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CONSTITUTIONAL FOUNDATIONS OF ENVIRONMENTAL PROTECTION

Environmental Duties and Liability in the Constitution of the Republic of Poland

Abstract

The aim of this article is to present the provisions of the Constitution of the Republic of Poland relating to the environment and future generations, particularly through the lens of their interpretation in the case law of the Polish Constitutional Court. Focusing on the environmental regulations, the analysis embraces the following aspects: the notion of 'environment', the principle of sustainable development, constitutional rights and freedoms of the individual, the duties of public authorities and individuals, and legal liability. An important purpose of the analysis is an attempt to determine the legal consequences of violating these provisions which may be triggered in court proceedings.

Keywords: Constitution of the Republic of Poland, environmental constitutionalism, right to a healthy environment, obligation to protect the environment, legal liability

1. Introduction

The 'environment' is the subject of extensive regulations in the Constitution of the Republic of Poland of 2 April 1997¹ (hereinafter 'the Constitution' or 'the Fundamental Law'). The reference to this concept in as many as five articles of the Constitution (namely Arts. 5, 31(3), 68(4), 74 and 86) demonstrates the constitutional legislator's particular concern for protecting environment-related values.²

The constitutional concept of the 'environment', just as most terms employed in the Fundamental Law, has not been further specified by means of a legal

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1 | Journal of Laws No 78, item 483, as amended.

2 | Cf. Rakoczy 2015, 75–76; Idem 2021, 124.



definition contained in this normative act. The Constitutional Court also noted it in its judgment of 13 May 2009, case ref. Kp 2/09, while pointing out that the term belongs to the category of constitutional 'general notions' with an established doctrinal content, generally known in the jurisprudence and having an 'autonomous meaning' which should not be assessed solely through the prism of corresponding concepts used in statutes (i.e. normative acts of a lower rank than the Constitution). However, the Constitutional Court emphasised that reference to statutory definitions does not *per se* constitute an error. Therefore, for the purposes of resolving individual cases, the Court may rely on the definition contained in the Act of 27 April 2001 – Environmental Protection Law³ (hereinafter 'EPL'), according to which the 'environment' means "the totality of natural elements, including those transformed as a result of human activity, in particular the surface of the earth, minerals, waters, air, landscape, climate and other elements of biological diversity, as well as the mutual interactions between these elements" (Art. 3(39) EPL).⁴

Moreover, the Constitutional Court perceives the 'environment' as an element of constitutional axiology. In its jurisprudence, it has stated, *inter alia*, that 'environmental protection'⁵ or the '(natural) environment' represents a constitutional value of particular importance, to which the process of interpreting the Fundamental Law should be subordinated.⁶ In a different judgment, however, the Court pointed to the value of a 'healthy environment', a term that better reflects the notion of 'value' as defined in the Dictionary of the Polish language, i.e. "a feature of something that is good in a particular respect"⁷ or "the qualities of something that determine that it satisfies specific needs".⁸ As a result, it is not the 'environment' itself that ought to be regarded as a constitutional value but rather the environment in a 'proper condition' – notably, a 'healthy' one. In this context, the environment-related values under the Fundamental Law include, in addition to a "healthy environment", also an 'ecological balance' – which, according to the Constitutional Court, represents a defining element of the constitutional notions of 'environmental protection' and 'sustainable development' (Art. 5 of the Constitution)⁹ – as well as 'ecological security' (Art. 74(1) of the Constitution), understood as "obtaining such a state of the environment that allows for a safe stay in this environment and enables its use in a way that ensures human development."¹⁰

3 | Journal of Laws of 2025, item 647, as amended.

4 | Cf. Judgment of the Constitutional Court of 13 May 2009, case ref. Kp 2/09 (OTK ZU no 5/A/2009, item 66).

5 | Judgment of the Constitutional Court of 20 December 2022, case ref. SK 66/21 (OTK ZU no A/2023, item 1).

6 | Judgments of the Constitutional Court of: 15 May 2006, case ref. P 32/05 (OTK ZU no 5/A/2006, item 56); 1 July 2014, case ref. SK 6/12 (OTK ZU no 7/A/2014, item 68).

7 | See: <http://bit.ly/3ZPiYOJ> [25.06.2025].

8 | See: <http://bit.ly/44hhIFw> [25.06.2025].

9 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.

10 | Judgments of the Constitutional Court of: 6 June 2006, case ref. K 23/05 (OTK ZU no 6/A/2006, item 62); 28 November 2013, case ref. K 17/12 (OTK ZU no 8/A/2013, item 125).

Accepting the systematics proposed in the literature¹¹ as a starting point, the provisions of the Fundamental Law relating to the environment and its protection may be classified into four groups, which refer, respectively to: 1) the principle of sustainable development (Art. 5); 2) the rights and freedoms of the individual (Arts. 31(3) and 74(3)); 3) the duties of public authorities and individuals (Arts. 5, 68(4), 74(1), 74(2), 74(4) and 86); 4) legal liability (Art. 86). This division structures the discussion in the following sections of this article; the principle of sustainable development being examined within the part dedicated to the duty to protect the environment, since according to Art. 5 of the Constitution this principle constitutes the framework for the realisation of said duty. The analysis places particular emphasis on the interpretation of the above provisions in the case law of the Constitutional Court which is of particular importance as the body entrusted with delivering binding interpretations of the Fundamental Law.¹² It should be noted, however, that constitutional provisions concerning the environment have relatively rarely been the subject of interpretation by the Constitutional Court, as most of these provisions have only exceptionally served as substantive standards of review in proceedings before the Court.¹³ More frequently, the term ‘environmental protection’ has appeared in the Court’s case law as one of the elements of the limitation clause associated with the principle of proportionality (Art. 31(3) of the Constitution).¹⁴ In those instances, however, the Constitutional Court has focused primarily on the application of the requirements of suitability, necessity, and proportionality *sensu stricto*, rather than on the interpretation of the duty to protect the environment. Only the judgments in cases ref. SK 6/12, K 20/14, K 17/12 and K 13/18. show exceptions to this approach.

2. Fundamental rights and freedoms in the field of environmental protection

Upon the entry into force of the Constitution on 17 October 1997 the question arose as to whether it establishes a subjective right of the individual to an environment of proper quality.¹⁵ This question was justified by the fact that the formerly binding

11 | Cf. Rakoczy 2021, 124–125; Zębek 2024, 127.

12 | Cf. Judgment of the Constitutional Court of 13 November 2013, case ref. P 25/12 (OTK ZU no 8/A/2013, item 122).

13 | Judgments of the Constitutional Court: case ref. K 23/05; case ref. Kp 2/09.

14 | Judgments of the Constitutional Court: case ref. P 32/05; case ref. SK 6/12; case ref. SK 66/21; of 21 April 2004, case ref. K 33/03 (OTK ZU no 4/A/2004, item 31); of 25 July 2006, case ref. P 24/05 (OTK ZU no 7/A/2006, item 87); of 26 March 2007, case ref. K 29/06 (OTK ZU no 3/A/2007, item 30); of 13 October 2010, case ref. Kp 1/09 (OTK ZU no 8/A/2010, item 74); of 28 November 2013, case ref. K 17/12 (OTK ZU no 8/A/2013, item 125); of 10 July 2014, case ref. P 19/13 (OTK ZU no 7/A/2014, item 71); of 28 September 2015, case ref. K 20/14 (OTK ZU no 8/A/2015, item 123); of 10 September 2020, case ref. K 13/18 (OTK ZU no A/2020, item 58); of 5 December 2023, case ref. P 2/17 (OTK ZU A/2023, item 94).

15 | Cf. Radecki 1998, 36.

Constitution of the Republic of Poland of 22 July 1952,¹⁶ in Art. 71, provided as follows: “Citizens of the Republic of Poland have the right to use the value of the natural environment (...)”. According to the Constitutional Court, this provision gave rise to a ‘fundamental right’ of citizens to benefit from the natural environment, “and the Constitution undoubtedly refers here to an environment meeting the standards of proper quality and ensured ecological balance.”¹⁷ The currently binding Fundamental Law contains no corresponding provision. At the same time, in its judgment in case ref. Kp 2/09, the Constitutional Court stated – in the context of Arts. 5, 68(4), 74 and 86, as well as Art. 31(3) of the Constitution – that these provisions do not establish or guarantee a subjective right to ‘live in a healthy environment’.¹⁸ This position has been affirmed by certain representatives of legal doctrine.¹⁹ However, an opposing view is also present in the literature, according to which the Constitution may serve as a basis for deriving a constitutional right to the environment, albeit differently defined in terms of its content.²⁰ Furthermore, in a limited number of judgments, voivodship administrative courts have pointed to a ‘subjective right to the environment’ or a ‘subjective right to ecological security’ derived from Art. 74 of the Constitution.²¹

In the field of environmental rights, the Fundamental Law quite clearly recognises only the right to be informed of the quality of the environment and its protection (Art. 74(3) of the Constitution).²² This right is granted to ‘everyone’ – that is, to citizens and foreigners alike, as well as to legal persons and other organisational entities, regardless of their legal status, form of activity, or any other distinguishing characteristics.²³ However, it should be noted that, in the context of Art. 81 of the Constitution, ‘constitutional subjective right’ as derived from the above is questioned in legal doctrine.²⁴ Pursuant to that provision, the rights specified, *inter alia*, in Art. 74 of the Constitution “may be asserted subject to limitations specified by statute”. Thus far, the Constitutional Court has not had the opportunity to resolve this controversy under Art. 74(3), but it has unequivocally ruled on the nature of the more general right of access to public information (Art. 61 of the Constitution), the right to environmental information constituting then a specific manifestation thereof.²⁵ As seen by the Court, Art. 61(1) of the Constitution forms the source of

16 | Journal of Laws of 1976 No 7, item 36, as amended (a version in force by 31 December 1989).

17 | Ruling of the Constitutional Court of 17 December 1991, case ref. U 2/91 (OTK ZU 1991, item 10).

18 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.

19 | E.g. Garlicki 2003, 2; Habuda 2019, 108, 110–111; Uliasz 2021, 154.

20 | Survey of views presented in: Majchrzak 2022, 261–263.

21 | Cf. Judgments of the Voivodship Administrative Court in Warsaw of: 10 February 2015, case ref. IV SA/Wa 1304/14 (<http://bit.ly/4nlxckf>) [27.06.2025]; 7 July 2015, case ref. IV SA/Wa 1280/15 (<http://bit.ly/44m6tM2>) [27.06.2025]; Order of the Voivodship Administrative Court in Łódź of 30 December 2019, case ref. II SA/Lu 506/19 (<http://bit.ly/4eqT61x>) [27.06.2025].

22 | Cf. e.g. Haładyj 2003, 52; Rakoczy 2006, 220–223; Majchrzak 2022, 265.

23 | Cf. Garlicki 2003, 5; Rakoczy 2006, 220.

24 | Cf. Tarnacka 2009, 136.

25 | Cf. e.g. Garlicki 2003, 5; Rakoczy 2006, 219.

a ‘public subjective right’, meaning that “a citizen is guaranteed the possibility of effectively demanding specific conduct from public authorities, enforceable, if necessary, through appropriate procedural instruments”.²⁶ Therefore, the nature of this right should not vary depending on the subject matter of the public information – environmental or any other one. Moreover, it should be noted that, in the Constitutional Court’s view, Art. 81 of the Fundamental Law reduces only the scope of claims available to an individual but does not completely exclude them; thus, we can still speak of a constitutional subjective right. In this situation an objection that a statutory regulation is unconstitutional can only be raised when it falls “below a certain minimum of protection and will lead to a situation where a given right is devoid of its actual content”. Compliance with Art. 74(3) of the Constitution would, therefore, be limited, in particular, to “examining whether the act clearly and unequivocally contradicts the essence of the right” to information on the state and protection of the environment and whether this act takes into account “a certain minimum standard of requirements”.²⁷

As regards other subjective rights linked to environmental protection, it is necessary to refer to Art. 68(4) of the Constitution stating: “Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment”. This provision must be interpreted in conjunction with Art. 68(1) of the Fundamental Law, which lays down the right of everyone to have their health protected.²⁸ The Constitutional Court expressed the view that the latter provision constitutes the basis for deriving an individual’s subjective right to health protection. In the Court’s view, the substance of this right is the possibility to use a healthcare system functionally oriented towards combating and preventing diseases, injuries and disability. This right is accompanied by the obligation of public authorities to ensure the effective realisation of the conditions necessary for its enjoyment – such realisation cannot be illusory or merely potential; rather, the system in its entirety must be efficient. However, the Constitution does not make it possible to precisely determine the types or categories of health benefits falling under Art. 68(1) of the Fundamental Law, their sources of financing, the nature and structure of the entities responsible for their funding, or the ownership structure of healthcare providers. As a result, ‘the burden of constitutional guarantees is thereby transferred to the procedural level’, particularly to the correct determination by the legislator of the organisational framework requiring establishing a healthcare system that is precise, unambiguous, and functionally effective.²⁹ This

26 | Judgment of the Constitutional Court of 18 December 2018, case ref. SK 27/14 (OTK ZU no A/2019, item 5).

27 | Cf. Judgment of the Constitutional Court of 24 November 2015, case ref. K 18/14 (OTK ZU no 10/A/2015, item 165).

28 | Cf. Trzciński 2003, 2.

29 | Cf. Judgment of the Constitutional Court of 7 January 2004, case ref. K 14/03 (OTK ZU no 1/A/2004, item 1).

system is also shaped by the duty imposed on public authorities under Art. 68(4) of the Constitution.³⁰ However, this provision does not constitute a source of a subjective right³¹ and, therefore, cannot serve as a basis for lodging a constitutional complaint by an individual. This is due to the fact that, under the case law of the Constitutional Court, the right to health protection consists in the possibility of benefiting from the institutional and procedural solutions that form the healthcare system (i.e. access to health services), and not in the realisation by public authorities of the duty to prevent the consequences of environmental degradation.³²

In exceptional instances, the Constitutional Court draws attention to the connection between environmental protection and certain subjective rights, namely the right to a court (Art. 45(1) of the Constitution),³³ as well as the right to ownership and other property rights (Art. 64(1) and (2) of the Constitution).³⁴

The duty to protect the environment arises indirectly from Art. 31(3) of the Fundamental Law, which provides that “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights”. Consequently, neither constitutional rights nor freedoms are absolute; among other things, considerations relating to environmental protection may constitute a legitimate justification for interference with such rights or freedoms.³⁵ Importantly, the ‘environmental premise’ is not limited solely to the expression ‘to protect the natural environment’ but may also be understood as encompassed within the phrase ‘protection of state security’, which includes, *inter alia*, ‘ecological security’.³⁶ This entails broader obligations upon public authorities than those derived strictly from the requirement ‘to protect the environment’.³⁷ Further constitutional conditions for the permissibility of such limitations include their introduction by statute, as well as the observance of their outer boundaries, namely the requirements of necessity and the prohibition on infringing the essence of rights and freedoms.³⁸ Under the established case law of the Constitu-

30 | Cf. Judgment of the Constitutional Court of 21 May 2024, case ref. K 27/23 (OTK ZU no A/2024, item 77).

31 | Cf. Judgment of the Constitutional Court of 22 July 2008, case ref. K 24/07 (OTK ZU no 6/A/2008, item 110); Florczak-Wątor 2023, point 1.

32 | A different view, however, is expressed in: Trzciński 2003, 4–7.

33 | Cf. Judgments of the Constitutional Court of: 12 May 2021, case ref. SK 19/15 (OTK ZU no A/2021, item 25); 1 July 2021, case ref. SK 23/17 (OTK ZU no A/2021, item 63).

34 | Cf. Judgments of the Constitutional Court of: 3 July 2013, case ref. P 49/11 (OTK ZU no 6/A/2013, item 7); 21 July 2014, case ref. K 36/13 (OTK ZU no 7/A/2014, item 75).

35 | For more on this, see Rakoczy 2006, *passim*.

36 | Dissenting opinion of the Judge Teresa Liszcz to the Order of the Constitutional Court of 20 May 2009, case ref. Kpt 2/08 (OTK ZU 5/A/2009, item 78); Korzeniowski 2012, 182.

37 | Cf. Judgment of the Constitutional Court, case ref. K 23/05.

38 | Cf. Garlicki 2001, 6.

tional Court, this ‘necessity’ entails three elements: usefulness, indispensability, and proportionality *sensu stricto*. Based on the above constitutional provisions, the case law of the Constitutional Court has thus far examined the constitutionality of statutory provisions introducing restrictions – on the grounds of ‘environmental protection’ – on the right to property³⁹ and the freedom of economic activity.⁴⁰

3. The protection of the environment and future generations as a duty and obligation

The regulation of environmental issues in the Fundamental Law emphasises the duty to protect the environment, which is imposed upon ‘the Republic’ (Art. 5 of the Constitution), ‘public authorities’ (Art. 74(1) and (2) of the Constitution), and ‘everyone’ (Art. 86 of the Constitution). Among these provisions, Art. 5 holds particular significance, as it is included in Chapter I of the Constitution, entitled ‘The Republic’, and thus forms part of the “fundamental constitutional provisions which define the basic and specially protected systemic features of the Republic of Poland”.⁴¹ Following this provision, “The Republic of Poland (...) shall ensure the protection of the natural environment pursuant to the principle of sustainable development”. In the view of the Constitutional Court, the ‘primary method’ for achieving the aim of this provision (as well as other constitutional provisions on environmental protection and ecological security) is by adhering to the principle of sustainable development, which reflects international consensus, particularly the outcomes of the 1992 Rio de Janeiro Conference.⁴² With appropriate caution, given the implications of interpreting constitutional provisions through statutory definitions, the Court proposes to understand the concept of ‘sustainable development’ in line with Art. 3(50) EPL. Accordingly, the Court understands it as: “such social and economic development which extends to the process of integrating political, economic and social actions, with maintaining the environmental balance and sustainability of basic natural processes, with a view to guaranteeing the capability of satisfying basic needs of particular communities or citizens of both the present and future generations”.⁴³ Moreover, the Constitutional Court has noted that ‘sustainable development’ implies “the requirement that interference with the environment be limited as much as possible (i.e. the least harmful), and that the social benefits

39 | Judgments of the Constitutional Court: case ref. P 32/05; case ref. SK 6/12; case ref. SK 66/21; case ref. P 19/13; case ref. K 20/14; case ref. K 13/18; case ref. P 2/17.

40 | Judgments of the Constitutional Court: case ref. SK 66/21; case ref. K 33/03; case ref. P 24/05; case ref. K 29/06; case ref. Kp 1/09.

41 | Judgment of the Constitutional Court of 10 July 2000, case ref. SK 21/99 (OTK ZU no 5/2000, item 144).

42 | Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.

43 | Judgment of the Constitutional Court, case ref. Kp 2/09.

be proportionate and socially adequate in relation to the damage caused”.⁴⁴ At the same time, the Court emphasised that: “The principles of sustainable development encompass not only nature conservation and spatial planning, but also adequate concern for social and civilisational development, which includes the need to build essential infrastructure to support human life as well as the life of individual communities, in accordance with civilisational standards. The idea of sustainable development therefore entails the need to consider various constitutional values and to balance them appropriately”.⁴⁵ The Constitutional Court further pointed out that “the principle of sustainable development is of an objective nature only and does not provide a normative basis for deriving specific subjective rights enforceable by way of a constitutional complaint”.⁴⁶

Arts. 5 and 74(2) of the Constitution impose the duty to protect the environment upon public authorities, while Art. 74(1) requires them to “pursue policies ensuring the ecological security of current and future generations”. Additionally, Art. 74(4) of the Constitution obliges public authorities to “support the activities of citizens to protect and improve the quality of the environment”. In the context of the constitutional meaning of the term ‘environmental protection’, the Constitutional Court, in its judgment in case ref. Kp 2/09, referred to the statutory definition provided in Art. 3(13) EPL, at the same time suggesting reliance on this definition when adjudicating at least certain matters before the Court. According to this definition, environmental protection means: “taking or abandoning actions, which allows environmental balance to be maintained or restored; the protection includes, in particular: a) reasonable managing of the environment and environmental resources in line with the principle of sustainable development; b) preventing pollution; c) restoring items of the environment to a favourable status”. The Constitutional Court also referred this concept to Art. 74(1) of the Constitution, particularly to the phrase ‘ecological security’ used therein, understood as “a state of the environment that allows for a safe stay in this environment and enables its use in a way that ensures human development”.⁴⁷ It held that: “environmental protection is one of the components of ecological security, but the tasks of public authorities are broader – they also include activities aimed at improving the current state of the environment and planning for its future development”.⁴⁸ At the same time, however, the Court emphasised that ensuring environmental protection, by virtue of being set out in a provision of systemic importance – namely Art. 5, Chapter I of the Constitution – requires a more comprehensive approach than the state policy directive contained in Art. 74(1) of the Constitution.⁴⁹

44 | Ibid; cf. also Judgment of the Constitutional Court, case ref. P 19/13.

45 | Judgments of the Constitutional Court: case ref. K 23/05; case ref. K 17/12; case ref. K 20/14.

46 | Order of the Constitutional Court of 7 April 2016, case ref. Ts 54/15 (OTK ZU no B/2016, item 462).

47 | Judgment of the Constitutional Court, case ref. K 23/05.

48 | Ibid.

49 | Judgments of the Constitutional Court: case ref. K 17/12; case ref. K 52/12.

The addressees of the above-mentioned duties are the ‘public authorities’. In the interpretation of the Constitutional Court these obligations are directed “primarily to the Parliament, the pace and manner of their implementation depending thereon”. Nevertheless, they apply to “all public authorities of the Republic of Poland” – encompassing not only the legislative and executive bodies, but also the judiciary and local government ones,⁵⁰ as well as other institutions – including those which do not constitute state or self-government entities – insofar as they exercise delegated public authority functions.⁵¹

The beneficiaries of public activities under Arts. 5 and 74 of the Fundamental Law are not only the ‘present generation’, but also ‘future generations’. This follows from the express wording of Art. 74(1) of the Constitution, as well as the above-mentioned concept of sustainable development (cf. Art. 5 of the Constitution). Furthermore, such an orientation of the duty to protect the environment and ensure ecological security may also be derived from the Preamble to the Constitution.⁵² According to the relevant part thereof: “We, the Polish Nation – all citizens of the Republic (...), obliged to bequeath to future generations all that is valuable from our over one thousand years’ heritage”. It may be assumed that this intergenerational legacy encompasses a set of constitutional values: the democratic state of law, a healthy environment, national heritage, human life and health, individual liberty, ecological security, and property, as well as the universal values referred to in the Preamble – those derived from the Christian heritage of the Nation or from other sources. Under the case law of the Constitutional Court, the above-quoted passage of the Preamble should be interpreted as imposing a duty to protect these values, incumbent upon both public authorities and citizens.⁵³ Respecting the interests of future generations also reflects the implementation of the duty of intergenerational solidarity and intergenerational justice, as derived from the principles of solidarity and social justice laid down in the Preamble and in Art. 2 of the Constitution.⁵⁴

In the opinion of the Constitutional Court, Arts. 5, 74(1), 74(2), and 74(4), as well as Art. 68(4) of the Constitution – discussed in subsection 2 of this study – constitute sources of ‘program norms’.⁵⁵ They identify the goals and tasks of the State,⁵⁶ and impose specific obligations upon public authorities with respect to the development and implementation of policies relating to environmental

50 | Judgment of the Constitutional Court, case ref. Kp 2/09.

51 | Cf. e.g. Judgment of the Constitutional Court of 26 July 2012, case ref. P 8/11 (OTK ZU no 7/A/2012, item 84).

52 | For more on this, see Majchrzak 2022, 274–277.

53 | Cf. Judgment of the Constitutional Court of 16 March 2017, case ref. Kp 1/17 (OTK ZU no A/2017, item 28).

54 | For more on this, see Majchrzak 2022, 283–284.

55 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09; Order of the Constitutional Court, case ref. Ts 54/15; Gizbert-Studnicki & Grabowski 1997, 97–98, 111; Czekałowska 2022, 101, 146, 151.

56 | Cf. Judgment of the Constitutional Court, case ref. Kp 2/09.

protection and ecological security.⁵⁷ However, “according to the settled case law of the Constitutional Court, such provisions do not, in themselves, provide a sufficient basis for construing concrete subjective rights of the individual that would be protected by means of a constitutional complaint”.⁵⁸ Program norms do not confer upon individuals the right to raise ‘positive’ claims to specific actions of or benefits from public authorities,⁵⁹ since they leave those authorities with discretion as to the selection of the means for achieving the constitutionally prescribed goals.⁶⁰ Nevertheless, despite their nature, the Constitutional Court does not rule out the possibility of relying upon such norms as independent standards for constitutional review. This approach stems from the fact that such provisions allow for the identification of a “minimum threshold of constitutional guarantees” within the areas they address. On this ground, it is possible, for instance, to challenge a complete failure to act on the part of public authorities or allege the creation of illusory measures, which, in practice, fail to fulfil the stated constitutional goals. “The Constitutional Court should limit its role in such review to assessing whether the means adopted by the legislature were clearly and unequivocally unsuitable for achieving the goal defined in such a provision”.⁶¹

In addition to specifying the obligations of public authorities, the Constitution establishes in Art. 86 “a general duty of care for the condition of the environment; this general obligation is accompanied by the principle – also of a general nature (imposed on ‘everyone’) – of responsibility for causing the deterioration of the environment”.⁶² This is one of the few general obligations explicitly expressed in the Fundamental Law, which further emphasises the importance of environmental protection.⁶³ According to the Constitutional Court, the ‘duty to care for the environment’ comprises not only a ‘negative’ aspect – the prohibition on destroying or degrading elements of the environment, polluting water, air or soil – but also a ‘positive’ one: the duty to prevent environmental damage, manage it rationally, and restore natural elements to a proper condition.⁶⁴ Moreover, in the Court’s view, “the general obligations regarding environmental protection, set out in the Constitution, are not limited to prohibiting or requiring specific behaviour; they go much further as they empower the legislator to restrict constitutional rights and freedoms when necessary to fulfil the obligation to protect the environment”⁶⁵ (cf. Art. 31(3) of the Constitution).

57 | Order of the Constitutional Court, case ref. Ts 54/15.

58 | Ibid.

59 | Gizbert-Studnicki & Grabowski 1997, 111–112.

60 | E.g. Judgment of the Constitutional Court of 18 October 2017, case ref. K 27/15 (OTK ZU no A/2017, item 74).

61 | Ibid.

62 | Judgments of the Constitutional Court: case ref. Kp 2/09; case ref. SK 6/12.

63 | Judgment of the Constitutional Court, case ref. K 20/14.

64 | Judgments of the Constitutional Court: case ref. SK 6/12; case ref. K 20/14.

65 | Judgment of the Constitutional Court, case ref. K 20/14.

The Constitutional Court has also expressed its position on the interpretation of the term ‘everyone’ as defining the personal scope of the obligation laid down in Art. 86 of the Fundamental Law. In its judgment in case ref. K 13/18, it explained that this obligation has a ‘universal nature’ and is addressed to “natural persons, legal persons, as well as organisational units, regardless of their nature or the type of activity they pursue”.⁶⁶ The legal literature defines the group of addressees even more precisely, listing: Polish citizens, foreigners, economic entities – Polish, mixed, and foreign ones – subject to the Polish legal order, other organisational units, as well as public administration bodies – both governmental and self-governmental.⁶⁷

4. Liability for violation of constitutional rights and obligations (including judicial enforcement)

1. The concept of legal liability may be understood, following W. Lang, as the attribution to a specific entity of negative legal consequences (sanctions – *author’s note*) resulting from incidents or conditions subject to negative normative qualification.⁶⁸ Here, the question arises as to what these consequences are, how they are to be concretised (applied), and what the competences of the relevant authorities (particularly, the courts) are in cases involving violations of the above-mentioned provisions of the Constitution relating to environmental matters. This question is linked to the assumption that normative nature is one of the features of the Fundamental Law, and therefore, it is an act composed entirely of provisions capable to provide grounds for the construction of legal norms.⁶⁹

In the Polish legal order, most constitutional provisions are (and must be) detailed and further developed through regular statutes,⁷⁰ and subsequently – where appropriate – through secondary legislation implementing those statutes (i.e. regulations and acts of local law). This rule also applies to the constitutional provisions on environmental protection. Therefore, legal responsibility for their violation may encompass, firstly, the actions of the legislator in operationalising these provisions through normative acts of a lower order than the Constitution (in particular, statutes, regulations, and acts of local law); secondly, the conduct of other public authorities – in particular, executive bodies (public administration) – involving the combined application of relevant constitutional provisions and other normative acts adopted to implement them; and thirdly, the actions of other

66 | Judgment of the Constitutional Court, case ref. K 13/18.

67 | Boć 2000, 194; Haładyj 2003, 55–56.

68 | Lang 1986, 385.

69 | Cf. Order of the Constitutional Court of 22 March 2000, case ref. P 12/98 (OTK ZU no 2/2000, item 67).

70 | Cf. *ibid.*

entities (as part of the category referred to as ‘everyone’) in connection with the fulfilment of the constitutional duty to care for the state of the environment (Art. 86 of the Constitution), as operationalised in other normative acts (especially statutes, regulations, and acts of local law). The issue of the liability of the above-mentioned ‘public authorities’ and ‘everyone’ for the violation of constitutional environmental provisions is closely linked to the problem of the direct application of the Constitution (cf. Art. 8(2) of the Fundamental Law). This concerns, in particular, the judicial authorities which are empowered to determine such liability and the negative legal consequences arising therefrom for an individual or an entity that has breached the constitutional provisions. The direct application of the Fundamental Law may take three forms: 1) autonomous application – where a constitutional provision constitutes the main, and sometimes even the sole, basis for a judgment (a scenario occurring only exceptionally); 2) combined application of the Constitution and a statute, or possibly another normative act – where the matter at hand is regulated simultaneously at both levels; 3) confrontational (collision-based) application – where the Constitution serves as a benchmark for reviewing the constitutionality of a lower-ranking normative act.⁷¹

2. As a preliminary point, it should be emphasised that the issue of legal liability is directly addressed in the Fundamental Law in Art. 86 which stipulates that “everyone shall be held responsible for causing degradation of the environment and the principles of such responsibility shall be specified by statute”. It is widely recognised as the constitutional basis for the ‘polluter pays’ principle.⁷² However, due to the statutory reference embedded in this provision, the constitutional concept of liability does not possess an autonomous character. Rather, it entails a reference to the forms of liability that exist within the Polish legal system, including penal liability *sensu stricto*, liability for misdemeanours, civil liability, and administrative liability, all of which are regulated by various statutes⁷³ – in particular, the EPL, the Act of 13 April 2007 on the Prevention and Repair of Environmental Damage,⁷⁴ the Act of 23 April 1964 – Civil Code,⁷⁵ the Act of 6 June 1997 – the Penal Code.⁷⁶ In such cases, a breach of Art. 86 of the Constitution – and, consequently, the attribution of liability based thereon – will result from a violation of specific statutory provisions that operationalise this constitutional norm and from the fulfilment of the statutory premises for liability. Therefore, in essence, the statutory provisions themselves constitute the proper and sufficient legal basis for adjudication. Provided they are clear, precise, and free from constitutional doubt, they exclude the conclusion that the constitutional provision in question forms, even partially, the

71 | Florczak-Wątor 2014, 320, 329, 332, 343; Garlicki 2022, 34–35.

72 | Haładyj 2003, 54; Trzcińska 2021, 144.

73 | Czekałowska 2022, 171; Haładyj 2003, 55; Radecki 2002, 38.

74 | Journal of Laws of 2020, item 2187.

75 | Journal of Laws of 2025, item 1071, as amended.

76 | Journal of Laws of 2025, item 383, as amended.

basis of the legal assessment⁷⁷ or serves as a normative standard for evaluating the conduct of the party held liable.

From the perspective of liability for a breach of constitutional environmental rights or obligations, particular importance must be attached to those mechanisms for the protection of the legal order in which the provisions of the Constitution form one of the elements of the legal basis for adjudication – without which the normative standard for evaluating the contested conduct of a ‘public authority’ or ‘anyone’ cannot be reconstructed. Undoubtedly, such situations arise in the context of the exercise of powers by the Constitutional Court or an administrative court, especially involving the direct ‘collision-based’ (or ‘confrontational’) application of the Constitution by these judicial authorities.⁷⁸

3. Potentially, all provisions of the Fundamental Law relating to the environment may serve as standards of review in proceedings before the Constitutional Court (for the specific nature of standards derived from program norms, see subsection 3 of this study; for the standard arising from Art. 74(3), see subsection 2). However, the review exercised by the Court is not uniform in application. Its subjective and objective prerequisites vary depending on whether it concerns an abstract review (initiated by an application from an authorised body) or a specific review (initiated by a constitutional complaint or a legal question of a court).⁷⁹ An application for abstract review (i.e. not related to a specific case pending before a court or public authority) may be submitted by entities whose procedural standing is either not subject to material limitations (Art. 191(1) point 1 of the Constitution)⁸⁰ or is restricted to challenging provisions concerning “matters falling within the scope of their activity” (Art. 191(1) points 2–5⁸¹ in conjunction with Arts. 186(2) and 191(2) of the Constitution).⁸² Among the entities with limited standing, these are only the constitutive organs of units of local government that are of relevance in the context of challenging compliance with the environmental provisions of the Constitution, since only the scope of their activity encompasses matters of environmental protection.

As part of the abstract review of constitutionality, statutes, international agreements and legal provisions issued by central state organs may be challenged (Art.

77 | Cf. Florczak-Wątor 2014, 329–330.

78 | Cf. Masternak-Kubiak 2022, 139–141; Mączyński & Łyszkowska 2005, 35–36.

79 | E.g. Judgment of the Constitutional Court of 15 May 2012, case ref. P 11/10 (OTK ZU no 5/A/2012, item 50).

80 | “The President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Supreme Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens’ Rights”.

81 | “2) the National Council of the Judiciary, to the extent specified in Art. 186(2); 3) the constitutive organs of units of local government; 4) the national organs of trade unions as well as the national authorities of employers’ organizations and occupational organizations; 5) churches and religious organizations”.

82 | Cf. Order of the Constitutional Court of 23 September 2009, case ref. P 81/08 (OTK ZU no 8/A/2009, item 130).

188 points 1–3 of the Constitution). The latter include, in particular, implementing regulations (Arts. 87(1) *in fine* and 92 of the Constitution),⁸³ resolutions of the parliamentary chambers,⁸⁴ and internal acts of central government bodies⁸⁵ (Art. 93 of the Constitution), provided that they express general and abstract norms binding on their addressees (since the decisive criterion is the substantive normativity, not merely the formal classification of an act, e.g. as a regulation issued by the Council of Ministers or a minister⁸⁶). Environmental policy acts adopted by the Council of Ministers may also, in principle, be subject to an application for constitutional review, provided they possess normative features – in particular, if they interfere with constitutional rights or freedoms of individuals or with the legal status of local government units.⁸⁷ It should be noted, however, that the Constitutional Court takes a cautious approach towards the admissibility of reviewing ‘state policy acts’. The Court has held that planning (policy) norms, which constitute the ‘material content’ of such acts, are not legal norms of a general and abstract nature. Moreover, the process of making political and economic choices, as well as the assessment of the accuracy and fairness of such decisions, remains, in principle, outside the scope of a review carried out by the Constitutional Court.⁸⁸

In the case of a constitutional complaint, the constitutional review concerns the provision of a normative act based on which a final ruling for the law enforcement was issued, regarding freedoms, rights, or obligations defined in the Constitution. Such a complaint may be lodged by “anyone whose constitutional freedoms or rights have been infringed” (Art. 79(1) of the Constitution). This construction of the conditions for a constitutional complaint implies that only those provisions of the Fundamental Law which give rise to individual subjective rights may serve as the standard for review.⁸⁹ In the context of environmental provisions, this essentially includes only Art. 74(3), and additionally Art. 31(3) of the Constitution when applied in conjunction with another provision establishing a subjective right that is being restricted on the grounds of ‘environmental protection’. It is also worth noting that, due to the broad subjective scope of the right under Art. 74(3) of the Constitution, a complainant may not only be a natural person (a Polish citizen, a foreign national, or a stateless person), but also a legal person or another organisational unit (in

83 | E.g. Judgment of the Constitutional Court of 27 November 2012, case ref. U 4/12 (OTK ZU no 10/A/2012, item 124).

84 | E.g. Judgment of the Constitutional Court of 29 November 2008, case ref. U 1/08 (OTK ZU no 9/A/2008, item 160).

85 | E.g. Judgment of the Constitutional Court of 14 April 2014, case ref. U 8/13 (OTK ZU no 4/A/2014, item 39).

86 | Cf. Judgments of the Constitutional Court of: 5 June 2001, case ref. K 18/00 (OTK ZU no 5/2001, item 118); 8 April 2009, case ref. K 37/06 (OTK ZU no 4/A/2009, item 47).

87 | Cf. e.g. Judgment of the Voivodship Administrative Court in Warsaw of 17 October 2023, case ref. I SA/Wa 404/23 (<http://bit.ly/4nM1tjx>) [9.07.2025].

88 | Cf. Order of the Constitutional Court of 20 June 2001, case ref. K 35/00 (OTK ZU no 6/2001, item 167).

89 | E.g. Order of the Constitutional Court, case ref. Ts 54/15.

particular, an environmental organisation) – generally, any entity possessing legal capacity to act as an autonomous holder of the right to environmental information, the violation of which is being alleged.⁹⁰ Nevertheless, entities performing public authority functions in the material sense, such as units of local government, public economic operators,⁹¹ or political parties,⁹² are excluded from this group.

A legal question may be submitted by a court (subjective criterion) and may concern the constitutionality of a provision of a normative act (objective criterion), if the resolution of a case pending before that court is preconditioned by the answer to that question (functional criterion)⁹³ (Art. 193 of the Constitution).

It is worth noting that the aforementioned ‘normative act’, as the subject of a constitutional complaint or a legal question, includes not only the acts listed in Art. 188 points 1–3 of the Constitution, but also all acts meeting the material criterion of normativity – i.e. those that contain general norms directed to a generically defined addressee, prescribing for them essentially repeatable (abstract) conduct. This definition may include, in particular, acts of local law, EU regulations,⁹⁴ and even planning acts (e.g. environmental policies),⁹⁵ insofar as they establish general and abstract rules of conduct that are legally binding on their addressees.⁹⁶

4. The constitutional provisions concerning environmental protection are also applied by administrative courts in the exercise of their competence to review the activities of public administration (Art. 184 of the Constitution). Pursuant to Art. 1(2) of the Act of 25 July 2002 – Law on the Organisation of Administrative Courts,⁹⁷ such review is – in principle – exercised in terms of compliance with the law, including compliance with the Constitution.⁹⁸ Art. 3(2) of the Act of 30 August 2002 – Law on the Proceedings before Administrative Courts⁹⁹ (hereinafter: ‘LPAC’) lists the categories of conduct by public administrative authorities that may be challenged before an administrative court. These include both individual

90 | Cf. e.g. Order of the Constitutional Court of 12 October 2004, case ref. Ts 35/04 (OTK ZU no 1/B/2005, item 25).

91 | Order of the Constitutional Court of 20 December 2007, case ref. SK 67/05 (OTK ZU no 11/A/2007, item 168).

92 | Order of the Constitutional Court of 15 September 2011, case ref. Ts 256/09 (OTK ZU no 5/B/2011, item 359).

93 | E.g. Judgment of the Constitutional Court of 21 November 2024, case ref. P 11/24 (OTK ZU no A/2024, item 109).

94 | Judgment of the Constitutional Court of 16 November 2011, case ref. SK 45/09 (OTK ZU no 9/A/2011, item 97); Szmulik 2006, 172–178; Wiącek 2011, 91, 113–117.

95 | Majchrzak 2023, 54–60.

96 | Cf. Judgment of the Constitutional Court of 3 July 2012, case ref. K 22/09 (OTK ZU no 7/A/2012, item 74).

97 | Journal of Laws of 2024, item 1267.

98 | E.g. Judgments of the Supreme Administrative Court of: 6 May 2013, case ref. II OSK 2608/11 (<http://bit.ly/3InFxUF>) [09.07.2025]; 6 May 2013, case ref. II OSK 2609/11 (<http://bit.ly/3liUHe0>) [09.07.2025]; 9 January 2018, case ref. II GSK 1760/17 (<http://bit.ly/407QpMG>) [09.07.2025]; 23 January 2018, case ref. II GSK 3614/17 (<http://bit.ly/44y1Sc8>) [09.07.2025].

99 | Journal of Laws of 2024, item 935, as amended.

acts (e.g. administrative decisions, orders issued in administrative or enforcement proceedings, and other acts or actions in the field of administration relating to rights or obligations arising under legal provisions) and general acts (in particular, local laws adopted by the bodies of local self-government units and territorial government administration authorities).

A complaint to the administrative court against the above-mentioned actions of public administration may, in principle, be lodged by “anyone who has a legal interest therein, the public prosecutor, the Commissioner for Citizens’ Rights, the Commissioner for Children’s Rights, and a social organisation within the scope of its statutory activities, in matters concerning the legal interests of other persons, provided that it participated in the administrative proceedings” (Art. 50(1) LPAC). The last stipulation means that a social organisation’s standing to lodge a complaint is limited solely to decisions and orders issued in such ‘proceedings’ (i.e. a series of procedural acts aimed at resolving an individual case by means of an administrative decision), and does not extend, in particular, to general acts of public administration (including acts of local law).¹⁰⁰ This requirement of prior participation in the ‘administrative proceedings’ does not apply, however, to ‘environmental organisations’ participating in proceedings ‘requiring public participation’ in environmental protection. Nevertheless, even these provisions allow such organisations to file a complaint with the administrative court only against a decision issued in the above-mentioned proceedings,¹⁰¹ which also encompasses orders related to such proceedings (in particular, an order refusing to admit the environmental organisation to participate in the proceedings).

A review of the case law of administrative courts concerning the application of constitutional environmental provisions reveals several issues that have emerged in this context.

Firstly, the violation of these provisions has often been raised by complainants as a legal argument (sometimes directly, independently of an allegation of statutory violation) and has subsequently served as a standard for reviewing the legality of individual ‘acts’ of public administrative authorities, particularly administrative decisions and cases of inaction regarding access to environmental information. This has concerned the following standards invoked in conjunction with one another: Arts. 5 and 74 of the Constitution;¹⁰² Arts. 5 and 74(4) of the Constitution;¹⁰³

100 | Cf. Order of the Supreme Administrative Court of 29 May 2015, case ref. II GSK 976/15 (<http://bit.ly/44C1FCb>) [9.07.2025].

101 | Art. 44(3) of the Act of 3 October 2008 on Sharing Information on the Environment and Its Protection, Public Participation in Environmental Protection, and on Environmental Impact Assessments, Journal of Laws of 2024, item 1112, as amended.

102 | Judgments of the Supreme Administrative Court of: 2 February 2009, case ref. II OSK 62/08 (<http://bit.ly/46LkyEX>) [11.07.2025]; 18 October 2023, case ref. II OSK 1952/23 (<http://bit.ly/4gxDMkW>) [11.07.2025].

103 | Judgment of the Voivodship Administrative Court in Poznań of 25 February 2009, case ref. II SA/Po 702/08 (<http://bit.ly/45ZH8Jy>) [11.07.2025].

Arts. 5, 74 and 86 of the Constitution;¹⁰⁴ Art. 31(3) in connection with Art. 86 of the Constitution¹⁰⁵ (in the context of the proportionality of an interference with the right to property); Art. 68(4), Arts. 74(1), (2), (4) and 86 of the Constitution;¹⁰⁶ Arts. 74(1) and (2) of the Constitution;¹⁰⁷ Art. 74(3) and (4) of the Constitution;¹⁰⁸ Art. 74(3) in connection with Art. 31(3) of the Constitution.¹⁰⁹

Secondly, the constitutional provisions relating to environmental protection served as the basis for alleging a violation of the law, and subsequently as a standard for review of the local law acts' legality. These included: Art. 31(3) in connection with Arts. 5 and 74(1) of the Constitution (in the context of the proportionality of interference with the right to property¹¹⁰ or the freedom of economic activity);¹¹¹ Art. 74(1), (2), and (4) of the Constitution.¹¹²

Thirdly, constitutional environmental provisions were invoked by complainants as a source of a legal interest justifying the lodging of a complaint against an act of local law or another resolution of a local government authority (cf. Art. 50(1) LPAC). In response, administrative courts held that such an 'interest' cannot be derived from the constitutional obligations to protect the environment, as the Fundamental Law in this regard does not create a specific entitlement that could be pursued, for example, through judicial proceedings; it does not constitute a source of direct, individual, and specific legal interest of the complainant¹¹³ that would entitle them to lodge an administrative court complaint.

104 | Judgment of the Voivodship Administrative Court in Warsaw of 4 April 2017, case ref. VII SA/Wa 199/17 (<http://bit.ly/3K3Zsjk>) [11.07.2025].

105 | Judgment of the Voivodship Administrative Court in Szczecin of 18 November 2009, case ref. II SA/Sz 992/09 (<http://bit.ly/3VW8mLk>) [11.07.2025].

106 | Judgment of the Voivodship Administrative Court in Lublin of 29 June 2022, case ref. II SA/Lu 801/21 (<http://bit.ly/4mivaQd>) [11.07.2025].

107 | Judgments of the Supreme Administrative Court of: 18 January 2008, case ref. II OSK 1887/06 (<http://bit.ly/4nGtMIp>) [11.07.2025]; 14 December 2011, case ref. II OSK 1871/10 (<http://bit.ly/4pxj0kz>) [11.07.2025].

108 | Judgments of the Voivodship Administrative Court in Lublin of: 11 October 2022, case ref. II SAB/Lu 108/22 (<http://bit.ly/41Ku2xm>) [11.07.2025]; 27 October 2022, case ref. II SAB/Lu 88/22 (<http://bit.ly/45G5BSR>) [11.07.2025].

109 | Judgment of the Voivodship Administrative Court in Lublin of 28 February 2023, case ref. II SA/Lu 885/22 (<http://bit.ly/47CEKty>) [11.07.2025].

110 | Judgments of the Supreme Administrative Court of: 6 September 2011, case ref. II OSK 1217/11 (<http://bit.ly/4lwS7yN>) [11.07.2025]; 24 May 2012, case ref. II OSK 624/12 (<http://bit.ly/41dzvg0>) [11.07.2025]; 9 December 2024, case ref. II OSK 2318/23 (<http://bit.ly/3jihQxL>) [11.07.2025]; Judgment of the Voivodship Administrative Court in Warsaw, case ref. IV SA/Wa 1280/15.

111 | Judgment of the Supreme Administrative Court, case ref. II OSK 1217/11.

112 | Ibid.

113 | Orders of the Supreme Administrative Court of: 9 April 2019, case ref. II OSK 883/19 (<http://bit.ly/4mjAmNC>) [11.07.2025]; 5 May 2023, case ref. II OSK 659/23 (<http://bit.ly/4mrgkrG>) [11.07.2025]; Judgment of the Voivodship Administrative Court in Poznań of 25 March 2009, case ref. II SA/Po 1052/08 (<http://bit.ly/3UFzRZ8>) [11.07.2025]; Orders of the Voivodship Administrative Court in: Lublin of 30 December 2019, case ref. II SA/Lu 506/19 (<http://bit.ly/44EiUTs>) [11.07.2025]; Opole of 19 May 2022, case ref. II SA/Op 556/21 (<http://bit.ly/3GilmG8>) [11/07.2025].

Fourthly, in exceptional cases, administrative courts have addressed the characteristics of program norms derived from Arts. 5, 74, and 86 of the Constitution and the consequences arising therefrom. The Voivodship Administrative Court in Warsaw, in its judgment in case ref. VII SA/Wa 199/17, noted that the above provisions “determine the directions of the state’s action, both in the process of law-making and law application. These provisions, however, do not contain legal norms that impose precise patterns of conduct on clearly defined addressees, to be conclusively applied. The above-mentioned provisions of the Constitution of the Republic of Poland may and should, therefore, serve as a basis for interpreting statutes in conformity with the Constitution (so-called pro-constitutional interpretation). Nevertheless, they serve only as a standard for interpreting and applying statutory provisions in a way that allows for the fullest implementation of the constitutional values set out in the cited provisions”. At the same time, the view expressed by the Court did not prevent it from concluding that “in the case under consideration, there was no violation of the constitutional provisions indicated by the complainant”.¹¹⁴

5. Liability for the violation of constitutional norms concerning environmental protection, as determined by the Constitutional Court and administrative courts, is linked to a sanction which, according to the terminology adopted in legal theory, may be described as “relative nullity (annulability)” of a conventional act¹¹⁵ – in this context, specifically a normative act or an administrative decision.

The effect of a judgment of the Constitutional Court declaring legal norms unconstitutional is the loss of their binding force, understood as a legal event resulting in the cessation of the obligation to apply the legal norm by its addressees. The Polish model of constitutional review adopts the concept of revocability/invalidation of a normative act, which may be derived from Art. 190(3) of the Constitution. This provision indicates the consequences of a Constitutional Court judgment, including a judgment of unconstitutionality. As of the date of publication of the ruling in the relevant official journal – or upon the date indicated by the Constitutional Court, provided that the legislator has not amended the norm during the deferral period – the unconstitutional norm is eliminated from the system of sources of law.¹¹⁶

A judgment of an administrative court recognising a complaint and thereby establishing the unlawfulness (including unconstitutionality) of the challenged conduct of a public administration authority is, as a rule, of a cassatory nature. The court adjudicates only on: the annulment or declaration of nullity of a decision or order (Art. 145(1) LPAC); the annulment of an individual act or the declaration of

114 | Judgment of the Voivodship Administrative Court in Warsaw, case ref. VII SA/Wa 199/17. Cf. also Judgment of the Supreme Administrative Court, case ref. II OSK 1952/23.

115 | Cf. Chauvin, Stawecki & Winczorek 2017, 117.

116 | Judgment of the Constitutional Court of 10 March 2022, case ref. K 7/21 (OTK ZU no A/2022, item 24).

ineffectiveness of an action (Art. 146(1) LPAC); the declaration of nullity of a resolution or act (including an act of local law) of local government bodies and their associations or territorial government administration bodies (Art. 147(1) LPAC); or the annulment of a supervisory act (Art. 148 LPAC). This results in the removal of the defective administrative acts from legal circulation either with *ex tunc* or *ex nunc* effect.

5. In lieu of a conclusion – best practices and *de lege ferenda* proposals

An analysis of the case law of the Constitutional Court and the views expressed by representatives of legal scholars, conducted for the purposes of this study makes it possible to identify two elements that may be regarded as best practices in the application of constitutional provisions relating to the environment.

The first one may be inspired by the Court's judgments in cases concerning the financing of local government units, particularly those relating to the so-called income equalisation system for such units.¹¹⁷ These judgments imply the obligation to interpret the principle of sustainable development (Art. 5 of the Constitution) to a broader material scope than environmental protection alone, and treat this principle as independent (autonomous), encompassing in its essence a 'mechanism for balancing various values'¹¹⁸ not necessarily including the appropriate state of the environment. Therefore, starting from the concept of the 'established legal notions' and the meaning attributed to 'sustainable development' in international law, the content of this principle should be sought, firstly, in the principles of solidarity and social justice (intra-generational and intergenerational – cf. the Preamble and Art. 2 of the Constitution), thus directing its normative impact towards the good and well-being of both present and future generations. Secondly, the content of this principle should also be recognized as encompassing the requirements arising from the proportionality test (i.e. Art. 2 and Art. 31(3) of the Constitution, applied *mutatis mutandis*). Thirdly, it would contain the rules for balancing values focused on social or economic development, and other values that conflict with the previous ones, including a healthy environment, but also, for instance, national heritage, an adequate condition of public finances or state ownership – or alternatively, it would cover only the balancing of 'pro-development' values.

Another best practice should be to interpret Art. 68 of the Constitution in such a way that sections 2 to 5 thereof are regarded as a substantive complement to the subjective right to health protection enshrined in Art. 68(1). This is justified

117 | Judgements of the Constitutional Court of: 31 January 2013, case ref. K 14/11 (OTK ZU no 1/A/2013, item 7); 4 March 2014, case ref. K 13/11 (OTK ZU no 3/A/2014, item 28); 6 March 2019, case ref. K 18/17 (OTK ZU no A/2019, item 10).

118 | Cf. Judgements of the Constitutional Court: case ref. K 23/05; case ref. K 17/12.

on the grounds of systemic interpretation which recognises that we are dealing here with a single, editorially coherent provision. This would mean that Art. 68(4), in conjunction with Art. 64(1) of the Constitution, could constitute a source of an individual's subjective right to health protection.¹¹⁹ This right would encompass a claim (including the constitutional complaint) requiring public authorities to prevent the consequences of environmental degradation – a claim that could be invoked in situations where a causal link between such degradation and adverse effects on human health can be established.

As regards the *de lege ferenda* proposals, it is worth considering amending Art. 74(4) of the Constitution in the direction of establishing a subjective right to public participation in environmental protection matters. Such a provision would replace the current wording, which has rather general and ambiguous normative meaning, even though attempts have been made to interpret it as a source of public entitlement related to participation in environmental proceedings.¹²⁰ The arguments in favour of recognising the above subjective right include: 1) the appropriateness of thus complementing the right to environmental information (Art. 74(3) of the Constitution), which in international legal frameworks is typically connected with public participation in decision-making (e.g. Principle 10 of the Rio's Declaration on Environment and Development);¹²¹ 2) the guarantee of broadly understood participatory rights in the field of environmental protection is currently a distinctive standard of environmental protection in Europe;¹²² 3) the establishment of such a right at the constitutional level would serve to strengthen the fulfilment of the obligation to care for the environment (cf. Art. 86 of the Constitution).

Another *de lege ferenda* proposal is related to the activities of the Commissioner for Citizen's Rights and the Commissioner for Children's Rights, aimed at interpreting or establishing a fundamental (human) right to a 'clean, healthy and sustainable environment'.¹²³ This initiative is further supported by the growing environmental challenges facing Poland and Europe, particularly in the context of climate change, air pollution (smog), water scarcity and contamination – as well as the imperative to safeguard the interests of future generations, given the necessity to address their needs already now, as well as the demographic trends and challenges associated with the development and growing use of artificial intelligence (AI), which may also carry serious environmental risks. Against this background, the establishment of a separate, independent state body – another 'Commissioner'

119 | Cf. Trzciński 2003, 2–7.

120 | Cf. Judgement of the Constitutional Court, case ref. SK 23/17.

121 | <http://bit.ly/40dyeoK> [10.07.2025].

122 | Nyka 2018, 281.

123 | Cf. the Intervention of the Commissioner for Children's Rights dated 17 April 2025, addressed to the Minister of Foreign Affairs, concerned a request to initiate the adoption of an additional protocol to the European Convention on Human Rights and Fundamental Freedoms, which would guarantee the "right to a clean, healthy and sustainable environment" (<http://bit.ly/4nNhdvO>) [11.07.2025]; Majchrzak 2022, 259–261.

(for the Environment and Future Generations Protection) seems worth considering – which could consolidate and give institutional shape to the initiatives thus far undertaken by the Commissioner for Citizen's Rights and the Commissioner for Children's Rights. Such a body could also intensify and strengthen the effectiveness of efforts to represent the interests of both present and future generations in ensuring adequate quality of the environment.¹²⁴

124 | Cf. Bándi 2020, 8–11; Krajnyák 2022, 212–215; Krajnyák 2023, 9–18; Nyka 2016, 368–369.

Reference list

1. Bándi G (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *JAEL* 15(29), pp. 7–22, DOI: <https://doi.org/10.21029/JAEL.2020.29.7>.
2. Boć J (2000) Ochrona środowiska w postanowieniach Konstytucji Rzeczypospolitej Polskiej, *Acta Universitatis Wratislaviensis* 2244, Prawo 272/2000, pp. 187–195.
3. Chauvin T, Stawecki T & Winczorek P (2017) *Wstęp do prawoznawstwa*, C.H. Beck, Warszawa.
4. Czekałowska M (2022) *Zagadnienia ochrony środowiska na podstawie Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Wydawnictwo Sejmowe, Warszawa.
5. Florczak-Wątor M (2014) *Horyzontalny wymiar praw konstytucyjnych*, Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków.
6. Florczak-Wątor M (2023) Komentarz do art. 68 in: Tuleja P (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Wolters Kluwer Polska, Warszawa, <http://bit.ly/40ym3CW> [30.06.2025].
7. Garlicki L (2001) Przesłanki ograniczania konstytucyjnych praw i wolności (na tle orzecznictwa Trybunału Konstytucyjnego), *Państwo i Prawo* 10/2021, pp. 5–24.
8. Garlicki L (2003) Komentarz do art. 74, in: Garlicki L (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III*, Wydawnictwo Sejmowe, Warszawa, pp. 1–5.
9. Garlicki L (2022) Stosowanie konstytucji przez sądy i trybunały (ile monopolu, a ile dekoncentracji?), *Studia Prawnicze* (226)2, pp. 31–57, DOI: <https://doi.org/10.37232/sp.2022g>.
10. Gizbert-Studnicki T & Grabowski A (1997) Normy programowe w Konstytucji, in: Trzeciński J (ed.) *Charakter i struktura norm Konstytucji*, Wydawnictwo Sejmowe, Warszawa, pp. 95–113.
11. Habuda A (2019) The Right to the Environment in the Republic of Poland, *Studia Prawnoustrojowe* 44/2019, pp. 107–121, DOI: <https://doi.org/10.31648/sp.4898>.
12. Haładyj A (2003) Konstytucyjne podstawy ochrony środowiska, *Prawo-Administracja-Kościół* 1–2/2003, pp. 39–58.
13. Korzeniowski P (2012) *Bezpieczeństwo ekologiczne jako instytucja prawna ochrony środowiska*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź.

14. Krajnyák E (2022) Hungary: a Progressive Approach to the Protection of the Environment and Future Generations in a Traditional Constitution, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations. Legislation and Practice in Certain Central European Countries*, CEA Publishing, Miskolc-Budapest, pp. 203–248.
15. Krajnyák E (2023) The Role and Activity of the Deputy Commissioner for Fundamental Rights Ombudsman for Future Generations in Shaping Environmental Protection in Hungary, *JAEL* 18(34), pp. 7–30, DOI: <https://doi.org/10.21029/JAEL.2023.34.7>.
16. Lang W (1986) Pojęcia prawne i prawnicze, in: Lang W, Wróblewski J & Zawadzki S, *Teoria państwa i prawa*, Państwowe Wydawnictwo Naukowe, Warsaw, pp. 353–388.
17. Mączyński A & Łyszkowska A (2005) Bezpośrednie stosowanie Konstytucji RP przez Trybunał Konstytucyjny, in: Działocha K (ed.) *Bezpośrednie stosowanie Konstytucji Rzeczypospolitej Polskiej*, Wydawnictwo Sejmowe, Warszawa 2005, pp. 25–51.
18. Majchrzak B (2022) Poland: One of the Most Protected Values of the Constitution and its Limited Conceptualization in the Practice of the Constitutional Court, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations. Legislation and Practice in Certain Central European Countries*, CEA Publishing, Miskolc-Budapest, pp. 249–308.
19. Majchrzak B (2023) Constitutional Framework for Planning Acts as Legal Forms of Administrations Activity in Environmental Protection (on the Example of Poland), *JAEL* 18(34), pp. 52–72, DOI: <https://doi.org/10.21029/JAEL.2023.34.52>.
20. Masternak-Kubiak M (2022) Bezpośrednie stosowanie konstytucji przez sądy administracyjne, *Studia Prawnicze* (226)2, pp. 133–161, DOI: <https://doi.org/10.37232/sp.2022l>.
21. Nyka M (2016) Sprawiedliwość międzypokoleniowa w międzynarodowym prawie środowiska, *Gdańskie Studia Prawnicze* 35/2016, pp. 355–372.
22. Nyka M (2018) Partycypacyjne prawa w ochronie środowiska jako element podejścia ekosystemowego do ochrony środowiska Morza Bałtyckiego, in: Gronowska B, Rakoczy B, Kapelańska-Pręgowska J, Karpus K & Sadowski P (eds.) *Prawa człowieka a ochrona środowiska – wspólne wartości i wyzwania*, Uniwersytet Mikołaja Kopernika, Toruń, pp. 281–301.
23. Radecki W (1998) Prawo do środowiska w świetle nowej konstytucji, *Aura*, 1998/2.

24. Radecki W (2002) *Odpowiedzialność prawna w ochronie środowiska*, Difin, Warszawa.
25. Rakoczy B (2006) *Ograniczenie praw i wolności jednostki ze względu na ochronę środowiska w Konstytucji Rzeczypospolitej Polskiej*, TNOiK 'Dom Organizatora', Toruń.
26. Rakoczy B (2015) Prawo ochrony środowiska w styku z innymi obszarami systemu prawa, in: Korzeniowski P (ed.) *Zagadnienia systemowe prawa ochrony środowiska*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, pp. 69–79.
27. Rakoczy B (2021) Constitutionalisation of Environmental Protection in Poland, *Journal of Agricultural and Environmental Law* 31(16), pp. 121–129, DOI: <https://doi.org/10.21029/JAEL.2021.31.121>.
28. Szmulik B (2006) *Skarga konstytucyjna. Polski model na tle porównawczym*, C.H. Beck, Warszawa.
29. Tarnacka K (2009) *Prawo do informacji w polskim prawie konstytucyjnym*, Wydawnictwo Sejmowe, Warszawa.
30. Trzcińska D (2021) Problematyka obliczania opłat za korzystanie ze środowiska za wydanie uprawnień do emisji gazów cieplarnianych, *Gdańskie Studia Prawnicze* 51(3), pp. 143–152, DOI: <https://doi.org/10.26881/gsp.2021.3.10>.
31. Trzciński J (2003) Komentarz do art. 68, in: Garlicki L (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom III*, Wydawnictwo Sejmowe, Warszawa, pp. 1–7.
32. Uliasz J (2021) Prawo podmiotowe jednostki do środowiska. Perspektywa konstytucyjna, in: Sitek M & Navarro J B (eds.) *Human rights – evolution in the digital era*, WSGE, Józefów, pp. 145–158, DOI: <https://doi.org/10.13166/WSGE/HR-PL/BWXD2958>.
33. Wiącek M (2011) *Pytanie prawne sądu do Trybunału Konstytucyjnego*, Wydawnictwo Sejmowe, Warszawa.
34. Zębek E (2024) Konstytucyjne prawa i obowiązki obywatela wobec środowiska w warunkach zrównoważonego rozwoju, *Ius Novum* 18(1), pp. 124–143, DOI: <https://doi.org/10.26399/iusnovum.v18.1.2024.07/e.zebek>.

Environmental Duties and Liability in the Constitution of Slovakia¹

Abstract

The article addresses the constitutional protection of the environment in the Slovak Republic, focusing in particular on an analysis of Arts. 44 and 45 of the Constitution of the Slovak Republic and their application in practice. From the perspective of Slovak legal doctrine, this constitutional framework is embedded in a broader development, whereby environmental law is increasingly regarded as a distinct and internally coherent branch of law within the national legal system.² Attention is given to the obligations of the state, the obligations of the individual, constitutional liability, as well as to the issues of enforceability of these rights and obligations. The basis for the constitutional analysis lies in the constitutional and statutory regulation of the right to a favourable environment and the right to information on the environment, complemented by a systematic interpretation of the decision-making activity of the Constitutional Court of the Slovak Republic in the context of the principles of the rule of law. The authors place special emphasis on addressing the constitutional dilemma concerning the nature, content and scope of the right to a favourable environment, as regulated and interpreted within the Slovak constitutional system, and its interconnection with other fundamental rights which determine its practical enforceability. The contribution further presents selected examples of good application practice and formulates “de constitutio ferenda” proposals aimed at strengthening the constitutional regulation of environmental protection as a fundamental element of an individual’s life within a modern society, with regard to the constitutional regulation of environmental obligations and liability.

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2 | Michalovič & Maslen 2024, 2–3.



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1. Overview of the position of certain constitutional institutions in the Constitution and in the practice of the Constitutional Court

Historically, given the nature and origin of the right to environmental protection and the circumstances leading to its emergence, such protection cannot be found in the constitutional documents of the Czechoslovak State of 1918–1948. However, the suggestion of a framework for environmental protection in the form of a regulation of the duty of the state to take care of ecology was contained in the Constitution of the Czechoslovak Socialist Republic, Constitutional Act No. 100/1960 Coll., in Art. 15(2): “The state takes care of the development and comprehensive protection of nature and of the preservation of the natural beauty of the homeland, thereby creating ever richer sources of the people’s welfare and a suitable environment that would benefit the health of working people and enable their recovery.”³ In the constitutional development after 1989, under the influence of sociopolitical changes, Constitutional Act of the Federal Assembly of the Czechoslovak Federative Republic No. 23/1991 Coll. was drafted and adopted, by which the Charter of Fundamental Rights and Freedoms was introduced. In its third chapter, entitled Economic, Social and Cultural Rights, Art. 35 provides the following:

- (1) Everyone has the right to a favourable environment.
- (2) Everyone has the right to timely and complete information on the state of the environment and natural resources.
- (3) In the exercise of his or her rights, no one may endanger or damage the environment, natural resources, the biodiversity of nature, or cultural monuments beyond the extent established by law.

The Constitutional Act, the Charter of Fundamental Rights and Freedoms, remains valid and effective in the Slovak Republic in accordance with Art. 152(1) of the Constitution of the Slovak Republic: “Constitutional Acts, Acts and other generally binding legal regulations shall remain in force in the Slovak Republic if they do not contradict this Constitution. They may be amended and repealed by the competent authorities of the Slovak Republic.” This represents a general reception norm through which legal continuity with the legal order of Czechoslovak statehood,

3 | Trellová 2015, 35.

which still existed at the time of the adoption of the Constitution, is ensured.⁴ The material condition for the validity of these regulations is their conformity with the Constitution of the Slovak Republic.

At present, Art. 44 of the Constitution of the Slovak Republic, as amended by Constitutional Acts No. 90/2001 Coll. and No. 137/2017 Coll., ensures a broader scope of environmental protection than the Charter of Fundamental Rights and Freedoms in this sphere.

The constitution-maker incorporated constitutional protection of the environment in the Slovak Republic in the second chapter of the Constitution of the Slovak Republic, i.e. in the regulation of fundamental rights and freedoms, thereby confirming that it constitutes an important component of the value orientation of the state. The constitutional regulation contained in Arts. 44⁵ and 45 of the Constitution of the Slovak Republic forms an inseparable part of the principles of a democratic and rule-of-law state (Art. 1(1) of the Constitution of the Slovak Republic) and is inherently linked to the commitments of the Slovak Republic arising from international law. The provision of Art. 44(1) of the Constitution of the Slovak Republic, “Everyone has the right to a favourable environment”, is appropriately complemented by the wording of Art. 45 of the Constitution of the Slovak Republic: “Everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of that state.” These rights may be restricted only in accordance with the rules set out in Art. 13 of the Constitution of the Slovak Republic. The rights enshrined in Arts. 44 and 45 of the Constitution of the Slovak Republic are guaranteed within the limits established by Art. 51(1) of the Constitution of the Slovak Republic, according to which the rights referred to therein may be claimed only within the scope of laws implementing these provisions. From the interrelation between the second chapter, section six, and Art. 51 of the Constitution of the Slovak Republic, it follows that a fundamental right or freedom granted in this section of the Constitution of the Slovak Republic may be exercised only to the extent laid down by law.

According to modern human rights theory, the right to environmental protection may be classified among third-generation rights.⁶ Vasak then identified a ‘third generation’ of rights, which he called ‘solidarity rights’, including rights to peace, development, a healthy environment and the right to ownership of the common heritage of mankind.⁷ Vasak associated each of these ‘generations’ with the motto of the French Republic, namely *liberté*, *égalité*, and *fraternité* (solidarity), respectively. In a later essay, Vasak further associated each generation or wave of rights with periods of history, with the first wave said to arise out of the French Revolution, the second wave out of the Russian Revolution of 1917 and the third wave

4 | Orosz et al. 2022, 771.

5 | Constitution of the Slovak Republic, Art. 44 paras. 1–6.

6 | Vasak 1977, 29.

7 | Chalabi 2023, 4.

out of ‘the emancipation of colonised and dominated peoples’ in the mid-twentieth century.⁸

The complexity of the Slovak constitutional regulation is expressed by the enshrinement of the protection of mineral resources, caves and water – groundwater, natural healing resources and watercourses – contained in Art. 4 of the Constitution of the Slovak Republic, which the constitution-maker extended by Amendments No. 90/2001 Coll. and No. 306/2014 Coll. This represents an explicit constitutional regulation of tangible assets or things in the ownership of the state. The Slovak Republic may directly use the subject matter of its ownership and manage it through its bodies or organisations and derive benefits from this property. Alternatively, it may lease this property and collect rent for such lease, or it may grant its use to a third party, which compensates the Slovak Republic for the use of its property (typically in the form of payments for extracted minerals).⁹ The purpose of Art. 4 of the Constitution of the Slovak Republic is not only to regulate the obligations and liability of the state in managing its exclusive ownership in such a way that it is used prudently and efficiently, but above all to constitutionally express the duty of the Slovak Republic to protect and enhance this natural wealth. This is not merely a constitutional declaration without practical implication, but an expression of the state’s highest interest in protecting its nature, specifically in the form of defined resources, such as mineral wealth, caves, groundwater, natural healing resources and watercourses. This constitutional norm represents a command not only to protect, prudently utilise and enhance the specific natural wealth and the components of the environment, but also a directive to the legislator to adopt constitutionally compliant legislation in accordance with this command.

1.1. Conceptual issues in the Constitution and constitutional practice

The right of everyone to a favourable environment is formulated in Art. 44(1) of the Constitution of the Slovak Republic. It is complemented by the right to information on the state of the environment, which is regulated in Art. 45 of the Constitution of the Slovak Republic. Likewise, the constitutional right to the protection of cultural heritage (Art. 44) is guaranteed. The inclusion of the right to a favourable environment in the second chapter of the Constitution of the Slovak Republic, section six, entitled The Right to Protection of the Environment and Cultural Heritage, indicates that this is qualitatively and by its nature a different type of right than the economic, social and cultural rights which are regulated in section five of the Constitution of the Slovak Republic. The right to a favourable environment may undoubtedly be classified in the form of the constitutional principle of environmental protection among the principles constituting the essence

8 | Vasak 1984, 837.

9 | Orosz et al. 2021, 56.

of the constitutional principle of the rule of law. As regards its nature, the right to a favourable environment belongs to the so-called solidarity rights, i.e. rights of the third generation of human rights. At the same time, the right to a favourable environment represents a subjective public right. Its specific feature is its general character, which requires concretisation through statutory regulation.¹⁰

Implicitly, from this regulation of Art. 4, a right to water may be inferred, although it is not expressly stated in the text. Water is a strategic resource and an irreplaceable component of the environment, and its protection and preferential use in the public interest is of fundamental importance in the context of ongoing climate change and the sustainable development of society. For this reason, the Constitution prohibits the use of water abstracted from water bodies located in the territory of the Slovak Republic for the purpose of transporting such abstracted water as a raw material across the Slovak state border by means of transport. Ensuring sufficient water for future generations and the sustainable development of nature and the landscape is the reason for the constitutional prohibition of large-scale water transport outside the territory of the Slovak Republic. The ban on the export of water outside Slovakia does not apply to the export of drinking water and natural mineral water bottled in consumer packaging within the territory of the Slovak Republic, to water for personal consumption or to the provision of humanitarian aid and assistance in emergency situations.

In relation to the right of ownership and its binding effect, the Slovak constitution-maker, in Art. 20(3), explicitly prohibits its abuse to the detriment of the rights of others or in conflict with general interests protected by law. It explicitly provides that the exercise of the right of ownership must not damage human health, nature, cultural monuments or the environment beyond the extent established by law. Restrictions on ownership rights to immovable property may be found in legal regulations governing the protection of individual components of the environment, for example, Act No. 543/2002 Coll. on the Protection of Nature and the Landscape. The constitutionally guaranteed fundamental right to the use of ownership is not superior to the constitutionally guaranteed fundamental right to a favourable environment. These two rights complement each other, and it may be stated that one right creates the boundaries for the exercise of the other.¹¹ In the case of the regulation contained in Art. 20(3) of the Constitution of the Slovak Republic, it is sufficient that the conduct is negligent for the constitutional prohibition to be violated. Intentional conduct is not required here, since a general institute of abuse of rights is introduced and applied specifically to the abuse of the right of ownership.

The right to a favourable environment is not conferred by statute, since it is guaranteed in the second chapter, section six, of the Constitution of the Slovak

10 | Maslen 2022, 399–437.

11 | Čič M et al. 2012, 153.

Republic as one of the fundamental rights and freedoms (Art. 44(1)). It is not possible to consider the protection of ownership as having priority over the protection of the right to a favourable environment, because all rights regulated in the second chapter of the Constitution of the Slovak Republic have equal legal force and protection, and none of them may be regarded as ‘more fundamental than fundamental’ merely because it is set out in the section entitled Fundamental Human Rights and thereby inferred to have precedence over another fundamental right. Fundamental rights and freedoms are mutually equal. The concept of a material rule-of-law state excludes the creation of a “hierarchy” of fundamental rights and freedoms in which one fundamental right or freedom would be accorded greater significance than another.¹²

According to the Constitutional Court of the Slovak Republic in case No. PL. ÚS 22/06: “The purpose of the regulation in Art. 20(3), third sentence, of the Constitution of the Slovak Republic is to define the scope and content of the legal status of the owner, to make the exercise of ownership rights conditional upon mandatory considerations which the owner must take into account in relation to other values of public interest. The regulation in Art. 20(3) of the Constitution is generic; it concerns groups of owners. The legal effects of Art. 20(3) of the Constitution, limiting the legal status of the owner, arise with the acquisition of ownership. During the existence of the right of ownership, the owner cannot be exempted from the legal effects of Art. 20(3) of the Constitution. A statute determining the degree of damage to a protected interest need not be adopted, but if such a statute is adopted, the owner cannot be exempted from the duty not to damage human health, nature, cultural monuments and the environment (not even by statute).” By Art. 20(3) of the Constitution of the Slovak Republic, a constitutional requirement is thus established for a fair balance between the scope of the owner’s rights defined on the basis of Art. 20(1) of the Constitution and the rights of third parties guaranteed, *inter alia*, by Art. 44(1) of the Constitution of the Slovak Republic.

According to Art. 44(3) of the Constitution of the Slovak Republic, no one may endanger or damage the environment, natural resources or cultural monuments beyond the extent established by law. From the perspective of Art. 20(3) of the Constitution of the Slovak Republic, this provision may appear redundant; however, Art. 44(3) has a general significance. It does not establish an obligation only in relation to the exercise of the right of ownership. It establishes an obligation not to endanger or damage the environment, natural resources and cultural monuments beyond the extent established by law in the exercise of every fundamental right and freedom. In relation to the environment, the Constitution, through the wording of Art. 44(3), extends its protection also into the sphere of prevention by prohibiting not only damage to the environment, but also endangerment of the environment.

12 | Constitutional Court of the Slovak Republic 2008, 8–9, paras. 34–36.

These prohibitions are at the same time a complementary expression of the duty to protect and enhance the environment, which is laid down in Art. 44(2) of the Constitution of the Slovak Republic.¹³

The fundamental concept with which the constitutional regulation operates, and which is subsequently developed by legislation, is the ‘environment’. Under the applicable statutory regulation, i.e. pursuant to Section 2(1) of Act No. 17/1992 Coll. on the Environment, as amended, the environment is understood to mean “everything that creates the natural conditions for the existence of organisms, including humans, and constitutes the prerequisite for their further development. Its components are, in particular, the air, water, rocks, soil, and organisms.” On the other hand, to narrow the protection of the environment solely to the statutory definition of the term does not correspond to modern social development. Legal protection of the right to the environment, as understood today, encompasses not only natural resources and objects of nature conservation, but also the landscape in its anthropological significance. Therefore, the sphere of access to cultural heritage, especially in its tangible form, as well as the sphere of public health protection are also part of the environment.¹⁴ Therefore, the constitutional regulation of environmental protection is set more broadly and incorporates the provisions of Arts. 44 and 45 in connection with Arts. 4, 20(3), as well as Art. 40 of the Constitution of the Slovak Republic. In general, it may be said that the establishment of the constitutional framework guaranteeing a favourable environment corresponds to one of the oldest definitions of the term ‘environment’, presented by Professor S. Wik at the UNESCO conference in 1967, according to which “the environment is that part of the world (the universe) with which man interacts, i.e. which he uses, influences, and to which he adapts.”

1.2. The role of state bodies in protecting the environment and future generations

Art. 44(4) of the Constitution of the Slovak Republic explicitly provides that: “The state shall ensure the prudent use of natural resources, the protection of agricultural land and forest land, ecological balance, and effective care for the environment, and shall secure the protection of designated species of wild plants and wild animals.” By this provision, the constitution-maker established the duty of public authorities to be active and expressed five areas of state responsibility. Within these five defined areas, the state is expected not only to ensure passive protection against damage to nature, but also to create positive conditions for its preservation and enhancement. The state may ensure the implementation of these tasks through state authorities, whether central or local. It may likewise delegate

¹³ | Constitutional Court of the Slovak republic 2008, 9–10, paras. 37–39.

¹⁴ | Krošlák et al. 2016, 398.

the implementation of these tasks to bodies of territorial self-government or private law entities. Thus, the Constitution of the Slovak Republic defines the duty of the state to ensure tasks within the framework of environmental care, which constitutes the enshrinement of the so-called positive obligation of the state in this field. This obligation serves as a tool of protection for the individual against legislative passivity of the parliament, particularly through Art. 51(1) of the Constitution of the Slovak Republic. The state's positive obligation to secure the rights guaranteed to citizens by the Constitution does not mean an absolute guarantee of outcome, but rather the duty to create legislative and administrative conditions so that these rights may be effectively exercised in practice.¹⁵ At the same time, however, there also exist positive obligations of the state arising from the interest in the effective protection of rights. Such a special category of the state's positive obligations is represented by the duties of the state to ensure effective protection of the rights guaranteed by international treaties through the existence of a certain (legally regulated) process. More specifically, the objective of the state's positive obligation arising from Art. 8 of the Aarhus Convention is, through the legal order of the respective state, to secure the protection of public participation in the preparation of generally binding legal regulations having a significant impact on the environment, i.e. at the initial stage of the entire legislative process – during the preparation and deliberation of a draft law before its submission to the National Council of the Slovak Republic.¹⁶ The Constitutional Court of the Slovak Republic has confirmed that insufficient fulfilment of this positive obligation of the state does not automatically in itself mean a violation of the right in the protection of which the respective duty is to be implemented, i.e. the right to a favourable environment. This is because the public's right corresponds to a substantively identical duty of the state or of the relevant public authorities to protect the rights guaranteed to individuals, and also because only the final result of the legislative process, i.e. the promulgated statute, is binding upon the affected subjects. A violation or restriction of the fundamental right to a favourable environment could arise only on the basis of a statute published in the Collection of Laws of the Slovak Republic, either by a provision of such statute itself or by its application by the competent public authorities (I. ÚS 73/2014).¹⁷ The constitutional duty of the state to protect the environment is so strong that, in justified cases, it may prevail over individual ownership rights, provided that the proportionality of the interference is preserved. The public interest in environmental protection may thus legitimise interventions by the legislator as well as by administrative authorities into the individual sphere.

15 | See Constitutional Court of the Slovak Republic 1996, 5–6; Constitutional Court of the Slovak Republic 2003, 6–7.

16 | Constitutional Court of the Slovak Republic 2015, 13–14, paras. 44–47, 10–11, paras. 39–41.

17 | Constitutional Court of the Slovak Republic 2015, 8–9, paras. 30–34.

The state shall ensure the prudent use of natural resources. For the state and its authorities, the Constitution of the Slovak Republic establishes the obligation to create legal instruments and mechanisms that enable the use of natural resources, but only prudently. Prudent use of natural resources means their use in a manner that takes into account the needs and requirements not only of the present generation, but also of future generations. The state further bears responsibility in the form of securing adequate protection of agricultural land and forest land. A fundamental role of the state may be identified in its duty to ensure ecological balance. This is a term used to describe the balance between living organisms, such as humans, plants and animals, and their environment. Another area of state responsibility is effective care for the environment. Such care should not be merely illusory or formal; on the contrary, the system should be structured in such a way that the instruments of the state are capable of intervening in cases of violations of the right to a favourable environment. The state establishes a system of state authorities for ensuring effective care for the environment, in which the central authority of state administration in environmental care is the Ministry of the Environment of the Slovak Republic. Last but not least, within the created system the state must ensure the protection of wild plants and wild animals.

Within the system of environmental protection, the Slovak Environmental Inspectorate, whose competence derives from Act No. 525/2003 Coll. on State Administration of Environmental Care and on Amendments to Certain Acts, serves as the central authority of state supervision. It was established in 1991 by the merger of two separate inspectorates and today oversees compliance with environmental regulations in the fields of air, water, waste, nature and landscape. In the exercise of supervision it is authorised to impose fines, order remedial measures and issue integrated permits. Part of its activity also consists in handling submissions from the public and institutions, thereby strengthening public participation in environmental protection.

1.3. Fundamental rights: The right to a healthy environment

The right to a favourable environment is a subjective right of a public-law nature, i.e. it should be enforceable against the state, which distinguishes it from subjective rights of a private-law character. Its subject (holder) is provided with instruments ensuring such a quality of the environment as to allow him or her to live undisturbed, both in terms of personal and social life.¹⁸ In the Constitution of the Slovak Republic, the right to the environment is granted to everyone. Under the term ‘everyone’ we may understand not only all natural persons. Nevertheless, despite modern trends, the Constitutional Court of the Slovak Republic has repeatedly confirmed in its case law that “(...) by the nature of certain fundamental rights

18 | Trellová 2015, 39.

and freedoms it follows that legal entities cannot be their holders. This also applies to the designated fundamental right to a favourable environment under Art. 44(1) of the Constitution, whose subject is only a natural person”.¹⁹ Similarly, the subject of this right is only a natural person, and “for obvious reasons a legal entity cannot claim it, since the state and quality of the environment clearly determine the quality of human life, that is, the quality of life of a person.”²⁰ The non-recognition of the right to a favourable environment for legal entities may nevertheless be regarded as an interference with their status, since it is precisely the position and activity of legal entities that have a significant impact on the level of favourability of the existing environment.

The attribute ‘favourable’ environment, used by the constitution-maker, when interpreted linguistically, denotes a ‘suitable, satisfactory’ environment. All of the mentioned adjectives serve the same purpose – to express, in general, the sum of qualitative and quantitative characteristics of the environment as material reality, the preservation of which is essential for the existence and healthy development of man. For the purposes of law, however, it is not possible to leave their assessment to the subjective notions of particular individuals, but rather it is necessary to determine them in a legally binding manner in valid regulations, on the basis of objective scientific knowledge. Despite the blanket norm in Art. 44(5) of the Constitution of the Slovak Republic, it may be stated that the statutes do not *expressis verbis* establish rights *sui generis* of a substantive-law nature that would express the concrete content of the right to a favourable environment proclaimed by the Constitution of the Slovak Republic.²¹

The right to a favourable environment has a positive-law character, which determines the existence of the state’s positive obligation to adopt such legal regulations that will materially fulfil this right as well as create a system of state authorities that will enforce this right, monitor compliance and sanction those who violate it.²² The constitutional regulation also contains in Art. 44(2) one of the few constitutional duties, namely the duty of everyone to protect and enhance both the environment and cultural heritage. This rare enshrinement of a constitutional duty for everyone in the form of protecting and enhancing the environment and cultural heritage emphasises the constitution-maker’s intention to highlight the importance of the environment for the life of the individual and of society, as well as an appeal to create a state in which the protection of the environment will be a genuine all-societal goal, not merely a formal declaration. Contemporary Slovak legal scholarship and practice tend rather to interpret the right to a favourable environment as a constitutional principle, a programmatic norm or as a certain interpretative guideline. The Constitutional Court of the Slovak Republic has thus

19 | Constitutional Court of the Slovak Republic 2008, 23–24, paras. 72–74.

20 | Constitutional Court of the Slovak Republic 2008, 24.

21 | Trellová 2013, 223–229.

22 | Orosz et al. 2021, 566.

far not recognised Art. 44 of the Constitution of the Slovak Republic as a directly enforceable subjective right but has used it primarily as an interpretative guideline when assessing other fundamental rights, above all the right of ownership.²³ Nevertheless, the normative significance of the constitutional protection of the environment cannot be diminished.

No constitutional amendment adopted since 2022 has directly affected the constitutional provisions relating to environmental protection (such as the right to a favourable environment, the protection of nature or sustainable development). The amendments have focused on other areas (including family law and national identity) and have not interfered with the environmental-law dimension of the Constitution. Consequently, no change to environmental rights at the constitutional level has been adopted.

Based on the doctrine of the Constitutional Court of the Slovak Republic and the relevant scholarly literature, it can be concluded that, since 2022, the Court has not delivered any decisions that would explicitly and directly engage with, reinterpret or redefine environmental protection as an autonomous constitutional issue, as the pertinent constitutional case law in this field remains confined to earlier decisions, predominantly from 2019 and prior, with environmental aspects arising only indirectly in connection with other fundamental rights.

1.4. Other fundamental rights related to the protection of the environment

The importance of the right to a favourable environment is increasing in the modern era; therefore, its role is affirmed in the form of a guarantee directly in the constitutional text and in the catalogue of rights and freedoms, both as a positive obligation of the state in the field of environmental protection and as a subjective right of the individual, who in today's world is exposed to the consequences of human activity on the environment that affect or directly worsen the quality of life.²⁴ The relatively broad formulation of protection in Art. 44 of the Constitution of the Slovak Republic, together with the absence of a legal definition of the term 'favourable environment', creates a constitutional regulation at the level of a certain state objective in this sphere. The possibility of claiming this right only within the limits of statutes means that the right may be invoked only in connection with statutory regulation and most often with reference to the restriction or violation of other constitutional rights and freedoms. Environmental values most frequently come into conflict with ownership rights (Art. 20 of the Constitution of the Slovak Republic).

The right to a favourable environment may find its real fulfilment and application through the implementation of the state's positive obligations. The

²³ | Constitutional Court of the Slovak Republic 2009, 29–31.

²⁴ | Constitutional Court of the Slovak Republic 2019, 11–12.

Constitutional Court of the Slovak Republic has clarified in this respect that the content of the state's positive obligation in relation to the rights and freedoms of the citizen is the duty to take measures to protect the rights granted to the citizen by the Constitution, but that part of the positive obligation is not the duty to achieve the result which the citizen demands from the state.²⁵ At the same time, however, there also exist positive obligations of the state arising from the interest in the effective protection of rights. Such a special category of the state's positive obligations is represented by the duties of the state consisting in ensuring the effective protection of rights guaranteed by international treaties through the existence of a certain (legally regulated) process. Specifically, the objective of the state's positive obligation arising from Art. 8 of the Aarhus Convention²⁶ is, through the legal order of the respective state, to secure the protection of public participation in the preparation of generally binding legal regulations having a significant impact on the environment. This creates a link between this positive obligation of the state under Art. 44 and the right to information (Arts. 26 and 45 of the Constitution of the Slovak Republic). More specifically, it concerns ensuring an adequate opportunity for the public to comment on the draft of a generally binding legal regulation.

The minimum standard established by the Aarhus Convention for ensuring public participation in the preparation of legal regulations must meet, above all, three criteria:

- | provision of a sufficient timeframe for effective public participation,
- | publication of the draft or otherwise making it accessible to the public,
- | provision of the possibility for the public to submit comments either directly or through representative bodies.

These standards for ensuring public participation in the preparation of legal regulations are regulated in the Slovak Republic only within the framework of the Legislative Rules, which are an internal normative management act of the government. The legislative process itself continues further in the National Council of the Slovak Republic and ends with the promulgation of the adopted statute in the Collection of Laws of the Slovak Republic. The result of the legislative process is a statute regulating not only the rights and duties of the subjects to whom it is addressed but also ensuring their rights or the protection of their rights and legally protected interests. From this it is clear that insufficient fulfilment of this positive

25 | Constitutional Court of the Slovak Republic 1996, 5–6; Constitutional Court of the Slovak Republic 2003, 6–7.

26 | National Council of the Slovak Republic expressed its consent to the Aarhus Convention by Resolution No. 1840 of 23 September 2005, and the full text of the Convention was subsequently promulgated in the Collection of Laws under No. 43/2006 Coll. It follows from the resolution of the National Council (Resolution No. 1840 of 23 September 2005) that, pursuant to Article 7(5) of the Constitution of the Slovak Republic, the Aarhus Convention prevails over statutory law.

obligation of the state does not in itself automatically mean a violation of the right in the protection of which the respective duty is to be implemented, i.e. the right to a favourable environment. This is because the public's right corresponds to a substantively identical duty of the state or of the relevant public authorities to protect the rights guaranteed to individuals, and also because only the final result of the legislative process, i.e. the promulgated statute, is binding upon the affected subjects. A violation or restriction of the fundamental right to a favourable environment could arise only on the basis of a statute published in the Collection of Laws of the Slovak Republic, either by a provision of such statute itself or by its application by the competent public authorities.²⁷

Public access to information was also at issue in the case of the Pezinok landfill before the Court of Justice of the European Union. The Court held that the public must have access to the zoning decision concerning the siting of an installation with a significant impact on the environment. The protection of trade secrets cannot be relied upon in order to refuse such access.²⁸

A frequently and jointly invoked right is also the right guaranteed by Art. 46(1) of the Constitution of the Slovak Republic, the right to judicial protection in the form of the right of access to a court, which constitutes the entry point to the "procedural guarantees" of human rights protection. The relationship between this substantive right and procedural right is somewhat problematic, since Art. 44(1) has rather a programmatic character and thus does not really and fully represent an independently enforceable subjective right. The greatest problem in practice appears to be the fact that, despite the intention of the constitutional legislator to formulate a subjective right, it may be concluded that its independent practical enforceability is problematic. This corresponds to its broadly conceived programmatic nature. Its wording implies effective assertion of the right in the form of a successful court action, provided that the subjective right of the claimant has been violated. The content of the right to a favourable environment becomes enforceable when it is interconnected with other fundamental rights and freedoms, with protection being realised through the procedural guarantees of Art. 46. In practice, this means that an individual may effectively claim protection of the favourable environment before a court usually when he or she demonstrates an interference with his or her other constitutionally guaranteed rights.

Although the right to a favourable environment is explicitly recognised in the Constitution as a public subjective right, its predominantly programmatic character, as consistently affirmed by the case law of the Constitutional Court of the Slovak Republic, significantly constrains its autonomous judicial enforceability. The protection of this right is largely mediated through implementing legislation and the discretionary decision-making of public authorities, which in practice

27 | Constitutional Court of the Slovak Republic, 2014, 21–23.

28 | See CJ EU 2013, 18.

renders its direct and independent invocation before constitutional adjudicatory bodies particularly problematic.²⁹

1.5. Restriction of fundamental rights on the grounds of environmental protection

Environmental protection may constitute a legitimate ground for the restriction of fundamental rights, in particular the right of ownership or the right to conduct business. The basis for assessing the relationship between the protection of ownership and its possible restriction arising from the public interest in nature protection is Art. 20(3) of the Constitution of the Slovak Republic, which is determinative for this relationship. According to this article, the right of ownership cannot be understood as an unlimited right of the owner to exercise ownership at will, but as a right that may be realised only within certain boundaries. These boundaries are clearly defined in such a way that the exercise of ownership must not damage human health, nature, cultural monuments or the environment beyond the extent established by law. The prohibition on endangering nature and the environment beyond the extent established by law has an unequivocal preventive significance, which, in accordance with Art. 20(3) of the Constitution of the Slovak Republic, fundamentally affects the possibilities of exercising the right of ownership. The objective of the constitutional regulation in Art. 20(3) is to define the scope and content of the legal status of the owner and to make the exercise of ownership rights conditional on mandatory considerations which the owner must take into account in relation to other constitutionally designated values of public interest. The regulation in Art. 20(3) of the Constitution of the Slovak Republic is generic; it concerns groups of owners. The legal effects of Art. 20(3) of the Constitution of the Slovak Republic limiting the legal status of the owner arise with the acquisition of ownership. In this way, a requirement of fair balance is established between the scope of the owner's rights defined on the basis of Art. 20(1) of the Constitution of the Slovak Republic and the rights of third parties guaranteed by Art. 44(1) of the Constitution of the Slovak Republic.³⁰

In this context, the Constitutional Court of the Slovak Republic refers to the case law of the European Court of Human Rights (hereinafter 'ECtHR'), according to which an interference with the peaceful enjoyment of possessions must nevertheless maintain a fair balance between the needs of the public or general interest of society and the requirements of the protection of the fundamental rights of individuals.³¹ The objective of restricting rights must be based on the principle that any measure interfering with the right to peaceful enjoyment of possessions must

29 | Constitutional Court of the Slovak Republic 2021, 14–16.

30 | Constitutional Court of the Slovak Republic 2008, 8–9.

31 | See ECHR 2007, para. 46.

establish a fair balance between the requirement of the general interest of society and the need to respect the fundamental rights of the individual. Balancing and seeking a fair equilibrium also has its place in relation to the protection of constitutionally designated values in the form of the protection of nature and the environment. Such a restriction must respect the principle of proportionality – it must pursue a legitimate aim, be suitable, necessary and proportionate. The application of the proportionality test is a key instrument in balancing individual rights and the public interest in the protection of the environment and nature.

Just as it is possible to restrict other fundamental rights and freedoms in the interest of environmental protection, so it is possible under certain circumstances to restrict the protection of nature. In the Slovak constitutional order, during wartime, fundamental rights and freedoms may be restricted to the necessary extent and for the necessary time depending on the course of events, and duties may be imposed on the entire territory of the Slovak Republic or on part thereof. This also applies to the authorisation to restrict part of the right to a favourable environment protected in Art. 44 of the Constitution of the Slovak Republic in relation to the protection of nature and the landscape, as well as the restriction of the right to timely and complete information on the state of the environment guaranteed in Art. 45 of the Constitution.³² However, it is not possible to restrict the protection of nature and the landscape, nor the right to timely and complete information on the state of the environment, during a state of war, a state of emergency or a state of crisis.

1.6. Protecting national assets in relation to the environment and future generations

Closely related to the protection of the environment is the regulation in Art. 4 of the Constitution of the Slovak Republic. Here, the constitution-maker regulated those things which were considered so important for the Slovak Republic in this context that it was unequivocally determined that they are in the ownership of the state. In this way, the legislator was deprived *pro futuro* of the possibility to regulate the ownership of these things in any other manner. The basic idea underlying this constitutional regulation is the effort to ensure ecological balance and the preservation of these public goods also for future generations, i.e. the creation of a foundation of intergenerational solidarity in the field of environmental protection. Mineral resources, caves, groundwater, natural healing resources and watercourses are regarded as public goods, intended to serve the needs of society, to ensure the development of the national economy and to pursue the public interest. A more detailed definition of these goods and the rules for dealing with them are regulated by legislation on the basis of available knowledge. The

32 | See National Council of the Slovak Republic 2002, Art. 2 para. 3(u).

importance of water as a natural resource, an irreplaceable component of the environment and a strategic raw material can be seen in the content of Art. 4(2) of the Constitution of the Slovak Republic, where the management of water is regulated in detail.³³ This represents an exceptionally detailed constitutional regulation of water transport, and it is already in the introductory part of the first chapter of the Constitution of the Slovak Republic. By this, the constitution-maker declared its strong interest in preserving this essential component of the environment and of all living ecosystems. At the same time, it pointed out that this is an exhaustible natural resource which deserves a high degree of protection, as it is a determining factor of sustainable development. With water as an irreplaceable strategic resource, the risk of its loss or depletion is relatively high as a consequence of ongoing climate change and its negative impacts on the state of the environment. The Slovak Republic must therefore, in accordance with the narrative declared in Art. 4(1) of the Constitution of the Slovak Republic, protect and enhance this natural wealth as well, for the benefit of its citizens and future generations. The aim is the preferential use of water in the public interest – in the interest of safeguarding human life and health, national security and the development of society and the state.

In Slovak legal doctrine, we also encounter the assertion of B. Balog that, despite the fact that the Constitution of the Slovak Republic does not explicitly regulate a right to water, Art. 4 (2) of the Constitution of the Slovak Republic may be understood as an expression of such a right.³⁴

1.7. The relationship of values not yet mentioned (in parts 1.1–1.6 and parts 2.1.–2.2)

The protection of the environment and the environmental values guaranteed in the Slovak Constitution extend into all areas of the functioning of modern society and stand in a dynamic relationship with other constitutional values. The existence of constitutional values and principles is based on their harmonious coexistence. They influence economic development and social policy, and they seek to contribute to achieving the long-term sustainability of the management of the Slovak Republic with regard to the requirement of economic and social justice and solidarity between present and future generations. Within the constitutional system, the concept of sustainable development is thus gradually gaining ground as an interpretative principle, the aim of which is to contribute to reconciliation of the environmental, economic and social dimensions of public policy.

³³ | Constitution of the Slovak Republic, Art. 4 para. 2.

³⁴ | Balog 2021, 59.

2. Protection of the environment and future generations as a duty and obligation and the related liability issues

2.1. Protection of the environment and future generations as a duty and obligation

The importance of environmental protection in the Slovak Republic is emphasised by its inclusion among the most significant values within the Slovak constitutional order. The constitution-maker defined the right of everyone to a favourable environment, while at the same time creating, within the Slovak Constitution, a constitutional duty for everyone. The Slovak Republic, as a democratic and rule-of-law state (Arts. 1 and 2(2) of the Constitution of the Slovak Republic), guarantees a catalogue of fundamental rights and duties without making their exercise conditional upon the fulfilment of obligations. The general regulation of the imposition of duties is contained in Art. 13(1) of the Constitution of the Slovak Republic as a universal norm establishing the general criteria and prerequisites for the possible restriction of fundamental rights and freedoms.³⁵ According to this provision, a clear distinction is evident between duties and the limits of fundamental rights and freedoms, both in substance and in form.³⁶ Art. 13(1) of the Constitution applies exclusively to the determination of duties restricting fundamental rights and freedoms, where the primary aim is the protection of natural and legal persons against public authority.³⁷ The explicit enshrinement of a constitutional duty in Art. 44(2): “Everyone shall be obliged to protect and enhance the environment and cultural heritage” is exceptional within the Constitution of the Slovak Republic. In the second chapter of the Constitution, entitled *Fundamental Rights and Freedoms*, we find only three specific constitutional duties: compulsory military service (Art. 25(1)), compulsory school attendance (Art. 42(1)) and the duty to protect and enhance the environment and cultural heritage (Art. 44 (2)). The imposition of a duty in the matter of environmental protection represents a *lex specialis* to Art. 13(1) of the Constitution of the Slovak Republic, meaning that the basic principles contained in that article, both in terms of form and substance, also apply to its implementation. The regulation of the constitutional duty of environmental protection thus documents the constitution-maker’s heightened interest in the importance of this issue.

In this way, through its regulation of the right to the protection of a favourable environment, the Constitution of the Slovak Republic not only created a positive obligation of the state but also established the transfer of responsibility to the

35 | Constitutional Court of the Slovak Republic 2014, 7–8.

36 | Art. 13 of the Constitution of the Slovak Republic, Art. 13 paras 1–4.

37 | Constitutional Court of the Slovak Republic 2020, 9–10.

individual in this field. At the same time, this duty is formulated in more detail by setting certain of its limits in Art. 44(3), where it is expressly stipulated that everyone shall be obliged to protect and enhance the environment and not to endanger or damage its wealth, natural resources or cultural monuments beyond the extent established by law. This expresses the conception of environmental protection as a common concern of public authority and civil society – an expression of the principle of ecological solidarity. Ecological solidarity is the moral and positive attitude derived from acknowledging objective social and ecological interdependencies.³⁸ Ecological solidarity is both solidarity between people regarding the consequences of environmental changes, whether or not they are linked to human activities, and solidarity between humans and non-humans.³⁹

Within the constitutional regulation of environmental protection, a kind of four-layered system of protection has thus been created, consisting of qualitatively slightly different levels of guarantees. These are: the subjective public right of the individual to environmental protection; the state's positive obligation in this sphere; the universal duty of everyone to act responsibly towards the environment; and the establishment of a regime of specially protected natural resources and environmental wealth. The model created at the first level is appropriately supplemented by Art. 45 of the Constitution, which guarantees the right to timely and complete information about the state of the environment and about the causes and consequences of this state. In this way, the constitution-maker unequivocally expressed the fact that environmental protection is in practice hardly feasible without access to and knowledge of relevant information about the environment and its condition. The exercise of the right to a favourable environment in relation to the present generation, but above all to future generations, must therefore be linked with access to information about it and also with the possibility for the public to participate in decision-making processes in the environmental sphere.

The Slovak Republic recognises its obligation to preserve a favourable environment for future generations and therefore has an important active role and responsibility in the active protection of the environment and cultural heritage. On the part of the state, this activity belongs among its basic internal functions, consisting in preventing pollution or damage to the environment, or in limiting or removing pollution or damage to the environment. The activity and responsibility of the state concern the protection of the environment as a whole, but also of its components, individual ecosystems and their interconnections. The state establishes a system in which the constitutional duty to protect and enhance the environment is broken down into partial duties, in particular the duty of anyone who uses land or natural resources, designs, carries out or removes structures, to carry

38 | Moyano-Fernández 2022, 77.

39 | Mathevet et al. 2018, 605–623.

out such activities only after assessing their impacts on the environment and the burden on the land. Anyone intending to introduce into production, circulation or consumption technologies, products or substances, or intending to import them, is obliged to ensure that they meet the conditions of environmental protection or are assessed under legislative requirements in terms of their impacts on the environment. Anyone who, through their activities, pollutes or damages the environment or uses natural resources, is obliged at their own expense to ensure monitoring of such effects and to be aware of their possible consequences. Everyone is obliged to protect nature and the landscape against endangerment, damage and destruction and to care for, according to their possibilities, its components and elements for the purpose of their preservation and protection, improvement of the state of the environment and the creation and maintenance of a territorial system of ecological stability.⁴⁰

The constitutional prohibition, expressed for everyone, against endangering and damaging the environment, natural resources and cultural heritage beyond the extent established by law is only a supplement to the constitutional duty to protect and enhance the environment. The material scope covered by this constitutional prohibition consists primarily of the protection of air, water,⁴¹ soil, rocks, organisms, natural resources and cultural monuments. The issue of preserving the environment for future generations, i.e. the explicit expression of intergenerational solidarity, is not expressly contained in the constitutional regulation of Art. 44. However, from the wording of Art. 44(1–4) it can be inferred that the duty to protect the environment is not limited to the present generation. The orientation of the constitution-maker towards future generations may be found implicitly expressed in the constitutional text of Arts. 44 and 45, thereby implicitly adopting the doctrine of sustainable development, which is also developed in the legal acts of the European Union and in international documents to which the Slovak Republic adheres.

Natural resources, as an inherent component of the environment, may be renewable, i.e. have the capacity for partial or complete self-renewal in the process of consumption, or with human contribution they may renew themselves completely or partially. Non-renewable natural resources, however, disappear with consumption. For this reason, constitutional protection was supplemented by Constitutional Act No. 137/2017 Coll., which introduced special protection by the state and society for agricultural land and forest land in Art. 44(5). The establishment of precise rights and duties in relation to these non-renewable natural resources represents a special guarantee of protection, pursuing in particular the interest of future generations in the protection of the environment and thereby in creating and maintaining a territorial system of ecological stability. The protection

40 | Orosz et al. 2021, 56.

41 | Szilágyi 2022, 487.

of agricultural land serves to preserve its properties and functions and to ensure its sustainable use and management, thereby contributing to biodiversity, fertility and its capacity to perform all its functions. Similarly, the objective of protecting forest land is primarily the preservation of its sustainable use for the fulfilment of the functions of forests as a component of the natural environment and as an object of economic use.

The duty to protect and enhance natural wealth in the form of mineral resources, caves, groundwater, natural healing resources and watercourses, as well as the duty to use mineral resources and natural heritage effectively in favour of its citizens and future generations, is explicitly enshrined in Art. 4(1) of the Constitution of the Slovak Republic. Here the position of the Slovak Republic is defined in terms of its duties and responsibilities in the management of its exclusive ownership. The constitutionally defined duty of the state to protect and enhance the subject of its exclusive ownership is set in such a way that, under constitutional regulation, it must be carried out effectively and sustainably, and moreover with regard to the public interest and the interest of future generations. The regulation of Art. 4(1) is not merely a constitutional phrase; on the contrary, it expresses a constitutional instruction of the constitution-maker for all authorities of the Slovak Republic regarding how they must approach the management and disposal of state property. It is also a constitutional instruction to the National Council of the Slovak Republic to adopt such norms regulating the management of mineral resources, caves, groundwater, natural healing resources and watercourses that will, above all, pursue the intergenerational public interest in efficiency and sustainability.

The emphasis on an ecologically oriented market economy as a fundamental principle of the Slovak Republic's economic system is found in Art. 55(1) of the Constitution. The ecological orientation of the Slovak economy confirms the special interest in its sustainability. Current global climate challenges exceed the possibilities of individual states to independently secure the duty to contribute to the sustainability of the natural resources of economic development. However, this does not serve as a justification for neglecting this duty on the part of the Slovak Republic; on the contrary, practice should begin to place greater emphasis on fulfilling this part of the constitutional obligation.

From the perspective of constitutional law theory, it should be emphasised that the constitutional framework of environmental protection does not have an exclusively declaratory character. The principle of the material rule of law determines the duty of the state to act in the interest of environmental protection in the context of guaranteeing the protection of fundamental rights and freedoms. Environmental protection represents a legitimate public interest. The positive obligation of the state in the field of environmental protection takes the form not only of creating a legal framework enabling the real application of constitutionally guaranteed rights and duties, but also of creating a system of public

authorities that will ensure the effective functioning and observance of environmental regulations, as well as the provision of timely and complete information to the public.

The existence of the state's positive obligation in the field of environmental protection was also confirmed by the Constitutional Court of the Slovak Republic: "By adopting the reviewed legislation, the legislator was fulfilling the command of the fundamental law, as well as its positive obligation of environmental protection, when it established rules for waste management with the aim of preventing the creation of waste and limiting its generation, recovering waste through recycling, re-use or the obtaining of secondary raw materials from waste, and, last but not least, disposing of waste in a manner that does not endanger human health and does not damage the environment beyond the established extent."⁴²

The state fulfils its positive obligation to protect the environment also, for example, by granting procedural rights to associations and entities that, in the public interest, protect the environment in proceedings before state authorities vested with the power to authorise activities having an impact on the environment. These entities are thus entitled to intervene and to effectively protect and promote, also before the courts, the public interest in environmental protection. Entities protecting the environment in the public interest in proceedings before state authorities will, by virtue of their activities and their mission, otherwise beneficial to the quality of life of individuals in a given environment, always strive to minimise human interference with the environment. Conversely, state authorities must in every single case proceed as required by law – sometimes, due to the strictness of the law, the scope for balancing the various interests at stake and in conflict in a given proceeding (protection of the environment vs. private interests of persons engaging in entrepreneurial, constitutionally protected activity, or private persons exercising their constitutionally protected property rights, etc.) is smaller; at other times, such balancing, having regard to the wording and spirit of the law and the activity to be authorised, is directly required.⁴³

2.2. Liability issues related to environmental protection

Protection of the environment in the form of a right or a duty is conceived at the constitutional level not only for the state as the bearer of public authority, but also for the individual. The breach of duties is linked to the imposition of responsibility, which may be applied on several levels.

Constitutional responsibility for breaches of constitutional environmental norms must be understood in the context of the modern state founded on the sovereignty of the people and the resulting responsibility of the holders and

42 | Constitutional Court of the Slovak Republic 2009, 32–33.

43 | Constitutional Court of the Slovak Republic 2019, 13–15.

performers of public authority, the principles of democracy and equality and the guarantees of fundamental rights and freedoms created thereby. Responsibility in constitutional law is not among the typical features of this branch of law, as noted by Ľ. Cibulka.⁴⁴ Its essence lies in the breach of constitutional law norms, linked with sanctions. The application of constitutional liability in the environmental sphere is rather specific, since it derives primarily from the direct constitutional duties of the state. If the state fails to reflect its positive obligation in the field of environmental protection, neglects it, for example, by not adopting adequate legislation, this may lead to a violation of the fundamental rights and freedoms of the individual.

The constitutional regulation creates a basis for the fulfilment of the obligation of the present generation, responsible for the state of the environment that it will leave to the next generation of humankind, thereby also fulfilling the principle of sustainable development. This principle also belongs among the principles of international and European environmental law. On this basis, human activity should be directed towards minimising the reduction of the diversity of nature and ecosystems. In practice, it is implemented primarily through environmental policies and strategic documents adopted by the government and the National Council of the Slovak Republic. The derivation of constitutional-political liability towards the government, conditioned on non-compliance with or neglect of commitments in the field of environmental protection, is at present hardly conceivable.

The state ensures the protection of the environment and cultural heritage mainly through administrative law norms, where liability is conditioned on the violation of environmental regulations. For misdemeanours in the field of the environment, the liable subject is a natural person. Such a person commits a misdemeanour if, by breaching a generally binding legal regulation on environmental protection, they worsen the environment. A fine of up to 99 EUR may be imposed. A misdemeanour constitutes a culpable act that violates or endangers an interest of society and is expressly designated as a misdemeanour in Act No. 372/1990 Coll. on Misdemeanours or in another statute, provided it is not another administrative delict punishable under special legislation or a criminal offence. The principal supervisory authority in the field of state administration of environmental protection is the Slovak Environmental Inspectorate, which, by performing state supervision in matters of environmental protection, oversees compliance with legality in individual areas of the environment. It is also authorised to perform state administration in the field of integrated prevention and control of environmental pollution. The principal supervisory authority in the field of monument supervision is the Monument Inspectorate of the Ministry of Culture of the Slovak Republic. Administrative delicts in the field of environmental protection are regulated in

44 | Cibulka et al. 2014, 25.

special legislation (e.g. Act No. 543/2002 Coll. on Nature and Landscape Protection, Act No. 146/2023 Coll. on Air Protection, Act No. 79/2015 Coll. on Waste), with the common denominator being the principle of the “polluter pays principle”. This is one of the main principles underpinning the environmental policy of the European Union (EU). The application of this principle means that polluters bear the costs of pollution resulting from their activities, including the costs of measures taken to prevent, control and remedy pollution and the costs it represents for society. Application of this principle is intended to motivate polluters to avoid damaging the environment and bear responsibility for the pollution they cause. The polluter is also the one who bears the costs of remediation, not the taxpayers.⁴⁵ From the perspective of a person liable for an administrative delict in the field of environmental protection, it is essential to understand that their conduct will primarily entail financial consequences, associated with a potential obligation to take remedial measures against the unlawful conduct.

Civil liability is applied in particular through the instruments of compensation for damage and non-pecuniary harm. This includes, in particular, cases where interference with the environment or its components causes injury to a person’s health or damage to their property. Claims for compensation may be pursued under the general provisions of the Civil Code.

Criminal liability represents the most serious form of legal reaction by the state to anti-social conduct. While administrative and civil sanctions are commonly applied in the field of environmental protection, criminal law serves as a last resort (*ultima ratio*), used in the most serious and most harmful cases of interference with environmental values. The Slovak Republic, which has the right to a favourable environment enshrined in Art. 44 of the Constitution and in Art. 44(2) explicitly imposes the duty to protect and enhance it on everyone, is obliged to create and ensure effective instruments for the protection of these values. This duty constitutes the so-called positive obligation of the state, fulfilled through legislation, including criminal law. Criminal law protection of the environment is therefore a direct consequence of this constitutional imperative, which is reflected in the specific constituent elements of criminal offences as regulated in Act No. 300/2005 Coll., the Criminal Code.

One of the most significant aspects of Slovak regulation of environmental liability is the existence of a dual system, where certain unlawful conduct may be classified either as an administrative delict (misdemeanour) or as a criminal offence. Whether the act will be sanctioned under administrative or criminal law is determined primarily by the degree of its social harmfulness, in particular the extent of the damage or danger caused.

45 | European Court of Auditors 2021, 4.

3. Judicial enforcement

Judicial enforceability of the right to a favourable environment and the right to timely and complete information on the state of the environment and on the causes and consequences of that state is determined by the nature of Arts. 44 and 45 of the Constitution of the Slovak Republic. The Constitutional Court of the Slovak Republic provides protection of constitutionally guaranteed fundamental rights and freedoms within the framework of individual judicial review of constitutionality through a constitutional complaint under Art. 127 of the Constitution of the Slovak Republic. The Constitutional Court of the Slovak Republic has stated: “Fundamental rights guaranteed in Arts. 44 and 45 of the Constitution can only be invoked within the limits of the laws that implement these rights (Art. 51(1) of the Constitution of the Slovak Republic). Their essence is therefore protected by the Constitution (par. 113, PL. ÚS 13/2012), not their detailed democratic implementation (PL. ÚS 24/2019).” In the case of the right to a favourable environment, we encounter the programmatic nature of this provision, which makes its judicial enforceability difficult in practice. The right to a favourable environment is therefore most often enforceable in the case law of the Constitutional Court of the Slovak Republic in connection with other fundamental rights, in particular the right to judicial protection (Art. 46), the right to property (Art. 20) or the right to health protection (Art. 40). The right to information on the environment, which substantively coincides with the right to information guaranteed in Art. 26 of the Constitution of the Slovak Republic, grants the entitled person the right to seek, receive and disseminate information on the state of the environment. For this right under Art. 45 of the Constitution of the Slovak Republic, the fulfilment of the cumulative condition is essential: such constitutionally permitted conduct must relate to information on the state of the environment that is both timely and complete. If the information is timely but incomplete, its quality is contrary to Art. 45 just as if complete information is provided late. Information on the state of the environment can only be considered timely if it can be used in the interest of implementing procedures that will benefit the environment, especially if it concerns information on the negative state of the environment.⁴⁶ It may be perceived as a directly enforceable constitutional right; however, the extraordinary constitutional regime in the sense of timely and complete information on the state of the environment is difficult to achieve in today’s world of global environmental changes. The enforceability of environmental rights guaranteed in the Constitution of the Slovak Republic can be realised through the instrument of a constitutional complaint, which, however, is a formally limited tool in the context of their content.

46 | Drgonec 2019, 874.

4. Good practices and *de lege ferenda* proposals concerning part 2 of the Article

The right to a favourable environment has its prototype at the supranational level within the framework of Art. 8 of the European Convention on Human Rights (hereinafter the 'Convention'),⁴⁷ i.e. within the framework of the right to respect for private and family life. Within this framework, the ECtHR has found a connection between the quality of the environment and the quality of a person's privacy, since the quality of the environment can have a direct impact and influence on private and family life. According to the Court, it is evident that serious environmental pollution may affect an individual's well-being and deprive them of the enjoyment of their home in such a way that it harms their private and family life, even without seriously endangering the health of the person concerned.⁴⁸ With regard to violations of the right to a favourable environment under Art. 8 of the Convention, according to J. Svák, these complaints can, in terms of content, be divided into "interferences with the environment", "the State's positive obligations in the protection of the environment", and "the right to information on the environment".⁴⁹

A landmark judgment of the ECtHR from a recent decision may also serve as inspiration for the Slovak constitutional system.⁵⁰ The case concerned the Swiss non-profit association *Verein KlimaSeniorinnen Schweiz*, established with the aim of promoting the implementation of effective environmental protection on behalf of its more than 2,000 members, most of whom were elderly women. In 2016, the applicants submitted complaints to the Swiss authorities responsible for environmental protection, pointing to deficiencies in this field and emphasising the Paris Agreement on climate change of 2015. Their submissions were rejected on the grounds that their individual rights had not been directly violated, and also because their complaint did not concern their immediate surroundings, as they were seeking measures aimed at the global reduction of CO₂ emissions. The ECtHR held that the criteria of a high intensity of the applicants' exposure to the adverse effects of climate change and the urgent need to secure individual protection had not been met, meaning that the requirements for 'victim status' under Art. 34 of the Convention were not fulfilled; therefore, it declared their complaint inadmissible. On the other hand, the ECtHR admitted as admissible the individual complaint lodged by the non-profit organisation itself. Although the ECtHR generally does not consider *actio popularis* complaints admissible, it assessed that in relation to complex phenomena such as climate change, collective bodies (e.g. non-profit organisations) may be the only means of effectively protecting the interests of

47 | Federal Ministry of Foreign Affairs 1992.

48 | European Court of Human Rights 1994, 85.

49 | Svák 2021, 298.

50 | European Court of Human Rights 2024.

individuals. The harmful consequences of climate change are a shared problem of all humankind, and the intergenerational sharing of burdens also plays an important role. The voices of individuals who are in a significant representative disadvantage in such cases can only be heard through organisations representing their interests.⁵¹ From the positive-law character of the right to environmental protection arises the need to substantively fill this right with content in such a way that the positive obligation of the Slovak Republic also reflects the most modern trends at the European level. An example is the effective consideration of the form of the State's positive obligation, as was recently done by the ECtHR. The Court identified three types of measures to be addressed in relation to the State's positive obligation to ensure effective protection from the serious adverse effects of climate change, namely measures capable of mitigating the existing and potentially irreversible, future effects of climate change; adaptation measures aimed at alleviating the most severe or imminent consequences of climate change; and procedural safeguards in connection with both types of measures.⁵²

At present, the constitutional regulation under Art. 44(1), which guarantees the right of everyone to a favourable environment, has rather a programmatic character, safeguarding only the essence of this fundamental right. Slovak case law has thus far failed to give substantive content to the notion of a 'favourable environment', which is to the detriment of the individual and the enforceability of his or her constitutional rights. Seeking protection of this right by means of a constitutional complaint is therefore quite demanding and carries an uncertain outcome. There is considerable room here for the constituent power, or indeed for the Constitutional Court of the Slovak Republic, to attempt to fill this concept with more concrete entitlements, despite its broad character covering the diverse components of the environment. It is necessary to move beyond the general definition of a 'favourable' environment, where fulfilment depends on interpretation but ultimately aims at ensuring a full and dignified life in health. The quality of environmental protection legislation and the decision-making practice of state authorities in the environmental field are interconnected and predetermine the scope of discretion available to the authorities applying such legislation. The 'favourability' of the environment may be defined through statutory limits that must not be exceeded, since not all activities with a negative environmental impact can be prohibited. The legislator must therefore be more rigorous in setting certain permissible thresholds beyond which the environment cannot be endangered or damaged. At the same time, it is necessary to take into account the scope and value of these permissible thresholds, which are influenced both by the level of human knowledge and by societal conditions, international commitments, the performance of the national economy and other factors. Climate change and the climate

51 | Chládeková 2024, 1–2.

52 | Committee of Ministers 2025, 2–4.

crisis that society currently finds itself in are directly linked to the quality of life and the environment of the individual. It would also be appropriate at the constitutional level to specify more clearly what is meant by the wording “the careful use of natural resources (...)” employed in Art. 44(4) of the Constitution. By “careful use of natural resources” one should understand prudent and rational management or alternative utilisation of natural resources, with the underlying idea that such use must ensure their sustainable renewability. This concept may be regarded as a precursor to the doctrine of ‘sustainable development’.⁵³

Another problem concerning the effectiveness and enforceability of the right is the subject of the right to a favourable environment under Art. 44(1) of the Constitution of the Slovak Republic. The Constitutional Court of the Slovak Republic has once again confirmed that the bearer of the right to a favourable environment is exclusively a natural person, and not a legal entity.⁵⁴ In a more recent decision, the court once again confirmed its case law in this matter and examined the complaint of the civic association *Lesoochránárske zoskupenie VLK*, i.e. a legal entity, only because the complainant was not asserting its own subjective right, but was acting in the proceedings as an interested public, thereby defending and representing the public interest⁵⁵ in environmental protection. Moreover, in this case the complainant did not assert a right under Art. 44(1) of the Constitution of the Slovak Republic but instead invoked a right under Art. 9(3) of the Aarhus Convention in conjunction with Art. 44(2) and (4) of the Constitution of the Slovak Republic.⁵⁶ It would be appropriate for the Constitutional Court of the Slovak Republic to move interpretatively towards allowing legal entities to allege a violation of the right under Art. 44(1) of the Constitution of the Slovak Republic. The reason is that legal entities significantly participate in processes that affect the state of the environment and, at the same time, may themselves be affected by that state.

53 | Sládeček et al. 2016, 1264.

54 | Constitutional Court of the Slovak republic 2008, 8.

55 | Constitutional Court of the Slovak Republic 2025, 24–26.

56 | Constitutional Court of the Slovak Republic 2021, (IV. paras. 42–44).

Reference list

Literature

1. Cibulka L et al. (2014) *Ústavné právo (ústavný systém Slovenskej republiky)*, Právnická fakulta Univerzity Komenského, Bratislava.
2. Čič M et al. (2012) *Komentár k Ústave Slovenskej republiky*, Eurokódex, Bratislava.
3. Chalabi A (2023) A New Theoretical Model of the Right to Environment and its Practical Advantages, *Human Rights Law Review* 23(4), pp. 1–19, DOI: <https://doi.org/10.1093/hrlr/ngad023>.
4. Chládek M (2024) Vnútroštátne súdy majú kľúčovú úlohu v konaniach týkajúcich sa klimatickej zmeny (z judikatúry ESLP), *Bulletin Slovenskej advokácie* 3/2024, pp. 46–47.
5. Drgonec J (2019) *Ústava Slovenskej republiky*, Nakladateľstvo C.H.Beck, Bratislava.
6. Ministerstvo vnútra SR (2025) *Environmentálna kriminalita*, <https://www.minv.sk/?environmentalna-kriminalita> [16.09.2025].
7. Committee of Ministers (2025) *H46-30 Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (Application No. 53600/20), *Supervision of the execution of the European Court's judgements, Reference document*, CM/Notes/1521/H46-30, <https://tinyurl.com/5n899k9e> [16.09.2025].
8. Generálna prokuratúra SR (2025) *Hodnotia správa o úsmom kole vzájomných hodnotení „Praktické vykonávanie a uplatňovanie európskych politík v oblasti predchádzania trestnej činnosti proti životnému prostrediu a boja proti nej” – správa o Slovensku*, <https://www.genpro.gov.sk/extdoc/7370> [16.09.2025].
9. Jakab R (2023) Prohibition of cross – border water transport in the conditions of the Slovak Republic and its legal consequences, *JAEL* 18(35), pp. 49–63, DOI: <https://doi.org/10.21029/JAEL.2023.35.49>.
10. Vasak K (1984) Pour une troisième generation des droits de l'homme, in: Swinarski C (ed.) *Studies and Essays on International Humanitarian Law and Red Cross Principles*, ICRC & Nijhoff, n.p., pp. 837–845.
11. Krošlák D et al. (2016) *Ústavné právo*, Wolters Kluwer, Bratislava.
12. Maslen M (2023) Waste management and its possible development in the Slovak Republic, *JAEL* 18(34), pp. 73–90, DOI: <https://doi.org/10.21029/JAEL.2023.34.73>.

13. Maslen M (2022) Slovak Republic: Constitution and the Protection of Environment and Natural Resources, in Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations*, Central European Academic Publishing, Miskolc – Budapest, pp. 399–437.
14. Michalovič M & Maslen M (2024) Advocating for environmental law – grounds for its status as an independent branch of law in Slovak legal doctrine, *Prawne Problemy Górnictwa i Ochrony Środowiska* 2/2024, pp. 1–26, DOI: 10.31261/PPGOS.2024.02.06.
15. Mathevet R, Bousquet F, Larrère C & Larrère R (2018) Environmental Stewardship and Ecological Solidarity: Rethinking Social-Ecological Interdependency and Responsibility, *J. Agric. Environ. Ethic* 31(2), pp. 605–623, DOI: 10.1007/s10806-018-9749-0.
16. Moyano-Fernández M (2022) Building Ecological Solidarity: Rewilding Practices as an Example, *Philosophies* 7(4), pp. 1–14, DOI: <https://doi.org/10.3390/philosophies7040077>.
17. CCPE (2022) *Opinion No. 17 (2022) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe: The Role of Prosecutors in the Protection of the Environment*, <https://rm.coe.int/opinion-no-17-2022-slovak/1680b4bc0a> [16.09.2025].
18. Orosz L, Svák J et al. (2023) *Ústava Slovenskej republiky. Komentár. Zväzok III.*, Wolters Kluwer s.r.o., Bratislava.
19. Orosz L, Svák J et al. (2021) *Ústava Slovenskej republiky. Komentár. Zväzok I.*, Wolters Kluwer s.r.o., Bratislava.
20. Orosz L, Svák J et al. (2022) *Ústava Slovenskej republiky. Komentár. Zväzok II.*, Wolters Kluwer s.r.o., Bratislava.
21. Szilágyi J E (2022) Constitutional Protection of the Environment and Future Generations in Certain Central European Countries, in Szilágyi JE (ed.) *Constitutional Protection of the Environment and Future Generations*, Central European Academic Publishing, Miskolc–Budapest, pp. 479–526.
22. Sládeček V et al. (2016) *Ústava České republiky. Komentář*, 2nd edn., C. H. Beck, Praha.
23. ECA (2021) *Special Report 12/2021: Zásada „znečisťovateľ platí“: nejednotné uplatňovanie v rámci politik a opatrení EÚ v oblasti životného prostredia*, https://www.eca.europa.eu/lists/ecadocuments/sr21_12/sr_polluter_pays_principle_sk.pdf. [19.05.2024].

24. Generálna prokuratúra SR (2023) *Správa generálneho prokurátora Slovenskej republiky o činnosti prokuratúry a poznatkoch prokuratúry o stave zákonnosti v Slovenskej republike za rok 2023*, https://www.genpro.gov.sk/fileadmin/Sprava_o_cinnosti/2023/vlastny_material.pdf [16.09.2025].
25. Svák J (2021) *Nadnárodné systémy ochrany ľudských práv, III. Zväzok. Ochrana súkromia a majetku*, Wolters Kluwer SR s.r.o., Bratislava.
26. Trellová L (2015) Ústavnoprávna regulácia starostlivosti o životné prostredie, in: Cepek B et al. (eds.) *Environmentálne právo. Všeobecná a osobitná časť*, Vydavateľstvá a nakladateľstvá Aleš Čeněk, Plzeň.
27. Trellová L (2013) Ochrana životného prostredia v Ústave Slovenskej republiky a jej vybrané aspekty, *Míľniky práva v stredoeurópskom priestore 2013, 1. časť*, Univerzita Komenského, Právnická fakulta, Bratislava, pp. 223–229.
28. SIŽP (2025) *Trestnoprávna zodpovednosť*, <https://www.sizp.sk/priroda/ochrana-prirody-a-krajiny/trestnopravna-zodpovednost> [16.09.2025].
29. Vasak K (1977) A 30-Year Struggle, *UNESCO Courier*, <https://unesdoc.unesco.org/ark:/48223/pf0000046193> [16.09.2025].

Case law

1. Constitutional Court of the Slovak Republic (1996) *Finding no. II. ÚS 8/96* of 4 September 1996.
2. Constitutional Court of the Slovak Republic (2003) *Finding no. I. ÚS 4/02* z 9 July 2003.
3. Constitutional Court of the Slovak Republic (2009) *Finding no. PL. ÚS 3/03* z 28 January 2009.
4. Constitutional Court of the Slovak Republic (2008) *Finding no. 22/06* z 1 October 2008.
5. Constitutional Court of the Slovak Republic (2008) *Finding no. II. ÚS 93/08* zo 6 March 2008.
6. Constitutional Court of the Slovak Republic (2008) *Finding no. III. ÚS 100/08* z 1 April 2008.
7. Constitutional Court of the Slovak Republic (2009) *Finding no. PL. ÚS 14/06* z 23 September 2009.
8. Constitutional Court of the Slovak Republic (2014) *Finding no. I. ÚS 73/2014* of 5 March 2014.
9. Constitutional Court of the Slovak Republic (2014) *Finding no. PL. ÚS 10/2013* of 10 December 2014.

10. Constitutional Court of the Slovak Republic (2015) *Finding no. III. ÚS 352/2015* of 14 July 2015.
11. Constitutional Court of the Slovak Republic (2019) *Finding no. II. ÚS 107/2019* of 6 June 2019.
12. Constitutional Court of the Slovak Republic (2020) *Finding no. I. ÚS 174/2020* of 16 April 2020.
13. Constitutional Court of the Slovak Republic (2021) *Finding no. I. ÚS 529/2019* of 19 January 2021.
14. Constitutional Court of the Slovak Republic (2025) *Finding no. PL. ÚS 2/2025* of 15 January 2025.
15. Constitutional Court of the Slovak Republic (2015) *Finding no. I. ÚS 7/2014* of 11 June 2015.
16. ECHR (2005) *J. A. Pye (Oxford) v. the United Kingdom*, Application no. 44302/02.
17. CJEU (2013) *Judgment in Case C-416/10* of 15 January 2013.
18. ECHR (1994) *López Ostra v. Spain*, Application no. 16798/90.
19. ECHR (2024) *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application no. 53600/20, 9 April.
20. SC SR (2018) *Judgment Case No. 10Asan/5/2017* of 27 April 2018.

Environmental Duties and Liability in the Constitution of the Czech Republic – Environmental Constitutionalism in the Anthropocene¹

Abstract

This article examines how the Czech constitutional order regulates environmental protection and liability in the Anthropocene, with a particular focus on future generations and climate litigation. It shows that the Constitution and the Charter of Fundamental Rights and Freedoms provide only a fragmented, anthropocentric framework. Art. 7 of the former and Art. 35 of the latter recognise environmental interests and the right to a favourable environment but do not establish an explicit, general duty on everyone to protect the environment, nor a clear constitutional mandate to safeguard future generations. Environmental duties and the polluter pays principle are therefore largely operationalised at sub-constitutional level through the Environment Act, sectoral legislation and multi-layered regimes of administrative, civil, criminal and ecological-damage liability, which strongly constrain private actors while leaving state liability comparatively underdeveloped. The analysis traces how courts have gradually expanded standing for individuals, communities and NGOs, and how they invoke intergenerational interests in selected contexts (such as the Soutok case) yet remain cautious when asked to enforce positive climate obligations. The first Czech climate lawsuit is used to illustrate both the potential and limits of climate litigation. Against this backdrop, this article identifies scattered statutory references to future generations and evaluates institutional options ranging from a stronger role for the ombudsman to an expanded mandate for the children's ombudsman. It concludes with de lege ferenda proposals, including an explicit constitutional duty to protect the environment, clearer climate- and biodiversity-related

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objectives, and a clause steering the economic order towards sustainable, ecologically oriented development.

Keywords: Environmental constitutionalism, future generations, climate litigation, Anthropocene, environmental liability

1. Introduction

This article focuses on constitutional protection of the environment and future generations in the Anthropocene era, providing a brief overview of national constitutional law and practice, with a particular emphasis on future generations and climate protection.

Several key issues are highlighted. First, it examines related constitutional obligations and duties. Second, it analyses environmental liability issues identified in constitutional texts and constitutional practice. Third, it addresses the enforceability of constitutional obligations. Fourth, it presents existing good practices relevant to the topic and discusses *de lege ferenda* proposals, developed in detail in relation to sub-constitutional duties, obligations and responsibilities.

The analysis builds on aspects identified in the book *Constitutional Protection of the Environment and Future Generations: Legislation and Practice in Certain Central European Countries*,² with a special focus on developments since mid-2022. The article directly follows the chapter by Radvan, Czech Republic: Limited Constitutional Regulation of Environmental Protection Complemented by the Case Law of the Constitutional Court.³

2. Overview of the position of certain constitutional institutions in the Constitution and in the practice of the Constitutional Court

The Czech constitutional order is characterised by a formal dualism: the Constitution of the Czech Republic (Act No. 1/1993 Coll.) (the Constitution) and the Charter of Fundamental Rights and Freedoms (Act No. 2/1993 Coll.) (the Charter), both forming part of the constitutional order yet neither setting out an exhaustive regime for environmental protection.

The preamble to the Constitution expresses citizens' resolve to "guard and develop together the natural and cultural, material and spiritual wealth handed

2 | Szilágyi 2022, 11–16 and 479–526.

3 | Radvan 2022, 161–202.

down to us”, thereby framing environmental protection as a foundational social commitment.

Art. 7 of the Constitution further imposes a state obligation: “The state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.”⁴

The Charter is primarily anthropocentrically oriented, and this is particularly evident in the wording of Art. 35:

“(1) Everyone has the right to a favourable environment.

(2) Everyone has the right to timely and complete information about the state of the environment and natural resources.

(3) No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law.”⁵

These provisions form the constitutional basis for environmental protection in the Czech Republic.

2.1. Conceptual issues

Art. 7 of the Constitution constitutes the basic substantive foundation for the constitutional protection of the environment in the Czech Republic. It establishes the duty of the state to ensure the sustainable use of natural resources and the protection of natural wealth, with the restrictive wording in the first part of the sentence complemented by a requirement for active state conduct in the second. This duty is fulfilled not only through the state’s own direct actions, but above all through the creation of generally binding rules for private and public actors. The Constitution does not compel the state to manage all the activities itself, but rather to construct the normative framework within which legal subjects must operate.⁶

This provision is closely linked to everyone’s right to a favourable environment under Art. 35 of the Charter yet operates within the narrower concepts of natural resources and natural wealth. These terms predominantly denote natural, non-human-made values – including biodiversity and ecological relationships – which are difficult to subsume under traditional notions of objects of rights.⁷

The term natural wealth is understood to cover all the components of the natural environment, species of organisms and specific ecosystems, together with their mutual interdependencies, as well as the natural environment as a whole – both within and beyond the territory of the Czech Republic.⁸

4 | Constitution of the Czech Republic.

5 | Charter of Fundamental Rights and Freedoms.

6 | Uhl 2015.

7 | Ibid.

8 | Syllová 2016, 60.

At the same time, these goods confer dispersed, cross-generational benefits that resist individualisation, significantly complicating the construction of procedural enforceability of this constitutional duty.⁹

The practical implementation of Art. 7 has been shaped more by the development of international and EU environmental law and by administrative practice than by systematic case law working directly with the constitutional norm. The current model of constitutional protection rests on two main pillars: the classic interventionist system of administrative authorities (permit and prohibition procedures), and procedural regimes based on the right to information and public participation, especially in environmental impact assessment processes.

The duty to protect natural wealth (that is, the environment) applies, first, to the activities of state authorities themselves, which are required to limit their own conduct so as to respect the general interest in environmental protection, and second, to their regulatory influence on private actors. The state exercises this influence through environmental legislation, systems to monitor the environment, energy policy, and a wide range of other instruments, including economic tools. Legal protection mechanisms operate on the one hand in a cross-cutting manner, applicable to all environmental media, through sector-specific regimes for individual components (such as air and water), as well as through preventive regulation of major sources of environmental risk.¹⁰

The judicial review in this field focuses primarily on procedural standards, while the substantive assessment of sustainability or protection in the sense of Art. 7 remains largely in the hands of political bodies.¹¹

In 2022, the Czech government proposed an amendment to Art. 7 of the Constitution in response to the environmental disaster that struck the River Bečva in 2020.¹² That river was heavily polluted by toxic cyanide compounds, resulting in the death of tens of tonnes of fish and other aquatic organisms, and has been recovering ever since. The ensuing public outcry resonated at the political level and prompted the government to initiate a constitutional amendment.

The proposed amendment would have modified Art. 7 to read: “The state shall concern itself with the prudent use of its natural resources, especially water and soil, and the protection of the environment.”¹³

Academic debate quickly arose as to whether explicitly naming these environmental components would have any practical legal effect. The prevailing view was that it would not. Water and soil are already encompassed within the broader notion of natural resources in Art. 7, so their express mention was regarded as a

9 | Ibid.

10 | Ibid.

11 | Ibid.

12 | Vlasatá 2025.

13 | Draft Constitutional Act Amending Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, as amended by later constitutional acts, 2023.

largely symbolic or cosmetic step, rather than a real strengthening of protection. Moreover, their protection is already anchored in ordinary legislation.

The prudent use of water is regulated by the Water Act (Act No. 254/2001 Coll.), and the prudent use of soil in turn by Act No. 334/1992 Coll., on the Protection of Agricultural Land, both of which contain general provisions on the protection of these components. In addition, Act No. 17/1992 Coll., on the Environment, defines the environment as including, *inter alia*, water and soil. The protection and prudent use of these resources are thus ensured through statutory rules and the action of competent authorities. Overall, the proposed amendment was widely seen as more of a public gesture than a genuine step towards more robust environmental protection.

However, during parliamentary debates, a further modification was put forward, changing the proposed text to: “The state shall concern itself with the protection of the environment, the protection of animals, and prudent use of natural resources, especially water.”¹⁴

This shifted the focus of the amendment to the protection of animals. Unlike the earlier wording, this revision would have introduced a genuinely new constitutional value by elevating animal protection to the constitutional level.¹⁵

From a constitutional perspective, animals are currently protected only indirectly: either as natural resources subject to prudent use under Art. 7 of the Constitution, or as objects of property rights linked to the right to own property under Art. 11(1) of the Charter. Neither provision is primarily aimed at animal protection or expressly recognises animal protection as a public interest. Act No. 17/1992 Coll., on the Environment, does not explicitly list animals as an environmental component in Section 2, although it does recognise organisms as one such component, and animals are, of course, living organisms. Furthermore, Act No. 114/1992 Coll., on Nature and Landscape Protection, provides general protection for wild animals and protected species, while Act No. 246/1992 Coll., on the Protection of Animals against Cruelty, contains general safeguards against abuse.

Constitutionalising the protection of animals would likely have far-reaching implications for constitutional review and the decision-making of public authorities, especially in situations where public interests or constitutional rights collide. In such cases, animal protection could be recognised as a legitimate ground for restricting other fundamental rights or public interests.¹⁶

Despite these potential impacts, deliberations on the amendment were halted in November 2024. Members of Parliament failed to adopt the amendment before the end of their term, and the legislative procedure consequently lapsed. The new government appointed in 2025 has not, so far, returned to the idea of proposing

14 | Chamber Print No. 497; Amendment to the Constitutional Act – the Constitution of the Czech Republic, 2023.

15 | *Ibid.*

16 | Šuráň 2025, 68–73.

a similar amendment. Art. 35 of the Charter, enshrining the right to a favourable environment, has also remained unchanged since its enactment.

Both provisions – Art. 7 of the Constitution and Art. 35 of the Charter – have instead been developed primarily through judicial interpretation, above all by the Constitutional Court.

2.2. Role of state bodies in protecting the environment and future generations

The Constitution does not expressly mention future generations. However, its preamble articulates a foundational societal commitment to protect natural wealth, from which it may be inferred that Czech citizens are obliged to safeguard natural wealth – not only from overuse and degradation affecting its current inhabitants, but also for the benefit of future generations who will wish to use it.

The Charter contains a similar proclamation in its preamble, but here future generations are explicitly mentioned: “(...) recalling our responsibility to future generations for the fate of all life on Earth.” As with the Constitution, this is framed as a commitment of the Czech people. Nevertheless, it remains largely at the level of a declaratory statement: the existence of future generations is acknowledged, but this acknowledgment is not accompanied by specific constitutional mechanisms or rights.

Beyond these preambular references, there is no further mention of future generations at the constitutional level. Below that, however, several statutes refer to future generations. As noted in the literature,¹⁷ one example is the Atomic Act,¹⁸ which explicitly requires that nuclear waste and spent nuclear fuel be managed so as not to impose an unreasonable technical, economic or social burden on present or future generations.

The Act on the Support of Gardening Activity also briefly refers to future generations, stating that horticulture in the Czech Republic has a long tradition and that non-indigenous plant species grown in allotments have cultural value and must be protected for future generations.¹⁹

The Act on Municipal Chronicles links the keeping of chronicles to the idea of their role as a reminder and a repository of lessons for future generations.²⁰ A similar declaratory reference appears in the Act on Plant and Microorganism Genetic Resources, which underscores that the conservation and use of specified genetic resources must benefit both present and future generations.²¹

17 | Radvan 2022, 187.

18 | Act No. 263/2016 Coll., the Atomic Act, Section 108(2). For more information, see the commentary on the Atomic Act by Tlapák Navrátilová et al. 2023.

19 | Act No. 221/2021 Coll., on the Support of Gardening Activity, Section 4.

20 | Act No. 132/2006 Coll., on Municipal Chronicles, Section 1.

21 | Act No. 148/2003 Coll., on Plant and Microorganism Genetic Resources, Section 1(1).

Two government decrees also mention future generations. The decree declaring the Czech Crown Archives a national cultural monument stresses that the Archives must be preserved for future generations, while another decree on cultural awards ties the title Bearer of Folk Craft Traditions to the duty to transmit traditional knowledge to future generations.²²

By contrast, references in the Act on Specific Health Services employ the concept in a descriptive rather than protective sense, defining the human genome as genetic information that can be transmitted to future generations²³ and using the term in the context of genetic laboratory testing.²⁴

The Building Act is among the few statutes that substantively aim to protect future generations. One of the objectives of spatial planning is sustainable development which, *inter alia*, must not endanger the living conditions of future generations.²⁵ This concept must be respected in spatial planning and also influences substantive construction rules and building proceedings.²⁶ Within this context, the protection of future generations is a value that must be reflected in building law.²⁷

The Environment Act likewise contains several relevant provisions: its preamble acknowledges Parliament's responsibility to preserve a favourable environment for future generations, though this remains a purely declaratory statement, whereas Section 6 gives a normative definition of sustainable development as meeting present needs while preserving biodiversity and ecosystem functions without compromising the ability of future generations to meet theirs.²⁸

Case law on future generations includes a notable Constitutional Court decision upholding the government's designation of the Soutok floodplain forests as a protected landscape area.²⁹ A group of 35 Members of Parliament had challenged the measure as disproportionately infringing property rights, entrepreneurial freedom and municipal self-government. The Constitutional Court dismissed the challenge and, in the proportionality analysis, emphasised a strong public interest in preserving this valuable natural area for future generations, finding that this interest outweighed the alleged interferences. Subsequent decisions rejected related constitutional complaints by affected landowners on the same basis.³⁰ By

22 | Government Decree No. 5/2003 Coll., on Cultural Awards Granted by the Ministry of Culture, Section 25(1).

23 | Act No. 373/2011 Coll., on Specific Health Services, Section 28(1).

24 | *Ibid.*, Section 28(10)(a) and (12).

25 | Act No. 283/2021 Coll., the Building Act, Section 38(1). For more information on this issue, see: Stejskal 2024, 55–56.

26 | *Ibid.*, Section 137(2).

27 | Uhl et al. 2025, 302–304.

28 | Section 6 of Act No. 17/1992 Coll., on the Environment.

29 | The Constitutional Court of the Czech Republic 2025a.

30 | The Constitutional Court of the Czech Republic 2026; The Constitutional Court of the Czech Republic 2025b; The Constitutional Court of the Czech Republic 2025c; The Constitutional Court of the Czech Republic 2025d.

contrast, the Constitutional Court did not invoke the concept of future generations in its climate judgment, despite its obvious relevance (see section 3).

Future generations have also been referenced by the Supreme Court. In a criminal case concerning abuse of ownership under Section 229 of the Criminal Code (Act No. 254/2001 Coll.), the Supreme Court linked ownership of a cultural heritage site to a duty to protect it and its cultural values for future generations.³¹

This suggests that, although not expressly stated, certain provisions of the Criminal Code, such as Section 229, and potentially provisions on the spread of contagious diseases (Sections 152, 153 and 155) where risks can affect unborn children, can be interpreted as indirectly protecting future generations. Likewise, many offences in Chapter VIII on crimes against the environment (e.g. general environmental protection, damage to water sources, unlawful handling of ozone-depleting substances, and damage to protected natural areas) protect environmental interests that are, by their nature, intergenerational.

Overall, the Czech legal system contains several references to future generations, but these are predominantly proclamatory rather than normatively operative. In terms of institutional roles, only the courts have meaningfully worked with this concept so far. In the absence of explicit statutory duties to protect future generations, state bodies are under no general legal obligation to do so, and even the Public Defender of Rights (ombudsman) and the children's ombudsman are not expressly mandated to address the interests of future generations under Act No. 349/1999 Coll., on the Public Defender of Rights.

2.3. Fundamental rights: the right to a healthy environment

The Czech legal system does not recognise the right to a healthy environment as such, but does enshrine the right to a favourable environment in Art. 35 of the Charter. Some authors treat these two concepts as equivalent,³² yet under Czech law they differ in scope and structure.

The core of the right to a favourable environment lies in the entitlement of every individual to seek, through legally provided means, protection of the natural environmental conditions necessary for their existence and sustainable development. This corresponds to the state's positive obligation to protect inherited natural wealth,³³ ensure the prudent use of natural resources and safeguard the environment against damage that would prevent the fulfilment of basic human needs.³⁴ Yet Art. 35 is not directly applicable, with Art. 41(1) of the Charter stipulating that the rights in Art. 35 may be claimed only within the confines of implementing

31 | The Supreme Court 2021.

32 | For example, Radvan 2022, 162.

33 | The Constitutional Court of the Czech Republic 2019.

34 | Ibidem and the Constitutional Court of the Czech Republic 2021.

legislation, such as the Air Protection Act (Act No. 201/2012 Coll.)³⁵ and the Water Act (Act No. 254/2001 Coll.).

It follows from the above that a favourable environment is one that does not obstruct the fulfilment of basic human needs. Section 12 of Act No. 17/1992 Coll., on the Environment, further refines this by defining a permissible level of pollution as one “determined by limit values established by specific regulations; these values are set in accordance with the current state of scientific knowledge so as not to endanger human health or other living organisms and components of the environment.” In practice, the Constitutional Court conceives a favourable environment as one that is not detrimental to human health and basic needs, whereas the Environment Act focuses on an environment that does not endanger human health.

The right to a favourable environment is a compound right, comprising both positive and negative obligations of the state, with substantive and procedural dimensions whose content can be specified in relation to particular environmental components.³⁶

Over the past 30 years, the Constitutional Court and the Supreme Administrative Court have gradually evolved their approach, especially regarding procedural aspects such as the legal standing of legal entities, while the substantive understanding of the right has remained relatively stable.

By contrast, the international concept of the right to a healthy environment³⁷ also has both substantive and procedural elements, but with a differently structured catalogue: substantive elements include a safe climate, clean air, healthy ecosystems and biodiversity, safe and sufficient water, healthy and sustainable food, and a non-toxic environment, while procedural elements comprise access to information, public participation and access to justice. Some of these procedural aspects (for example, access to environmental information) in the Czech Republic are anchored outside Art. 35(1), even though they are often bundled within the international understanding of a healthy environment.³⁸

Although the Czech Republic does not recognise the right to a healthy environment in the United Nations sense, it does recognise a right to a favourable environment that is more precisely framed in terms of its legal conditions and mechanisms of enforceability within the existing constitutional and statutory framework.

2.4. Other fundamental rights related to environmental protection

From a broader perspective, almost every right in the Charter can be linked to either protection of the environment or its restriction. It is therefore useful to

35 | For a comprehensive commentary on the Air Protection Act, see Morávek et al. 2013.

36 | Tomoszek, Tomoszková & Vomáčka 2021, 994.

37 | OHCHR, UNEP & UNDP 2023.

38 | For the interplay between EU law and international law see Orlando 2024.

distinguish between rights in *stricto sensu* and *largo sensu* relationships towards environmental protection.

Stricto sensu fundamental rights related to environmental protection include the right to environmental information under Art. 35(2) of the Charter, operationalised through Act No. 123/1998 Coll., on Access to Information on the Environment, and the right to an impartial and independent court under Art. 36 of the Charter. Together, they partially mirror the three pillars of the Aarhus Convention: access to information, public participation in decision-making and access to justice in environmental matters, although the Convention itself is not directly applicable in Czech law. However, the Constitutional Court has held that: “If it is possible to interpret national norms in several possible ways, the interpretation that meets the requirements of the Aarhus Convention takes precedence.”³⁹ Moreover, it has recognised environmental protection as a public interest that can operate in synergy with Art. 35.⁴⁰

Largo sensu rights in the Charter connected to environmental protection include, *inter alia*, the right to own property (Art. 11), the right to life (Art. 6) and the right to the protection of health (Art. 31). These are frequently invoked alongside environmental protection claims: for example, certain natural resources are reserved to state ownership, which presupposes their prudent use, while the right to life is often read in conjunction with the right to a favourable environment, since life cannot be fully enjoyed in an unfavourable environment.

One structural difficulty lies in the differing justiciability of these rights. Social and economic rights, such as those linked to environmental quality and health, are generally not self-executing and must be implemented via specific legislation and provisions, whereas many first-generation rights, like the right to own property, are directly applicable and can be invoked without implementing acts. This asymmetry can pose challenges when balancing environmental interests against directly enforceable individual rights.

2.5. Restriction of fundamental rights on the grounds of environmental protection

Environmental protection is frequently weighed against specific fundamental rights, most notably the right to own property and the right to conduct a business. It is important, however, to note that Art. 35 of the Charter itself contains an explicit limitation clause. Art. 35(3) provides that: “No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law.”

39 | The Constitutional Court of the Czech Republic 2014; Chaloupková 2024, 7 and 11.

40 | The Constitutional Court of the Czech Republic 1997.

The scope of this provision is broad, as it applies to the exercise of all rights whose exercise may endanger or harm the environment in a broad sense, and implicitly requires a proportionality assessment between restrictions on individual rights and the interest in protecting environmental components.⁴¹

At the same time, Art. 35(3) presupposes the existence of specific legislation that delineates the legally permissible level of environmental harm, with conduct exceeding that level being prohibited and possibly triggering environmental liability. In this respect, it complements Art. 11(3) of the Charter, which states that: “Ownership entails obligations. It may not be misused to the detriment of the rights of others or in conflict with legally protected public interests. It may not be exercised to harm human health, nature, or the environment beyond the limits established by law.”

Nevertheless, authorities and courts regularly face situations in which they must balance conflicting legitimate interests, such as environmental protection versus property rights.⁴² This was scrutinised by the Constitutional Court in the *Soutok* case (Pl. ÚS 17/25),⁴³ which concerned the designation of a new protected landscape area. The Constitutional Court held that the anticipated restrictions on property resulting from the designation did not amount to deprivation of property under Art. 11(4) of the Charter, but rather to the regulation of use consistent with the social function of property under Art. 11(3) of the Charter. Applying proportionality, it concluded that any interference with property rights, entrepreneurial freedom and municipal self-government was significantly outweighed by the public interest in protecting a unique complex of floodplain forests of exceptional biodiversity and international importance. The same reasoning was applied to the collision with the right to conduct a business under Art. 26(1) of the Charter.

Collisions between environmental and other public interests also arise in different contexts. For example, in a case concerning heritage protection and solar panel installation on protected buildings, heritage authorities had systematically refused installations by invoking the precautionary principle.⁴⁴ The Constitutional Court issued a reprimand, holding that each case must be assessed individually as blanket refusals based solely on precaution but without concrete analysis were impermissible.

Environmental protection (as a public interest) can also collide with the right to a favourable environment under Art. 35(1) of the Charter. This often occurs in relation to large infrastructure projects, such as the construction of bypasses. There may be a right to a more favourable environment for residents suffering from air pollution, noise and vibration near existing routes, yet simultaneously a public interest in nature conservation (for example, protecting endangered species along

41 | Tomoszek, Tomoszková & Vomáčka 2021, 1026.

42 | Cf. Vícha 2023, 92.

43 | Para. 28.

44 | The Constitutional Court of the Czech Republic 2020.

the proposed new route). In such situations, the competent authority must weigh these competing interests, assess alternatives and determine whether and how the impasse can be resolved within constitutional and statutory bounds.

2.6. Protecting national assets in relation to the environment and future generations

According to Art.11(2) of the Charter: “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 by designated legal entities; the law may also provide that certain items of property may be owned exclusively by citizens or legal entities with their headquarters in the Czech and Slovak Federal Republic.”

Act No. 44/1988 Coll., the Mining Act,⁴⁵ designates reserved deposits as the exclusive property of the Czech Republic. These deposits are treated as strategic minerals, so their ownership and use are closely tied to the state’s mineral and material security. This approach also aligns with Art. 7 of the Constitution, which requires the prudent use of natural resources. By restricting exploitation and keeping control at state level, resources can be conserved for future use and over-extraction limited, reducing dependence on imports.

Although neither the Mining Act nor Art. 7 explicitly refer to future generations, such protection can be inferred from the prudent use requirement. There are further mechanisms that structurally support this idea. Under Section 61 of Act No. 114/1992 Coll., on Nature and Landscape Protection, the state has a pre-emptive right to acquire undeveloped land outside built-up areas within national parks, national nature reserves, national natural monuments and land associated with caves. In addition, certain environmental components have a special legal status: water and water sources,⁴⁶ caves⁴⁷ and wild animals⁴⁸ are initially without an owner in the private-law sense and are not subject to ownership until lawfully appropriated or extracted.

2.7. The relationship of values not yet mentioned (in parts 2.1.–2.6. and parts 3.1.–3.2.)

As described above, environmental protection is embedded in Art. 7 of the Constitution. Under this provision, the state must protect the environment through the prudent use of natural resources and the protection of natural wealth, in both

45 | For a comprehensive commentary on the Mining Act, see Vícha 2017.

46 | Act No. 254/2001 Coll., on Water, Section 3(1).

47 | Act No. 114/1992 Coll., on Nature and Landscape Protection, Section 61(4).

48 | Act No. 89/2012 Coll., the Civil Code, Section 1046(1).

its vertical (towards individuals) and its horizontal (in shaping relations between private actors) actions.⁴⁹

This elevates environmental protection to a constitutional value that should be integrated into all state policies. In practice, this is typically reflected through Strategic Environmental Assessment (SEA) under Act No. 100/2001 Coll., on Environmental Impact Assessment, though only selected policy documents and strategies are subject to SEA. Legislative proposals are assessed through Regulatory Impact Assessment (RIA), which explicitly includes an evaluation of environmental impacts and environmental protection.⁵⁰

At the institutional level, the Chamber of Deputies has a Committee on the Environment, while the Senate has a Committee on Public Administration, Regional Development and the Environment. Both committees provide expert input and opinions on legislative proposals concerning environmental protection, thereby helping to translate the constitutional value of environmental protection into ordinary legislation.

3. Protection of the environment and future generations as a duty and obligation, in addition to the related liability issues

3.1. Protection of the environment and future generations as a duty and obligation

Unlike that of the Slovak Republic, the Czech constitutional order does not contain an explicit, general constitutional duty on everyone to protect and enhance the environment.⁵¹ Instead, environmental duties are regulated in a more fragmented and indirect manner. The Constitution (*sensu stricto*) provides in Art. 7 that “the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth,” but does not formulate a corresponding individual constitutional duty. The individual dimension appears primarily in the Charter, in particular in Art. 35(3), which provides that “no one may, in exercising their rights, endanger or damage the environment, natural resources, the wealth of natural species or cultural monuments beyond the extent set by law.” However, this is subject to Art. 41(1) of the Charter, which limits justiciability to the framework of implementing legislation. As a result, environmental duties are constitutionally recognised but their actual content and enforceability depend heavily on ordinary legislation and judicial interpretation.

49 | Syllová 2016, 61.

50 | Government of the Czech Republic 2025, 11–12.

51 | Michalovič 2025, 63.

This creates a two-level system of duties. At the first level, there is a general state duty to protect natural wealth in Art. 7 of the Constitution, complemented by the positive obligations derived by the Constitutional Court from the right to a favourable environment under Art. 35(1) of the Charter. At the second level, there is an individual duty not to damage the environment beyond statutory limits under Art. 35(3) of the Charter, concretised through a network of sub-constitutional norms ranging from the Environment Act (Act No. 17/1992 Coll.) to sectoral legislation on environmental components. The idea of shared responsibility between state and individuals is reconstructed from these dispersed provisions and from the case law of the Constitutional Court and administrative courts.

The Environment Act translates these abstract obligations into explicit, legally binding duties. It defines the environment as everything that creates the natural conditions for the existence of organisms, including humans, and identifies its components (air, water, rock, soil, organisms, ecosystems and energy).⁵² It also codifies key principles, prevention,⁵³ the polluter pays principle⁵⁴ and sustainable development,⁵⁵ which operationalise both the state's positive obligations and the individual duty not to cause environmental damage. The Environment Act and its related legislation disaggregate the general duty of care into specific obligations for distinct categories of actors: land and resource users, developers, operators of industrial installations, and those placing products or technologies on the market must comply with *ex ante* assessment, permitting and monitoring duties, including environmental impact assessment, integrated prevention and control, and continuous monitoring of emissions and impacts. In this way, the legal order breaks down the general duty of responsible conduct towards the environment into sector-specific duties, even though this architecture exists mainly at the legislative rather than constitutional level.

Section 19 of the Environment Act further imposes a general duty on any person who becomes aware of an imminent threat of environmental damage, or of damage already caused, to take necessary measures, to the best of their ability, to avert the threat or mitigate its consequences, and to report the facts immediately to the competent authority.⁵⁶

Administrative law adds a general framework for administrative offences through Act No. 250/2016 Coll., on Liability for Administrative Offences and Proceedings in Respect Thereof, with specific environmental offences and sanctions spread across sectoral statutes, while criminal law complements this with a group of environmental and environment-related offences in the Criminal Code (Act

52 | Act No. 17/1992 Coll., on the Environment, Section 2.

53 | *Ibid.*, Section 17.

54 | *Ibid.*, Section 31. For a better understanding of this principle in the Czech Republic, see Vícha 2014.

55 | *Ibid.*, Section 6.

56 | *Ibid.*, Section 19.

No. 40/2009 Coll.), applicable to both natural persons and legal entities.⁵⁷ Taken together, these regimes show that, despite the absence of a broad, explicit catalogue of constitutional duties, Czech law imposes extensive obligations on individuals and enterprises to act responsibly, to assess and monitor environmental impacts, and to bear the consequences of pollution and damage.

What remains largely absent is an explicit constitutional articulation of intergenerational responsibility and an ecologically orientated economic order. Although the preambles of the Constitution and the Charter refer to responsibility for “the natural and cultural, material and spiritual wealth handed down to us and the fate of all life on Earth,” the Czech constitutional text does not explicitly link environmental duties to future generations or to an ecologically framed market economy. As a result, the doctrine of sustainable development enters the Czech constitutional order only indirectly and through the principles codified in the Environment Act and via the influence of EU law and international instruments.

3.2. Liability issues related to environmental protection

The Czech regulation of environmental rights, duties and liability operates on multiple levels and relies more heavily on ordinary legislation than on explicit constitutional clauses. Environmental protection is constitutionally recognised through the state obligation in Art. 7 of the Constitution and the right to a favourable environment in Art. 35 of the Charter, complemented by Art. 35(3), which prohibits anyone from endangering or damaging the environment, natural resources, the wealth of natural species, or cultural monuments beyond the limits set by a law.⁵⁸ In practice, however, the link between environmental responsibility and breaches of environmental duties is primarily realised through civil, administrative, criminal and specialised environmental-damage regimes that make these constitutional principles operative via detailed rules.

Constitutional liability thus has a structurally important, but not dominant, role. The Constitutional Court has repeatedly stressed that Art. 7 of the Constitution does not, in itself, create a subjective right, but instead imposes on the state an obligation to ensure due care in managing natural resources and preserving natural wealth.⁵⁹ If the legislature or executive fails to articulate or implement this positive obligation in law or practice, such failure may indirectly infringe fundamental rights such as the right to a favourable environment, the right to health or the right to life. However, constitutional liability for environmental failures has in fact been applied cautiously. The Constitutional Court tends to defer to the legislature

57 | Legal entities are criminally liable under Act No. 418/2011 Coll., on the Criminal Liability of Legal Entities and Proceedings Against Them. Offences listed in Chapter VIII of the Criminal Code are also applicable to legal entities.

58 | Radvan 2022, 161–162.

59 | The Constitutional Court of the Czech Republic 2025e.

to define acceptable levels of environmental harm, relies on a rationality review rather than strict proportionality, and refrains from deriving concrete legislative duties directly from constitutional text.⁶⁰ This restrained approach was confirmed and intensified in recent climate litigation, where the Constitutional Court largely avoided engaging with the substance of climate obligations, treating criticisms of climate plans as issues falling within the political responsibility of lawmakers rather than justiciable constitutional liability.⁶¹

Accordingly, the main instruments of environmental liability lie in administrative, civil and criminal law, as well as in the special regime of liability for environmental damage. Act No. 250/2016 Coll. defines an administrative offence as an unlawful act of social harmfulness defined by law, unless it constitutes a crime,⁶² while environmental misdemeanours by natural persons and the strict (objective) liability of legal entities and entrepreneurs are then specified in sectoral legislation.⁶³ Supervisory and sanctioning powers are concentrated primarily in the Czech Environmental Inspectorate (CEI), established by Act No. 282/1991 Coll., which can impose corrective measures, fines, and even bans and suspensions for harmful activities, with regional and municipal authorities exercising additional supervisory powers under specific environmental statutes.

A common denominator across these regimes is the progressive implementation of the polluter pays principle.⁶⁴ Although not explicitly embedded in the Constitution or the Charter, it is codified in the Environment Act and numerous implementing statutes, in line with Art. 191(2) TFEU. Under this principle, the costs of prevention, monitoring, remediation and other corrective measures are borne by those whose activities cause pollution or environmental harm, rather than by the public. For offenders, this typically entails not only financial penalties but also obligations to undertake remedial measures at their own expense, such as habitat restoration, soil and water decontamination, and compensatory measures. In practice, therefore, administrative liability, backed by the polluter pays principle, constitutes the central mechanism through which environmental obligations are enforced in the Czech legal system.

Civil liability complements the Czech system of environmental protection by providing compensation for both pecuniary and non-pecuniary harm. Under Section 2900 of the Civil Code (Act No. 89/2012 Coll.), the general preventive duty obliges everyone to “act so as to prevent unreasonable harm to freedom, harm to life, bodily harm or harm to the property of another.” Although the environment

60 | The Constitutional Court of the Czech Republic 1995.

61 | The Constitutional Court of the Czech Republic 2025e.

62 | Act No. 250/2016 Coll., on Liability for Administrative Offenses and Proceedings in Respect Thereof, Section 5.

63 | Act No. 201/2012 Coll., on Air Protection, Act No. 254/2001 Coll., the Water Act, Act No. 114/1992 Coll., on Nature and Landscape Protection, and Act No. 541/2021 Coll., the Waste Act.

64 | For more information about environmental principles, see Krámer & Badger 2024.

is not mentioned explicitly, Czech law recognises that environmental damage can trigger liability where harm to health or property occurs – for example, air pollution causing illnesses or emissions damaging forest stands – so affected persons may bring claims under the general rules on liability for damage or unjust enrichment. In practice, such environmental cases show how technically and financially demanding it can be to establish causation between particular emissions and identifiable impacts on health, especially where multiple polluters and diffuse impacts are involved.⁶⁵

Alongside civil liability, a specific public-law framework governs environmental damage under the Environment Act and the Act on the Prevention and Remedy of Environmental Damage (Act No. 167/2008 Coll.⁶⁶), which transposes Directive 2004/35/EC.⁶⁷ This regime defines ecological damage as loss or impairment of the natural functions of ecosystems, is based on objective liability and requires operators who cause such damage to restore the normal functions of the damaged ecosystem wherever possible, or otherwise to provide equivalent remedial measures; while administrative authorities may order corrective action and impose monetary obligations. These forms of compensation may also be combined. The regime thus implements the polluter pays principle in a direct way yet focuses on damage to the environment as such, rather than on individual health claims, and does not provide a clear avenue for personal compensation where public authorities have failed preventively (for instance, in relation to air quality or climate mitigation).

Criminal liability functions as the *ultima ratio* in Czech environmental protection. The Criminal Code (Act No. 40/2009 Coll.) includes a group of crimes against the environment and crimes related to environmental protection in Chapter VIII, which can be committed by both natural persons and legal entities. Sanctions, ranging from fines and bans on activity to confiscation of property and imprisonment, are reserved for the most serious and socially harmful conduct, signalling the state's strong interest in safeguarding constitutionally relevant environmental values, even if, in practice, criminal law is used less frequently than administrative sanctions.

A notable feature of the Czech system is the dual and often overlapping nature of administrative and criminal liability: the same unlawful behaviour (e.g. illegal emissions or unlawful interference with protected areas) may qualify either as an administrative or criminal offence, depending on its social harmfulness, the extent of the damage and the interests at stake. This raises fundamental questions about how to delineate the two regimes, avoid double punishment, and ensure sanction coherence across legal branches.

65 | The Constitutional Court of the Czech Republic 2023 and The Supreme Court 2023.

66 | For a comprehensive commentary on Act No. 167/2008 Coll., see Stejskal & Vícha 2009.

67 | For more information about the Environmental Liability Directive, see Bergkamp & Goldsmith 2013.

From a constitutional perspective, the liability framework is asymmetric. While there is a dense and expanding system for imposing liability for environmental harm on private actors, mechanisms for holding the state accountable for failures to fulfil its positive environmental obligations, especially in the climate context, remain relatively weak. The Constitutional Court has acknowledged the state's constitutional duty to protect the environment but has been reluctant to clarify the consequences of legislative or executive inaction in areas such as long-term air pollution and inadequate climate mitigation. As a result, individuals suffering through systemic environmental degradation face substantial barriers when seeking redress from the state, even though the Constitutional Court has upheld claims in some specific contexts, such as noise pollution.⁶⁸ This asymmetry underscores the need for further doctrinal and jurisprudential development on state liability for breaches of environmental obligations in Czech law, including a clearer articulation of the relationship between constitutional environmental provisions, EU requirements, and the remedies available to impacted individuals.

4. Judicial enforcement

The judicial enforcement of environmental obligations has undergone a fundamental transformation at the European level, providing an essential backdrop for the Czech experience. The European Court of Human Rights (ECHR) has progressively recognised that Art. 8 of the European Convention on Human Rights (the Convention) imposes positive obligations on states to protect individuals from serious environmental harm. In *López Ostra v. Spain*,⁶⁹ the ECHR held that the right to respect for the home extends beyond physical intrusion to encompass disturbances caused by noise, emissions and smells. This was reinforced in *Moreno Gómez v. Spain*⁷⁰ with a finding that tolerating systematic infringements of domestic environmental regulation renders the protection from the Convention illusory. In *Kapa and Others v. Poland*,⁷¹ the ECHR confirmed that the state has a positive duty to take adequately effective measures, including compensation, to prevent individuals from being deprived of the enjoyment of their home due to excessive environmental interference. The Grand Chamber judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*⁷² extended this line of case law to the climate context, holding that Art. 8 of the Convention requires states to establish a binding regulatory framework with targets and pathways for achieving carbon neutrality.

68 | The Constitutional Court of the Czech Republic 2025f.

69 | European Court of Human Rights 1994.

70 | European Court of Human Rights 2005.

71 | European Court of Human Rights 2022.

72 | European Court of Human Rights 2024.

In its judgment I. ÚS 818/24,⁷³ the Czech Constitutional Court drew directly on this body of ECHR case law, holding that a regional hygiene authority's unlawful noise exemption breached the state's positive obligations under Art. 8 of the Convention, with effective remedies, including compensation, forming an integral part of those obligations. Whether such obligations can be effectively enforced primarily depends, however, on the threshold question of who is entitled to bring a claim before Czech courts.

Under Czech law, any person (natural or legal) whose rights may be affected has legal standing to bring an action, including actions against administrative decisions, where legal standing typically (but not necessarily)⁷⁴ follows from participation in the underlying administrative proceedings. As the right to a favourable environment is not conceived as a strictly individual right, individuals organised in communities can also have legal standing.⁷⁵

The legal standing of environmental NGOs (more commonly known in the Czech Republic as environmental associations) has evolved significantly since the 1990s. The Constitutional Court's landmark judgment I. ÚS 59/14 recognised that associations for environmental protection can, if they meet specific criteria, enjoy both procedural and substantive standing, provided they have a direct and unmediated link to the affected territory and can claim a reduction of their rights by an unlawful administrative decision.⁷⁶ The Constitutional Court has also accepted that municipalities, as representatives of their inhabitants, may have legal standing,⁷⁷ while the Supreme Administrative Court has extended this logic further to city districts.⁷⁸

Recent case law has refined the territorial-connection requirement for NGOs. Courts have held that an NGO based in another municipality may still obtain judicial protection if it conducts activities (even informal or educational) in or near the affected area,⁷⁹ whereas NGOs with a broadly national scope of activity are scrutinised more strictly.⁸⁰ At the same time, natural persons enjoy a wide range of substantive and procedural environmental rights, and the Supreme Administrative Court has allowed them to invoke infringements of public interests where the infringement of their rights stems from provisions primarily aimed at protecting public interests.⁸¹

Several recent decisions address specific issues at the intersection of environmental protection and fundamental rights. In a high-profile case on freedom of

73 | The Constitutional Court of the Czech Republic 2025f.

74 | The Supreme Administrative Court 2014a.

75 | Tomoszek, Tomoszková & Vomáčka 2021, 1003.

76 | The Constitutional Court of the Czech Republic 2014.

77 | The Constitutional Court of the Czech Republic 2015.

78 | The Supreme Administrative Court 2014b.

79 | The Supreme Administrative Court 2024a and Chaloupková 2024, 44.

80 | The Supreme Administrative Court 2024b.

81 | The Supreme Administrative Court 2024c and Chaloupková 2024, 44.

expression, the Constitutional Court upheld Greenpeace's satirical video criticising the greenwashing of a national energy company,⁸² emphasising the protection of parody and satire as valuable contributions to public debate on environmental issues.⁸³ In the field of access to environmental information, the Constitutional Court has accepted that fees⁸⁴ (for instance for extensive searches or access to spatial data) may be charged, but requires that their amount be assessed for proportionality⁸⁵ in light of the Aarhus Convention's standards.⁸⁶

Finally, the Supreme Administrative Court has addressed conflicts between the fundamental right to conduct a business and the public interest in environmental protection in the context of integrated permits under the IPPC regime. In a case concerning the extension of landfill operations,⁸⁷ it asked the Court of Justice of the EU for a preliminary ruling on whether an amendment represented a substantial change.⁸⁸ The Court of Justice of the European Union concluded that, in the specific circumstances, it did not.⁸⁹

Civil courts in the Czech Republic have traditionally taken a very cautious and restrictive approach to remedies for harm arising from environmental damage, and the Constitutional Court long aligned itself with this practice.⁹⁰ In a recent shift, however, the Constitutional Court held that noise pollution exceeding statutory limit values infringes fundamental rights and triggers positive obligations on the state, thereby requiring civil courts to hear such claims and to be open to granting compensation for immaterial harm.⁹¹

One landmark environmental case is the *Soutok* decision (as described above),⁹² while another is the first Czech climate action,⁹³ which directly engaged Art. 7 of the Constitution, Art. 35 of the Charter, questions of legal standing, and the scope of possible remedies.⁹⁴

The first Czech climate action began in 2021 before the Municipal Court in Prague. The case was brought by seven different plaintiffs – four affected individuals, two environmental NGOs [Klimatická žaloba (Czech Climate Litigation) and Czech Society for Ornithology], and a municipality (Obec Svatý Jan pod Skalou) – against the Czech Government, the Ministry of the Environment, the

82 | The Constitutional Court of the Czech Republic 2024a.

83 | Chaloupková 2024, 12.

84 | For example, for an exceptionally extensive search of information under Section 10(3), or access to spatial data under Section 11c(3) of Act No. 123/1998 Coll.

85 | The Constitutional Court of the Czech Republic 2024b.

86 | Chaloupková 2024, 14.

87 | The Supreme Administrative Court 2024d.

88 | Chaloupková 2024, 32.

89 | The Court of Justice of the European Union 2022.

90 | The Constitutional Court of the Czech Republic 2024c.

91 | The Constitutional Court of the Czech Republic 2025f.

92 | See 2.5.

93 | For a comprehensive overview of the case, see Müllerová and Ač, 2022.

94 | The Constitutional Court of the Czech Republic 2025e.

Ministry of Industry and Trade, the Ministry of Agriculture, and the Ministry of Transport. To protect their rights, plaintiffs chose to take action against unlawful interference under the Code of Administrative Justice (Act No. 150/2002 Coll.). The Prague Municipal Court initially granted the action in part, but after a cassation intervention by the Supreme Administrative Court, it dismissed the claim in the second judicial review round. Both judgments were challenged by a cassation complaint. On the first occasion, the Supreme Administrative Court partially quashed the Municipal Court's judgment; on the second, it dismissed the cassation complaint. In the first phase of the proceedings before the administrative courts, the case also concerned adaptation measures (responding to actual or expected climate change, including increasing the resilience of society and the landscape). The second phase of the proceedings concerned only mitigation measures (aimed at reducing climate change).

Before the Constitutional Court, the plaintiffs [association Klimatická žaloba (Czech Climate Litigation), municipality (Obec Svatý Jan pod Skalou), Czech Society for Ornithology and 2 individuals] challenged both the decisions of the Supreme Administrative Court and the second judgment of the Municipal Court of Prague, insofar as it related to the ministries and the mitigation measures. They argued that the administrative courts had failed to examine the autonomous normative content of the state's positive obligations in the field of climate protection arising from the Charter and the Convention. In their view, the obligation of the ministries to take the specific steps set out in the action follows directly from the constitutional order, in particular from the fundamental right to a favourable environment. The Constitutional Court delivered its judgment in November 2025. In view of the seriousness of the question raised, the case was referred to the plenary by order dated 5 March 2025.

The Constitutional Court regards climate change as a serious issue for society as a whole. However, the preparation and implementation of appropriate measures in this field is primarily the task of the legislative and executive branches. The judiciary is not excluded from the topic, but its role is limited by its constitutional function. Climate change has appeared before many foreign courts, yet because they have dealt with it in different types of proceedings and procedural contexts, their conclusions cannot simply be transplanted, nor can it be inferred that proceedings in the Czech Republic must end in the same way as those in a different state.

In view of the type of proceedings and the procedural steps taken by the complainants, the Constitutional Court did not address in this judgment whether the Czech Republic is taking sufficient measures to combat climate change and its consequences. It focused only on (1) whether the defendant ministries infringed the fundamental rights in the manner defined in the action against unlawful interference, and (2) whether the administrative courts infringed the complainants' fundamental rights when ruling on that action.

Before the administrative courts, the complainants sought a declaration that the interference by the ministries was unlawful, arguing that, in the absence of specific legislation, the ministries had failed to establish specific mitigation measures that would lead to a reduction in greenhouse gas emissions. The individual claims differed only in the manner and degree to which the desired reduction in emissions was specified. At the same time, the complainants asked the court to prohibit the ministries from continuing to infringe their right to a favourable environment. The key question was whether, in fact, it is the defendant ministries that bear the obligations arising from the fundamental right to a favourable environment.

According to the Constitutional Court, the ministries could not be the authors of the unlawful interference as defined by the complainants. Since they did not cause the alleged interference, they could not cease it or grant the relief sought by means of an action against unlawful interference under the Code of Administrative Justice. Therefore, the administrative courts had not erred in refusing the complainants' requests.

In its *Verein KlimaSeniorinnen* judgment, the European Court of Human Rights held that climate measures must be part of the domestic regulatory framework.⁹⁵ In Czech law, the positive and negative obligations for public authorities flowing from the (broadly understood) fundamental right to a favourable environment are shaped by Art. 35(1) of the Charter in conjunction with Art. 7 of the Constitution and Art. 8 of the Convention. At present, however, there is no legislation in the Czech Republic that implements the right to a favourable environment in such a way as to impose on the ministries a duty to adopt specific mitigation measures to reduce emissions. The ministries themselves lack the power to enact legislation, as that competence lies solely with the legislature. None of the relevant legal sources, whether the constitutional order, EU law, the case law of the ECHR, or the advisory opinion of the International Court of Justice impose on the ministries the duty to adopt the measures demanded in the action. Had the administrative court upheld the claim, it would effectively have created that duty itself, which is incompatible with the nature of an action against unlawful interference, a remedy intended to protect against the breach of an existing obligation.

The Constitutional Court therefore did not find that the ministries had infringed the fundamental right to a favourable environment through interference as defined in the claim. The human-rights obligation invoked by the complainants can be discharged only by the state imposing new duties on natural persons and legal entities by way of legislation. The complainants were thus directing their demands at the wrong bodies, since the defendant ministries have no competence to meet them. No administrative courts infringe fundamental rights. The Constitutional Court therefore dismissed the constitutional complaint.

None of the judges issued a dissenting opinion.

95 | European Court of Human Rights 2024.

5. Good practices and *de lege ferenda* proposals concerning part 2 of the Article

Existing literature⁹⁶ indicates that the Czech ombudsman is a highly respected institution in the Czech Republic. However, it does not have any executive powers. It performs two roles in environmental protection. First, it provides legal support to complainants (especially in dealings with administrative bodies and authorities) and may issue public statements or recommendations. Second, it can initiate judicial review of an administrative decision, provided it demonstrates that there is a serious public interest that needs to be protected.⁹⁷

The requirement that the ombudsman must prove the existence of a serious public interest is, however, restrictive. This contrasts with the position of the prosecutor general, who can initiate the same type of proceedings solely based on their conviction that a serious public interest requires protection.⁹⁸

The emphasis on establishing a serious public interest makes it difficult for the ombudsman to rely on this power. One *de lege ferenda* proposal would therefore be to align Section 66(3) with Section 66(2) of Act No. 150/2002 Coll. In other words, to introduce an irrebuttable presumption that a serious public interest exists whenever the ombudsman deems it necessary to initiate judicial review of an administrative decision.

Furthermore, Act No. 150/2002 Coll. unduly limits the ombudsman's active legal standing solely to the review of administrative decisions. Another *de lege ferenda* proposal could extend this power to actions connected to other types of encroachments (such as unlawful interference, inaction by an administrative authority, and measures of a general nature).⁹⁹

One of the key issues discussed in this article is the protection of future generations. The analysis has shown that the legal system contains several provisions referring to future generations but that these references are scattered and lack a comprehensive legal framework. It has also been demonstrated that the protection of future generations can be inferred from specific provisions (for example in criminal law).

Another approach to protecting future generations would be to establish an NGO dedicated to this purpose.¹⁰⁰ This could take the form of a specific NGO founded to protect future generations, or an environmental NGO primarily dedicated to environmental protection, with a secondary focus on protecting future generations. However, this approach raises several issues. First, the Constitutional

96 | Radvan, 194–196.

97 | Act No. 150/2002 Coll., the Administrative Procedure Code, Section 66(3).

98 | Ibid., Section 66(2).

99 | Chamráťová 2016, 702.

100 | Tomoszková & Tomoszek 2024, 84–85.

Court currently understands associations (or NGOs) as entities primarily protecting the individual rights of the people grouped within them.¹⁰¹ Their role would therefore need to be reconceptualised so that substantive rights extend to future generations. Second, questions arise in relation to the concept of the public concerned under the Aarhus Convention: could such NGOs legitimately claim to protect future generations through environmental protection? This may prove difficult because the existing legal framework focuses predominantly on protecting current generations and individuals. Practical problems may arise, for instance, in environmental impact assessment procedures, with authorities having to determine how far into the future a project's effects must be evaluated.

One possible way forward would be to introduce the principle of protecting future generations either in a (future) climate law or by amending Act No. 17/1992 Coll.

As regards the protection of future generations, the Czech Republic does not have an explicit constitutional mechanism comparable to that in Hungary.¹⁰² In the Czech context, this deficit could be addressed by extending the mandate of the children's ombudsman to cover the interests of future generations. This would allow the children's ombudsman to initiate administrative and judicial proceedings and to issue opinions on this topic. In addition, it would be useful to grant the children's ombudsman active legal standing in specific cases involving inaction by the state or administrative authorities, thereby enabling them to press the state to adopt policies that protect future generations and, by extension, the environment closely tied to their well-being.

Such an extension would, however, need to be accompanied by stricter eligibility requirements for the children's ombudsman. In particular, a high degree of moral integrity and impartiality would be essential to prevent undue political and non-political influence. One likely area of contention would be abortion: some fundamentalist religious groups might interpret the protection of future generations as a mandate to restrict abortions and could pressure the ombudsman to adopt a position on this issue.

Finally, three *de lege ferenda* proposals concern amendments to the Charter and the Constitution. First, the absence of an explicit, general constitutional duty on everyone to protect and enhance the environment makes the individual duty in Art. 35(3) of the Charter heavily dependent on legislative concretisation and judicial interpretation. Second, although positive obligations are recognised in law, they are not clearly linked to specific constitutional objectives in areas such as climate protection, biodiversity conservation or the sustainable use of key natural resources such as agricultural land and forests. Third, there is no constitutional clause steering economic policy towards an ecologically orientated market economy or explicitly embedding sustainable development as a guiding principle of the economic order.

101 | Cf. the Constitutional Court of the Czech Republic 2014.

102 | For more information, see Szilágyi 2021a or Szilágyi 2021b.

Reference list

Literature

1. Bergkamp L & Goldsmith B (2013) *The EU Environmental Liability Directive: A Commentary*, Oxford University Press.
2. Constitution of the Czech Republic of 16 December 1992, No. 1/1993 Coll.
3. Constitutional Act No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms.
4. Chaloupková A (2024) National Report on the Implementation of the Aarhus Convention in the Czech Republic in the Period 2021–2024, *Ministry of the Environment*, https://mzp.gov.cz/system/files/2025-06/733-Implementacni_zprava_ENG-20250620.pdf [27.03.2026].
5. Chamráťová A (2016) Zvláštní žalobní legitimace k ochraně veřejného zájmu, *Právník* 8/2016, pp. 689–703.
6. Krämer L & Badger C (2024) *Krämer's EU Environmental Law*, 9th edn., Hart Publishing, London.
7. Michalovič M (2025) Kapitola 3. Pramene environmentálního práva, in: Vrabko M et al. (eds.) *Environmentální právo. Všeobecná část*, 1st edn., C. H. Beck, Bratislava, pp. 36–71.
8. Morávek J, Tomášková V, Bernard M & Vícha O (2013) *Zákon o ochraně ovzduší: Komentář*, C. H. Beck, Prague.
9. Müllerová H & Ač A (2022) The First Czech Climate Judgment: A Novel Perspective on the State's Duty to Mitigate and on the Right to a Favourable Environment, *Climate Law* 12(3–4), pp. 273–284, DOI: <https://doi.org/10.1163/18786561-12030004>.
10. Draft Constitutional Act Amending Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, as amended by later constitutional acts (2023).
11. Orlando, E. (2024) *Environmental Liability and the Interplay between EU Law and International Law*, 1st edn., Routledge, Abingdon.
12. Radvan, M. (2022) Czech Republic: Limited Constitutional Regulation of Environmental Protection Complemented by the Case Law of the Constitutional Court, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations: Legislation and Practice in Certain Central European Countries*, pp. 161–202, DOI: https://doi.org/10.54237/profnet.2022.jeszcpfg_5.

13. Stejskal V & Vícha O (2009) *Zákon o předcházení ekologické újmy a o její nápravě s komentářem, souvisícími předpisy a s úvodem do problematiky ekologicko-právní odpovědnosti*, Leges, Prague.
14. Stejskal V (2024) Principy práva životního prostředí v novém stavebním zákoně, *Právník 1/2024*, pp. 48–61.
15. Chamber of Deputies Document No. 497; Amendment to the Constitutional Act – Constitution of the Czech Republic (2023), <https://www.psp.cz/sqw/historie.sqw?o=9&t=497> [26.03.2026].
16. Syllová J (2016) Art. 7 [Ochrana životního prostředí], in: Sládeček V et al. (eds.), *Ústava České republiky*, 2nd edn., C. H. Beck, Prague, pp. 59–63.
17. Szilágyi J E (2021a) Some Values and Guarantees in the Ten-Year-Old Hungarian Constitution, with a Look at the Constitutional Arrangements of the Countries Founding the European Integration, *Central European Journal of Comparative Law* 2(2), pp. 197–219, DOI: <https://doi.org/10.47078/2021.2.197-219>.
18. Szilágyi J E (2021b) The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, with Special Reference to the Right to a Healthy Environment and Other Environmental Issues, *JAEL* 16(31), pp. 130–144, DOI: <https://doi.org/10.21029/JAEL.2021.31.130>.
19. Szilágyi J E (2022) Constitutional Protection of the Environment and the Future Generations in Certain Central European Countries, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations*, CEA Publishing, Miskolc – Budapest, pp. 479–526, DOI: https://doi.org/10.54237/profnet.2022.jeszcpfeg_12.
20. Šuráň P (2025) Právní dopady navrhovaného ukotvení ochrany zvířat v Ústavě ČR, především ve vztahu k základnímu právu na náboženské projevy, *České právo životního prostředí 1/2025*, pp. 68–73.
21. Tlapák Navrátilová et al. (2023) *Atomový zákon (č. 263/2016 Sb.) – Komentář*, 1st edn., Wolters Kluwer, Prague.
22. Tomoszek M, Tomoszková V & Vomáčka V (2021) Čl. 35 [Životní prostředí], in: Husseini F et al. (eds) *Listina základních práv a svobod*, 1st (1st rev.) edn., C. H. Beck, Prague, pp. 974–1031.
23. Tomoszková V & Tomoszek M (2024) Dnešní i budoucí děti – ochrana jejich práv v souvislosti s klimatickou změnou, *Právník 1/2024*, pp. 62–86.
24. Uhl P (2015) Article 7, in: Rychetský P et al. (eds) *Ústava České republiky: Komentář*, Wolters Kluwer, Prague.

25. Uhl P, Černý P, Korbel F, Roztočil A & Bursíková L (2025) § 38 [Cíle územního plánování], in: Bursíková L et al. (eds.) *Stavební zákon*, 1st edn., C. H. Beck, Prague, pp. 302–304.
26. Vícha O (2014) *Princip “ZNEČIŠŤOVATEL PLATÍ” z právního pohledu*, 1st edn., Linde, Prague.
27. Vícha O (2017) *Horní zákon. Zákon o hornické činnosti, výbušninách a o státní báňské správě. Komentář*, Wolters Kluwer, Prague.
28. Vícha O (2023) Ústavní soud (nejen) k odpovědnosti státu za pochybení orgánů ochrany ovzduší či autorizovaného inspektora, *České právo životního prostředí* 1/2023, pp. 74–94.
29. Government of the Czech Republic (2025) General Principles for Regulatory Impact Assessment (RIA), https://ria.vlada.cz/wp-content/uploads/2025_01_01_OZ_RIA.pdf [26.03.2026].
30. Vlasatá Z (2025) Anatomy of an Ecocide: The Mysterious Poisoning of the Czech Republic’s Becva River, <https://gijn.org/stories/anatomy-ecocide-becva-river-moravia/> [26.03.2026].
31. OHCHR, UNEP & UNDP (2023) What is the Right to a Healthy Environment?, <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> [27.03.2026].

Case law

1. European Court of Human Rights (1994) *López Ostra v. Spain*, App no 16798/90.
2. European Court of Human Rights (2005) *Moreno Gómez v. Spain*, App no 4143/02.
3. European Court of Human Rights (2022) *Kapa and Others v. Poland*, App no 75031/13.
4. European Court of Human Rights (2024) *Verein Klimaseniorinnen Schweiz and Others v Switzerland*, App no 53600/20.
5. The Constitutional Court of the Czech Republic (1995). Judgment of 25. 10. 1995, Case No. Pl.ÚS 17/95.
6. The Constitutional Court of the Czech Republic (1997). Judgment of 10. 7. 1997, Case No. III.ÚS 70/97.
7. The Constitutional Court of the Czech Republic (2014). Judgment of 30. 5. 2014, Case No. I. ÚS 59/14.

8. The Constitutional Court of the Czech Republic (2015). Judgment of 13. 10. 2015, Case No. IV. ÚS 3572/14.
9. The Constitutional Court of the Czech Republic (2019). Judgement of 17. 7. 2019, Case No. Pl.ÚS 44/18.
10. The Constitutional Court of the Czech Republic (2020). Judgement of 12. 5. 2020, Case No. III.ÚS 709/19.
11. The Constitutional Court of the Czech Republic (2021). Judgement of 26. 1. 2021, Case No. Pl. ÚS 22/17.
12. The Constitutional Court of the Czech Republic (2023). Judgement of 16. 5. 2023, Case No. I. ÚS 233/23.
13. The Constitutional Court of the Czech Republic (2024a). Judgement of 10 January 2024, Case No. I.ÚS 2956/23.
14. The Constitutional Court of the Czech Republic (2024b). Judgement of 26. 6. 2024, Case No. I.ÚS 3254/22.
15. The Constitutional Court of the Czech Republic (2024c). Resolution of 18. 6. 2024, Case No. III.ÚS 2860/23.
16. The Constitutional Court of the Czech Republic (2025a). Judgement of 22. 10. 2025, Case No. Pl. ÚS 17/25.
17. The Constitutional Court of the Czech Republic (2025b). Resolution of 11. 12. 2025, Case No. III. ÚS 2986/25
18. The Constitutional Court of the Czech Republic (2025c). Resolution of 27. 11. 2025, Case No. III. ÚS 3094/25.
19. The Constitutional Court of the Czech Republic (2025d). Resolution of 27. 11. 2025. Case No. IV. ÚS 2254/25.
20. The Constitutional Court of the Czech Republic (2025e). Judgement of 22. 10. 2025, Case No. Pl. ÚS 6/25.
21. The Constitutional Court of the Czech Republic (2025f). Judgement of 23. 1. 2025, Case No. I. ÚS 818/24.
22. The Constitutional Court of the Czech Republic (2026). Resolution of 28. 1. 2026, Case No. II. ÚS 3706/25.
23. The Court of Justice of the EU (2022). Judgment of 2. 6. 2022, C-43/21, FCC Czech Republic.
24. The Supreme Administrative Court (2014a). Judgment of 18. 4. 2014, Case No. 4 As 157 / 2013-33.

25. The Supreme Administrative Court (2014b). Judgment of 24. 4. 2015, Case No. 4 AOs 1/2013-125.
26. The Supreme Administrative Court (2024a). Judgment of 18. 7. 2024, Case No. 6 As 150/2023-81.
27. The Supreme Administrative Court (2024b). Judgment of 13. 9. 2024, Case No. 7 As 99/2024-71.
28. The Supreme Administrative Court (2024c). Judgment of 9. 5. 2024, Case No. 6 As 366/2023-46.
29. The Supreme Administrative Court (2024d). Judgment of 6. 2. 2024, Case No. 1 As 225/2023.
30. The Supreme Court (2021). Resolution of 31. 8. 2021, Case No. 4 Tdo 855/2021.
31. The Supreme Court (2023). Resolution of 15. 8. 2023, Case No. 30 Cdo 1678/2023.

CIVIL LIABILITY AND ENVIRONMENTAL REMEDIES

The Role of Civil Law in Environmental Protection: Liability, Damages, and Remedies in Czechia

Abstract

This article deals with the role of private law in environmental protection in the Czech Republic. Based on the values and principles of private law, it presents the Czech tort law system and the functions that tort law fulfils. It then discusses in detail selected special provisions regarding liability for damage, which, according to the author, are most applied in cases of environmental damage. The text also examines who is liable for environmental damage and who has the right to claim compensation. It also focuses on causation and, within this framework, identifies special types of factual causality. It also addresses issues relating to the burden of proof. This is followed by a section dealing with the manner and extent of compensation for damage and the circumstances under which the tortfeasor may be released from his obligation to pay compensation. Finally, the article assesses the effectiveness of private law in compensating for environmental damage and considers whether it would be appropriate to make various legislative changes. In particular, it concludes that while some changes to the law would be useful, environmental protection should remain primarily a matter for public law.

Keywords: Czech Republic, compensation for damage, subjective liability, strict liability, environment, fault, manner and extent of compensation for damage, circumstances excluding liability, limitations period

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1. Principles of private law, tort law system and its functions

Consideration of the role of private law in environmental protection requires attention to relevant constitutional law provisions. Specifically, Art. 11(3), third sentence, stipulates that the exercise of property rights “shall not damage human health, nature, or the environment beyond the extent specified by law.” Additionally, Art. 35(3) of the Charter of Fundamental Rights and Freedoms provides that “in exercising their rights, no one may endanger or damage the environment, natural resources, biodiversity, and cultural monuments beyond the extent specified by law.”

These and other provisions are then specified in statutes and other legal regulations. First and foremost, the Civil Code should be mentioned. At the same time, it should not be forgotten that environmental protection through private law is only a secondary effect, as it is not its primary objective, as Psutka¹ aptly points out, and that the role of private law in environmental protection derives from the principles on which private law is based.

In the context of environmental protection, we can mention, for example, the principle of protection of property [Section 3(2)(e)²] or the prohibition of abuse of rights (Section 8). In the tort law, the principle of *neminem ledere* plays an important role, one of the manifestations of which is, for example, the duty of prevention (Sections 2900 and 2901).³ From these principles, we can deduce that they prohibit damaging the environment and that the injured party should be given protection, but only under the condition that the damaged part of the environment is also protected by civil law.

With effect from January 1, 2014, Czech tort law abandoned the system of broad general clause used in Austria and, together with the recodification of private law, adopted the German model of narrow general clauses. There are four small general clauses in the law, namely liability for interference with an absolute right (Section 2910, first sentence), for violation of a protective norm (Section 2910, second sentence), for intentional violation of good morals (Section 2909), and for breach of contract (Section 2913). Except for the latter case, these are cases of liability for fault, with negligence presumed (Section 2911).

Furthermore, the Civil Code contains special statutory provisions regarding liability for damage, whereby, in connection with environmental protection, particular reference can be made to liability for operating activities (Section 2924), for particularly hazardous operations (Section 2925), for the operation of a means of transport (Section 2927 et seq.), or for damage caused by an animal (Section 2933

1 | Psutka 2011, 30.

2 | Unless stated otherwise, reference is made to Act No. 89/2012 Coll., the Civil Code, the English version of which, albeit in its unamended form, is available online.

3 | Lavický 2022, 36.

et seq.). Various aspects of these special provisions will be examined in more detail below, as some contain specific rules concerning the proof of causation or the distribution of the burden of proof.

Special provisions regarding liability for damage are also present in other legal acts. For instance, damage caused using hunting grounds, by game and to game,⁴ damage caused by selected specially protected animals,⁵ or nuclear damage⁶ are related to environmental protection. Particularly in the case of special provisions outside the Civil Code, the relationship to the general regulation is not always clear, as Psutka pointed out already in 2011.⁷ The situation has not changed much since then.

In light of the importance of the right to compensation for environmental damage, I also consider it important to point out the functions of tort law, which include preventive and reparative (compensatory) functions.⁸ The preventive function means that the right to compensation should deter potential perpetrators from causing damage, as they should be aware that they will have to compensate for it if they do.⁹ The reparative function means that we should put the injured party in the position it would have been in if the tortfeasor had not committed the unlawful act or if the harmful event had not occurred.¹⁰ Sometimes the punitive function is also mentioned. I consider the most convincing opinion to be that this function applies at most within the framework of the compensatory function, from which it results that tort law in the Czech Republic “does not have a distinctive punitive function.”¹¹ In this concept, a sanction is not understood as a punishment but consists in the very creation of an obligation to compensate for damage.¹² Therefore, we must bear in mind that a person who has damaged the environment cannot be punished through tort law.

4 | Provisions of Section 52 et seq. of Act No. 449/2001 Coll., on hunting. For details on liability for damage caused by game, see Vomáčka & Bártů 2022, 183–200.

5 | Act No. 115/2000 Coll., on compensation for damage caused by selected specially protected animals.

6 | The Vienna Convention on Civil Liability for Nuclear Damage and the Joint Protocol relating to the Application of the Vienna Convention and the Paris Convention, promulgated under No. 133/1994 Coll., and Section 32 et seq. of Act No. 18/1997 Coll., on the peaceful use of nuclear energy and ionizing radiation (Atomic Act) and on amendments and supplements to certain acts.

7 | Psutka 2011, 390.

8 | Melzer 2018a, 7.

9 | Ruling of the Supreme Court of December 15, 2020, file no. 25 Cdo 27/2020, point 26.

10 | Psutka 2011, 10.

11 | Melzer 2018a, 7. However, the Constitutional Court admits the punitive function in the case of so-called media lawsuits, in which well-known personalities (celebrities) usually seek compensation for non-material damage caused to them, most often by the tabloid media (Ruling of the Constitutional Court of January 23, 2025, file no. I. ÚS 428/23).

12 | Ruling of the Supreme Court of December 15, 2020, file no. 25 Cdo 27/2020, point 26.

2. Significant special provisions, their classification, and the role of fault

2.1. Classification of liability

The obligation to compensate for damage may be based on various principles of attribution; the Czech Civil Code is based on fault-based liability (*Verschuldenshaftung*) pursuant to Section 2895. In this case, we sometimes refer to so-called subjective liability. However, the law may stipulate that the tortfeasor's obligation to compensate for damage arises regardless of fault. However, it does not do so explicitly, but we must reach this conclusion by interpreting the relevant provision, whereby we usually judge the nature of liability according to the reasons for which the tortfeasor may be exempt from liability.¹³ If fault is absent from the prerequisites for liability, this is referred to as strict liability.¹⁴ The most significant group of cases of strict liability is liability for endangerment (*Gefährdungshaftung*), which I will discuss in more detail, but this also includes liability for permissible interference (*Eingriffshaftung*)¹⁵ and liability for security (*Sicherstellungshaftung*).¹⁶

Equitable liability is recognised in Czech law only in cases involving persons unable to assess the consequences of their acts (§ 2920 and 2921). If other conditions are met, an obligation to compensate for damage on the basis of equity may arise either to a person who is not able to assess the consequences of his acts or to a person exercising full parental responsibility over the tortfeasor, "if it is fair with regard to the property situation of the tortfeasor and victim." However, I believe this provision will be applied very rarely, especially in connection with environmental damage, and therefore, I will not discuss it in more detail.

2.1.1. Liability for fault and its degrees

In tort law, the most significant degrees of fault are simple negligence, gross negligence, and intent. The existence of simple negligence is one of the prerequisites for the obligation to compensate for damages, for example, in the case of liability for interference with an absolute right (Section 2910, first sentence) or for violation of a protective norm (Section 2910, second sentence) and is regulated by Section 2912(1). This section formulates a rebuttable presumption that the tortfeasor acts negligently if he does not act as "can be reasonably expected in private dealings from a person of average qualities," who is specified in Section 4(1). This section

13 | Melzer 2018c, 53–54.

14 | Melzer 2018a, 9.

15 | For more details on liability for permissible interference, see Koziol 2014, 515 et seq.

16 | For more details on the issue of liability for security (*Sicherstellungshaftung*), see Koziol 2019, 376–419.

establishes a rebuttable presumption that “every person having legal capacity [has] the intellect of an average individual and the ability to use it with ordinary care and caution, and anybody can reasonably expect every such person to act in that way in legal transactions.” Czech tort law is therefore generally based on a subjective concept of fault. Although the above-mentioned rebuttable presumption establishing a certain standard is laid down, the law allows that the contrary may be proven.¹⁷ However, the situation is different in the case of experts (or persons who declare themselves to be experts), where the concept of fault is based on an objective approach (Section 2912 in conjunction with Section 5). Whether these persons acted subjectively without fault is not decisive for the assessment of fault as one of the prerequisites for liability.¹⁸ Under Czech law, the existence of fault in the form of simple negligence is presumed if the tortfeasor violates a legal duty (Section 2911).

When defining gross negligence, we can refer, for example, to Ehrenzweig’s definition, according to which “these are mistakes which, given their severity or frequency, can only occur in particularly negligent or reckless individuals and, depending on the circumstances, may also suggest malicious intent.”¹⁹ Gross negligence is mentioned, for example, in Section 2898, which, among other things, prohibits agreements that, in advance, exclude or limit the tortfeasor’s obligation to compensate for damage caused by gross negligence or intentionally. It is also a prerequisite for liability for non-material damage under Section 2971.

A tortfeasor acts intentionally if he knows that he can cause harmful consequences and, at the same time, wants to cause them or is at least aware of causing them.²⁰ Culpability in the form of intent, as one of its prerequisites, requires, for example, the emergence of liability under Section 2909 (intentional violation of good morals).

The degree of fault, therefore, plays an important role in assessing liability for damage. If this damage occurs to the environment, it will also be important in these cases to determine, for example, whether the tortfeasor acted negligently or intentionally, not only with regard to the prerequisites for liability, but also with regard to the length of the limitation period (cf. Section 636(2)).

On the borderline between subjective and strict liability are cases where the law allows the tortfeasor to be exempt from liability by proving that he exercised the objectively determined necessary care. Their significance lies in the fact that they reverse the burden of proof regarding unlawfulness and objectify the standard of care, the fulfilment of which may exempt the liable person from liability. A typical

17 | Bezouška 2014b, 1563.

18 | Pašek 2019a, 3031.

19 | “(...) handelt es sich um Versehen, die mit Rücksicht auf ihre Schwere oder Häufigkeit nur bei besonders nachlässigen oder leichtsinnigen Menschen vorkommen können und nach Umständen auch wohl die Vermutung des bösen Vorsatzes nahelegen.” Quoted from: Koziol 2020, 373.

20 | Melzer 2018g, 241–242.

case relevant to compensation for environmental damage is Section 2924, which establishes the operator's liability for damage caused by operational activities. At the same time, however, it permits the operator to be released from liability "if he proves that he has exercised all care that can be reasonably requested to prevent the damage." Some classify this provision as subjective liability,²¹ while others classify it as strict²² liability.²³

2.1.2. Strict liability and its role in environmental protection

The Czech Civil Code contains several grounds for strict liability that can be considered significant for compensating for environmental damage.

First, there is liability for damage caused by particularly hazardous operations, which can be further characterised as liability for endangerment. According to Section 2925(1), "an operation is particularly hazardous if the possibility of serious damage cannot be reasonably excluded in advance even by exercising due care." At the same time, Section 2925(3) establishes a rebuttable presumption that "(an) operation is (...) particularly hazardous if it is carried out in a factory-like manner or if explosive or similarly hazardous substances are used or handled therein." The operator's options for exempting himself from liability are very limited. He would have to prove "that the damage was externally caused by force majeure or that it was caused by the very acts of the victim or unavoidable acts of a third person."

Regarding this provision and compensation for environmental damage, it should be noted that experts have long debated whether damage to forest stands caused by acid rain resulting from the emission of sulphur oxides and nitrogen oxides is compensated under Section 2924 (liability for operation) or Section 2925 (liability for particularly hazardous operations). The case law of the Supreme Court has confirmed that thermal power plants emitting the aforementioned greenhouse gases are of a particularly hazardous nature and therefore their operators are liable for the damage caused under Section 2925.²⁴

The category of liability for endangerment also includes liability for damage caused by the operation of means of transport. These pose a danger to their surroundings, for example, because of their speed and weight, which make them difficult to control, or because of their technical complexity. For example, the Supreme Court found that the danger arising from the operation of a means of transport materialised even in a case where a car caught on fire due to faulty electrical wiring

21 | Bezouška 2014c, 1603; Melzer 2018h, 452.

22 | Pašek 2019b, 3052; Vojtek 2021, 971. In accordance with this part of the literature, case law (e.g. Ruling of the Supreme Court of June 27, 2019, file no. 25 Cdo 1127/2018).

23 | However, I consider Koziol's approach to be the most appropriate, as it views the relationship between purely subjective liability and liability for endangerment without the possibility of exemption from liability as a scale, rather than as two separate sets. Koziol 1986, 51.

24 | Ruling of the Supreme Court of March 23, 2023, file no. 25 Cdo 1152/2021.

and caused a fire in the building where it was parked.²⁵ This also includes “damage caused by exhaust fumes produced during the combustion of fuels,”²⁶ the leakage of operating fluids, collisions between vehicles and animals, and vibrations or noise that may have a negative impact on animals.²⁷

The operator has only limited options for avoiding liability. For this to happen, according to Section 2927(2), the cause of the damage must originate outside the operation, and the operator must prove “that he could not have prevented the damage despite having exerted all the efforts which may have been required.” If the cause of the damage is a circumstance originating from the operation, the law does not permit exemption from liability under any circumstances.

An example of environmental damage for which the operator would be liable under Section 2927 is a recent accident in the Czech Republic. A train carrying benzene derailed and crashed as a result of excessive speed, contaminating the surrounding area with toxic substances. Among other things, this resulted in property damage compensable under private law.

In connection with damage caused to the environment, liability for damage caused by animals, as enshrined in Sections 2933 to 2935, cannot be overlooked. The law recognises two basic liability regimes. For animals kept as pets, there is liability for endangerment. For domestic utility animals,²⁸ there is liability for objective proper care.²⁹ There is an ongoing discussion in the Czech Republic about how to define dangerousness of an animal, which is a key condition for liability. In my view, all damage where the animal’s energy contributed should be covered by endangerment liability.³⁰

The animal’s owner is primarily liable for the damage. It does not matter whether the owner had the animal with him at the time, entrusted it to someone else, the animal strayed or ran away, etc. (Section 2933). The owner can only be exempt from liability in the case of domestic utility animals. However, he must bear the burden of proof regarding the circumstances that “in the supervision of the animal, he did not neglect to exercise the necessary care, or that the damage would have also been incurred by exercising the necessary care” (Section 2934).

The Civil Code names as another liable person the person to whom the owner entrusted the animal. This person is liable under the regime of objective proper care, regardless of whether the animal entrusted to him was kept as a pet or a domestic utility animal. He is exempt from liability under the same conditions as the owner in the case of domestic utility animals.³¹ Finally, a person who has

25 | Ruling of the Supreme Court of August 31, 2017, file no. 25 Cdo 3485/2016.

26 | Melzer 2018i, 562.

27 | Psutka 2011, 272–273.

28 | An animal that “serves its owner to pursue his profession or another gainful activity or livelihood, or if it serves a disabled person as a helper” is designated as a utility animal (Section 2934).

29 | Bártů 2025, 54.

30 | For details, see Bártů 2024, 879–891.

31 | Bártů 2025, 41–44.

arbitrarily taken an animal from its owner or from a person to whom the owner has entrusted the animal is also liable for damage caused by the animal. In such cases, joint and several liability also arises for the owner or the person to whom the animal was entrusted, unless they prove that they “could not have reasonably prevented the animal from being taken away” (Section 2935).

3. Who can sue whom – the main weakness of tort law

When it comes to compensation for environmental damage, the question of who is entitled to claim compensation and from whom cannot be overlooked.

3.1. Who is liable for the damage caused?

The obligation to pay damages may arise for a natural person, a legal entity, or the state (Section 21).³² The Civil Code defines liable persons in different ways, depending primarily on the principle of attribution, on which the obligation to pay damages is based. In the case of fault-based liability, the person who has culpably breached a legal obligation or to whom someone else’s culpable conduct is attributed (Section 2914, first sentence) is liable.

In cases involving special provisions, the Civil Code always defines the liable person for each case. In the case of liability for endangerment, the operator is typically liable for the damage caused, which may be a person different from the owner of the operation, which corresponds to this principle of attribution.³³ Under Czech law, this applies, for example, to the operator of a particularly hazardous operation (Section 2925) or the operator of a means of transport (Section 2927 et seq.). An exception is the provision on liability for damage caused by an animal, which stipulates that the owner is primarily liable (Section 2933).

3.2. Who can claim damages?

Damages may be claimed by the injured party, which, as in the case of the injuring party, may be a natural person, a legal entity, or the state. From the perspective of private law, it should be emphasised that “the injured party cannot be society as a whole, even in cases of damage of societal significance or damage that negatively affects all its members. Such a concept of the injured party is incompatible with the private (individual) nature of civil law.”³⁴ The injured party only has the option, not the obligation, to claim damages, which follows from the principles of private law.

32 | Psutka 2011, 13.

33 | Spickhoff 2022, 462.

34 | Psutka 2011, 15.

The injured party may decide not to claim damages, and no one can force them to do so.³⁵ Exceptions may include cases where the injured party is the state and the law requires it to claim damages.

In order to determine who the injured party is, it is necessary to first address the definition of compensable damage under private law.

3.2.1. Material and non-material damage according to the Civil Code

The Civil Code distinguishes between material and non-material damage (Section 2894), whereby only the person who has suffered the damage may claim compensation. Non-material damage can be defined as “what the affected person reasonably perceives as personal misfortune.”³⁶ However, this person can only be a natural or legal person, which means that non-material damage, as understood by the Civil Code, can never be damage to the environment.³⁷

However, it cannot be ruled out that non-material damage (e.g. compensation for pain or impairment of social functioning) may arise as a result of environmental damage.³⁸ It is conceivable that part of the population will fall ill due to contamination of the territory or air pollution. If, in such a case, they seek compensation for the damage, they may indirectly contribute to environmental protection by putting pressure on polluters to stop polluting the environment.

Material damage is understood to mean damage to assets and liabilities (Section 2894(1)), with assets and liabilities being defined by the Civil Code as the totality of a person's property and debts (Section 495). Material damage may take the form of actual damage or loss of profit (Section 2952).

Actual damage is defined as “material loss expressed in money, consisting of a reduction, decrease, or other impairment of the existing assets and liabilities of the injured party, as well as the costs incurred to remedy this impairment.”³⁹ Therefore, in order for damage caused to the environment to be compensable through private law instruments, it must be both environmental damage and damage as defined by private law. In this context, Melzer correctly observes that if no damage occurs in the civil law sense, there is no injured party, i.e. no person who

35 | In this context, reference can be made to Hungarian legislation, according to which the state may seek compensation for damages if the injured party refuses to do so. Bobvos et al. 2006, 32. For more on this topic in a broader context, see also Bándi 2020, 7–22.

36 | Melzer 2018b, 43.

37 | See the definition contained in Section 2 of Act No. 17/1992 Coll., on the environment: “The environment is everything that creates the natural conditions for the existence of organisms, including humans, and is a prerequisite for their further development. Its components include, in particular, air, water, rocks, soil, organisms, ecosystems, and energy.” Similarly, Psutka states that neither human life nor health is part of the environment. Psutka 2011, 30.

38 | However, protected assets under Section 81 are not only life and health, but also, for example, the right to live in a favourable environment.

39 | Ibid.

could claim compensation for damage.⁴⁰ This would be the case, for example, with air pollution, unless it also causes a loss of value to someone's property or necessitates expenditure to remedy that loss of value. However, if acid rain caused by air pollution devalues forest stands, thereby reducing the value of the land on which the trees are located, this will constitute damage that can be compensated for by private law instruments.⁴¹ Damage that the injured party decides not to claim or that the owner (injured party) causes to himself (e.g. contaminates his own land with asbestos) cannot be compensated through private law instruments.

Lost profits occur when the total amount of the injured party's assets and liabilities would have been higher than they actually are, had it not been for the unlawful conduct of the injuring party or the harmful event. It therefore includes situations in which the injured party's assets did not increase, as well as those in which the amount of their debts did not decrease.⁴² Although in the vast majority of cases, lost profits are monetary, there are also cases of non-monetary lost profits. An example is the case of a plaintiff who claimed damages from the defendant for, among other things, the fact that, as a result of the death of bees, he did not produce as much honey as he would have produced had it not been for the defendant's unlawful conduct.⁴³

In some cases of environmental damage, the legislator is aware that damage is being caused to property that is not subject to civil law (typically ownerless property). An example of this is damage caused to the game by poaching. In this case, the legislator establishes active legal standing for the user of the hunting ground to claim damages (Section 56 of the Hunting Act).⁴⁴

3.2.2. *Ecological damage under the Environmental Act*

Ecological damage under the Environmental Act must be distinguished from material damage as understood by private law. According to Section 10 of the Act, "ecological damage is the loss or impairment of the natural functions of ecosystems resulting from damage to their components or disruption of internal relationships and processes as a result of human activity." This is an institute of public law, with the Environmental Act designating the state as the entitled entity (Section 27(3) of this Act), which has the obligation to claim compensation for damage. Compensation for ecological damage under the Environmental Act can be useful, for example, if someone damages their own property and at the same

40 | Melzer 2018d, 87.

41 | Srov. Psutka 2011, 167–168. Psutka's conclusions apply even though, unlike previous legislation, Czech private law, as of January 1, 2014, is based on a broad concept of a thing in the legal sense.

42 | Melzer 2018j, 932.

43 | Ruling of the Regional Court in Brno of July 22, 1969, file no. 7 Co 233/69.

44 | For details on compensation for damage caused to game, see Mitášová 2022, 101–105. See also Section 12 of Act No. 99/2004 Coll., on fish farming, the exercise of fishing rights, the fishing guard, the protection of marine fishery resources, and on amendments to certain acts (the Fisheries Act).

time causes environmental damage. This damage would not be recoverable under private law.⁴⁵

If ecological damage occurs, Section 27(1) of the Environmental Act requires the polluter to first restore “the natural functions of the disturbed ecosystem or part thereof.” If the damage cannot be compensated in this way or if it would be ineffective, the Act assumes that the polluter will compensate for the damage in another way. Only if it is not possible to compensate for the environmental damage in this way does the Act require the polluter to provide monetary compensation. The recipient of this compensation will be the state. According to the explicit wording of this provision, it is not excluded that, for example, part of the damage may be compensated by restoration to the previous state and part in money.

It may happen that material damage under the Civil Code will also constitute (partial) ecological damage within the meaning of the Environmental Act, whereby the relationship between compensation for damage under private law and compensation for ecological damage is not entirely clear, and a whole range of different situations can be imagined. Therefore, Psutka proposed an amendment in 2011 that would clarify the relationship between damages under private law and ecological damage under the Environmental Act.⁴⁶ However, the legal regulation has not yet been amended. In general, however, it cannot be ruled out that ecological damage will be compensated through private law instruments or vice versa.

3.2.3. Ecological damage according to the Act on the Prevention of Ecological Damage

Similarly, damage within the meaning of private law can be compensated, for example, by the procedure under Act No. 167/2008 Coll., on the prevention of ecological damage and its remediation and on amendments to certain acts.⁴⁷ This Act contains its own definition of environmental damage in Section 2(a), which is considerably more detailed than that in the Environmental Act. Unlike the Environmental Act, Section 21(6) defines the relationship to the general regulation of liability for damage, stating that “it shall not be applied if, as a result of the remediation of ecological damage under this Act, material damage is also compensated.”

The Act on the Prevention of Ecological Damage also concerns public law, with administrative proceedings conducted by the relevant state authorities. It is worth noting, however, that proceedings are not only initiated *ex officio*. Proceedings may also be initiated by a natural person affected by ecological damage or a legal entity under private law engaged in environmental protection (Section 8(2) of the Act).

45 | Ruling of the Supreme Court of March 30, 2016, file no. 25 Cdo 2466/2014.

46 | *Ibid.*, 41.

47 | This legal regulation transposes Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

3.3. Fazit

Issues related to standing in cases involving claims for damages are the weakest point in compensating for environmental damage through private law instruments.

Private individuals can only claim compensation for environmental damage if it also constitutes damage within the meaning of civil law. Furthermore, they may decide not to claim compensation for the damage incurred, and as a rule, no one can force them to do so. However, if the damage also constitutes ecological damage within the meaning of Section 10 of the Environmental Act or Section 2(a) of the Act on the Prevention of Ecological Damage, compensation for damage within the meaning of private law could be awarded even against their will.

Non-profit organisations and public authorities play no role in civil proceedings for compensation for environmental damage, unless they themselves are injured parties within the meaning mentioned above. An exception is the right of a hunting ground user to claim compensation for damage caused to game.

4. On issues related to causality in cases of environmental damage and the burden of proof

4.1. Procedure for assessing causality

When determining causality, no special rules apply to disputes over compensation for environmental damage.⁴⁸ In these cases, too, the correct procedure should be followed in two steps. First, we must use the theory of conditionality (but-for test) to determine whether there is a natural (factual) causal link. Second, we ask whether the damage is attributable to the perpetrator (legal causal link).

4.1.1. Factual (natural) causality

In the first step, we ask whether there is a factual (natural) causal link between the cause under consideration and the resulting consequence. To determine this, we use the *conditio sine qua non* rule (referred to in English-language literature as the *but-for test*), which is applied by disregarding the cause in question and examining whether, even in such a case, the consequence would have occurred in the form in which it occurred. If so, the cause under consideration is not in fact the cause of the consequence; if not, then it is the cause.⁴⁹ An example of this is a situation where person A shoots an animal. If he had not fired the shot, the animal

48 | Psutka 2011, 113.

49 | For more details on the factual causal link, see Doležal & Doležal 2016, 60–78.

would not have died at the same time, in the same place, and in the same way, and therefore his action is considered to be the cause of its death.

4.1.2. *Special types of factual causality*

Although applying the theory of conditionality is not usually problematic, there are situations in which it fails. In the context of environmental damage, alternative and proportional causality can be mentioned in particular.

Cases of alternative causality occur when there are multiple potential causes, one of which was the cause of the consequence, but it is impossible to determine which one it was. The Czech Civil Code addresses these situations in Section 2915 and imposes joint and several liability on all parties involved, provided they acted unlawfully. This type of causality can be demonstrated by the following situation. Person X and person Y simultaneously shoot at an animal, which is hit by a single bullet, but it cannot be determined whether the bullet was fired from the weapon of person X or person Y. If both shooters acted unlawfully, they would be jointly and severally liable for the damage caused under Czech law.⁵⁰

The second type of causality I consider important to mention in connection with damage caused to the environment is proportional causality. This can be defined as the imposition of liability on the wrongdoer to the extent that corresponds to the probability with which he caused the damage.⁵¹ From the perspective of tort law, it is significant that this institute is expressly regulated for cases of damage caused by particularly hazardous operations in Section 2925(2), according to which “if circumstances clearly indicate that the operation has significantly increased the risk of damage, although it can be legitimately referred to other possible causes, a court shall order the operator to provide compensation for the damage to the extent that corresponds to the probability of the damage having been caused by the operation.” Therefore, if thermal power plants X, Y, and Z are located next to each other in one area, with the first emitting 50% of all air pollutants, the second 30%, and the third 20%, and these gases cause acid rain and thus damage to forests, the court will order thermal power plant X to compensate 50%, thermal plant Y 30%, and thermal plant Z 20% of the damage caused.

4.1.3. *Attributability (legal causality)*

If we applied only the *conditio sine qua non* test when determining causation, we could end up with the Big Bang (the creation of the world) in the chain of causes and consequences. Therefore, we must take a second step and determine whether the damage can be attributed to the wrongdoer. Throughout history, a number of

50 | Doležal & Doležal 2016, 148.

51 | Ibid., 184–185.

theories have emerged to limit factual causality, but the prevailing view today is that both the theory of adequacy and the theory of the protective purpose of the norm should be applied simultaneously.⁵² For the cause to be attributable to the tortfeasor, the consequence must be both adequate and fall within the protective purpose of the norm.

The theory of adequacy uses predictability as a criterion, which is not assessed from the perspective of the tortfeasor, but from the perspective of the so-called optimal observer. According to the Constitutional Court,⁵³ this is “an imaginary person who encompasses all the experience of his time.” According to the Court, a causal link exists if “for (...) the optimal observer, the occurrence of damage is not highly improbable.”

At the same time, the damage incurred must fall within the protective purpose of the norm, which means that the damage that the breached norm was intended to prevent must have occurred. A distinction is made between the personal, material, and modal protective purposes of the norm. Personal means that the damage was caused to a person whom the norm is intended to protect. The damage falls within the material protective purpose if it is the type of damage that the norm was intended to protect against. Finally, the damage must occur in a manner that the norm anticipates. Then the criterion of the so-called modal purpose of the norm will be fulfilled.⁵⁴

4.2. Who bears the burden of proof?

The rules of bearing the burden of proof in civil litigation concerning compensation for environmental damage are no different from those in other cases of compensation for damage. In particular, the rule applies that “each party to the proceedings bears the burden of proof regarding the factual prerequisites of the legal norm favourable to it.”⁵⁵ In some cases, rebuttable presumptions are of great importance regarding the distribution of the burden of proof, with the most significant one in the case of compensation for environmental damage under private law being the presumption of fault (Section 2911). However, except for the above-mentioned Sections 2915 and 2925(2), there are no special rules for overcoming uncertainty regarding the existence of a causal link.

It is generally pointed out that proving causation in cases of environmental damage is more complicated than in other cases and that it very often requires expert opinion, and a number of proposals have been made to address these difficulties, ranging from reversing the burden of proof, i.e. transferring it from the injured party to the wrongdoer, to the state bearing the damage, or reducing

52 | Ibid., 104.

53 | Ruling of the Constitutional Court of November 1, 2007, ref. no. I. ÚS 312/05.

54 | Pipková 2013, 879–881.

55 | Lavický 2017, 252.

the standard of proof.⁵⁶ I personally consider the latter option to be the most appropriate proposal, as it best balances the rights and obligations of the polluter and the injured party. We must also always bear in mind that the main objective of private law, and therefore also tort law, is not to compensate for damage to the environment. This objective should primarily be served by instruments of public law.

5. Manner and extent of compensation for damage

The Czech Civil Code distinguishes between two basic manners of compensation for material damage, namely restitution to the original state and monetary compensation, with preference given to restitution to the original state, which can be considered more suitable when compensating for damage caused to the environment. Monetary compensation is provided only if requested by the injured party or if restitution to the original state is not feasible (Section 2951(1)). It is not excluded that part of the damage may be compensated by restoration to its original state, and part of the damage in money. Typically, this will be the case where, even after repair, the item will not have the same value as it had before the damage.⁵⁷

The Civil Code contains two special provisions regarding the extent of damage to be compensated. The first concerns damage caused to a thing and stipulates that “the amount of damage to a thing is determined on the basis of its usual price at the time the damage was incurred, taking into account everything which the victim must efficiently incur to restore or replace the function of the thing.” (Section 2969). It is deduced from this rule that the extent of damage compensated for to a thing is determined either as the difference between the usual price before and after the damage, or as the amount of costs necessary to carry out restitution to the original state.⁵⁸ However, the second of these options may not be permissible, for example, because it would be uneconomical.⁵⁹

An example of this is a situation repeatedly dealt with by the Supreme Court, where trees were felled unlawfully. The Supreme Court considered it impossible to restore the land to its original state under the given circumstances and therefore decided that the amount of compensation would be determined as the difference

56 | Psutka 2011, 113–117, 121–123.

57 | Ruling of the Supreme Court of October 11, 2017, file no. 25 Cdo 2782/2017.

58 | Ruling of the Supreme Court of November 25, 2020, file no. 25 Cdo 2679/2019.

59 | Ruling of the Supreme Court of May 16, 2022, file no. 25 Cdo 2651/2021. In this decision, the Supreme Court accepted, for example, that the cost of repairing a car could reach up to 130 % of its usual price before damage (the so-called *Integritätszuschlag*), even though it is generally accepted that a repair is considered uneconomical if the cost exceeds the usual price of the item before damage. For details, see the literature and case law cited therein.

between the price of the land, of which the trees were a part (Section 507), before and after the trees were felled.⁶⁰

However, special provisions may determine the extent of the damage to be compensated differently, as exemplified by the Hunting Act. This Act regulates compensation for damage caused by game and defines both damage that is compensated (Section 52(1)(b)) and damage that is not compensated (Section 54(1) and (2)). Similarly, Section 4 of the Act on Compensation for Damage Caused by Selected Specially Protected Animals defines the damage that is compensated under this legislation.

The second provision concerns compensation for damage caused to an animal, so its significance for compensation for damage caused to the environment cannot be overestimated, and it can be found in Section 2970.⁶¹ Its purpose is primarily to deviate from the general rule that repair is not usually reasonable if the cost of repair exceeds the value of the item before the damage. In the case of animals, all reasonable costs incurred for their treatment are reimbursed, “provided that they would be incurred by a reasonable breeder in the position of the victim”, and may even significantly exceed the price of the animal. This is a manifestation of the process of dereification of animals, i.e. the fact that the Civil Code does not consider animals to be things (Section 494).⁶²

The burden of proof regarding the extent of the damage incurred lies with the injured party. Particularly in cases of environmental damage, it may be proven that damage occurred, but its exact extent cannot be determined. In such a case, the court may not dismiss the action but shall apply Section 2955 and determine the extent of the damage “on the basis of a fair consideration of each circumstance.”

6. The possibility of exemption from liability and circumstances excluding unlawfulness

Even if all the conditions for liability for damage are (apparently) met, circumstances may arise in which the tortfeasor is not obliged to compensate for the damage. This category includes mainly circumstances under which liability may be exempted and circumstances precluding unlawfulness.

Except in very exceptional situations, there is no maximum limit on the extent of damages that is to be compensated. An exception is, for example, Section 35 of

60 | Rulings of the Supreme Court of September 20, 2023, file no. 25 Cdo 533/2022, or of November 27, 2024, file no. 25 Cdo 1673/2024.

61 | Similar provision is also contained in public law regulations, specifically Section 28a(4) of the Animal Protection Act, according to which “the costs of treating an animal that has been abused and injured in such a way as to damage its health shall be borne by the person who caused this condition, even if they exceed the value of the animal.”

62 | Pašek 2019c, 3136.

the Atomic Energy Act, which limits the license holder's liability to 8 billion CZK or 2 billion CZK.

6.1. Grounds for exemption from liability

In cases of fault-based liability, the Civil Code establishes a rebuttable presumption that negligence is presumed to exist if the injuring party has violated a statutory duty (Section 2911). This legislative construct allows the tortfeasor to be exempted from liability by proving that he was not at fault for the damage. If he bears the burden of proof, he will not be liable for damages.

In the case of certain specific grounds for liability for damage, the legislator expressly stipulates grounds for exemption from liability. In the case of liability for ordinary operational activities, for example, the tortfeasor must prove that he complied with an objectively established standard of care (Section 2924); the same applies to the owner's liability for damage caused by so-called privileged animals (Section 2934). In some cases, the grounds for exemption from liability are objective in nature. For example, in the case of particularly hazardous operations, the tortfeasor may be exempted (besides other grounds) if the damage was caused by force majeure (Section 2925). Objective reasons for exemption from liability that are independent of the tortfeasor also lead to exemption from liability in the case of contractual liability (Section 2913(2)). Force majeure can therefore play a significant role as a circumstance that leads to an exemption from liability in cases of strict liability.

6.2. Circumstances excluding unlawfulness

If unlawfulness is one of the prerequisites for liability, the tortfeasor shall not be liable for damages if he proves any of the circumstances excluding unlawfulness. Some of these are explicitly regulated by law (e.g. self-help (Section 14), self-defence (Section 2905), or necessity (Section 2906)), while others have been inferred by case law. The latter category includes, for example, situations where someone is fulfilling a legal obligation.⁶³

Unlawfulness of conduct is also excluded by self-defence, which is regulated by the Civil Code in Section 2905. Self-defence is exercised by anyone "who turns away from himself or from another ongoing or imminent unlawful attack." This is based on the premise that "the right does not have to yield to injustice."⁶⁴ However, the conditions for self-defence are not met "if it is clear that, given the circumstances, the attacked person is under the threat of incurring only negligible harm, or the defence is manifestly excessive." In this case, the severity of the harm the defender

63 | Ruling of the Supreme Court of October 17, 2012, file no. 30 Cdo 701/2011.

64 | Melzer 2018c, 132.

causes the aggressor in repelling the attack is considered. This provision may apply, for example, to a situation where person X commands their dog to attack person A. However, person B, who is standing nearby, uses a legally owned weapon to kill the dog.⁶⁵ On the other hand, it would not be self-defence if the tortfeasor was picking flowers of insignificant value in someone else's garden and the wealthy owner of the garden shot him.⁶⁶

Another circumstance that excludes unlawfulness is necessity. According to Section 2906, there is no obligation to compensate for damage to anyone “who protects himself or another from an imminent risk of harm”. In cases of necessity, the principles of subsidiarity and proportionality, as expressed in the aforementioned provision, apply. According to the first principle, necessity does not apply if the person acting could have averted the danger in another way. The second principle requires that the harm caused by the person acting be smaller than the imminent harm. However, this restriction does not apply if material assets are sacrificed that would have been lost anyway. The provision on necessity does not apply to the person who caused the danger.⁶⁷

If someone acts in necessity, he is not acting unlawfully, but this does not mean that the person whose property was sacrificed cannot claim compensation. This obligation may be based, for example, on Sections 1037–1039 concerning compensation for the restriction of ownership rights or Sections 3012–3014 regulating the use of another person's thing for the benefit of another.⁶⁸

An example of necessity could be a situation where person A is attacked by an animal that no one has set upon him. Person A has no choice but to take a chair owned by person B and use it to chase the animal away. However, in doing so, he destroys the chair. Person A acted in necessity, i.e. not unlawfully. However, this does not mean that he will not have to compensate person B.⁶⁹

7. Challenges and shortcomings

Private law instruments are not primarily intended to protect the environment, which is why they have their limitations and are ineffective. However, it cannot be overlooked that the Civil Code, effective since January 1, 2014, has brought about significant changes in this area. It initiated the process of dereification of animals (Sections 494 and 2970), enshrined alternative (Section 2915) and proportional causality (Section 2925), and restitution to the original state to monetary compensation for damages. However, the values and principles on which private law is

65 | Cf. Ibid.

66 | Cf. Bezouška 2014a, 1526.

67 | Hrádek 2021, 876.

68 | Melzer 2018f, 151 and 155.

69 | Ibid., 155.

based significantly limit the possibilities for compensating for damage caused to the environment through private law.⁷⁰

I believe that the accessibility of private law actions for persons affected by environmental damage will generally be worse than in other disputes. Even with these, there are costs associated with the proceedings (in particular court fees and legal representation costs),⁷¹ but it will also be very difficult for the injured party to bear the burden of proof regarding all the prerequisites for the obligation to compensate for damage. In disputes over compensation for environmental damage, it will generally be very difficult to prove the causal link or the extent of the damage, even though these problems are partially eliminated by legislation. High costs will also be associated with experts' opinions.

The considerations set out in the previous paragraph also apply to proving long-term environmental damage. In addition, however, it will be necessary for the injured party to claim the damage incurred in a timely manner. Claims for compensation for damage caused to the environment are subject to a limitation period, and therefore, the injured party must be cautious. If the injured party files the claim in court too late and the tortfeasor raises an objection based on the lapse of the limitation period, the court will not award compensation for the damage.

8. Future perspectives and conclusions

In my opinion, the adoption of Act No. 89/2012 Coll., the Civil Code, which enshrined the institutions mentioned in the previous chapter, represents a significant development. Case law may also play an important role if, for example, in disputes over compensation for damage caused to the environment, the courts reduce the standard of proof generally required to prove a particular fact.⁷² I believe that the current situation, in which environmental protection is a domain of public law, is consistent with the values and principles on which these two main parts of the legal system are based. Although I consider environmental protection extremely important, I believe it should not be pursued primarily through private law.

However, this does not mean that I deny that it would be appropriate for the legislator to make a few changes. For example, Psutka's⁷³ yet unheeded proposal to clarify the relationship between special legal regulations governing compensation for environmental damage and the Civil Code, as well as between these regulations themselves, and to ensure uniform terminology in various legal regulations, could

70 | Similarly, even before the adoption of Act No. 89/2012 Coll., the Civil Code Psutka 2011, 390–392.

71 | However, it should not be overlooked that Sections 30 and 138 of Act No. 99/1969 Coll., the Code of Civil Procedure, establish the possibility of exempting a party from paying court fees and the possibility of appointing legal representation for a party at the expense of the state.

72 | See above.

73 | Psutka 2011, 390–392.

be reiterated. I also agree with his observation that the shortcomings are not so much to be found in private law regulations as in the ineffectiveness of compensation for ecological damage within the meaning of Section 10 of the Environmental Act. I believe that his opinion that it would be appropriate to consider special legal provisions concerning the limitation period for environmental damage (e.g. that the periods would be extended or that only a subjective period would run) or a change in the distribution of the burden of proof to be correct.

The existence of (compulsory) insurance should be completely irrelevant when assessing whether an obligation to compensate for damage has arisen.⁷⁴ However, it is advisable for persons who are at risk of being held liable for environmental damage to take out insurance. Environmental damage can reach extremely high amounts, which the tortfeasors will generally not be able to pay.

The Czech legal system provides for several methods of out-of-court dispute resolution. These include, for example, arbitration⁷⁵ or mediation.⁷⁶ In my opinion, mediation, in particular, could play an important role in compensating for environmental damage while saving costs for both parties to the dispute, who would avoid expensive court proceedings with an uncertain outcome. Another example is the out-of-court settlement of consumer disputes,⁷⁷ the main advantage of which for consumers is that it is free of charge, while the disadvantage is that it does not result in a binding and enforceable ruling. Very often, it is not worthwhile for consumers to go to court because of the low amounts involved (however, this shortcoming could be overcome by class action lawsuits).⁷⁸ However, the same argument does not apply to disputes over compensation for damage caused to the environment. As I have already explained above, I see shortcomings in areas other than the lack of special out-of-court proceedings for disputes over compensation for environmental damage.

74 | Lovětínský 2021, 32.

75 | Act No. 216/1994 Coll., on arbitration proceedings and the enforcement of arbitration awards.

76 | Act No. 202/2012 Coll., on mediation and on amendments to certain acts (Act on Mediation).

77 | For example, Section 20d et seq. of Act No. 634/1992 Coll., on consumer protection.

78 | Act No. 179/2024 Coll., on collective civil proceedings.

Reference list

1. Ahrens, H-J & Spickhoff A (2022) *Deliktsrecht*, C. H. Beck, München, pp. 461–470.
2. Bándi Gy (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *International Journal of Agricultural and Environmental Law* 15(29), pp. 7–22, DOI: <https://doi.org/10.21029/JAEL.2020.29.7>.
3. Bártů J (2024) Nebezpečnost zvířete jako předpoklad vzniku odpovědnosti za škodu, *Právník* 163(9), pp. 879–891.
4. Bártů J (2025) *Náhrada škody způsobené zvířetem*, C. H. Beck, Praha.
5. Bezouška P (2014a) § 2905 Nutná obrana, in: Hulmák, M (ed.) *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014)*, C. H. Beck, Praha, pp. 1523–1527.
6. Bezouška P (2014b) § 2912 Požadovaná úroveň opatrnosti, in: Hulmák, M (ed.) *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014)*, C. H. Beck, Praha, pp. 1563–1564.
7. Bezouška P (2014c) § 2924 Škoda z provozní činnosti, in: Hulmák, M (ed.) *Občanský zákoník VI. Závazkové právo. Zvláštní část (§ 2055–3014)*, C. H. Beck, Praha, pp. 1600–1605.
8. Bobvos P et al. (2006) The polluter pays principle in the agriculture, *Journal of Agricultural Law* 1/2006, pp. 29–54.
9. Doležal A & Doležal T (2016) *Kauzalita v civilním právu se zaměřením na medicínskoprávní spory*, Ústav státu a práva AV ČR, Praha.
10. Hrádek J (2021) § 2906 Krajiní nouze, in: Švestka J, Dvořák, J & Fiala J (eds.) *Občanský zákoník. Svazek 6: (§ 2521 až 3081)*, Wolters Kluwer, Praha, pp. 874–878.
11. Koziol H (1986) *Bewegliches System und Gefährdungshaftung*, in: Bydlinski, F et al. (eds.) *Das Bewegliche System im geltenden und künftigen Recht*, Springer-Verlag, Wien-New York, pp. 51–62.
12. Koziol H (2014) *Österreichisches Haftpflichtrecht. Band III: Gefährdungs- Produkt – und Eingriffshaftung*, Jan Sramek Verlag, Wien.
13. Koziol H (2019) Die Sicherstellungshaftung – eine weitere Spur im Haftungsrecht?, *Archiv für die civilistische Praxis* 219(3/4), pp. 376–419.
14. Koziol H (2020) *Österreichisches Haftpflichtrecht. Band I: Allgemeiner Teil*, Jan Sramek Verlag, Wien.
15. Lavický P (2017) *Důkazní břemeno v civilním řízení soudním*, Leges, Praha.
16. Lavický P (2022) § 3 Zásady soukromého práva, in: Lavický, P (ed.) *Občanský zákoník I. Obecná část (§ 1–654)*, C. H. Beck, Praha, pp. 30–38.
17. Lovětínský V (2021) *Objektivní odpovědnost v českém deliktním právu*, C. H. Beck, Praha.
18. Melzer F (2018a) Úvodní výklad před § 2894, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 1–20.

19. Melzer F (2018b) § 2894, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 20–45.
20. Melzer F (2018c) § 2895, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 46–54.
21. Melzer F (2018d) § 2900, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 74–91.
22. Melzer F (2018e) § 2905, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 131–140.
23. Melzer F (2018f) § 2906, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 140–158.
24. Melzer F (2018g) Úvodní výklad před § 2909 an., in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 167–265.
25. Melzer F (2018h) § 2924 Škoda z provozní činnosti, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 447–469.
26. Melzer F (2018i) § 2927 Škoda z provozu dopravních prostředků, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 519–611.
27. Melzer F (2018j) § 2951–2952, in: Melzer, F & Tégl, P (eds.) *Občanský zákoník: velký komentář. Svazek IX, § 2894–3081*, Leges, Praha, pp. 892–958.
28. Mitášová B (2022) Škoda způsobená pytláctvím, *Právní rozhledy* 30(3), pp. 101–105.
29. Pašek M (2019a) § 2912 Požadovaná míra obezřetnosti, in: Petrov, J, Výtisk, M & Beran, V (eds.) *Občanský zákoník*, C. H. Beck, Praha, pp. 3030–3031.
30. Pašek M (2019b) § 2924 Škoda z provozní činnosti, in: Petrov, J, Výtisk, M & Beran, V (eds.) *Občanský zákoník*, C. H. Beck, Praha, pp. 3052–3054.
31. Pašek M (2019c) § 2970 Náhrada při poranění zvířete, in: Petrov, J, Výtisk, M & Beran, V (eds.) *Občanský zákoník*, C. H. Beck, Praha, pp. 3136–3137.
32. Pipková P J (2013) Ochranný účel normy a jeho význam pro vymezení rozsahu odpovědnosti za škodu (k § 2910), *Právník* 152(9), pp. 869–882.
33. Psutka J (2011) *Odpovědnost za ekologické škody v občanském právu*, Wolters Kluwer, Praha.
34. Vojtek P (2021) § 2924 Škoda z provozní činnosti, in: Švestka, J, Dvořák, J & Fiala J (eds.) *Občanský zákoník. Svazek 6: (§ 2521 až 3081)*, Wolters Kluwer, Praha, pp. 971–976.
35. Vomáčka V & Bártů J (2022) Damage Caused by Game and its Compensation in Central European Countries: A Comparative Perspective, *Central European Journal of Comparative Law* 3(2), pp. 183–200, DOI: <https://doi.org/10.47078/2022.2.183-200>.

The Role of Civil Law in Environmental Protection: Liability, Damages, and Remedies in Hungary¹

Abstract

Private law liability can be placed within the scope of civil law. Private law regulates personal and financial relations, and accordingly in the field of environmental protection, it sanctions unlawful conduct caused to 'others' at the level of liability. Therefore, the primary source of law in Hungary with regards to private liability is the Civil Code. The legislation regulating environmental protection also settles liability issues under private law, including the Environmental Protection Act and the Nature Conservation Act, as well as the sectoral legislation and implementing decrees. In addition to the framework of the Hungarian legal system, the issue of liability must also be examined in international and EU areas, which influence and determine the content of environmental relations through 'soft' and 'hard' regulators.

Keywords: Environmental protection, environmental liability, environmental damage, joint and several liability, threat to the environment

1. Introduction

In general, we talk about responsibility in many contexts in connection with environmental protection. The whole of humanity is responsible for the destruction and waste of the Earth's treasures, the present generation is responsible to future generations for the protection of a healthy environment, the state is responsible to all other states for the cleanliness of the seas, rivers and atmosphere, its leaders have

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a political responsibility towards the citizens if they do not do everything possible to protect the environment. In addition, all citizens have a moral responsibility to the community if they pollute the environment. “The institution of responsibility is one of the tools of self-improvement of society, which is differentiated in many ways by interacting systems of behaviour (religion, morality, law). Yet it is a unified complex, the sub-complex of which is legal responsibility, and within that, civil liability.”² In the field of environmental protection too, the degree and extent of the self-improvement of society is the result of the combined effect of the different systems of responsibility, within which the individual sub-complexes also affect each other, but their effectiveness is not the same.³ Legal responsibility plays a prominent role, because the organising-coercive apparatus of the state stands alone behind it. The regulation of legal liability must be very clear, distinct, coherent and applicable, as it fully encompasses legal relationships. Not only legislation, but also law enforcement must deal with potential legal loopholes uniformly on the basis of dogmatic and legal interpretation in the interest of legal certainty. The field of environmental protection⁴ is made up of a complex system of administrative, civil and criminal liability.^{5,6}

Administrative and civil law aspects appear with varying intensity in environmental regulations from country to country. In general, administrative law can be said to be decisive in terms of the methodological delimitation of environmental regulation, which basically points to the predominance of state influence. At the same time, however, economic regulatory instruments, voluntary instruments and consensual instruments that reflect state influence in a less or indirect way are also gaining more prominent roles. Through these instruments, legal regulation requires the full range of public and private law instruments.

The issue of environmental liability permeates environmental regulation and the assessment of environmental use horizontally. Although a large part of the preventive tools can be linked to the regulation of the administrative area (e.g. licensing procedures), the limits of legal liability also play a role in terms of prevention, but especially in terms of reparations.⁷

The field of environmental liability is dominated by administrative liability, with civil and criminal liability gaining more and more territory. With regard to

2 | Lenkovics 2001. See also: Eörsi, 185. At the same time, Ödön Zoltán adds that “(...) liability in the field of environmental protection is also an important tool for the self-preservation of society.” Zoltán 1985, 78.

3 | Sólyom 1977, 28.

4 | See more: Farkas Csamangó, Hegyes 2017, 194–204.

5 | Text effective from April 2012 in connection with the amendment of the Environmental Protection Act. Section 101 (1) of the Environmental Protection Act.

6 | See more: Csapó 2015.

7 | Restitutive sanctions place the emphasis on the restoration and compensation of the damage and injury caused, as opposed to repressive sanctions. For more information on the sanction bond and claims settlement obligations, see: Marton 1993, 26–35.

civil liability, the issues of liability for damages naturally come to the fore. General civil liability, compensation for imputable damages, prevention for educational purposes, but at the same time financial incentives based on repression and liability-based reparations, also belong to this category. Liability for damages is a financial liability that adjusts its sanction to the damage caused, regardless of the degree of culpability of the conduct causing the damage. It is therefore characteristic that it reacts retrospectively to human behaviour that has already taken place (the damage) by imposing compensation in order to deter the perpetrator, and indeed everyone else, from similar behaviour in the future.⁸

With regards to the role of civil law, this role is particularly pronounced, which is not limited to the field of compensation – according to the classical conception – although it is indisputably one of the decisive legal institutions. However, in the context of civil law legal institutions, other areas, such as the legal protection of persons, rights in rem, the law of obligations, and the doctrine of liability, are also incorporated into the complex system of environmental regulation with a decisive role.

Private law liability can be placed within the scope of civil law.⁹ Private law regulates personal and financial relations, and accordingly in the field of environmental protection, it sanctions unlawful conduct caused to ‘others’ at the level of liability. Therefore, the primary source of law in Hungary with regards to private liability is the Civil Code.¹⁰ The legislation regulating environmental protection also settles liability issues under private law, including the Environmental Protection Act¹¹ and the Nature Conservation Act,¹² as well as the sectoral legislation¹³ and implementing decrees. In addition to the framework of the domestic legal system, the issue of liability must also be examined in international¹⁴ and EU¹⁵ areas, which influence and determine the content of environmental relations through ‘soft’ and ‘hard’ regulators.

According to the Fundamental Law of Hungary (2011), natural resources, particularly arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species and cultural values shall comprise the nation’s common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual (Art. P Section (1)), enshrines the protection of private and family life (Art. VI), recognises and enforces the right

8 | Lenkovics 2001. See more: Gellért 2007, 1224–1229.

9 | See more: Horváth 2017, 264–292; Gyüre 2024, 111–121.

10 | Act V of 2013.

11 | Act LIII of 1995.

12 | Act LIII of 1996.

13 | For example: Act CXVI of 1996 on Atomic Energy. See more about it: Mádl 2025, 47–90. See more about the regulation of other countries: Borislavova Borisova 2025, 9–46; Penttinen 2025, 91–121; Samec Berghaus, Ferčič & Drnovšek 2025, 123–155; Teles Da Silva 2025, 157–192.

14 | See more: Kecskés 2012; Majtényi 2012; Raisz 2010, 9–25.

15 | See more: Fodor 2024, 67–92.

to a healthy environment, the polluter pays principle (Art. XXI), the right to physical and mental health and GMO-free agriculture (Art. XX). The provision of the Fundamental Law uniquely formulates values, principles and rights at both European and international level that are forward-looking in terms of environmental protection.¹⁶ The provisions of the Fundamental Law¹⁷ show the commitment of the given country with regard to the enforcement of environmental interests, the enforcement of which appears in the legislation in the interest of the application of the law, and judicial practice (at domestic, EU and international level) is suitable for the enforcement of this aspiration. Accordingly, this process can also be traced in private law regulation and judicial practice.

2. Types of civil liability for environmental harm

With regards to environmental damage, it is difficult to give an exhaustive and unambiguous answer from the point of view of private liability. The concept of environmental damage is not defined in the Civil Code, so we must start from the general shape of damage. According to the traditional private law legal approach to damage, damage can be classed as material and non-material. In terms of the elements of damage, the actual loss of property, costs, lost profit, which in many cases can be detected and quantified itemised, while in the absence of this, the tools of compensating for material damage is the enforcement of general compensation.

Lenkovics stated as a problem that “a significant proportion of environmental burdens are those that are not recognized as compensable damages by traditional liability systems (e.g. general strain on the nervous system caused by noise, stench, vibration damage, aesthetic damage, etc., resulting in constant malaise, decreased performance, or possibly psychological or physical health damage). However, the legal recognition of liability for non-material damage in 1977 paved the way for compensation for such types of damage as well”.¹⁸ However, the latest judicial practice has already dealt with this problem, and the possibility of compensation for non-material damage resulting from activities harmful to the environment already appears in case law.

Thus, ‘damage’ means that damage occurs, the ecological system is affected, which includes damage to public property, private property and persons alike. We can distinguish different areas of harmful behaviour: a) people, b) the ecological

16 | See more: Szilágyi 2022, 479–526; Hornyák & Lindt 2023, 31–48; Szilágyi 2021, 130–144; Szilágyi 2019, 88–112; Olajos & Mercz 2022, 79–97.

17 | See more about the constitutional regulation of environmental protection of other countries: Ofak 2025, 349–369; Vučković 2023, 145–160; Lutman & Strojman 2023, 31–51; Židek 2021, 145–160; Rakoczy 2021, 121–129.

18 | Lenkovics 2001.

system or a living organism that is part of such a system, c) ownership, e.g. plants or animals, and d) ownership – in the form of buildings. There are damages that are significant in terms of their ecological impact, e.g. death, injury, genetic mutation, birth defect, or impairment of reproductive function in humans, and also applies to damage that causes irreversible change or causes significant change. If no actual significant damage event occurs, the possibility of the risk of significant damage also establishes the form of liability.

Anyone who causes damage in violation of the laws and specific official regulations on the protection of nature is obliged to compensate for the damage in accordance with the rules of the Civil Code on activities involving increased danger.¹⁹ Damages caused by violating the rules of nature protection includes a) actual material damage, b) loss of profit, c) justified costs incurred in connection with the elimination of the damage, d) non-material damage resulting from the deterioration of the state and quality of nature, or e) non-material damage expressed in the deterioration of the living conditions of a society, its groups or individuals.²⁰

If the extent of the damage cannot be determined, the person responsible for the damage is obliged to pay compensation in an amount that is suitable for compensating for the damage suffered by the injured party (general compensation).

Pursuant to Section 103 (1) of the Environmental Protection Act, damage caused to other parties by virtue of activities or negligence entailing the utilisation or loading of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on activities entailing increased danger shall be applied. Due to the legal connection, in addition to the rules of the Civil Code on liability for hazardous operations, its general provisions on the risk of damage also apply. Therefore, in the application of Section 103 (1) of the Environmental Protection Act, both conduct causing environmental damage and conduct threatening to cause damage provides an appropriate substantive legal basis for bringing an action.²¹

When assessing the effects of activities that use and burden the environment from a civil law perspective, several points of connection can be identified – in addition to the significant area of liability for damages and compensation. These include the possibility of applying the rules of neighbours' rights, the protection of possessions, the protection of personal rights, and liability issues arising from tortious and contractual legal relationships.

The Civil Code and the Environmental Protection Act both stipulate the unit of liability for damages arising from non-contractual damage in environmental protection. By interfering with legal regulations, it creates the possibility of

19 | Section 81(1) of the Nature Conservation Act.

20 | Section 81(2) of the Nature Conservation Act.

21 | See: Civil Decision No. 2233/2010.

uniform enforcement of the law for the application of the law. Thus according to the Civil Code, a person who pursues an activity that is considered highly dangerous shall be liable for any damage caused thereby. Where such a person is able to prove that the damage occurred due to an unavoidable cause that falls beyond the realm of highly dangerous activities, he shall be relieved from liability. These provisions on the liability for hazardous operations shall also apply to persons who cause damage to other persons through activities that endanger the human environment (Civil Code, Section 6:535 (1)–(2) [Liability for hazardous operations]).

Based on the provisions of the Civil Code, the rules of liability for hazardous operations can be applied in two ways. On the one hand, if the activity can be traced back to the nature of a hazardous operation, i.e. there is a hazardous operation qualification (the scope of which varies and can be determined individually). It is not even possible to provide an exhaustive list of behaviours, because the content and scope of this activity changes and expands with the development of technology, therefore the court must decide individually whether the activity arising in the given case entails an increased danger (BH2002. 306). Therefore, the law continues to leave it to case law to determine what constitutes a hazardous operation. The position developed by the Budapest Court of Appeals formulated a system of guiding criteria, according to which an activity is associated with increased danger if even a relatively minor irregularity occurring during its continuation could create a dangerous situation threatening serious damage. The activity is also classed as extremely dangerous if the lesser culpability of the person who continues it would create a situation threatening serious damage, and if it would cause a threat of damage to the life, physical integrity, health or property of a larger number of persons at the same time (BDT2012. 2661). When assessing an activity involving an increased risk, the characteristic features of the device used in the course of operation must be examined, and the consequences of the possible causal process that can be initiated by the activity must also be taken into account. It must be considered on a case-by-case basis whether a minor malfunction occurring during normal use could cause disproportionately widespread or disproportionately serious damage (BDT2010. 2358).

On the other hand, if a threat to the environment can be established, it is not the hazardous nature of the operation that is decisive, but the fact of the threat to the environment itself that gives rise to the application of objective liability. In many cases however, the threat to the environment resulting from environmentally hazardous behaviour can be traced back to the hazardous nature of the operation. The point of connection formulated by the Environmental Protection Act focuses on the application of the rules on activities involving increased danger, according to which damage caused to other parties by virtue of activities or negligence entailing

the utilisation²² or loading²³ of the environment shall qualify as damage caused by an activity endangering the environment, and the provisions of the Civil Code on activities entailing increased danger shall be applied (Environmental Protection Act Section 103(1)). The Civil Code contains an analogy, according to which the rules on activities involving increased danger must be applied to those who cause damage to others with their activities endangering the human environment. This indicates that a tortfeasor by an activity endangering the human environment is liable under the rules of civil law, and on the other hand, that the legal provision also determines the possibility of exemption from this liability.

We need to clarify the terminology of the Environmental Protection Act in order to properly handle individual conceptual elements. The behaviours and consequences associated with the use of the environment²⁴ form a close chain of concepts to be interpreted together. A threat to the environment is actually a dangerous behaviour that can cause damage to the environment. However, environmental damage already has a harmful result. At the same time, environmental pollution does not necessarily mean the state prior to threat to the environment but hides the circumstances through which threat can occur²⁵ (BH2007. 16., BH2007. 259., BH2003. 419). Environmentally hazardous behaviour can generally be established as a consequence of behaviours falling within the scope of causal environmental law, but of course not exclusively. Such behaviour includes, for example, threat to the environment arising from noise pollution.

22 | Pursuant to Section 4 of the Environmental Protection Act 'utilization of the environment' means causing changes in the environment and making use of the environment or any of its components as natural resources. 'Environmental component' means land, air, water, the biosphere as well as the built (artificial) environment created by humans as well as the constituents thereof. 'Environment' means the environmental components and the systems, processes and structure thereof. 'Natural resource' means the environmental components or certain constituents thereof (with the exception of the artificial environment) that may be used for satisfying the needs of society.

23 | 'Environmental impact' means the direct or indirect emission of a substance or energy into the environment.

24 | 'Use of the environment' means an activity involving the utilisation or loading of the environment or a component thereof.

25 | 'Environmental pollution' means loading a component of the environment above the emission standard; unlawful conduct, which, if it can be traced back to human conduct, is a case of exceeding the limit set by law or in an official decision.

'Level of environmental' pollution means the state of the environment or a component thereof that may be characterized by a pollution level that has occurred as a result of environmental pollution.

'Threat to the environment' means the imminent threat of environmental damage.

'Activity posing imminent threat to the environment' means an act or omission leading to an imminent threat of environmental damage.

'Damage to the environment' means an act or omission as a result of which environmental damage occurs.

'Environmental damage' means any measurable adverse and significant change in the environment or any environmental components which may occur directly or indirectly, or any measurable impairment of a natural resource service which may occur directly or indirectly.

However, when examining behaviour that endangers the environment, the provisions of the Environmental Protection Act must be taken as a starting point. According to the Environmental Protection Act 'threat to the environment' means the imminent threat of environmental damage. Environmental damage means any measurable adverse and significant change in the environment or any environmental components which may occur directly or indirectly, or any measurable impairment of a natural resource service which may occur directly or indirectly. According to the Environmental Protection Act, any activity posing imminent threat to the environment means an act or omission leading to an imminent threat of environmental damage, while damage to the environment means an act or omission as a result of which environmental damage occurs. It follows from all of this that the consequence, i.e. threat to the environment or damage to the environment, can be achieved by active and non-active (omission) behaviour, however the behaviour endangering the environment does not necessarily have to produce environmental damage, the direct risk of environmental damage is sufficient. However, this emergency situation cannot be measured, it is difficult to define it exactly, which again puts the emphasis on the judge's discretion and the importance of case law as in the assessment of the dangerous nature of the operation.

With regards to the protection of personality rights and the protection of possession, the general forms of liability for damages can be applied, and not the dangerous operational, objective liability form. Therefore, it is of decisive importance in determining the legal basis for the enforcement of claims, which makes it easier or more difficult to enforce the applicant's position with regards to the burden of proof.

In civil legal relationships, therefore, a distinction must be made between cases of contractual and non-contractual liability. While in the above we have touched on the issue of liability outside the contract, the issue of foreseeability is relevant in contractual relationships. Pursuant to Section 6:142 of the Civil Code, the person who causes damage to the other party by breaching the contract shall be liable for such damage. It is exempt from liability if it proves that a) the breach of contract was caused by a circumstance beyond its control, b) a circumstance that was not foreseeable at the time of conclusion of the contract, c) and it could not be expected that the circumstance was avoided or the damage was averted.

3. Legal standing: Who can claim damages?

In private and civil proceedings, anyone whose personality or property rights have been violated may be a plaintiff. The prosecutor also has the right to initiate a lawsuit in case of endangerment to the environment and may propose a ban on the activity or the payment of damages. On the defendant's side is the user of the environment, i.e. the person who has rights and obligations in relation to the

environment, or who carries out behaviour related to the use, burden, endangerment and pollution of the environment.

The Deputy Commissioner for Fundamental Rights (Ombudsman), who²⁶ is responsible for the protection of the interests of future generations, monitors the enforcement of the interests of future generations.²⁷ The procedure of the Commissioner for Fundamental Rights may be initiated by anyone who considers that the activity or omission of an authority violates or entails a direct threat to his or her fundamental right, provided that he or she has exhausted the available administrative remedy. The Commissioner for Fundamental Rights may also initiate proceedings *ex officio* if it becomes necessary to investigate a maladministration affecting a larger group of natural persons or if a comprehensive examination of the enforcement of a fundamental right is necessary. In Hungary, social organisations also carry out significant and decisive activities in order to enforce environmental interests. Under certain conditions, social organisations have the status of clients and can therefore participate in the proceedings of the authorities and courts. The procedure of the Commissioner for Fundamental Rights and the activities of social organisations can be fundamentally linked to matters related to public administration. However, it should be noted that they are of great importance and effectively contribute to environmental interests in the course of environmental enforcement, using various tools. Their activities are outstanding in the field of fact-finding, establishing legal conclusions, gathering and collecting information, and the information and findings revealed in the course of this activity can also be used in private law proceedings.

There are no special rules for civil lawsuits in environmental matters. Depending on the legal basis for the enforcement, civil, administrative or criminal proceedings take place.

4. Burden of proof and causation

In the examination of the question of legal liability, one of the most important and debatable issues is the question of causality, which can be approached on the basis of private law as the question of the existence and determinability of the causal relationship between the conduct causing the damage and the occurrence of the damage as a result. There is no legal dispute for damages that does not focus on the issue of causality, which is especially true in the case of certain special tortious liabilities,²⁸ where the existence of causality is a factor that creates liabil-

26 | Act CXI of 2011 on the Commissioner for Fundamental Rights

27 | See more: Bándi 2020, 7–22; Bándi 2021, 342–349; Bándi 2022, 17–71; Krajnyák 2022, 203–248.

28 | According to Bar, in the case of tort liability, causality is the established necessary connection between an erroneous human behaviour and the existence of a source of danger, as well as the damage to be compensated for which the actor or omission must be liable. Bar 1999, 463.

ity.²⁹ The concept of causation is not defined, it is necessary to establish the facts and aspects to be taken into account during the assessment, for which the legal provisions provide a framework, legal practice and theory provide a basis.

According to the foreseeability limit of the Civil Code (Section 6:521 of the Civil Code), no causal relationship shall be deemed to exist in respect of any damage that the tortfeasor could not and should not have foreseen. However, the examination of the foreseeability aspect could already be discovered in the earlier case law of the court (BH1984. 195, BH2008.299, BDT2011. 2393). The foreseeability limit can also be derived from the previous regulation. In the Hungarian regulation in force, the starting principle of the causal relationship is that the person who causes damage is obliged to compensate it. The tortfeasor shall be relieved of liability if his or her actions or omissions were not imputable. According to the doctrine of imputability, the person liable for damage is the person whose conduct has a contemplation of the harmful consequences and covers the foreseen or foreseeable consequences. Within the scope of material liability regulated by the Civil Code, the liability of the operator of a hazardous operation can be established regardless of the content of the consciousness, it is sufficient to have causality in the sense that the damage occurred in connection with the operation of the hazardous operation. The question of causality is both a condition of liability and a basis of liability in the case of this situation (activity involving increased danger).³⁰ The relationship between cause and effect creates it, the lack of which does not establish liability. In the case of damage caused by an activity involving increased danger, which occurs as a result of a hazardous operation or environmental hazard, a presumption of causation can be established.

In the course of the examination of causality, it is necessary to first focus on the exploration of the causes leading to the damage (causal identification), and then on the determination of the relevant causes (causal selection). The *conditio sine qua non* (doctrine of the equivalence of conditions) only serves to explore and sequencing the acts that preceded the occurrence of the damage. The doctrine of the 'closest cause' examines the relationship between an action and regularity in time and space. As a cause-selection theory, it tries to find the act that has the most direct relationship with the damage. A supplementary element and organising principle of this is the assessment of the issue of foreseeability.³¹ In the course of assessing the injury caused, increased attention is paid to the enforcement of the foreseeability clause, but in the case of multiple damages, the elements of adequate causality prevail dominantly, but not as the only ones.

29 | Bar 1999, 434–435.

30 | Szalma 2000, 51 and 61. See more: The elements of the liability condition and the liability basis are set out in Section 339 of the Civil Code and Section 345 of the Civil Code. In the case of material liability, fault – even if it exists – does not have a decisive role in liability.

31 | Fézér 2006, 127.

On the basis of the principle of full compensation, the compensation realised with the interests of the injured party in mind is reduced in certain cases. Behaviours aimed at this include the contribution of the injured party, and in the case of the accumulation of causes, the establishment of the liability of those who caused the damage. These aspects all lead to the fact that in the event of a violation of the linear causal chain or adequate, equivalent causes, the tortfeasor's obligation to pay full damages is also impaired. In other words, approaching the issue from another angle, the complete and exclusive existence of causality generally leads to full compensation, and the question of causality also affects the amount of compensation. Factual causes and causal, legal causation must be synchronised in order to establish liability.

The court can approach the question of causation from three aspects. Firstly, the determination of causes closer in time (*causa proxima*), secondly, the most influential causes, and thirdly, the effect of the series of causes (cumulative coefficient causes).³² In the case of environmental damage, the exploration and assessment of cause and effect is very difficult, which basically stems from the fact that the time frame of environmental damage is wide, requiring the examination of several coefficient conditions, and the scope of those affected is also difficult to determine in many cases. In the case of environmental damage, the evidentiary procedure is usually very complicated and has an uncertain outcome. In the case of multiple inseparable pollution sources, joint and several liability of the tortfeasors is established.

In some cases, it is very difficult to establish a causal relationship. It is hardly possible to select and prove a 'relevant' cause, the result is usually at the end of a whole chain of reasons.

In the case of multiple contributing factors that have led to a harmful outcome, the relationship between the causes plays a major role. In the case of a set of causes, we can distinguish between cumulative³³ and competing causes. In the case of cumulative causes, multiple damages and joint and several liability are usually established. In the case of competing causes, causality is combined with a legal precondition, resulting in a reduction and individualisation of liability.³⁴

4.1. Joint and several liability

Joint and several liability is a legal institution related to the joint cause of damage, according to which the damage arises as a result of the combined conduct

32 | Julesz 2007, 36.

33 | In the case of the cumulation of causes, damage occurs as a result of several acts, in such a way that all of them contributed to the occurrence of the damage to some extent. In the case of competition between causes, the decisive cause and thus the person causing the damage are selected from the causal chain according to certain criteria. See more: Szalma 2000, 79.

34 | Lenkovics 2001.

of several persons.³⁵ “Co-causation is the phenomenon that several people are involved in the causal process that has produced a harmful result with such a contribution without which the event in question would not have occurred.”³⁶ From the point of view of the relationship between the contribution of the persons, it is irrelevant whether they were aware of each other’s activities or not, or to what extent they contributed to the development of the harmful result, nor whether their harmful behaviour is the same or different in time (BDT2011. 2538). Thus, it is basically a prerequisite for the application of joint and several liability that the coefficients of their conduct have an effect and point in the direction of the occurrence of the damage, i.e. a causal relationship can be demonstrated between the conduct causing the damage and the damage. It is characterised by the fact that it can also be applied if the harmful conduct can be assessed on the basis of other grounds for liability (BDT2010. 2363, P. Act III/B. 20408/1965, Pf. V. 21379/1979). In the case of so-called ‘intentional co-causing’, the tortfeasors cause the damage through joint conduct (will), regardless of whether the activity is carried out at the same time or at different times, and regardless of the extent to which the individual activities interact.

In the case of so-called ‘involuntary co-causing’, the damage was caused by the separate conduct of several persons (not by common will).³⁷ In this case, the application of the joint and several rule is possible if the damage would have been caused by any of the activities (omissions) alone;³⁸ or the unlawful consequence is the result of multiple interactions; or the damage is not the result of a combined effect, but the activities are causally linked to each other and, according to general life experience, the individual damages help and strengthen each other. In such a case, the proportion of joint damage cannot be determined, and it is not possible to determine which of their activities actually caused the damage, but the activity of all of them can be established as a causal condition. There is no need for unity of will between the tortfeasors. Based on this objective approach, the combined effect of the conduct of the tortfeasors is decisive. On the basis of the above therefore, the conditions of joint and several liability are not met if, in the case of joint damage, the individual conduct causes damage completely independently of each other in such a way that the causal link cannot be established. Thus, a distinction must be made between the absence of the conditions of joint and several liability and the omission of joint and several liability. While in the former case there is no causal link between the harmful conduct of the individual activities, in the latter case joint

35 | Joint damage of several persons Section 6:524 of the Civil Code.

36 | Marton 1993, 131. See more: 147.

37 | Co-causation can occur by joint causation, or by independent actions in the framework of involuntary cooperation (simple co-causality). See more: Marton 1993, 147.

38 | For example, gas from a chemical plant pollutes the air, which is itself a cause of environmental pollution, regardless of the fact that there are other air pollution plants in the area. However, there is joint and several liability based on joint tort if all of the harmful conduct was capable of causing the damage.

and several liability can be established, but the court may disapply it. In the case of multiple damages, of course, the law may also expressly order the application of joint and several liability in certain cases.³⁹

The justification for the application of joint and several liability is created by the reparation of the injured party and the balancing of the injured party's position. On the other hand, it creates the complete vulnerability of the tortfeasor in a case where, from the point of view of establishing liability, the minimis tortfeasor bears the compensation for the entire damage, even if this liability lasts temporarily until the final conclusion of the enforcement of the right of recourse against the tortfeasor. Accepting the legal policy requirements of the injured party's reparations, the primacy of the injured party and the difficulties of enforcing shared liability (Section 6:524 (2) of the Civil Code), it is expedient in practice to enforce the legal institution of joint and several liability very carefully and as an exceptional option.

Section 6:524 (4) of the Civil Code extends the rules of joint tort and introduces the so-called 'alternative liability'.⁴⁰ According to this, the provision applicable to joint tortfeasors shall apply *mutatis mutandis* also if any one of the activities carried out concurrently would in itself be sufficient to cause the damage, or if the particular activity that in fact caused the damage cannot be identified. In this case, it is a question of an analogous assessment of concomitant behaviour. While in the case of joint tort, the contribution of the harmful behaviour is significant, in this case a person whose behaviour did not cause damage can also be held liable.

4.2. Special rules of joint and several liability in environmental protection

The joint and several liability of the obligated party may be based on legislation or contract, but it can also be triggered by the nature of the service (indivisible service). The Civil Code establishes joint and several liability in the case of several legal institutions, but the rules of joint and several liability laid down in other legal acts can also be included here. In the case of environmental damage, Section 102 of the Environmental Protection Act lays down special rules. These rules regulate the joint and several liability of the owner and possessor of the property, and in the case of companies (business associations), the founders and successors, the members and executive officers, and their conditions.

4.2.1. Joint and several liability of the owner and possessor (user) of the property

"Environmental damage often occurs only as a result of the polluting behaviour of several emitters, each of which is of negligible danger, or after several years of cumulation of pollutants. In such a case, the first obstacle to the – joint and

39 | Nochta 2012, 119–136; Zoltán 1985, 119.

40 | Lábady 2014, 173; Fuglinszky 2015, 352–364.

several – conviction of the single or multiple tortfeasors is the ‘finding’ of the person who caused the damage.”⁴¹ In the case of material liability, the tortfeasor is determined by causality as a criterion establishing liability and points to the responsible person. The legal provisions may also determine the scope of potentially affected persons, e.g. the owner of the property, the operator of a facility, the previous owner, the operator at the time of contamination, the transporter of the hazardous material to the site, the seller of the hazardous material, etc.

Court case law consistently applies joint and several liability for harmful conduct on property. The vast majority of environmentally polluting behaviours can be linked to this fact. The law provides for the possibility of applying the special rules of joint and several liability regulated by the Environmental Protection Act not only in the field of public law, but also in the field of private law, given that these rules can be found among the general provisions of liability. However, it should be noted that the Environmental Protection Act is fundamentally public law in nature.

According to the Environmental Protection Act (Section 102) liability for environmental damage or for any risk to the environment shall fall joint and severally – pending proof to the contrary – upon the person who is registered as the owner or possessor (user) of the property after environmental damage or threat to the environment has occurred on which the activity resulting in damage to the environment or posing imminent threat to the environment was carried out. The owner shall be exempted from joint and several liability if able to name the actual user of the real property and if able to provide proof beyond any reasonable doubt that liability does not lie with him. These provisions shall be appropriately applied to the owners and the possessors (users) of non-stationary (mobile) contaminating sources.⁴² The rule formulated is not a direct liability rule, but rather a liability-based rule, according to which the obligated party is liable for its polluting activities even if it does not itself engage in polluting activities.

4.2.2. Joint and several liability of the founders and successors of business associations

If several polluters of the environment jointly form a business association to unite the similar or complementary activities that they had formerly performed, such business association shall, with respect to environmental protection obligations, be regarded as the successor in title of the founders, and its liability shall be

41 | Lenkovics 2001.

42 | Section 102(1)–(3) of the Environmental Protection Act. On the basis of the previous law in force before 2007: “Liability for illegal activity, with the exception of criminal and misdemeanour liability, shall be borne jointly and severally by the owner and possessor (user) of the property on which the activity is or was carried out, until proven otherwise.”

joint and several with the founders (Section 102(4) of the Environmental Protection Act).

Sui generis legal succession based on legislation and the joint and several liability regulations established in the relationship between the legal predecessor and the legal successor, may only be applied in the field of environmental protection and under its legal effect. This is not a case of organisational (company law) succession, but the governing provision establishes *sui generis* joint and several liability based on legislation under the scope of the Environmental Protection Act, which means continuity in activity. The issue of continuing the activity should be interpreted broadly in the sense that the activities of each founder do not necessarily have to be the same or have the same scope of activity, as it can also be determined by considering the persons performing different sub-processes projected onto the vertical of the given activity process.

The circle of persons established with regards to the joint and several liability of business associations and their founders is sufficiently, although not exhaustively, but it can be stated that the legal regulation does not differentiate between legal entities and natural persons (at least in their capacity as founders).

4.2.3. Joint and several liability of executive officers and members

Those members (shareholders) of a business association, or the owner of a sole proprietorship, and their executive officers who have supported a resolution (measure), in respect of which they knew, or should have known given reasonable care that such resolution (measure) if carried out would cause environmental damage, shall bear unlimited and joint and several liability in the event of the termination of the business association or sole proprietorship for the company's ensuing liability for remediation and compensation for damages, which the company did not satisfy (Section 102(5) of the Environmental Protection Act).

The liability of the member and the executive officer exists in the case of the dissolution of the company, so it can be applied as an underlying liability rule. The obligation for restoration costs and compensation for damages is primarily borne by the company. In the case of its termination – subject to the specified conditions – it is possible that those whose conduct can be traced back to environmental damage cannot evade liability, and in the case of the termination of the company, the possibility of liability is ensured.

4.3. Exemption from liability

In environmental law, we can talk about compensation for damage caused to others on the basis of private liability. A significant area of environmental regulation is administrative, public law liability, the primary purpose of which however, is to implement or enforce reparations in kind (restoration of the original state).

Compensation is the dominant way to create a balance of interests and values in environmental damages under private law, both in its vertical related to the protection of property and personal rights.

From the perspective of the legal basis for compensation (non-contractual, i.e. tortious) liability, it is decisive in the enforcement of claims what legal basis the plaintiff specifies in enforcing compensation, and to which form of liability under the Civil Code the plaintiff refers in submitting its claim. This can be done by referring to the general rules of compensation or by indicating the rules on liability for hazardous operations. Obviously, the reference to the liability for hazardous operation is more favourable to the plaintiff from the point of view of the burden of proof (Győr Court of Appeal, Pf.I.20.234/2015/7/I.).

The liability rule related to activities involving increased danger allows for excussion, in a rather narrow circle. While the injured party has to prove the damage and the causal link due to the centre of gravity of the burden of proof, the person who caused the damage must prove that the damage was caused by an unavoidable cause outside the scope of the activity involving increased danger. This means two but interrelated, i.e. conjunctive conditions.⁴³

5. Remedies and compensation

There is no special order for the conduct of civil proceedings and the system of legal remedies, the general procedural rules apply.⁴⁴

In a substantive sense, there are discernible specialties in terms of reparation for damages. The Civil Code emphasises monetary compensation as a method of compensation. The tortfeasor shall provide compensation in cash, unless compensation in kind is justified by the circumstances. In determining the mode of compensation, the court shall not be bound by the injured party's request, however the court shall not order any mode of compensation such that is objected to by all of the parties. Compensation may be awarded in a lump sum or in the form of an annuity, taking into account the circumstances of the case and the legal provisions.⁴⁵

In addition to the provisions of the Civil Code, restoration in kind is the primary aspect of environmental protection and nature conservation. In the event of damage, restoration in kind must be attempted in the first place, and in this case, the damage also includes the costs of restoring the original condition.⁴⁶ An action for compensation for non-material damage arising from the deterioration of the living conditions of society or its groups may be brought by the prosecutor and the compensation awarded must be paid to the current account of the ministry headed

43 | Pusztahelyi 2015, 309–310.

44 | See another country's example: Zdráhalová & Vomáčka 2025, 237–260.

45 | Civil Code, Section 6:527.

46 | Section 81(3) of the Nature Conservation Act.

by the minister for the payment of nature conservation damages. The amount of compensation received may only be used for the implementation and support of nature conservation goals and tasks.⁴⁷

In the case of endangering the environment or damaging the environment, the possibility can be derived from private and public law regulations that the authority or the court prohibits the person committing the unlawful behaviour from using the environment, or suspends or restricts his or her activities. This possibility also appears in the Civil Code, and these substantive rules can also be proposed as interim measures during the litigation procedure. In case of the presence of imminent danger, the endangered person shall be entitled to request the court, as it follows from the circumstances of the case a) to restrain the person imposing such danger from continuing such conduct; b) to order the person imposing such danger to take sufficient preventive measures; c) to order the person imposing such danger to provide sufficient guarantee.⁴⁸ Providing adequate security can be interpreted differently in private law and public law regulations. In private law regulation, the obligation to provide security is an opportunity and obligation to solve, avert and repair the harmful consequences of a given conduct. In public law, the law prescribes an appropriate financial guarantee for the performance of activities involving the use of the environment specified in the administrative authority licensing procedure. Examples include waste management activities or mining activities. Proof of financial security is an essential condition for the issuance of a licence, so it is a condition related to an official act.

6. Defences and limitations

The liability of those who cause damage and the possibilities for victims to assert their claims are influenced by various restrictive provisions. Claims for environmental damages usually arise from non-contractual legal relationships.

The general limitation period for civil claims is five years. The limitation period for liability for activities involving increased danger is shorter, namely three years. If the environmentally damaging behaviour also constitutes a criminal offence, the limitation period is adjusted to the limitation period of criminality. The rules governing the extension and interruption of the limitation period allow for the extension of the time limit for enforcing a claim. Injured parties can enforce their claims within the specified limitation period.

The Civil Code prohibits unlawful damage. All damage shall be considered unlawful, unless the tortfeasor has committed the damage a) with the consent of the injured party; b) against the assailant in order to prevent an unlawful assault

47 | Section 81(4) of the Nature Conservation Act.

48 | Section 6:523 of the Civil Code.

or a threat suggesting an unlawful direct assault, if the tortfeasor did not use excessive measures to avert the assault; c) in an emergency, to the extent deemed proportionate; or d) by way of a lawful conduct, and such conduct does not violate the legally protected interests of others, or if the tortfeasor is required by law to provide compensation.⁴⁹

Any person who causes damage to another person wrongfully shall be liable for such damage. The tortfeasor shall be relieved of liability if able to prove that his conduct was not actionable.⁵⁰ The injured party is obliged to prevent, avert and mitigate damages. The tortfeasor is not obliged to provide compensation for the damage caused by the imputable breach of these obligations.

The tortfeasor must compensate for the entire damage. In the case of circumstances deserving special consideration, the court may determine the amount of compensation at a lower amount than the total damage.

Force majeure leads to exemption from liability. This statement applies to both general liability and special forms. A causal relationship cannot be established in relation to damage that the tortfeasor did not and should not have foreseen.

7. Challenges and shortcomings

Civil proceedings primarily involve claims for damages and proceedings for the protection of property rights, neighbour rights, and personal rights relating to physical and mental health. In these procedures, the prohibition of environmentally hazardous and damaging activities and financial reparation are the decisive legal consequences. If we want to draw further generalisations, then financial compensation is decisive, which in itself is not a reassuring legal consequence and a preventive tool from the point of view of environmental interests.

With regard to environmental private law damages, it is worth recalling two Hungarian cases. One of them is the cyanide pollution of the Tisza (2000), when the dam of the sludge reservoir of the Romanian gold mine burst and cyanide and various precious metals got into the Tisza, which destroyed the fish stocks and the wildlife of the river. A lawsuit was initiated, where the Hungarian state sued the mining company. The state won the lawsuit, but due to the liquidation of the company, the financial compensation (nearly 30 billion HUF) could not be collected. During the cyanide pollution of the Tisza, many private individuals and businesses found themselves in a difficult situation, such as restaurateurs in the Tisza region, etc., who did not receive compensation for their damages. The case is considered to be of such magnitude that it can be considered a catalyst for the creation of the 2004 EU Environmental Liability Directive.

49 | Section 6:520 of the Civil Code.

50 | Section 6:519 of the Civil Code.

The other case is the red sludge disaster in Ajka (2010), where the red sludge storage dam of the Ajka Alumina Plant burst and caused the most serious industrial disaster in Hungary. People died, and huge financial and environmental damage was caused. The claims for damages were enforced on the basis of the objective, high-risk liability form and the court established the liability of the tortfeasor on this basis. However, the case has shown that there is no adequate security system either in Hungary or at an EU level.

8. Future perspectives and conclusions

Hungary has fulfilled its implementation obligations on time, and in the field of environmental protection, the 'phase delay' in legislation and law enforcement cannot really be established in a legally sanctionable manner, but there are areas, e.g. the development of the security system, the implementation of which is a topical issue from both a legal and economic point of view. There is no uniform private liability law in the EU legislation, and the 2004 Environmental Liability Directive is essentially administrative in approach. There are conventions regulating civil liability in international law, which do not define the framework of liability in a general manner, but concentrate on certain activities (e.g. oil transport, etc.). Environmental protection is not a specialised area in private law. During the drafting of the Hungarian Civil Code, there was a codification proposal that defined environmental damage. However, this proposal was not finally regulated. A private law interpretation of environmental damage would be expedient from the point of view of legal theory and legal dogma.

In the field of environmental law, environmental use processes can be grouped and analysed according to different aspects. Analysing the processes of environmental use, we can conclude that there are activities that do not stop at the level of lawful behaviour but have consequences arising from an activity that need to be repaired. The principle of liability has been formulated explicitly and implicitly at the legislative level and the 'polluter pays' principle. Although the two principles are not considered synonymous, one is incorporated into the other, there is an overlap between the two principles. The joint enforcement of the two principles means that whether it is a question of lawful or unlawful conduct as a use of the environment, it may entail liability and payment obligations.⁵¹

In the area of environmental liability, the issue of financial security for financial settlement is essential. The process does not stop at the determination of liability and the imposition of legal consequences the legislation must also cover

51 | Csák 2011, 31–46; Csák 2008, 171; Bobvos et al. 2006, 29–54; Szabó 2007, 215–224. Cf: the Court of Justice of the European Union in Case C-378/08 and Joined Cases C-379/08 and C-380/08 (*Rada de Augusta* cases) following a reference for a preliminary ruling from an Italian court.

the elements necessary for its implementation. When determining the scope of financial coverage, the legal institutions of collateral, insurance, and provisioning came to the fore, with the proviso that these legal institutions can be interpreted as collective terms, particularly with regards to collateral and insurance. In each case, the user of the environment must bear financial burdens. In some cases, this means a specific payment obligation (fee, commission, etc.), in other cases it means the commitment of own resources and the withdrawal of funds at the expense of the environmental user. These costs will obviously appear in the price of products and services. To this end, a system operating at a reasonable cost level must be established. The establishment of a system of financial guarantees is therefore not only significant and subject to scrutiny in terms of the relationship between the law and its intended results but is also a subject of analysis in economic terms.⁵²

Liability, the security system, litigation and out-of-court procedures may provide a solution in the case of damages. However, if we keep in mind the central principle of environmental protection, the principle of prevention, then a system of tools should be developed in this area. This would result in the introduction and application of environmental compliance in the case of businesses.

52 | Nagy 2011, 247–258; Olajos 2010, 199–211. See also: Erdős 2010, 132–145; Erdős 2012b, 255–271; Erdős 2012a, 38–50; Nagy 2012a, 339–350; Nagy 2012b, 1–9.

Reference list

1. Bándi Gy (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *JAEL* 15(29), pp. 7–22, DOI: <https://doi.org/10.21029/JAEL.2020.29.7>.
2. Bándi Gy (2021) Környezetbiztonság – jövő nemzedékek védelme – elővigyázatosság, *Scientia et securitas*, 2(3), pp. 342–349, DOI: <https://doi.org/10.1556/112.2021.00049>.
3. Bándi Gy (2022) Sustainable Development, the Interests of Future Generations and Moral and Legal Implications, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*, CEA Publishing, Miskolc–Budapest, pp. 17–71, DOI: https://doi.org/10.54237/profnet.2022.jeszcepf_2.
4. Bar C (1999) *Gemeineuropäisches Deliktsrecht*, 2nd. edn., Kausalität und Zurechnung, Verl. C.H. Beck, München.
5. Bobvos P, Csák Cs, Horváth Sz, Olajos I, Szilágyi J E & Prugberger T (2006) The polluter pays principle in the agriculture, *JAEL* 1/2006, pp. 29–54.
6. Borislavova Borisova O (2025) The Nuclear Future of the Republic of Bulgaria – Trends in the Development of the Regulatory Framework for the Construction and Operation of Nuclear Power Plants, Problems and Recommendations for Improvement, *JAEL* 20(38), pp. 9–46, DOI: <https://doi.org/10.21029/JAEL.2025.38.9>.
7. Csák Cs (2008) *Környezetjog: Előadásvázlatok a környezetjogi gondolkodás köréből*, Novotni Kiadó, Miskolc.
8. Csapó O (2015) *A környezetjogi felelősség határai*, PhD thesis, Pázmány Péter Katolikus Egyetem, Budapest.
9. Eörsi Gy (1976) Tézisek a polgári jogi felelősségről, *Állam- és Jogtudomány*, 19(2).
10. Erdős É (2010) Az állami támogatások jogi szabályozásának anomáliái, *Pénzügyi Jogot Oktatók Konferenciáinak előadásai 2006–2009*, Novotni Kiadó, Miskolc, pp. 132–145.
11. Erdős É (2012a) A beruházás ösztönzés és a környezetvédelem, in: Raisz A (ed.) *A nemzetközi környezetjog aktuális kihívásai*, Miskolci Egyetem, Miskolc, pp. 38–50.
12. Erdős É (2012b) Az európai adóharmonizáció, mint a káros adóverseny elleni fellépés eszköze, *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica* 30(2), pp. 255–271.

13. Farkas Csamangó E & Hegyes P (2017) Environmental Law in Hungary, in: Wang G, Yuk-Lun Lee A, Priscilla & Mei-fun Leung P (eds.) *Essentials of the Laws of the Belt and Road Countries: Greece, Hungary, Norway*, Zhejiang University, Hangzhou, Kína, pp. 194–204.
14. Fézer T (2006) Az okozati összefüggés értelmezésének változatai az európai államok kártérítési jogában, *Collega* 2–3/2006, pp. 127–131.
15. Fodor L (2024) A környezetvédelmi szabályozás főbb irányai európai uniós tagságunk első húsz évében, *Állam- és Jogtudomány* 65(2), pp. 67–92, DOI: <https://doi.org/10.51783/ajt.2024.2.04>.
16. Fuglinszky Á (2015) *Kártérítési jog*, HVG-ORAC Kft., Budapest.
17. Gellért Gy (2007) *Kommentár: A Polgári Törvénykönyv magyarázata 1. kötet*, Complex Kiadó Budapest.
18. Gyüre A Cs (2024) A környezeti felelősségről és fenntarthatóságról az éghajlatváltozás tükrében, in: Boóc Á & Miskolczi-Bodnár P (eds.) *65 Studia in honorem Tibor Nochta*, Károli Gáspár Református Egyetem, Állam- és Jogtudományi Kar, Budapest, pp. 111–121.
19. Hornyák Zs & Lindt R (2023) Liability rules protecting waste management in the light of the right to a healthy environment, *JAEL* 18(35), pp. 31–48, DOI: <https://doi.org/10.21029/JAEL.2023.35.31>.
20. Horváth G (2017) A polgári jogi felelősség agrárjogi, illetve környezetjogi vonatkozásai, in: Köhidi Á, Fazekas J & Csitéi B (ed.) *Állandóság és változás: Tanulmányok a magánjogi felelősség köréből*, Gondolat Kiadó, Budapest, pp. 264–292.
21. Julesz M (2007) *A környezetvédelem polgári jogi vonatkozásai*, PhD thesis, University of Pécs, Pécs, <https://pea.lib.pte.hu/server/api/core/bitstreams/276d4d40-0cde-4b80-be22-a41de6649013/content> [25.08.2025].
22. Kecskés G (2012) *A környezeti károkért való felelősség a nemzetközi jogban*, PhD thesis, Széchenyi István Egyetem, Győr.
23. Krajnyák E (2022) Hungary: A Progressive Approach to the Protection of the Environment and Future Generations in a Traditional Constitution, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations*, CEA Publishing, Miskolc–Budapest, pp. 203–248, DOI: https://doi.org/10.54237/profnet.2022.jeszcpfeg_6.
24. Lábady T (2014) A deliktuális felelősség fontosabb változásai az új Ptk.-ban, *Jogtudományi Közlöny* 4/2014, pp. 169–179.

25. Lenkovics B (2001) *A polgári jog lehetőségei a környezetvédelemben*, in: *A környezetvédelmi jogalkotás és jogalkalmazás időszerű kérdései c. konferencia előadásai*, 13–14 December 2001.
26. Lutman K & Strojan L (2023) State liability for health damage caused by excessive air pollution: Constitutional and Private Law aspects, *JAEL* 18(34), pp. 31–51, DOI: <https://doi.org/10.21029/JAEL.2023.34.31>.
27. Mádl MV (2025) Hungary's Nuclear Legislation in Light of a Nuclear Renaissance, *JAEL* 20(38), pp. 47–90, DOI: <https://doi.org/10.21029/JAEL.2025.38.47>.
28. Majtényi B (2012) *A környezet nemzetközi jogi védelme*, Elte Eötvös Kiadó, Budapest.
29. Marton G (1993) *A polgári jogi felelősség*, Triorg Kft., Budapest.
30. Nagy Z (2011) Fenntartható költségvetési elvonások rendszere a környezetvédelem területén, *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica* 29(1), pp. 247–258.
31. Nagy Z (2012a) A közpénzügyi támogatási jogviszony a közjogi és a magánjogi szabályozás metszetében, *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica* 30(2), pp. 339–350.
32. Nagy Z (2012b) Adó és támogatáspolitikai szabályozás hatékonysága a környezetvédelem területén, *Pázmány Law Working Papers* 9/2012, pp. 1–9.
33. Nochta T (2012) A polgári jogi felelősség néhány alapproblémájának tükröződése az új Polgári Törvénykönyv 2011. decemberi Szerkesztőbizottsági Javaslatában, in: Pusztahelyi R & Juhász Á (eds.) *Miskolci konferenciák 2011: Javítandó és jobbítandó elemek a Ptk. kodifikációjában*, Novotni Alapítvány a Magánjog Fejlesztéséért Kiadó, Miskolc, pp. 119–136.
34. Ofak L (2025) The right to a healthy environment in the light of the new case law of the Croatian Constitutional Court, *JAEL* 20(38), pp. 349–369, DOI: <https://doi.org/10.21029/JAEL.2025.38.349>.
35. Olajos I (2010) A vis maior szerepe a támogatásokban–különös tekintettel az árvíz és belvíz helyzetre, in: Csák Cs (ed.) *Az Európai földszabályozás aktuális kérdései*, Novotni Kiadó, Miskolc, pp. 199–211.
36. Olajos I & Mercz M (2022) The use of the precautionary principle and the non-refoulement principle in public law – Or how far the boundaries of constitutional principles extend, *JAEL* 17(32), pp. 79–97, DOI: <https://doi.org/10.21029/JAEL.2022.32.79>.
37. Penttinen S-L (2025) Nuclear Energy in Finland, *JAEL* 20(38), pp. 91–121, DOI: <https://doi.org/10.21029/JAEL.2025.38.91>.

38. Pusztahelyi R (2015) A veszélyes üzemi felelősség egyes kérdései az új Ptk. rendszerében, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica* 33/2015, pp. 309–310.
39. Raisz A (2010) Környezetvédelem a nemzetközi jogban, in: Nagy Z, Olajos I, Raisz A & Szilágyi J E, *Környezetjog II. kötet – Tanulmányok a környezetjogi gondolkodás köréből*, Novotni Kiadó, Miskolc, pp. 9–25.
40. Rakoczy B (2021) Constitutionalisation of Environmental Protection in Poland, *JAEL* 16(31), pp. 121–129, DOI: <https://doi.org/10.21029/JAEL.2021.31.121>.
41. Samec Berghaus N, Ferčič A & Drnovšek K (2025) Slovenia's Nuclear Energy Pathway: Strategic Expansion, Regulatory Hurdles, and Future Prospects, *JAEL* 20(38), pp. 123–155, DOI: <https://doi.org/10.21029/JAEL.2025.38.123>.
42. Sólyom L (1977) *A polgári jogi felelősség hanyatlása*, Akadémiai Kiadó, Budapest.
43. Szabó Sz (2007) A szennyező fizet elve a környezetvédelemben, *Iustum Aequum Salutare* 3(3), pp. 215–224.
44. Szalma J (2000) *Okozatosság és polgári jogi felelősség*, Miskolci Egyetem és a „Novotni Alapítvány a Magánjog Fejlesztéséért”, Miskolc.
45. Szilágyi J E (2019) The precautionary principle's 'strong concept' in the case law of the constitutional court of Hungary, *Lex et Scientia* 26(2), pp. 88–112.
46. Szilágyi J E (2021) The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues, *JAEL* 16(31), pp. 130–144, DOI: <https://doi.org/10.21029/JAEL.2021.31.130>.
47. Szilágyi J E (2022) Constitutional Protection of the Environment and Future Generations in Certain Central European Countries, in: Szilágyi J E (ed.) *Constitutional Protection of the Environment and Future Generations – Legislation and Practice in Certain Central European Countries*, CEA Publishing, Miskolc–Budapest, pp. 479–526, DOI: https://doi.org/10.54237/profnet.2022.jeszcepf_12.
48. Teles Da Silva D (2025) Nuclear Renaissance in France: Legal and Regulatory Challenges, *JAEL* 20(38), pp. 157–192, DOI: <https://doi.org/10.21029/JAEL.2025.38.157>.
49. Vučković J (2023) Constitutional legal protection of ecological values in the Republic of Serbia, *JAEL* 18(35), pp. 145–160, DOI: <https://doi.org/10.21029/JAEL.2023.35.145>.

50. Zdráhalová L & Vomáčka V (2025) One System, Many Rules: A Critical Examination of Environmental Remedial Measures in the Czech Republic, *JAEL* 20(39), pp. 237–260, DOI: <https://doi.org/10.21029/JAEL.2025.39.237>.
51. Židek D (2021) Environmental protection in the Constitution of the Czech Republic, *JAEL* 16(31), pp. 145–160, <https://doi.org/10.21029/JAEL.2021.31.145>.
52. Zoltán Ö (1985) *Kártérítési felelősség a környezetvédelemben*, Akadémiai Kiadó Budapest.

The Role of Civil Law in Environmental Protection: Liability, Damages, and Remedies from the Perspective of Slovakia¹

Abstract

The article examines how Slovak civil law can be mobilised as an instrument of environmental protection, distinct from but complementary to administrative and criminal enforcement. The article analyses the provisions of the Slovak Civil Code which can be invoked in a case of environmental damage. The analysis is also focused on the draft of the new Civil Code that is at present in legislative preparative work, and the current legislative state is compared with the new proposal. Procedurally, Slovakia's representative-actions regime for consumers offers a workable chassis for aggregating environmentally linked harms (qualified entities, notice/opt-in, court-managed implementation) and can be adapted to restorative outcomes in environmental cases. The article closes with de lege ferenda thoughts for courts and legislators to align private-law remedies with ecological recovery and environmental justice.

Keywords: Environmental harm, environmental civil liability (Slovakia), collective redress, Environmental Liability Directive, recodification of private law

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1. Introduction

A growing body of comparative EU-oriented scholarship rejects the once dominant assumption that private law and environmental law are inherently at odds. Howarth captures both the historical friction and the contemporary shift: “The relationship between environmental law and private law has long been controversial and unhappy,”² yet “the balance of the debate has shifted again towards recognizing the importance of private law in the development of environmental controls.”³ His typology ‘private law as environmental law’ vs ‘environmental law in private law’ is methodologically useful for the Slovak debate.⁴ We adopt this typology in Chapter 4 to elaborate on the Slovak collective redress mechanism in the context of environmental protection and, in general, to show on Slovak terrain how core civil-law institutions (preventive duty, fault liability and heightened responsibility for especially hazardous operations) can function as environmental law, and how environmental-protection aims can be internalised in private law through restoration-oriented remedies and collective redress.

To situate the Slovak discussion, comparative soft-law accounts portray civil liability as a complement to public regulation and trace Europe’s long pivot towards prevention and remediation instruments rather than mere *ex post* pecuniary redress.⁵ This shift is mirrored in regional scholarship, which builds a mixed enforcement model: Serbian analyses, for example, expressly position civil actions alongside administrative and criminal instruments and underline the value of pre-emptive lawsuits capable of stopping harmful activities before damage occurs.⁶ Any civil-law strategy must therefore be embedded in the broader enforcement ecology. Empirical and doctrinal studies emphasise the limits of a penal-only approach, such as low prosecution rates, modest fines and weak deterrence, and make the case for proportionate civil and administrative measures that internalise environmental costs while reserving criminal law for aggravated misconduct.⁷ Finally, courts are not passive transmission belts; they are a judicial practice that shapes access to justice, manages expertise and proof in diffuse harm and calibrates remedies in ways that advance distributive, procedural and recognition justice within environmental disputes.⁸ This comparative framework explains why the article treats Slovak civil-law tools not as residual after public law, but as co-equal instruments oriented to prevention and restoration.

2 | Howarth 2019, 1.

3 | Pontin 2013.

4 | Howarth 2019, 1.

5 | Ludeña & Abella 2010, 59–60.

6 | Milošević, Madžgalj & Novaković 2025, 65.

7 | Watson 2005, 3–5.

8 | Preston 2023, 1–2, 14–15, 17–18.

Slovak civil law contains tools – often overlooked – that can be mobilised directly for environmental protection. This article advances two core claims. *De lege lata*, Slovak civil law, through Sections 415, 420 and 432 of Act No. 40/1964 Coll. the Slovak Civil Code, as amended (hereinafter referred to as the ‘CC’), already accommodates environmental protection logics. Prevention as a conduct-duty, represents fault liability attuned to risk and foreseeability and a strict liability for especially hazardous operations, unconstrained by the presence or absence of administrative permits. *De lege ferenda*, the draft Civil Code’s damages part, provides doctrinal tools, such as restoration-first at the injured party’s election, comparability in non-pecuniary awards, judicial estimation where measurement is impracticable and calibrated moderation that can be operationalised specifically for environmental claims. The EU framework, including the Environmental Liability Directive’s (hereinafter referred to as the ‘Environmental Liability Directive’)⁹ prevention/remediation logic, reinforces a design in which private-law remedies supplement public enforcement to internalise environmental externalities.

The further parts of this article employ doctrinal analysis of Slovak law and the forthcoming civil-code reform and integrates comparative insights (with a focus on Serbia and selected common-law contrasts) to illustrate options for causation, standing and remedies.

The structure proceeds as follows. After the introduction (Chapter 1), Chapter 2 maps the Slovak civil-law foundations for environmental harm (prevention, fault, heightened liability). Chapter 3 assesses the draft damages regime for environmental claims within the new (re)codification process of private law in Slovakia. Chapter 4 examines collective protection and access-to-justice instruments pertinent to environmental mass harm in Slovakia. The conclusion synthesises findings and proposes targeted *de lege ferenda* steps for a more coherent and EU-consistent civil-law response to environmental harm.

2. Types of civil liability for environmental harm

Doctrinally, the general preventive duty in Section 415 CC articulates an objective standard of conduct also oriented to nature and environmental media. Its breach leads into fault-based liability under Section 420 CC, while the special-danger regime of Section 432 CC allocates losses from inherently hazardous operations, irrespective of permitting status. Building on these pillars, the draft Civil Code on damages (Sections 813–821) embeds a restoration-sensitive architecture: a monetary default paired with a claimant’s option for specific reparation,

9 | Directive 2004/35/EC (2004) on environmental liability with regard to the prevention and remedying of environmental damage, Official Journal of the European Union L 143, 30.04.2004, 56–75.

function-focused valuation (cost-to-cure), judicial estimation under uncertainty, calibrated moderation and the comparability of non-pecuniary awards.

The general preventive duty in Section 415 CC already articulates an obligation of conduct *vis-à-vis* nature: “Everyone is obliged to act so as to prevent harm to health, property, nature and the environment.” Read together with the fault-based liability under Section 420 CC and the strict liability architecture for ‘especially hazardous operation’ in Section 432 CC, this framework delineates a private-law pathway to deter and remedy ecological harm. The general preventive duty fixes an objective standard of care aimed at preventing risks to health, property, nature and the environment, and a breach of Section 415 CC routes into Section 420 liability; the duties of care expand with control over sources of danger and may crystallise into a duty to act where circumstances warrant it.¹⁰

Furthermore, strict liability under Section 432 CC supplies an additional anchor for activities whose nature creates uncontrolled risks to the surroundings, including risks to environmental media and biodiversity. It emphasises both the open-textured, context-sensitive definition of especially hazardous operation and the irrelevance of administrative permission to civil liability in the sense under which permitting status cannot prejudice victims.¹¹ The elasticity of Section 432 CC enables courts to recognise contemporary environmental hazard profiles from the handling of hazardous chemicals to high-risk energy infrastructures as contexts justifying heightened responsibility.

Against this domestic backdrop, the forthcoming reform of Slovak private law proposes a damages architecture deliberately compatible with environmental protection needs. The draft’s Fourth Section on Damages codifies a restoration-sensitive default: “Pecuniary damage shall be compensated in money. If appropriate in the circumstances, the injured party may claim compensation in another suitable manner.”¹² The Explanatory Report confirms both European alignment and claimant choice, together with a proportionality filter. It also clarifies that courts may determine loss where precise quantification is impracticable: “If the amount of damage cannot be determined precisely, the court shall determine the amount of damage according to the circumstances of the case.”¹³ For non-pecuniary harm, the draft and its report build a hierarchy and a comparability principle to stabilise awards across like cases.¹⁴

10 | Csach 2019, 1431.

11 | Novotná 2019, 1570.

12 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 813.

13 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 817; Explanatory Report to the Fourth Section – Damages.

14 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 814.

2.1. General preventive duty (section 415 CC) as a normative bridge to environmental protection

“The essence of the precautionary principle is that the best way to protect the environment should be based on prevention rather than cure as it might be cheaper to prevent environmental damage in advance than to restore damaged environment.”¹⁵

For environmental disputes, the general preventive duty in Section 415 CC is best understood as an objective standard of care whose content scales with the foreseeability and controllability of ecological risks. It functions as a conduct-directing norm that attaches in proportion to a party’s relation to the source of danger. Federal-era case-law, in a classic decision of the Supreme Court of the Czech Republic handed down within the Czechoslovak federation and still followed by Slovak courts, made clear that where that relation is sufficiently intense and the danger becomes concrete, the preventive duty may evolve into a true duty to intervene. Once the actor is informed of a specific risk, it can be reasonable and expected to eliminate it or at least to warn those affected, as in the classic decision on a landowner who, having been notified of the hazardous state of vegetation on his land, was obliged either to remove the danger or to warn about it.¹⁶

This scaling is consistent with the German notion of *Verkehrssicherungspflichten* in the sense that the actor who opens or manages a sphere of risk for others must organise it so that third parties are not exposed to unreasonable dangers, through baseline measures such as adequate maintenance, illumination, monitoring and hazard removal.¹⁷ The doctrine does not demand omniscience. Czech case-law illustrates the boundary line: a trail or facility manager does not bear a duty of permanent, continuous inspection and instantaneous remediation of every defect across the entire network. The duty is one of reasonable prevention calibrated to the nature, scale and use of the place.¹⁸ At the same time, the addressees of the general preventive duty are not limited to private operators. Slovak constitutional case-law conceptualises Section 415 CC as binding ‘everyone’ – natural persons and legal entities, but also public authorities.¹⁹ Thereby, it integrates administrative and regulatory actors into the architecture of preventive responsibilities. Transposed to environmental disputes, this yields an operator-centred norm of vigilance: entities handling hazardous substances or running emission-prone installations must anticipate and control foreseeable ecological risks *ex ante*, rather than externalising them to neighbours or the public purse. An instructive comparative illustration is Hungary, where the 2011 Fundamental Law couples an explicit right to a healthy

15 | Hayajneh 2004, 22.

16 | The Supreme Court of the Czech Republic, File No. 1 Cz 3/91 (R 9/1992).

17 | Brüggemeier 2006, 128–129.

18 | The Supreme Court of the Czech Republic, File No. 25 Cdo 618/2001.

19 | The Constitutional Court of the Slovak Republic, File No. II. ÚS 431/2013.

environment with institutional guarantees, such as the Advocate of Future Generations, and a strong constitutional doctrine on non-regression and precaution, showing how intergenerational environmental interests can be embedded at the constitutional level rather than left to ordinary legislation.²⁰

This is exactly the sense in which private law can function as environmental law, and it aligns with comparative private-law scholarship that rejects a binary opposition between public environmental law and private law and instead treats private-law duties of care as part of the overall control architecture for environmental risk. Howarth's survey of systems notes both the historical friction and the recent "shift" towards recognising private law's role in environmental controls, while mapping the variety of techniques by which private law and environmental law interact.²¹ Ultimately, courts are not passive conduits. Contemporary judicial writing emphasises their role in shaping access to justice, managing expert proof in diffuse-harm cases and calibrating remedies in ways that advance procedural, distributive and recognition justice in environmental disputes.²² In this regard, preventive duty in Section 415 CC is a doctrinal bridge, as it acts as a civil-law tool for risky conduct obligations in environmental contexts, integrates naturally with heightened liability, where appropriate, and supports remedial practice oriented on abatement and restoration rather than bare monetisation.

2.2. Fault-based liability in environmental litigation (section 420 CC) – who can claim damage and burden of proof

Section 420 CC establishes the general delictual regime on a fault basis. In structure, it is orthodox, as it involves a requirement of wrongfulness, damage, causation and a fault. Once the first three are proven, fault is presumed, and the defendant must exculpate by showing the absence of culpability. This is not an 'environmental' rule as such; yet it travels well into ecological disputes because it accommodates open-textured standards and fact-intensive proof. In particular, wrongfulness may be grounded in the general preventive duty of Section 415 CC whenever no specific regulatory rule is available, in the sense that breaches of Section 415 CC act as a route into Section 420 CC wrongfulness, and then applies the ordinary presumption of fault.²³ Slovak case-law under Section 420 CC also illustrates how environmental fact-finding must be granular as the courts reconstruct the baseline condition of the affected resource and its surroundings, identify the contemporaneous activities in the relevant locale, examine natural and technical pathways (for instance hydrology in groundwater cases) and follow the trajectory of measured contamination values before drawing causal inferences.

20 | Szilágyi 2021, 132–135.

21 | Howarth 2019, 1–2.

22 | Gauna 2012, 34–38.

23 | Dulak 2019, 1446.

Following this, it has been indicated in real Slovak case-law, in cases of pollution of groundwater flowing into a well used by a private individual, that it is necessary to distinguish between damage caused by the deterioration of water quality and damage that may have occurred to the well itself and to the equipment for pumping and distributing the water (within the meaning of Section 420 CC). The legal relationship arising from liability for the deterioration of groundwater quality is a relationship between the person responsible for that deterioration and the authorised consumer drawing water from the specific water source, who suffered damage due to the deterioration of water quality. When assessing active standing in a dispute over compensation for the deterioration of groundwater quality in a well, one cannot, without having more, proceed solely from the ownership of the real property associated with the use of the well. In addition to compensation for damage caused by the deterioration of water quality, the authorised water consumer may also suffer loss corresponding to the pecuniary harm incurred by having to spend higher costs to draw water from an alternative source (e.g. from a municipal hydrant or from a tanker located at a greater distance); such loss is to be assessed under Section 420 CC.²⁴ This is an evidential discipline rather than a relaxation of causation standards.

Two further features matter for ecological disputes. First is the relationship between Section 420 CC and special regimes: where a special head (including Section 432 CC on especially hazardous operations) applies, the claimant need not prove fault – proof of the harmful event replaces proof of culpability.²⁵ The practical consequence is a calibrated duality, where an ordinary negligence amounts for routine risks, and a strict responsibility regime applies where the activity itself is the risk vector. Second is organisational attribution. Section 420 para. 2 CC recognises enterprise-level responsibility for acts of auxiliaries performed in the course of a venture. The reasoning of the text extends attribution beyond formal privity, where there is a functional nexus (local, temporal, material) to the enterprise's tasks.²⁶ This functional reading is mirrored in Supreme Court case-law, which treats interferences committed by individuals used by a legal entity to carry out its activities, where such a local, temporal and material nexus exists, as acts of the legal entity itself.²⁷ In environmental practice, where operators commonly out-source construction, waste handling, monitoring or transport, this channelling of liability to the risk controller prevents evasion through subcontracting and aligns with comparative critiques of 'outsourcing as compliance theatre'. Comparative private-law frameworks converge on the same point, to the point where the entity that creates and organises the risk must internalise the costs of its materialisation.²⁸

24 | The Supreme Court of the Czech Socialist Republic, File No. 1 Cz 45/85 (R 37/1988).

25 | Dulak 2019, 1445.

26 | The Supreme Court of the Czech Republic, File No. 25 Cdo 1855/2012.

27 | The Supreme Court of the Slovak Republic, File No. 3 Cdo 228/2012.

28 | Krstinić, Bingulac & Dragojlović 2017, 1163, 1168.

English nuisance and Ryland's v. Fletcher illustrate this intuition in a different doctrinal register. Under them, in cases when dangerous things escape from a defendant's sphere, responsibility follows without proof of negligence, qualified by foreseeability and 'non-natural use'.²⁹

The content of the duty of care under Section 420 CC is not static but is shaped by the foreseeability of harm in light of the risk-creating activity. Here, the continental doctrine on *Verkehrssicherungspflichten*, mentioned in the previous subchapter, is instructive, because anyone who opens a space or facility to public use must secure it against reasonably foreseeable hazards, through design, maintenance and warnings.³⁰ Transposed to environmental settings, this supports a differentiated standard for operators of installations with diffuse-emission potential (odour, noise, particulates) or with acute externalities (hazardous substances, tailings, pipelines): the more systemic and more foreseeable the risk, the denser the precautions and the more robust the monitoring that a diligent operator must show.

2.3. Strict liability for especially hazardous operation (section 432 CC) and environmental risk with a focus on defences and limitations

Section 432 CC is best understood as a risk-allocation device. It assigns losses generated by activities whose inherent operation surpasses acceptable safety thresholds to the party who organises and controls those activities. Slovak legislation deliberately leaves 'especially hazardous operation' open-textured and context-sensitive, which is precisely what makes the provision fit for contemporary environmental hazards whose profiles change with technology, geography and time.³¹ This elasticity permits courts to treat installations handling hazardous substances, energy infrastructures or hydrotechnical works as falling within Section 432 CC when their operational envelope exposes the surroundings, including environmental media and biodiversity, to atypical, non-reciprocal risks. The same materials emphasise that administrative permissions do not immunise the operator against civil liability in the sense that permitting status is neutral for the purposes of Section 432 CC, because the point of the rule is the protection of third parties from activity-intrinsic dangers. Finally, the literature acknowledges *ad hoc* classification, where the transient configurations (maintenance outages, abnormal operations, accident conditions) may temporarily elevate an otherwise ordinary operation into the 'especially hazardous' category.³²

Two doctrinal filters follow from this architecture. First, the classification must be more than a label, since it demands a reasoned showing that the nature of the operation (substances used, energy involved, process characteristics) generates a

29 | Case *Rylands v Fletcher* (1866) Law Reports 1, Exchequer Chamber 265.

30 | See more at subchapter 2.1. of this article or Brüggemeier 2006, 128–129.

31 | Novotná 2019, 1570.

32 | *Ibid.*, 1568.

level of risk that society does not expect others to bear without compensation. In exactly this vein it should be cautioned that not every case of dust or fumes qualifies, and courts should confine Section 432 CC to harms traceable to the qualifying features the norm has in view. Secondly, because Section 432 CC is a *lex specialis vis-à-vis* fault (Section 420 CC) when damage is connected to the special danger, the evidential focus shifts. Plaintiffs establish the harmful event and the nexus to the operation; questions of negligence recede.

Comparative materials vindicate both the policy and the design choices embedded in Section 432 CC.³³ The Lugano Convention crystallises a pan-European instinct toward strict responsibility for ‘dangerous activities’, locating liability in “the operator at the time or during the period when he was exercising control of that activity”, and framing recognised defences narrowly (force majeure-type events, deliberate third-party interference despite sufficient preventive measures, compliance with a specific authority order).³⁴ The Council of Europe’s analytical report on climate-change liability explains the historical logic: strict liability emerged to correct the mismatch between private profit and socialised industrial risk and to place losses “on those whom it was most reasonable to hold responsible”.³⁵ In EU law, the Environmental Liability Directive carries the same prevention ethos but leaves important lacunae, such as authority-driven choice of remedial measures, thresholds of significance and limited reach over diffuse pollution. This is, in our opinion, why national private law risk-oriented regimes must remain available alongside public administration.

Furthermore, attribution under Section 432 CC should be read functionally. What matters is control over the risk-creating activity, not formal privity. Slovak civil law already recognises enterprise-level responsibility for acts performed ‘in the course of’ an undertaking, and environmental operations commonly involve contractors for construction, waste handling, monitoring and logistics. EU materials on the Environmental Liability Directive likewise anticipate recourse by operators against truly responsible third parties, but they also recognise that Member States may widen the circle of liable actors (including non-business entities) where domestic policy demands it.³⁶ The upshot for Section 432 CC practice is straightforward, and one shall begin with the operator who controls the hazard; further, one shall entertain contribution or recourse downstream where facts justify it, and, lastly, one shall not let corporate structure or contract chains defeat the protective purpose of the rule.

33 | For a detailed account of how the polluter pays principle has been introduced, stretched towards restoration and only partially enforced in Hungarian agricultural and environmental law (including objective liability for environmentally dangerous activities and environmental charges); see Bobvos et al. 2006, 29–54.

34 | Ludeña & Abella 2010, 95.

35 | Council of Europe 2021, 11.

36 | Tran & Vu 2021, 286–287.

The provision's permit-neutrality deserves emphasis in environmental litigation. Slovak commentary is explicit that compliance with administrative authorisations neither precludes nor diminishes civil responsibility under Section 432 CC. The two tracks are complementary and serve distinct functions.³⁷

Finally, defences under Section 432 CC should be read sparingly, in line with the provision's logic and European comparators. The Lugano template and Environmental Liability Directive discourse both confine exculpation to exceptional events (war, insurrection or 'inevitable and irresistible' natural phenomena), deliberate third-party acts despite adequate precautions and compliance with specific official orders.³⁸ This is the right calibration for ecological harm because it keeps the burden on those who profit from high-hazard activities to organise for safety, insure and provide for remediation and compensate when the activity's characteristic risks materialise. In short, Section 432 is not an exotic adjunct to Slovak tort law, but we see it as a modern instrument for internalising environmental externalities where the activity, not merely human error, is the risk vector.

2.4. Causation in environmental cases

Causation in environmental cases is the perennial difficulty. Slovak practice emphasises painstaking reconstruction rather than doctrinal shortcuts³⁹ and requires that the breach be a direct, non-interrupted cause of the harm in order to ground liability.⁴⁰ But comparative sources show why evidential pragmatism is sometimes necessary. Environmental harms often involve multiple sources, latency and scientific uncertainty. English courts, confronting mesothelioma causation, accepted a 'material increase in risk' as sufficient where scientific identification of a single causal exposure was impossible. The analysis is context-specific and exceptional, but it illustrates a policy lever for hard evidential settings.⁴¹ Continental debates likewise explore burden-shifting or rebuttable presumptions in multi-source pollution, precisely to avoid making diffuse harms practically non-actionable. In that sense, some countries understand that the traditional burden of proof in environmental damage cases presents a complicated challenge to the plaintiff, and accordingly they enact special rules to ease this burden.⁴² Any Slovak development in this direction would sit comfortably within the Section 420 CC architecture (which already presumes fault once wrongfulness, damage and

37 | Novotná 2019, 1570.

38 | Ludeña & Abella 2010, 95.

39 | The Supreme Court of the Slovak Socialist Republic, File No. 3 Cz 31/79 (R 5/1981).

40 | The Supreme Court of the Slovak Republic, File No. 2 Cdo 292/2006; The Supreme Court of the Slovak Republic, File No. 5 Cdo 126/2009.

41 | *Case Fairchild v Glenhaven Funeral Services Ltd* (2002) 3 All England Law Reports 305.

42 | See more at Hayajneh 2004, 198 et seq.

causal link are shown) and would complement the Section 432 strict-type allocation for especially hazardous operations.

Finally, within this subchapter, we would like to deal with enterprise liability and internal governance. Environmental risk today is often organisational: failures in contractor selection and supervision, gaps in safety management systems or paper-compliance in monitoring can be the real engines of harm. Comparative enforcement literature shows the limits of a penal-only response (low prosecution rates, modest fines) and argues for civil or administrative mechanisms that ensure internalisation of environmental costs at the level where risk is organised.⁴³ Scholarly analyses of civil-versus-criminal tracks in environmental protection in Central and South-Eastern Europe reach the same conclusion: civil liability must shoulder a preventive function alongside compensation, and courts should be prepared to order specific measures (abatement, remediation) rather than default to money alone.⁴⁴ Slovak constitutional case-law at the same time reads the Civil Code concept of ‘damages’ broadly, as encompassing both material and non-material harms, including health and integrity impacts,⁴⁵ which is crucial in environmental disputes where loss often consists in impaired living conditions, amenity and well-being rather than immediate market loss. In practical terms, the law must therefore internalise organisational risk, just as we suggested, so that the acts of auxiliaries in the course of a venture, negligent selection or supervision of contractors, and systemic failures in safety management should be attributed to the principal so that outsourcing does not become an evasion device.⁴⁶ This is consistent with Section 420 para. 2 CC logic, coherent with already mentioned *Verkehrssicherungspflichten* and consonant with the comparative movement towards restoration-oriented civil remedies.⁴⁷

3. Future Perspectives – forthcoming reform – draft Civil Code rules on damages for environmental claims

3.1. Restoration logic, valuation under uncertainty and non-pecuniary calibration for environmental harms

The Fourth Section on Damages in the Slovak draft Civil Code (hereinafter referred to as the ‘DCC’) is built around a clear remedial hierarchy with a deliberate aperture for restoration. Monetary compensation remains the default, but the statute empowers the injured party to elect specific reparation where ‘appropriate

43 | Watson 2005, 3–6.

44 | Milošević, Madžgalj & Novaković 2025, 56–60.

45 | The Constitutional Court of the Slovak Republic, File No. II. ÚS 695/2017.

46 | Krstinić, Bingulac & Dragojlović 2017, 1163, 1168.

47 | Novotná 2019, 1568.

in the circumstances', a formulation that is capacious enough to cover orders to remove contamination, rehabilitate affected media or otherwise return environmental resources to functionality.⁴⁸ The appropriateness of the circumstances is a broad concept that requires assessing all relevant aspects of the specific case, including the feasibility and proportionality of such a form of compensation. The injured party may not, for example, demand an alternative form of compensation if it would not be reasonably practicable. The Explanatory Report is explicit that this opening for in-kind relief operates through a proportionality filter aligned with prevailing European approaches and that the choice of non-monetary mode belongs to the claimant.⁴⁹ In environmental disputes where the ecological 'end-state' is recovery rather than cash, the pairing of a statutory permission for specific reparation and an articulated proportionality test is not merely decorative. It is the doctrinal hinge that allows courts to order a cure where money is plainly second best.

Two further features of Section 813 DCC matter in practice. First, the draft codifies in Section 813 para. 2 and para. 3 DCC the traditional patrimonial heads (loss and lost profit) and, crucially for pollution cases, a 'debt-as-damage' track that captures regulatory clean-up liabilities imposed on victims; thus, where damage consists in the creation of a debt, the victim may require the author to discharge the liability or to provide resources to meet it. The Explanatory Report underlines that this is an election of the injured party. This mechanism sits comfortably with EU thinking that environmental protection requires not only compensation but effective 'decontamination and restoration', supported by access to justice and financial-security instruments.⁵⁰ Second, Section 815 DCC explicitly yokes market value to 'cost-to-cure', directing courts to assess damage to things by reference both to their ordinary value and to what must be reasonably expended to restore or replace function. The Explanatory Report to that Section confirms that the functional benchmark, not merely nominal value, should steer quantification. In environmental litigation, where protective works, crops or equipment are impaired by emissions or accidents, the cost-to-cure axis avoids under-compensation and better aligns award with actual remediation needs.

The draft also addresses the chronic epistemic difficulty of valuing environmental loss. Section 817 DCC authorises judicial estimation where the quantum cannot be determined precisely or only at disproportionate effort. The Explanatory Report states the policy plainly as the provision exists "to enable the injured party to obtain compensation even in cases where the amount of damage cannot be determined precisely at all or only with disproportionate difficulty". For diffuse

48 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 813.

49 | Ministry of Justice of the Slovak Republic n.d., *Draft Civil Code, Fourth Section – Damages*, Section 813; *Explanatory Report to the Fourth Section – Damages*.

50 | Commission of the European Communities 2000, 3.

pollution, complex natural baselines or time-lag harms, this rule prevents the evidential tail from wagging the remedial dog. It is consistent with EU environmental liability thinking that place restoration and remediation on the baseline condition at the centre of environmental private law rather than mere *ex post* money awards.⁵¹

Non-pecuniary harm is re-systematised around ordered satisfaction and comparability. Section 814 DCC provides for appropriate satisfaction, in money only if other modes (e.g. an apology, corrective statements) would not suffice, and adds a comparability directive, under which “in similar cases, comparable sums are awarded”. This will stabilise outcomes across similar harms. The Explanatory Report’s rationale to the pertinent section is legal certainty and predictability. For neighbourhood-scale nuisance and amenity loss, that guidance promises more even-handed treatment of similarly affected communities. It also resonates with environmental-justice scholarship that criticises remedial pathways which, in practice, deliver thin or uneven outcomes for over-burdened populations and argues for frameworks that converge remedy design with lived community impacts.⁵² In Gauna’s words, civil-rights-style pathways have too often yielded ‘virtually non-existent’ remedial action, prompting a search for models that can actually deliver change on the ground.⁵³ The draft’s comparability rule in Section 814 para. 2 DCC is one such stabiliser.

Furthermore, it is noteworthy to mention the judicial moderation in Section 818 DCC, pursuant to which “the court may reduce damages in exceptional cases especially if full compensation would be grossly unfair or clearly disproportionate to the wrongdoer. In doing so, it will usually consider the degree of fault, the legal nature of the liability and the circumstances in which the harm occurred. However, no reduction is allowed if the harm was caused intentionally, or if it was caused by a breach of due care by someone acting in a professional capacity.” The Explanatory Report emphasises these negative predicates for moderation. In environmentally risky industries, this signals that skimping on professional diligence will not be rewarded by down-rating awards. Finally, Section 820 DCC introduces a small general clause for non-pecuniary loss in aggravated cases, allowing awards (including to indirectly affected persons) where circumstances involving especially intentional causation justify it. The Explanatory Report confirms that reflex harms may be captured here. This is structurally relevant where intentional wrongdoing produces community-wide affronts alongside material degradation.

Placed against the European framework, the draft’s grammar of monetary default and restoration option, cost-to-cure, judicial estimation under uncertainty and comparability of non-pecuniary awards is orthodox and fit for purpose. EU

51 | Hayajneh 2004, 183–184.

52 | Gauna 2012, 58.

53 | *Ibid.*, 45.

materials stress that effective environmental protection must secure restoration (not just compensation) and that, in implementation, public authorities choose and supervise remedial measures, particularly under Art. 4 (5) of the Environmental Liability Directive, with diffuse pollution covered where causal responsibility can be established.⁵⁴ In turn, the civil side should be capable of mirroring that restoration logic when disputes reach private law. The Slovak draft's damages architecture operationalises that shift, as it gives courts the tools to deliver ecologically rational relief while maintaining proportionality and predictability.

3.2. Operationalising the DCC in environmental cases

The Damages title of the DCC is only as good as the adjudicatory method that animates it. In environmental disputes, three method questions recur: (1) when to privilege restoration and how to structure it, (2) how to handle proof and causation where the science is contested or data sparse, and (3) how to align private-law relief with the broader enforcement mix without diluting deterrence.

As regards the first point, European thinking treats compensation as necessary but insufficient if the ecological baseline remains degraded. We shall emphasise again that effective protection requires 'effective decontamination and restoration'⁵⁵ and that access to justice should support these outcomes.^{56,57} These dovetail with the DCC's architecture in this sense: when restoration is appropriate in the circumstances, courts should not hesitate to order restoration rather than cash. This resonates with the Slovak public-law debate as captured by Michalovič and Jenčo, who in their analysis of effective environmental remediation underline the centrality of restorative principles and effective remediation tools in environmental enforcement.⁵⁸ The practical import for Slovak courts is to design private-law orders that deliver the public-law end-state (ecological recovery) rather than an abstract monetary equivalent.

As to the second point, environmental harm often resists precise quantification or monocausal attribution. Section 817 DCC's valuation under uncertainty is a natural adjunct, since it authorises judges to value loss where exact measurement would be disproportionate or impracticable, preserving the integrity of remedy when science sets hard limits. By contrast, the Environmental Liability Directive hews to orthodox causation weighing liability by reference to traditional proof requirements for biodiversity damage and, despite proposals in the Commission's White Paper to ease the evidential burden, that suggestion was not ultimately taken

54 | Cf. Ludeña & Abella 2010, 94.

55 | Tran & Vu 2021, 294–295.

56 | European Commission, *Commission Notice on Access to Justice in Environmental Matters*, 2017/C 275/01.

57 | Eliantonio & Richelle 2024, 262–264.

58 | Michalovič & Jenčo 2022, 17–18.

up in the Directive.⁵⁹ Read together, these two points justify the DCC's evidential pragmatism – if the Environmental Liability Directive leaves causation largely to classical doctrines, national private law must furnish workable techniques to value and redress harm under uncertainty. Section 817 performs exactly that gap-filling function, allowing courts to translate incomplete scientific knowledge into legally cognisable awards without diluting the causal inquiry itself.

As to the third point, experience cautions against relying on criminal law alone. Proportionate civil/administrative penalties are a much more potent economic deterrent than a criminal conviction and a modest fine, while at the same time they can complement, but not replace, more traditional criminal sentences.⁶⁰ The DCC's moderation clause aligns with this mix: do not blunt the price signal where culpability is high or risk is professionally managed.

The success of the DCC's innovations, including remedial grammar, finally depends on judicial craft. Courts shape access, proof management and remedial responsiveness. As Preston puts it, they “play a vital role in achieving sustainable development and access to justice promoting environmental justice.”⁶¹

4. Challenges and shortcomings – collective environmental protection and access to justice in Slovakia (doctrinal bases and procedural design)

Slovakia now operates a modern, court-managed mechanism for the protection of collective consumer interests, effective since 25 July 2023 under Act No. 261/2023 Coll. Act on Representative Actions for the Protection of Consumers' Collective Interests (hereinafter referred to as the ‘Representative Actions Act’). The design responds to three persistent obstacles in mass-harm settings. These are the high coordination costs for dispersed claimants, information asymmetries and the mismatch between individual litigation and systemic breaches. In legislative terms, the mechanism is purposive, as it aims at effective protection of collective consumer interests, ensuring compliance with EU and national consumer-protection rules by traders and removing barriers consumers face when enforcing rights individually.

The architecture is bifurcated. First, there is a remedial track (*‘konanie o vydanie nápravného opatrenia’* pursuant to Section 14 et seq. of the pertinent act) that culminates in particular measures benefitting those who opt in. Second, an abstract control track enabling judicial review of terms, practices or statutory

59 | Hayajneh 2004, 199.

60 | Watson 2005, 6.

61 | Preston 2023, 1

breaches irrespective of a specific dispute and even without the participation of consumers pursuant to Section 23 et seq. of the pertinent act. This duality matters in environmental contexts because the first track is capable of delivering individualised material redress (including repair, replacement, refund, disgorgement), while the second track targets the legality of standardised practices with diffuse environmental externalities (e.g. misleading ‘green’ claims or contractual terms that frustrate compliance with environmental product standards).

Legitimacy and case-initiation are centralised through qualified entities rather than individual consumers. A registered entity (*‘oprávněná osoba’*) files the action in the court designated by the statute. Before filing, it must publish a notice of intent on its website and in the Commercial Gazette, naming the trader, describing the facts and alleged breaches and proposing the remedial measure sought (Section 15 of the pertinent act). Consumers then decide whether the action concerns them and whether to participate. Participation proceeds through a notary chosen by the qualified entity, who maintains the roll of participating consumers. The statute and implementing regulation specify the contents of the consumer’s application, offer form templates and allow late opt-in until the close of evidence at first instance. Consumers may also withdraw consent up to that point (Section 16 of the pertinent act). The cost signals are calibrated to lower barriers⁶² payable to the designated notary, and no further court fees or costs for participating consumers, save for exceptional cost-shifting where a participant’s negligence or fault caused expenses.⁶³

The remedial track is activated only where numerosity is present, since the action proceeds if at least 20 injured consumers enrol within the notice period (Section 17 para. 2 of the Representative Actions Act). Otherwise, the court must discontinue the case. This threshold is modest enough to capture clustered mass harm and, in environmental settings, would be routinely satisfied in localised pollution, odour, noise or greenwashing cases affecting many purchasers or users.

Once the court reaches the merits and grants the action, it issues a judgment that (1) specifies the remedial measure(s) the trader must implement and (2) is accompanied by an annex listing the participating consumers and their entitlements. At the same time, it shall, in the operative part of the judgment, specify the corrective measure, state the number of registered consumers, designate the appointed notary as the place of performance and determine the amount of the remuneration of the qualified entity. Otherwise, it shall dismiss the action (Section 17 para. 5 of the Representative Actions Act).

Execution is not left to atomised follow-on suits: the designated notary implements the decision without delay once the judgment is final and funds are placed

62 | An application fee of 20 EUR + VAT (and 10 EUR + VAT for withdrawal).

63 | Section 3 of the Decree No. 289/2023 Coll. implementing certain provisions of Act No. 261/2023 Coll. on Representative Actions for the Protection of Consumers’ Collective Interests and on Amendments and Supplements to Certain Acts.

in notarial escrow, paying out after deducting the success fee of the qualified entity (Section 17 para. 6 of the Representative Actions Act). Importantly, the remedial outcome does not prejudice other remedies available to participating consumers that are outside the scope of the action. From an environmental-law perspective, this is a critical safeguard, since where the collective measure secures, say, product-related redress (refunds, replacements, corrective advertising), it leaves unaffected public-law clean-up duties and private tort claims for broader ecological damage.

Although enacted for consumer protection, the Slovak model might offer an immediately intelligible procedural chassis for environmental mass harm brought in private law. The notice-and-opt-in infrastructure, centralised beneficiary list, notarial implementation and defendant-funded communications are precisely the tools one needs to aggregate small-value individual harms that are environmentally linked (e.g. households exposed to odour or dust, users misled by green claims, local purchasers affected by a defective environmental performance of goods). The remedial catalogue consisting of compensation for damage, repair or replacement of the product, a reduction of the purchase price, a refund of the purchase price paid, restitution of unjust enrichment or another similar remedial measure aimed at redress is inherently restoration-friendly and can be adapted to order function-oriented cures (repair, replacement, disgorgement of compliance savings) while coordinating with public remedial programmes. In judicial management terms, the statute mandates pre-trial case management, which might be particularly valuable in disputes saturated with expert evidence, monitoring data, hydrology or exposure modelling (Section 17 para. 3 of the Representative Actions Act).

In the context of EU law, we can say EU access to justice remains fragmented. As Eliantonio and Richelle note, there is no horizontal EU instrument transposing Art. 9(3) of the Aarhus Convention,⁶⁴ with access provisions instead “being incorporated directly into several pieces of ‘sectoral’ legislation”,⁶⁵ so that the “emerging picture cannot be regarded as fulfilling the objective of ensuring the ‘wide access to justice’ promise of the Aarhus Convention.”⁶⁶ In this light, a Slovak collective pathway that is procedurally based on the representative-actions regime and substantively on civil-law duties seems like a rather complete system enabling restorative remedies (including in-kind remediation) for group harms.

As regards the place of collective civil actions within the enforcement ecology, we have already noted in the previous subchapter that criminal law alone is not

64 | Pursuant to this Article: “In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”

65 | Eliantonio & Richelle 2024, 261.

66 | *Ibid.*, 274.

an adequate primary route for routine environmental infringements. UK evidence shows, “it seems clear that most environmental offenders – the vast majority, in fact – are not prosecuted.”⁶⁷ Civil or administrative fines are a much more potent economic deterrent which can complement more traditional criminal sentences. Moreover, a credible civil collective mechanism lowers the entry costs of enforcement and produces deterrence through predictable remedial consequences.

For environmental claims tied to consumer markets (greenwashing, unsafe or non-compliant products, systemic breaches producing environmental externalities), the present statute is already usable. A tort-based claim seeking ecological restoration would instead have to rely on general Civil Code liability provisions, namely the preventive duty in Section 415 CC, general liability in Section 420 CC, or strict liability for inherently hazardous operations under Section 432 CC. In short, Slovakia already has the procedural framework in place. On the other hand, aligning it with environmental substance would bring private enforcement closer to what comparative literature urges – civil liability as a complement to regulation, oriented on repair and attentive to justice in process and outcome.

5. Conclusion

This article has argued that Slovak civil law already contains a workable architecture for environmental protection and that the ongoing recodification can make that architecture both more coherent and more effective. This finding aligns with Michalovič and Maslen’s conclusion that environmental law in Slovakia is increasingly meeting the criteria of an independent branch of law whose effectiveness depends on the availability of precisely such preventive and restorative private-law instruments.⁶⁸

As a matter of *de lege lata*, Section 415 CC provides a general conduct duty that squarely encompasses even the natural environment; Section 420 CC supplies a flexible fault-based frame capable of absorbing environmental standards and granular causation analysis, and Section 432 CC assigns the costs of abnormally dangerous activities to those who organise and control them, irrespective of permitting status. Taken together, these provisions enable courts to deter risky conduct *ex ante* and to channel losses *ex post* without needing to reinvent private law for ecological disputes.

The Draft Civil Code strengthens this base by giving courts a remedial grammar that fits environmental harms. A monetary default paired with a genuine option for specific reparation makes restoration thinkable as the first best outcome rather than an afterthought. Judicial estimation under uncertainty prevents

67 | Watson 2005, 3.

68 | Michalovič & Maslen 2024, 21–23.

proof difficulties from defeating meritorious claims in settings of diffuse pollution, latency or incomplete science. And the calibration of non-pecuniary awards through comparability promises greater consistency in the neighbourhood-scale nuisance and amenity cases.

As regards procedure, Slovakia's new representative-actions regime for consumers offers a ready template to aggregate environmentally linked harms at low transaction cost: registered (qualified) entities, an opt-in system, vast remedies and centralised implementation via a notary. Transposed thoughtfully, this chassis can support restorative outcomes in private law with its repairs, remediation plans, disgorgement of compliance savings and corrective information, while coordinating with administrative sanctions and leaving space for criminal law where culpability is aggravated. In the EU framework, where access to justice remains scattered across sectoral instruments and public enforcement must often prioritise prevention and remediation under the Environmental Liability Directive, robust civil institutes complement the administrative and criminal tools quite adequately.

Several *de lege ferenda* can be mentioned, though. First, operational guidance should clarify when restoration is 'appropriate in the circumstances' (under Section 813 DCC) including feasibility, proportionality and coordination with public remedial measures, so that courts can confidently order a cure where money is second best. Second, representative actions should be opened to qualified environmental NGOs alongside consumer bodies to safeguard class interests. Third, courts should be encouraged to use comparative tables or guideline ranges to anchor non-pecuniary awards in like environmental cases, reinforcing predictability without rigid tariffing.

Last but not least, if environmental protection aims at preventing harm and restoring what is harmed, private law must be able to impose exacting standards of care, to internalise the costs of risky activity and to deliver remedies that actually repair the world outside the courtroom. This intergenerational orientation resonates with comparative constitutional practice, which increasingly frames environmental protection as a three-fold obligation towards future generations – to conserve options, quality and access – underpinned by a non-regression principle and a broad understanding of precaution.⁶⁹ With the analysed Draft Civil Code's tools and with a collective procedure adapted to environmental mass harm, we believe the Slovak law is close to that destination.

69 | Bándi 2020, 18.

Reference list

1. Bándi Gy (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *JAEL* 15(29), pp. 7–22, DOI: <https://doi.org/10.21029/JAEL.2020.29.7>.
2. Bobvos P, Csák C, Horváth S, Olajos I, Szilágyi J E & Prugberger T (2006) The polluter pays in the agriculture, *JAEL* 1(1), pp. 29–54, DOI: 10.1111/j.1467-9701.1996.tb00664.x.
3. Brüggemeier G (2006) *Haftungsrecht: Struktur, Prinzipien, Schutzbereich. Ein Beitrag zur Europäisierung des Privatrechts*, Springer, Heidelberg.
4. *Case Fairchild v Glenhaven Funeral Services Ltd* (2002) 3 All England Law Reports 305.
5. *Case Rylands v Fletcher* (1866) Law Reports 1, Exchequer Chamber 265.
6. Commission of the European Communities (2000) *White Paper on Environmental Liability*, COM(00) 66 final.
7. Council of Europe, Parliamentary Assembly, Committee on Legal Affairs and Human Rights (2021) *Addressing issues of criminal and civil liability in the context of climate change*, AS/Jur (2021) 06 (provisional version), Rapporteur: Ziya Altunyaldiz, Council of Europe, Strasbourg.
8. Eliantonio M & Richelle J (2024) Access to Justice in Environmental Matters in the EU Legal Order: The ‘Sectoral’ Turn in Legislation and Its Pitfalls, *European Papers* 9(1), pp. 261–274, DOI: 10.15166/2499-8249/756.
9. Gauna E (2012) Environmental Law, Civil Rights and Sustainability: Three Frameworks for Environmental Justice, *Journal of Environmental and Sustainability Law* 19(1), pp. 34–59.
10. Hayajneh A Z (2004) *Civil Liability for Environmental Damage: A Comparative Study between Jordanian and English Legal Systems*, Newcastle Law School, Newcastle upon Tyne.
11. Howarth W (2019) Environmental Law and Private Law, in: Lees E & Viñuales J E (eds.) *The Oxford Handbook of Comparative Environmental Law*, Oxford University Press, Oxford, DOI: 10.1093/law/9780198790952.001.0001.
12. Krstinić D, Bingulac N & Dragojlović J (2017) Criminal and Civil Liability for Environmental Damage, *Economics of Agriculture* 64(3), pp. 1161–1176, DOI: 10.5937/ekoPolj1703161K.
13. Ludeña S A & Abella J A F (2010) Environmental Civil Liability under Comparison: Some Notes in Soft Law, *Revista Jurídica Piélagus* 9/2010, pp. 59–100.

14. Michalovič M & Jenčo J (2022) Konceptia boja proti environmentálnej protiprávnej činnosti ako základný kameň revízie starostlivosti o životné prostredie v podmienkach Slovenskej republiky, in: Novotná V & Durec Kahounová M (eds.) *Bratislavské právnické fórum 2022: Zefektívňovanie boja proti nelegálnej činnosti v oblasti starostlivosti o životné prostredie*, Právnická fakulta UK, Bratislava, pp. 12–24.
15. Michalovič M & Maslen M (2024) Advocating for environmental law – grounds for its status as an independent branch of law in Slovak legal doctrine, *Prawne Problemy Górnictwa i Ochrony Środowiska* 2/2024, pp. 1–26, DOI: <https://doi.org/10.31261/PPGOS.2024.02.06>.
16. Milošević O, Madžgalj J & Novaković S (2025) Environmental protection through civil law instruments in the legislation of the Republic of Serbia, *Ekonomika* 71(1), pp. 55–67, DOI: <https://doi.org/10.5937/ekonomika2501055M>.
17. Pontin B (2013) *Nuisance Law and Environmental Protection: A Study of Nuisance Injunctions in Practice*, Lawtext, Witney.
18. Preston B (2023) *The role of the courts in delivering environmental justice*, The 2023 Sir Ninian Stephen Lecture, University of Newcastle School of Law and Justice, pp. 1–18.
19. Szilágyi J E (2021) The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues, *JAEL* 16(31), pp. 130–144, DOI: <https://doi.org/10.21029/JAEL.2021.31.130>.
20. Števček M, Dulak A, Bajánková J, Fečík M, Sedlačko F, Tomašovič M et al. (2019) *Občiansky zákonník I, Komentár*, C. H. Beck, Praha.
21. Tran C & Vu T D (2021) Some legal issues on compensation for environmental damage under Vietnamese law and the law of the European Union, *Studia Prawnicze KUL* 3(87), pp. 277–306, DOI: <https://doi.org/10.31743/sp.10660>.
22. Watson M (2005) The enforcement of environmental law: civil or criminal penalties? *Environmental Law and Management* 17(1), pp. 3–6.

The Role of Civil Law in Environmental Protection in Poland: Liability, Damages, and Remedies¹

Abstract

The study shows that classic private law claims, in light of the conventional judicial approach, are not particularly effective in cases involving environmental damage. There are numerous legal grounds for pursuing environmental claims, including those provided for in the Environmental Protection Law and the Civil Code, which often overlap. However, in practice, those seeking to pursue environment-related claims through civil law have often sought to rely on the concept of personal rights. One crucial reason for this trend is the individual nature of civil law claims and the perception of the environment as a common good, which results in evidentiary complexities that are difficult to overcome. The article examines the particular grounds of civil liability for environmental damage, their prerequisites, and the available legal remedies, including compensation and other forms of restoration of the previous state of the environment, as well as measures aimed at preventing future damage. The shortcomings of the current legal framework and attempts to identify alternative solutions for pursuing environmental claims through civil law are also examined.

Keywords: *Ex delicto* liability, compensation for environmental damage, personal rights, environmental protection, civil liability, environmental claims

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1. Overview of the regulation of civil liability for environmental damage in Polish law

When outlining the basic structure of civil law engagement in environmental protection in Poland, it is necessary to identify the actors between whom a civil law dispute concerning environmental protection may arise. This is crucial, since the role of civil law is limited to the regulation of relationships between parties possessing civil law personality (legal capacity), in which the individual interests of those parties are the subject of potential protection. Polish civil law does not provide a framework for treating the State (a public entity) as the owner and exclusive holder of a general right to the environment as a whole.² Rather, particular elements of the environment are treated either as common goods³ (the so-called *res omnium communes*,⁴ such as atmospheric air, the sea, and other flowing waters) or, in the case of things, as objects of ownership and other proprietary or contractual rights entitling their holders to possession, belonging to particular public or private entities.⁵

Private actions concerning environmental issues may arise between different actors, which may in turn require the application of different civil law provisions:

1. The State (or local government bodies) may seek private law protection against natural persons or legal entities (particularly business entities) that fail to comply with environmental regulations. In this case, private law serves only as a supplement for administrative and criminal law provisions,⁶ which are often more effective in ensuring compliance with environmental requirements (hereinafter referred to as Situation 1).

2 | Skoczylas 2003, 61.

3 | See e.g. judgement of the Supreme Court of 5 October 2012 (IV CSK 244/12).

4 | Wolter, Ignatowicz & Stefaniuk 2001, 233.

5 | On the specific legal status of animals, to some extent similar to that of things, see Art.1 of the Act of 21 August 1997 on Animal Protection, Journal of Laws 2023, item 1580. With regard to wild animals, which are regarded as a national good and owned by the State Treasury, see Art. 2 of the Act of 13 October 1995 – Hunting Law, Journal of Laws 2025, item 539.

6 | See, in particular, the Act of 13 April 2007 on the Prevention of Environmental Damage and its Remediation Journal of Laws of 2020, item 2187, which imposes on entities using the environment [within the meaning of Art. 3(20) EPL, as defined below] duties to take preventive or remedial measures where they have caused environmental damage or created a direct threat thereof through activities posing a risk of such damage (even in the absence of fault) or through other activities affecting protected species or protected natural habitats (in the latter case, only where fault is established). Furthermore, the Act authorises environmental protection authorities to undertake such measures at the expense of the entity using the environment. See: Korzeniowski 2011, 91; Czech 2009, 21; Frączak 2013. These obligations also apply to the entity occupying the land (regardless of whether that person holds legal title to it), but only where the environmental damage or the direct threat thereof occurred with that person's knowledge or consent. See: Czech 2009, 78. The Act primarily provides administrative-law protection mechanisms. Civil law claims play only a limited role, mainly in situations where an entity using the environment has incurred the costs of preventive or remedial measures and seeks reimbursement from the perpetrator or the competent administrative authority.

2. A natural person, NGO, or other legal entity (e.g. a business entity) may seek private law protection against another natural person or business entity. In this case, it is necessary to demonstrate that the environmental impact caused by one entity produces consequences within the individual legal sphere of the entity seeking protection (hereinafter referred to as Situation 2).
3. A natural person, NGO, or other legal entity (e.g. a business entity) may seek private law protection against the State (or local government bodies) for inadequate environmental protection affecting that entity's legal position (hereinafter referred to as Situation 3).

Given the limited scope of the study, the discussion that follows focuses on Situations 2 and 3. These situations do not primarily concern the State (or the relevant administrative authorities) acting in fulfilment of its statutory duty to protect the environment.

In Polish law, the regulation of civil claims relating to environmental protection is highly fragmented, which undoubtedly complicates the application of the relevant provisions. Given the limitations imposed by the scope of this study, the analysis is confined to the basic regulations contained in the Environmental Protection Law⁷ (hereinafter referred to as the EPL) and the Civil Code⁸ (hereinafter referred to as the CC). Detailed provisions contained in specialised statutes (concerning, for example, water protection, land protection, nuclear damage, and similar matters), as well as those arising from international agreements, are not considered.

The Environmental Protection Law contains a number of private law provisions (Section I of Title VI, Arts. 322–328), as well as specific regulations located elsewhere in the Act, such as Art. 129, which governs claims arising from restrictions on the use of immovable property imposed for environmental protection purposes.

In the EPL, it is Art. 323 that is intended to provide protection for individuals, although, at the same time, it opens up – at least in theory – the possibility of using civil law regulations to protect the environment as a common good.⁹ It states that a person ('everyone') who is directly threatened or harmed by an unlawful impact on the environment may demand that the entity responsible for the threat or violation restore the lawful state of affairs and take preventive measures (e.g. by installing equipment or facilities to prevent the threat or violation),¹⁰ and, if this is impossible or excessively difficult, may demand the cessation of the activity

7 | Act of 27 April 2001 – Environmental Protection Law, Journal of Laws of 2025, item 647.

8 | Act of 23 April 1964 – Civil Code, Journal of Laws of 2025, item 1071.

9 | Skoczylas 2000, 260; Rakoczy 2013, Art. 322 no. 3.

10 | The claimant may also request the cessation of unlawful environmental impacts where there is a direct threat of damage occurring in the future. See: Rakoczy 2013, Art. 323 no. 3.

causing the threat or violation.¹¹ Contrary to the original intentions expressed in the draft bill, Art. 323 of the EPL does not provide for claims for monetary compensation for damage.¹² Legal standing is not linked to legal title to land;¹³ therefore, anyone who is directly threatened or has suffered damage as a result of an unlawful environmental impact may be a plaintiff. This provision additionally states that if the threat or violation concerns the environment as a common good, the claim may be filed by the State, a local government unit, or an environmental organisation. Despite the general wording of the provision, for a civil claim to be successful it is necessary to specifically identify the responsible entity as the defendant.¹⁴

This regulation indicates how difficult it may be for an individual to effectively enforce an environmental claim. Negative changes to the environment do not translate directly into civil law damage, which must necessarily be associated with adverse consequences for the assets of a specific entity.¹⁵ The extensive evidentiary burden that the claimant must satisfy effectively neutralises the practical usefulness of the claim under Art. 323 EPL. The claimant must prove:

- a) the defendant's conduct constituting an environmental impact,
- b) the unlawfulness of that conduct,
- c) the damage that the claimant is facing or has suffered (although its amount does not need to be proved under the provision in question),¹⁶
- d) the causal link between the defendant's conduct and the claimant's damage.¹⁷

Slightly less stringent requirements apply to claims brought by NGOs or public authorities, as these actors may bring a claim concerning harm to the environment (or a threat thereto) as a common good, which removes the need to demonstrate individual damage. Some authors argue that this regulation bears certain

11 | During court proceedings, or even before an action is brought, the court may grant injunctive relief in respect to a claim brought under Art. 323 EPL, determining the rights and obligations of the plaintiff and the defendant until the conclusion of the proceedings in a manner appropriate to the circumstances. See: Art. 755 § 1 in conjunction with Art. 730 § 1 and 2 of the Act of 17 November 1964 – Code of Civil Procedure, Journal of Laws 2024, item 1568; hereinafter referred to as the CCP. See also the decision of the District Court in Warsaw of 30 July 2021 (III C 1697/19), which granted injunctive relief by ordering the defendants to suspend and refrain from forestry activities, including tree felling.

12 | Lipiński 2001, Art. 323 no. 5; Rakoczy 2009, 215. This issue remains controversial in Polish legal literature. See e.g. Skoczylas 2003, 68. The opposing view allows monetary compensation to be sought under the regime of Art. 323 EPL. See: Gruszecki 2025, Art. 323 no. 4. With regard to the latter view, it may be objected that insufficient consideration has been given to Art. 322 EPL, which provides for the application of the provisions of the Civil Code to matters not regulated by the EPL. Resolving this issue is particularly crucial given that Art. 323 EPL does not treat fault as a prerequisite for liability.

13 | Skoczylas 2003, 67.

14 | Robakowska 2021, 117.

15 | Littwin 2021, 82–85.

16 | Poniatowski 2021, 70.

17 | Frączak 2013.

similarities to an *actio popularis*, because the claim may be brought by parties who have not themselves been affected.¹⁸

Since fault is not a necessary component of liability under Art. 323 of the EPL, several authors consider that this provision establishes strict liability.¹⁹

When considering Art. 323 EPL, it is also necessary to mention Art. 325 EPL. According to this provision, liability for damage caused by environmental impacts is not excluded by the fact that the activity causing the damage is carried out on the basis of and within the limits of an administrative decision.²⁰ This results in an interesting dichotomy whereby a final and lawful administrative decision does not necessarily remove the unlawfulness of the action carried out on its basis.²¹

Additionally, under Art. 326 EPL, the party that has repaired the environmental damage is entitled to claim reimbursement from the offender for the expenses incurred in this regard,²² but the amount of the claim is limited to the reasonable costs of restoration. Depending on the legal ground relied upon by the plaintiff, the remedies may be subject to certain additional statutory limitations, the most fundamental of which concerns the concept of damage – it is a well-known rule that the plaintiff should not be enriched by compensation for damage.²³ Furthermore, under the regime of contractual liability (*ex contractu*), there is no possibility of seeking redress for non-pecuniary harm suffered by a party (physical or psychological injury).²⁴ It is controversial whether liability under the *ex delicto* regime may be limited by means of a contractual clause (pursuant to Art. 473 § 2 CC). Finally, Art. 323 EPL does not provide for a claim seeking payment of a sum of money as compensation for damage, being limited instead to certain restitutive or preventive²⁵ measures.

The EPL provisions do not exclude other grounds for liability for infringements of the legally protected interests of an individual entity,²⁶ which may therefore

18 | Jaworowicz-Rudolf 2014, 172; Gruszecki 2025, Art. 323 no. 6.

19 | Dmowska 2020, 30; Rakoczy 2009, 207.

20 | See the judgment of the Supreme Court of 2 April 2014 (IV CSK 404/13), concerning a case in which the reconstruction (raising) of a national road, carried out in accordance with a building permit, resulted in the removal of a natural protective barrier along the flight path of bees from a nearby apiary and, consequently, increased bee mortality and reduced the income of the apiary operator.

21 | See also Art. 22(2) point 2 of the 2007 Act on the Prevention of Environmental Damage and its Remediation, which exempts an entity using the environment from bearing the costs of preventive and remedial measures where the environmental damage or the direct threat thereof arose as a result of compliance with an order issued by a public administration authority, provided that the order did not result from emissions or events caused by that entity's own activities. On the relationship between Art. 325 EPL and the provisions of the Civil Code, see: Czech 2010, 9.

22 | See also Lewandowski 2011, 568. With regard to the costs incurred for preventive or remedial measures in response to environmental damage, see also Arts. 22 and 23 of the 2007 Act on the Prevention of Environmental Damage and its Remediation.

23 | See e.g. judgement of Supreme Court of 16 December 1999 (II CKN 643/98).

24 | Nesterowicz 2007, 22.

25 | Skoczylas 2003, 63; Robakowska 2021, 99.

26 | In context of Art. 323 EPL and Art. 222 § 2 CC see: Skoczylas 2003, 64.

choose the appropriate legal remedy (which will generally affect the scope of the prerequisites of the claim that must be proved). When it comes to the CC, there are many provisions that may be useful in environmental claims, depending on the particular situation and the actors involved. The principal provisions that should to be outlined are discussed below.

1. Art. 415 introduces the general rule that a person who, through his fault, causes damage to another, is obliged to compensate for it (Situations 1 and 2). This provision requires the claimant to prove the act that caused the damage, the defendant's fault (which is not presumed), the damage to the claimant's property, and an adequate causal link between the act and the damage. The claim is limited to compensation for the damage.
2. Arts. 417–417² focus on legislative failures or omissions and damage caused in the exercise of public authority (Situation 3). The most relevant in the context of environmental damage is Art. 417,¹ which regulates the liability of the State for legislative failures and omissions to enact legal regulations. According to this provision, if damage was caused by the enactment of a normative act, compensation may be sought only where it has been established in the relevant proceedings that the act is inconsistent with the Constitution, a ratified international agreement, or a statute. If, on the other hand, the damage was caused by a failure to issue a normative act whose issuance is required by law, the unlawfulness of that omission is determined by the court before which compensation is sought.

The second part of this provision regulates failures connected with judgements or administrative decisions, as well as omissions to issue them.²⁷ It provides that where damage has been caused by a final judgement or final decision, compensation may be sought only after its unlawfulness has been established in the relevant proceedings. This also applies where a final judgement or decision was rendered on the basis of a normative act that is inconsistent with the Constitution, a ratified international agreement, or a statute. Alternatively, if the damage was caused by the omission to issue a judgement or decision, compensation may be sought after the unlawfulness of the omission has been established in the relevant proceedings, but only where there was a legal obligation to issue the judgement or decision.

In theory, this regulation is intended to provide protection against mistakes and negligence on the part of the State in the course of legislation and the exercise of public authority, particularly in the field of environmental

27 | See, for example, Art. 15(1) point 1 of the Act of 2007 on the Prevention of Environmental Damage and its Remediation, under which the environmental protection authority may, by way of an administrative decision, impose on an entity using the environment or a landholder an obligation to undertake preventive or remedial measures.

protection.²⁸ In practice, however, a claim based on this provision would be extremely difficult to pursue successfully. The liability of the State is based on the condition of unlawfulness. This is intended as a concession to the injured party, who is not required to prove fault on the part of State representatives, since a finding of unlawfulness is sufficient. However, this solution does not significantly improve the effectiveness of these provisions in the field of environmental protection. The primary difficulty lies in demonstrating the existence of individual economic damage resulting from shortcomings in environmental protection on the part of the State. In cases involving legislative omissions, an additional challenge is proving that the State was under an obligation to regulate a particular issue in a specific manner. As regards liability for failure to issue decisions, a private entity may pursue claims relating to omissions affecting its individual sphere of rights, whereas these provisions provide only limited and often ineffective remedies in cases involving a general failure by the State to enforce environmental regulations, such as those concerning permissible levels of air pollutants. These difficulties have led private law actors to seek protection through the law of personal rights, a matter discussed in detail later in this article.

Although equity is, in principle, insufficient to justify liability for environmental damage, it may nevertheless become relevant to a limited extent under an express statutory provision.²⁹ Art. 417² provides for liability for personal injury caused by the lawful exercise of public authority where such liability is justified by considerations of equity.

3. Art. 435, as modified by Art. 324 EPL, regulates the liability of an entity operating an enterprise for damage caused by the operation of that enterprise (Situation 2). Under this provision, a company operating a plant powered by natural forces (steam, gas, electricity, liquid fuels, etc.)³⁰ or a high-risk facility is liable for personal injury or property damage caused to anyone by the operation of that facility, unless the damage resulted from force majeure or solely from the fault of the injured party or a third party for whom the company is not responsible.³¹ The provision is universal in nature, but it also encompasses situations in which the operation of a plant causes environmental damage that, in turn, results in individual damage. This regime is based on strict liability, from which only force majeure or the exclusive

28 | The liability of the State under private law is also widely discussed in other jurisdictions. See e.g. Bergkamp 2001; Wilde 2012; Rudall 2024.

29 | Equity may, albeit exceptionally, limit or postpone the obligation to compensate for damage if the defendant successfully raises the plea of abuse of rights (Art. 5 CC). In relation to compensation for damage between natural persons, see also Art. 440 CC.

30 | Zelek 2018, 903.

31 | See: judgement of Court of Appeal in Warsaw from 13 March 2017 (VI ACa 1027/15).

fault of persons for whom the entrepreneur is not responsible may provide exoneration.³²

Some authors argue that this model of liability is not fundamentally distinct from liability based on presumed fault.³³ However, fault is irrelevant under a strict liability regime. Instead, the defendant must prove the existence of at least one exonerating circumstance. In this sense, only a presumption of liability operates, shifting the burden of proof to the operator of the enterprise. Nevertheless, Art. 435 still requires the claimant to prove the negative economic consequences suffered and the causal link between the operation of the plant and the damage. Case law has established that unlawfulness is not a necessary condition for liability under this provision.³⁴ At the same time, it has been emphasised that strict liability should not be interpreted too broadly, as doing so could negatively affect the competitiveness of business activity in Poland.³⁵

Art. 435 is complemented by Art. 439, which provides that a person facing imminent harm as a result of a failure to properly supervise the operation of an enterprise may demand that the responsible person take the measures necessary to avert the threatened danger.³⁶ Art. 439 establishes a preventive claim that is similar to, but distinct from, that provided for in Art. 323(1) EPL.³⁷

4. Art. 144 prohibits the owner of property from engaging in activities that interfere with the use of neighboring properties beyond the average level of inconvenience. Under this provision, a landowner must, in exercising his rights, refrain from actions that interfere with the use of neighbouring properties beyond the average degree determined by the socio-economic purpose of the property and local conditions. This provision belongs to property law rather than the law of obligations and is therefore limited to relationships between actors holding legal title to property, as the claim is derived from that title. Activities giving rise to such claims may include environmental nuisances such as smoke, water pollution, or soil

32 | Strict liability without any grounds for exoneration is controversial in Polish law. However, some authors argue that it may arise in cases involving nuclear, mining, geological, or hunting damage. See: Jamiołowski 2018, 114.

33 | Andrzejczak 2013, 62. According to another view, Art. 435 CC establishes a presumption of an adequate causal link between the operation of the enterprise and the damage suffered. See: Lewaszkiewicz-Petrykowska 1967, 130. R. Strugała, in contrast, argues that Art. 435 CC gives rise to a legal presumption that, where damage has been caused by the operation of an enterprise, it should be assumed that the damage did not result from circumstances constituting grounds for exoneration from liability that fall outside the scope of the enterprise's operation. See: Strugała 2024, Art. 435 no. 13.

34 | Trzaskowski 2011, 127.

35 | *Ibid.*, 130–131.

36 | Skoczył 2011, 127–128.

37 | Jamiołowski 2018, 117.

contamination (Situation 2).³⁸ The basis of the claim is the excessive level of interference; neither unlawfulness (in the sense of violating applicable legal norms)³⁹ nor fault on the part of the emitter is required. The beneficiary may seek only the cessation of the interference, as the provision does not constitute an independent basis for compensation. If the interference also causes damage, compensation may be sought on a separate legal basis, for example under Art. 415 CC.⁴⁰

Under property law, a claim for damages may also arise under Arts. 224 § 2 and 225 CC, which regulate the relationship between the owner (or other entitled individual to whom the provisions on the protection of ownership apply) and the possessor where the possessed item has deteriorated or been lost.⁴¹

5. Arts. 23 and 24, in conjunction with Art. 438, provide protection for personal rights such as e.g. health, privacy of correspondence, and inviolability of the home (Situations 2 and 3). The protection of personal rights encompasses a complex set of claims that may be exercised by the claimant.
 - a) If an individual's personal right is threatened by the conduct of another person, the individual may demand that the conduct cease, unless it is lawful. Thus is a preventive claim based solely on unlawfulness; fault is not required.
 - b) In the event of a violation of a personal right, the injured person may demand that the person responsible remove the consequences of the violation. As with the preventive claim, a restorative claim requires unlawfulness, which must be established by the claimant.
 - c) Where the offender is at fault (in most cases), the injured party may also seek monetary compensation for non-material harm or payment of an appropriate sum for a specified social purpose.
 - d) Where the offender is at fault (in most cases), the injured party may also seek compensation for material damage.

There is, however, controversy as to whether the rules governing the protection of personal rights are suitable for environmental claims. In particular, it remains disputed whether the right to non-degraded environment constitutes a personal right and, consequently, whether it can serve as the basis for the claims listed above.

38 | Rakoczy 2008, 75.

39 | This may lead to a situation in which even conduct that complies with the requirements of an administrative decision imposing regulatory restrictions is nevertheless found to exceed the average measure of interference within the meaning of Art. 144 CC. See: Trzaskowski 2011, 126–127; Jamiółowski 2018, 116.

40 | Karwowska 2013, 177.

41 | See the judgement of the District Court in Toruń of 12 April 2018 (I C 2492/14), which upheld a claim for monetary compensation brought by an affected landowner against an unauthorised possessor who had caused contamination of the land.

In cases involving fault-based claims, intentional fault is not required; negligence, consisting of a failure to exercise due care, is sufficient. Where the claim is brought against a business entity, the required standard of care is higher because the professional nature of the defendant's activity is taken into account (Art. 355 CC). The existence of fault is sufficient, and its degree generally does not affect the extent of the defendant's liability. On the other hand, fault is not presumed under the legal grounds that may serve as the basis for environmental claims. In cases involving infringements of personal rights, unlawfulness is presumed (the defender must prove that his conduct was lawful in order to avoid liability), but fault must still be proved by the claimant.

If an obligation to compensate for damage arises under the CC, the injured party may choose between restoration of the previous state and monetary compensation. However, if restoration is impossible or would entail excessive difficulties or costs for the liable party, the injured party's claim is limited to monetary compensation (Art. 363 CC).

There are, however, limitations relating to causation under the CC. Pursuant to Art. 361 CC, the liable party is responsible only for the normal consequences of the act or omission from which the damage resulted. Compensation covers both the losses suffered by the injured party and the benefits that would have been obtained had the damage not occurred. Establishing such a causal link rests with the claimant. This may be particularly difficult where environmental harm does not clearly translate into individual financial loss.

When calculating compensation, emphasis is placed on its compensatory function, as compensation is intended to cover actual losses and lost benefits suffered by the injured party. Its punitive function is not recognised, and therefore punitive damages are not available. Parties may agree on a contractual penalty, which need not correspond exactly to the amount of the damage suffered. However, contractual liability plays only a limited role in the field of environmental damage.

Civil liability for environmental damage may be covered by insurance, thereby reducing the financial risks associated with environmental harm. Insurance plays a particularly critical role in relation to liability under Art. 435 CC, given its strict nature. The scope of coverage depends on the terms of the specific insurance contract. Liability towards third parties for environmental damage is generally covered under business liability insurance. However, standard business liability insurance policies frequently exclude environmental damage from their scope of coverage. Such risks usually require an additional extension clause.⁴²

Extended coverage typically includes the costs of environmental clean-up, restoration of damage to third-party property and preventive or remedial measures aimed at preventing or mitigating environmental damage.⁴³ Even with extended

42 | Littwin 2021, 97.

43 | Ibid.

coverage, standard liability insurance focuses on losses suffered by third parties. It does not cover damage to the insured's own property, including damage to existing assets or lost profits resulting, for example, from a temporary interruption of production. Such losses require separate first-party insurance coverage.⁴⁴

It should be emphasised that civil liability insurance generally covers only the civil law consequences of environmental damage. It does not protect the insured against administrative or criminal liability.⁴⁵

The civil law nature of these claims allows them to be pursued both through civil proceedings before courts of general jurisdiction (Arts. 1 and 2 § 1 CCP)⁴⁶ and through alternative dispute resolution mechanisms, including mediation (Art. 183¹ CCP) and arbitration (Art. 1157 CCP). However, given the need for party consent and the evidentiary complexity of environmental damage cases, although such disputes are in principle suitable for mediation or arbitration, these mechanisms have so far played only a limited role. Nevertheless, Polish civil procedure provides a normative framework for their use, including in disputes involving public entities such as the State Treasury or local government units.

Polish law does not recognise a form of representative action available to an affected community environmental damage cases. However, individual members of such a community, provided that they have legal capacity, may bring claims in their own name.⁴⁷

While civil law is capable of dealing adequately with cases in which environmental damage directly affects the claimant's economic interests or property (e.g. where water or soil pollution affects living conditions or reduces the value of real estate), private law principles make it much more difficult to address situations in which environmental harm has no obvious connection with the plaintiff's individual legal position. This difficulty is particularly evident where protection of the environment, or its components, as a common good is at stake. The fact that the environment as a common good cannot be regarded as belonging to any individuals⁴⁸ creates significant obstacles when individuals seek to protect it through private legal action.

44 | *Ibid.*, 98–99.

45 | Littwin 2021, 100.

46 | Like other disputes between business entities, cases against entrepreneurs concerning the cessation of environmental damage, restoration of the previous state of the environment, compensation for environmental damage, or the prohibition or restriction of activities threatening the environment are classified as commercial cases. Consequently, they are examined by commercial courts in accordance with the provisions governing separate proceedings in commercial matters (Art. 458² § 1 pt. 4 CCP), which, due to their evidentiary framework, are intended to facilitate a more expeditious resolution of disputes than ordinary proceedings. In all other respects, such cases are subject to the general rules of civil procedure.

47 | The Act of 17 December 2009 on the Pursuit of Claims in Group Proceedings, *Journal of Laws* 2024, item 1485, provides for the joint pursuit of claims of the same type in a single proceeding by a group of at least ten persons, including claims arising from tortious acts.

48 | Jaworowicz-Rudolf 2014, 174.

It is worth noting that in cases involving environmental claims where no direct individual economic loss can be linked to the environmental infringement, the EPL provisions on civil liability largely remain ineffective in practice. In such cases, claimants often seek protection under the CC provisions governing personal rights. The reason lies precisely in the challenges associated with translating environmental interests into legal instruments designed to safeguard the individual interests of natural or legal persons. This issue is discussed further in Section II.

The question of the relationship between different civil claims in situations where the facts fall within the scope of several legal provisions remains the subject of dissenting opinions. The potential for concurrent claims arises in a number of configurations. The first involves a concurrence between a claim governed by the EPL and a claim under the CC. Art. 322 EPL provides that liability for damage caused by environmental impacts is governed by the CC, unless the EPL provides otherwise.

Although the general principle appears clear, considerable uncertainty remains regarding its detailed application. In particular, it is disputed whether the provisions of the EPL that regulate the same factual situations as provisions of the CC exclude the application of the latter or merely supplement them, thereby giving claimants a choice between a claim under the EPL and a claim under the CC. This issue may arise, for example, where environmental damage gives rise to a claim under Art. 323 EPL, while at the same time constituting an interference with the use of neighbouring properties (giving rise to a claim under Art. 144 CC)⁴⁹ or resulting from the operation of an enterprise (giving rise to a claim under Art. 435 CC).

Seeking protection under Art. 323 EPL is not necessarily more advantageous for the claimant, if only because liability under the provision requires unlawfulness of conduct, whereas unlawfulness is not a necessary condition for claims under Arts. 144 or 435 CC. If the EPL provisions are regarded as *legis specialis* in relation to the CC regime, the fact that a given situation falls within the scope of an EPL provision would exclude the possibility of pursuing an alternative claim under the CC.⁵⁰ Such an approach would, in effect, limit the protective potential of civil law by excluding, in many cases, the possibility of relying on remedies available under the CC.

A far more favourable solution would be to adopt an interpretation according to which the EPL expands, rather than narrows, the claimant's options⁵¹ by allowing a choice between different legal remedies.⁵² However, this approach is not universally applicable. Certain EPL provisions clearly indicate their exclusive nature and therefore exclude concurrent claims. Art. 129 EPL should be viewed in this way.

49 | Karwowska 2013, 178–179.

50 | Littwin 2021, 95.

51 | *Ibid.*, 94.

52 | Robakowska 2021, 105 and 113.

This provision governs claims available to the owner of property whose value or utility has been diminished as a result of an environmental decision or environmental regulations. Where restrictions on the use of real property makes it impossible, or significantly limited to continue using the property in its previous manner or in accordance with its intended purpose, the owner may demand that all or the part of the property be purchased. Alternatively, the owner may seek compensation for the damage suffered, including any reduction in the value of the property.

The provision contains a special limitation requiring the claim to be brought within three years of the entry into force of the legislation or local act imposing the restriction of the use of the property. This period should be regarded as a preclusive time limit and is independent of the ordinary limitation period.⁵³ It would be inconsistent if, after the expiry of this claim, the property owner could seek protection under other provisions of civil law. Consequently, this particular situation should be treated as precluding concurrent claims.⁵⁴

It is also possible for concurrence to arise between claims regulated by the CC. One example is where the operation of an enterprise causes environmental impacts that interfere with the use of neighbouring properties, thereby giving rise to potential claims under both Arts. 435 and 144 CC.⁵⁵ Similarly, there may be a concurrence between a claim under Art. 144 CC and claims based on the protection of personal rights.⁵⁶ In such situations, unless there is a clear indication to the contrary, preference should be given to allowing the claimant to choose the most appropriate means of protection.

2. Attempts to pursue environmental claims through the law of personal rights

The overview of civil law remedies available to actors seeking environmental protection demonstrates that the possibilities for obtaining such protection through civil law are fundamentally limited where environmental harm does not translate directly and unequivocally into the economic sphere of an individual. The problem begins with the very definition of environmental damage.

Environmental damage is defined in Art. 3(11) of the Law of 13 April 2007 on the Prevention and Remediation of Environmental Damage as a negative, measurable change in the state or function of environmental elements, evaluated in relation to their initial state and caused directly or indirectly by the activity of the entity using the environment. However, this definition was adopted for the purposes of a

53 | Szalewska 2014, 246.

54 | Trzaskowski 2011, 128.

55 | *Ibid.*, 128–132.

56 | Pietraszewski 2013, 377–378.

specific statute and is therefore not of universal application within the legal system. Moreover, the Act regulates administrative liability,⁵⁷ which implies that the definition of environmental damage contained therein is limited to that context. In the literature, environmental damage defined in this manner is referred to as *damage sensu stricto*.⁵⁸ By contrast, *damage sensu largo* encompasses any damage to environmental elements, including negative consequences arising from interactions between them.⁵⁹

However, this distinction is somewhat misleading. Environmental changes and interactions occur constantly, making it necessary to identify a measurable criterion that distinguishes environmental damage from other environmental changes. The concept of damage inherently carries a negative connotation, which means that environmental damage can be identified only where changes in environmental elements are evaluated as detrimental.⁶⁰ Such an assessment is inevitably subjective, since different actors may evaluate the same environmental change differently.

Attempts to objectivise the concept of negative change usually involve reference to economic criteria, such as market value. In the environmental context, however, such criteria may prove unreliable.⁶¹ Since market value always does not provide an adequate measure of environmental harm, certain provisions permit claims for restoration costs where specified conditions are met (e.g. Art. 326 ELP).⁶² Nevertheless, environmental damage should be understood as extending beyond purely economic criteria. Environmental losses may occur without measurable financial consequences, and in some cases the previous environmental state cannot be restored, making recovery of restoration costs impossible.

From this perspective, environmental damage *sensu largo* should be understood as a change in environmental elements that leaves the environment in a worse condition than before, regardless of whether measurable economic consequences can be identified. Yet this condition alone is insufficient. A second requirement is the existence of a connection between the environmental change and human impact.⁶³

Even when anthropocentric activity causes environmental change that leaves the environment in a worse state, thereby satisfying the criteria for environmental damage, civil liability may still not arise if the change does not result in consequences affecting the economic interests of a specific individual. At this point, it is useful to return to the party configurations discussed earlier in this article, as confusion may arise in the terminology employed.

57 | Littwin 2021, 83.

58 | Ibid.

59 | Ibid.

60 | Wałkowski 2019, 96.

61 | Ibid., 97.

62 | Ibid.

63 | Ibid., 98.

In Situation 1, the State (or local government bodies) may be entitled to claim reimbursement of expenses incurred in restoring the environment. Such claims concern the protection of the environment as a common good rather than the protection of an individual right belonging to the State. The existence of these claims may create the misleading impression that an equivalent mechanism exists in Situations 2 and 3.

Admittedly, civil law recognises certain situations in which a person may recover expenses incurred in protecting another person's interests or property. One example is Art. 438 CC, under which a person who suffers property damage while preventing imminent harm to another person or averting a common danger may seek compensation from those who benefited from those actions, in an appropriate proportion. Such solutions, however, remain exceptions to the fundamental principle of private law that its rules are designed primarily to protect individual interests.

Consequently, in Situations 2 and 3, a person seeking protection under private law must demonstrate that environmental damage has affected his or her individual legal sphere, for example by causing damage in the civil law sense. Even where legislation strengthens the position of the claimant by imposing strict liability or dispensing with the requirement of unlawfulness, the fundamental private law question remains the same: what specific individual harm is to be remedied, or what specific individual interest is to be protected?⁶⁴

Thus, a party seeking to establish civil liability must demonstrate not only the existence of the conditions for another party's liability under a particular legal basis (e.g. unlawfulness, fault, or exceeding the permissible degree of interference) but also the entire chain of events leading to that liability. This chain consists of an act or omission by the responsible party that produces environmental effects, which in turn generate adverse consequences in the economic sphere of the entitled party. In addition, it is necessary to demonstrate that each element of this chain falls within the scope of adequate causal link defined in Art. 361 CC. Consequently, an effective defence may in practice be limited to disputing the existence of the elements and conditions necessary to establish liability under a particular legal basis, and it will often prove impossible for the claimant to demonstrate their existence.

The difficulties associated with pursuing environmental claims under private law raise the question of whether civil law can provide protection where environmental changes do not have a direct financial dimension but nevertheless negatively affect an individual's life. Growing public awareness of the importance of a clean environment for individual health and well-being has increased pressure to identify civil law instruments that enable individuals to prevent actions or omissions that degrade the environment. These efforts have focused on the provisions governing the protection of personal rights and have generated a decades-long

64 | *Ibid.*, 87.

debate over whether an individual possesses an individualized and legally protected right to live in a non-degraded environment.

It should be noted that such attempts face a structural problem relating to the function of civil law claims. From a systemic perspective, the protection of the environment as a common good (action in the public interest) is generally pursued through administrative proceedings conducted *ex officio*. In civil law, by contrast, the identification of an individual interest is a necessary element of protection.⁶⁵ If actions based on environmental degradation were permitted under the rules governing the protection of personal rights where the requirement to demonstrate a specific personal interest were substantially relaxed, the institution would effectively become a form of *actio popularis*.⁶⁶

The Supreme Court addressed the issue of an individual's right to an unpolluted environment as early as 1975. It should be noted that this occurred under a different political system and under a Constitution that is no longer in force, although the relevant provisions of the CC concerning personal rights remained unchanged. At that time, the Court held that a person's right to an unpolluted biological environment and to derive aesthetic satisfaction from natural scenery could be protected by the means provided in Art. 24 CC only where the violation of that right simultaneously constituted a violation or threat to one of the personal rights recognised under Art. 23 CC.⁶⁷

This statement is crucial to understanding the ongoing debate. The Court held that although a right to an unpolluted environment exists as a common right, it does not automatically become an individual right. Only where the violation of this common right simultaneously infringes or threatens an already recognized personal right do the provisions of the CC governing personal rights become applicable.

A different stance was adopted by the Supreme Court in 1984, again under the previous political system and a Constitution that is no longer in force. In a decision issued that year, the Supreme Court explicitly recognised an individual personal right to enjoy the benefits of an unpolluted environment and held that this right was protected under civil law.⁶⁸

More recently, under the current constitutional framework, the so-called "smog cases" have emerged. Public figures brought claims against the State, arguing that the right to clean air ought to be recognised as a personal right protected under Arts. 23 and 24 of the Civil Code.⁶⁹ District courts in Warsaw found that the claimants' personal rights, understood as including the right to enjoy an unpolluted environment, had been infringed, together with other personal rights

65 | Karwowska 2013, 180.

66 | Korzeniowski 2012, 375.

67 | Łażnia & Sitko 2023, 32; Radecka 2022, 111.

68 | Ibid.

69 | Szczepaniak 2020, 27–28; Doktor-Bindas 2020, 120–121.

such as health and privacy.⁷⁰ Interestingly, the courts accepted that the violation of the right to health occurred not through direct physical injury but through the impairment of health security, resulting in anxiety concerning health.⁷¹ The courts further held that State authorities had acted unlawfully because Poland had failed to comply with the judgement of the CJEU of 22 February 2018 in Case C-336/16, in which the Court found that Poland had infringed Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe by persistently exceeding the permissible daily pollution limits.⁷²

This line of litigation culminated in a 2021 ruling of the Supreme Court.⁷³ In that decision, the Supreme Court concluded that there was no justification for expanding the catalogue of personal rights and that the right to live in a clean and unpolluted environment does not, in itself, constitute a personal right. However, environmental degradation may affect recognised personal rights, such as health, and in such circumstances protection may be granted under the provisions governing personal rights.⁷⁴

In practice, despite the change in the political system and the adoption of a new Constitution, the Supreme Court returned to the approach adopted in 1975. This means that the state of the environment does not automatically translate into an individual right; rather, it constitutes an intermediate factor that may, but does not necessarily, produce adverse consequences within the sphere of individual rights. In other words, the Court reaffirmed the traditional view that environmental damage does not automatically enter the domain of individual rights. This decision has generated extensive commentary in the legal literature and has been subject to sharply divergent assessments.⁷⁵

3. Future of private law environmental claims in Poland

The analysis conducted in this study demonstrates that traditional private law claims, as interpreted through conventional judicial approaches, are not particularly effective in cases involving environmental damage. Despite the existence of numerous legal bases for environmental claims, including those provided by the EPL, individuals seeking civil remedies have in practice increasingly relied on the concept of personal rights.

70 | Szczepaniak 2020, 27.

71 | Szczepaniak 2020, 27.

72 | *Ibid.*, 28

73 | Supreme Court ruling from 28 May 2021 (III CZP 27/20).

74 | Jastrzębski 2023, 11.

75 | Karpus 2024, 15–18; Trzciniecka 2024, 63–73; Trzewik 2022, 389–395; Trzewik 2021, 57–63; Szyprowski 2023, 284–294; Jastrzębski 2023, 9–23; Knap et al. 2024, 24–43; Strus-Wołos 2021, 488–490.

The individualised nature of civil law claims and the perception of the environment as a common good create significant evidentiary complexities for those seeking civil law protection against environmental harm. The separation between environmental damage and individual damage requires proof not only of environmental consequences but also of their impact on an individual's legal sphere and, furthermore, that such consequences constitute normal and adequate consequence within the meaning of the rules governing causation.

These obstacles become even more pronounced in cases involving long-term environmental damage, where both the harmful conduct and its consequences unfold over an extended period. In such cases, claimants face the difficult task of proving the prolonged conduct, its cumulative environmental effects, and the impact of those effects on their individual situation, while also demonstrating that the entire chain of events falls within the scope of an adequate causal relationship.

The evidentiary difficulties discussed above cannot be resolved merely by expanding liability based on presumed fault or by extending strict liability regimes, or even liability independent of unlawfulness. Such liability regimes may undoubtedly ease the claimant's evidentiary burden to some extent by eliminating the need to prove certain elements that are often difficult to establish. However, they do not address the fundamental problem of translating environmental events into consequences affecting an individual's legal sphere.

These considerations largely explain the limited practical significance of the EPL provisions on civil liability and the failure of that legislation to significantly strengthen the role of civil liability in environmental protection. For the same reason, where there is no obvious connection between environmental harm and an individual's legal position, claimants often attempt to rely on the provisions governing personal rights. Indeed, if an individual right to an unpolluted environment were recognised, a direct legal connection would exist between environmental degradation and the individual's protected legal sphere.

The Supreme Court's ruling, however, excludes this possibility. Under the approach adopted by the Court, even a breach by the State of its duty to protect the environment does not, in itself, amount to a violation of individual rights. It remains necessary to demonstrate a connection between pollution or other harmful environmental changes and an infringement of the private individual's legally protected sphere.⁷⁶

In this context, a fundamental question arises as to whether civil law should be used as a tool for environmental protection at all.⁷⁷ The application of civil law

76 | Szykowski 2023, 290; Hejbudzki 2019, 134.

77 | It appears that a similar approach has been adopted in Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, Official Journal of the EU, 5 July 2024, L series. Art. 29 of the Directive requires Member States to ensure that a company may be held liable for full compensation for damage caused to a natural or legal person where the company intentionally or

for environmental protection is a strategic choice that requires considerations of which legal instruments are best suited to protect particular interests. In order to make such a decision, it is necessary to balance the arguments for and against this approach.

If private law continues to be understood as an instrument for restoring appropriate relations between private law subjects, there is little basis for assigning it a broader environmental protection function. Under this view, the environment (and its condition) is reduced to a medium through which one entity interferes with the individual sphere of rights of another entity, and such interference is evaluated using traditional civil law concepts, including material or non-material damage suffered by the entitled party, the conduct of the liable party, an adequate causal link, and, where applicable, fault. The rationale underlying this approach stems from the assumption that introducing civil liability for environmental damage independently of the individual rights of existing private law subjects would undermine the coherence of civil law and open a Pandora's box of questions regarding who should be liable, for what conduct, and to whom.

On the other hand, this approach may be contrasted with the view that civil law provides the most effective framework through which individuals can seek protection of common values against the State or against other entities that threaten those values. Individual actions may therefore have a mobilising effect, counteracting government inaction or the conduct of entities that undermine such common values. At the same time, the possibility of pursuing civil claims may indirectly contribute to the activation of civil society.

If a private right to an unpolluted environment is not recognised, it appears that the only way to enable effective individual action aimed at improving the environment through civil law, or at compelling the State to ensure strict compliance with environmental regulations through instruments available exclusively to public authorities, would be to grant legal personality to the environment itself. Otherwise, civil law is unlikely to play a significant role in environmental protection, and the effectiveness of civil claims will remain limited to situations in which environmental damage is, in some way, a by-product of a clear infringement of an individual's private interests, preferably of an economic nature.

The idea of granting legal personality to nature is not unknown in Poland.⁷⁸ To a limited extent, it has already been introduced into the Polish legal system, as national parks are recognised as state legal persons under Art. 8a of the Nature Conservation Act.⁷⁹ The allocation of legal personality to national parks was mainly intended to

negligently failed to comply with the obligations laid down in Arts. 10 and 11. These obligations generally include the duty to prevent potential adverse impacts and to bring actual impacts arising from the company's operations to an end, whether environmental or human-rights related. The implementation of the Directive into the Polish legal system is likely to affect the existing regulatory framework.

⁷⁸ | Baran 2024.

⁷⁹ | Act of 16 April 2004 on nature protection, *Journal of Laws* 2026, item 13.

simplify organisational matters and facilitate park administration.⁸⁰ Nevertheless, it leaves open the possibility of considering whether legal personality could be granted to nature itself. Comparative examples demonstrate that legal rights have already been granted either to particular elements of nature or to nature as a whole.⁸¹

In New Zealand, the Whanganui River has been granted legal personality,⁸² and efforts are currently underway to recognise legal personality for cetaceans.⁸³ There are also numerous examples worldwide of rivers being granted legal personality.⁸⁴ In Ecuador, nature is recognised as a constitutional subject of rights, while Bolivian legislation likewise recognises nature as a subject of rights.⁸⁵ More generally, the idea of granting legal personality to nature dates back to the 1970s.⁸⁶

The concept of granting legal personality to elements of nature has been criticised in Polish legal literature.⁸⁷ However, this criticism has focused primarily on proposals to grant legal personality to specific natural objects, such as the Oder River, rather than on the broader concept of recognising nature as a whole as a legal person.⁸⁸

If the environment were recognised as a separate legal person, both material and non-material damage caused to that entity would become capable of protection through civil law claims. The difficulties associated with proving the impact of human activity or legislative and administrative omissions on the environment would nevertheless remain. However, a challenge that is almost insurmountable under the traditional private law framework, namely, the protection of a good of enormous value where it is extremely difficult to establish a sufficient connection with an individual's legal sphere, would be substantially resolved.

Private law traditionally identifies three functions of civil liability: preventive, restorative, and compensatory.⁸⁹ At present, the difficulty lies in the fact that environmental damage occurs within the environment itself, whereas these functions are designed to operate in relation to defined civil law subjects. This dilemma would disappear if the environment itself became such a subject.

At the same time, the principal advantage of granting legal personality to nature is also its greatest weakness. Forests are largely owned by a separate state legal entity (State Forests); most land and its natural components are privately owned; a significant proportion of inland waters, as well as all maritime waters, belong to the State; and underground resources are likewise publicly owned. Air,

80 | Habuda 2023, 84.

81 | Rotko 2025, 208–213.

82 | New Zealand Parliament 2017.

83 | Hutchins 2026.

84 | Bieluk 2020, 11–23.

85 | Berros 2015.

86 | Stone 1972, 450–501.

87 | Habuda 2023, 96.

88 | Kučka 2025, 334.

89 | Jamiołowski 2018, 115; Piekarska 2017, 82.

by contrast, is not treated as a separate legal object and is not owned by any person. Natural elements are therefore not only allocated among different owners but also fulfil numerous economic and social functions in addition to their ecological role, including forestry, agriculture, recreation, housing, and many others.

Granting legal personality to the environment would therefore require clarification of what constitutes the environment for the purposes of civil law, which elements would be covered by such legal personality, what rights this new legal person would possess, and how those rights would be reconciled with the rights of existing entities holding property rights over natural resources.

Another difficult issue would concern representation. It is a well-established principle of Polish civil law, currently expressed in Art. 38 CC, that a legal person acts through its organs. Determining who would be entitled to represent nature would therefore be essential. Allowing any individual to initiate proceedings on behalf of nature could create a substantial risk of excessive litigation. Such concerns may partly explain the reluctance of the Supreme Court to recognise a right to a non-degraded environment as an individual personal right, although some commentators regard this risk as relatively limited.⁹⁰ For this reason, any system based on the legal personality of nature would likely require procedural limitations concerning representation.

Furthermore, if a judgement in an environmental case were compensatory rather than restorative in nature, it would be necessary to determine how the awarded sums should be used. Such funds should not benefit the claimant personally. Instead, mechanisms would need to be established to ensure that they are directed towards environmental protection or restoration. One possibility would be the creation of a dedicated fund, together with rules governing the use of monies obtained through such claims.

This topic undoubtedly requires further in-depth research. It is clear that, at present, the civil law route to environmental protection is seriously constrained, and in some cases effectively obstructed, by evidentiary limitations. As a result, judicial outcomes may appear difficult to reconcile with common-sense expectations, for example where a causal link between severe air pollution and harm suffered by an individual cannot be established to the required legal standard.⁹¹ At the same time, caution is necessary when expanding the role of civil law in environmental protection. Environmental protection is one of the most important social challenges of our time, but it must be balanced against other important objectives, including economic development, economic competitiveness, security, or the development of housing infrastructure. Achieving an appropriate balance between these competing interests remains a complex task that requires careful calibration of the legal protection afforded to each of them.

90 | Hejbudzki 2019, 134.

91 | Doktor-Bindas 2020, 119.

Reference list

1. Baran M (2024) Pytanie o potrzebę zmiany paradygmatu w prawie (ochrony) środowiska: środowisko jako przedmiot czy podmiot prawa – wybrane uwagi, in: Baran M, Iwańska B & Przybojewska I (eds.) *Prawa i interesy w ochronie środowiska: Perspektywa międzynarodowa, unijna i Krajowa*, Warszawa, pp. 119–153.
2. Bergkamp (2001) *Liability and Environment: Private and Public Law Aspects of Civil Liability for Environmental Harm in an International Context*, Kluwer Law International, The Hague, DOI: 10.1163/9789004479043.
3. Berros M V (2015) The Constitution of the Republic of Ecuador: Pachamama has rights, *Environment & Society Portal* 2015(11), Rachel Carson Center for Environment and Society, DOI: <https://doi.org/10.5282/rcc/7131>.
4. Bieluk J (2020) Rivers as a Legal Person, *Studia Iuridica Lublinensia* 29(2), pp. 11–23, DOI: 10.17951/sil.2020.29.2.11-23.
5. Bukowski Z, Czech E K, Karpus K & Rakoczy B (eds.) (2013) *Prawo ochrony środowiska. Komentarz*, Warszawa, Lexis Nexis.
6. Czech E K (2010) Rola art. 325 Prawa ochrony środowiska w odpowiedzialności cywilnej w ochronie środowiska, *Przegląd Prawa Ochrony Środowiska* 2/2010, pp. 9–17.
7. Czech T (2009) Odpowiedzialność ekologiczna władającego, *Prawo i Środowisko* 3/2009, pp. 77–92.
8. Czech T (2009) Wina jako przesłanka odpowiedzialności administracyjnoprawnej za szkodę w środowisku, *Przegląd Prawa Publicznego* 2/2009, pp. 20–40.
9. Dmowska J Ł (2020) Funkcje odpowiedzialności cywilnej w prawie ochrony środowiska, *Przegląd Prawa Ochrony Środowiska* 1–2/2020, pp. 21–41, DOI: <https://doi.org/10.12775/PPOS.2020.002>.
10. Doktor-Bindas K (2020) Prawo do czystego powietrza, *Przegląd Konstytucyjny* 4/2020, pp. 95–127.
11. Frączak K (2013) Możliwość domniemania istnienia związku przyczynowego pomiędzy szkodą w środowisku naturalnym a działalnością podmiotu gospodarczego oraz rozszerzenia odpowiedzialności obiektywnej za szkodę. Głosa do wyroku TS z dnia 9 marca 2010 r., C-378/08, *System Informacji Prawnej LEX*.

12. Gruszecki K (2025) *Prawo ochrony środowiska: Komentarz, System Informacji Prawnej LEX*.
13. Habuda A (2023) Przyroda i jej element. Przedmiot ochrony prawnej czy podmiot prawa?, *Radca Prawny. Zeszyty Naukowe* 34(1), pp. 83–97.
14. Hejbudzuki M (2019) Normatywne podstawy wprowadzenia do polskiego porządku prawnego koncepcji prawa podmiotowego do życia w czystym środowisku, *Studia Prawnoustrojowe* 43/2019, pp. 121–139, DOI: <https://doi.org/10.31648/sp.4604>.
15. Hutchins R (2026) A law for the tohorā: New Zealand bill seeks personhood for whales, *Oceanographic*, 11 February, <https://oceanographicmagazine.com/news/new-zealand-bill-seeks-personhood-for-whales/> [09.06.2026].
16. Jamiołowski J (2018) Odpowiedzialność cywilna w ochronie środowiska, *Przedsiębiorstwo i Prawo* 1/2018, pp. 106–124.
17. Jastrzębski J (2023) Prawo do życia w czystym środowisku a dobra osobiste – glosa do uchwały Sądu Najwyższego z 28 maja 2021 r., III CZP 27/20, *Zeszyty Cywilistyczne Lege Artis* 8/2023, pp. 9–23.
18. Jaworowicz-Rudolf A (2014) Środowisko jako dobro chronione, in: Duniewska Z (ed.), *Dobra chronione w prawie administracyjnym*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, pp. 169–178.
19. Karpus K (2024) 'Zazielenianie' prawa cywilnego – ochrona dóbr osobistych a zielony konstytucjonalizm i prawa środowiskowe, *Prawne Problemy Górnictwa i Ochrony Środowiska* 1/2024, pp. 1–28, DOI: <https://doi.org/10.31261/PPGOS.2024.01.05>.
20. Karwowska A (2013) O skutkach prawnych immisji w świetle kodeksu cywilnego i ustawy z dnia 27 kwietnia 2001 r. – Prawo ochrony środowiska, *Białostockie Studia Prawnicze* 14/2013, pp. 175–182.
21. Knap A, Studzińska J, Nowak B & Buchalska J (2024) Prawo do czystego środowiska jako dobro osobiste i możliwość skutecznego egzekwowania orzeczeń z tego zakresu, *Krytyka Prawa* 16(3), pp. 25–44, DOI: 10.7206/kp.2080-1084.699.
22. Korzeniowski P (2011) Ryzyko szkody w środowisku, *Prawo i Środowisko* 1/2011, pp. 89–103.
23. Korzeniowski P (2012) Bezpieczeństwo ekologiczne jako instytucja prawna ochrony środowiska, *Wydawnictwo Uniwersytetu Łódzkiego*, Łódź.
24. Kućka M (2025) Czy rzekom należy przyznać osobowość prawną?, *Kwartalnik Prawa Prywatnego* 34(2), pp. 309–334.

25. Lewandowski P (2011) Rzymska koncepcja szkody a szkoda ekologiczna, *Gdańskie Studia Prawnicze* 1/2011, pp. 561–578.
26. Lewaszkiewicz-Petrykowska B (1967) *Odpowiedzialność cywilna prowadzącego na własny rachunek przedsiębiorstwo wprawiane w ruch za pomocą sił przyrody (art. 435)*, Wydawnictwo Prawnicze, Warszawa.
27. Lipiński A (2001) in: J. Jendrośka (ed.) *Ustawa – Prawo ochrony środowiska. Komentarz*, Wrocław, Centrum Prawa Ekologicznego, Arts. 322 and 323.
28. Littwin D (2021) Odpowiedzialność cywilnoprawna za szkodę w środowisku – pojęcie, zakres, podstawy, *Humanistyka i Przyrodoznawstwo* 27/2021, pp. 81–104, DOI: 10.31648/hip.6801.
29. Łażnia P & Sitko N (2023) Prawo do czystego środowiska a dobra osobiste – analiza na tle polskiego orzecznictwa i doktryny prawa cywilnego, *Zeszyty Cywilistyczne Lege Artis* 8/2023, pp. 24–41, DOI: 10.31338/uw.9788323562887.
30. Nesterowicz M (2007) Zadośćuczynienie pieniężne ex contractu i przy zbiegu z odpowiedzialnością ex delicto, *Państwo i Prawo* 62(1), pp. 20–31.
31. New Zealand Parliament (2017) Innovative bill protects Whanganui River with legal personhood, 28 March, <https://www3.parliament.nz/en/get-involved/features/innovative-bill-protects-whanganui-river-with-legal-personhood> [09.06.2026].
32. Piekarska M (2017) Odpowiedzialność cywilnoprawna w ochronie środowiska, in: Zębek E & Kulbacka-Burakiewicz N (eds.) *Terroryzm wobec środowiska potencjalnym zagrożeniem współczesnych czasów – wybrane zagadnienia*, KPP Kortowski Przegląd Prawniczy Monografie, Olsztyn, https://uwm.edu.pl/kpp/files/numery_kpp/kpp_monografie_terroryzm.pdf [06.07.2025].
33. Pietraszewski M (2013) Immisje sąsiedzkie a ochrona dóbr osobistych, in: Mazurkiewicz J (ed.) *Księga dla naszych kolegów. Prace prawnicze poświęcone pamięci doktora Zygmunta Masternaka doktora Andrzeja Ciska doktora Marka Zagrosika*, Prace Naukowe Wydziału Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, seria: e-Monografie, Nr. 36, Wrocław, <https://repozytorium.uni.wroc.pl/dlibra/publication/41585/edition/42768/immisje-sasiedzkie-a-ochrona-dobr-osobistych-pietraszewski-mateusz> [09.06.2026].
34. Poniatowski P (2021) (Niewystarczające) środki ochrony prawnej przysługujące osobom narażonym na ponadnormatywny hałas drogowy, *Transformacje Prawa Prywatnego* 3/2021, pp. 49–83.
35. Radecka E (2022) Is the Right to Live in an Environment with Clean Air a Personal Interest? Selected Issues, *Acta Universitatis Carolinae – Iuridica* 68(1), pp. 107–114, DOI: 10.14712/23366478.2022.7.

36. Rakoczy B (2008) Wykorzystanie roszczenia negatoryjnego w ochronie środowiska, *Przegląd Sądowy* 9/2008, pp. 75–82.
37. Rakoczy B (2009) Skarb Państwa i jednostki samorządu terytorialnego jako powodowie w sprawach z zakresu ochrony środowiska, *Gdańskie Studia Prawnicze* 3/2009, pp. 207–216.
38. Robakowska M (2021) Funkcja roszczenia prewencyjnego uregulowanego w art. 323 ust. 1 ustawy z dnia 27 kwietnia 2001 r. – Prawo ochrony środowiska w systemie cywilnoprawnych środków ochrony środowiska, *Transformacje Prawa Prywatnego* 1/2021, pp. 97–123.
39. Rotko J (2025) Koncepcje prawnej podmiotowości przyrody, *Prawo i Wiąż* 58(5), pp. 203–221, DOI: <https://doi.org/10.36128/bqac2c58>.
40. Rudall J (2024) *Responsibility for Environmental Damage*, Edward Elgar Publishing, Cheltenham.
41. Skoczylas J J (2000) Odpowiedzialność za szkody wyrządzone w środowisku przewidziana w projekcie ustawy o ochronie środowiska, in: Mikosz R. (ed.) *Rozprawy prawnicze. Księga pamiątkowa dla uczczenia pracy naukowej Profesora Antoniego Agopszowicza*, Wydawnictwo Uniwersytetu Śląskiego, Katowice, pp. 258–269.
42. Skoczylas J J (2003) Odpowiedzialność cywilna na podstawie ustawy – prawo ochrony środowiska, *Przegląd Sądowy* 4/2003, pp. 61–76.
43. Skoczylas J J (2011) Pojęcie i rodzaje odpowiedzialności prawnej w ochronie środowiska, *Zeszyty Naukowe SGSP* 41/2011, pp. 119–132.
44. Stone C D (1972) Should trees have standing – toward legal rights for natural objects, *Southern California Law Review* 45(2), pp. 450–501.
45. Strugała R (2024) in: Machnikowski P (ed.) *Zobowiązania. Część ogólna. Tom II. Komentarz*, Wydawnictwo C.H. Beck, Warszawa, Art. 435.
46. Strus-Wołos M (2021) Przegląd orzecznictwa Sądu Najwyższego – Izba Cywilna, *Głos Prawa. Przegląd Prawniczy Allerhanda* 4(2), pp. 484–490.
47. Szalewska M (2014) Glosa do wyroku Sądu Najwyższego z 4 grudnia 2013 r., II CSK 161/13, *Przegląd Prawa Ochrony Środowiska* 2/2014, pp. 243–255, DOI: <http://dx.doi.org/10.12775/PPOS.2014.049>.
48. Szczepaniak R (2020) Smog a odpowiedzialność odszkodowawcza władz publicznych, *Zeszyty Prawnicze Biura Analiz Sejmowych Kancelarii Sejmu* 66(2), pp. 26–48, DOI: <https://doi.org/10.31268/ZPBAS.2020.28>.
49. Szyprowski B (2023) Glosa do uchwały Sądu Najwyższego z dnia 28 maja 2021 r., sygn. III CZP 27/20, *Prokuratura i Prawo* 7–8/2023, pp. 284–295.

50. Trzaskowski R (2011) Odpowiedzialność przedsiębiorstwa (zakładu) wprowadzającego w ruch za pomocą sił przyrody (art. 435 k.c.) za zmniejszenie wartości nieruchomości wynikające z emisji dopuszczalnych w świetle prawa ochrony środowiska, *Palestra* 3–4/2011, pp. 124–132.
51. Trzewik J (2021) Prawo do życia w czystym środowisku umożliwiającym oddychanie powietrzem atmosferycznym spełniającym standardy jakości jako dobro osobiste – glosa do zagadnienia prawnego zarejestrowanego w Sądzie Najwyższym, III CZP 27/20, *Przegląd Ustawodawstwa Gospodarczego* 74(4), pp. 57–63, DOI: 10.33226/0137-5490.2021.4.8.
52. Trzewik J (2022) Glosa do uchwały Sądu Najwyższego z 28 maja 2021 r., sygn. akt III CZP 27/20, *Przegląd Prawa Konstytucyjnego* 66(2), pp. 389–397.
53. Trzciniecka D (2024) Czy prawo do życia w czystym środowisku jest dobrem osobistym? Glosa krytyczna do uchwały Sądu Najwyższego z 28 maja 2021 roku (sygn. III CZP 27/20), *Studia Administracyjne* 19(1), pp. 63–73, DOI: 10.18276/sa.2024.19-05.
54. Wałkowski D (2019) Czy zmiany klimatu są szkodą w środowisku? Przyczynek do dyskusji o odpowiedzialności prawnej, *Co do Zasady. Studia i Analizy Prawne* 1/2019, pp. 85–103.
55. Wilde M (2012) *Civil liability for environmental damage: a comparative analysis of law and policy in Europe and the US*, Oxford University Press, Oxford.
56. Wolter A, Ignatowicz J & Stefaniuk K (2001) *Prawo cywilne: zarys części ogólnej*, Wydawnictwo Prawnicze Lexis Nexis, Warszawa.
57. Zelek M (2018) Ruch przedsiębiorstwa lub zakładu jako przyczyna szkody (art. 435 § 1 k.c.) de lege lata i de lege ferenda, *Kwartalnik Prawa Prywatnego* 4/2018, pp. 903–930.

SUBSTANTIVE ASPECTS OF ADMINISTRATIVE LIABILITY IN ENVIRONMENTAL PROTECTION

Environmental Protection Liability in Poland – Aspects of Substantive Administrative Law¹

Abstract

Firstly, administrative law was defined and characterised, and substantive law issues were distinguished from procedural. The sources of administrative law and their specific features were indicated. The next part concerns the legal framework governing administrative competencies, including a presentation of Polish public administration bodies responsible for environmental policies. The principles of law applicable to the activities of those were discussed. The focus is then shone on the regulatory powers of administrative authorities, including various acts issued in the field of the environment and the duties and obligations contained therein. The next part concerns administrative environmental offences, those included in criminal codes and administrative acts. The accumulation of administrative and criminal liability, and to a lesser extent civil is also discussed. The focus then shifts to administrative sanctions and penalties in the field of the environment, which were characterised. The last part deals with challenges in administrative governance and future perspectives of Polish environmental law enforcement and contains proposals de lege ferenda.

Keywords: Environmental law, public administration, administrative liability, administrative sanctions

1. Introduction

Substantive administrative law is the dominant branch of administrative law in terms of the number of regulations, and regulates the content of the rights and obligations of addressees of the law in their relations with public administration.

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As Ochendowski pointed out, it is a set of norms that regulate the administrative activities of the state.² It also defines the tasks and competences of public administration bodies in the performance of state functions, setting out the rules for the exercise of state authority over individuals, whether natural persons, entrepreneurs or other organisational units. In the case of countries which, according to their own political philosophy, see a greater role for the state in economic and social life, e.g. in environmental protection, construction and public housing, education, health care, transport or social assistance, the sphere of administrative law, especially substantive law, will automatically be greater, as it will regulate the rules and limits of such state activity.

A characteristic feature of substantive administrative law is that, through its norms, it regulates the legal situation of its addressees by specifying what is permitted, prohibited or required. It is the dominant part of public law,³ alongside the smaller part of criminal law, if we judge by the number and frequency of use of regulations. Substantive administrative law also defines the limits and rules of operation of state authorities in the process of granting, exercising and controlling the rights and obligations of individuals, such as obtaining social benefits, building permits or consent to conduct certain types of economic activity. In this process, authorities acting on behalf of the state must do so in accordance with the provisions of substantive administrative law, including in conjunction with constitutional law.

The role of substantive administrative law is to implement public policies designed by the authorities, most often elected ones. Substantive administrative law forms the basis for sectoral policies in such important areas as public safety, health care, environment etc. What is more, this law simultaneously sets standards for the operation of public administration, establishing the level of protection and implementation of civil rights. In fact, all public management is carried out with the help of substantive administrative law. It creates the foundations for the legal, rational and effective functioning of the public administration. On the one hand it protects the interests of citizens, and on the other it enables the state to perform its administrative functions efficiently. It is the basis for the functioning of a modern state governed by the rule of law.

The difference between substantive administrative law and procedural administrative law is fundamental and concerns the nature of the regulated norms and their function in the administrative law system. As already indicated, substantive administrative law is a set of legal norms that define the rights and obligations of citizens and other entities in their relations with public administration, as well as the competences and tasks of administrative bodies. Due to its very broad scope it is covered by hundreds of specific-sector legal acts. Procedural administrative

2 | Ochendowski 1996, 14.

3 | Zimmermann 2022, 34.

law, on the other hand, is a set of legal norms that regulate the administrative procedure, i.e. the way in which administrative bodies operate⁴ when issuing decisions and other acts applying substantive law, and how they should operate in the process of enforcing the law. Its purpose is to ensure the implementation of substantive law norms.⁵

In Poland, regulation is quite concise. While standards of this type may be part of substantive legal acts, e.g. regulations concerning access to public information, they are most often only minor issues regulated in a special, separate manner in accordance with the principle of *lex specialis derogat legi generali*. The primary source of administrative procedural law is the Administrative Procedure Code,⁶ largely based on the first Polish regulation of this type from 1928, which drew on Austrian solutions.⁷ In addition to the KPA, the Act on Enforcement Proceedings in Administration⁸ also plays a role, but at a different stage of the process. In principle, these two acts establish the general rules of procedural action for the Polish public administrative authorities, which may only be included differently in sectoral acts on an exceptional basis, which is rarely the case. In environmental matters, authorities most often act on the basis of the KPA, although there are cases where environmental laws set different procedural standards, but this is not common.⁹

In the area of substantive administrative law in Poland, all possible sources of law are present. The Constitution of the Republic of Poland¹⁰ establishes a number of public administration bodies, the most important of which are the president, the government and the parliament. They also pursue environmental policy to some extent, and to a greater extent they create it. An important role of the constitution is to establish principles, including the principle of legality in Art. 7, the right to the environment in Art. 74, the principle of sustainable development in Art. 5, which applies not only to the environment but to all types of development, and the right to a safe environment in Art. 68. In summary, the constitution sets out the legal framework for the activities of public authorities and guarantees citizens' rights that must be taken into account in administrative activities, e.g. when issuing environmental decisions.

Acts have the highest rank after the constitution and regulate both substantive and procedural aspects of public administration. The role of the KPA has already been discussed. A number of acts establish public administration bodies and define

4 | Zimmermann 2022, 43.

5 | Sługocki 2007, 16.

6 | Act of 14.06.1960 Administrative Procedure Code (Journal of Law 2025 position 572 with further amendments). Thereinafter as 'KPA'.

7 | Wierzbowski 2010, 6.

8 | Act of 17.06.1966 Act on Enforcement Proceedings in Administration (Journal of Law 2025 position 132 with further amendments).

9 | This is particularly noticeable in the environmental impact assessment procedure.

10 | Act of 02.04.1997 the Constitution of the Republic of Poland (Journal of Law 1997 number 78 position 482 with further amendments).

their tasks in the implementation of public management or the performance of public tasks. These include, for example, acts establishing Polish local government units: municipalities,¹¹ counties¹² and provinces,¹³ or creating the office of the provincial governor,¹⁴ various environmental, maritime and food safety authorities, etc. A separate category of substantive administrative law acts are those that strictly define the rights and obligations of addressees, e.g. on access to public information,¹⁵ nature conservation,¹⁶ waste.¹⁷

Acts in the Polish legal system are abstract and general in nature, and their creation requires the activity of both chambers of parliament, and ultimately the signature, i.e. approval, of the president. Very often, an adopted act provides for the issuance of a regulation by a specific minister on a more specific matter, e.g. technical standards, application forms, algorithms for calculating various indicators, or lists of substances. In environmental law, such regulations concern, for example, the determination of permissible levels of pollutant emissions and the classification of waste according to its type and properties. Thus, a regulation is a tool for specifying the details of a law.¹⁸

Local law acts, mainly resolutions adopted by the legislative and supervisory bodies of local government units, also play an important role in the system of sources of law. However, unlike the sources discussed above, their validity is limited to the territory of a given local government unit, e.g. a city or county. The role of these acts in the area of substantive administrative law is significant in many industries. They designate areas of the municipality where specific development is permitted, e.g. industry, services, housing or recreational areas. Similarly, they regulate the organisation of household waste collection and fees for this service.

The catalogue of sources of substantive administrative law is complemented by international agreements and, in the case of Poland, acts of European Union law. Undoubtedly, most of these sources of law create specific privileges and obligations, setting limits on freedom of action in specific areas of activity. The Polish national law discussed above cannot conflict with the international and EU

11 | Act of 04.06.1990 on Municipal Self-Government (Journal of Law 2025 position 1153 with further amendments).

12 | Act of 05.06.1998 on County Self-Government (Journal of Law 2024 position 107 with further amendments).

13 | Act of 05.06.1998 on Provincial Self-Government (Journal of Law 2025 position 581 with further amendments).

14 | Act of 23.01.2009 on the Province Governor and Government Administration in the Province (Journal of Law 2025 position 428 with further amendments).

15 | Act of 06.09.2001 on Access to Public Information (Journal of Law 2022 position 902 with further amendments).

16 | Act of 16.04.2004 on Nature Conservation (Journal of Law 2025 position 884 with further amendments).

17 | Act of 14.12.2012 on Wast (Journal of Law 2024 position 1914 with further amendments).

18 | Sługocki 2007, 29.

legal regulations adopted by Poland. In practice, EU regulations and directives in particular set uniform standards in all EU member states in many sectors, leaving national administrative law essentially with the task of designating the administrative bodies that will control and enforce EU standards.

2. Legal framework governing administrative competencies

The division of administrative powers in the field of the environment between individual authorities in Poland is based on the principle of decentralisation of public administration and the division of competences between government and local government administration.

Art. 5 of Act on Government Administration Departments¹⁹ establishes a total of 36 areas that each Polish government must assign to individual ministers in specific ministries. These include, separately: climate and environment, which are most often, though not necessarily, managed within the same one ministry.

Therefore, when identifying the Polish public administration responsible for environmental matters, one should start with the central authorities, including the minister responsible for climate and the environment. To a limited extent, certain competences are also held by the ministers responsible for infrastructure and health. The central authorities, i.e. those with competences extending to the whole country, also include the General Director for Environmental Protection,²⁰ the Chief Inspector for Environmental Protection²¹ and the State Water Management Authority.

In accordance with the aforementioned principle of decentralisation, a number of tasks are performed by local authorities whose jurisdiction covers a specific part of the country. At the regional level,²² environmental tasks are performed by:

- | The provincial governor, who is the government representative in a certain region,
- | The provincial self-government, headed by the marshal as the executive body and the provincial council as the legislative and supervisory body,
- | The Regional Director for Environmental Protection,²³ subordinate to GDOŚ,
- | The Provincial Inspector for Environmental Protection,²⁴ subordinate to GIOŚ and the provincial governor.

19 | Act of 04.09.1997 on Government Administration Departments (Journal of Law 2024 position 1370 with further amendments).

20 | Thereinafter as 'GDOŚ'.

21 | Thereinafter as 'GIOŚ'.

22 | These units are called 'voivodeships' in Poland, and there are 16 of them.

23 | Thereinafter as 'RDOŚ'.

24 | Thereinafter as 'WIOŚ'.

A number of tasks are also carried out by the authorities of the other territorial units:

- | The county administrator, who is the executive body of the district. A district is a medium-sized unit of territorial division, of which there are 380, including 314 land districts consisting of several to a dozen or so municipalities and 64 cities that are also districts. The county is a local self-government unit, and its legislative and supervisory authority is the county council elected by the residents of that unit.
- | The *wójt* is the executive body of a rural commune, the mayor of a rural-urban commune and a small town, and the city president of a larger town. There are 2,479 communes in Poland. Both their executive bodies and their legislative and supervisory bodies, i.e. the commune council, are elected by direct vote.

Certain environmental tasks can also be found in maritime administration, river administration, sanitary administration and veterinary administration. State funds financing environmental activities also play an important role: the National Fund for Environmental Protection and Water Management and 16 provincial funds, one in each region. In practice, numerous non-governmental organisations play an extremely active role, particularly in monitoring the state of the environment and promoting environmental and climate protection.

With such an extensive catalogue of institutions involved in environmental activities, the principles of their cooperation are important, especially the principle of subsidiarity, the principle of decentralisation and the principle of cooperation. The transfer of regulatory powers and competences in public administration, including in the field of the environment, is based on specific legal principles that guarantee the legality, effectiveness and accountability of administrative bodies. The key ones are:

- | The principle of legality, which requires public authorities to act on the basis of and within the limits of the law. According to this principle, the transfer of competences must result directly from legal provisions, e.g. an act or regulation, and no authority may arbitrarily transfer its tasks to another entity unless it has explicit statutory authorisation to do so.
- | The principle of presumption of statutory powers, according to which a public administration body exercises only those powers that have been expressly granted to it by law. In the event of a dispute over which body has a given power, it is presumed that there is no power if it is not clearly assigned in the law.
- | The principle of decentralisation and subsidiarity, according to which public tasks are delegated as closely as possible to citizens, i.e. to local government units, if they have the capacity to perform them. The delegation of tasks from the central to the local level, e.g. waste management, is based on the assumption that local authorities are more familiar with the needs of the community.

- | The principle of specialisation and competence, according to which competences are transferred to bodies that have the knowledge and resources to perform them.
- | The principle of presumption of competence of local self-government, unless expressly provided otherwise by law, and within local self-government, the presumption of competence of the municipality, unless expressly provided otherwise. Hence the municipality's responsibility for so many areas and the assignment of tasks to it in the case of many new public services and activities.

3. Regulatory powers of administrative authorities

In terms of implementing environmental policies, legal and administrative obligations are defined by various types of administrative acts, both at national and EU level. Each of these acts has a different function and legal force, ranging from general rules of common law to specific decisions issued for individual cases.

Normative acts establish general standards for the environment and apply to all citizens and entities operating within the territory of a country or the entire European Union. These include national laws and implementing regulations, as well as EU regulations²⁵ and directives. Acts that are generally applicable, but within a specific area, are resolutions issued by the legislative and supervisory bodies of local self-government units.

A separate category of administrative acts are individual acts addressed to a specific addressee and binding only on that addressee. These are issued by public administration bodies in specific cases and do not constitute sources of general law. Polish doctrine generally defines them as administrative decisions, i.e. unilateral, authoritative decisions on individual cases made by an administrative body towards an addressee who is not subordinate to that body in the administrative structure.²⁶ Administrative decisions are issued at the end of administrative proceedings and their mandatory elements are specified in Art. 107 of the KPA. An administrative decision is both a category and a possible title of a document, which may, however, be different: a permit, authorisation, prohibition, order, licence or concession.

It is also worth mentioning planning and programme acts of a policy nature, which although not classic administrative acts, have a significant impact on the shape of environmental obligations. These include, for example, environmental protection programmes, waste management plans and local spatial development plans.

25 | A clear distinction must be made between the legal nature of a regulation issued by a Polish minister on the basis of an authorisation contained in a statute and an EU regulation. Although they have the same name, EU regulations are much closer to Polish national statutes, i.e. abstract, general acts originating directly from the law-making body.

26 | Wierzbowski 2010, 142.

Public authorities enforce compliance with environmental regulations through a system of control, monitoring and administrative enforcement measures. The aim of these measures is to ensure that entities using the environment operate in accordance with the law and, in the event of violations, that their activities are suspended, restricted or remedied.

The following entities are responsible for monitoring the condition of environmental elements:

- | GIOŚ and WIOŚ from each region
- | Polish Water Management Authority
- | State Sanitary Inspection and Veterinary Inspection
- | GDOŚ and RDOŚ in the field of habitats, protected species, etc.

They monitor air, water and soil quality, noise levels, emissions from industrial plants, pollution and illegal waste, Natura 2000 areas and other forms of area-based nature conservation. Administrative control is a form of public administration, also in the environmental sphere. It is carried out by:

- | WIOŚ, which is the main environmental control authority,
- | Executive bodies of local self-government units within the scope of their competences,
- | Sanitary inspection, construction supervision, Road Transport Inspection in cooperation.

Administrative controls are divided into planned, ad hoc and thematic, and their scope includes, for example:

- | Possession of permits and authorisations,
- | Compliance with the terms of administrative decisions,
- | Conducting measurements, record keeping, reporting,
- | Fulfilment of obligations, e.g. in the field of waste management.

Enforcement measures, i.e. legal instruments in this area, include administrative orders and prohibitions, e.g. an order to remove waste under Art. 26 of the Waste Act,²⁷ a prohibition on conducting activities under Art. 367 of the Environmental Protection Act,²⁸ and suspension of the operation of an installation by decision of the WIOŚ. Such instruments also include increased fees and administrative financial penalties, e.g. for: failure to submit reports or for exceeding limits, increased fees for using the environment without the required permit, fines to enforce compliance in administrative enforcement proceedings. In the enforcement proceedings themselves, which are initiated in order to enforce an obligation when the

27 | Act of 14.12.2012 on Wast (Journal of Law 2024 position 1914 with further amendments).

28 | Act of 27.04.2001 Environmental Protection Law (Journal of Law 2025 position 647 with further amendments).

addressee of an administrative decision has failed to comply with it, the following are issued: warnings, enforcement of non-monetary obligations, e.g. waste removal or demolition of buildings, monetary enforcement of unpaid fines, and fines are imposed. In the case of serious violations of the law, e.g. environmental crimes, the administrative authorities report the matter to the public prosecutor's office or the police and cooperate with the WIOŚ and the fire brigade. Public registers, which are open to anyone interested, are also a reliable instrument of law enforcement. The disclosure of irregularities in these registers may result in public pressure or damage to reputation.

Public administration authorities in environmental matters may impose preventive measures on the addressee in order to avoid damage to the environment before it occurs. This is the nature of the decision on environmental conditions, which is a mandatory stage before the start of an investment that may have a significant impact on the environment. Other preventive measures include, for example, a ban on investments in a specific location, an order to use low-emission technology, an obligation to maintain migration corridors for animals, and time restrictions on work during the breeding season.

These instruments also include the obligation to carry out an environmental impact assessment, the purpose of which is to identify potential threats and develop measures to eliminate them before a permit for the investment is issued. Similar in nature are: integrated permits, water law permits, emission permits, and waste management permits. Authorities may also require the use of specific technical safeguards such as filters, acoustic screens, sealed tanks, and organisational safeguards such as employee training, emergency response plans, and subcontractor control. Authorities may approve or impose an obligation to develop waste management programmes, flood risk management plans, air protection programmes, and noise reduction plans. These are documents that oblige entities to take preventive measures and respond early.

The WIOŚ may also issue preventive orders when there is a suspicion of possible damage, but it has not yet occurred, including an order to temporarily suspend operations, an order to conduct tests, an order to remove the source of the potential hazard, and an obligation to use a specific technology or procedure.

Guided by the principle of precaution and prevention, in some cases the authorities may require the investor to provide financial security in the event of damage. For example, an entrepreneur processing hazardous waste must have a bank guarantee or insurance policy to cover any damage.

4. Types of administrative offenses

In environmental matters, apart from environmental offences covered by criminal law, mainly the Criminal Code²⁹ and the Code of Misdemeanours,³⁰ we also deal with violations of administrative and legal obligations, which are not criminal offences but constitute a tort punishable by an administrative penalty, a financial penalty, a fine or other sanctions. Such acts or omissions consist in the violation of obligations provided for in laws and executive regulations or their non-performance, in particular related to: lack of required permits, non-compliance with the terms of administrative decisions, neglect of record-keeping and reporting obligations, and conducting activities in violation of regulations. Further examples include: conducting business activities without an environmental decision, water permit, emission permit, etc.; exceeding emission limits, waste management that is not in accordance with the decision; failure to send reports to the National Centre for Emissions Balancing and Management, failure to submit reports to the Waste Database; lack of waste transfer cards, lack of emission records; water abstraction, sewage discharge without a permit; lack of entry in the Waste Database, lack of registration in the National Centre for Emissions Balancing and Management system; refusal to admit a WIOŚ inspector, failure to present documentation; failure to comply with an order of the environmental protection authority; abandonment of waste, storage without a permit.

Individual environmental regulations individually design the form of liability for such acts and omissions. These solutions are in principle, always decided by the national legislator, although the acts themselves are often based on EU law. The most common forms of liability are, for example:

- | In terms of administrative liability: financial penalty, withdrawal of permit, prohibition of activity,
- | In terms of criminal liability for offences: financial penalties,
- | In terms of enforcement liability: coercion to perform an obligation, e.g. waste removal,
- | In terms of civil liability: claims for damages before the courts in civil proceedings.

Administrative liability may be based on the principle of risk,³¹ also known as objective liability. In such cases, intention is not required, and the violation itself is sufficient, without the need to prove the guilt of the perpetrator. The mere fact of

29 | Act of 06.06.1997 Criminal Code (Journal of Law 2025 position 383 with further amendments) thereafter as 'Criminal Code'.

30 | Act of 20.05.1971 Code of Misdemeanours (Journal of Law 2025 position 734 with further amendments).

31 | Ratusznik 2025.

the violation is sufficient to hold the perpetrator liable. The public administration body does not have to prove that the perpetrator acted intentionally or negligently. It is sufficient that a specific violation of environmental regulations has occurred. Such liability arises from the mere fact that the event occurred or the standards were exceeded. Examples of such situations include exceeding pollution emission limits, unauthorised use of land, lack of a valid entry in environmental registers, failure to comply with reporting obligations, illegal discharge of sewage, and failure to properly operate filtration systems. In such cases, the mere fact of the act automatically results in an administrative penalty, most often a financial penalty and/or an appropriate order to remedy the violation. This solution greatly facilitates law enforcement, although it may be considered to disregard any circumstances on the part of the perpetrator, who nevertheless bears the risk of their activity.

Importantly, the application of administrative and legal liability does not preclude the parallel application of criminal or civil liability. It is possible to apply all these liabilities simultaneously in the case of a single act and a single perpetrator. For example, an entrepreneur involved in the collection of waste electronic equipment who was not registered in the Waste Database was imposed an administrative fine of 100,000 PLN and a report was filed with the public prosecutor's office regarding the possibility of a criminal offence having been committed.

Such hybrid offences may give rise to both administrative and criminal liability. In other words, violations of environmental law, which on the one hand result in administrative sanctions, on the other hand may be classified as criminal offences and result in criminal liability, including the restriction of liberty and imprisonment. An example of such a situation may also be illegal waste disposal resulting in an administrative penalty, an order to remove the waste and a fine under the waste regulation, and at the same time it may be classified as an offence under Art. 183 of the Criminal Code, punishable by a fine, the restriction of liberty or imprisonment for up to five years. A similar combination of administrative and criminal liability can be found for the unauthorised discharge of sewage into water and soil under the Water Law³² and Art. 182 of the Criminal Code. Other examples include exceeding permissible emission standards, illegal hazardous waste management and illegal waste storage.

The boundary between administrative and criminal liability in relation to the environment is crucial for the correct classification of infringements and the imposition of appropriate sanctions. When assessing this, the degree of social harm of the act must be taken into account, which when low or moderate, suggests only administrative liability, and when high, additionally suggests criminal liability. In the case of criminal liability, it is necessary to prove and assign guilt to the perpetrator, which is not always the case in the enforcement of administrative liability. Administrative liability is encountered in the case of violations with less

32 | Act of 20.07.2017 Water Law (Journal of Law 2025 position 960 with further amendments).

severe, often reversible consequences. Criminal liability is encountered when the consequences are significant and permanent, when human life and health are at risk. When deciding on the type of legal liability for environmental offences, recidivism, i.e. repeat offences, as well as the perpetrator's awareness and intentions, are also taken into account. When analysing the possibility of applying administrative or criminal liability, the principle of proportionality of penalties should be followed, which means that the penalty imposed should be proportionate to the seriousness of the violation, its consequences and the circumstances in which it was committed. This is particularly important in environmental protection, as the range of offences is very wide, from minor formal violations to serious ecological damage.

The catalogue of acts subject to both administrative and criminal liability is specified in statutes, and criminal liability is not only included in the Criminal Code or the Code of Misdemeanours, but such norms are often part of industry-specific statutes, alongside a much larger number of substantive and procedural administrative norms. It should also be remembered that criminal liability is by definition, most often the liability of a specific natural person – an individual. Holding legal persons, such as companies, criminally liable is possible under the Act on the Liability of Collective Entities for Acts Prohibited Under Penalty of Law,³³ but it is rare. Holding legal persons administratively liable is standard, well-known and relatively simple, also through the procedures of the Act on Enforcement Proceedings in Administration.³⁴

5. Administrative sanctions and penalties

In the field of the environment, certain acts may be punished with various types of penalties and coercive measures. The main instruments that administrative authorities may use include:

- | Warnings, which are the mildest form of punishment. They are a warning to the perpetrator, usually for minor violations such as failure to obtain a minor permit on time, minor formal irregularities
- | Administrative fines, i.e. financial penalties imposed for violations of regulations. These may vary in amount depending on the severity of the offence, e.g. exceeding emission limits, failure to keep the required documentation
- | Orders to remedy the effects of the violation, i.e. the obligation to restore the situation to a lawful state, e.g. removal of illegal waste, land reclamation.

33 | Act of 28.10.2002 on the Liability of Collective Entities for Acts Prohibited Under Penalty of Law (Journal of Law 2024 position 1822 with further amendments).

34 | Act of 17.06.1966 Act on Enforcement Proceedings in Administration (Journal of Law 2025 position 132 with further amendments).

- | Revocation or suspension of permits or licences to carry out specific activities related to the environment, e.g. revocation of an emission permit or suspension of a plant's operations
- | Prohibition of specific activities when the administrative authority prohibits activities that pose a threat to the environment. E.g. prohibition of the operation of equipment that emits pollutants
- | Obligation to submit reports or conduct monitoring, i.e. an order to report regularly on the status of environmental activities or to introduce additional supervision.
- | Compulsory performance of activities, e.g. elimination of sources of pollution, modernisation of sewage treatment systems after detection of exceedances.

Under Polish environmental law, the amount of administrative fines depends on the specific statutory provision, the type of violation and the circumstances of the case. They range from several hundred to several hundred thousand. For example, the fine for non-compliance with environmental conditions is up to 5,000 PLN, for improper waste management up to 50,000 PLN, and for illegal discharge of sewage or use of water without a permit, several hundred thousand. However, the laws most often indicate the maximum possible penalty, and the certain amount, within these limits, is decided by the authority handling the case.

Incentives to comply with regulations are an important element of effective enforcement of administrative law, including in the field of the environment. They help not only to punish violations, but also to motivate active damage repair and compliance with standards, which is ultimately beneficial for the environment and all parties. Therefore, authorities may offer a reduction in the penalty or waive it altogether if the perpetrator remedies the effects of the violation in a timely manner, thus avoiding lengthy and costly proceedings. After all, prompt remediation reduces permanent damage to the environment. Therefore, authorities promote a proactive approach rather than simply reacting to infringements or engaging in lengthy appeal proceedings and administrative court proceedings. Furthermore, incentives show that the law is not only a tool for punishment, but also for support and education, which increases the awareness and responsibility of entities towards the environment.

In most cases, the potential penalty may be reduced if the perpetrator reports the violation themselves and repairs the damage. It is also possible to defer or spread out the administrative fine in instalments.

6. Challenges in administrative governance and future perspectives

Restructuring Polish public administration to improve the effectiveness of environmental enforcement requires a comprehensive approach that takes into account organisational structure, human resources and decision-making processes.

The activities of the Polish environmental administration to date raise a number of concerns. Its current structure is the result of politically motivated decisions rather than well-thought-out measures. In 2008, with the introduction of the regulation on environmental impact assessment and public participation in environmental protection,³⁵ the GDOŚ and RDOŚ was established at central and regional levels, but this was at least partially dictated by the Prime Minister's promise to reduce employment in provincial governor offices from 1st January 2009. Employment fell with the liquidation of the environment and agriculture departments, with agriculture matters being transferred to the provincial self-government and a new entity being created to handle environmental matters. Secondly, RDOŚ operate in parallel with WIOŚ, both in the regions and GDOŚ with GIOŚ. This solution is costly, and although both institutions perform different tasks, they are related to the same issue, i.e. the management and protection of environment. The first proposal would therefore be to merge the government institutions responsible for the environment into one, eliminating duplicate service and administrative structures and using the budget savings for activities. Until now, WIOŚ in particular has been heavily criticised both for its slow response to frequent landfill site fires and for its lack of a rapid response to the poisoning of fish in the Oder River with salt water. The proposal to establish a Polish Environmental Protection Agency and strengthen its policing function and response speed appeared in doctrine years ago.³⁶

The second systemic and structural problem of Polish public administration, which results in the effectiveness of environmental activities, is the fragmentation of public administration and the large number of authorities at all levels of the hierarchy. Hence, some tasks are carried out by the minister responsible for the environment, and others by the minister responsible for climate, as these are sometimes separate institutions. The ministers of infrastructure, health and agriculture also have their own tasks here. Each of the ministers has central offices under their authority, which usually also have local structures. This creates an extremely complex network that is not easy for clients to navigate. In addition,

35 | Act of 03.10.2008 on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection, and Environmental Impact Assessments (Journal of Law 2024 position 1940 with further amendments).

36 | Bojar-Fijałkowski 2016, 177–188.

there are selected environmental tasks assigned to all three levels of territorial self-government. This system should be greatly simplified. At the same time, the monitoring of environmental elements and reporting methods should be strengthened to make a greater use of digitalisation and e-administration.

A consequence of the above is, of course, a shortage of personnel, as a large number of authorities have relatively small budgets, which creates limited equipment and staffing capabilities. Incentives for officials and additional positions, especially for monitoring and control ones, are necessary. This also applies to training opportunities in specialist technical knowledge.

In terms of law enforcement, it is worth considering shortening and simplifying certain procedures, standardising forms and report templates, and digitising them. The proposal to facilitate the work of organisations that can demonstrate an integrated and efficient internal environmental management system such as ISO 14000 or EMAS has never been heard of by the Polish legislator.³⁷

Given the multitude and individuality of administrative proceedings, there exist very or even completely different approaches by authorities to similar cases, within the limits of their decision-making freedom. It is therefore worth considering clarifying, for example, the system of administrative fines by narrowing the range or clearly indicating the amount of the fine.

The effectiveness of administrative penalties in ensuring compliance with environmental regulations in Poland depends on many factors. Administrative penalties are primarily intended to serve a preventive function, i.e. to deter violations of the law. They are also intended to compel entities to repair damage and ensure that violations are quickly remedied. They are often more flexible than criminal sanctions, which allows them to be adjusted to the severity of the offence.

In practice, the penalties imposed by administrative authorities for violations of environmental law are sometimes insufficient. The financial penalties specified in the regulations lose their value and deterrent effect after a number of years. It would be worthwhile to introduce a system known from competition law, where penalties are a percentage of the entrepreneur's turnover.

In general, criminal sanctions are relatively less effective in cases of administrative law violations. The criminal procedure itself is specific because it is based on the principle of *nullum crimen sine lege*, the need to prove guilt and the principle of presumption of innocence. In the Polish reality of protracted court proceedings, with the possibility of prolonging criminal proceedings by the actions of the accused and their defence lawyers, this results in a very distant realisation of justice. What is more, criminal courts still take a somewhat lenient view of acts not directly related to loss of health or life, which means that sentences for other cases are quite lenient. Prosecutors are not particularly keen to initiate environmental cases, as their jurisdiction tends to focus on acts against people as defined in the

37 | Bojar-Fijałkowski 2011, 237–238; Bojar-Fijałkowski 2023, 116.

Criminal Code. Only recently have Polish criminal courts begun to severely punish ones who abuse animals, although custodial sentences are still the exception.

Data from the Police Headquarters³⁸ indicate that in 2020, a total of 439 offences under Chapter XXII of the Criminal Code, devoted to offences against the environment, were registered. In 2021, this number was around 388, which is still significantly higher than in the middle of the previous decade. In 2022, probably due to the peak of the Covid-19 pandemic, the data is distorted, as only 90 offences were recorded. In 2023, however, there were already 507 recorded offences. These figures show little interest on the part of law enforcement agencies, the police and prosecutors in environmental matters. The number of reports and detected crimes prosecuted under criminal law is very low for a country with an area of 312,000 km² and a population of almost 38 million.

When analysing the qualitative data, an increase in the segment of waste crimes was particularly noticeable in 2023. There were 415 such crimes reported. This suggests that this category alone accounted for a significant proportion of all environmental crimes. The structure of the subject matter is consistently dominated by 'waste' crimes under Art. 183 of the Criminal Code,³⁹ including in particular the abandonment and illegal storage of waste,⁴⁰ processed without the required decisions or in violation of their conditions, and the unauthorised cross-border movement of waste.⁴¹ Other types of destruction in the plant and animal world, and environmental pollution remain at relatively lower levels and show less variability, while offences classified as a failure to maintain protective equipment, destruction of protected areas and facilities, and activities threatening the environment have a marginal share.

Therefore, if lengthy criminal proceedings result in a fine, it is, apart from an entry in the register of convicted persons, *de facto* the same as an administrative fine imposed by an administrative authority. At the same time, administrative proceedings, even with appeals and verification of decisions by two levels of administrative courts, are still faster than criminal proceedings. The legislator itself has proven the greater effectiveness of administrative sanctions over criminal sanctions by regularly replacing restrictions and deprivation of liberty with high administrative fines in a number of laws. This was the case with the 2018 Act on Cosmetics Products,⁴² which replaced Act on Cosmetics.⁴³ For the

38 | Portal Polskiej Policji 2025.

39 | For information on the environmental and criminal law implications of illegal waste disposal in Poland, see: Wielec 2024, 307–328.

40 | A special area of Polish waste legislation is the provisions on bio-waste. For more information on this area and its criminal law implications, see: Haładyj 2025, 9–29.

41 | Danecka & Radecki 2021, 221.

42 | Act of 04.10.2018 on Cosmetic Products (Journal of Law 2018 position 2227 with further amendments).

43 | Act of 30.03.2001 on Cosmetics (Journal of Law 2001 number 42 position 473 with further amendments).

same offences, the 2001 act provided for custodial penalties, while since 2018, administrative fines of up to 100,000 PLN have been imposed.⁴⁴ Similarly, under the Act on Combating Drug Addiction,⁴⁵ in the area of placing new, unknown and non-prohibited psychoactive substances on the market. By constantly changing the chemical composition, their manufacturers avoided responsibility for the death of customers due to the principle of *nullum crimen sine lege*. Unable to keep up with their activities, the legislator curtailed, at least partially, the production of such substances by means of administrative sanctions. An obligation to register as a producer of legal psychoactive substances was introduced, as administered by the State Sanitary Inspection.⁴⁶ For operating without registration, which no one had done, an administrative fine of 1 million PLN was imposed in several cases.

44 | Bojar-Fijałkowski 2019, 166.

45 | Act of 29.07.2005 on Combating Drug Addiction (Journal of Law 2023 position 1939 with further amendments).

46 | Bojar-Fijałkowski 2019, 180–181.

Reference list

Literature

1. Bojar-Fijałkowski T (2011) Ocena skuteczności system zarządzania środowiskowego jako instrumentu prawa ochrony środowiska na przykładzie EMAS, in: Rudnicki M, Hałdyj A & Sobieraj K (eds.) *Dekada harmonizacji w prawie ochrony środowiska*, Wydawnictwo KUL, Lublin, pp. 219–239.
2. Bojar-Fijałkowski T (2016) Instytucjonalna organizacja ochrony środowiska w Polsce: Postulaty de lege ferenda oparte na analizie rozwiązań wybranych państw europejskich, in: Barczak A & Ogonowska A (eds.) *Prawo i polityka ochrony środowiska w doktrynie i praktyce*, Uniwersytet Szczeciński, Szczecin, pp. 177–188.
3. Bojar-Fijałkowski T (2019) *Prawo sanitarne w systemie prawnej ochrony środowiska w Polsce*, Wydawnictwo UKW, Bydgoszcz.
4. Bojar-Fijałkowski T (2023) Cele klimatyczne w działalności przedsiębiorców – o zapomnianych prawnych instrumentach zarządzania środowiskowego, *Gdańskie Studia Prawnicze* 4(61), pp. 108–121, DOI: <https://doi.org/10.26881/gsp.2023.4.06>.
5. Danecka D & Radecki W (2021) *Ustawa o lasach: Komentarz*, 3rd edn., Wolters Kluwer Polska, Warszawa.
6. Haładyj A (2025) The separate collection of biodegradable waste: The case of Poland, *JAEL* 20(39), pp. 9–28, DOI: <https://doi.org/10.21029/JAEL.2025.39.9>.
7. Ochendowski E (1996) *Prawo administracyjne*, TNOiK, Toruń.
8. Portal Polskiej Policji (2025) *Statystyka przestępstw przeciwko środowisku*, <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-3>, [06.08.2025].
9. Ratusznik P (2025) *Odpowiedzialność na zasadzie ryzyka: Analiza podstaw przypisania oraz wyłączenia*, C.H. Beck, Warszawa.
10. Sługocki J (2007) *Prawo administracyjne. Podstawowe zagadnienia ustrojowe*, Wolters Kluwer, Warszawa.
11. Wielec M (2024) Legal regulations and sanctions related to the illegal dumping of waste in Polish environmental law, *JAEL* 19(36), pp. 307–332, DOI: <https://doi.org/10.21029/JAEL.2024.36.307>.

12. Wierzbowski M (ed.) (2010) *Postępowanie administracyjne – ogólne, podatkowe, egzekucyjne i przed sądami administracyjnymi*, C.H. Beck, Warszawa.
13. Zimmermann J (2022) *Prawo administracyjne*, Wolters Kluwer, Warszawa.

Sources of law

1. Act of 02.04.1997 the Constitution of the Republic of Poland (Journal of Law 1997 number 78 position 482 with further amendments).
2. Act of 14.06.1960 Administrative Procedure Code (Journal of Law 2025 position 572 with further amendments).
3. Act of 17.06.1966 Act on Enforcement Proceedings in Administration (Journal of Law 2025 position 132 with further amendments).
4. Act of 20.05.1971 Code of Misdemeanours (Journal of Law 2025 position 734 with further amendments).
5. Act of 04.06.1990 on Municipal Self-Government (Journal of Law 2025 position 1153 with further amendments).
6. Act of 06.06.1997 Criminal Code (Journal of Law 2025 position 383 with further amendments).
7. Act of 04.09.1997 on Government Administration Departments (Journal of Law 2024 position 1370 with further amendments).
8. Act of 05.06.1998 on County Self-Government (Journal of Law 2024 position 107 with further amendments).
9. Act of 05.06.1998 on Provincial Self-Government (Journal of Law 2025 position 581 with further amendments).
10. Act of 30.03.2001 on Cosmetics (Journal of Law 2001 number 42 position 473 with further amendments).
11. Act of 27.04.2001 Environmental Protection Law (Journal of Law 2025 position 647 with further amendments).
12. Act of 28.10.2002 on the Liability of Collective Entities for Acts Prohibited Under Penalty of Law (Journal of Law 2024 position 1822 with further amendments).
13. Act of 16.04.2004 on Nature Conservation (Journal of Law 2025 position 884 with further amendments).
14. Act of 29.07.2005 on Combating Drug Addiction (Journal of Law 2023 position 1939 with further amendments).

15. Act of 03.10.2008 on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection, and Environmental Impact Assessments (Journal of Law 2024 position 1940 with further amendments).
16. Act of 23.01.2009 on the Province Governor and Government Administration in the Province (Journal of Law 2025 position 428 with further amendments).
17. Act of 06.09.2001 on Access to Public Information (Journal of Law 2022 position 902 with further amendments).
18. Act of 14.12.2012 on Wast (Journal of Law 2024 position 1914 with further amendments).
19. Act of 20.07.2017 Water Law (Journal of Law 2025 position 960 with further amendments).
20. Act of 04.10.2018 on Cosmetic Products (Journal of Law 2018 position 2227 with further amendments).

Environmental Protection Liability in Hungary – The Aspects of Substantive Administrative Law¹

Abstract

This article summarises the constitutional foundations of Hungarian environmental law, the basic principles of regulation, and the rules of civil criminal and administrative liability. In the second part, we explain the regulations governing the environmental protection institutional system and the supervisory system. We describe and compare administrative sanctions in environmental protection. At the end of the article, we distinguish between the administrative and criminal law instruments of Hungarian environmental law.

Keywords: Environmental law, public administration, administrative liability, administrative sanctions

1. Legal basis

The system of obligations in the field of environmental protection is defined by the Fundamental Law. Based on this, the relevant provisions are set out in Article P, Article XX, and Article XXI.² The subjects of special protection therefore include the safeguarding of natural resources that are part of the nation's common heritage, as well as the protection against environmental impacts endangering physical and mental health. Based on regulations aimed at ensuring a healthy environment, the restoration of environmental damage is given special priority. This includes the

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1 | The research and preparation of this study was supported by the Central European Academy.

2 | See: Paulovics & Jámbor 2022, 98–111.



obligation for the polluter to compensate for the harm caused, as well as a prohibition on importing waste from other countries for disposal.³

Our key natural resources enjoy protection under the Fundamental Law, as does human health, which is also expressly protected from environmental threats. Environmental responsibility includes restoration and holding polluters accountable for environmental damage, as well as managing waste, which is a critical risk factor. The system of obligations for environmental users and state bodies can best be characterised by the system of explicit environmental protection principles found in the Environmental Protection Act. The obligations gain meaning through the elaboration of the principles of precaution-prevention and restoration, environmental responsibility, and cooperation.⁴

These principles are formulated by Act LIII of 1995 on the General Rules of Environmental Protection as follows: Precaution, Prevention, and Restoration.

The following can be said about the interpretation of the principles. All environmental users must organise their activities in such a way as to pay attention to the environmental impacts of their activities and be generally mindful of their consequences.

If the environmental impact of an activity cannot be evaluated, we take a precautionary approach by assuming it has the most severe potential impact on the environment and act accordingly to mitigate those risks. The concept of GMO-free agriculture has been incorporated into the Fundamental Law based on the Constitutional Court's interpretation of the precautionary principle.⁵

If the environmental user's activity has a direct impact on the environment, its environmental impacts must be assessed, and measures must be taken to prevent the potential environmental damage even before the environmental pollution occurs. Impact studies for preliminary environmental permits are conducted within this framework.⁶

If the resulting danger from the activity is direct in nature, the authorising authority can specify the best available technology and the maximum, but still lawful environmental burden achievable with it (emission limit value, and technology specification in an integrated environmental use permitting procedure).⁷

If the environmental damage has already taken place, both the polluter and the injured party (in the case of environmental damage, the state and its bodies) must participate in the mitigation and in the restoration of the disturbed environmental balance. After the damage has occurred, the goal is not to restore the disturbed

3 | Csák & Nagy 2020, 41–51.

4 | On the role of environmental principles in judicial and constitutional court practice, see: Olajos & Mercz 2022, 79–97; Szilágyi 2021, 130–144; Bándi 2020, 7–22; Hojnyák 2021, 39–54.

5 | See Olajos & Mercz 2022, 79–97; Szilágyi 2021, 130–144; Bándi 2020, 7–22; Hojnyák 2021, 39–54.

6 | Csák 2024.

7 | Bándi 2024.

material balance, but to return the environment to its original state, as stated in the cited Section.

Section 10–11, state bodies, local governments, natural persons, and organisations are also obliged to cooperate according to the Environmental Protection Act and municipal decrees. Based on the Environmental Protection Act, the Hungarian state is obliged to cooperate in the international legal protection of the environment.⁸

The issue of responsibility is also laid down by the Environmental Protection Act in a separate Chapter IX, in addition to the cited Section 9. Summarising the rules on liability, we can speak of general environmental user liability, which can be further broken down into individual and joint and several liability. Beyond general liability, the Environmental Protection Act also names administrative law, civil law, and criminal law liability.

According to the interpretation of the general liability rule, the environmental user is obliged:

1. To refrain from environmentally hazardous conduct;
2. To cease environmental pollution;
3. To provide information about their activities to the authorities;
4. Within the scope of damage mitigation imposed on them, to avert the effects of the damage caused, to remove the damaging factors;
5. Within the scope of restoring the original state, to restore the service provided by the environmental element.

If the environmental user fails to meet their aforementioned obligations of liability, prevention, and restoration, and thereby endangers the environment, the authority or court may prohibit, suspend, or restrict them from the activity related to environmental use. The rules of joint and several liability for damages can be summarised as follows:

1. The owner and possessor (user) of a property shall be jointly and severally liable for environmental damage or endangerment, subsequent to the time it occurred, for damage caused to environmental elements on which the environmentally damaging or endangering conduct was carried out. This can be interpreted as an exception to this rule, “unless proven otherwise”. The owner is exempt if they disclose the actual user and prove that the liability does not rest with them. This rule applies to both stationary and mobile sources of pollution.
2. A jointly established business organisation, whose purpose is to combine previously independent activities, is liable jointly and severally with the founders as the legal successor for compliance with environmental obligations for damage caused by its operation.

8 | Csák 2025, 1–8.

3. Responsibility for corporate decisions (member-executive officer) If a decision that is known, or should have been reasonably known, to cause environmental damage is made, it leads to unlimited joint and several liability for any restoration and compensation obligations that the company fails to fulfil in the event of its dissolution. However, this liability does not apply to individuals who did not participate in the decision-making process, protested against it, or voted against it. Anyone who fails to fulfil their consequential financial liability may not, until their obligation is fulfilled, be an executive officer of a business association or private company that carries out its activities in possession of an environmental permit, an integrated environmental use permit, or a permit required by separate legislation on waste management.

We will explain the interpretation of administrative law liability rules regarding the answers given to the classification of sanctions.

2. Institutional structure

According to Government Decree 624/2022 (XII. 30) on the designation of authorities performing environmental protection authority and administrative tasks, the government designates the following bodies as environmental protection authorities:

The Minister, the Pest County Government Office, the County Government Office, the District Environmental Protection Authority, HungaroMet Nonprofit Zrt., the Lord Mayor, the Mayor, the Chief Notary of the capital, the Notary of the Municipal Self-government, the Notary of the Capital District Self-government (municipal environmental protection authorities) of the Budapest Capital Government Office, the Deputy State Secretary responsible for environmental protection authority affairs.

The National Environmental Protection Authority the Pest County Government Office (in authority issues assigned to its competence by a government decree), the Second-instance Environmental Protection Authority, the Deputy State Secretary responsible for environmental protection authority affairs.

Territorial environmental protection authority The county government office – with county competence (for the territory of Budapest capital and Pest county, the Pest County Government Office with competence extending to this area).⁹ If the route of a linear investment affects the competence area of multiple territorial environmental protection authorities, the one whose competence area is affected

9 | For the specific competence of the regional environmental protection authority, see Annex 1 of Government Decree No. 624/2022 (XII. 30.)

by a longer section of the investment route shall act (if the affected authorities jointly request it, the authority designated by the supervisory body shall act).

District environmental protection authority the district (capital district) office of the capital and county government office – with district competence (in matters assigned to its competence by government decree) As a general rule, the territorial environmental protection authority acts as the environmental protection authority.¹⁰

The Budapest Capital Government Office operates with national authority in the integrated environmental use permitting procedure.¹¹ Additionally, the National Environmental Protection Authority serves as the environmental protection authority in the environmental impact assessment procedures in the case of expressway construction; as the authority contributing to the preparation of the examination documentation specified in Act CXXVIII of 2003 on the development of the expressway network,¹² and as the environmental protection authority, it acts in procedures for spatial planning studies, route designation, new route designation,¹³ in expressway designation and holding public hearings, in forming a unified position,¹⁴ in informing the transport authority as an environmental protection authority,¹⁵ and in the preliminary procedure and public hearing for new route designation,¹⁶ in the preliminary examination and impact assessment procedure for issuing an environmental permit,¹⁷ in publicising the decision,¹⁸ and in revoking the environmental permit¹⁹ for work not commenced within 5 years.²⁰

The Deputy State Secretary responsible for environmental protection matters exercises authority at the national level pursuant to the powers conferred by government decree. Pursuant to Government Decree No. 624/2022 (December 30) on the designation of authorities performing environmental protection and administrative tasks, the government designates the following bodies as supervisory and regulatory environmental protection administrative bodies: the Deputy State Secretary responsible for environmental protection matters, the National Environmental Protection Authority, the Regional Environmental Protection Authority, and HungaroMet Nonprofit Zrt.

The regional environmental protection authority acts as an environmental administrative body with special jurisdiction in the cases specified in Annex 2.

10 | Act LIII of 1995 on the general rules of environmental protection (Kvt.), section 66 (1b).

11 | Section 66 (1) a) of the Kvt.

12 | Act CXXVIII of 2003 tv para. 5 (3).

13 | In Section 6, paras. (1), (3) and (4) Act of CXXVIII of 2003.

14 | In Section 9, paras. (2) and (3) of the Act of CXVIII.tv 2003.

15 | Act of CXXVIII.tv 2003 section 10.

16 | Act of CXXVIII.tv 2003 section 12, para. (1) above.

17 | Section 67 (1) and (2) of the Civil Code.

18 | Kvt. Section para. (1) a. and b.

19 | See section 71 (3) of the Civil Code.

20 | Section 72 of the Civil Code.

The powers relating to authorities acting in special administrative matters are as follows:

The Deputy State Secretary responsible for environmental protection matters shall perform the tasks related to Hungary's membership in the European Union's Environmental Law Enforcement and Implementation Network (IMPEL). As the environmental administrative body responsible for operating the environmental information system: HungaroMet Hungarian Meteorological Service Nonprofit Private Limited Company is responsible, at the national level, for the operation of the measurement, observation, and monitoring network.

HungaroMet performs its duties in accordance with the government decree on Hungary's national meteorological service and meteorological activities, as well as in accordance with the government decree on air protection.

With regard to the operation of the National Environmental Information System, the National Environmental Protection Authority, the Regional Environmental Protection Authority, or the Deputy State Secretary responsible for environmental protection matters exercise national jurisdiction in matters falling within their scope of responsibility.

Within the scope of his or her core responsibilities, the Deputy State Secretary for Environmental Affairs, at the Minister's request, makes available the data generated in the course of his or her activities that is necessary for the conduct of government business; analyzes and evaluates the implementation of legislation pertaining to his or her duties and powers; expresses opinions on draft legislation pertaining to his or her duties and powers; acts independently within the scope of his or her duties.

With regard to the following tasks, he or she cooperates in the performance of international duties at the request of the Minister:

Performs continuing education tasks; collects and makes available to the OKIR (National Environmental Information System) the data necessary for the operation of the OKIR, and cooperates with other monitoring and information systems; maintains and updates the registry and the related spatial representation based on data provided by polluting facilities.

The Territorial Environmental Protection²¹ Authority, within the scope of its fundamental state activities, collects and provides data necessary for the operation of the OKIR, and cooperates with other control and information systems; cooperates in the execution of international tasks; provides opinions on regional development concepts and programmes, spatial plans, settlement planning tools; makes data obtained on the state of the environment accessible and provides information about them; provides data on regional environmental hazards and damages to the Deputy State Secretary responsible for environmental protection authority affairs, participates in awareness-raising tasks, prepares measurement

21 | Its legal basis is Government Decree 624/2022. (XII. 30.).

plans for air purity protection measurements and noise measurements. Supervisory, legality, and professional powers are exercised by the Minister responsible for environmental protection, the Minister responsible for energy policy, and the Deputy State Secretary responsible for environmental protection authority affairs.

If a supervisory procedure is initiated against a decision of the National Environmental or Territorial Environmental Protection Authority that also includes findings related to nature protection/water management/water protection, the Deputy State Secretary responsible for environmental protection authority affairs shall obtain the opinion of the Minister responsible for nature protection/the National Water Authority/the National Water Protection Authority.

The annexes of Government Decree 624/2022 (XII. 30) on the designation of authorities responsible for environmental protection supervision and administrative tasks outline the professional questions to be examined in the procedures of the environmental protection authority: professional questions to be examined during the preliminary examination, environmental impact assessment, integrated environmental use authorising procedure, consolidated procedure, and review procedure [Annex 3] professional questions to be examined in certain environmental protection procedures [Annex 4] professional questions to be examined in liquidation and winding-up procedures [Annex 5] professional questions to be examined in procedures related to air protection [Annex 6]. Further annexes specify the special competence of Territorial Environmental Protection Authorities [Annex 1], the special competence area of environmental administrative bodies [Annex 2], and the competence area of county government offices operating regional laboratories [Annex 7].²²

3. What is its relationship with other administrative bodies (e.g. ministries, environmental agencies, prosecutor's offices)?

In matters related to the environment, the Prosecutor's Office has the authority to take certain actions. These include filing a lawsuit on behalf of the state for compensation for damages caused by environmental harm,²³ as well as initiating judicial annulment of decisions that have been identified as unlawful in the prosecutor's admonition but have not been amended by the relevant authority. The prosecutor is therefore obliged in all cases, before filing a lawsuit, to call on the authority to cease the infringement within its own competence. The call has a deadline; as a general rule, it can be made within one year from the date the

²² | See: Fiknérné Schulz 2024, 1–6.

²³ | See Act CLXIII of 2011 on the Public Prosecutor's Office, hereinafter referred to as section 27(3) of the Public Prosecutor's Office Act.

decision becomes final. In addition to decisions, appealable orders can also be challenged with a call. The addressee of the call can be the authority that made the decision itself or its supervisory body, and it aims for the authority to withdraw or modify its decision, or for the supervisory body to annul or change it, or to remedy its omission, to make a substantive decision in the case. Chapter IX of the Ákr. (Act on General Administrative Procedure) lists prosecutorial action and admonition among the decision review procedures. The review following a prosecutor's admonition is special compared to other *ex officio* procedures in that it can take place within one year of the decision becoming final, even if it infringes on rights acquired and exercised in good faith. This rule is of particular importance in the case of activities commenced based on unlawfully issued permits. In the case of a substantive infringement detected during the exercise of the legality supervision power, the prosecutor may initiate a judicial review of the decision.²⁴

Pursuant to paragraph 327/A (1) of the Pp. (Code of Civil Procedure), this can arise if the decision still does not comply with the legal provisions after the expiry of the deadline set in the prosecutor's admonition for remedying the illegality. If the infringement includes the authority's omission, failing to fulfil its procedural obligation, paragraph 122 of the Ákr. authorises²⁵ the prosecutor to turn to the court. In this case, it is necessary that the deadline specified in the prosecutor's admonition has passed without success. Additionally, the prosecutor's new authority to protect public interest differs from the previous regulations in that it cannot be exercised on its own initiative, or *ex officio*; an investigation substantiating the action can only take place if data or other circumstances that have come to the prosecutor's attention strongly indicate a serious illegality, omission, or unlawful situation.

How can such circumstances come to our attention? The government offices send their binding, prohibiting decisions, and fine-imposing decisions to the Prosecutor's Office for information. We assess these decisions from two perspectives. On one hand, the facts learned this way may serve as a basis for filing a lawsuit for prohibition or compensation; on the other hand, within the framework of the legal supervisory power, we can examine the legality of these decisions, as well as whether the environmental authorities are effectively enforcing them, potentially through enforcement procedures.

Prosecutorial action in environmental matters is therefore twofold. On one hand, it is of a civil law nature, aiming at prohibition or compensation; on the other hand, it aims to eliminate the infringement, ultimately by initiating the judicial review of administrative decisions. In Somogy county, we have used both tools. For the Prosecutor's Office, environmental cases are of high priority within the public interest protection field, which is also reflected in its organisational structure.²⁶

24 | See section 2) (5) of the Penal Code.

25 | See: Act CL of 2016 on the general rules of administrative procedure (Ákr.), sections 111–112.

26 | For more information on the environmental protection responsibilities of the Public Prosecutor's Office, see also: Havasi 2022, 204–223 and Bérczesi 2001, 18–29.

At the Prosecutor General's Office, a dedicated department, along with designated prosecutors in each county, addresses this responsibility.²⁷

4. Scope of competencies and inspection authorisations

Neither the Environmental Protection Act nor the government decree on environmental authorising specifies the special tasks and inspection authorisations of the authority responsible for environmental matters. Therefore, the rules outlined in the Ákr. concerning on-site inspection memos and minutes must be followed. The key difference between the two legal frameworks is that when the authority speaks with relevant witnesses regarding a case, the time and place of the statements, along with the pertinent details of what was said must be documented in the minutes. This can be supported by video and image recordings made on-site. If, despite coordination efforts, the site remains inaccessible, or if there are important observations to document, an on-site memo will be prepared. This memo can then serve as the basis for initiating the administrative procedure. One possible procedure that may be launched is an environmental review, which will be based on the documentation collected on-site. The procedural details of this review are outlined in the first section of this study.²⁸

Environmental permits are valid for a fixed period. After the permit expires, the environmental user is obliged to initiate the extension of the existing permit. The extension of such permits functions as a routine inspection. At this time, according to legal requirements, the actual extent of environmental use should be checked and compared with the preliminary estimated values specified in the permit. However, this does not happen due to a lack of instruments or experts. If this occurs, it must be documented in the operational permits issued during the review. This documentation was missing from the 30 permits we examined.²⁹

In connection with integrated environmental authorising, the inspection of the specified environmental use limit values is mandatory; these are generally recorded in the decisions, but not as actual measurements, but as data provided by the environmental user.³⁰

A permanent telephone customer service operates at the environmental departments of the government offices, where the designated public official is

27 | Horváthné Márkus 2016, 41–43.

28 | Questionnaire for Environmental Protection Department staff, questions 1–5 on environmental inspectorate – Miskolc, August 14, 2025, hereinafter referred to as Questionnaire (2025).

29 | For more information on environmental responsibility, see: Winther 2008, 163–191; Kramer Machado 2022, 40–61.

30 | Under Hungarian law, the primary objective of environmental liability is remediation; administrative, criminal, and civil liability are subordinate means of achieving this objective. In this regard, see: Csapó 2007, 139–157; Csapó 2015; Tahiné Kovács 2004; Tahiné Kovács 2005, 123–132; Tahiné Kovács 2023, 1–9.

obliged to record the substance of the telephone report and take the necessary measures. If immediate action is required, the official on duty immediately notifies the head of the department.

Among the representatives of the relevant departments – the waste, noise, and soil protection officials, as well as the senior official coordinating the authority's work and responsible for the response team – have a duty to take action. If the investigation of the causes of environmental pollution falls within the jurisdiction of the environmental protection authority, the official required to take action must prepare a report.³¹

In the event of an emergency, it is important to consider the role of the environmental user in contributing to the situation. This relates to the enforcement of the 'polluter pays' principle and how those involved cooperate to mitigate the consequences of the emergency. These are primarily involved in the enforcement of sector-specific regulations, such as fines for water pollution.

When a water pollution fine is imposed, the environmental user who promptly reports the pollution and actively contributes to the earliest possible mitigation of its consequences according to their financial capacity, and who follows the instructions of the relevant disaster management and environmental authorities involved in mitigating the results of the pollution, receives the basic case for the fine.

Environmental inspection: any activity – including on-site inspection, as well as checking emissions, internal reports, and monitoring documents, verifying self-monitoring, checking the adequacy of applied techniques and the facility's environmental management – which the environmental authority performs or has performed in order to check and promote compliance with the conditions included in the facilities' permits, and – if necessary – to monitor the environmental impacts of these facilities.³²

The monitoring system outlined in the decision regarding the environmental permit, issued after the environmental impact assessment, must specify the types of parameters to be monitored and the duration of this monitoring. This should be done while considering the nature, location, and scale of the activity, as well as the extent of its environmental impacts, all while ensuring that the approach remains proportionate.³³

The environmental authority monitors the implementation of the activity in accordance with the permit, as well as the execution of measures necessary to avoid, prevent, reduce, or offset significant adverse environmental effects – according to the provisions in this decree and in regulations for individual environmental elements and factors, with official inspection as required.³⁴ In an integrated

31 | Government Decree 404/2004 (July 21), sections 31 and 36 and Annex 2.

32 | See: Government Decree No. 314/2005 (XII. 25.) on environmental impact assessment and integrated environmental licensing procedures, hereinafter referred to as Khv. Decree, section 2 (j).

33 | See: Khv. Decree sections: 10, 8, 9 Point of ba. and section 10, para. (4a).

34 | Khv. Decree section 11/B.

environmental authorising procedure, the applicant must attach the methods for monitoring emissions as part of the summary related to the initiative.³⁵

The environmental authority, in coordination with the water protection authority, prepares an environmental inspection framework plan for the facilities under the scope of integrated environmental authorisation operating in its area of competence, which it updates at least annually, and which includes at least the following:

- a) the subject of scheduled inspections, the inspection period, the schedule, and means of inspection;
- b) a general assessment of significant environmental problems regarding the geographical area and facilities affected by the inspection framework plan;
- c) the delimitation of the geographical area covered by the inspection framework plan;
- d) an identification list of the facilities covered by the framework plan;
- e) aspects for conducting regular and extraordinary inspections;
- f) the frequency of on-site inspections for each facility, determined based on the environmental risk assessment criteria – which for the highest-risk facilities cannot exceed one year, and for the lowest-risk facilities, three years;
- g) provisions for cooperation with other authorities possibly involved in the environmental inspection. Based on the inspection framework plan, the environmental authority prepares an annual inspection plan.

The environmental authority, in cooperating with the water protection authority, conducts an on-site inspection at the facilities under the scope of integrated environmental authorisation in the year following the commencement of the activity, and thereafter with the frequency specified in the inspection framework plan.

The environmental authority – in cooperation with the water protection authority when water, as an environmental element is involved – conducts an immediate extraordinary inspection of facilities covered by integrated environmental authorisation. This occurs if a complaint is received regarding a significant environmental impact related to the activity or if an unexpected event happens that justifies concern due to its significant environmental impact.

Based on the findings of the inspection, the environmental authority takes the necessary measures. If, during the on-site inspection, the environmental authority establishes an environmental hazard or pollution, it will repeat the on-site inspection within six months of the first inspection. In the event of the application of a new technology, the environmental authority evaluates the results of the emission monitoring at least annually, based on data submitted by the operator, to ensure that emissions under normal operating conditions do not exceed the emission levels associated with the best available techniques.³⁶

35 | See: Khv.Decree section 21, para. (1a), pt. e.

36 | Khv Decree section 22, paras. (3)–(9).

5. Interaction with administrative sanctioning and compliance mechanisms

Procedures are initiated upon request when permits with a fixed term expire. If the environmental user exceeds the limits of use based on public reports, the authority is obliged to investigate the reports made in person or by phone. Reporting is facilitated by the waste radar application³⁷ introduced after 2020, in which the person reporting can specify the coordinates of the illegally placed waste and can also attach photos.³⁸

The authority is obliged to check such reports on-site, identify the person or organisation responsible for the odour, noise, and waste impacts, and the official memo thus prepared will be the basis for initiating authority procedures.

The environmental authority, acting within its own competence, is obliged to involve the specialist fields it considers affected. In the previous procedure, this was the mandatory contacting of specialist authorities.³⁹

With the creation of a unified mid-level public administration, the previously independent authorities, specifically named as specialist authorities, were integrated into the government office. The exception to this is the Regulated Activities Supervisory Authority, which performs specialist authority tasks regarding tobacco and mining supervision, and which the environmental authority is obliged to contact as a specialist authority in the context of environmental authorising.

Inquiries within the government office have become completely informalised. The acting case officer and the department head supervising their task performance decide which (actually interested) bodies to contact, in what form, based on the relevant provisions of the organisational and operational regulations (SZMSZ).⁴⁰

The request for contact can be made orally or in writing; the responses received are summarised by the acting case officer and recorded in the decision. The decision of the acting case officer is initialled by the competent department head and signed by the head of the main department under the right of issuance.

The authority to issue decisions lies with the government office, and the head of the office determines whether to make important environmental decisions based on a professional expertise or to exercise their right to provide instructions related to the content of the decision, as guided by the organisation of the office.

37 | The application is available at: hulladekradar.hu.

38 | Answers to questions 8–9 of the Questionnaire.

39 | Answers to questions 10–12 of the Questionnaire.

40 | Compare your Answers to questions 10–12 of the Questionnaire with the provisions of Instruction 15/2024 (VI.24) KTM on the organisational and operational rules of the capital and county government offices.

The Constitutional Court examined the issue of abolishing the specialist authority system and the procedure for contacting internal organisational units at the time of its introduction. During the integration of the system into the government office, it made the following findings:

The specialist authority procedure signifies the special order of joint decision-making between the authority and the specialist authority. Its peculiarity is that the specialist authority, exercising its public authority, gives a binding opinion to the authority, which incorporates it into its decision with unchanged content.

The function of the specialist authority procedure is that a decision, contained in a single resolution, is born from the mandatory cooperation of specialist administrative or general administrative bodies belonging to the executive branch.

In other words: the specialist authority procedure serves the convenience of the clients, as they do not have to obtain various authority decisions to settle a single matter. The specialist authority procedure was thus brought to life by practicality.⁴¹

It follows from this that the specialist authority procedure loses its function as soon as the authority entitled to make the substantive decision acquires the competence and resources necessary to judge the specialist question. In this case, contacting the specialist authority becomes unnecessary.⁴²

Several significant differences can be established between specialist authority involvement and answering the specialist question within the organisation (or between organisations with the same competence) in terms of the legal characteristics of the procedure. The Constitutional Court points out four differences below.⁴³

On one hand, the specialist authority's opinion is legally binding for the head of the requesting authority.⁴⁴ On the other hand, the specialist authority's binding opinion is included in the operative part of the authority's decision; it is one of its mandatory elements by an express legal provision.⁴⁵

Thirdly, it is a separately named ground for nullity if the decision was made without the mandatory involvement of the specialist authority or by disregarding the specialist authority's opinion.⁴⁶

41 | Decision 4/2019 (III. 7.) AB: on the determination of constitutional requirements related to section 66/A (1) of Act LIII of 1995 on the general rules of environmental protection and sec. 38/A (1) of Act LIII of 1996 on nature conservation, as well as on the determination of constitutional requirements related to section 38/A (1) of Act LIII of 1996 on nature conservation and section 38/A (1) of Act LIII of 1996 on nature conservation, as well as on the determination of constitutional requirements related to section 38/A (1) of Act LIII of 1996 on nature and the determination of an omission arising from art. P (1) and Art. XXI (1) of the Fundamental Law, hereinafter referred to as 4/2019 (III.7) AB hat. [53].

42 | 4/2019 (III.7) AB hat. [54].

43 | 4/2019 (III.7) AB hat. [75].

44 | 4/2019 (III.7) AB hat. [79].

45 | 4/2019 (III.7) AB hat. [78].

46 | 4/2019 (III.7) AB hat. [83].

Finally, it must be highlighted that the specialist authority's binding opinion also differs significantly from the answer given to a specialist question in terms of ensuring legality.⁴⁷

Based on all this, the Constitutional Court, in point 2 of the operative part, based on paragraph 46 (2) c) of the Abtv. (Act on the Constitutional Court), established that the essential content of the current procedural regulation is deficient. It does not state that the acting administrative authority must make an express finding in the operative part of its decision about the effect of the activity, carried out based on the permit, on the environment and nature protection.⁴⁸

6. How are the different types of administrative infringements (general, strict liability, hybrid) defined in Hungarian environmental law, and what sanctions are most commonly applied?

The instrumental nature of environmental legal liability follows from the principle of restoration. Thus, the primary function of every legal instrument is to restore the disturbed environmental balance; therefore, the *ne bis in idem* principle – prohibiting the parallel application of criminal and administrative instruments – does not primarily apply here. This means that if, due to a change in the conduct of the offense, the ongoing administrative procedure turns into a criminal procedure, it is not necessary to terminate the administrative procedure when the criminal procedure is initiated, if justified by the interests of restoration. This principle is strongly applied in waste law, where Act CLXXXV of 2012 on waste, in Section 3(e), names the 'polluter pays' principle as a fundamental principle, as follows: e) the 'polluter pays' principle: the waste producer, the waste holder, or the manufacturer of the product that has become waste is responsible for the management of the waste and for paying the costs of waste management; According to these principles, the waste producer, holder, and the manufacturer of the product that has become waste have a waste management obligation, and they also bear the costs of waste management, which also includes the costs of legally regulated measures. Characteristics of administrative liability applicable in Hungarian environmental law:

1. It can be imposed in case of violation of legislation or a decision, or failure to fulfil an obligation. It is an objective legal instrument, independent of culpability. Exemption from administrative law liability can occur in two cases:
2. damage caused by armed conflict, natural disaster;

47 | 4/2019 (III.7) AB hat. [84].

48 | 4/2019 (III.7) AB hat. [93].

3. the damage is the direct result of the execution of a final and binding decision. Legal scholarship identifies the obligations of the environmental user from Section 101 of the Environmental Protection Act by prescribing the following conduct: The environmental user is obliged: to take the preventive measures for environmental damage specified in a separate legislation, and in the event of environmental damage, to take restoration measures, as well as to provide information.

The rule regarding the payment of fines is as follows: Anyone who breaches a requirement set out in legislation, an official decision, or a directly applicable community legal act, or exceeds a limit value, may be obliged to pay a fine proportionate to the extent and severity of the environmental damage. Payment of the fine does not exempt the violator from criminal liability, liability for damages, or the obligation for restoration: Characteristics of the imposed fine: Establishing the unlawful conduct is sufficient for its imposition. Culpability may only be considered in aggravated cases, and this may be the basis for establishing criminal liability. A portion of the aggravated and privileged cases goes into an environmental protection target fund or a municipal environmental protection fund. Named types of fines: sewer, water pollution, land protection, waste management, air quality protection fines.

Among the fine types involved, the waste management fine is considered to be the harshest sanction, as the imposition of the administrative sanction here does not exempt from misdemeanour, criminal, or compensation liability, as declared by the Waste Act itself.

The provision itself can be derived from the ‘polluter pays’ principle, which is declared as a fundamental principle in waste law. The fine itself most closely resembles the structure of a criminal norm; it has privileged and aggravated cases, and forms of commission that exclude the application of privileged cases.

Although most of the fine is state revenue, 30% of it is received by the local government. If the municipal cooperating authority discovers the infringement on the spot, the revenue becomes municipal revenue.

7. How is the boundary between administrative and criminal liability determined in practice?

The right to the environment is an autonomous and self-contained institutional protection, i.e. a specific fundamental right whose objective institutional protection side is predominant and decisive.

The right to the environment elevates the guarantees of the state’s fulfilment of its environmental protection duties to the level of fundamental rights, including the conditions for restricting the achieved level of environmental protection.

Constitutional Court Decision 28/1994 (V. 20) AB ruled that the right to a healthy environment also includes the state's obligation not to reduce the level provided by nature protection legislation, unless this is unavoidable for the enforcement of another fundamental right or constitutional value.

In addition to establishing the aforementioned principle of the prohibition of regression, the Constitutional Court continuously interprets and holds the legislator accountable for the principles of precaution, prevention, and restoration in connection with the prohibition of regression.

The right to the environment is distinguished from other fundamental rights by its specific relationship to subjective rights, as well as by its own subject matter. The right to the environment, as is well known, cannot be classified among the classic defensive fundamental rights, but is a so-called third-generation constitutional right.

Thus, it is a right that the state recognises and enforces in its capacity as such. Most of the subjective rights used in environmental protection do not serve a specifically environmental purpose, but among others, can be used for this purpose.

The closest connection is with the right to life; the right to the environment is actually one part of the objective institutional protection side of the right to life.

The peculiarity of the right to the environment lies in the fact that its subject could actually be humanity and nature. This is vividly illustrated by all those efforts that wish to grant rights to nature, or in its representation, to animals, plants, etc., or speak of the rights of unborn generations.

The right to the environment guaranteed in the Fundamental Law signifies the state's duty to protect the environment and maintain the natural forms of life. Here, therefore, the state must also substitute the function of subjective rights with legislative and organisational guarantees. Therefore, the measure of institutional protection for the right to the environment is not arbitrary.

The level of protection is influenced by the finite nature of the natural forms of life, the irreversibility of a significant part of natural damage, and finally, the fact that all these are conditions for the survival of human life.

All this demands that the protection of the right to the environment by legislation be particularly strict compared to other rights. Due to these peculiarities, prevention has priority among the tools for protecting the right to the environment, since the subsequent sanctioning of irreversible damage cannot restore the original state.

National regulation concerning the environment and all its elements is extensive, encompassing the voluminous and constantly changing system of administrative norms; there is multifaceted sectoral regulation, and its administrative and commercial elements are influenced by economic regulators. The arsenal for law

enforcement and protection affects several branches of law, appearing not only in criminal legislation but also in the field of civil law.

A key feature of our environmental law enforcement is that both the Environmental Protection Act and the Nature Conservation Act allow for parallel liability. This means that a violation can result in fines from administrative authorities without exempting the offender or polluter from criminal or misdemeanour charges, compensation claims, or liability. Additionally, these authorities have the power to impose prohibitions or obligations on the violators.

The law classifies the most serious cases of violation of environmental legislation as crimes. Criminal law, in accordance with the *ultima ratio* principle, is the last resort among the tools of state intervention, applied when other sanctions are not effective enough to protect the legally protected interest. According to the Constitutional Court's interpretation, criminal law is the capstone of the legal system, assuming the necessity and proportionality of the intervention. Consequently, it cannot replace other tools, but is located at the tip of the 'iceberg' of tools. Criminal law can be a tool for punishment, reparation, and prevention, but it cannot solve the underlying social problem that gives rise to the crime. It is difficult for the judiciary to argue in a case where, for example, protected animal species are destroyed out of necessity for food or subsistence, or a strictly protected plant is used for firewood. A so-called 'environmental law socialisation' is a complex social and economic problem, for which criminal law cannot be the sole solution, but only one of the tools.⁴⁹

Whether principles reserved for the differentiation of criminal law and misdemeanor law and the application of sanctions, such as the *ne bis in idem* principle mentioned in the administrative part of this study can be enforced in the judiciary depends on whether the legislator defines the regulated area as part of environmental law or differently.

One area where the relevant rules are undergoing change in recent constitutional case law is the field of individual animal welfare. Here, in the application of jointly applicable administrative, civil, and criminal sanctions, the Constitutional Court has taken the *ne bis in idem* principle into account.

It has therefore declared the application of the sanction of disqualification in the context of animal welfare damages unconstitutional, and in parallel administrative and criminal proceedings, the sanctions raised in the preceding procedure determine whether this sanction can be applied in the subsequent procedures or not.

49 | For a comparative analysis of criminal sanctions for illegal waste disposal, see: Uhri & Nemes 2024, 225–253.

8. Future prospects and conclusions

The current system is challenging to maintain due to the issues outlined in section 5. This system relies on independent and specialised authorities, which are responsible for administering, enforcing and managing civil and criminal liabilities. It is structured around a permitting process that designates specific competencies, jurisdictions, and inspection phases to the authority responsible for both permitting and inspection tasks.⁵⁰

It would be simpler to assign the responsibility for complying with the requirements to the environmental user at the start of operation, which could be followed by a prohibition of the activity during an administrative inspection and continuation only after complying with the specific requirements. This system would place less burden on the state, and the environmental users would employ the appropriate experts.⁵¹

However, the solution drawn from the questionnaire responses might run into the prohibition of regression, analysed in detail by the Constitutional Court, so in the case of its constitutional analysis, there would be a risk of it being in conflict with the Fundamental Law.

The IT systems and tools installed in the administrative system are 10–15 years behind the contemporary state of digital technology. Without first replacing these systems and tools, further technical developments are pointless. In addition, it would be important to introduce and apply generally accepted Microsoft systems instead of using open-source systems (LibreOffice).⁵²

Unfortunately, due to the centralisation and large size of the mid-level public administration, along with the absence of an independent authority system, the environmental organisation system operates as part of government offices.

As part of a larger system, it cannot be held accountable on its own. The central administration of environmental protection is currently divided among three state secretariats within two ministries. The distribution of responsibilities, along with the coordination of areas that fall under multiple authorities, creates challenges and results in separable powers. In the existing governmental structure, the ministries are tasked with both economic and environmental protection functions simultaneously.

Separating these functions and having a central management dedicated solely to the assertion of environmental aspects and principles would increase the efficiency and transparency of this organisation.

50 | AJBH-1495/2019, 26–30 and 2021.El.II.JGY.K.1, 187–203.

51 | Questionnaire Answers to questions 24–26.

52 | Questionnaire Answers to questions 27.

Reference list

1. 2021.El.II.JGY.K.1 A nemzetgazdasági szempontból kiemelt jelentőségű beruházások helye a jogalkotásban, in: *Az építésügyi hatósági eljárások gyakorlata” tárgykörben felállított joggyakorlat-elemző csoport összefoglaló véleménye*, pp. 187–203,
2. AJB-1495/2019 A hatósági rendszer működésével kapcsolatos kérdések, in: A jövő nemzedékek szószólójának jogalkotási kezdeményezése a környezeti felelősség hatékonyabb érvényesítése érdekében, pp. 26–30.
3. AJB-4133/2024. A jövő nemzedékek szószólójának figyelemfelhívása a környezeti hatások vizsgálatára irányuló eljárásokról az akkumulátor-újrafeldolgozó üzemek helyszínének kijelölése kapcsán.
4. AZ ALKOTMÁNYBÍRÓSÁG 4/2019. (III. 7.) AB HATÁROZATA a környezet védelmének általános szabályairól szóló 1995. évi LIII. törvény 66/A. § (1) bekezdésével, valamint a természet védelméről szóló 1996. évi LIII. törvény 38/A. § (1) bekezdésével kapcsolatos alkotmányos követelmény megállapításáról, valamint az Alaptörvény P) cikk (1) bekezdéséből és XXI. Cikk (1) bekezdéséből fakadó mulasztás megállapításáról
5. Bándi Gy (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *JAEL* 15(29), pp. 7–22, DOI: <https://doi.org/10.21029/JAEL.2020.29.7>.
6. Bándi Gy (2024) Környezetvédelmi engedélyezés, <https://jak.ppke.hu/storage/tinymce/uploads/old/uploads/articles/11861/file/K%C3%B6rnyezet-v%C3%A9delmi%20enged%C3%A9lyez%C3%A9s.ppt> [10.08.2025].
7. Bércesi Z (2001) Az ügyész szerepe a környezetvédelemben, *JURA* 2/2001, pp. 18–29.
8. Csák Cs & Nagy Z (2020) Methodological issues of environmental regulation, in: Miheș, C D (ed.) In honorem Valentin Mirișan: Gânduri, Studii și Instituții București, Universul Juridic, Romania, pp. 41–51.
9. Csák Cs (2024) *Környezetvédelmi engedélyezési rendszer* (lecture for 4th-year law students), October 4.
10. Csák Cs (2025) *A környezetvédelmi szabályozás módszertana*, pp. 1–8.
11. Csapó O (2015) *A környezeti jogi felelősség határai: az uniós jog hatása a magyar szabályozásra*, PhD Thesis.
12. Csapó O (2007) A környezeti károkért való felelősség kérdése az Európai Unióban, *Iustum Aequum Salutare* 4(3), pp. 139–157.

13. Fiknérné Sulcz Á (2024) *A környezetvédelmi hatósági és igazgatási szervek*, 6 August, <https://www.muszakiforum.hu/33/kornyezetvedelmi-hatosagi-es-igazgatasi-szervek-uniqueidRCViWTptZHK7UOPEgn4QjLfz8Ua3rDF51UWBSOtlgLw/?serp=1> [11.08.2025].
14. Havasi, S (2022) Az ügyészség közérdekvédelmi feladatai, különös tekintettel a környezetvédelemmel kapcsolatos ügyészi feladatokra, in: Domonkos A (ed.) *A természet és környezet büntetőjogi védelme*, Károli Gáspár Református Egyetem Állam- és Jogtudományi Kara Budapest, pp. 204–224.
15. Horváthné Márkus I (2016) A közérdekű ügyészi fellépés lehetőségei és gyakorlata a környezetvédelmi hatósági ügyekben, in: Fodor L & Pump J (eds.) *Társadalmi részvétel a környezetvédelmi ügyekben A részvételi jogok uniós és hazai jogi védelme*, Alapvető Jogok Biztosának Hivatala Budapest, pp. 41–49.
16. Hojnyák (2021) Current tendencies of the development of the right to a healthy environment in Hungary in the light of the practice of the Constitutional Court in recent years, *JAEL* 31/2021, pp. 39–54, DOI: <https://doi.org/10.21029/JAEL.2021.31.39>.
17. Kraemer M et al. (2022) Responsabilidade ambiental do Estado: um estudo acerca da imposição de multas ambientais ao Estado e a extinção do crédito pela confusão, *Revista da Defensoria Pública do Estado do Rio Grande do Sul* 2(31), pp. 41–60.
18. Olajos I & Mercz M (2022) The use of the precautionary principle and the non-refoulement principle in public law – or how far the boundaries of constitutional principles extend, *JAEL* 17(32), pp. 79–97, DOI: <https://doi.org/10.21029/JAEL.2022.32.79>.
19. Questionnaire for Environmental Protection Department staff, questions 1–25 on environmental inspectorate – Miskolc, 14 August 14 2025, hereinafter referred to as Questionnaire (2025).
20. Paulovics A & Jámor A (2022) The Right to a Healthy Environment in the Hungarian Constitution, *JAEL* 17(32), pp. 98–111, DOI: <https://doi.org/10.21029/JAEL.2022.32.98>.
21. Szilágyi J E (2021) The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues, *JAEL* 16(31), pp. 130–144, DOI: <https://doi.org/10.21029/JAEL.2021.31.130>.
22. Tahyné Kovács Á (2004) A polgári jogi felelősség kérdése a környezetjogban, *Emlékkönyv Lábady Tamás 60. születésnapjára tanítványaitól*, Szent István Társulat, Budapest, pp. 257–269.

23. Tahyné Kovács Á (2005) A környezet büntetőjogi védelmének közösségi szabályairól, *Belügyi Szemle: A Belügyminisztérium folyóirata* (1995-2006) 53(5), pp. 123–132.
24. Tahyné Kovács Á (2023) A természet helyreállításáról szóló európai bizottsági javaslat margójára, *Európai jog: Az Európai Jogakadémia folyóirata* 23(5), pp. 1–9.
25. Uhri L & Nemes O (2024) Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia), *JAEL* 19(36), pp. 225–253, DOI: <https://doi.org/10.21029/JAEL.2024.36.225>.
26. Winter G et al. (2008): Weighing up the EC environmental liability directive, *Journal of Environmental Law* 20(2), pp. 163–191.

Legal Framework for Administrative Offenses: Defining Responsibilities, Compliance, and Sanctions in Czechia

Abstract

This article examines the legal framework governing environmental protection in the Czech Republic, focusing on the pivotal role of administrative law in defining responsibilities and enforcement mechanisms. It establishes environmental protection as a fundamental constitutional obligation and a public interest, rooted in the state's role as the guarantor of a favourable environment. The study details the division of competences between central bodies, such as the Ministry of the Environment and the Czech Environmental Inspectorate, and territorial self-governing units (municipalities and regions), which are responsible for delegated state administration. The author categorises regulated environmental activities into four groups, ranging from public use to absolute prohibitions, and discusses the administrative tools used for regulation, including individual permits and so-called binding opinions. A significant portion of the text is dedicated to the system of administrative liability, specifically distinguishing between administrative delicts and criminal offences based on the degree of social harmfulness and the principle of ultima ratio. The article analyses the effectiveness of administrative sanctions, particularly fines, which are often perceived as having a stronger deterrent effect than criminal penalties due to their high statutory limits. Furthermore, it explores the potential for waiving penalties if an offender takes voluntary remedial measures, and proposes this approach as a model for future legislation. Finally, the work identifies key challenges, such as the volatility of legislation driven by EU law and institutional capacity limitations, concluding that strengthening the expert-led Czech Environmental Inspectorate is essential for effective law enforcement.

Keywords: Environmental law, administrative delicts, sanctions and penalties, public administration

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1. Introduction

Environmental protection is one of the most urgent tasks today. The environmental crisis requires active engagement in environmental protection at all levels of human society, from the international community down to the individual. The state occupies a privileged position in this regard, as it is a primary entity of international law, and environmental problems cannot be effectively addressed without international cooperation. The state is also the guarantor to its citizens of a certain level of environmental quality. In the Czech Republic, this obligation is reflected in the constitutional order both in the form of the state's commitment to ensure the prudent use of natural resources and the protection of natural wealth,¹ and in its role as the guarantor of the public right to a favourable environment.² Environmental protection is one of the key public interests, the promotion of which would be unthinkable without effective legislation. Considering the characteristics of the protected interest, it follows that the principal area of law governing environmental protection falls within public law, with administrative law being of particular importance. Despite the recognition of environmental law as an independent branch within the legal system, its mechanisms and methods of regulation remain closely linked to the principles and structures of administrative law. The framework and processes that guide environmental protection are, to a significant extent, rooted in administrative law, which provides the foundation for the organisation, implementation, and enforcement of environmental regulations.

1.1. Administrative law: definition and division

There is no universally accepted definition of administrative law in Czech legal doctrine, but current legal scholarship most often considers it to be the part of the legal system that regulates public administration. More precisely, it is a set of public law rules that regulate the organisation, activities, and procedures within public administration.³ As regards the term 'public administration' itself, it refers to the management of public affairs, i.e. a set of matters that are difficult to define clearly but can generally be described as matters whose management (administration) is determined by the public interest as an interest that is beneficial to the society as a whole.⁴ Depending on its holder (the entity on whose behalf it is exercised), public administration is divided into state administration (exercised on behalf of the state), territorial (self-)government (exercised on behalf of regions and municipalities), and other public administration (exercised on behalf of

1 | See Art. 7 of the Constitution of the Czech Republic, Constitutional Act No. 1/1993 Sb.

2 | See Art. 35/1 of the Charter of Fundamental Rights and Freedoms, Constitutional Act No. 2/1993 Sb.

3 | Sládeček 2019, 44.

4 | Ibid. 24–25.

other self-governing entities),⁵ of which the first two perform tasks in the field of environmental protection. The precise division of competences in environmental matters between state administration and territorial (self-)government will be discussed below.

A characteristic feature of administrative law is that it protects public interests and, as a rule (except for public law contracts), regulates relations between actors in unequal positions, in which one of these actors (the administrative authority) can decide regarding the rights and obligations of the other actor. Actors whose rights and obligations are subject to such decisions, or – more generally – in relation to whom public administration is exercised, are referred to as addressees of public administration. They include natural persons and legal entities, of which the most common in the field of the environment are, on the one hand, legal entities and natural persons engaged in business activities that might have a (negative) impact on the environment and, on the other hand, individuals whose rights may be affected by such activities, and environmental non-governmental organisations.

Administrative law can be internally divided according to several criteria. The first criterion is the type of relationships (activities) that a given part of administrative law concerns. According to this criterion, we distinguish between substantive administrative law and procedural administrative law. Substantive administrative law governs rules regulating the activities of administrative authorities in individual areas and sectors of public administration (social security, construction, environmental protection, etc.) and define the conditions and prerequisites for the exercise of rights and obligations of public administration addressees. Procedural administrative law in the narrower sense includes rules governing procedures within the exercise of public administration, in particular administrative proceedings, i.e. the formal procedure conducted by an administrative authority in which that authority decides regarding the rights, legally protected interests, and obligations of the addressees of public administration. This division is based, among other things, on one of the basic principles of the exercise of state power – the principle of legality. This principle is enshrined in Art. 2 (3) of the Constitution of the Czech Republic, according to which “[state power] may be exercised only in the cases, within the limits and in the manner provided by law.”⁶

As regards the definition of the competences (subject-matter/territorial jurisdiction and powers) of administrative authorities, there is no strict consensus on whether it should be considered part of substantive or procedural law. It is typically considered a component of administrative procedural law.⁷

5 | These entities include, for example, public universities or professional chambers, but they do not perform public administration in environmental matters and will therefore not be considered further.

6 | Underline added by author.

7 | Hendrych et al. 2012, 20.

The second criterion is the degree of specificity, according to which administrative law is divided into a general and a special part. The general part (general administrative law) includes those parts of administrative law that are generally applicable and common to this field of law and. These include the definitions of basic terms and legal concepts, principles, constitutional foundations, forms of administrative activity, and other issues that form the necessary basis for the creation, application, and control of administrative law rules.⁸ The general part of administrative law includes not only substantive law norms and concepts, but also procedural ones (administrative proceedings, administrative justice).

The special part of administrative law consists primarily of substantive provisions within individual branches of administration (areas of public administration activities), which are found in numerous legal regulations of varying legal force.⁹ In this respect, environmental law can be, to a limited extent, considered a special part of administrative law.

2. Legal framework governing administrative competences

As noted above, the primary responsibility for environmental protection lies with the state. This obligation is derived from Art. 7¹⁰ of the Constitution and Art. 35 of the Charter of Fundamental Rights and Freedoms. The state fulfils this obligation primarily by adopting laws that are necessary to discharge the obligations under the aforementioned provisions.¹¹ At the same time, it must have the appropriate administrative staff to implement the adopted legislation.¹²

From the perspective of the division of public administration into the area of state administration and self-government, environmental protection is primarily implemented within state administration. Territorial self-governing units

8 | *Ibid.*, 21–22.

9 | *Ibid.*, 20.

10 | Art. 7 of the Constitution: “The State shall take care to conserve natural resources and protect natural wealth.” Art. 35 (1) of the Charter: “Everyone has the right to a favourable environment.” With regard to Art. 41 (1) of the Charter, the rights enshrined in Art. 35 cannot be claimed directly, but only within the limits of the laws implementing that article. Art. 35(3) of the Charter: “No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law” (emphasis added by author).

11 | As the Czech Constitutional Court held in the case IV. ÚS 254/02: “The way in which the state takes care of the fulfilment of all requirements for environmental protection is determined by law. The constitutional regulation of the right to a favourable environment explicitly envisages a realistic definition of the legal definition of the content and scope of the manner of ensuring this right (Art. 41(1) of the Charter). By imposing obligations, restrictions and prohibitions, punishing unlawful conduct and minimizing adverse consequences, or compensating them in another appropriate way, the state fulfils its obligations in relation to the environment and contributes to the fulfilment of the rights of individuals.”

12 | Damohorský et al. 2010, 47–49.

(municipalities, regions) are allocated only a smaller, although in some cases very significant, part of the performance of public administration as part of their autonomous competences. A very important role in environmental protection, implemented in the area of autonomous competences of territorial self-government, is planning (municipal zoning plans, Principles of Regional Spatial Development) – one of the key cross-cutting tools for environmental protection. Through such plans, territorial self-governing units set the conditions for the use of their territory,¹³ which also includes the conditions for the protection of natural and cultural values. It is the responsibility of both municipalities and regions to ensure the comprehensive development of their territories. In this regard, land-use planning serves as a fundamental tool available to these local government entities. Municipalities and regions are responsible for developing the relevant technical infrastructure (such as water supply and sewer systems), protecting green infrastructure – including regional ecological stability systems – and undertaking a range of other activities that have a direct impact on the environment. At the municipal level, mention should also be made of waste management, where municipalities regulate the management of municipal waste and certain related commodities through generally binding decrees.¹⁴

However, the bodies of territorial self-governing units (i.e. municipalities and regions) play a very important role in the performance of state administration, because in the Czech Republic, at the local (municipalities) and regional (regions) level, the performance of state administration is mainly carried out within the delegated competences by the bodies of municipalities and regions (municipal authorities, regional authorities) rather than through the state's own agencies. In this context, municipal and regional authorities are referred to as 'indirect executors' of state administration. The state's own agencies are then referred to as 'direct executors' of state administration.¹⁵

The highest state authority in the field of the environment is the Ministry of the Environment, which serves as the primary central administrative body in charge of environmental protection. The Ministry of Agriculture (forest protection, hunting, fishing, water management), the Ministry of Regional Development (planning and zoning), and the Ministry of Industry and Trade (use of mineral resources)

13 | According to Section 38 para. 1 of Act No. 283/2021 Sb., the Building Act, the aim of spatial planning is "to systematically and comprehensively address the functional use of the territory, to determine the principles of its functional and spatial arrangement and to create the prerequisites for the sustainable development of the territory consisting of a balanced relationship of conditions to a favourable environment, to economic development and the cohesion of the community of inhabitants of the territory, which satisfies the needs of the current generation without endangering the living conditions for future generations."

14 | See Section 59 et seq. of Act No. 541/2020 Sb., on Waste.

15 | Kopecký 2019, 77–90.

also have significant competences.¹⁶ At the national level, the structure of central government bodies (ministries) is complemented by inspection authorities, foremost among which is the Czech Environmental Inspectorate¹⁷, which reports to the Ministry of the Environment.

At the regional level, regional authorities are a key link in the chain of state administration. They play a decisive role in the licensing of activities (integrated permits, waste management facilities, specified stationary sources of air pollution), where they act as first-instance authorities. At the same time, they act as the appellate body against decisions made by municipal authorities of all three types (see below). It can therefore be said that, in terms of their scope of competences, regional authorities are the most important link within the state administration system regarding environmental protection.

The performance of state administration at the municipal (local) level is divided among three types of municipal authorities. Each municipality (there are 6,258 municipalities in the Czech Republic) has a municipal authority (first level municipalities), which has defined basic competences in the field of environmental protection. In principle, these are very simple agendas, such as permitting the felling of trees growing outside forests. A total of 392 municipal offices are defined as authorised municipal authorities (second-level municipalities) and in 205 cases they serve as authorities of municipalities with extended powers (third-level municipalities). Second and third-level municipalities are entrusted with agendas that require a higher level of expertise and can be provided only at the level of a certain number of municipalities (e.g. permitting wastewater discharges, issuing building permits, authorisation of interventions in specially protected parts of nature, etc.).

This structure of municipal authorities is the result of a significant reform of the state administration that took place in 2000, within which the district offices, which had been state bodies, were abolished. Their competence was then transferred to a certain extent to municipal authorities (mainly third level) and regional authorities.

The large number of municipalities in the Czech Republic is widely seen as an obstacle to effective public administration, as the administrative division of the state is highly fragmented at the basic (municipal) level. A further issue is the systemic risk of conflicts of interest. This is because state administration at the level of municipalities and regions is carried out by employees of those municipalities and regions. Society-wide interests (state interests) and the interests of a particular

16 | Act No. 2/1969 Sb., on the establishment of ministries and other central government bodies of the Czech Republic.

17 | Act. No. 282/1991 Sb., on the Czech Environmental Inspectorate and Its Powers in Forest Protection.

municipality or region may conflict, and the legislation must therefore contain tools to ensure impartial decision-making.¹⁸

The above-outlined structure of state administration is supplemented by specialised bodies that perform state administration in selected (specialised) sections or in specially defined areas. Typical examples are the National Park Administrations, which exercise the powers of authorities for nature conservation, forest protection, hunting, fishing, etc., in (the territories of) national parks.¹⁹

3. Regulatory powers of administrative authorities

The basis for the imposition of any obligations is Art. 4(1) of the Charter of Fundamental Rights and Freedoms, according to which obligations may be imposed only on the basis of law and within its limits, and subject to the preservation of fundamental rights and freedoms.

Activities regulated for environmental protection reasons can be divided into four basic groups according to the degree of regulation that is characteristic of each group.

The first group includes activities that can be carried out directly on the basis of a law and do not require an individual permit. These activities constitute the so-called public use of certain components of the environment. Specifically, these are the general use of surface waters under Section 6²⁰ of the Water Act, the general use of forests under Section 19²¹ of the Forest Act and the general right of access to the countryside under Section 63 of the Nature and Landscape Protection Act.²² In all these cases, the limits of this public use (scope of rights) are directly determined *ex lege* and activities that are prohibited in connection with it are defined (e.g. damaging the banks of watercourses, disturbing peace and quiet in the forest, etc.). General use may be restricted or prohibited, with the exception of access to countryside, by the competent administrative authority, as a rule, by means of a so-called administrative measure of a general nature which is binding on an

18 | The basic rules for the assessment of a potential conflict of interest on the part of an authorised official, and therefore the grounds for exclusion from the proceedings, are set out in Section 14 of Act No. 500/2004 Sb., the Code of Administrative Procedure.

19 | Act No. 114/1992 Sb., on the protection of nature and the landscape (see section 78).

20 | According to Section 6(1) of Act No. 254/2001 Sb., the Water Act, “any person may, at his own risk, withdraw surface water or otherwise dispose of it for his own use without the permission or consent of the water authority, unless a special technical facility is required” (emphasis added by author).

21 | According to Section 19 of Act No. 289/1995 Sb., the Forest Act, “everyone has the right to enter the forest at their own risk, to collect forest fruits and dry brushwood lying on the ground for their own use.”

22 | Section 63(2) reads as follows: “Everyone shall have the right to free passage over land owned or leased by the State, a municipality or another legal entity, provided that by doing so he does not cause damage to the property or health of another person and does not interfere with the rights of personality or neighbourhood rights.”

indeterminate group of addressees, or, exceptionally, by an individual administrative decision.²³

The second, most important group of activities are activities that can generally be carried out on the basis of an individual permit. The permit allows for the determination of individual conditions for the implementation of a specific activity and represents a basic administrative tool in the field of environmental protection. The most important types of permits are integrated permits, permits for the operation of listed stationary sources of air pollution, for the operation of waste management facilities, for water management, and for construction projects, etc. Very often, a conditional administrative act is necessary for the issuance of a permit, usually in the form of a binding opinion issued by the competent administrative authority and the content of which is binding on the authority issuing the permit. A typical prerequisite is a binding opinion issued as a result of the EIA process and a unified environmental statement.²⁴

The third group of activities consists of activities that are not generally permissible but can be authorised in certain exceptional circumstances. It is therefore a matter of allowing exceptions, usually on the basis of the existence of another, overriding public interest. An example is the permitting of public infrastructure construction in specially protected areas such as national parks, natural reserves, etc. When granting exceptions, administrative measures of a general nature are again applied in some cases, if the exception is addressed to an indeterminate group of addressees. Typically, administrative measures of a general nature are used to permit derogations from the general protection of birds (e.g. cormorant shooting) or exceptions to the basic protective conditions of specially protected animal species (e.g. destruction of beaver dams and settlements).

The last, and very limited, group consists of activities that are absolutely prohibited and cannot be allowed under any circumstances. An example is the direct discharge of wastewater into groundwater.²⁵

To a limited extent, public law contracts, which may be concluded particularly in the field of nature conservation, may also serve as a means of determining obligations. Such contracts are used to secure the protection of certain Natura 2000 sites, memorial trees and similar elements. In these cases, they serve as an

23 | For example, Section 6(4) of the Water Act allows the water authority to “by decision or measure of a general nature, modify, restrict or prohibit the general management of surface water without compensation if the public interest so requires.”

24 | According to Section 2(1) of Act No. 148/2023 Sb., on Unified Environmental Statement: “an unified environmental statement is a binding opinion on the environmental impact of a project that is subject to a permit under the Building Act or an environmental impact assessment under the Environmental Impact Assessment Act, which is issued in lieu of administrative acts stipulated by other legal regulations in the field of environmental protection.”

25 | According to Section 38(8) of the Water Act “direct discharge of wastewater into groundwater is prohibited.”

alternative to a generally binding legal regulation, which would otherwise establish the protective regime for these elements.²⁶

The range of administrative authorities that have the power to inspect compliance with the established obligations is relatively wide. The principal inspection body is the Czech Environmental Inspectorate established by Act No. 282/1991 Sb., on the Czech Environmental Inspectorate and Its Powers in Forest Protection. The competence of the Inspectorate in other areas of environmental protection is governed by the relevant ‘sectoral’ regulations. In addition to the Inspectorate, inspection powers are also vested in regional authorities and in municipal authorities – particularly in those of municipalities with extended powers. Inspection powers are typically regulated in parallel at the municipal and regional levels, so that an inspection may be carried out by any of the above-mentioned bodies. Inspection activities concern all obligations, whether they arise directly from the law or have been imposed on the basis of it (e.g. by a permit for the operation of a certain facility). Obligations arising *ex actu* are usually inspected by the administrative authority that issued the relevant permit, or by the Czech Environmental Inspectorate.

The powers of inspection authorities necessary to ensure the conduct of inspections are governed by Act No. 255/2012 Sb., on Inspection (Inspection Rules), and encompass a wide range of powers. These include, among other things, the right to enter land, buildings, and other premises; to request the provision of data and documents; and to require the cooperation of the entity subject to inspection (Sections 7 and 8 of the Inspection Rules).

If an inspection reveals that an operator has violated their obligations, the inspection may lead to one of two outcomes. The first is the initiation of administrative proceedings and the subsequent imposition of a penalty for the violation of rules. The second is the initiation of proceedings to impose corrective measures, which are intended to remedy the identified deficiencies or, where applicable, to avert the risk of environmental damage (ecological harm). Such a remedial measure may consist either in remedying the harmful situation (environmental damage) or in prohibiting the activity the unlawful performance of which caused the harm. In both cases, the provisions governing the competent authority’s powers to take such action are set forth in individual laws establishing the protection of specific components of the environment. A typical example is Section 22(1) of the Air Protection Act, which states that: “If the operator fails to fulfil the obligations set forth in this Act or in the operating permit, the inspection authority or the municipal authority with extended powers is authorized to order the operator to take remedial measures within a reasonable period of time. If the operator fails to take corrective measures within the specified period, the inspection authority or the municipal authority with extended powers is authorized to issue

26 | See Section 39(1) of Act No. 114/1992 Sb., on Nature and Landscape Protection.

a decision to suspend the operation of the stationary source.” Similar provisions can also be found in other relevant laws.²⁷ While the aforementioned provisions limit the imposition of corrective measures to situations involving a breach of duty, the Nature and Landscape Protection Act allows for the imposition of measures to prevent harm even in relation to otherwise permitted activities. According to Section 66(1) of this Act: “the nature protection authority is entitled to impose conditions on natural persons and legal entities for the performance of an activity that could cause an unauthorised change to generally or specially protected parts of nature, or to prohibit such an activity.” In this case, the law does not link the possibility of imposing measures to an actual breach of an existing obligation, but rather to the risk of such a breach. The law anticipates situations in which a permit from the nature conservation authority is required for a specific intervention in the protected areas of nature and the landscape, but such a permit has not yet been issued because there were no grounds for doing so. Continuation of a potentially harmful activity is then possible only if the relevant entity obtains a permit from the nature and landscape conservation authority. The authority may then issue the permit contingent upon the fulfilment of certain restrictive conditions, or it may deny the permit, thereby definitively preventing the activity from taking place.

For the sake of completeness, it should be noted that the Czech legal system also includes Act No. 167/2008 Sb., on the Prevention and Remediation of Environmental Damage, which transposes Directive 2004/35/EC. Although this Act establishes rules for imposing preventive and remedial measures and although it takes precedence over legislation protecting specific components of the environment, it is rarely applied in practice. The reason for this is that the concept of environmental damage is defined in a highly complex manner, and proving its occurrence – or even the risk thereof – is challenging. Legal practice therefore generally gives priority to the application of procedures under the sector-specific laws described above.

4. Types of administrative delicts²⁸

According to Czech law, a basic administrative delict is an administrative transgression misdemeanour. An administrative transgression can be committed by a natural person, a legal entity, or a natural person engaged in business. A transgression as an administrative delict of a legal entity and a natural person engaged in business has been only recently introduced into the Czech legal system, with the

27 | See e.g. Section 116 of the Waste Act or Section 42 of the Water Act.

28 | Czech law distinguishes a special group of unlawful acts violating administrative regulations in their widest sense and deals with them within the system of administrative law (including penalties) and not criminal law. This is why this category of unlawful acts is usually termed ‘Administrative Delicts’.

adoption of Act No. 250/2016 Sb.²⁹ While a natural person is liable on the basis of fault, the liability of a legal entity or a natural person engaged in business for an administrative transgression is constructed as strict liability. In the field of environmental protection, as in all other areas of public administration, legal entities and natural persons engaged in business are subject to strict liability, regardless of whether the obligation breached is administrative in nature or one with direct environmental impact. However, this is not absolute liability, as a person may be exempt from liability if they prove that they “made every effort that could be required to prevent the offence” (Section 21(1) of the Offences Act).

While the Administrative Delicts Act regulates the general conditions for liability for a delict, the elements of delicts are defined by legal regulations in individual sectors of environmental protection legislation. It is understandable that legislators strive to formulate perfect legal norms and therefore to establish the relevant elements of a delict for each of the specified obligations. The range of elements constituting delicts is therefore very extensive in individual areas of environmental protection, totalling several hundred types of administrative delicts. For example, Section 117 of the Waste Act defines 30 elements of delicts that may be committed by a natural person. Sections 118 to 121 then define more than one hundred elements of delicts that may be committed by a legal entity or a natural person engaged in business. This difference in scope is understandable, as the regulation concerns, to a significant extent, activities of an essentially commercial nature, where the holders of obligations are legal entities or natural persons engaged in business.

A delict is defined in Section 5 of Act No. 250/2016 Sb., on liability for delicts and proceedings concerning them (hereinafter referred to as the ‘Administrative Delicts Act’), as: “a socially harmful unlawful act that is expressly designated as an delict in the law and that exhibits the characteristics specified by law, unless it is a criminal offence.” The definition of a delict therefore contains the typical element, which is social harmfulness.

On the other hand, a criminal offence is defined in Section 13(1) of Act No. 40/2009 Sb., the Criminal Code, as: “an unlawful act which the Criminal Code designates as a criminal offence and which exhibits the characteristics specified in that Act.” Unlike the definition of an administrative delicts, the definition of a criminal offence is constructed as formal and does not contain the element of dangerousness for the society. The Criminal Code applies social harmfulness as a corrective element on the basis of Section 12(2), according to which: “the criminal liability of the perpetrator and the criminal law consequences associated with it may only be applied in cases of social harmfulness where the application of liability under another legal regulation is insufficient. Criminal liability is therefore a

29 | Prášková 2017, 17–22.

means of *ultima ratio*³⁰ and can be applied when the application of liability for an administrative delict is insufficient.

The degree of social harmfulness of an unlawful act is therefore a key criterion for distinguishing between an administrative delict and a crime,³¹ particularly when the definition of their formal characteristics, typically the elements of the offence, is not sufficient to distinguish between them. The formulation of the elements of delicts and crimes respectively in the field of environmental protection is very often similar, and the two frequently overlap.

Criminal offences against the environment are defined in Chapter Eight of the Special Part of the Criminal Code (Sections 293–307). These offences can be divided into three groups. The first group consists of criminal offences of endangering and damaging the environment (Sections 293 and 294). The second, and most important, group consists of offences where the protected interest is one of the components of the environment (forests, nature and landscape, water resources), or whose elements involve the unlawful handling of sources of environmental threats (waste, ozone-depleting substances). The last group consists of offences where the object of protection is primarily livestock or animals kept in captivity, or cultivated plants – for example, spreading a contagious animal disease (Section 306 of the Criminal Code) or spreading a contagious disease and pests of cultivated plants (Section 307 of the Criminal Code). For the last two groups, related elements of an administrative delict also exist, so it is necessary, on the basis of the rules outlined above, to distinguish which type of liability – administrative or criminal – should be applied in a specific case. It should be noted that criminal liability is applied only in a minority of cases, and that most violations of environmental rules are dealt with under the administrative liability framework.

5. Administrative sanctions and penalties

The Administrative Delicts Act sets out, in Section 35, the following types of administrative penalties: reprimand, fine, prohibition of activity, forfeiture of the item or substitute value, and publication of the decision in the case. The last type of penalty may be imposed only on a legal entity or natural person engaged in business.

In the field of environmental protection, the fine is the primary administrative penalty and is provided for in respect of all delicts. The upper limits of fines differ for natural persons on the one hand, and for legal entities and natural persons engaged in business on the other. For natural persons, the statutory maximum is usually set at 1,000,000 CZK for the most serious delicts. For legal entities and natural persons engaged in business, the upper limit may reach up to 25,000,000 CZK.

30 | Borčevský 2025, 16–18.

31 | Uhří & Nemes 2024, 100.

Under the general provisions of the Administrative Delicts Act, the penalty of forfeiture of the item or its substitute value may be imposed without specific authorisation in a special act.

Conversely, imposing the penalty of prohibition of activity requires explicit statutory authorisation in a special act. Surprisingly, legal regulations in the field of environmental protection do not enshrine this possibility. Instead, they typically empower the relevant authority to restrict or even prohibit the operation of a facility as a corrective measure when it is being run contrary to its operating conditions (e.g. Section 19b of the Integrated Prevention Act, Section 22 of the Air Protection Act).³²

One tool for distinguishing the seriousness of administrative delicts, and consequently for determining appropriate sanctions, is a legislative technique that groups elements of similarly serious delicts into subdivisions within individual sections of the Act. The sections defining elements of administrative delicts are generally divided into subsections, in which the specific elements are set out under individual section. The law then specifies the maximum fine that may be imposed for committing an administrative delict described in a particular subsection. For individual administrative delicts, maximum fines are set on a case-by-case basis only in a very limited number of instances. In extremely rare cases, the amount of the fine is determined in some other way than by setting a specific range within which the competent authority operates, applying the criteria for the severity of the delict described above. One of the few such cases is the offence of unauthorised extraction of surface or groundwater, for which the Water Act imposes a fine of 40 CZK per m³ of extracted surface water and 70 CZK per m³ of extracted groundwater.³³

In Section 37, the Administrative Delicts Act defines the criteria that are taken into account when imposing an administrative penalty. These criteria include, under paragraph c), mitigating circumstances, which are further non-exhaustively listed in Section 39 of the Act. The mitigating circumstances include, in particular, the fact that the offender “assisted in the removal of the harmful consequence of the delict or voluntarily compensated for the damage caused” (paragraph c), and also that they “reported the delict to the administrative authority and effectively assisted in its clarification” (paragraph d). These mitigating circumstances are taken into account by the administrative authority *ex officio* and, given the general nature of the administrative delicts legislation, they are applicable in the case of all delicts.

The Administrative Delicts Act also regulates the waiver of the imposition of an administrative penalty (Section 43), which can be used if “given the seriousness of the delict, the circumstances of its commission and the person of the offender,

32 | Fiala 2022, 100–105.

33 | See Section 116(3–4) of the Water Act.

it can be reasonably expected that the mere hearing of the case before an administrative authority will be sufficient to remedy it.” Given that the mildest type of sanction is reprimand, it can be assumed that this provision will be used only exceptionally.

In addition to this general regulation, however, in the field of environmental protection, it is also possible to find a special legal regulation that is intended to motivate the offender to voluntarily remove the consequences of their unlawful conduct. In the first place, it is Section 125l(1) of Act No. 254/2001 Sb., on Waters (the Water Act), which allows the competent authorities to refrain from imposing an administrative penalty “if the offender takes actual measures to eliminate the consequences of the breach of obligation, as well as measures to prevent further endangerment or pollution of groundwater or surface water, and the imposition of an administrative penalty would lead to disproportionate harshness in view of the costs of the measures taken.” A similar provision, allowing the amount of costs incurred for the voluntary removal of harmful consequences to be taken into account, is also contained in Section 38(1) of Act No. 76/2002 Sb., on Integrated Prevention, and in Section 125 of Act No. 541/2020 Sb., on Waste. In the latter case, Section 125 of the Waste Act allows the administrative authority to suspend the proceedings for the administrative delict due to the implementation of “measures to prevent the occurrence of further adverse consequences.” Without this possibility, the administrative authority would not be able to take into account the actual amount of the costs of the measures taken, because the proceedings would have been terminated earlier, due to statutory time limits, and the extent of the costs incurred could not have been known at the time of the decision.

6. Challenges in administrative governance

If we are to consider the limitations of the current public administration system in the area of environmental protection and their implications for the application and enforcement of the law, two potential problems can be identified. The first of these is the considerable instability – or rather, the volatility – of the legal framework. The second issue concerns the limitations of the institutional framework for the administration of public affairs, through which the legal regime is enforced.

The instability or volatility of legislation essentially has two causes. The first can be described as external and stems from the need to adapt domestic legislation to constantly evolving European law. Take, for example, the field of waste management legislation, which is vast and complex and poses a challenge not only for those it affects but also for the authorities responsible for enforcing it. In 2020, the Czech Republic enacted its fourth Waste Act since 1989. The second, internal, problem is the relatively low quality of the legislative process. This issue results in practical difficulties caused by ambiguous legal provisions. In the area of administrative

penalties, clear legal provisions are an essential prerequisite without which compliance with obligations cannot be effectively enforced.

With regard to institutional arrangements, it is worth noting that the exercise of state administration in the field of environmental protection is carried out primarily through municipal and regional authorities through their exercising delegated state administration. The relevant officials are therefore employees of municipalities or regions. Although the state provides funding to municipalities and regions for the performance of public administration, these funds are insufficient to cover all potential costs. The result is a relatively small number of officials and a consequent lack of capacity to carry out inspection activities and enforce imposed measures (e.g. corrective measures).

The system of administrative penalties – specifically fines, which are by far the most common type of administrative penalty – can be considered relatively effective. The maximum amount of a fine that can generally be imposed is so high that, in practice, fines are rarely imposed at the upper limit of the penalty range. The potential amount of the fine imposed for an administrative delict is often seen as a greater deterrent than the potential punishment if the act were prosecuted as a criminal offence. In the case of environmental crimes set forth in Title VIII of the Criminal Code (Sections 293–308), imprisonment for a maximum of five years may be imposed, with certain exceptions.³⁴ This is also the threshold for imprisonment, at which point the upper limit of imprisonment below which the Criminal Code requires³⁵ that a suspended sentence be given primary consideration. In most cases, courts opt for a suspended sentence, which is perceived as relatively lenient compared to the potentially high financial penalties for administrative offences.

7. Future perspectives and conclusions

To ensure fairness, it is essential that the system not only punish the violation itself but also encourage the rectification of its consequences. Special legal provisions (e.g. in the Water Act or the Waste Act) allow administrative authorities to waive the imposition of a penalty if the offender takes concrete remedial measures. This prevents ‘disproportionate harshness’ in cases where the costs of remediation, combined with a fine, would be ruinous for the entity. This approach should be adopted as a general model and enshrined across the entire field of environmental protection. It is certainly desirable that, in the event of environmental damage, the primary focus be on its remediation rather than on punishing the perpetrator.

34 | See the elements of the criminal offences as set forth in the following provisions of the Criminal Code: Section 293(3) Damage and endangerment to the environment, Section 297(3) and (4) Unauthorised discharge of pollutants, Section 299(4) Unauthorised Disposal of Protected Wildlife, Section 302(4) Animal Cruelty.

35 | See Section 55(2) of the Criminal Code.

In 2016, following the adoption of a new law on administrative delicts, a comprehensive review of the elements of administrative delicts was conducted across all areas of administrative law, including environmental law. In this regard, therefore, no major changes can or should be expected. Similarly, no changes can be expected by way of a potential codification of the elements of administrative delicts in the area of environmental protection. The scope of the relevant legislation is so extensive and subject to change that any codification would likely cause more problems than it would solve. To enhance the effectiveness of the enforcement system, strengthening the role of the relevant administrative authorities therefore appears to be the most promising approach. In particular, strengthening the position and powers of the Czech Environmental Inspectorate, which is a state authority, could yield the most significant results. It exercises its authority on a nationwide scale and possesses the necessary expertise. Increasing the number of staff and the financial resources necessary to carry out inspection activities would likely be the most effective measure to strengthen the existing inspection system.

Reference list

1. Borčevský P (2025) *Trestní parvo hmotné. Obecná část*, 1st edn., Aleš Čeněk, Plzeň.
2. Damohorský M et al. (2010) *Právo životního prostředí*, 3rd edn., C.H. Beck, Praha.
3. Fiala Z (2022) K uplatňování správněprávní odpovědnosti při složkové ochraně životního prostředí se zaměřením na ochranu ovzduší, *AUC Iuridica* 68(1), pp. 91–105, DOI: <https://doi.org/10.14712/23366478.2022.6>.
4. Hendrych D et al. (2012) *Správní právo. Obecná část*, 8. vydání, C.H. Beck, Praha.
5. Prášková H (2017) *Nové přestupkové právo*, Leges, Praha.
6. Sládeček V (2019) *Obecné správní právo – 4. aktualizované vydání*, Wolters Kluwer ČR, Praha.
7. Uhri L & Nemes O (2024) Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia, *JAEL* 19(36), pp. 225–253, DOI: <https://doi.org/10.21029/JAEL.2024.36.225>.

The Legal Framework for Administrative Offences: Defining Responsibilities, Compliance and Sanctions in Slovakia¹

Abstract

This article examines the Slovak legal framework governing administrative offences, with a particular emphasis on environmental protection as one of the most dynamically developing areas of public law. It outlines the conceptual distinction between substantive and procedural administrative law, analyses the hierarchy of legal sources and explains the principles guiding the distribution of powers among central, regional and local authorities. The paper highlights the fragmented and dispersed regulation of administrative liability and sanctions, drawing attention to the competences of ministries, inspection bodies, municipalities and public guards, and the resulting lack of clarity in their responsibilities. It further explores the classification of administrative offences, including misdemeanours, strict liability offences and hybrid offences, while assessing their specific relationship to criminal liability and the principle of subsidiarity of criminal repression. Particular attention is devoted to the system of sanctions, their proportionality, preventive function and the need to balance deterrence with fairness. The article argues that despite the generally sufficient legislative framework, procedural shortcomings and overlaps between administrative and criminal enforcement reduce legal certainty and effectiveness. In conclusion, the authors call for clearer distribution of competences, greater procedural consistency and possible codification of administrative liability as key steps for strengthening enforcement and enhancing the credibility of environmental protection in Slovakia.

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1. Introduction

1.1. Define substantive administrative law and its general role in governance

Substantive administrative law is a part of administrative law and regulates social relations in the field of public administration.² In administrative law relations, a public administration body always acts in a position of power, i.e. as an administering entity. Natural persons and legal entities, as administered subjects, are obliged to submit to unilateral authoritative intervention in their rights or obligations.

Administrative law regulates a wide range of relations in the public administration sphere. It responds to the changing tasks of public administration and the development of society.³ The set of administrative law norms is increasingly differentiated internally in connection with this development. Based on similar features and systemic connections, it is divided into sections or subsystems. For example, the environmental care section consists of administrative law norms regulating the activities of public administration bodies in protecting and creating the environment and administrative law instruments focused on creating compliance between human activities and the environment.⁴ New legal branches,⁵ such as environmental law, are also emerging with higher frequency and greater social importance.

1.2. Explain the distinction between substantive and procedural administrative law

Substantive administrative law and procedural administrative law are interconnected. In simple terms, this is a relationship between the objective and the means. Substantive law is a regulator of a person's status and a meritorious regulation of rights and obligations. However, their application would be problematic if there were no possibility of enforcing them through procedural rules.⁶

We find common links within the subsystems of administrative law, such as administrative criminal law. The reason for perceiving administrative criminal law as a subsystem is the fact that it also has special features of a repressive nature

2 | Vrabko et al. 2018, 56.

3 | Seman, Jakab & Tekeli 2020, 11.

4 | Vrabko et al. 2017, 331.

5 | Seman, Jakab & Tekeli 2020, 10.

6 | Fábry, Kasinec & Turčan 2017, 90.

typical of its social function. This function is not typical for public administration and is used in imposing tortious liability. Public administration should resort to repressive means only if social relations cannot be protected in any other way. The objective of public administration in this area is the prevention and protection of society from illegal activity, fair sanctioning, gentle elimination of the consequences of illegal activity and discouraging potential delinquents from committing administrative offences.⁷

1.3. Provide an overview of the legal sources of administrative law (constitutional principles, statutory laws, regulatory decrees)

Generally binding legal regulations are Constitutional Act No. 460/1992 Coll. Constitution of the Slovak Republic, as amended (hereinafter referred to as the 'Constitution'), laws, government regulations, decrees and measures of ministries, decrees of local state administration bodies and generally binding regulations of self-governing units.

The Constitution is the national source of law of highest legal force.⁸ The basis for environmental protection is Art. 44 in conjunction with Art. 51, paragraph 1 of the Constitution, which state that the right to environmental protection may be claimed only within the limits of the laws that implement the Constitution. According to the Constitution, everyone has the right to a favourable environment, which is explicitly mentioned only in Act No. 17/1992 Coll. on the Environment⁹ (hereinafter referred to as the 'Environmental Act'). According to the Constitution, everyone is obliged to protect and improve the environment, and no one may endanger or damage it beyond the limits set by law. The Constitution also expresses the principle of state responsibility, and the state may implement tasks related to its fulfilment directly by state authorities or transfer them to local self-governing authorities or other entities.¹⁰ The framework thus created expresses the principle of shared responsibility from a legislative viewpoint in the form of:

1. the obligation to protect and improve the environment,
2. the prohibition to endanger and damage the environment beyond the limits established by law, which is the basis for the legal regulation of liability for administrative offences).¹¹

Legal regulation is contained in general and component legal regulation. *Lex generalis* is the law on the environment. It defines the basic concepts, principles of

7 | Hamuláková & Horvat 2019, 14–15.

8 | The right to environmental protection is enshrined among the fundamental rights and freedoms. See Section Six of Chapter Two of the Constitution.

9 | Košičiarová 2022, 105.

10 | Drgonec 2007, 437.

11 | Košičiarová 2022, 106.

environmental protection, obligations of legal entities and natural persons,¹² basic provisions on liability for a breach of obligations, regulation of sanctions and other measures for environmental damage.¹³

Component laws, i.e. *lex specialis*, are linked to components of the environment and are thus focused on:

- | water protection (Act No. 364/2004 Coll. on Water),
- | air protection and Earth's ozone layer protection (Act No. 146/2023 Coll. on Air Protection),
- | waste management (Act No. 79/2015 Coll. on Waste),
- | environmental impact assessment (Act No. 24/2006 Coll. on Environmental Impact Assessment),
- | geological research and exploration (Act No. 569/2007 Coll. on Geological Works),
- | nature and landscape protection (Act No. 543/2002 Coll. on Nature and Landscape Protection)

and they also regulate the specific facts of an administrative delict.

2. Legal framework governing administrative competences

2.1. How do central, regional and local authorities share administrative powers within the scope of environmental protection?

Public administration is organised into various organisational units and consists of state administration bodies, local self-governance bodies and public guards. The tasks of state administration in the field of environmental protection are thus significantly fragmented.

A fundamental role in the field of environmental protection is played by state administration bodies with competence over the entire territory of the state (ministries and state administration bodies with nationwide competence) and for a part of this territory (local state administration bodies):¹⁴

1. Ministry of the Environment of the Slovak Republic (hereinafter referred to as the 'Ministry'),
2. district offices in the seat of the region,

12 | Vrabko et al. 2025, 49.

13 | Provisions of Sections 28–30 of the Environmental Act.

14 | The foundations of the system of state administration in the field of environmental protection are laid down in Section 1(1) of Act No. 525/2003 Coll. on State Administration in Environmental Protection (hereinafter referred to as the 'Act on State Administration in Environmental Protection'). Ministries are established by Act No. 575/2001 Coll. on the Organisation and Activities of the Government and the Organisation of Central State Administration. Several tasks are also carried out by the Ministry of Agriculture and Rural Development of the Slovak Republic (hereinafter referred to as the 'Ministry of Agriculture'), for example in the areas of water management, veterinary care, fisheries and hunting.

3. district offices,
4. Slovak Environmental Inspection (hereinafter referred to as the 'Inspection').

The Ministry is obliged to exercise its legal capacity, for example, in the areas of nature and landscape protection, water management, air protection, waste management, protection and regulation of trade in endangered species of wild animals and wild plants. The Ministry manages and controls the performance of state administration by local state administration bodies and the Environmental Inspection. It also coordinates the cooperation of other state administration bodies at the national level. In addition to tasks, it develops environmental conceptual materials.

Inspection and supervisory bodies of state administration with nationwide legal competence are specialised in administrative supervision, control and inspection. The Inspection is an inspection body and is subordinate to the Ministry. It is managed and responsible for its activities by the Director General. It is divided into the Inspection Headquarters and the Environmental Inspectorates subordinate to it. It carries out its activities in accordance with special laws and imposes liability for administrative offences. The Slovak Forestry and Timber Inspection¹⁵ is an inspection body that is subordinate to the Ministry of Agriculture. It imposes measures and liability for administrative offences on economic entities. The State Veterinary and Food Administration of the Slovak Republic¹⁶ is a supervisory body. At the local level, regional veterinary and food administrations are subordinate to it. It is not directly subordinate to any of the central state administration bodies. It carries out control and supervision, for example, over the health and protection of animals.

Local state administration bodies are district offices and district offices in the regional seat.¹⁷ The current model of the local state administration bodies system consists of bodies with general competence and bodies with specialised competence. District offices are bodies with general competence; therefore, they carry out state administration in several of its sections. Bodies with specialised competence¹⁸ have been established for several other sections of state administration. One of the several organisational units of the district office, which is the

15 | Act No. 113/2018 Coll. on the Placing of Timber and Timber Products on the Internal Market and on Amendments to Certain Acts.

16 | Provision of Section 4 of Act No. 39/2007 Coll. on Veterinary Care.

17 | According to Act No. 221/1996 Coll. on the Territorial and Administrative Organisation of the Slovak Republic, regions and districts are administrative units established for the exercise of state authority.

18 | Since 1990, as a result of public administration reforms, various models of local state administration have alternated: the so-called integrated system based on the existence of authorities with general competence, and the so-called deconcentrated system based on sectoral management of authorities with special competence. The current model, in force since 2013, may be characterised as a mixed one with strengthened horizontal concentration.

environmental care department, has competence in matters of environmental care. District offices in the first instance carry out their state activities on the basis of component laws, for example, in waste management, water care and nature and landscape protection. Their legal capacity includes issuing permits, monitoring the fulfilment of obligations and imposing liability for administrative offences. They are a second-instance body in matters in which the municipality decides in the first instance, including when sanctioning environmental administrative offences. District offices in the regional seat carry out state administration in the second instance in matters in which the district office decides in administrative procedure.¹⁹

2.1.1. Local self-governance

Municipalities, as the basis of local self-governance, ensure a number of tasks in their territory. Environmental care is included among the basic tasks and activities of self-governance.²⁰ The scope of self-governing tasks is regulated by the Act on Municipal Authority by demonstrative calculation. It also includes the environmental section of administration, which is expressed extremely broadly and abstractly.²¹ The scope of tasks in matters of delegated state administration is defined exclusively by component laws, such as Act No. 364/2004 Coll. on Water, Act No. 146/2023 Coll. on Air Protection, Act No. 79/2015 Coll. on Waste, Act No. 543/2022 Coll. on Nature and Landscape Protection and many other laws.²²

To determine whether a municipality exercises self-governance or state administration, the law regulates not only the task but also the area to which it belongs.²³ However, if the law does not state such a regulation or fails to state it, the rule that it is the exercise of the municipality's self-governing powers applies. The lack of transparency in such a system is caused by an exception resulting from Case law,²⁴ according to which, when a municipality decides on administrative

19 | Pursuant to Section 4(2)(b) of the Act on Local State Administration.

20 | Tekeli, Hoffmann & Tomaš 2021, 172.

21 | Provision of Section 4(3)(g) and (h) of the Act on Municipal Establishment:

"In the exercise of self-government, a municipality shall in particular:

(g) provide public utility services, in particular the management of municipal waste and small construction waste, the maintenance of cleanliness in the municipality, the administration and upkeep of public greenery and public lighting, water supply, wastewater disposal, the management of wastewater from cesspools and local public transport,

(h) create and protect healthy conditions and a healthy way of life and work for the inhabitants of the municipality, protect the environment, ..."

22 | See the illustrative list in Section 1(2) of the Act on State Administration in Environmental Protection.

23 | In the performance of self-government tasks, competences are exercised in the municipality's own name, at its own responsibility and expense. In the exercise of delegated state administration, competences are exercised in the name of the State, at its responsibility and expense.

24 | Resolutions of the Supreme Court of the Slovak Republic: 6Rks/1/2011, R 87/2012, R 88/2012.

offences, it always acts within the framework of delegated state administration.²⁵ Moreover, in environmental protection, the municipality's self-governing competence and the delegated exercise of state administration meet, since their tasks are determined by the same component regulations. It is clear from application practice that municipalities are often unaware of this overlap in regulating individual components of the environment. This leads to the illegality of activities and legal acts.²⁶

The range of tasks of higher territorial units is regulated in a similar way as in the case of municipalities.

2.1.2. Public wardens

Members of public wardens are natural persons with the status of public officials.²⁷ According to special laws, they protect the individual components of the environment in the public interest. Public wardens are Nature Wardens, Water Wardens, Field Wardens, Forest Wardens, Hunting Wardens and Fishing Wardens. Their activities focus on protecting the exercise of law or property, detecting illegal actions and imposing liability for administrative offences at the place of their commission. They monitor compliance with the laws and other generally binding regulations and decisions issued on their basis.²⁸ The regulation of wardens is inconsistent. Component laws regulate in various ways the conditions of membership, the rights of members and the relations of superiority and subordination, for example, Nature Wardens are subordinate to the Ministry and Field Wardens to the Ministry of Agriculture of the Slovak Republic. Their unsystematic and insufficiently regulated rights and their use are perceived negatively.²⁹

2.2. What legal principles determine delegation of powers and regulatory authority?

The most important rule for the organisation and activity of public administration is the principle of legality. It expresses the strict binding of public administration bodies by legal regulations. For administered entities, this is particularly important when issuing decisions that affect their obligations.

The territorial principle expresses the territorially limited competence of public administration bodies, since all of them have their competence defined for a certain territory, state, administrative units or self-governing territorial units.

25 | Potasch 2013, 202–203.

26 | Tekeli, Hoffmann & Tomaš 2021, 173.

27 | Vrabko et al. 2025, 14.

28 | Košičiarová 2022, 150–151.

29 | Mráz & Novotná 2022, 71–72.

The sectoral principle entrusts a public administration body with a set of competences with a material connection, as in the case with environmental protection. In contrast, the functional principle expresses the entrustment of competences for ensuring specific tasks carried out in several sectors of public administration.³⁰ It can be applied to activities in the exercise of supervision and the imposing of liability for administrative offences.

Subordination is a rule based on relations of superiority and subordination. Its manifestation is management and control always emanating from a hierarchically higher entity. It is applied in the vertical line of the state administration structure, for example, the line of the Ministry, the district office in the regional seat and the district office.

Inspection and supervisory bodies of state administration with nationwide legal competence are a manifestation of the principle of de-centralisation, i.e. the transfer of tasks from central state administration to lower-ranking bodies.

The principle of delegation is a manifestation of the entrusting of state administration performance to entities other than state administration bodies. The performance of state administration is usually delegated to municipalities, higher territorial units or natural persons, for example, members of public wardens are natural persons with delegated legal capacities.

The principle of decentralisation expresses the entrusting of some competencies to local self-governance, thereby increasing the legal competence and responsibility of other public entities at the expense of the state.³¹ Municipalities and higher territorial units represent two levels of local self-governance without relations of superiority and subordination.

Coordination and cooperation are typical for state administration bodies at the same level. An example is the relationship between the Ministry and the Ministry of Agriculture or several district offices. Also, relations among all components of public administration, regardless of which part they are classified into, are relations of cooperation and synergy in the field of environmental protection.

2.3. How does administrative law balance government intervention and individual rights?

Public administration is strictly governed by the principle of legality from both an organisational and functional viewpoint. However, its performance is a set of demanding activities, and the opinions of recipients on their implementation result from their subjective attitudes and expectations. In this regard, the question arises as to what extent public administration bodies should implement their activities in relation to individual subjects. In the field of administrative law, the principle

³⁰ | Vrabko et al. 2025, 21.

³¹ | Tekeli, Hoffmann & Tomaš 2021, 151.

of maintaining the public interest is particularly important in this regard and should be present in every activity of public administration. Public administration officials should therefore carry out their activities in such a way that everyone, or at least the majority, benefits from them. At the same time, it is also necessary to interpret this principle in accordance with the basic principles on which the state is built, as a certain association of its inhabitants.

Two concepts which provide a framework consisting of principles and guidelines for the proper and fair performance of public administration are also important for balancing the interference of public administration with the rights of individuals and legal entities. These are the right to good administration and the right to a fair process. The concept of the right to good administration contains basic requirements for the quality of the activities of administrative entities towards the addressees of their activities. The principles and guidelines that form it are aimed at:

- | protection of the individuals rights in relation to the activities of public administration, especially when issuing administrative acts,
- | the position and activities of public administration executives,
- | ensuring equal access to services provided by public administration.³²

The concept of the right to a fair process³³ contains basic requirements for the quality of proceedings before any public authority. Its impact is particularly significant in administrative proceedings, in which liability for administrative offences is imposed. On this basis, everyone has the right to have their case discussed fairly, publicly and within a reasonable time.³⁴

3. Regulatory powers of administrative authorities

3.1. What types of administrative acts (e.g. regulations, directives, decisions) define obligations?

Every activity of public administration is externally manifested in a concrete final form of activity. Administrative legal acts are among those that can regulate and impose new obligations.

Normative administrative acts regulate the rights and obligations of administered entities within the scope of legal regulations of higher legal force. They include government regulations, decrees and measures of ministries and other central state administration bodies, decrees of local state administration bodies

32 | Vrabko et al. 2025, 30.

33 | Art. 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

34 | Vrabko et al. 2019, 8.

and generally binding regulations of local self-governance. Individual administrative acts apply the legal norms contained in normative legal acts to specific cases. They do not have a law-making character, but as a rule they establish or declare concrete rights and obligations of natural persons and legal entities. Typical individual administrative acts are decisions. A special type of decisions imposing obligations are writ proceedings and penalty blocks, which are issued in simplified administrative proceedings on administrative offences. Decisions that grant their addressees new rights and impose new obligations are called constitutive decisions.³⁵

Inspection result protocols are the result of inspection and supervision procedures if non-compliance of the inspected state with the requirements specified in legal regulations or decisions is detected.³⁶ Within the protocol, the administrative supervision authority has the legal capacity to impose obligations on the inspected person. It imposes these obligations mainly through corrective and sanctions means, depending on the circumstances.³⁷

3.2. How do administrative bodies enforce compliance through monitoring, inspections and compliance orders?

Public administration bodies are obliged to ensure the fulfilment of obligations by the entities they administer. To achieve this objective, they need to obtain information about relevant facts. Therefore, they carry out administrative supervision and environmental monitoring.

Administrative supervision is a specific type of control activity that is carried out by public administration bodies towards administered entities. It is a procedure by which they detect the actual state and subsequently compare it with the state required by legal regulations or obligations imposed by decisions. The exercise of administrative supervision affects the rights of the controlled natural persons and legal entities. Therefore, the rights and obligations and the progress of all interested entities are regulated by law. If deficiencies are found during administrative supervision, all findings on breaches of legal regulations are listed in the protocol on the results of the inspection. Even though administrative supervision is regulated in terms of substance by specific regulations, it is generally true that corrective measures or sanctions can be imposed when deficiencies are found. Corrective measures have the objective to protect the environment, and therefore a general corrective mean is the legal capacity of the supervisory body to require the elimination of the identified deficiencies, for example, by imposing an obligation to refrain from certain actions, ordering the closure or suspension of operations

35 | Vrabko et al. 2025, 145.

36 | Vrabko et al. 2025, 202.

37 | Košičiarová 2022, 149.

or revoking authorisation.³⁸ Sanctions are intended to punish the detected illegal behaviour. They are penalties for a breach of substantive obligations arising from legal regulations or decisions. The findings obtained during the inspection also serve as a basis for subsequent imposition of liability for administrative offences.

Public administration bodies carry out administrative supervision to a varying extent. They have an important place in the activities of the Ministry and inspection³⁹ and other specialised inspection and supervision bodies. The Ministry's activities are focused on lawmaking in terms of emphasis. In contrast, issuing decisions takes a back seat and is the main activity of local state administration bodies.⁴⁰ Inspection and supervision bodies carry out administrative supervision, as their focused activity and their follow-up decision-making activity in imposing responsibility is also important for detecting administrative offences. The district office in the regional seat, district offices and municipalities, when devolved to perform state administration according to special regulations, also carry out state supervision tasks. Their activity in issuing decisions that punish administrative offences is important.

3.3. What preventive measures can authorities impose to avoid environmental harm?

Preventive measures can be adopted by public administration bodies on the basis of several component laws. The opposite approach to environmental protection is represented by integrated prevention and control of environmental contamination.⁴¹ According to the Integrated Prevention Act, this is a set of measures focused on:

- | prevention of environmental contamination,
- | reduction of emissions into air, water and soil, and
- | limitation of waste generation and its treatment and removal.

Their objective is to achieve a high level of environmental protection through preventive action, namely by limiting the negative impact of significant industrial activities. Integrated contamination prevention and control measures include:

- | issuing integrated permits,
- | reviewing and updating the conditions of issued integrated permits, and
- | performing environmental controls.⁴²

38 | Košíčiarová 2022, 148.

39 | The Ministry and the Inspectorate exercise state supervision pursuant to Section 2(1)(e) and Section 9 of the Act on State Administration in Environmental Protection.

40 | Seman, Jakab & Tekeli 2020, 73.

41 | Pursuant to Act No. 39/2013 Coll. on Integrated Prevention and Control of Environmental Pollution (hereinafter referred to as the 'Act on Integrated Prevention').

42 | Vrabko et al. 2025, 201.

In the field of integrated prevention and control of environmental contamination, state administration is carried out by the Ministry and the Inspection. In relation to the addressees of preventive measures, the Inspection has a central position, issuing integrated permits. These are decisions that determine the binding conditions for the performance of industrial operations activities. An integrated permit authorises the operator⁴³ to perform activities in the operation and determines the binding conditions for the performance of this activity. An integrated permit must also be issued for each significant change in the operation's activities.⁴⁴

The operator is obliged, for example:

- | to perform the activity in operation in accordance with the issued integrated permit,
- | to maintain the operation in line with the conditions specified in the permit, and
- | to fulfil corrective measures.

If a breach of the conditions in the permit threatens serious harm to human health or the environment or the occurrence of significant damage, the operator is obliged to stop the activity.

The Inspection is also a state supervisory authority in this area of state administration; it imposes corrective measures and, if an administrative offence is committed in this area, it imposes administrative legal liability.

4. Types of administrative offences

4.1. General administrative offences – breaches of general administrative duties (e.g. failure to obtain necessary permits, non-compliance with reporting obligations)

An administrative offence is understood as a less serious unlawful action for which sanctions may be imposed that affect the sphere of the delinquent to a lesser extent.⁴⁵ Slovak legal regulation on administrative offences is contained in several legal regulations with legal force. Currently, there is no single legal regulation of a code nature that would systematically regulate all administrative offences that Slovak legislation recognises. Equally, the typology of administrative offences is currently not unequivocal and generally accepted.

43 | According to Section 2(g) of the Act on Integrated Prevention, an operator is a natural person – entrepreneur or a legal entity who wholly or partly operates or manages an installation, a combustion plant, a waste incineration plant or a waste co-incineration plant.

44 | Košíčiarová 2022, 271.

45 | Horvat et al. 2018, 118.

Legal theory most often distinguishes the following types of administrative offences: misdemeanours, administrative offences of legal entities and natural persons engaged in business, as well as natural persons performing qualified activities, other administrative offences of natural persons, administrative disciplinary offences and administrative order offences.⁴⁶

The only legal division of administrative offences is the division into misdemeanours and other administrative offences. This division also results from many laws that focus on various sections of public administration in terms of content. It is typical for them that in the part regulating administrative legal liability they refer first to misdemeanours and consequently to other administrative offences. From this we can deduce that the basic type of administrative offences in Slovakia is misdemeanours. They also have their own direct definition, namely in Act No. 372/1990 Coll. on Misdemeanours, as amended (hereinafter referred to as the 'Misdemeanour Act'), according to which an action due to a misdemeanour is one that breaches or threatens the interests of society and is explicitly designated as a misdemeanour in this or another law, unless it is another administrative offence covered by special legal regulations or is a criminal act.⁴⁷ A misdemeanour must therefore simultaneously meet several characteristics: it must be fault-based conduct (and since culpability is possible only for natural persons, we can deduce from this that a delinquent liable for a misdemeanour can only be a natural person); the proceedings must fulfil the material characteristic (breach or threaten the interest of society); the misdemeanour must be expressly designated in accordance with the law (this can also be in legal regulations other than in the Misdemeanour Act), and at the same time, the rule of subsidiarity applies; i.e. it is a misdemeanour only when the action does not constitute the facts of the case fulfilment in another type of administrative offence or criminal act.

In the legal regulation of misdemeanours, the rule applies that the individual facts of a case are either regulated in a special part of the Misdemeanour Act or in special regulations. The Misdemeanour Act regulates only one type of misdemeanour in the field of environmental protection, namely according to the provisions of Section 45, which is generally formulated in the sense that this misdemeanour is committed by a person who, by breaching generally binding legal regulations on environmental protection in a manner other than as follows from the provisions of Sections 21 to 44 of the Misdemeanour Act, deteriorates the environment.

Other administrative offences that are not misdemeanours represent administrative sanctions for various situations. Their legal regulation, compared to misdemeanours, is present in several legal regulations and is very brief. Since administrative offences of natural persons sanctioned based on fault, administrative disciplinary offences and administrative order offences represent a relatively

46 | Vrabko et al. 2025, 212.

47 | Section 2(1) of the Act on Misdemeanours.

specific way of imposing administrative liability, we will focus further on administrative offences of legal entities and natural persons engaged in business, as well as natural persons performing qualified activities, which the theory also calls 'hybrid administrative offences'. This is because the subject of this type of offence can be a legal entity (without the need for further specification) or a natural person (as an entrepreneur or performing a certain type of qualified activity).

4.2. Strict liability administrative offences – offences where intent is not required (e.g. exceeding emission limits, unauthorised land use)

Currently, hybrid administrative offences are of the greatest importance in terms of imposing liability for a breach of obligations in the field of environmental protection. Their legal regulation is present in several legal regulations. As stated by Beleš and Havelková, "administrative offences of legal entities are contained in many special regulations, which usually regulate only the facts of the case in concrete specific administrative offences, sanctions, determination of the authority that decides on them and deadlines for imposing them."⁴⁸

However, the essential difference between them is the fact that the mentioned hybrid administrative offences are punished regardless of fault, in other words, on the basis of objective liability. As stated by Čerkala and Vajlíková, "we distinguish between subjective and objective legal liability. Subjective legal liability involves culpable unlawful proceedings, intentional or careless. It is characteristic of objective liability that it always involves a result, or rather an unlawful state, the prerequisite for which is not subjective fault."⁴⁹ Thus, in the case of objective liability, we only determine whether a certain unlawful proceeding is objectively attributable to a certain subject, without further examining the subject's relationship to the proceedings.

This model of objective liability is not merely a theoretical construct; it is applied consistently in sector-specific areas of environmental regulation. In Slovak water law, administrative offences are sanctioned regardless of fault, primarily in response to breaches of prohibitive regulatory regimes, such as unauthorised water use or cross-border water transport, reflecting a strong preventive and protective rationale.⁵⁰ In contrast, waste management regulation relies on administrative penalties mainly to enforce ongoing compliance with statutory obligations related to waste handling and management, thereby emphasising regulatory discipline rather than mere prohibition.⁵¹

This is partly for the formal reason that in legal entities, as in legal constructs, fault as an internal psychological relationship of the delinquent to the unlawful

48 | Havelková & Beleš 2016, 3.

49 | Čerkala & Vajlíková 2007, 33.

50 | Jakab 2023, 49–50.

51 | Maslen 2023, 73–75.

proceedings cannot even exist. An equally important reason, however, is the fact that in this case the unlawful act, as such, and the consequences of these proceedings are penalised, not other circumstances that may have preceded it, including the will or knowledge of the delinquent about the unlawfulness of the proceedings. This fact is also of great importance because in many areas of public administration, including climate and environmental protection, subjective liability would be very difficult to prove. Of course, even if this case concerns objective liability, from which in principle one cannot be freed by a lack of will or knowledge (as is the case, for example, in the case of those misdemeanours that require fault), it is not absolute liability. This means that if a certain proceeding is not attributable to a certain delinquent, he cannot be sanctioned for it, even in the case of an event that was beyond his ability to influence (*force majeure*). The concept of objective liability is thus based on the correct punishment of all hybrid administrative offences in Slovakia, which otherwise could not be sufficiently effective.

4.3. Hybrid offences – cases where administrative liability overlaps with potential criminal liability (e.g. illegal waste disposal leading to criminal prosecution)

In the case of certain proceedings that generally meet the characteristics of administrative offences, we can in some cases also speak of criminal liability. A criminal act is an unlawful act whose characteristics are listed in the Penal Code, unless that law provides otherwise.⁵² In other words, if a certain proceeding meets the characteristics of both a criminal act and an administrative offence, it will be punished as a criminal act.

Administrative offences in the field of environmental protection are regulated in a special part of the Penal Code, namely in its sixth chapter, together with generally dangerous criminal acts. Concretely, these are the following criminal acts: Endangerment and damage to the environment, Unauthorised waste management, Unauthorised discharge of harmful substances, Breaching of water and air protection, Unauthorised handling of substances damaging the ozone layer, Breaching of plant and animal protection, Tyranny to animals, Killing of companion animals without adequate reason, Neglect of animal care, Organising animal fights, Breaching the protection of trees and shrubs, Spreading a contagious animal and plant disease, Escape of organisms, and Poaching.⁵³ In most of these proceedings, it is true that criminal development is still based on certain criteria such as it is, for example, damage. In the case of this type of criminal acts, this is defined differently than in general. “As stated by the legislator, in environmental criminal acts, damage is understood as the sum of ecological damage and property

52 | Section 8 of the Criminal Code.

53 | Sections 300–310 of the Criminal Code.

disadvantage, with property disadvantage also including the costs of restoring the environment to its previous state.”⁵⁴ As stated by Burda, “property disadvantage to the environment is therefore determined according to the usual criteria for determining disadvantage and must always include the costs of restoring the environment to its previous state, i.e. as if the environmental damage had not occurred before the act.”⁵⁵ It continues: “Ecological damage must be assessed as complex environmental damage, even if it concerns only one, or possibly even an isolated component (e.g. one tree), but it is all the greater, i.e. the more ecological links are disrupted between the individual disrupted components.”⁵⁶

Another distinctiveness of environmental criminal acts is that, apart from exceptions, all provisions have a blanket character and therefore refer to other generally binding legal regulations. In their essence, they refer to the provisions of individual sectoral legal regulations in the field of environmental protection, which we refer to in the article above. As Záhora states, this ‘fragmentation’ of the legal regulation and the quantity of blanket legal norms make it difficult to detect and investigate these criminal acts.⁵⁷

4.4. How are the boundaries between administrative offences and criminal offences set?

The differences between administrative legal and criminal liability in the field of environmental protection arise from one of the basic principles of substantive criminal material law, namely the subsidiarity of criminal repression (*ultima ratio*). As Mihálik states, “it is necessary to find a fine balance between what needs to be protected through criminal law and what is sufficient for protection through other legal branches (primarily we mean private law protection through tools of civil law and public law protection through tools of administrative law)”.⁵⁸ Therefore, even in the case of environmental protection, it is necessary to first impose liability through administrative law tools and only consequently proceed to criminal sanctions.

One of the important means of state coercion is administrative punishment, i.e. imposing sanctions on natural persons and legal entities in cases where the seriousness of the unlawful proceedings does not justify criminal liability.⁵⁹ The distinguishing criteria for whether administrative or criminal liability will be imposed in a given case therefore include the degree of seriousness of a certain offence.

However, there are, of course, more of these differences. It may also be the nature of the sanction. Equally, as we stated when differentiating between

54 | Section 124(3) of the Criminal Code.

55 | Burda 2010, 124.

56 | Ibid.

57 | Záhora 2011, 300–310.

58 | Mihálik 2021, 85.

59 | Havelková 2020, 119.

misdeemeanours and other administrative offences that a higher penalty is generally applied in the case of other administrative offences, there is also a difference in sanction between administrative offences in general and criminal acts. Criminal liability is imposed for more serious acts that require stricter sanctions, such as imprisonment, to discourage the delinquent and provide satisfaction to the public. On the contrary, administrative sanctions are of a milder nature, serving more as an emphasis on the obligation to respect the law. The most common administrative sanction is a financial penalty.⁶⁰

Among other differences between administrative offences and judicial offences (criminal acts) we can include, for example, the object of the offence (in the case of administrative offences, it is primarily the proper functioning of public administration and only consequently other objects) and the social and ethical condemnation of the offence (such condemnation occurs primarily in criminal acts). There are also differences in who is the authority competent to hear the unlawful proceedings (in the case of administrative offences, these are public administration bodies, while in the case of criminal acts, these are authorities acting in criminal proceedings and courts) and in the legal regulation. While the legal regulation of administrative offences is present in dozens of legal regulations for individual sections of public administration without a unified code, the codification of substantive criminal law is in the Penal Code, and the codification of criminal procedural law is in the Criminal Procedure Code. In addition, certain specific features of punishment of legal entities are regulated by Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities, as amended.

5. Administrative sanctions and penalties

5.1. What are the types of penalties for administrative offences? (e.g. warnings, fines, licence revocation, business restrictions)

The legally foreseen consequence of breaching a norm of administrative law is a sanction. Although the science of administrative law currently refers to the process of imposing liability for committing an administrative offence as administrative punishment, the term 'punishment' is still not an accepted term for a sanction in the field of public administration. A sanction is a consequence of a misdemeanour that is intended to deter the delinquent from further illegal behaviour. It is a means of state coercion imposed by an administrative authority in accordance with the law. However, the imposition of a sanction is not mandatory; the administrative authority may also refrain from it.⁶¹

60 | Vrabko et al. 2025, 205.

61 | Srebalová et al. 2020, 55.

The consequence of committing an administrative offence may be one of the sanctions which are assumed by legal regulations. In the case of misdemeanours, we distinguish the following types of possible sanctions: reprimand, penalty, prohibition of activity and confiscation of property. The Act on Misdemeanours even considers the fact that a decision on a misdemeanour may refrain from the imposition of a sanction, if the mere hearing of the delinquent is sufficient to correct the misdemeanour.⁶² The general nature of the provisions of the Act on Misdemeanour implies that unless a special act provides otherwise, an administrative authority may impose an admonition or penalty for each misdemeanour. An administrative authority may impose a prohibition of activity and confiscation of property only if the conditions for their imposition are met.⁶³ However, we must also point out that if a special act regulates, in addition to the facts of the case, elements of a certain proceeding as a misdemeanour, the competent administrative authority is obliged to adhere to these provisions when imposing sanctions in such a case.

Unlike misdemeanours, there is no unifying code for other administrative offences that would regulate individual types of sanctions. Therefore, the type and amount of the sanction in all cases depends on what the provision of the specific law regulates. In the case of hybrid administrative offences, the most common type of sanction is also a penalty. In less frequent cases, individual laws also assume a prohibition of an activity, confiscation of an object (the objective is to prevent the object from being used again to commit an administrative offence, and at the same time to make it more difficult for the delinquent to commit such an proceedings again), a reprimand or warning for a breaching of the law, or publication of a decision on an administrative offence.⁶⁴

5.2. How are penalties proportionate to the offence (e.g. small infractions vs. serious regulatory breaches)

When assessing the adequacy of sanctions for individual administrative offences in the field of environmental protection, we proceed from the fact that the most common type of sanction is a penalty. We can therefore assess the adequacy of the sanction depending on the amount of the penalty.

In the case of the above-mentioned misdemeanour under Section 45 of the Act on Misdemeanours, the upper limit of the penalty is 99 EUR, which is a very low amount compared to the upper limits of penalties that can be imposed for committing any of the other misdemeanours under this Act. However, this low amount is also due to the subsidiarity of this provision and the fact that more serious offences are regulated under other regulations. In the case of special regulations,

62 | Section 11(1) and (3) of the Act on Misdemeanours.

63 | Srebalová et al. 2020, 56.

64 | Vrabko et al. 2025, 246.

the differences between misdemeanours and other (hybrid) administrative offences are clearly distinguishable. For example, in the case of Act No. 543/2002 Coll. on Nature and Landscape Protection, as amended, we can thus compare two administrative offences – a misdemeanour and a hybrid administrative offence, the objective aspect of which lies in the failure to notify about the felling of a tree. If it is a hybrid administrative offence, where the responsible entity is a natural person–entrepreneur or a legal entity, the upper limit of the possible penalty is 9,958.17 EUR.⁶⁵ In contrast, where in the case of a misdemeanour with the same objective aspect of the facts of the case the responsible entity is a natural person, the upper limit of the possible penalty is 3,319.39 EUR, and the law at the same time provides for the possibility of imposing a sanction of confiscation of property.⁶⁶ We could find a very high number of such examples, in various regulations in individual sections of environmental protection, as well as in the entire public administration.

We can therefore deduce that, in general, a distinction is made between whether the delinquent is a (private) natural person – i.e. a misdemeanour is committed – or an entrepreneur or legal entity (a hybrid administrative offence).

5.3. What role do compliance incentives play in administrative enforcement (e.g. reduced penalties for voluntary corrective actions)?

In any case, all laws regulate only basic frameworks, i.e. most often the upper (and sometimes also the lower) limit of the penalty that can be imposed in a certain case. To determine the concrete limit, it is necessary to apply discretionary powers, as the administrative authority can, within the limits of the law, take the decision it acknowledges most appropriate, taking into account the specific circumstances of the case.⁶⁷ However, this consideration is based on certain criteria, which in the case of a misdemeanour are, for example, the manner in which the misdemeanour was committed and its consequences, the circumstances under which it was committed, the degree of culpability, the motives and the persons of those delinquent, as well as whether and in what way the delinquent was punished for the same act in punishment or disciplinary proceedings.⁶⁸ However, these criteria for applying discretionary powers within a certain financial framework for determining the amount of the penalty do not represent a kind of legal list of aggravating or extenuating circumstances, as we know from criminal law.

In the case of hybrid offences, these criteria for the application of discretionary powers may be present in a special law. Here we would like to point out the possibility of reducing the imposed sanction for an administrative offence. This is

65 | Section 90(1)(f) of Act No. 543/2002 Coll.

66 | Section 92(1)(h) in conjunction with Section 92(2)(b) of Act No. 543/2002 Coll.

67 | Judgment of the Supreme Court, Case No. 9Sžsk/50/2017 of 28 March 2018.

68 | Section 12(1) of the Act on Misdemeanours.

provided for by some legal regulations; in the field of environmental protection this is the new Act No. 146/2023 Coll. on Air, as amended. This act allows the hearing of some hybrid administrative offences in writ proceedings, i.e. without regular administrative proceedings and further evidence. It applies that the penalty is considered paid if, within 15 days of the date of the writ proceedings delivery, at least two-thirds of the imposed penalty amount are credited to the bank account specified in the writ proceedings (i.e. the participant in the proceedings will not defend themselves in the form of an objection), or in the case of a regular decision in administrative proceedings, if, within 15 days of the delivery date of such a decision, at least four-fifths of the imposed penalty are credited to the bank account specified in the decision.⁶⁹ As Michalovič and Jenčo report, a total of 39 writs proceedings were issued in Slovakia in the first half of 2024 alone, none of which were contested. These figures point to the efficiency of the payment writ proceedings and suggest that sanctioning non-compliance has improved thanks to the fast and simple enforcement mechanism introduced by the new Air Protection Act.⁷⁰

6. Challenges in administrative governance

6.1. How should public administration be restructured to improve the effectiveness of administrative enforcement?

If we were to propose certain changes in the organisation or functions of public administration in the area of imposing liability of administered entities, we proceed from the above-mentioned premise that in the area of environmental protection, fragmentation of its tasks can be observed.

As part of the public administration reform of 2013, the tasks of several offices (district office branches, land offices, forest offices, cadastral administrations and others) were unified under the competence of district offices. This expanded the principle of horizontal concentration of local state administration. The objective of the changes was to improve the transparency of finances, control costs, limit the constant expansion of workplaces and streamline management, education, personnel policy, wages and introduce IT and databases. However, for the same reasons, state administration was decentralised more than a decade before this reform.⁷¹

We believe that the tasks of public administration in the area of imposing liability for environmental protection offences could also be expanded in the future. We can identify two main directions: strengthening the tasks of local

69 | Section 55(17) of Act No. 146/2023 Coll.

70 | Michalovič & Jenčo 2024, 37.

71 | Knežová & Vernarský 2014, 771.

state administration bodies with general substantive competence, as currently stabilised elements of administration, and expanding the supervisory tasks of inspection.

6.2. Are administrative penalties effective in ensuring compliance?

In the case of administrative offences in the field of environmental protection in general and hybrid offences in particular, it is valid, that the basic objective is to impose liability for the given act. Although administrative criminal law performs several functions, including protective, regulatory, preventive and repressive,⁷² we can state that, especially in this field, the most important task is to protect the interests of society and the environment. It is necessary primarily to prevent the possible repetition of the proceeding and the causing of ecological damage and harm according to special regulations.

Administrative sanctions, in terms of legal regulation and the upper limit of penalties, are in most cases sufficient to ensure compliance with legal regulations. A certain exception is penalties in case of misdemeanours, for which the amount is not always set at a level that could effectively deter the commission of a particular misdemeanour.⁷³ However, in the case of hybrid administrative offences, the amount of the penalty sometimes exceeds 100,000 EUR.⁷⁴ Their effectiveness, however, is significantly limited by the practice of detecting unlawful proceedings, the process of providing evidence and the actual imposition of liability. The key factor for effectiveness remains the consistent and systematic application of legal instruments by the relevant administrative authorities.

6.3. Are penalties appropriately aligned with criminal sanctions for similar violations?

Comparing sanctions imposed in administrative and criminal proceedings necessarily requires a view that goes beyond the scope of the amount and type of sanction alone. It is essential to distinguish which unlawful proceedings are subject to administrative law instruments and which fall under criminal liability. This interface is defined in the legal order of the Slovak Republic mainly according to the amount of damage caused and the seriousness of the proceedings, although the amounts of individual types of damage have recently increased after the adoption of Act No. 40/2024 Coll., which amended the Penal Code.

While the basic type of sanction for administrative offences is a penalty, in criminal law it is primarily imprisonment, with a financial penalty serving rather

72 | Vrabko et al. 2025, 200–201.

73 | For example, the provision of Section 45 of the Act on Misdemeanours.

74 | Section 75(9) and (10) of Act No. 365/2004 Coll. on Waters.

as an alternative sanction. For this reason, it is not possible to mechanically compare these sanction regimes. In application practice, however, a penalty as a sanction for an administrative offence proves to be equally effective, especially given the fact that the delinquents of these offences are largely entrepreneurs and legal entities, for whom a financial penalty represents a sufficiently deterrent mechanism.

From a systemic perspective, it is therefore desirable that less serious unlawful proceedings be dealt with as a matter of priority within the framework of administrative punishment, while criminal liability should only be applied only as a subsidiary measure, in cases of particularly serious proceedings.

7. Future perspectives and conclusions

7.1. What adjustments in administrative sanctioning could ensure a balance between deterrence and fairness?

The current legislative setting of administrative liability in the field of environmental protection is generally sufficient in terms of balancing the preventive function and justice. The amount of sanctions, especially for hybrid administrative offences, is set relatively high, in some cases in the hundreds of thousands of euros, which ensures the necessary deterrent effect. At the same time, the administrative authority has the opportunity to apply discretionary power and determine the amount of the penalty in accordance with the specific circumstances of the case, which allows for the individualisation of the sanction to be taken into account.

Administrative punishment in this area appears to be the most appropriate method of sanctioning, as the delinquents are usually legal entities, against whom financial sanctions are more effective than other forms of sanctions. Therefore, we do not consider the adjustment of the sanction limits or types of sanctions to be crucial, but rather the consistent elimination of procedural shortcomings in the proceedings, which lead to the imposition of liability. Any changes should focus primarily on strengthening procedural guarantees and ensuring consistent and lawful procedures by administrative authorities in applying sanctions.

7.2. How can administrative penalties be standardised and better integrated into the broader enforcement system?

The legal system of the Slovak Republic clearly distinguishes between the punishment of administrative offences and criminal acts. As mentioned above, in some cases administrative and criminal liability for similar proceedings overlap, with the decisive criterion for their distinction being primarily the objective aspect

of the offence: in particular the amount of damage caused, which in the environmental field also includes environmental damage.

We see room for standardisation of administrative sanctions mainly in the need for systematisation and unification of the legal regulation of various categories of administrative offences. The Czech model may be inspiring in this regard, where general provisions on administrative legal liability are concentrated in one regulation, while the factual basis of the offences remains dispersed in special legal norms. Such an approach would contribute to greater legal certainty, clarity and more effective enforcement of liability, while it would not be necessary to interfere with the regulation of disciplinary or order offences.

An important step towards integrating the administrative sanction system into the broader law enforcement framework would also be to unify the competencies of public administration bodies operating in this area. Simplifying the organisational structure and clearly defining the scope of competence would strengthen the consistency of decision-making practice and increase the effectiveness of the entire administrative punishment system.

Reference list

1. Burda E (2010) § 124 [Definícia škody], in: Burda E, Čentěš J, Kolesár J & Záhora J (eds.), *Trestný zákon I*, 1st ed., C. H. Beck, Praha.
2. Čerkala E & Vajlíková M (2007) Administratívnoprávna zodpovednosť. *Acta Facultatis Ecologiae* 17/2007, pp. 33–36.
3. Drgonec J (2007) *Ústava Slovenskej republiky: komentár*, 2nd ed., Heuréka, Šamorín.
4. Fábry B, Kasinec R & Turčan M (2017) *Teória práva*, Wolters Kluwer, Bratislava.
5. Hamuláková Z & Horvat M (2019) *Základy správneho práva trestného*, Wolters Kluwer, Bratislava.
6. Havelková M (2020) Full jurisdiction and its impact on the decision-making process of administrative bodies, *Acta Facultatis Iuridicae Universitatis Comenianae* 39(1), pp. 117–129.
7. Havelková M & Beleš A (2016) Vyvodzovanie trestnoprávnej a administratívnej zodpovednosti voči právnickým osobám, *Notitiae Iudiciales Academiae Collegii Aedilium in Bratislava* 2(1), pp. 93–107.
8. Horvat M, Srebalová M & Havelková M (2018) Principles of administrative penalty in the statutory law of the Slovak Republic, in: Chmielnicki P (ed.) *Zasady w prawie administracyjnym: teoria, praktyka, orzecznictwo*, Wolters Kluwer, Warsaw, pp. 118–135.
9. Jakab R (2023) Prohibition of cross-border water transport in the conditions of the Slovak Republic and its legal consequences, *JAEL* 18(35), pp. 49–63, DOI: <https://doi.org/10.21029/JAEL.2023.35.49>.
10. Knežová J & Vernarský J (2014) The territorial and sectoral principle of state administration organisation in the current reform of local state administration in Slovakia, *Právnik*, 9, pp. 758–771.
11. Košičiarová S (2022) *Právo životného prostredia: všeobecná časť*, Aleš Čeněk, Plzeň.
12. Maslen M (2023) Waste management and its possible development in the Slovak Republic, *JAEL* 18(34), pp. 73–90, DOI: <https://doi.org/10.21029/JAEL.2023.34.73>.
13. Michalovič M & Jenčo J (2022) Koncepcia boja proti environmentálnej protiprávnej činnosti ako základný kameň revízie starostlivosti o životné prostredie v podmienkach Slovenskej republiky, in: Novotná V & Durec Kahounová M (eds.) *Bratislavské právnické fórum 2022: zborník z medzinárodnej vedeckej konferencie*, Comenius University in Bratislava, Faculty of Law, Bratislava, pp. 12–24.

14. Michalovič M & Jenčo J (2024) Innovative legal mechanisms for environmental accountability: Slovakia's air protection act, in: Garžík T, Zemanová A & Ťažká V (eds.) *Bratislavské právnické fórum 2024: procesné zásady práva na spravodlivý proces*, Comenius University in Bratislava, Faculty of Law, Bratislava, pp. 29–40.
15. Mihálik S (2021) Trestnoprávna charakteristika navrhovaného trestného činu týkajúceho sa postihovania kyberšikany, in: Szakács A, Hlinka T, Mydliarová M, Senková S & Durec Kahounová M (eds.) *Bratislavské právnické fórum 2021: Kybernetická kriminalita v čase krízy*, Comenius University in Bratislava, Faculty of Law, Bratislava, pp. 85–94.
16. Mráz B & Novotná V (2022) Integrovaná stráž ako jediná stráž pre ochranu životného prostredia v podmienkach SR, in: Novotná V & Durec Kahounová M (eds.) *Bratislavské právnické fórum 2022: zborník z medzinárodnej vedeckej konferencie*, Comenius University in Bratislava, Faculty of Law, Bratislava, pp. 70–75.
17. Potasch P (2014) “Decentralizované” priestupky – samospráva alebo delegovaná štátna správa?, in: Košíliková A (ed.) *Přestupky a řízení o nich z pohledu teorie a praxe*, Policejní akademie České republiky v Praze, Prague, pp. 199–213.
18. Seman T, Jakab R & Tekeli J (2020) *Správne právo hmotné: všeobecná časť*, 2nd ed., Pavol Jozef Šafárik University in Košice, Faculty of Law, Košice.
19. Srebalová M, Horvat M, Vrabko M & Vačok J (2020) *Zákon o priestupkoch: komentár*, 2nd ed., C. H. Beck, Bratislava.
20. Tekeli J, Hoffmann M, Tomaš L (2021) *Zákon o obecnom zriadení: komentár*, 2nd ed., Wolters Kluwer, Bratislava.
21. Vrabko M et al. (2017) *Správne právo hmotné: osobitná časť*, 3rd revised and updated ed., Wolters Kluwer, Bratislava.
22. Vrabko M et al. (2018) *Správne právo hmotné: všeobecná časť*, 2nd ed., C. H. Beck, Bratislava.
23. Vrabko M et al. (2019) *Správne právo procesné: všeobecná časť*, 2nd ed., C. H. Beck, Bratislava.
24. Vrabko M et al. (2025) *Správne právo hmotné: všeobecná časť*, 3rd ed., C. H. Beck, Bratislava.
25. Záhora J (2011) Druhý diel [Trestné činy proti životnému prostrediu (§ 300–310)], in: Burda E, Čentěš J, Kolesár J & Záhora J (eds.) *Trestný zákon II*, 1st ed., C. H. Beck, Praha.

PROCEDURAL FRAMEWORKS OF ADMINISTRATIVE ENVIRONMENTAL ENFORCEMENT

The Procedural Framework of Administrative Liability in Slovakia: Proceedings, Remedies and Enforcement in Environmental Matters¹

Abstract

This article examines the procedural architecture of administrative punishment in Slovakia with an emphasis on environmental protection cases. It maps the interplay between the Act on Infractions and the Administrative Procedure Code, describing how environmental offences are detected, clarified and adjudicated, including the distribution of competences among authorities and the procedural status of key actors. The analysis covers first-instance proceedings, summary forms of procedure, ordinary and extraordinary remedies and the enforcement of administrative decisions, including the role of administrative courts. Particular attention is paid to systemic weaknesses of the current framework, fragmentation and the absence of codification for 'mixed' administrative offences (notably those committed by legal entities and entrepreneurs), inconsistent protection standards (e.g. reformatio in peius), deficits in predictability and data availability and recurring difficulties with sanction proportionality. The article concludes with reform-oriented recommendations aimed at greater coherence, transparency and effectiveness of administrative liability enforcement.

Keywords: Administrative punishment, administrative offences, infractions, environmental protection, legal entities, enforcement of decisions, proportionality of sanctions

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1. Introduction

Defining the procedural regulation of administrative punishment is not possible without first establishing the essential foundations of its substantive law. Procedural regulation always concerns the adjudication of guilt and the imposition of a fair sanction upon the perpetrator of an administrative offence, i.e. primarily, the determination of the substantive legal status of the individual accused of committing such an offence. The role of procedural regulation is thus to establish whether the accused individual has in fact committed the administrative offence (and is therefore its perpetrator) or not.

In the territory of the Slovak Republic, administrative liability is adjudicated by public administration authorities, whose decisions are subject to review by independent and impartial courts through administrative lawsuits pursuant to Section 194 et seq. of the Administrative Judicial Procedure Code.²

Administrative liability forms part of the public law sector – specifically, administrative law. The subfield dealing with liability is referred to as administrative penal law.

Administrative penal law is not a separate branch of the Slovak legal system but constitutes an integral part of administrative law as a legal branch.³ By contrast, recent Slovak scholarship argues that environmental law satisfies the standard criteria of an independent branch of law, which may also affect how administrative liability in environmental matters is conceptualised.⁴ Administrative penal law is governed by both substantive norms (rights and obligations of public authorities and regulated entities) and procedural norms (the process by which liability is determined and enforced).

Currently, nearly all legal regulations within administrative law contain sanctioning provisions.

Administrative liability refers to liability for violations of administrative law norms enforced through administrative procedures by public authorities. From a substantive perspective, both the substantive and procedural aspects related to the conditions for the emergence of liability, the process of enforcement and even preventive measures must be addressed.

Administrative liability may be imposed on a natural person or legal entity only if their conduct (or omission) fulfils all elements of the factual basis of an administrative offence. In line with the principle of *nullum crimen sine lege*, liability in administrative law may only be imposed for acts explicitly designated by law as administrative offences.

2 | Act No. 162/2015 Coll. Administrative Judicial Procedure Code as amended.

3 | See Cepek et al. (eds.) 2018, 94–95.

4 | Michalovič & Maslen 2024.

The term “administrative offence” is a crucial concept in administrative penal law. Where no administrative offence exists, administrative liability cannot be imposed. The conduct in question may either be legally permissible or constitute a criminal offence. The legal system does not provide a statutory definition of an administrative offence. Although the Administrative Justice Procedure Code introduces the legislative shorthand ‘administrative offence’ to refer to infractions, disciplinary and other administrative offences,⁵ it does not further define these categories.

The term ‘administrative offence’ encompasses all types of administrative violations found in the legal system. Typically, an administrative offence is defined as unlawful conduct, the elements of which are established by law and for which a public authority imposes a sanction prescribed by administrative law.⁶

Administrative offences are categorised as follows:

- a) infractions,
- b) other administrative offences committed by natural persons,
- c) administrative offences committed by legal entities and self-employed natural persons,
- d) disciplinary administrative offences,
- e) procedural administrative offences.⁷

Legal practice deals mostly with infractions and administrative offences committed by a legal entity or self-employed natural persons. An infraction is a culpable act that violates or endangers societal interests and is explicitly designated as such in the Act on Infractions⁸ or another statute, provided it does not constitute another administrative offence punishable under special legislation or a criminal offence.

An administrative offence committed by a legal entity or self-employed natural persons is unlawful conduct by a legal entity or a natural person authorised to perform certain activities, the elements of which are defined by law, and for which a public authority imposes a statutory sanction, provided it is not a criminal offence.

International sources of administrative penal law include both hard law and soft law instruments.⁹ Hard law sources include treaties, while soft law sources include selected recommendations of the Council of Europe. Case law from the European Court of Human Rights also serves as a supplementary source of law.

5 | Art. 71(1) Administrative Justice Procedure Code.

6 | See, e.g. Machajová 2005, 149.

7 | E.g. Machajová 2005, 151; Vrabko et al. (eds.) 2012, 282; Košičiarová 2015, 217; Vrabko et al. (eds.) 2018, 208.

8 | Act No. 372/1990 Coll. on Infractions, as amended.

9 | Hard law sources are legally binding rules of conduct that are enforceable. They are usually enshrined in international treaties. Soft law sources, on the other hand, are not binding rules of conduct, but rather rules that are merely recommendations.

The primary national source of administrative penal law is the Constitution of the Slovak Republic. At the statutory level, the Act on Infractions and the Administrative Procedure Code¹⁰ are considered foundational sources. The Act on Infractions is the only regulation in the field of administrative punishment that partially codifies infractions as administrative offences; no such codification exists for other types of administrative offences.

The significance of the Act on Infractions lies not only in its definition of the term ‘infraction’ but also in its codification of the general substantive regulation of infractions, applicable to all infractions, including those defined in special legislation. Additionally, the Act on Infractions regulates the procedural aspects of liability enforcement, codifying the procedure by which public authorities impose sanctions for committed infractions.

The Administrative Procedure Code, as a general procedural regulation for public administration, is also a significant source of law for administrative punishment. In relation to infractions, it is used only subsidiarily, meaning that its provisions apply only where the Act on Infractions does not provide a specific regulation (e.g. time limits, reasoning and instruction in decisions).

For administrative offences committed by legal entities and self-employed natural persons, other administrative offences committed by natural persons and procedural administrative offences, the Administrative Procedure Code serves as the primary procedural regulation, except for legal institutions specifically governed by a special legislation regulating the elements of these offences. Procedural aspects mostly include jurisdiction and time limits for liability enforcement.

Further sources of administrative penal law include all statutes that define the elements of administrative offences. For example, there are over 160 statutes governing administrative offences committed by legal entities.¹¹

These special statutes primarily regulate the elements of administrative offences, types of sanctions (most commonly fines), factors to be considered by public authorities when determining the type and of a sanction and its range, time limits for enforcement and jurisdiction for administrative proceedings. Other legal institutions must be applied either under the Act on Infractions (for infractions) or, most commonly, under the Administrative Procedure Code.

A major drawback of the current legal framework is its lack of conceptual coherence and the absence of a unified regulation. In the field of environmental protection, Slovak practice-oriented scholarship similarly highlights fragmented regulation and unclear competences as key barriers to effective control and the derivation of liability.¹² We believe that a unified legal framework in the field of administrative penal law is both possible and desirable, at least in certain areas.

10 | Act No. 71/1976 Coll. Administrative Procedure Code, as amended.

11 | See the comprehensive list in Horvat 2017, 257–263.

12 | Michalovič & Jenčo 2022, 13.

A suitable solution would be a statute that regulates both the general substantive framework for administrative punishment and the procedural framework for liability enforcement.

Such a statute should unify infractions and other administrative offences committed by natural persons into a single category of administrative offence (infraction). It should also regulate administrative offences committed by legal entities and self-employed individuals. Due to the differing subject matter, this statute should not regulate disciplinary and procedural administrative offences. In this respect, administrative penal law, unlike administrative law as a branch of law, is codifiable.

2. Administrative offence proceedings

In this section of the article we will look into two questions in more detail: (1) How are administrative offences detected and investigated, and (2) which authorities are responsible for initiating proceedings?

The current legislation on administrative liability was not passed on a uniform basis. Therefore, even unlawful acts designated as administrative offences constitute a numerous group of acts of a diverse nature, and there is no law that would legislatively define the individual categories of administrative offences. Legal theory defines types of administrative offences on the basis of various dividing criteria. In the following, we will base our approach on the division of administrative offences into infractions, administrative disciplinary offences, administrative order offences, other administrative offences of natural persons and administrative offences of legal entities and natural persons engaged in business.¹³ Since in the field of environmental protection the most frequently occurring administrative offences in the Slovak legal order are infractions and administrative offences of legal entities and natural persons engaged in business, in the following chapters special attention will be paid to these types of administrative offences.

2.1. How are administrative offences detected and investigated?

In the field of environmental protection, the special part of the Act on Infractions establishes the facts of offences in such a way that an offence is committed by a person who violates the generally binding legal regulations on environmental protection in a manner other than that resulting from the provisions of Art. 21 to 44 of the Act on Infractions,¹⁴ i.e. in a manner other than in the cited facts of the

13 | Vrabko et al. (eds.) 2018, 208.

14 | Act No. 372/1990 Coll. on Infractions.

Act on Infractions, and worsens the environment. A fine of up to 99 EUR may be imposed for such an offence.

An offence procedure can be characterised as a special type of administrative procedure in which the competent administrative authority acts and decides on the guilt and the penalty for the offence committed. Misdemeanour proceedings are a special type of administrative proceedings; therefore, it is necessary to analyse their relationship to the general procedural rules of administrative proceedings, i.e. the Administrative Procedure Code.¹⁵ The Act on Infractions is in a relationship of subsidiarity to the Administrative Procedure Code, i.e. the Act on Infractions is applied in priority to the application of the Administrative Procedure Code.¹⁶

In terms of time, the offence procedure can be divided as follows:

- | Pre-procedural phase: clarification of offences (this phase does not take place only in the case of draft offences).
- | First instance proceedings (mandatory).
- | Remedy procedure (optional).
- | Enforcement proceedings (optional).¹⁷

2.1.1. Clarification of offences

If an offence is suspected to have been committed, it is necessary to obtain and procure the necessary documents for the offence proceedings, various explanations, for example, from state authorities or citizens, and to carry out actions to establish the identity of persons and other actions in order to clarify the offence and to obtain documents for the decision of the administrative authority on the offence. We therefore refer to the institution of clarification of offences as the pre-procedural stage, in which the documents necessary for initiating proceedings on the offence and for issuing a decision are obtained.¹⁸ It should be noted that the clarification of an offence is not an offence proceeding; the authorities clarifying the offence do not have the status of an administrative authority and cannot apply the Administrative Procedure Code in the clarification of offences, since the latter applies exclusively to administrative (and therefore also offence) proceedings.¹⁹ The main objective of the clarification of offences is to establish the actual state of affairs.

The clarification of offences is initiated on the basis of a specific complaint, either on the basis of the administrative authorities' or bodies' own findings or on the basis of a notification by a natural person or legal entity. The administrative

15 | Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code).

16 | Art. 51 of the Act on Infractions: "Unless otherwise provided for in this or any other Act, the general regulations on administrative proceedings shall apply to proceedings on misdemeanours."

17 | Hamuláková & Horvat 2019, 114.

18 | Ibid.

19 | Potásch & Hašanová 2013, 214.

authority or body empowered to clarify offences shall, as a rule, conclude the clarification of the offence within one month from the date on which it became aware of the offence. This is a statutory period, which means that its expiry does not result in the termination of the obligation of the competent authority to clarify the offence.

The clarification of offences is a pre-procedural stage, or a stage prior to the initiation of proceedings for an offence, which does not result in a decision.

2.1.2. Offence proceedings at first instance

Like the Administrative Procedure Code, the Act on Infractions distinguishes two ways of initiating proceedings: proceedings initiated by the administrative authority on the basis of the principle of formality or proceedings initiated at the request of a party on the basis of the principle of disposition. In contrast to administrative proceedings under the Administrative Procedure Code, the principle of formality is applied in most cases in the initiation of proceedings in offence proceedings, and offence proceedings at the request of a party are initiated only in exhaustively defined cases in the case of so-called draft offences, namely offences in the field of the right of access to information and the offence of defamation, which is classified as an offence against civil coexistence. In most cases, the offence proceedings are initiated by the administrative authority, i.e. *ex officio*. The distinction between the way in which the offence proceedings are initiated is important in terms of the calculation of procedural time-limits. Proceedings initiated at the initiative of the administrative authority are initiated on the date on which the administrative authority takes the first action against the party to the proceedings, usually by serving the first document on the party to the proceedings, e.g. by serving a summons to an oral hearing. Proceedings initiated on the application of a party shall be initiated on the date on which the party's application reaches the administrative authority competent to decide on the matter.²⁰

In relation to jurisdiction in misdemeanour proceedings, legal theory distinguishes the jurisdiction of the administrative authority in infractions proceedings as subject-matter, local jurisdiction and functional jurisdiction.²¹ In principle, the administrative authorities with jurisdiction in the first instance are the district authorities, unless the law provides otherwise. The subject-matter jurisdiction of administrative bodies other than district authorities is laid down in the Act on Infractions as well as in specific laws. For example, a municipality may be another administrative body with subject matter competence, with the municipality itself as a legal entity having the status of a subject matter competent administrative

20 | Srebalová 2019, 74–75.

21 | Srebalová 2015, 260 et seq.

body.²² The Act on Infractions further establishes the subject matter jurisdiction of the Police Corps authorities for proceedings on infractions committed in violation of generally binding legal regulations on road traffic safety and continuity, infractions against public order pursuant to Art. 47(1)(k) to (m) of the Act on Infractions, infractions of extremism pursuant to Art. 47a of the Act on Infractions, and infractions if a special law so provides. The Military Police authorities shall deal with infractions if a special law so provides.

Local jurisdiction determines which of the substantively competent administrative authorities is entitled to hear the infractions with regard to the perimeter of its territorial jurisdiction.²³ The administrative authority within whose territorial jurisdiction the infraction was committed shall be locally competent to deal with the infractions.

Functional jurisdiction in infractions proceedings is not directly regulated by the Infractions Act, and therefore the provisions of the Administrative Procedure Code shall apply in the alternative. Where an authority which is internally subdivided into departments empowered by law to act independently is competent to act, the administrative authority competent to act in the first instance shall be the department provided for by law. For example, in the Bratislava District Office, Department of Trade Licensing: the subject matter jurisdiction is determined by the district office; the local jurisdiction is determined by the territory of the City of Bratislava, and the functional jurisdiction is determined by the Department of Trade Licensing.

2.1.3. Subjects of infraction proceedings

Any actual or potential holder of procedural rights or obligations in an infringement procedure is a subject of an infraction procedure. We distinguish two basic subjects of the infraction proceedings, namely the administrative authority and the participant(s) in the administrative proceedings. In infraction proceedings this is the accused. We refer to these subjects as the basic subjects, since without them the infraction proceedings cannot be conducted. In addition to the basic subjects, there may be other subjects of the infraction whose participation is generally not necessary, such as the victim, the owner of the thing to be confiscated, the complainant (more on this below), the witness, the expert, the interpreter, the translator, the persons in possession of the things or documents which are means of evidence or who are obliged to endure inspection, the public prosecutor.²⁴

An administrative authority, according to its legal definition in Art. 1(2) of the Administrative Procedure Code, is a state authority, a body of territorial

22 | Art. 27 of Act No. 369/1990 Coll. on Municipal Establishment.

23 | Ševčík 2007, 24.

24 | Hamuláková & Horvat 2019, 131.

self-government, a body of interest self-government, a natural person or a legal entity entrusted by law with the decision-making on the rights, legally protected interests or obligations of natural persons and legal entities in the field of public administration.

The parties to the proceedings are defined exhaustively in Art. 72 of the Act on Infractions, so Art. 14 of the Administrative Procedure Code, which regulates the definition of parties to administrative proceedings, does not apply to infraction proceedings. The different parties to the proceedings have different procedural status in the proceedings on infractions.

The parties to an infraction proceeding are:

a) the person accused of an infraction – a natural person suspected of having committed an act having the characteristics of an infraction. A natural person becomes accused of an infraction at the moment when the administrative authority has carried out the first procedural act against him/her. The accused shall be presumed innocent until his/her guilt has been pronounced by a final decision. The principle of presumption of innocence applies in this case.

If the accused is a juvenile, he/she enjoys special care of the society devoted to youth (in the Act on Infractions it is expressed in a special provision on juveniles), which is to ensure the educational effect of their punishment for the infraction and their special protection in the proceedings on infractions. The specifics of the liability for an infraction against juvenile defendants further concern the imposition of sanctions, the inadmissibility of hearing an infraction of a juvenile in a dispositional proceeding, the obligation of the administrative authority to notify the juvenile's legal representative of the oral hearing ordered, the authority for social protection of children and social guardianship and, if the juvenile is entrusted to the personal care of a natural person on the basis of a decision pursuant to special regulations or is placed in an institution on the basis of a court decision pursuant to special regulations, these persons as well.

b) the injured party, if the proceedings concern compensation for property damage caused by an infraction – the injured party in an infraction proceeding is the person whose property has been damaged, i.e. damage expressible in monetary terms. In the case of non-pecuniary damage (defamation), the claimant is the party to the proceedings, not the injured party. The injured party is only a party to the proceedings for infractions to a limited extent, which is defined by the hearing of compensation for pecuniary damage.

c) the owner of an item that may be seized or has been seized, in the part of the proceedings relating to the seizure of the item – similarly to the injured party, he/she is a party to the infraction proceedings only to a limited extent, as he/she is a party only to the part of the infraction proceedings relating to the seizure of an item. Confiscation is a protective measure which may be imposed provided that the sanction of forfeiture has not been imposed. This protective measure may also be imposed if the item belongs to an offender who cannot be prosecuted for the

infraction (e.g. lack of age) or if the item does not belong to the offender if the safety of persons or property or another general interest (e.g. it is a weapon) so requires. The owner of the item can then appeal only against the part of the infraction decision that pronounces the confiscation of the item.²⁵

d) the claimant, on whose motion the proceedings on the infraction were initiated pursuant to Art. 68(1) of the Act on Infractions – the claimant is a party to the proceedings on the infraction only in the case of draft infractions, which may be heard by the administrative authority only on motion.

Only a natural person may be the accused of an infraction; the injured party, the owner of an object and the claimant may also be a legal entity. Only those persons who have a certain relationship to the subject matter of the proceedings have the procedural status of parties to the proceedings. Their procedural status is determined by the totality of procedural rights and procedural obligations arising not only from the Act on Infractions but also from the Administrative Procedure Code.²⁶

2.1.4. Termination of infraction proceedings

First instance infraction proceedings may be terminated in the following ways: a) by discontinuance of the infraction proceedings, b) by a decision on the case, i.e. a decision on the infraction, if the accused has been found guilty, c) by amicable settlement of the case (only for one type of infraction, namely the infraction of defamation).

The stay of proceedings can be characterised as an institute of procedural law which is applied when an obstacle of a permanent nature occurs in administrative proceedings, i.e. an obstacle which permanently prevents the continuation of the proceedings. A stay of proceedings may occur at any stage of the infraction proceedings, including the appeal proceedings.²⁷ The Act on Infractions regulates the grounds for discontinuance of infraction proceedings exhaustively and thus cannot be extended. These grounds include, for example, where it is established that: the act in question has not been or is not an infraction, or the act has not been committed by the person accused of the infraction or has not been proven to have been committed, or the act has already been finally decided by an administrative or criminal authority.²⁸ A decision to discontinue proceedings shall terminate the administrative proceedings without a decision on the merits. The finality of the decision to discontinue the proceedings creates an obstacle to the case already finally decided (*res iudicata*), and thus the act which was the subject of the

25 | Art. 16(b) of the Act on Infractions.

26 | Potásch & Hašanová 2013, 235.

27 | Hamuláková & Horvat 2019, 138.

28 | The grounds for discontinuation of infraction proceedings are exhaustively listed in Art. 76 of the Act on Infractions.

proceedings and which was discontinued by the administrative authority cannot be retried in the administrative proceedings.

If, after evaluating the grounds for the decision, the administrative authority concludes that the act was committed by the accused of the infraction and at the same time none of the legal grounds for discontinuation of the infraction proceedings has occurred, it shall issue a decision on the infraction, by which it shall find the accused guilty of the infraction. The content of the infraction decision shall comprise the operative part, the statement of reasons and the notice of appeal.

2.1.5. Summary forms of infraction proceedings

Summary forms of infraction proceedings are simplified and accelerated ways of concluding infraction proceedings without ordering an oral hearing or procedurally demanding evidence. Summary forms of infraction proceedings are applied to minor infractions where the conditions laid down by law are met.²⁹

The block procedure is a shortened, accelerated and simplified form of infraction proceedings which may be implemented in cases where the facts immediately after the infraction are sufficiently established and no further evidence is necessary. The block procedure is used for minor infractions. It is intended to increase the educational effect in relation to natural persons by means of repression, in the form of a block fine imposed on the offender immediately after the infraction has been committed.³⁰ The statutory conditions for the processing of an infraction in misdemeanour proceedings, which must be cumulatively fulfilled, are:

- a) the infraction must be reliably established – there is no doubt about the act which is to be an infraction as well as about its perpetrator,
- b) the accused of the infraction is willing to pay the fine – the accused is willing to pay the block fine, thereby in effect admitting his or her guilt,
- c) reprimand is not sufficient to settle the matter – for minor infractions, sometimes the matter can be settled by a reprimand; sometimes it is stated that it is actually an interview. A reprimand is not in itself a sanction (such as a reprimand under Art. 11 of the Act on Infractions). A reprimand cannot be used to terminate summary forms of infraction proceedings, for which the penalty under the Infractions Act is prohibition of activity and forfeiture of property,³¹
- d) it is not a petitionable infraction – infractions which are dealt with only on a petition pursuant to Art. 68(1) of the Act on Infractions cannot be dealt with in block proceedings.

29 | Hamuláková & Horvat 2019, 147.

30 | Vrabko 2015, 418.

31 | Vrabko 2015, 419.

If the aforementioned legal conditions are met, the administrative authority may deal with the matter in block proceedings and impose a block fine on the offender. The decision issued in the block procedure cannot be appealed, nor can there be a retrial or review of the decision outside the appeal procedure, since by paying the block fine the person accused of the infraction admits that he/she committed the infraction, that he/she agreed to the fine imposed, and that he/she did not exhaust the remedies in the infraction procedure.³²

The order procedure is another abbreviated, accelerated and simplified form of infraction proceedings. The purpose of this procedure is to shorten the hearing of infractions by allowing a decision to be taken without an oral hearing and without the taking of evidence.³³ The statutory conditions for the hearing of an infraction in a summary procedure, which must be cumulatively fulfilled, are:

- a) there is no doubt that the person charged with the infraction has committed the infraction – i.e. there is no doubt about the act which is to be an infraction as well as about the perpetrator of the infraction,
- b) the matter has not been dealt with in a block proceeding – the decision on the infraction in a block proceeding creates an obstacle to *res iudicata*,
- c) the person charged with the infraction is fully competent to perform legal acts (i.e. their legal capacity is not impaired),
- d) the infraction is not a juvenile offence – a juvenile offence cannot be dealt with in a dispositional procedure,³⁴
- e) it is not a petition infraction – infractions which are dealt with only on a petition pursuant to Art. 68(1) of the Act on Infractions cannot be dealt with in order proceedings.

Unlike block proceedings, one of the statutory conditions of the order procedure is not the consent of the person accused of the infraction. The result of the order procedure is the issuing of a so-called order. An order is a specific type of individual administrative act which has all the elements of a decision on an infraction.³⁵ As in block proceedings, the only type of sanction that can be imposed in order proceedings is a fine. It is not possible to decide on costs or compensation for the damage caused by the infraction. According to the Act on Infractions, a fine of up to EUR 250 may be imposed in order proceedings.³⁶ Special regulations may also provide for a different upper limit of the fine in order proceedings.

32 | Judgment of the Supreme Court of the Slovak Republic of 27 January 2010, Case No. 2 Sžo 58/2009.

33 | Potásch & Hašanová 2013, 261.

34 | Art. 19(2) of the Act on Infractions.

35 | Vrabko 2015, 432.

36 | Art. 13(2) of the Act on Infractions.

2.2. How are administrative offences detected and investigated?

As administrative offences committed by legal entities and self-employed natural persons are frequent in the field of environmental protection, in addition to infractions, the following text provides the basics of the legal regulation of this type of administrative offence.

We classify administrative offences committed by legal entities and self-employed natural persons as other administrative offences, i.e. administrative offences other than infractions. Administrative offences committed by legal entities and self-employed natural persons are referred to in legal theory as mixed administrative offences, since laws usually regulate the liability of legal entities together with that of self-employed natural persons. Administrative offences committed by legal entities and self-employed natural persons (mixed administrative offences) can be characterised as the unlawful conduct of a legal entity or a natural person authorised to carry on certain activities, the features of which are set out in the law, for which the administrative authority imposes a statutory sanction if it is not a criminal offence.³⁷ The above definition implies a similarity with other administrative offences, but mixed administrative offences are distinguished by a specifically defined subject and a subjective aspect.

The legislation on mixed administrative offences is fragmented and scattered in a large number of specific pieces of legislation. Unlike infractions, there is not even a partial codification of their legislation. The laws governing the sanctioning of mixed offences are mostly limited to regulating the facts of administrative offences, the penalties and their scope, the time-limits for the imposition of penalties and establishing the power of the competent administrative authorities to impose penalties. From a procedural point of view, the legal regulation of this type of offences mostly refers to the application of the Administrative Procedure Code. The legal regulation of mixed administrative offences is subject to justified criticism due to its lack of conceptual clarity, opacity, as well as inconsistency and absence of regulation of the bases of administrative law sanctions (e.g. concurrence of administrative offences, anchoring of absolute objective liability, principles for imposing sanctions, etc.). In practice, the problems in deriving administrative liability, which often also lie in the different nature of legal entities, are often solved by (sometimes controversial) analogies from infractions or criminal law.³⁸

The tort capacity of a legal entity and a self-employed natural person consists in the fact that a legal obligation is breached by a natural person (statutory body, employee, etc.) acting on behalf of a legal entity or a self-employed natural person,

37 | Sládeček 2013, 224.

38 | Vrabko et al. (eds.) 2018, 237.

and this breach is attributed to the legal entity or self-employed natural person, as the case may be. Natural persons acting on behalf of a legal entity or a self-employed natural person may be subject to liability for an infraction under Art. 6 of the Act on Infractions or for another administrative infraction of a natural person. The current legislation on mixed administrative offences makes it almost impossible to get rid of strict liability, as there is no general regulation of liberalisation grounds (we are talking about the so-called absolute strict liability). In cases where the legislation does provide for liberalising grounds, the legal entity or self-employed natural persons may be exempted from liability by proving that these grounds have been met – these are unavoidable events, such as force *majeure* in the form of a natural disaster.³⁹

Proceedings on administrative offences committed by legal entities and self-employed natural persons (mixed offences) are a special type of administrative proceedings in which the competent administrative authority decides on the guilt and sanction of a legal entity or a self-employed natural person for the committed act. As in the substantive law, the procedural procedure for imposing administrative liability for mixed offences is not regulated by a single legal regulation; therefore, the Administrative Procedure Code will apply to this procedure in the alternative. The commencement of proceedings is also linked to the *lis pendens* barrier (*lis pendens*), which fulfils the *ne bis in idem* principle. If proceedings are pending before another authority in respect of an identical act, this fact precludes the institution of other proceedings in respect of that act (the case must be identical and against the same subjects). This means that further administrative proceedings against the same party(ies) cannot be carried out in the same case by a different administrative authority, and the subsequent administrative proceedings must be discontinued. In relation to administrative offences committed by legal entities, the *lis pendens* barrier also arises in relation to criminal liability or criminal offences of legal entities. Where a criminal prosecution has already been initiated against a legal entity, that fact precludes administrative proceedings being brought against the same legal entity for the same act.⁴⁰ In relation to concurrent proceedings for an administrative offence, the Act on Criminal Liability of Legal Entities regulates the *lis pendens* bar in favour of criminal proceedings. The *lis pendens* bar arises at the moment of initiation of the criminal proceedings, while the identity of the act (subject matter of the criminal and administrative proceedings) and the identity of the legal entity must be fulfilled at the same time.⁴¹

39 | For more on this, see Vrabko et al. (eds.) 2018, 235 et seq.

40 | Art. 21(1) of Act No. 91/2016 Coll. on Criminal Liability of Legal Entities and on Amendments and Additions to Certain Acts.

41 | Hamuláková & Horvat 2019, 207.

3. Infractions and administrative offences committed by legal entities and self-employed natural persons at second instance

In this part of the article, we will take a closer look at the infractions and administrative offences committed by legal entities and self-employed natural persons at second instance, focusing on what options are available for challenging administrative fines and decisions and what are the steps for administrative appeals and reconsideration.

In principle, a decision on an offence can be reviewed by ordinary and extraordinary legal remedies. Ordinary remedies are appeal, dissent and in order proceedings opposition and can be lodged against decisions which are not final. The extraordinary remedies which may be brought against final decisions are a retrial and a review of the decision outside the appeal procedure. Their application is fully covered by the provisions of Arts. 62 to 64 of the Administrative Procedure Code (retrial) and Arts. 65 to 68 of the Administrative Procedure Code (review of a decision outside the appeal procedure).⁴²

In relation to administrative offences committed by legal entities and self-employed natural persons, we have stated in the previous part of the article that from the procedural law point of view they will be subject to the regulation under the Administrative Procedure Code, and this also applies to the institute of ordinary and extraordinary remedies.

3.1. Ordinary remedies

The Act on Infractions specifies only an appeal, but it does not contain a complete regulation of the institute of appeal; therefore, the subsidiary regulation in the Administrative Procedure Code shall apply.

The right of a party to an infraction proceeding to file an appeal is limited by its procedural status and relationship to the infraction case. Only the accused may appeal in full against a decision on an infraction, not only against a decision on guilt, but also against a decision on the imposing of a sanction and the imposing of compensation for costs and damages. If the accused is a juvenile, the appeal may also be lodged by his/her legal representative and by the authority for the social protection of children and social welfare. The injured party is a party to the proceedings on infractions only to a limited extent, which is defined by the hearing of compensation for property damage. Therefore, the injured party may appeal only in respect of compensation for damages. The owner of property that may be seized

42 | The specific means of reviewing the decision on the offence are the prosecutor's protest (Art. 23 et seq. of Act No. 153/2001 Coll. on the Prosecutor's Office) and the administrative action in matters of administrative punishment (Art. 194 et seq. of Act No. 162/2015 Coll. – Administrative Judicial Procedure Code).

or has been seized is, like the injured party, a party to the infraction proceedings only to a limited extent; he may appeal only to a limited extent, and only against the part of the decision pronouncing the seizure of the property. The complainant may appeal only against the part of the decision which relates to the declaration of the guilt of the accused of the infraction or the obligation of the complainant to pay the costs of the proceedings; he may also appeal against the decision to discontinue the proceedings.⁴³

The appeal shall be lodged with the administrative authority which issued the contested decision. The time-limit for lodging an appeal shall be 15 days from the date of notification of the decision, unless a different time-limit is laid down by a special law. The Act on Infractions expressly provides that a timely lodged appeal against a decision on an infraction shall have suspensive effect, which cannot be excluded.⁴⁴ The appeal has a devolutive effect in relation to the administrative authority, i.e. the power to decide on the appeal passes to the higher administrative authority or the administrative authority of the second instance.⁴⁵

The Act on Infractions expressly provides for the prohibition of *reformatio in peius* (prohibition of change for the worse) for the appeal proceedings, and thus the position of the accused of the infraction cannot be worsened after the decision on appeal.⁴⁶ This is a specificity of the infraction law, since according to the general legislation on administrative proceedings in the Administrative Procedure Code, the administrative authority shall examine the contested decision in its entirety, without being bound by the claims and evidence submitted by the parties to the proceedings.⁴⁷ It follows from the above that the decision may be changed to the advantage or disadvantage of the party who lodged the appeal.

Art. 61 of the Administrative Procedure Code applies to the appeal procedure. An appeal may be lodged against a decision taken at first instance by a central government authority. The appeal shall be decided by the head of the central government body on the basis of a proposal from a special commission appointed by it. No appeal may be lodged against that decision.

With regard to the summary forms of infraction proceedings, it has already been pointed out that a decision given in a block procedure cannot be appealed, nor can there be a retrial or a review of the decision outside the appeal procedure.

43 | Art. 81 of the Act on Infractions.

44 | In contrast to the general regulation in Art. 55(2) of the Administrative Procedure Code, according to which, if it is required by an overriding general interest or if there is a danger that a party to the proceedings or someone else will suffer irreparable harm by postponing the enforcement of a decision, the administrative authority may exclude the suspensive effect; the urgency must be duly justified.

45 | Vrabko et al. (eds.) 2019, 131.

46 | Art. 82 of the Act on Infractions: "In the appeal proceedings, the administrative authority may not change the sanction imposed to the detriment of the person accused of the infraction if it does not establish new material factual circumstances."

47 | Art. 59 of the Administrative Procedure Code.

Unlike in block proceedings, the person charged with an offence may lodge an appeal against an order, which is referred to as an opposition. The opposition shall be lodged with the administrative authority which issued the order. The timely lodging of a statement of opposition shall have the effect of setting aside the order and initiating summary proceedings, as a general rule by ordering an oral hearing. The infraction proceedings shall then end with the issue of a decision on the infraction, against which the party to the infraction proceedings may appeal.

3.2 Extraordinary remedies

A review of final decisions rendered in administrative proceedings is carried out before administrative authorities or courts (national or European) by means of extraordinary administrative remedies. Among the extraordinary administrative remedies that belong to the general institute of review of administrative decisions issued by administrative authorities in administrative proceedings and are also among the remedies in administrative proceedings, we can include, to the widest extent, retrial, review of a decision outside the appeal procedure, judicial review of final decisions in the framework of administrative justice in the Slovak Republic or in the framework of the European administrative justice before the European Courts.⁴⁸ Until the last amendment to the Administrative Procedure Code, the procedure on a prosecutor's protest was also included, which was subsequently deleted from the Administrative Procedure Code by the last amendment as an institute of extraordinary remedy. A review of a decision outside the appeal procedure has the character of a supervisory remedy. The prosecutor's protest proceedings and the judicial review of final decisions within the administrative justice system are usually referred to in theory as means of supervision of legality in public administration; thus, they have the character of supervisory means.⁴⁹

Extraordinary remedies under the Administrative Procedure Code include the reopening of proceedings and the review of a decision outside the appeal procedure.

The reopening of proceedings at the request of a party to the proceedings or on the order of an administrative authority, if there is a general interest in reviewing the decision, occurs if the following conditions are met:⁵⁰

- a) new facts or evidence have come to light which may have had a substantial influence on the decision and which could not have been adduced in the proceedings through no fault of the party to the proceedings;
- b) the decision depended on the examination of a preliminary question on which the competent authority had decided otherwise,

48 | See more on the right to access justice in environmental matters: Ujhelyi-Gyurán, Lele & Pártay-Czap 2024, 203–224.

49 | Vrabko et al. (eds.) 2019, 140.

50 | Art. 62 of the Administrative Procedure Code.

- c) the administrative authority's wrongful conduct deprived the party concerned of the opportunity to participate in the proceedings where that could have had a substantial effect on the decision and where the remedy could not have been made in the appeal proceedings;
- d) the decision was made by an excluded authority where it may have had a material effect on the decision and where the remedy could not have been made on appeal;
- e) the decision is based on evidence which has proved to be false, or the decision was obtained by criminal means.

It should be noted that the reopening of proceedings consists of two stages, namely (a) the proceedings for authorisation or for ordering a reopening of proceedings, (b) a new trial of the case. The review of a decision outside the appeal procedure⁵¹ is a supervisory (or instance) remedy which allows the higher administrative authorities to intervene in a case already finally decided by a lower administrative authority and thus to have an administrative authority's already final decision reversed or annulled on the ground of illegality.⁵² A review of a decision outside the appeal procedure may be carried out on its own or on another initiative by the administrative authority of the next higher level above the administrative authority which issued the decision, or, if it is a decision of a central government body, by its head on the basis of a proposal from a special commission appointed by him. The administrative authority competent to review the decision shall annul or amend it if it was issued in contravention of a law, a generally binding legal regulation or a generally binding regulation.

For the Slovak Republic, the fact that it is codified in the form of the relevant provisions of the Administrative Procedure Code⁵³ (in particular Sections 194 to 198) is of the greatest importance from the point of view of the judicial review of a decision on an administrative offence. For its purposes, the Administrative Procedure Code defines both the term 'administrative punishment' and 'administrative offence'. For the purposes of this Act, administrative punishment means the decision of public authorities on an infraction, administrative offence or sanction for other similar unlawful conduct. Administrative offence means infractions or disciplinary and other administrative offences. Pursuant to Art. 6 of the Administrative Procedure Code, administrative courts in the administrative justice system review, on the basis of actions, the legality of decisions of public administration bodies, measures of public administration bodies and other interventions of public administration bodies, provide protection against inaction of public administration bodies and rule on other matters provided for by this Act.

51 | Art. 65 to 68 of the Administrative Procedure Code.

52 | Vrabko et al. (eds.) 2019, 147.

53 | Act No. 162/2015 Coll.

In the field of administrative penalties, it is important to note that the administrative courts rule on administrative actions in matters of administrative penalties. An administrative court is entitled to review only final decisions of public authorities in matters of administrative sanctions, provided that the party to the proceedings has exhausted all the ordinary remedies available under the special provision before they become final.⁵⁴

A cassation complaint may be lodged as an extraordinary remedy against a judgment of an administrative court. The Supreme Administrative Court of the Slovak Republic is the competent administrative court to decide on a cassation complaint.

4. Enforcement of administrative decisions

Enforcement of an administrative decision is understood in legal theory as a procedural mechanism through which compliance with obligations imposed on parties or other entities in administrative proceedings is compelled, in cases where such obligations were not voluntarily fulfilled within the prescribed time limit.⁵⁵ Individual decision-making activity within public administration can fulfil its societal function only if the rights granted and obligations imposed through acts of legal application are effectively realised in practice. Since public administration authorities, through their individual acts, not only determine the legal status of natural persons and legal entities but also carry out tasks assigned to them within their jurisdiction, the enforcement of such decisions is of both individual and societal interest – particularly with regard to imposed obligations.⁵⁶

The right to a fair process in the execution of public administration, as guaranteed by Art. 46(1) and (4) of the Constitution of the Slovak Republic, must be understood not only as the right of individuals to a legally established procedure in the issuance of administrative decisions but also in their enforcement. The recipient of an administrative decision is obligated to act in accordance with it. If an obligation is imposed, it must be fulfilled. In cases where voluntary compliance does not occur, the legal framework provides for a procedural mechanism by which a public authority may compel compliance through the exercise of public power. This is referred to as administrative enforcement, which Slovak legislation designates as the ‘enforcement of a decision’. The procedural actions involved directly and immediately affect the legal status of the obligated party and are carried out against their will. Therefore, public authorities must act in accordance

54 | At the same time, it is legally irrelevant which of the parties to the original administrative proceedings used the proper remedy. Of course, assuming that there were several parties to the administrative proceedings.

55 | Jakab & Molitoris 2025, 179.

56 | Tóthová 2019, 167.

with applicable legal regulations, which are designed to guarantee a certain level of protection to the obligated party.⁵⁷

Enforcement of a decision represents the final and relatively autonomous stage of administrative proceedings. It is not a mandatory stage that follows automatically but occurs only when the obligation imposed by the decision has not been voluntarily fulfilled.⁵⁸

Currently, the following enforcement procedures are applied within public administration:

- a) enforcement of decisions under the Administrative Procedure Code,
- b) tax (customs) enforcement under the Tax Procedure Code,
- c) enforcement of decisions under the Enforcement Procedure Code,
- d) enforcement of decisions under special legislation with supplementary application of the Administrative Procedure Code (e.g. in infraction cases).

Given the focus of this paper, we will address only the enforcement of decisions under the Administrative Procedure Code, as this procedure is generally applied in relation to administrative offences. We will also highlight specific legal regulations (such as the Act on Infractions) that govern certain particularities – namely, special methods of enforcement that differ from those provided in the Administrative Procedure Code.

Legal theory emphasises several principles and rights in relation to the enforcement of decisions. These include: a) the right to a reasonable period for voluntary compliance, b) the right to a legally regulated enforcement procedure and c) the right to proportionate enforcement measures. The principles that must be observed in connection with compulsory enforcement include several principles. These are: the principle of legality – enforcement must be governed by law and carried out only by authorities with legally established competence; the principle of transparency – affected private individuals, especially the obligated party, must be informed in advance by the public authority about the enforcement and its reasons; and the principle of proportionality – applied to the measures that the public authority is authorised to use during enforcement.⁵⁹

An administrative decision issued in matters of administrative punishment is considered an enforcement title under the Administrative Procedure Code. The enforcement title represents the legal-theoretical basis for carrying out administrative enforcement and constitutes a condition for enforcement. The administrative authority is required to examine the existence of this condition throughout the entire enforcement process.

57 | Košičiarová 2013, 320.

58 | Sobihard 2007, 301.

59 | Košičiarová 2013, 320.

The enforcement of a decision is initiated based on a motion by the enforcing creditor, i.e. the entitled party to the proceedings or the enforcing administrative authority.⁶⁰

Enforcement will always be sought by the party to the proceedings who has a legal interest in the actual execution of the decision – i.e. the person who derives a right from the decision against the obligated party and seeks to exercise it.⁶¹

The enforcement of a decision is carried out by the first-instance administrative authority. The enforcement process consists of two phases: ordering the enforcement and executing the enforcement.

Upon receiving the motion, the enforcing administrative authority examines whether the conditions for enforcement have been met.⁶² The executing authority does not examine the material correctness or legality of the enforcement title; it only verifies whether the decision is enforceable and whether it imposes an obligation with a specified deadline for voluntary compliance.⁶³

In administrative enforcement, it is necessary to ensure legal protection for both the party to the proceedings and third parties affected by the enforcement. The law therefore allows the submission of a special remedy against individual actions and measures related to enforcement, referred to as objections. This remedy does not have the nature of an appeal within administrative proceedings. Objections may be raised against any act within the enforcement process.⁶⁴

The second phase of the enforcement process involves the actual coercive execution of the obligation arising from the enforcement title. In cases involving monetary obligations, enforcement is typically carried out by an entity other than the administrative authority that ordered it. For non-monetary obligations, enforcement is carried out according to the nature of the obligation imposed.⁶⁵ Enforcement may only be carried out using means prescribed by law. The chosen method must be the one that least burdens the party while still achieving the intended outcome. Enforcement is carried out on the basis of an enforcement order.

The Administrative Procedure Code categorises the means of enforcement into two groups: means for enforcing monetary obligations and means for enforcing non-monetary obligations.

With respect to monetary enforcement, the Code regulates the following methods: wage garnishment, assignment of claims and assignment of claims from bank accounts.

The law provides that the Enforcement Procedure Code may be applied supplementarily in the enforcement of monetary obligations.

60 | Tóthová 2019, 172.

61 | Košičiarová 2017, 263.

62 | Sobihard 2007, 310.

63 | Tóthová 2019, 175.

64 | Píry 2022, 243.

65 | Sobihard 2007, 311.

These enforcement methods apply to both infractions and other administrative offences, particularly when the administrative authority has issued a decision imposing a fine. In the case of infractions, however, the Act on Infractions provides for special enforcement methods, including: community service and garnishment from social insurance benefits, subsistence assistance or parental allowance.

A decision imposing a non-monetary obligation may be enforced through substitute performance, imposition of monetary fines or direct enforcement of the obligation.

5. Challenges in administrative procedural law

Administrative proceedings in the Slovak Republic are primarily governed by the Administrative Procedure Code, which serves as the general procedural statute for public administration.⁶⁶ While it regulates decision-making processes,⁶⁷ its fundamental principles also apply to other administrative acts that do not constitute individual decision-making activities.⁶⁸

In addition to the Administrative Procedure Code, public administration authorities utilise other legal regulations in their procedural activities, most commonly applying the Administrative Procedure Code subsidiarily.⁶⁹ One such regulation is the Act on Infractions.

Although these statutes have been in force for a considerable time, legal practice has largely aligned with them, ensuring both continuity and relative stability in administrative decision-making. However, by contemporary standards this legal framework is also relatively general. We contend that this generality is not detrimental; rather, it contrasts with the modern legislative trend toward excessive specificity and casuistry, which can render statutes less adaptable in cases of legal gaps. This issue is less prevalent in the application of the Administrative Procedure Code and the Act on Infractions.

Legal norms are frequently supplemented by the decision-making practice of administrative authorities, which is subject to judicial review by independent and impartial administrative courts, headed by the Supreme Administrative Court of the Slovak Republic.

Nonetheless, this reliance on interpretative practice invites critical reflection. In the Slovak context, public administration personnel often lack formal legal education. Imposing obligations on them to understand a wide array of legal regulations and relevant case law – both domestic and supranational – can pose

66 | Sobihard 2007, 14.

67 | Vrabko et al. 2007, 23–24.

68 | See Art. 3(7) Administrative Procedure Code; see more Potásch et al. 2019, 52–53.

69 | For the relationship between specific legal regulations and the Administrative Procedure Code, see, for example Škrobák 2019, 42–47.

significant challenges. Consequently, there is a growing consensus within the professional community regarding the need for a comprehensive reform, including procedural rules governing administrative liability.⁷⁰

Generally, there has been no pressing demand within legal practice to revise the legal framework governing the enforcement of decisions, which is therefore considered sufficient. However, as previously noted, a notable deficiency remains: the absence of legislation regulating the enforcement of decisions through community service. We strongly advocate for the prompt adoption of such legislation.

In a certain sense, the procedural framework is sufficiently flexible and does not impose unnecessary administrative burdens on decision-making processes. On the other hand, it does not always provide clear answers to all legal questions, which may result in inconsistent decision-making, procedural delays (due to the complexity of cases), and, ultimately, the annulment of administrative decisions upon judicial review.

Currently, records of committed infractions are maintained. The administrative authority competent to adjudicate an infraction, including in summary proceedings, is responsible for maintaining such records. A central registry of infractions is maintained by the relevant central government authority with jurisdiction over the offence. This registry serves to provide data to authorised entities and is used for criminal proceedings, civil litigation and administrative proceedings, and for verifying the integrity and reliability of individuals. Data from the registry may only be disclosed pursuant to the Act on Infractions and is not subject to the Freedom of Information Act.⁷¹ The registry is not publicly accessible.⁷² At present, no registry exists for administrative offences other than infractions.

This lack of centralised data makes it relatively difficult in practice to determine whether administrative authorities impose sanctions consistently in similar cases. This inconsistency poses practical challenges, particularly in light of the principle of legitimate expectation, which requires that future conduct of public authorities in specific matters be predictable based on applicable legal norms and prior decisions. If this principle were consistently upheld, deviations from established practice would require rational justification.⁷³

We believe that a unified registry of administrative offences should be established, enabling administrative authorities to compare their decision-making practices and promote a consistent approach to similar factual scenarios. This would enhance legal certainty⁷⁴ and reinforce the principle of legitimate expectations. Moreover, it would assist authorities encountering novel factual situations,

70 | See Horvat 2025, 106.

71 | Act No. 211/2000 Coll. as amended.

72 | Srebalová 2020, 453–456.

73 | Košičiarová 2013, 33.

74 | See more on the principle: Orosz & Svák et al. 2021, 24–25, 43.

thereby facilitating timely adjudication in accordance with the principle of procedural expediency.⁷⁵

In the Slovak Republic, enforcement proceedings in criminal matters⁷⁶ are conducted by courts or law enforcement authorities pursuant to Art. 406 et seq. of the Criminal Procedure Code.⁷⁷ Law enforcement authorities include investigators and prosecutors. Therefore, aligning enforcement mechanisms between criminal proceedings and administrative liability proceedings is generally infeasible due to the separation of powers and the differing nature of imposed sanctions. In criminal proceedings, custodial sentences are standard, whereas in infractions proceedings, fines are the typical sanction.

Nonetheless, certain areas of cooperation may be identified, particularly in the enforcement of fines and forfeiture of property, which are sanctions imposed in both criminal and administrative proceedings. However, joint enforcement by a single authority is currently not possible. As noted, enforcement in criminal matters is carried out by courts, prosecutors or investigators, while in administrative matters, it is the responsibility of the first-instance administrative authority. This does not preclude inter-agency cooperation and information exchange on a partnership basis.

6. Future perspectives and conclusions

We consider the current legal framework to be generally sufficient. The enforcement of administrative decisions must respect the specificities of each Member State. From this perspective, further standardisation of enforcement procedures could hinder effective implementation, as it may fail to accommodate enforcement mechanisms that prove efficient within individual jurisdictions.

Nevertheless, we emphasise that fundamental principles governing the enforcement of administrative decisions should apply uniformly across the European legal space. We refer to Recommendation CM/Rec (2007)7 on good administration, which builds upon Recommendation CM/Rec (2003)16 of the Committee of Ministers concerning the enforcement of administrative and judicial decisions in the field of administrative law. Art. 20 of the latter sets forth rules for the enforcement of administrative decisions, aimed at promoting good governance in practice. It underscores the principle that public authorities bear responsibility for enforcing their own decisions. Each Member State must establish an adequate system of administrative or criminal sanctions to ensure that private individuals comply with decisions issued by public authorities. Such substantive regulation

75 | See more on the principle: Jakab & Molitoris 2025, 52–53.

76 | See more on enforcement proceedings in criminal matters: Čentéš, Kurilovská, Šimovek & Burda et al. 2021, 811–909.

77 | Act No. 301/2005 Coll., as amended.

should incentivise voluntary compliance with administrative decisions. Accordingly, individuals must be granted key procedural rights, including: the right to a reasonable period for voluntary compliance, the right to have enforcement procedures governed by law, and the right to proportionate enforcement measures. Exceptions to these rights may be justified only by urgent public interest. In the realm of enforcement, authorities must adhere to the principles of legality, transparency and proportionality.⁷⁸

Regarding automated decision-making in public administration, we maintain that if a state opts to implement such systems, it must do so under a clear and precise legal framework that provides sufficient safeguards against disproportionate interference with fundamental rights and freedoms. Each safeguard serves a distinct purpose and corresponds to specific rights, ensuring that algorithmic decisions remain reviewable, explainable and attributable to identifiable actors.⁷⁹

Our analysis indicates that preserving the right to a fair process in the use of artificial intelligence systems – particularly in administrative punishment – requires informing individuals when a decision has been made with the assistance of AI tools. Public authorities must not only disclose the use of automated decision-making but also clearly and intelligibly explain how the AI system operates and how it influenced the final decision. This transparency is essential to uphold another fundamental right – the right to appeal. Individuals must understand the rationale behind automated decisions to effectively exercise their right to challenge them. As previously stated, every automated decision in administrative proceedings – not limited to administrative penalisation – must be subject to judicial review. To enable meaningful judicial oversight, authorities must ensure that such decisions are sufficiently transparent and legally intelligible.⁸⁰

The current legal regulation of administrative offences in the Slovak Republic is enshrined in a number of legal regulations, and there is no codification. Partial codification can be recorded only in the case of infractions, as one of the types of administrative offences, in the Act on Infractions. In the case of other administrative offences, such as administrative offences committed by legal entities and self-employed natural persons, in particular, the situation is more complicated. The legal regulation of administrative offences committed by legal entities and self-employed natural persons is thus contained in a large number of specific legal provisions, which means that it does not have a codified form and is currently accused of being nonconceptual, opaque and inconsistent in the basis of administrative sanctions and of lacking regulation of general institutes. From a procedural point of view, this legislation mostly refers to the subsidiary application of the Administrative Procedure Code, which, as a general procedural regulation,

78 | Košičiarová 2012, 136–139.

79 | Andraško et al. 2022, 338.

80 | See more Hamuláková & Horvat 2026, in press. Hamuláková 2024, 8–24.

does not contain specifics on the imposition of liability for administrative offences. The absence of a uniform regulation of the basic substantive and procedural legal institutes of administrative offences complicates the guarantee of the rights of the accused under Art. 6 of the Convention. The shortcomings of the legal regulation of administrative punishment in the Slovak Republic are reflected, for example, in the inconsistent application of the prohibition of *reformatio in peius* to those accused of infractions and to those accused of other administrative offences, as the Administrative Procedure Code, unlike the Act on Infractions, does not provide for the regulation of this prohibition. Shortcomings also appear in the framework of the fulfilment of the principle of legitimate expectation, i.e. that unjustified differences do not arise in the decision-making activities of administrative authorities on factually identical or similar cases. It is the proper reasoning of the decision on an administrative offence that tends to be problematic in the practice of administrative authorities. The current regulation of administrative offences committed by legal entities and self-employed natural persons does not regulate the requirements for the justification of a decision on the imposition of a sanction. The requirements of justification are found in Art. 47(3) of the Administrative Procedure Code,⁸¹ from which it follows that the evaluative reasoning of the administrative authority must be evident from the justification of the decision. However, as a general procedural regulation, the Administrative Procedure Code does not provide the administrative authorities with more detailed guidance on how the decision to impose a sanction should be justified. At present, however, the role of proper justification of the decision in matters of administrative sanctions is not fully understood and accepted by the administrative authorities, as confirmed by numerous judgments of the administrative courts. The current not very instructive legislation on the requirements for the statement of reasons for a decision on an administrative offence is largely influenced by case law.⁸²

One of the biggest problems in imposing administrative liability (not only in the field of environmental protection) is the requirement of proportionality of the sanctions imposed for administrative offences committed. It is precisely in relation to the proportionality of the fines imposed that the professional public increasingly advocates the view that Slovak laws should contain a criterion when imposing a sanction that would take into account the position of the responsible person, in particular his or her financial circumstances.

An important objective of the legal regulation of administrative punishment is to set up an effective system of sanctions that would correspond to the principles

81 | Art. 47(3) of the Administrative Procedure Code: "In the reasons for the decision, the administrative authority shall state which facts formed the basis for the decision, what considerations guided it in assessing the evidence, how it applied the correct reasoning in applying the legal provisions on the basis of which it made its decision and how it dealt with the submissions and objections of the parties to the proceedings and their comments on the basis of the decision."

82 | Judgment of the Supreme Court of the Slovak Republic of 29 September 2011, Case No. 5Sžo/15/2011.

of punishment in the rule of law, in particular the principle of proportionality of the sanction and the principle of individualisation of the sanction, while achieving the repressive and preventive purpose of the sanction. While in the case of infractions we can find several types of sanctions or protective measures in the legal regulation,⁸³ in the case of administrative offences committed by legal entities and self-employed natural persons we mostly encounter fines in the current Slovak legal regulation. In our opinion, the current system of sanctions imposed in the framework of administrative punishment of legal entities, with the predominance of sanctions in the form of fines, is not sufficiently differentiated and is not very effective compared to the options offered in the reformed systems, i.e. imposing differentiated punishments (e.g. warning, fine, prohibition of activity, community service, forfeiture of property, ordering the sale of a business, ordering the dissolution of a legal entity and its entry into liquidation) and protective measures (e.g. official supervision, compulsory administration, etc.). Naturally, the most serious sanctions (for example, the dissolution of a legal entity) cannot be imposed in the conditions of administrative law.

However, a fine is not an effective sanction in every case. This is the case, for example, when the administrative authorities do not use the full range of sanctions that the law gives them in their decision-making. This does not motivate the legal entities to behave in a desirable way; on the contrary, it reinforces the legal entity's belief that it is 'worthwhile' to not comply with a legal obligation, that it is still cheaper to pay a relatively low fine than to provide often costly measures to prevent offences or to ensure lawful behaviour at the cost of more complex, demanding action.

The types of penalties that could be imposed on legal entities (and natural persons doing business), including in the field of environmental protection, could be categorised as follows:

a) property penalties, i.e. (a) property sanctions, i.e. sanctions affecting the property of legal entities (fines, forfeiture of property used or intended to be used for the commission of an administrative offence), (b) sanctions against the activities of legal entities (the sanction of prohibition of activities, or the sanction of prohibition for the responsible entity to participate in public procurement by submitting tenders), (c) sanctions against the reputation, good name of legal entities (warnings, publication of the decision on the administrative offence of legal entities). Thus, the sanction of publication of the decision on administrative offence may be an appropriate solution where the legal entity is concerned about its reputation and/or at the same time it is necessary to warn the public against an untrustworthy entity. The effectiveness of this sanction can also be demonstrated in the field of

83 | Art. 11(1) of the Act on Infractions: "The following sanctions may be imposed for a misdemeanour: a) reprimand, b) fine, c) prohibition of activity, d) forfeiture of property." Section 16 of the Act on Infractions: "Protective measures are: a) a restraining measure, b) confiscation of the item, c) a probation programme or other educational programme in the proceedings against the juvenile."

environmental protection in cases where there is a need to inform the public about unfair (commercial) practices of legal entities, or where there is a recidivism by the responsible legal entity, or where the imposition of a financial sanction does not fulfil the desired purpose of administrative punishment. These are cases where the administrative authority, on the basis of the criteria set out in the law, imposes a fine either in the minimum amount or even in a high, even maximum, amount, but for a particular legal entity this fine is of a negligible nature compared to the profit that it will achieve by the unlawful conduct (non-compliance with the law), i.e. despite the (high) fine imposed, it is 'worthwhile' for the legal entity to break the law. However, the threat of 'damage to its reputation, a bad reputation' in the form of publication of the decision on the administrative offence, which could have a negative impact on its further economic activity, appears to be a more effective means of achieving the lawful conduct in the cases in question.⁸⁴

It follows from the preceding text that the basic substantive and procedural law institutes, in particular of administrative offences committed by legal entities and self-employed natural persons, are not regulated. The basic principles of administrative procedure under the Administrative Procedure Code do not constitute a special procedural regulation for the implementation of liability for administrative offences. The above complicates the exercise of the fundamental rights of an accused of an administrative offence under Art. 6 of the Convention. This situation underlines the need to unify the basic institutes related to the liability of legal entities and entrepreneurs for administrative offences in administrative law by creating a general norm regulating this issue. In our view, an appropriate solution would involve enacting legislation that establishes a general substantive framework for administrative punishment, alongside procedural rules governing the imposition of liability. This legal framework should consolidate infractions and other administrative offences committed by natural persons into a single category of administrative delict (infraction). The same statute should also regulate administrative delicts committed by legal entities and by natural persons acting as entrepreneurs. Due to the distinct nature of the protected legal interests involved, the statute should exclude disciplinary administrative offences and procedural administrative offences from its scope. Unlike administrative law as a whole, administrative penal law lends itself to codification.

84 | Hamuláková 2017, 231.

Reference list

1. Andraško J et al. (2022) *Regulačné výzvy e-governmentu v Slovenskej republike v kontexte práva Európskej únie*, Wolters Kluwer, Praha.
2. Bohadlo D, Potěšil L & Potměšil J (2013) *Správní trestání z hlediska praxe a judikatury*, C. H. Beck, Praha.
3. Cepek B et al. (eds.) (2018) *Správne právo hmotné, všeobecná časť*, Wolters Kluwer, Bratislava.
4. Čentěš J, Kurilovská L, Šimovček I, Burda E et al. (2021) *Trestný poriadok II, § 196 – 569*, C. H. Beck, Bratislava.
5. Hamuláková Z (2017) *Správne delikty právnických osôb – vybrané inštitúty a problémy*, Wolters Kluwer, Bratislava.
6. Hamuláková Z & Horvat M (2019) *Základy správneho práva trestného*, Wolters Kluwer, Bratislava.
7. Hamuláková Z (2020) *Zákaz reformatio in peius v správnom trestaní*, Wolters Kluwer, Bratislava.
8. Hamuláková Z (2024) *Právo na spravodlivý proces v kontexte automatizovaných rozhodnutí vo verejnej správe*, in: Maslen M (ed.) *Elektronizácia a digitalizácia verejnej správy*, Trnavská univerzita v Trnave, Trnava, pp. 8–24.
9. Hamuláková Z & Horvat M (2026) *Umelá inteligencia a správne trestanie*, AUCI 1/2026, in press, pp. 65–84, DOI: 10.14712/23366478.2026.5.
10. Horvat M (2017) *Administratívnoprávna zodpovednosť právnických osôb*, Bratislava, Wolters Kluwer.
11. Horvat M (ed.) (2025) *Nová procesnoprávna úprava správneho trestania*, Právnická fakulta Univerzity Komenského v Bratislave, Bratislava.
12. Jakab R & Molitoris P (2025) *Správne právo procesné*, Univerzita Pavla Jozefa Šafárika v Košiciach, Košice.
13. Košičiarová S (2012) *Princípy dobrej verejnej správy a Rada Európy*, Iura Edition, Bratislava.
14. Košičiarová S (2013) *Správny poriadok, komentár*, Heuréka, Šamorín.
15. Košičiarová S (2015) *Správne právo hmotné, všeobecná časť*, Aleš Čeněk, Plzeň.
16. Košičiarová S (2017) *Správne právo procesné, všeobecná časť*, Heuréka, Šamorín.
17. Machajová J (2005), in: Škultéty P et al. *Správne právo hmotné, všeobecná časť*, VO PraF UK, Bratislava.

18. Michalovič M & Maslen M (2024) Advocating for environmental law – grounds for its status as an independent branch of law in Slovak legal doctrine, *Prawne Problemy Górnictwa i Ochrony Środowiska* 2/2024, pp. 1–26, DOI: <https://doi.org/10.31261/PPGOS.2024.02.06>.
19. Michalovič, M & Jenčo (2022) Koncepcia boja proti environmentálnej protiprávnej činnosti ako základný kameň revízie starostlivosti o životné prostredie v podmienkach Slovenskej republiky, in: Novotná, V & Durec Kahounová M (eds.), *Bratislavské právnické fórum 2022: Zefektívňovanie boja proti nelegálnej činnosti v oblasti starostlivosti o životné prostredie*. 1. vyd. Bratislava: Právnická fakulta UK, 2022, pp. 12–24.
20. Orosz L, Svák J et al. (2021) *Ústava Slovenskej republiky, komentár, zväzok I*, Wolters Kluwer, Bratislava.
21. Píry M (2022) *Zákon o správnom konaní (správny poriadok)*, Eurokódex, Žilina.
22. Potásch P & Hašanová J et al. (2013) *Vybrané správne procesy*, Eurokódex Bratislava.
23. Potásch P, Hašanová J, Vallová J, Milučný J & Medžová D (2019) *Správny poriadok, komentár*, C. H. Beck, Praha.
24. Sládeček V (2013) *Obecní správní parvo*, Wolters Kluwer, Praha.
25. Sobihard J (2007) *Správny poriadok, komentár*, Iura Edition, Bratislava.
26. Srebalová M et al. (2020) *Zákon o priestupkoch, komentár*, C. H. Beck, Bratislava.
27. Ševčík M et al. (2007) *Správne právo procesné*, Eurounion, Bratislava.
28. Škrobák J (2019), in: Vrabko M et al. *Správne právo procesné, všeobecná časť*, C. H. Beck, Bratislava, pp. 42–47.
29. Škurek M (2015) *Evropské správní právo trestní a postihování přestupků v ČR*, Leges, Praha.
30. Vrabko M et al. (eds.) (2012) *Správne právo hmotné, všeobecná časť*, C. H. Beck, Bratislava.
31. Vrabko M et al. (eds.) (2018) *Správne právo hmotné, všeobecná časť*, C. H. Beck, Bratislava.
32. Vrabko M et al. (eds.) (2019) *Správne právo procesné, všeobecná časť*, C. H. Beck, Bratislava.
33. Ujhelyi-Gyurán, Lele & Pártay-Czap (2024) Locus standi in administrative proceedings concerning environment protection, in the case law of the CJEU and the ECtHR, *JAEL* 19(36), pp. 203–224, DOI: <https://doi.org/10.21029/JAEL.2024.36.203>.

Legal Framework for Administrative Offences in Environmental Protection Matters: Defining Responsibilities, Compliance and Sanctions in Poland¹

Abstract

The subject of this study is to present the procedural aspects of administrative offences² in environmental protection matters in Poland, which are classified in our country in two ways: 1) offences penalised by criminal law provisions and subject to the Misdemeanour Law and dealt with in misdemeanour proceedings, subject to the jurisdiction of common courts, and 2) administrative offences, defined as violations of administrative law orders and prohibitions, which are dealt with by public administration bodies applying the law in administrative proceedings specified in the Code of Administrative Procedure and specific statutes. The study aims to assess the Polish model of applying the law in the area of adjudicating administrative offences following administrative proceedings, particularly with regard to the issuance of administrative decisions imposing administrative fines, guidelines for the imposition of penalties, procedural guarantees for parties in proceedings for the imposition of administrative sanctions, their review by higher authorities, and the procedure for enforcing obligations and sanctions.

Keywords: Administrative offence, administrative fines, administrative liability, administrative sanction, procedural guarantees

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2 | Term 'offences' or 'offences' in British English, refers to: violations of the law or unlawful acts, act of wrongdoing. Longman Dictionary of Contemporary English 1987, 717.



1. Introduction

1.1. The evolution of Polish legal regulations on administrative proceedings and proceedings in misdemeanour cases

At the beginning of the 20th century, Poland regained its sovereignty, but inherited different legal systems from the partitioning powers. Right from the first years after regaining independence, steps were taken towards the unification of three completely different legal systems, primarily concerning administrative procedure regulations.³ In the landmark year of 1928, following the example of Austrian regulations,⁴ fundamental legal regulations were adopted. On 23 March 1928, the Polish legislature introduced three legal regulations with the force of law into the legal system.⁵

1. Regulation of the President of the Republic of Poland on administrative proceedings,⁶
2. Regulation of the President of the Republic of Poland on coercive proceedings in administration,⁷
3. Regulation of the President of the Republic of Poland on criminal and administrative proceedings.⁸

The regulation at the beginning of the aforementioned acts was the first Polish codification of administrative proceedings,⁹ and at the same time one of the first in the world to introduce the rights of parties in explanatory proceedings, the institution of excluding an official from participation in proceedings, appeals against decisions, the resumption of proceedings, and the institution of the invalidity of decisions.¹⁰ This act remained in force throughout the interwar period and after the end of World War II, until the end of 1960, when the current Act of 14 June 1960, the Code of Administrative Procedure (hereinafter: Kpa), came into force.¹¹

3 | Act of 1 August 1923 on legal remedies against decisions of administrative authorities, J.L. No. 91, 712, and Act of 31 July, 1924 on legal remedies against decisions and orders of state school authorities, J.L. No. 76, 748.

4 | Kmiecik 2019, 26.

5 | In the Second Polish Republic, a regulation of the President of RP was a normative act issued by the head of state and countersigned by the Prime Minister and relevant ministers, having the force of law pursuant to art. 5 Act of 2 August, 1926 am. and supplementing the Constitution of RP of 17 March, 1921 (J.L. of 1926, No. 78, 442).

6 | J.L. No. 36, 341, as am.

7 | J.L. No. 36, 342, as am.

8 | J.L. No. 38, 356, as am.

9 | J. Borkowski pointed to the 1928 regulation as the second codification, deeming the 1919 provisional act to be the first one; Borkowski 2021, 83–85.

10 | Janowicz 1987, 35.

11 | J.L. 2024, 572.

The second of the aforementioned acts on coercive proceedings regulated the issue of the enforcement of monetary payments. The current legal regulation in this area is the Act of 1966 on Enforcement Proceedings in Administration.¹²

The third of the above-mentioned regulations, the Regulation on Criminal-Administrative Proceedings, was the first Polish regulation to introduce criminal sanctions linked to administrative norms. This regulation remained in force until 31 March 1952, i.e. until the entry into force of the Act of 15 December 1951 on criminal-administrative jurisdiction,¹³ replaced by the Act of 20 May 1971 on the Code of Procedure in Misdemeanour Cases.¹⁴ This Act was the direct predecessor of the currently applicable Act of 2001, the Code of Procedure in Misdemeanour Cases.¹⁵

1.2. Definition of procedural administrative law, its sources and role in environmental management

Administrative proceedings are a series of procedural steps taken by the authority conducting the proceedings and managing the participants in the proceedings in order to examine an administrative case and resolve it by means of an administrative decision, as well as a series of procedural steps taken by these entities to verify an administrative decision.¹⁶ The purpose of these proceedings is to determine, in a specific case, on the basis of substantive administrative law, the legal situation, i.e. the rights or obligations, of a specifically named addressee. This objective is achieved by issuing an administrative decision, which is the final result of the process of applying substantive administrative law.¹⁷

In Poland, there are two types of administrative proceedings: general proceedings and special proceedings. General proceedings, based on Kpa (Code of Administrative Procedure 1960), serve to resolve all individual cases falling within the competence of public administration bodies. According to this procedure, or with minor deviations, the vast majority of cases decided by administrative decision are dealt with, including cases relating to environmental protection, agricultural and forest land protection, and water issues.

However, the Polish Kpa is subsidiary in nature. A specific provision of substantive administrative law may exclude a given case from this procedure. This means that specific provisions stipulate that certain proceedings are not conducted on the basis of Kpa, but on the basis of other, separate administrative procedures. For example, proceedings concerning environmental impact assessments under the Act of 3 October, 2008 on access to information on the environment and its

12 | J.L. 2025, 132.

13 | J.L. No. 39, 233, as am.

14 | J.L. No. 12, 116, as am.

15 | J.L. 2025, 132.

16 | Chróścielewski & Tarno 2021, 30.

17 | Kmiecik 2019, 38.

protection, public participation in environmental protection and environmental impact assessments¹⁸ apply Kpa regarding several aspects, but with significant additions and modifications, e.g. in the area of public participation, parties to the proceedings (e.g. environmental organisations), the mode of delivery (announcements, publication in the Public Information Bulletin instead of traditional delivery of a letter or electronic delivery), as well as specific deadlines and forms of decisions.

Administrative enforcement of administrative acts and obligations arising from the law continues to be carried out on the basis of the 1966 Act on Enforcement Proceedings in Administration, while the Code of Procedure in Misdemeanour Cases (2001) sets out the rules for conducting proceedings in cases of misdemeanours from the moment they are disclosed to the enforcement of penalties or measures.

1.3. The role of procedural administrative law in environmental management

The role of procedural administrative law in environmental management is crucial, as administrative procedures are those that determine how and on what terms the objectives of substantive environmental law are implemented. Procedural law is therefore a tool or instrument by which substantive law norms are implemented. Procedural law is thus closely dependent on substantive law.¹⁹ Polish legal doctrine has even pointed out that procedural law norms serve substantive administrative law norms.²⁰

In the literature dealing with the subject, B. Adamiak²¹ attributes several functions to procedural administrative law. In terms of socially desirable effects, these functions can be reduced to three basic ones: 1) an ordering function, hinges on the fact that procedural rules, by determining the order and regulating the sequence of procedural actions, organise the activities of all parties to the proceedings; 2) an instrumental function, expressed in the optimisation of the path leading to the achievement of the objective of the process; 3) a protective function guaranteed to the parties to the proceedings, manifested in the protection of individual and social interests.²²

Administrative procedural law also plays an important role in the application of environmental law by public administration bodies:

1. ensuring the legality of administrative actions, which, pursuant to Arts. 6 and 7 of Kpa, are carried out on the basis of and within the limits of the law;

18 | J.L. 2024, 1112, as am., hereinafter: 'u.u.i.ś'.

19 | Adamiak 2021, 27.

20 | Dawidowicz 1983, 31; Janowicz 1982, 13; Filipek 1971, 206; Chróścielewski & Tarno 2021, 26.

21 | Adamiak 2021, 24–25.

22 | Ibid., 29; Chróścielewski & Tarno 2021, 29.

2. Kpa determines the manner of initiating proceedings and issuing decisions in environmental protection matters, including environmental decisions;
3. the provisions of Kpa enable the participation and procedural guarantees of the party/parties to the proceedings. The procedures determine who is a party, guarantee the right to active participation in the proceedings, access to the case files, and the right to lodge legal remedies (complaints, appeals);
4. the provisions of Kpa define the participation of social organisations as participants with the rights of a party, and the procedure specified in the Act on Environmental Protection and Environmental Management ensures that the public is properly informed and that environmental organisations have special rights. These provisions give the right to submit comments and objections;
5. the provisions of Kpa introduce deadlines for the settlement of cases, the forms in which administrative decisions are taken, the need to justify them and the procedural transparency of the activities of administrative bodies;
6. The provisions of Kpa ensure control over the activities of the administration.

The administrative procedure prevents discretionary administrative power, arbitrariness, excessive intervention and abuse of the law, and is also an instrument for implementing ratified international agreements and the principles proclaimed therein. Administrative procedures frequently incorporate various aspects of environmental management. Although a general principle of uniformity in administrative jurisprudence does not exist, these procedure establish a consistent approach to environmental decisions that serve the public interest.

2. Administrative offences proceedings

2.1. The concepts of 'administrative offence' and 'misdemeanour'

Violation of the orders and prohibitions specified in environmental protection regulations result in legal consequences in terms of legal liability.²³ This liability is understood as a consequence of violating the law, whereby the entity involved faces negative consequences as stipulated by law for certain events or situations. These consequences are legally assigned to that entity within a specific legal framework. Given the nature of legal norms, this liability can be divided into administrative, criminal and civil liability. It is up to the legislator, guided by a specific socio-economic objective, to select the appropriate legal instruments.

In environmental protection, norms classified as administrative law play a special role, as they are the most effective in enabling the state apparatus to

²³ | Lang 1968, 11.

carry out its tasks in this area.²⁴ However, as pointed out by M. Górski,²⁵ several years of enforcement of regulations imposing environmental obligations on entities required to comply with them have revealed a lack of effectiveness in their enforcement, which has even prompted a response from European Union authorities. Hence, the doctrine²⁶ has come to believe that among the instruments of legal liability in environmental protection in Poland, administrative liability plays by far the most important role, in its criminal version, i.e. liability for administrative offences and misdemeanours.

Therefore, violations of the orders and prohibitions specified in the substantive provisions of environmental law can be divided into two groups:

- the first category covers offences, i.e. acts prohibited under penalty as specified in the Code of Procedure in Offence Cases,²⁷ where the proceedings are of a criminal nature, although they concern acts of lesser social damage than crimes, which are punishable acts of lesser severity (e.g. littering in forests, soil pollution, improper waste management or destruction of plants), which may result in a fine, but imposed under criminal law, issued in proceedings in misdemeanour cases.

- the second group consists of administrative offences.²⁸ In Polish legal literature,²⁹ an ‘administrative offence’ is defined as an act by an entity that violates applicable law (breach of duty or exceeding the limits of the exercise of authority) in the field of administrative law, punishable by administrative sanctions. It is therefore a negatively qualified act (action or omission) resulting in a state of administrative lawlessness. Administrative offences related to the violation of substantive environmental regulations, for which the legislator has set a sanction in the form of an administrative fine or other sanction after conducting proceedings provided for in Kpa.³⁰

As J. Wegner points out,³¹ an administrative offence seems to fall outside the subjective or objective criteria of the definition of prohibited acts, as it may concern both the behaviour of human beings and other entities. Furthermore, it is debatable whether the prerequisite for attributing an offence to the perpetrator is considered as a culpable action or an omission based on guilt. M. Górski emphasises³² that in a broad sense, administrative penalties can be viewed as a form of criminal liability, yet they are imposed by public administration bodies without requiring proof of guilt and can be directed not only at natural persons.

24 | Górski 1992, 46,

25 | Ibid. 2008, 9.

26 | Radecki 2020, 257.

27 | J.L. 2025, 860, as am.

28 | Wincenciak 2008, 93.

29 | Ibid.; Kruk 2013, 122 et seq.; Bogusz 2021, 20.

30 | J.L. 2024, 572, as am.

31 | Wegner 2023, 992.

32 | Górski 2008, 12.

As indicated by the Constitutional Tribunal,³³ the boundary between an administrative offence and a criminal offence is fluid and depends on the free decision of the legislator (within constitutional limits) and the conviction as to which norm will better fulfil the objectives set by the legislator. Determining whether we are dealing with an administrative offence or a misdemeanour or criminal offence can, in principle, only be assessed from the point of view of the characteristics of the sanctioning norm and the formula for applying the law adopted by the legislator. An administrative offence should be treated as an act or omission of an individual, which the law links to the obligation to bear the penalty determined by a public administration body by way of a decision. It is the nature of the sanctioning norm that determines the type of norm sanctioned as an offence, and not the other way around. The manner in which the penalty is determined by the legislator and the manner in which it is imposed are of fundamental importance.³⁴ Furthermore, it can be pointed out that among administrative offences, a distinction can be made between those involving a breach of statutory obligations (established by law itself) and those involving a breach of obligations specified in administrative acts.³⁵

Over the years, environmental regulations have been developed, introducing many legal instruments to enforce liability for violations, among which the main role has been given to administrative and legal instruments, and their enforcement has been entrusted to public administration bodies. A view was even held that administrative law was supplanting criminal law, especially with regard to environmental protection regulations, particularly those concerning waste.³⁶

2.2. Administrative financial penalties (fines)

2.2.1. Theoretical basis for administrative fines

Administrative financial penalties are directly related to the term ‘administrative sanction’, which is defined in a number of ways by numerous representatives of administrative law doctrine.³⁷ As pointed out by J. Filipek,³⁸ a sanction is a negative consequence of a financial or personal nature provided for in a specific legal norm and threatening anyone who fails to fulfil the obligation established by the norm, i.e. a certain hardship, loss of rights, invalidity of actions or other adverse effects affecting in some way the property or person of a specific entity. In administrative law theory, it has been pointed out that each branch of law should have legal

33 | Constitutional Tribunal judgement of 15 January 2007, P 19/06, OTK-A 2007, No. 1, 2.

34 | Błachnio-Parzych 2011, 657.

35 | Kruk 2023, 125 and the literature cited therein.

36 | Ruczkowski 2019, 98 and 110.

37 | Zimmermann 1964, 9; Kruk 2013, 164 et seq.

38 | Filipek 1963, 873–877.

instruments to punish legal entities for violating the obligations, orders and prohibitions resulting from the legal norms belonging to that branch.³⁹

As L. Staniszevska points out,⁴⁰ administrative sanctions are neither a new institution nor one that is unique to the Polish legal system. Their origins can be traced back to the period of absolutism, they are known to other legal systems, such as the Austrian one, and they can also be found in the legal system of the European Union. In this model, administrative offences are treated as administrative measures, and their imposition falls within the competence of administrative authorities. Countries that have drawn a clearer line between administrative and criminal sanctions include Portugal, Italy and the Netherlands.

In Poland, after regaining independence in 1918, the concept of administrative liability⁴¹ and a separate constitutional provision on criminal and administrative liability emerged.⁴² As pointed out by the Polish administrative law expert S. Kasznica, who lived during the interwar period, certain administrative authorities were given the right to punish particular offences specified in statutes. As a result, administrative bodies became, to a certain extent, criminal courts, and their jurisprudence was of a criminal-administrative nature. The adoption of this structure became the basis for the introduction of legal regulations in the form of a decree with the force of law issued by the President of RP in 1928 on criminal-administrative proceedings, which was the precursor to the current Law on Proceedings in Misdemeanour Cases.

In the 1970s, J. Filipek⁴³ pointed to the expansion of criminal-administrative sanctions, which had become an integral part of the Polish legal system, and predicted that it was unlikely that the legislator would decide to abandon this form of repression; on the contrary, an increase in their number could be expected. A characteristic feature of sanctions in Polish administrative law was their multitude and diversity, unheard of in other areas of law.

In the 1990s, the Constitutional Tribunal, in its judgement of 1 March 1994, ref. no. U 7/93,⁴⁴ stated that in public law, financial penalties are used to encourage entities subject to non-financial obligations to fulfil those obligations in a timely and proper manner, and the repressive element of an administrative penalty means that its amount cannot be determined by an executive act, but should be regulated by a statute.

Unfortunately, in Poland, the issue of imposing penalties for administrative offences in administrative proceedings remained outside the scope of interest of the legislator for decades, the lack of a definition led to terminological chaos,

39 | Niżnik-Dobosz 2011, 129.

40 | Staniszevska 2016, 68.

41 | Marek 1967, 81.

42 | Kasznica 1947, 16.

43 | Filipek 1974, 117.

44 | OTK 1994, part I, 5.

and specific provisions used diverse terms such as ‘penalty fees’, ‘increased fees’, ‘administrative fines’, ‘additional tax liabilities’ or ‘financial penalties’.

2.2.2. *Administrative financial penalties in environmental protection*

Since 2002, two types of financial administrative sanctions have been introduced into environmental law. In addition to the existing administrative financial penalties (imposed in the form of decisions) and new increased fees, a specific type of sanction in the form of product fees has appeared, whereby the fees are subject to the principle of self-assessment.⁴⁵

The regulation of administrative penalties in environmental protection is also very scattered. Penalties are imposed on the basis of provisions including:

- 1) The Environmental Protection Law⁴⁶ (Section III ‘Administrative fines’ in provisions 298–315k P.o.ś.);
- 2) The Nature Conservation Act⁴⁷ (Arts. 88–90 u.o.p.);
- 3) The Water Law Act⁴⁸ (Section XIa ‘Administrative fines’);
- 4) The Waste Act⁴⁹ (Chapter II ‘Administrative fines’ Arts. 194–202 u.o.);
- 5) The Act on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessment⁵⁰ (Section VIIA ‘Administrative fines’ Arts. 136a–136c u.u.i.ś.).

It should be noted that these provisions not only specify penalties for specific offences, the amount of penalties, issues of deferral, payment in instalments or remission of penalties, but also procedural issues concerning the proceedings for imposing penalties, deadlines, higher authorities, situations requiring the initiation of enforcement proceedings allowing for the compulsory collection of the amount of the penalty together with interest.

It is also necessary to draw attention to the normative solution adopted, according to which the provisions of Art. 315c. P.o.ś., Art. 202 u.o. or 136c. u.u.i.ś. refers to financial penalties for the relevant application of Section III ‘Tax obligations’ of the Act of 29 August 1997 – Tax Ordinance,⁵¹ except that the powers of the tax authorities are vested in the provincial environmental protection inspector. As indicated by K. Karpus,⁵² the provincial environmental protection inspector exercises the powers of the tax authority within the scope of assessing and collecting the amount

45 | Jaworowicz-Rudolf 2021, 209.

46 | Act of 27 April 2001 Environmental Protection Law, J.L. 2025, 647, as am., hereinafter: ‘P.o.ś.’.

47 | Act of 16 April 2004 on Nature Conservation, J.L. 2024, 1478, as am., hereinafter: ‘u.o.p.’.

48 | Act of 20 July 2017 on Water Law, J.L. 2025, 960, hereinafter: ‘P.w.’;

49 | Act of 14 December 2012 on waste, J.L. 2023, 1587, as am., hereinafter: ‘u.o.’.

50 | J.L. 2024, 1112, as am., hereinafter: ‘u.u.i.ś.’.

51 | J.L. 2025, 111, as am., hereinafter: ‘O.p.’.

52 | Bukowski et al. 2013.

due, which is the penalty. The solution applied here is characteristic of public levies and financial sanctions collected or imposed on the basis of environmental protection law. The proceeds from penalties represent revenue for the National Fund for Environmental Protection and Water Management instead of the state budget. However, as indicated by the Supreme Administrative Court in its judgement of 2024,⁵³ this provision does not preclude the application of Art. 189f § 1(1) Kpa to this type of penalty, because the provisions of Section III P.o.ś. do not regulate the institution of waiving the imposition of a tax liability, which can be applied accordingly to financial penalties, including the financial penalty under Art. 315a Kpa. Only in such a case would it be permissible to exclude the application of Art. 189f § 1(1) Kpa on the basis of Art. 189a § 2(2) Kpa. However, in another judgement of 2024,⁵⁴ the court indicated that with regard to administrative financial penalties, the provision of Art. 68, para. 1 O.p, in cases concerning such penalties imposed on the basis of P.o.ś., cannot be applied either directly or with modifications. In this regard, the court referred to the provisions of Art. 189g, paragraph 1 Kpa, Art. 189h, paragraph 1 Kpa and Art. 189h, paragraph 4 Kpa. It must therefore be concluded that, in this respect, the provisions of Section IVa Kpa 'Administrative financial penalties', rather than the Tax Ordinance, will apply to the guidelines for determining the penalty and the circumstances that may mitigate or aggravate its amount by a public administration body under the current legal framework.

As indicated in three of the aforementioned acts, in cases concerning administrative financial penalties, reference was made to the relevant application of the provisions of Section III of the Tax Ordinance, granting the powers of the tax authority to the provincial environmental protection inspector. However, the Nature Conservation Act does not contain such a reference, as can be inferred from the competence of the commune head (mayor, city president in this respect (Art. 88 u.o.p.).

2.2.3. Administrative financial penalties in administrative proceedings

As pointed out by the Ombudsman,⁵⁵ for decades there has been a lack of general regulations in administrative law governing issues such as: the concept of administrative sanctions, the rules of liability for administrative offences, the expiry of the punishability of an offence due to the passage of time, the exclusion of administrative liability for an act constituting an administrative offence, and the manner of formulating administrative sanctions. Z. Kmiecik⁵⁶ and J. Wegner⁵⁷ emphasised that the long-standing lack of general provisions on administrative

53 | Supreme Administrative Court judgement of 20 February, 2024, III OSK 3169/21, Legalis.

54 | Supreme Administrative Court judgement of 16 July, 2024, III OSK 2402/22, Lex No. 3750561.

55 | Letter from the Ombudsman to the Minister of Administration and Digitisation 2013.

56 | Kmiecik 1997, 3.

57 | Wegner 2021, 998.

sanctions in the domestic system, coupled with the growth of administrative regulations of a punitive nature, was considered an unfavourable situation, for example for individuals deprived of adequate protection against repression by the administration. This issue was addressed in case law in 2014 in a judgement of the Constitutional Tribunal⁵⁸ concerning an administrative fine for violating a provision of the Nature Conservation Act.⁵⁹

For this reason, in 2017,⁶⁰ the Code of Administrative Procedure was supplemented by Chapter IVa. 'Administrative financial penalties', standardising the legal definition of the concept, their scope of application, the principle of applying the more lenient law, guidelines for imposing penalties, exclusive punishability in cases of force majeure, waiver of penalties, limitation periods and leniency measures. As indicated by G. Radecki,⁶¹ the provisions were intended to remove systemic deficiencies in the imposition of penalties that had long been raised in literature and case law.

In response to some of the demands of the judiciary and legal doctrine,⁶² the Polish legislator introduced the legal definition of the term 'administrative financial penalty' in Art. 189b Kpa, added as a result of the 2017 amendment, according to which such a penalty is to be understood as a financial sanction specified in the Act, imposed by a public administration body, by way of a decision, as a result of a violation of the law involving the failure to fulfil an obligation or a violation of a prohibition imposed on a natural person, a legal person or an organisational unit without legal personality. Thus, the scope of this concept in the Polish legal system was defined and the freedom of interpretation was limited.

2.3. Public administration bodies with supervisory and control powers

The structure of public administration bodies in Poland, which have been entrusted with supervisory and control tasks as part of the division of competences, is diverse.

Firstly, pursuant to Art. 379(1) P.o.ś., supervisory and control tasks are performed by:

58 | Constitutional Tribunal judgement of 1 July 2014, ref. no. SK 6/12, J.L., p. 926, OTK-A 2014, no. 7, 68.

59 | The case concerned the obligation of the competent local government authority to impose an administrative fine for the removal without the required permit or destruction by the property owner of a tree or shrub in a strictly defined amount, regardless of the circumstances of the act. The Constitutional Tribunal said that Art. 88(1)(2) & art. 89(1) of the Act were inconsistent with Art. 64(1) & (3) in conjunction with Art. 31(3) Constitution of RP (J.L. No. 78, 483, as am).

60 | Act of 7 April, 2017 amending the Act – Code of Administrative Procedure and certain other acts, J.L., 935, hereinafter: '2017 amendment'.

61 | Radecki 2020, 168.

62 | As Wegner points out, non-pecuniary penalties remain outside the scope of the Code. Wegner 2023, 1006.

- | government administration bodies (the minister responsible for climate issues);
- | local governments, which are the provincial marshals in the province, the district administrators in the district (cities with district rights) and the commune administrators (mayor or city president) in the communes. The designated local government bodies may authorise employees of their subordinate offices (provincial, district, city or commune offices or commune guard officers) to perform control functions.

Secondly, under specific provisions, supervisory and control powers are entrusted to:

- | the regional director for environmental protection, a central government administration body established under the Act on access to information on the environment and its protection, public participation in environmental protection and environmental impact assessments, performing the tasks specified in Art. 127 u.u.i.ś, and is also the authority responsible for nature conservation within the meaning of Art. 91 u.o.p.;
- | the competent authority of Polish Waters (including the President of Polish Waters), and with regard to Polish Waters – the minister responsible for water management pursuant to Arts. 472a P.w., 472aa(2) P.w., and Art. 472b(6) P.w.

Thirdly, specialised inspection authorities have been established within the public administration structures, which have control tasks imposed on them by law. These include:

- | the State Environmental Protection Inspectorate,⁶³ a specialised central public administration body whose main task is to monitor compliance with environmental protection regulations (including entities using the environment), monitor the state of the environment, as well as make decisions on suspending activities carried out in violation of environmental protection requirements or in violation of the conditions for using the environment (Arts. 2(1)(1), (2) and (3) u.i.o.ś.);
- | State Sanitary Inspection,⁶⁴ a specialised body that carries out environmental inspections, particularly where there is a threat to public health. It has many powers directly protecting the environment (sanitary regulations for the protection of water quality, waste management, chemical safety, radiological protection, and the investment and construction process).⁶⁵

63 | Act of 20 July, 1991 on Environmental Protection Inspection, J.L. 2024, 425 (hereinafter: 'u.i.o.ś.').

64 | Act of 14 March, 1985 on the State Sanitary Inspection, J.L. 2024, 416.

65 | Bojar-Fijałkowski 2019, 81–138.

2.4. Initiation of proceedings in the field of administrative offences

Administrative proceedings concerning administrative offences may be initiated *ex officio*:

- 1) *ex officio*, most often as a result of control activities, and in particular on the basis of measurements or other evidence, technical and technological data obtained during such activities (e.g. Art. 299(1)(1) P.o.ś., provincial environmental protection inspector);
- 2) *ex officio* based on measurements carried out by an entity using the environment, obliged to carry out such measurements (e.g. Art. 299(1)(2) P.o.ś., provincial environmental protection inspector);
- 3) *ex officio* as a result of a request to initiate proceedings submitted by a social organisation (Art. 31 Kpa);
- 4) as a consequence of a notification (e.g. a report from a neighbour).

Government authorities (Minister for Climate) and local government authorities (voivode, district administrator, commune administrator, mayor, city president) authorised to carry out inspections pursuant to Art. 379(2) P.o.ś. are entitled to: enter the premises with experts and the necessary equipment; request written or oral information and summon and question persons to the extent necessary to establish the facts; request the presentation of documents and access all data related to the subject matter of the inspection.

The scope of powers of environmental protection inspection authorities carrying out inspections pursuant to Art. 9(2) u.i.o.ś. is much broader and includes, among other things, requests to suspend the operation or start-up of installations or equipment, or to impose fines in summary proceedings for environmental offences. On the basis of the findings of the inspection, the provincial environmental protection inspector may: 1) issue a post-inspection order to the manager of the inspected organisational unit or a natural person; 2) issue post-inspection recommendations on the basis of separate regulations; 3) issue an administrative decision on the basis of separate regulations; 4) initiate enforcement if the obligation arises from the law or an administrative decision. During the inspection, the provincial inspector may issue a decision (with immediate effect) to suspend: 1) activities that pose a threat to human health or life or a threat of environmental destruction; 2) the commissioning of a building, complex of buildings or installations that do not meet environmental protection requirements. These decisions exclude the possibility of suspending the execution of the contested act or action by an administrative court (Art. 12(6) u.i.o.ś.).

At this point, it is necessary to point out the institutional and procedural links between general administrative authorities vested with supervisory and control powers (including local government authorities) and the specialised inspection authority. Pursuant to Art. 379(5) P.o.ś. the controlling authority shall request

the provincial environmental protection inspector to take appropriate measures within his competence, forwarding the case file, if, as a result of the inspection, it is found that the inspected entity has violated the provisions of the Environmental Protection Law or there is a reasonable suspicion that such a violation may have occurred. According to M. Górski,⁶⁶ this structure addresses two categories of situations where the general authority must apply to the provincial environmental protection inspector: 1) during the inspection, the authority discovered a violation of provisions that the inspector is competent to monitor and, if necessary, enforce supervisory measures; 2) after having conducted an inspection, the authority concludes that its inspection powers are not sufficient to establish a violation of regulations, but such a violation is so likely that it would be necessary to take the measures for which the inspector is authorised. A request for inspection should be based on a reasonable suspicion of a legal violation. This includes a finding that the inspected entity has breached environmental protection regulations and that the inspector has the legal authority to take appropriate action. As the author emphasises, in the circumstances specified in the provision, it is the authority's duty to refer the matter to the provincial inspector.

Regardless of the above provision, in the event of a direct threat to the environment, pursuant to Art. 8a(3) u.i.o.ś., the district administrator or the commune head (mayor, city president) may submit a request, including a justification, to the provincial environmental protection inspector to take measures within his tasks and competences to remove the threat, when taking such measures goes beyond their tasks and competences.

However, in certain cases specified by law, the provincial marshal has the power to impose a fee for the economic use of the environment on an entity using the environment by way of a decision (Art. 288(1) P.o.ś.). The substantive basis for the marshal's decision is the findings of the relevant marshal's services or the results of an inspection conducted by the provincial environmental protection inspector.⁶⁷

Pursuant to Art. 31, para. 1(1) Kpa a public administration body may also initiate administrative proceedings *ex officio* at the request of a social organisation if this is justified by the statutory objectives of that organisation and if it is in the public interest. If the administrative authority considers the request of the social organisation to be justified, it shall decide to initiate proceedings. An appeal may be lodged against a decision refusing to initiate proceedings or admitting a social organisation to participate in the proceedings. Once proceedings have been initiated or the social organisation has been admitted to the proceedings, it shall participate in them as a party.

66 | Górski 2011, 1274.

67 | Ibid., 2021, 111.

Preferential rules are laid down in Art. 44 P.o.ś. for environmental organisations which, referring to their statutory objectives, express their willingness to participate in specific proceedings requiring public participation, participate in them as a party if they have been conducting statutory activities in the field of environmental protection or nature conservation for at least 12 months prior to the date of initiation of such proceedings.

In the event of a breach of environmental protection requirements, proceedings concerning the violation of environmental protection law are conducted before the designated public administration authorities. The subject of the proceedings is the imposition of sanctions such as administrative fines. The decision to apply sanctions takes the form of an administrative decision.

2.5. Initiation of proceedings for an offence

The environmental protection inspectorate has also been given powers to prosecute offences and crimes against the environment (Art. 10b u.i.o.ś.). In cases of offences against the environment, the inspection authorities have the power of a public prosecutor even if the request for sanctioning the offence has been submitted by another authorised prosecutor. If it is found that an act or omission meets the criteria of an environmental offence, the environmental protection inspection authorities should notify the authority responsible for prosecuting offences for the commission of a violation, attaching evidence documenting the suspicion. The inspection authorities may also request any public administration authority or the police to provide information or make available documents and data related to environmental protection.

3. Procedural rights of the parties

3.1. Guarantees of procedural rights of parties in proceedings for the imposition of administrative sanctions

In criminal law doctrine, the view has been expressed⁶⁸ that the legislator deliberately refrains from sanctioning acts punishable by criminal sanctions in the form of misdemeanours in favour of administrative sanctions. On the one hand, this makes it easier to apply such sanctions, but on the other hand, it poses a huge threat to citizens, whose possibilities of defending themselves against state actions are much more limited. The dangers of using this form of repression have been recognised by the Ombudsman,⁶⁹ who points out that administrative fines are

68 | Czichy 2017, 93.

69 | Letter from the Ombudsman 2013.

being used increasingly, often replacing the existing liability for offences, which has numerous negative consequences for those subject to punishment. In the case of administrative sanctions, there is no such extensive catalogue of guarantees (such as the presumption of innocence or liability based on the principle of guilt) as is the case under general criminal law.

This raises the question of the existence of procedural guarantees for a party against whom proceedings have been initiated and an administrative financial penalty has been imposed. The procedural guarantees of parties to administrative proceedings, both natural and legal persons, are ensured primarily through the implementation of the principles set out in the Code of Administrative Procedure. As J.P. Tarno points out,⁷⁰ several decades of experience with judicial review of administrative actions confirm the validity of the assertion that general principles should be used to ensure adequate protection of the legal interests of individuals, meeting the criteria appropriate for a democratic state governed by the rule of law. The participation of society, including through the admission of social organisations to administrative proceedings,⁷¹ the existence of procedures allowing for the verification of public authority decisions through administrative channels by a higher authority, and judicial review of administrative decisions constitute procedural guarantees for the parties.

3.2. The principle of proportionality and the imposition of administrative sanctions

The standard for European administrative procedure was set by the Committee of Ministers of the Council of Europe in Recommendation No. R (91) 1 on 13 February 1991 on administrative sanctions.⁷² Administrative authorities enjoy considerable powers to impose sanctions, which results from the increase in the administrative tasks of the state, as well as a visible trend towards decriminalisation. The Committee also noted that, from the point of view of protecting individuals, it is desirable to curb the spread of administrative sanctions, which, although they act quickly and automatically, also pose a threat to the interests of individuals. Therefore, the recommendation contains a number of principles setting out the minimum standard for the use of administrative penalties.

The Polish Constitutional Tribunal, in its judgements of 30 November 2004, ref. SK 31/04,⁷³ and of 14 October 2009, ref. Kp 4/09,⁷⁴ stated that the advantages

70 | Tarno 2018, 57.

71 | Haładaj 2013, 45.

72 | Council of Europe, Committee of Ministers, Recommendation R (91) 1 on administrative sanctions, adopted by the Committee of Ministers on 13 February 1991, [https://rm.coe.int/16804fc94c\[06.10.2025\]](https://rm.coe.int/16804fc94c[06.10.2025]), hereinafter cited as: CMRE Rec. R (91)1.

73 | OTK ZU No. 10/A/2004, 110.

74 | Constitutional Tribunal judgement of 14 October 2009, ref. no. Kp 4/09, M.P. 2009 no. 68, 888.

of a system of administrative penalties imposed in an informal manner are the promptness of punishment and the low costs of proceedings. However, the rationalisation of prosecution and punishment by creating different procedures in this area must be accompanied by attention to creating additional instruments ensuring the proportionality and effectiveness of protecting the interests of the administratively sanctioned entity. When determining the penalty for a violation of the law, the legislator must, in particular, respect the principle of proportionality of the offence. Therefore, it cannot apply sanctions that are obviously inadequate or unreasonable, or disproportionately severe.

Since 2017, Art. 189d Kpa has introduced guidelines for determining the penalty, i.e. circumstances that may either mitigate or aggravate the penalty imposed by a public administration body. When imposing an administrative financial penalty, the public administration body takes into account: 1) the gravity and circumstances of the violation of the law, in particular the need to protect life or health, to protect property of significant value or to protect an important public interest or an exceptionally important interest of a party, and the duration of the violation; 2) the frequency of past failures to comply with an obligation or violations of a prohibition of the same type such as the failure to comply with an obligation or violation of a prohibition for which the penalty is to be imposed; 3) previous punishment for the same behaviour for a criminal offence, fiscal offence, misdemeanour or fiscal misdemeanour; 4) the degree to which the party on which the administrative financial penalty is imposed contributed to the infringement of the law; 5) actions taken voluntarily by the party to avoid the consequences of the violation of the law; 6) the amount of benefit that the party has gained or the loss that it has avoided; 7) in the case of a natural person, the personal circumstances of the party on whom the administrative fine is imposed.

The guidelines apply in cases where the decision on the penalty is made within the scope of discretionary powers (administrative discretion), freedom to determine the amount of the penalty within a specified range, or where the amount of the penalty is fixed but the provision allows for a waiver of the penalty.⁷⁵ The penalty guidelines will not apply in situations where substantive law links a given infringement to a predetermined penalty, without providing for the possibility of mitigating or waiving the penalty and replacing it, for example, with a warning.

3.3. Procedural safeguards to prevent arbitrary enforcement

The imposition of an administrative fine requires administrative proceedings to be conducted, during which the following should be analysed: the facts of the case, the violation of the law and the amount of the fine imposed. The party has the right to actively participate in any proceedings and may present circumstances

⁷⁵ | Dańczak 2021, 274.

in its favour during those proceedings, and not only in the context of an appeal against the decision on the penalty. However, there is a clear lack of provisions on legal aid in terms of the possibility of appointing a representative (solicitor or legal adviser) and free legal aid in administrative proceedings for the imposition of an administrative fine, similar to administrative court proceedings.

The Code of Administrative Procedure has created several procedural guarantees to prevent the arbitrary enforcement of provisions on sanctions for administrative offences. These include: 1) interim guidelines for the imposition of penalties, 2) exclusion of the possibility of imposing an administrative fine on the parties, 3) waiver of its imposition, and 4) relief from the enforcement of an administrative fine.

The first procedural guarantee, separate from the above-mentioned sentencing guidelines, is the additional sentencing guideline indicated in Art. 189c Kpa. This is a so-called transitional provision indicating that if, at the time of issuing a decision on an administrative financial penalty, a law other than that in force at the time of the infringement of the law for which the penalty is to be imposed is in force, the new law shall apply, but the previously applicable law shall be applied if it is more favourable to the party. The established rule refers to the principle of the non-retroactivity of the law, ensuring that a party cannot suffer damage due to a change in the law to its disadvantage.

As indicated by A. Krawczyk,⁷⁶ the introduction of this provision is a manifestation of the *lex mitior agit* principle, recognised as a European standard in the sphere of repressive proceedings, derived from Art. 7(1), second sentence, of the European Convention on Human Rights⁷⁷ and the recommendation of the Council of Europe Committee of Ministers R (91)1. In the author's opinion, this provision is an almost verbatim repetition of the regulation included in Polish criminal law and in cases concerning misdemeanours, with the only difference being that the interim issue arises at the 'time of issuing the decision'.

The second procedural guarantee is the exclusion of the possibility of imposing an administrative fine on a party. This occurs in two situations specified in Arts. 189g and 189e Kpa:

1. The statute of limitations – Art. 189g, para. 1 Kpa, which defines the situation referred to in substantive administrative law as the statute of limitations for imposing an administrative financial penalty. In accordance with the provisions of paragraph 1 of the aforementioned article, an administrative financial penalty cannot be imposed if five years have elapsed since the date of the violation of the law or the occurrence of the effects of the violation of the law. The five-year limitation period does not apply to cases where

⁷⁶ | Krawczyk 2019, 987.

⁷⁷ | Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), ETS No. 005 Rome 04/11/1950.

separate provisions provide for a time limit after which proceedings cannot be initiated to impose a penalty or to establish a violation of the law, as a result of which an administrative financial penalty may be imposed. Furthermore, Art. 189g, paragraph 1 Kpa provides for the statute of limitations on the enforceability of penalties, which means that enforcement cannot be initiated after 5 years from the date on which the administrative financial penalty imposed on the party should have been enforced.

2. The institution of exclusion of the possibility of punishment also applies in the event of *force majeure*. A party is not subject to punishment if the violation of the law occurred as a result of *vis maior* (Fr: *force majeure*), i.e. circumstances which the party could not have foreseen or overcome, such as a natural disaster. P. Majczak⁷⁸ points out that the concept of *force majeure* has no legal definition. In case law,⁷⁹ it is interpreted as a random or natural event that is impossible to avoid and over which humans have no control. Most often these are natural disasters, as well as extraordinary disruptions to social life, such as war, civil unrest, hurricanes and floods. In order to apply Art. 189e Kpa, there must be a causal link between *force majeure* and the violation of the law. As J. Wegner points out⁸⁰, this provision does not establish a counter-type, because it does not remove unlawfulness, but only punishability. Thus, a decision considering proceedings on this basis must establish the occurrence of an offence, which, however, is not punishable.

The third procedural guarantee is the possibility of waiving the imposition of a financial penalty provided for in Art. 189f Kpa. This is another institution modelled on solutions adopted in criminal law and including in the waiver of punishment. As J. Wegner points out,⁸¹ the waiver provided for in Art. 189f Kpa, is an institution allowing the authority to refrain from imposing a penalty, despite finding that an administrative offence has been committed and determining the entity responsible for it, if there are special circumstances specified in the Act that make the punishment unjustified, without prejudice to the objectives of administrative and legal regulation. A public administration authority, by way of a decision, waives the imposition of an administrative financial penalty and confines itself to issuing a warning if:

- 1) the gravity of the violation of the law is negligible, and the party has ceased to violate the law, or
- 2) for the same behaviour, an administrative fine has previously been imposed on the party by another competent public administration authority by a final decision, or the party has been finally punished for a misdemeanour

78 | Majczak 2020, 116.

79 | Supreme Administrative Court judgement of 4 April, 2019, II GSK 1018/17.

80 | Wegner 2021, 1025.

81 | Ibid., 1026.

or fiscal offence or has been validly convicted of a criminal offence or fiscal offence and the previous penalty fulfils the purposes for which the administrative fine would be imposed. The aim here is to prevent the accumulation of grounds for repressive liability in accordance with the *ne bis in idem* rule.

If this allows the objectives for which the administrative fine would be imposed to be achieved, the public administration authority may, by way of a decision, set a deadline for the party to submit evidence confirming: 1) the removal of the infringement of the law, or 2) the notification of the competent entities of the infringement of the law, specifying the deadline and manner of notification. The public administration body shall refrain from imposing an administrative fine and shall limit itself to issuing a warning if the party has presented evidence confirming the implementation of the decision.

The fourth procedural guarantee is the legal possibility of granting relief from the enforcement of an administrative fine. This situation is provided for in Art. 189k Kpa. A party obliged to pay an administrative fine may apply to the public administration body that imposed the fine for relief in the enforcement of the fine. Such relief is granted by way of an administrative decision and must be justified by an important public interest or an important interest of the party. The forms of relief that may be granted by the administrative authority are exhaustively regulated. According to the provision, relief in the enforcement of an administrative financial penalty may consist of: 1) postponing the date of enforcement of the penalty; 2) spreading it out in instalments; 3) postponing the date of enforcement of an outstanding administrative financial penalty or spreading it out in instalments; 4) remitting the administrative financial penalty in whole or in part; 5) remitting interest for late payment in whole or in part. Art. 189k, para. 2 Kpa provides that the cancellation of an outstanding administrative fine also results in the cancellation of interest for late payment in whole or in part, to the extent that the outstanding administrative fine has been cancelled. As J. Wegner points out,⁸² a decision on relief from the enforcement of an administrative financial penalty is a discretionary decision, so the authority may (but is not obliged to) grant relief if it concludes that this is in the significant public interest or in the vital interest of the parties.

4. Appeals and remedies in proceedings

Appeals against administrative penalties and decisions in Poland are made in accordance with the rules set out mainly in Kpa and in specific laws (e.g. the Environmental Protection Law or the Act on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and

82 | Wegner 2021, 1053.

Environmental Impact Assessment, which may provide for derogations from the rules laid down in the Code).

In all cases where an administrative decision imposing administrative fines is issued, the parties (as well as the prosecutor and public interest advocates) have the right to appeal to a higher authority than the one that issued the decision (Art.129 Kpa). If there is no such authority, the party has the right to a special remedy under Art. 127, paragraph 3 Kpa – a request for reconsideration of the case submitted to the same authority (the Minister for Climate or a central administrative authority, e.g. the Chief Inspector of Environmental Protection).

A social organisation admitted to participate in the proceedings as a party under Art. 31 Kpa may lodge an appeal (i.e. its participation in the first instance is *a sine qua non* condition). However, pursuant to Art. 44 u.u.i.ś., an environmental organisation has the right to appeal against a decision issued in proceedings requiring public participation if this is justified by the statutory objectives of that organisation, even if it did not participate in specific proceedings requiring public participation conducted by the first instance authority; lodging an appeal is tantamount to expressing a willingness to participate in such proceedings. In the appeal proceedings, the organisation participates as a party.

If the decision is upheld by the appeal body, the party has the right, under the provisions of the Law on Proceedings before Administrative Courts,⁸³ to lodge a complaint with the provincial administrative court and then a cassation complaint with the Supreme Administrative Court. Pursuant to Art. 44(3) u.u.i.ś. an environmental organisation may also lodge a complaint with an administrative court against a decision issued in proceedings requiring public participation if this is justified by the statutory objectives of that organisation, even if it did not participate in the specific proceedings requiring public participation.

Administrative courts play a significant role in controlling the activities of public administration by adjudicating complaints against decisions in the field of environmental protection, including decisions imposing administrative fines, taken by public administration bodies.

5. Enforcement of administrative decisions

5.1. Mechanisms ensuring compliance with administrative decisions

The mechanisms ensuring compliance with administrative decisions in Poland are aimed at enforcing their implementation. They are primarily set out in Kpa, the Act on Enforcement Proceedings in Administration and in specific acts (e.g. the Environmental Protection Law).

⁸³ | Act of 30 August, 2002 on proceedings before administrative courts, J.L. 2024, 935, as am.

Art.108 Kpa provides for an instrument of immediate enforcement of a decision, referred to as immediate enforceability, which is included as a clause in an administrative decision or a subsequent ruling. An authority may grant immediate enforceability to a decision if: it is required by public interest or the important interest of a party, or the decision concerns an obligation that must be performed immediately. The lodging of an appeal does not suspend the enforcement of the decision.

The Act on Enforcement Proceedings in Administration applies when the addressee of the decision does not comply with it voluntarily. In Poland, there are two types of enforcement: 1) enforcement of financial obligations (e.g. penalties, fees), including through seizure of bank accounts, remuneration, movable property, immovable property; 2) enforcement of non-financial obligations (e.g. demolition order, prohibition of activity). To this end, the enforcement authorities may use the following: a fine for coercion, which is a coercive measure applied when the addressee fails to fulfil the obligation imposed by the decision. It may be imposed repeatedly until the obligation is fulfilled. It is applied, for example, in cases of failure to remove waste, failure to cease activities, or failure to submit documents.

- | substitute performance – the authority itself will perform the obligation at the expense of the obligated party when the obligation can be performed by an entity other than the obligated party (e.g. demolition, waste removal), and subsequently the authority orders the task to be performed at the expense of the obligated party,
- | collection of items, in situations where the obligated party must surrender a specific item (e.g. animals, documents). The authority has the right to collect it by force, often with the help of the police or a bailiff.

The Environmental Protection Inspection and Sanitary Inspection authorities have the right to use coercive measures or notify the enforcement authority if, as a result of an inspection, they conclude that the decision is not being implemented.

5.2. Additional sanctions for non-compliance

The most common form of sanction for violating the standards set out in the decision is the imposition of administrative fines. For example:

- | the penalty for unauthorised emissions provided for in the Environmental Protection Law. Pursuant to Art. 276 P.o.ś., an increased fee applies for using the environment without obtaining the necessary permit or decision. In the event of use of the environment in excess of or in violation of the conditions specified in the permit or other decision, the entity using the environment shall, in addition to the fee, pay an administrative fine.

- | for failure to comply with an environmental decision pursuant to Art. 136a(1) (1) u.u.i.ś., a financial penalty of between 5,000 PLN and 1,000,000 PLN shall be imposed. This penalty is imposed by the decision of the provincial environmental protection inspector, taking into account the number and severity of the violations found.
- | in water law, the penalty for illegal water abstraction – Art. 472aa of the Water Law. The provision entered into force with the amendment to the Water Law Act⁸⁴ on 1 January, 2024 authorising the competent authority of the State Water Management Authority to impose administrative fines, *inter alia*, in the case of water use, operation of water facilities, works in waters or other activities requiring a water permit, without obtaining such a permit.

The amount of penalties is usually specified in the Act, occasionally as a range (tariff penalties) where their amount is calculated based on the degree of violation. A fixed rate is used less frequently. It should also be noted that the proceeds from administrative fines constitute revenue for the state budget (Art. 31c(4) u.i.o.ś, or Art. 136b(4) u.i.o.ś.), Polish Waters (Art. 255(1a) Water Law), the National Fund for Environmental Protection (Art. 401(7)(1a) P.o.ś.), and the budgets of counties and municipalities (Art. 277(4) and Art. 402(2), (4) and (5) P.o.ś.).

6. Assessment of the effectiveness of Polish legal regulations on administrative offences in environmental protection cases

As indicated by Z. Kmiecik,⁸⁵ the initiation of law-making work should be accompanied by a conviction of the advisability of legal intervention, resulting from a comprehensive assessment of the phenomena occurring. Often, an analysis of legislative measures taken shows that sometimes consideration of whether a given type of instrument is appropriate for achieving the objectives is overlooked. As indicated in the doctrine,⁸⁶ both in Poland and in many other EU countries, we observe a clear tendency of legislators to impose administrative penalties for violations of the law, which they consider to be administrative offences. However, legislators often do so without giving it much thought and regulate the issue in such a way that the penalties imposed serve public interests, without fully ensuring that they comply with international human rights principles.⁸⁷

84 | Art. 472aa supplemented by Art. 13(32) of Act of 13 July, 2023, J.L. 2023, 1963, amending this Act as of 1 January, 2024.

85 | Kmiecik 1994, 48.

86 | Staniszevska 2016, 68.

87 | It also analyses Polish solutions to the issue of responsibility and sanctions for illegally dumped waste: Uhri & Nemes 2024, 225–254.

Polish legal regulations, developed gradually over decades, are characterised by a kind of hypertrophy, an excessive increase in quantity and casuistry of provisions. These regulations are scattered and complex, with substantive environmental law solutions found in many legal acts, characterised by great diversity. Unfortunately, it is also often contextual, with individual provisions regulating specific situations defined in legal language, processes or areas, rather than the entire field, thus limiting its effectiveness. The legal solutions adopted are rather extensive, characterised by dynamic changes, and the legislative technique used makes them completely uncommunicative. As indicated, the Polish legislator establishes many, not necessarily specialised bodies authorised to impose sanctions, while having a focused environmental protection inspection within the apparatus of authorities. As a result, penalties are not applied consistently and vary greatly. Furthermore, some of the procedural provisions in the field of environmental protection – and it is also significant that only some of them – refer to the application of tax liability provisions in the enforcement of administrative fines, because only the Tax Ordinance contains such provisions. However, these provisions were not correlated with Chapter IVa Kpa introduced in 2017, which established guidelines for the imposition of penalties for administrative violations, leaving room for interpretation by administrative courts.⁸⁸

7. Summary and challenges in the field of administrative procedural law

In Poland, the greatest achievement of the last decade has been the introduction of general provisions on administrative penalties into Kpa. Despite many proposals from legal scholars,⁸⁹ it was not until 2017 that general provisions were developed in administrative law that would address the issue of administrative offences and the rules for imposing penalties. As pointed out by M. Niezgódka-Medek and M. Szubiakowski,⁹⁰ this state of administrative law raised doubts from the point of view of the principle of social justice and other principles applicable in a democratic state governed by the rule of law, including the principle of proportionality. This was repeatedly pointed out in the case law of the Constitutional Tribunal referred to in this study, which relates to administrative sanctions. In its case law, the Polish Tribunal treats administrative sanctions as other forms of repressive liability and emphasises the need to maintain a similar standard when determining them as in the case of criminal liability. For this reason, the newly introduced Chapter IVa sets out general principles relating to both substantive and procedural issues, thus

88 | For interpretations of human rights and European court rulings affecting Polish law, see: Ujhe-lyi-Gyurán, Lele & Pártay-Czap 2024, 203–224.

89 | Wyrzykowski & Ziółkowski 2012, 361 and the literature indicated therein.

90 | Niezgódka-Medek & Szubiakowski 2016, 236–237.

supplementing the provisions contained in specific environmental protection laws. The introduced provisions are also intended to counteract arbitrariness by limiting possible decision-making leeway with the premises of legitimate interest of the party or public interest.

Challenges in the field of administrative procedural law are currently the subject of intense debate, particularly in the context of the digitisation of administration, the protection of individual rights and the efficiency of proceedings. Despite intensive research into a new model of misdemeanour law,⁹¹ there are no plans to combine liability for traditional misdemeanours with liability for administrative offences.

91 | Wróbel et al. 2024, *passim*.

Reference list

1. Adamiak B & Borkowski J (2021) *Postępowanie administracyjne i sądowo administracyjne*, Wolters Kluwer, Warszawa.
2. Błachnio-Parzych A (2011) Sankcja administracyjna a sankcja karna w orzecznictwie Trybunału Konstytucyjnego oraz Europejskiego Trybunału Praw Człowieka, in: Stahl M, Lewicka R & Lewicki M (eds.) *Sankcje administracyjne*, Wolters Kluwer business, Warszawa.
3. Bogusz M (2021) Delikt administracyjny i kara administracyjna z perspektywy konstytucyjnej, in: Bogusz M & Zalewski W (eds.) *Administracja prawa karnego czy kryminalizacja prawa administracyjnego*, Gdańsk.
4. Bojar-Fijałkowski T (2019) *Prawo sanitarne w systemie prawnej ochrony środowiska w Polsce*, Wydawnictwo Uniwersytetu Kazimierza Wielkiego, Bydgoszcz.
5. Bukowski Z, Czech E, Karpus K & Rakoczy B (2013) *Prawo ochrony środowiska: Komentarz*, LexisNexis, Warsaw.
6. Chróścielewski P, Tarno J P & Dańczak P (2021) *Postępowanie administracyjne i postępowanie przed sądami administracyjnymi*, Wolters Kluwer, Warszawa.
7. Czichy K (2017) O niestosowaniu gwarancji karnych do administracyjnych kar pieniężnych, *Prokuratura i Prawo* 2017/12, pp. 93–105.
8. Dańczak P (2021) Administracyjne kary pieniężne, in: Chróścielewski P, Tarno J P, Dańczak P, *Postępowanie administracyjne i postępowanie przed sądami administracyjnymi*, Wolters Kluwer, Warszawa.
9. Dawidowicz W (1983) *Postępowanie administracyjne*, Zarys wykładu, Warszawa.
10. Filipek J (1963) Sankcja prawna w prawie administracyjnym, *Państwo i Prawo* 12/1963.
11. Filipek J (1971) Założenia strukturalne procesu administracyjnego, in: Bar L (ed.) *Studia z dziedziny prawa administracyjnego*, Wrocław.
12. Filipek J (1974) *Rola prawa w działalności administracji państwowej*, Warszawa.
13. Górski M (1992) *Ochronę środowiska jako zadanie administracji publicznej*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź.
14. Górski M (2008) *Odpowiedzialność administracyjna w ochronie środowiska*, Oficyna, Warszawa.
15. Górski M et al. (2011) *Prawo ochrony środowiska: Komentarz*, Wydawnictwo Beck.
16. Górski M (2021) *Prawo ochrony środowiska*, Wolters Kluwer, Warszawa.

17. Haładyj A (2013) Udział społeczeństwa w ochronie środowiska w prawie publicznym międzynarodowym jako gwarancja procesowa prawa do środowiska, *Międzynarodowe prawo ochrony środowiska XXI wieku*, pp. 45–55.
18. Janowicz Z (1987) Postępowanie administracyjne, *Postępowanie przed sądem administracyjnym*, Warszawa Poznań.
19. Kasznica S (1947) Polskie prawo administracyjne, *Pojęcia i instytucje zasadnicze*, Poznań.
20. Kmiecik Z (1994) *Skuteczność regulacji administracyjnoprawnej*, Łódź.
21. Kmiecik Z (1997) Charakter prawny orzeczeń w sprawach o naruszenie dyscypliny budżetowej a koncepcja sankcji administracyjnej, *Glosa* 11/1997.
22. Kmiecik Z R (2019) *Postępowanie administracyjne, postępowanie egzekucyjne w administracji i postępowanie sądowoadministracyjne*, Wolters Kluwer, Warszawa.
23. Krawczyk A (2019) Administracyjne kary pieniężne, in: Kmiecik Z & Chróścielewski W (eds.), *Kodeks postępowania administracyjnego – Komentarz*, Wolters Kluwer Warszawa.
24. Kruk E (2013) *Sankcja administracyjna*, Wydawnictwo UMCS, Lublin.
25. Lang W (1968) Struktura odpowiedzialności prawnej, *Zeszyty Naukowe UMK* 31/1968, Prawo VIII, Toruń.
26. Longman Dictionary of Contemporary English 1987.
27. Majczak P (2020) Refleksje na temat kodeksowej regulacji kar administracyjnych, *Ius Novum* 14(1), pp. 112–131, DOI: <https://doi.org/10.26399/iusnovum.v14.1.2020.07/p.majczak>.
28. Marek A (1967) Istota i zasady odpowiedzialności za wykroczenia na tle ustawy o przekazaniu niektórych drobnych przestępstw do orzekania karno-administracyjnego, *Palestra* 11/5(113), pp. 81–90.
29. Niezgódka-Medek M & Szubiakowski M (2017) Przepisy dotyczące kar administracyjnych art. 260g–260n, in: Kmiecik Z (eds.) *Raport zespołu eksperckiego z prac w latach 2012-2016: Reforma prawa o postępowaniu administracyjnym*, Naczelny Sąd Administracyjny, Warszawa.
30. Niżnik-Dobosz I (2011) Cele i funkcje sankcji administracyjnej, in: Stahl M, Lewicka R & Lewicki M (eds.) *Sankcje administracyjne*, Wolters Kluwer business, Warszawa.
31. Radecki G (2020) Stosowanie przepisów o administracyjnych karach pieniężnych do opłat podwyższonej i dodatkowej uregulowanych Prawem geologicznym i górniczym, *Roczniki Administracji i Prawa* 20(3), pp. 167–180, DOI: <https://doi.org/10.5604/01.3001.0014.4241>.

32. Radecki W (2020) *Prawna ochrona środowiska w Polsce, Czechosłowacji, Czechach i Słowacji: Studium prawnoporównawcze*, Prokuratura Krajowa, Warszawa.
33. Radecki W (2024) Rozwiązania penalne w polskich, czeskich i słowackich przepisach o dostępie do informacji o środowisku, *Prawne Problemy Górnictwa i Ochrony Środowiska* 1/2024, pp. 1–21, DOI: 10.31261/PPGOS.2024.01.04.
34. Ruczkowski P (2019) Wypieranie prawa karnego przez prawo administracyjne a standardy współczesnej administracji i prawa administracyjnego, in: Daniewska Z, Stahl M & Rabiega-Przyłęcka A (eds.) *Standardy współczesnej administracji i prawa administracyjnego*, Wolters Kluwer, Wydawnictwo Uniwersytetu Łódzkiego.
35. Staniszevska L (2016) Models of liability for the administrative tort sanctioned with financial penalties on the example of selected European countries, *Studia Prawa Publicznego* 13/2016, pp. 67–84, DOI: 10.14746/stpp.2016.1.13.3.
36. Tarno J P (2018) Funkcje zasad ogólnych postępowania administracyjnego, in: Tarno J P & Piątek W (eds.) *Zasady ogólne postępowania administracyjnego*, Wolters Kluwer, Warszawa.
37. Uhri L & Nemes O (2024) Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia), *JAEL* 19(36), pp. 225–253, DOI: <https://doi.org/10.21029/JAEL.2024.36.225>.
38. Ujhelyi-Gyurán I, Lele Z & Pártay-Czap S (2024) Locus standi in administrative proceedings concerning environment protection, in the case law of the CJEU and the ECtHR, *JAEL* 19(36), pp. 203–224, DOI: <https://doi.org/10.21029/JAEL.2024.36.203>.
39. Kmieciak Z & Wegner J & Wojtuń M (2023) *Kodeks postępowania administracyjnego. Komentarz*, Wolters Kluwer, Warszawa.
40. Wróbel W, Małecki M, Pyrcak-Górowska M & Zając D (eds.) (2024) *Nowy model prawa wykroczeń: Teoria, praktyka, przyszłość*, Kraków.
41. Wincenciak M (2008) *Sankcje w prawie administracyjnym i procedura ich wymierzania*, Warszawa.
42. Wyrzykowski M & Ziółkowski M (2012) Konstytucyjne podstawy funkcjonowania administracji publicznej, in: Hauzer R & Niewiadomski Z & Wróbel A (eds.) *System prawa administracyjnego*, C.H. Beck, Warszawa.

Certain Issues of Environmental Administration – With Particular Regard to Liability and the Application of Sanctions in Hungary¹

Abstract

It has already been proven in the specialised literature that the legal basis of the environmental protection is the right to a healthy environment² under Article XX(1) of the Hungarian Fundamental Law,³ which is supplemented by the state obligation under Article P(1)⁴ as the institutional 'side' of the identified fundamental right. The research on which this study is based can be linked to this institutional, state 'side', as it seeks to explore the nature of the rules of administrative procedure applicable to those involved in environmental administration and to analyse their possible consequences, i.e. the potential sanctions. Given that, as we will see later, administrative bodies perform, among other things, official activities in environmental administration, in addition to the above mentioned provisions of the Fundamental Law, reference must be made to the right to fair administrative proceedings, which constitutes the fundamental legal framework for administrative and judicial proceedings [Art. XXIV(1) of the Fundamental

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1 | The research and preparation of this study was supported by the Central European Academy.

2 | See: Paulovics & Jámbor 2022, 17.

3 | "Everyone shall have the right to physical and mental health."

4 | "Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."



Law],⁵ and the right to a fair trial [Art. XXVIII(1) of the Fundamental Law].⁶ Since the aim of the research in this case is not only to demonstrate the enforcement of the right to a healthy environment at the legislative level, but also the enforcement of the rights of potential clients in administrative proceedings and other proceedings resulting in the imposition of sanctions. It must be emphasised here that it will be impossible to avoid demonstrating the (possible) conflict between these fundamental rights at a later stage.

Keywords: Sanctions, environmental procedure, misdemeanour procedure, environmental liability, right to fair procedure

1. Introduction

1.1. The concept of administrative procedure

In defining the concept of administrative authority proceedings, the legal literature is unified in that administrative proceedings are generally related to the issuance of administrative acts (acts). Among the numerous acts generally performed by administrative bodies, the official acts have the greatest significance, as these have an effect outside the administrative body and bring changes in the rights and obligations of the parties concerned.⁷ The concept of official proceedings can be summarised as follows: this is a legally regulated system of actions carried out in the affairs of legal entities outside the administrative body, which in the course of handling individual cases within the framework of official law enforcement, results in the issuance or enforcement of individual acts that have direct legal effect, changing the legal situation of the legal entity concerned, deciding on legal disputes, or responding to violations of the law.⁸ On this basis, it can be concluded that administrative procedures can basically be divided into three categories, or in other words, they can lead to three types of outcomes: firstly, the establishment of a right or obligation; secondly, the resolution of a legal dispute; and thirdly, the determination of liability and at the same time, the imposition of a sanction or fine, or the determination of liability for an administrative offense.

The general rules of administrative proceedings in Hungary, in accordance with the above, are laid down in Act CL of 2016 on General Public Administration Procedures (hereinafter: Ákr.). The Ákr. first stipulates in its Principles (Section

5 | “Everyone shall have the right to have his or her affairs handled impartially, fairly and within a reasonable time by the authorities. Authorities shall be obliged to state the reasons for their decisions, as provided for by an Act.”

6 | “Everyone shall have the right to have any indictment brought against him or her, or his or her rights and obligations in any court action, adjudicated within a reasonable time in a fair and public trial by an independent and impartial court established by an Act.”

7 | For details, see: Kalas 2006, 29. Furthermore: Lapsánszky, Patyi & Varga 2024, 327–346; Szalai & Rozsnyai 2024, 159–161.

8 | *Ibid.*, 338.

1) that “in administrative authority proceedings within the meaning of the Administrative Procedure Act – in accordance with Arts. XXIV and XXVIII of the Fundamental Law⁹ – all participants in the procedure shall act in accordance with the rules applicable to them and, at all stages of the procedure, shall ensure that the principles and fundamental rules laid down in this chapter are applied,” in other words, the Ákr. defines itself as the legal embodiment of the right to fair administration and judicial proceedings. When defining the scope of application (Section 7), the Ákr. defines the concept of an administrative matter as follows: “a case is one in which, in the course of its handling, the authority establishes the rights or obligations of the client, decides on a legal dispute, establishes a violation of the law, certifies facts, circumstances or data (hereinafter referred to as ‘data’) or keeps records, or enforces its decision concerning these.” The general nature of the Ákr. can be inferred from Section 7(1), which states that “shall apply the provisions of this Act in administrative proceedings falling within the scope of this Act (hereinafter referred to as cases) and in the course of official inspections.”

However, it should be noted here that while the legal literature defines the misdemeanour cases ending with the imposition of sanctions as a general type of administrative activity, the Ákr. itself excludes the handling of infraction cases from its scope of application in Section 8(1)(a). The provisions of Act II of 2012 on administrative offences (misdemeanour), administrative offence proceedings and the administrative offence registration system (hereinafter: Szabs. tv.) shall apply, supplemented by the provisions issued for its enforcement on administrative offences, the provisions of Decree 22/2012 (IV. 13.) BM on the implementation of Act II of 2012 on administrative offences, administrative proceedings and the administrative offence registration system, and on the amendment of certain related decrees (hereinafter: BM Decree).

In the general introduction, after presenting the main provisions on the settlement of official matters, mention should also be made of the system of sanctions under administrative law. According to the legal literature, administrative sanctions are based on three pillars:¹⁰ on one hand, they can be identified in the law on administrative offenses, on the other hand, they are based on the system of substantive fines, and thirdly, they are based on other administrative disadvantages (e.g. revocation of a license).

In line with this, in addition to the general procedural rules of the Ákr., the legislator has laid down uniform, transparent and consistent rules on the adverse legal consequences that may be imposed by administrative authorities in the event of infringements of the law established in administrative proceedings in Act CXXV of 2017 on sanctions for administrative infringements (hereinafter: Sanctions

9 | See: Paulovics 2022, 85–88.

10 | See: Nagy 2000, 182.

Act), transparent and consistent rules for the adverse legal consequences that may be imposed by administrative authorities in the event of violations of the law established during administrative authority proceedings in Act CXXV of 2017 on sanctions for administrative violations (hereinafter: Sanctions Act). For the implementation of this, the Government has issued Government Decree 714/2020. (XII. 30.) on the implementation of the Act on sanctions for administrative violations (hereinafter: Sanctions Decree).

1.2. The role of administrative procedure in environmental administration

In accordance with Article P) of the Fundamental Law, the Hungarian code on environmental protection, is the Act LIII of 1995 on the general rules of environmental protection (hereinafter: Kvt.). The Kvt. mentions in Section 1(2), which regulates the objectives of the Act, the definition of two state tasks that are relevant to our topic. Namely, in point (h), it mentions the establishment and development of the institutional system of environmental protection, and in point (i), the establishment and development of public administration for the protection and preservation of the environment. The concept of environmental administration is defined by a list in Section 64(1) of the Kvt. which includes, first and foremost, the performance of environmental protection authority activities (in particular the licensing of environmental use and the enforcement of administrative legal responsibility for the environment), data management and information tasks related to the operation of the Information System; the establishment of a system for the classification of materials, products and technologies from an environmental point of view, the authorisation of their marketing and use; and, in the cases specified in the decree issued for the implementation of this Act, the notification of these activities; the organisation of tasks aimed at preventing environmental damage; enforcing the requirements for the application of the most effective solutions and the best available technology; and developing and monitoring the implementation of measures and programs for the protection, improvement, and restoration of the environment.

It should be noted, separately from the administrative authority procedure, that Section 64(2) of the Kvt., as an administrative service, provides for the possibility of initiating professional consultation with the environmental protection authority. This may be concluded with an opinion issued by the authority, however this cannot replace the formal administrative procedure and the substantive decision (resolution) issued as a result thereof. This professional consultation is the reflection of the regulation of the Ákr., in connection with the client's right to information. This needs to be mentioned to make it clear that any so-called 'consultation' with the authority is also possible during the official procedure. There are several references to this in the Ákr.: already in the basic principles, Section 5(2) emphasises that "the authority shall ensure that the client and other participants

in the procedure are aware of their rights and obligations and shall promote the exercising of the client's rights. In addition, the notification sent by the authority regarding the initiation of the procedure *ex officio*, must contain information on the rights and obligations of the client [Section 104(4)]. If the authority calls on the client to make a statement, it shall also inform them of their rights and obligations in this regard [Section 64(3)]. In the case of a full procedure, the authority shall inform the client about the consequences of the administrative deadline and shall also refer to the possibilities of appeal in the substantive decision.

2. Environmental administrative procedure

2.1. Administrative responsibility in environmental protection

The Kvt. refers to the issue of liability in general terms in Section 9, stating that “the user of the environment shall be liable for the effects of his activities on the environment in the manner specified in this Act and in other legislation.” In addition, it devotes a separate chapter to the issue of liability in Chapter IX. Section 101(1) of the Kvt., defining three forms of liability: criminal, civil and administrative. According to Section 101(2) of the Kvt., negative impact on the environment, which also constitutes the conduct giving rise to liability, may take the form of endangerment or damage. It is important to note that, according to Section 102(2) of the Kvt., liability for environmental damage or environmental hazard lies with the owner or possessor (user) of the property at the time of the environmental damage or environmental hazard occurred. This presumption may be rebutted in one case, namely if the owner names the actual user of the property and proves beyond doubt that he is not liable. In administrative law, it is sufficient to establish environmental damage if the consequences of the conduct are measurable and result in a significant adverse change in the environment.¹¹

The European Parliament and Council Directive 2004/35/EC of 21st April 2004 (hereinafter: the Directive), which provides for environmental liability with regard to the prevention and remedying of environmental damage, had a decisive influence on the establishment of the rules of administrative liability in Hungary.

Both the Directive and the Kvt. take the principle of prevention into account when establishing regulations.¹² Accordingly, the user of the environment is obliged to take measures to prevent environmental damage as specified in the legislation and to take remedial measures in the event of environmental

11 | Fodor 2020, 42–66.

12 | This article is focusing on the administrative procedural background of environmental protection, on the role of constitutional environmental principles according to the Hungarian Constitutional Court's practice, see: Olajos & Mercz 2022, 79–97; Szilágyi 2021, 130–144; Bándi 2020, 7–22, Hojnyák 2021, 39–54.

damage. In this context, the user of the environment bears also the burden of the compensatory restoration obligation. The authority may require the user of the environment to provide information on cases of direct danger of environmental damage or suspected direct danger, or on damage caused in the event of environmental damage.

The obligation of the environmental protection authority extends, on the one hand, taking the necessary measures to prevent environmental damage and to restore the environment, and on the other hand, taking the necessary measures to prevent environmental damage or to restore the environment itself or have them carried out by others.

The environmental user is exempt from administrative liability in two cases: if the user proves that the environmental hazard or damage was caused by armed conflict, war, civil war, armed uprising or natural disaster; or the damage is the direct consequence of the implementation of a binding official decision or a final court decision.

In case of definitively established environmental damage, the environmental protection authority shall, on an ancillary basis, impose a prohibition on alienation and encumbrance in its decision ordering the restoration measure on the real estate of the person obliged to take the restoration measure, which provide sufficient coverage for the estimated costs of the restoration measures. It shall request the real estate authority to register this.

Regarding administrative liability, it can be concluded that the basis of liability is regulated by administrative law, that liability arises from the failure to comply with or breach of administrative authority's decisions, and that liability is objective, and the legislator regulates only a few exceptions.¹³

2.2. Environmental authority procedure

Since the Kvt. does not expressly exclude it, it can be concluded that the general rules regulating administrative procedures for the protection of the environment are rooted in the Ákr. It should be noted that in line with Section 10(1) of the Ákr., Section 98(1) of the Kvt. also recognises the capacity of organisations established for environmental protection purposes to be clients in their own field of activity.

Administrative procedures may be initiated either upon request or *ex officio*. It is important to note that procedures initiated by the authorities are often preceded by an official inspection (control), which is specifically intended to verify compliance with the provisions of the law and official decisions. Any violation may result in the imposition of a fine or an obligation.

13 | See: Bándi & Szamek 2020, 704.

The possibility of involving the public prosecutor in official proceedings deserves special mention. Section 122 of the Ákr. establishes the possibility of a public prosecutor's request and intervention as a form of an *ex officio* legal remedy. In these cases, the authority may, without restriction, change or annul the decision objected to by the public prosecutor, even if the regulations of administrative proceedings otherwise restricts or prohibits this. According to this, the public prosecutor's office is involved in ensuring the legality of the procedures and decisions of the environmental authorities.

According to Section 109 of the Kvt., the main task of the public prosecutor's office is to identify violations of environmental elements prohibited by the Criminal Code. At the same time, in the event of environmental hazards, the public prosecutor is also entitled to bring an action for the prohibition of the activity or for compensation for damage caused by the environmentally hazardous activity.

2.3. System of administrative authorities in environmental protection

General Administrative Authorities: ✓ Ministry of the Interior ✓ County Government Office ✓ Special Administrative Agencies ✓ District Headquarters Town Offices Environmental Protection Authority Department	Specialized administrative authorities: ✓ Ministry of Agriculture ✓ National Environmental and Nature Protection Inspectorate +10 territorial units ✓ National Institute for Environmental Affairs +10 territorial units

Decision 4/2019 (III. 7.) AB of the Hungarian Constitutional Court, in connection with the restructuring of administrative environmental offices

Fifty-two Members of Parliament turned to the Constitutional Court with a petition. They hold that by reforming the regional organisational structure of public administration, the lawmakers had liquidated the guarantees connected to licensing the use of the environment. The petition challenged the rules that introduced into the law on the examination of the professional issue as an alternative to contribution by the specialised authority, integrating the green authorities into the government offices. The Constitutional Court pointed out: the State must not reduce the degree of protection of the environment and of nature as guaranteed under the law, unless it is necessary for the purpose of the enforcement of another fundamental right or constitutional value. Even in the latter case, the degree of protection must not be reduced disproportionately to the desired objective.

The prohibition of step-back applies to the regulation of the system of environmental protection and nature conservation authorities in terms of both substantive law, procedural law and their organisational structure. The Constitutional Court has compared the characteristics of the organisational structure of the specialised authorities with those of the integrated structure. The Court also examined the increase in the risk of adopting official decisions that injure values of nature or elements of the environment.

The Constitutional Court established: the mere fact of integrating the green authorities into government offices does not qualify as a step-back from the level of environmental protection achieved, provided that the persons who exercise the official competence, the government commissioner or the head of the district office do not put, in the course of the decision-making, the aspects of environmental protection subordinated to other sectoral interests. The exercising of the decision-making competencies related to environmental protection and nature conservation shall only be compatible with the provisions of the Fundamental Law – becoming subject to control by the administrative court – if the decision and its reasons are clearly presented in the decision of the authority. The Constitutional Court therefore underlined: the official decision affecting any element of the environment or a value of nature should clearly present the answer to the specific question together with its reasoning. This however, is not required under the present legal regulation. As a result, the Constitutional Court established that an omission had taken place and it called upon the Parliament to meet its legislative duty by June 30th, 2019.

2.4. Environmental misdemeanour procedure

According to Section 1(1) of the Szabs. tv., a misdemeanour may be either an act or an omission if it is dangerous to society and punishable under the Szabs. tv. It is important to emphasise that, according to Section 4(4) of the Szabs. tv., no misdemeanour can be established if the act or omission constitutes a criminal offense, or if the act or omission is punishable by a fine imposed in an administrative procedure under a law or municipal regulation.

The principle of officiality is fundamental in misdemeanour proceedings. It means that the authority and the court are required to initiate the proceedings *ex officio*, but pursuant to Section 78 of the Szabs. tv., proceedings may also be initiated on the basis of a complaint.

The legal institution of case transfer may be applied in both administrative and misdemeanour proceedings. If the administrative authority finds that it does not have the power and/or jurisdiction to deal with the case, it is obliged to refer the case to a competent body to decide on it.

The Szabs. tv. identifies as the general administrative authority in misdemeanour proceedings concerning the police, and the National Tax and Customs Administration. In cases of administrative offenses punishable by imprisonment, the district courts have competency in misdemeanour cases. In addition to the above, the National Park Directorates also have jurisdiction in cases of environmental misdemeanour.

3. Rights of clients in administrative proceedings concluded in imposing sanctions

Administrative sanctions may be imposed on natural persons, legal persons or organisations without legal personality if the authority has established their responsibility for a misdemeanour. In order to enforce customer rights and proportionality, the Szankció tv. allows for the imposition of the following sanctions: warnings, administrative fines, prohibition from performing activities, and confiscations. The Szankció tv. allows in justified cases, and in specialised administrative fields, an act or governmental decree establish other sanctions.

It should be emphasised that, based on the provisions of the Kvt. already described, objective liability is the main characteristic of this area, since, for example, the owner and user of the given area are jointly liable for environmental damage until the user's liability is proven.

The requirement of proportionality is met by indicating the severity of the administrative sanctions that may be imposed.

The statute of limitations was also included in the Szankció tv. in order to protect the rights of clients. The passage of time is relevant to the imposition of sanctions. It must be pointed out here that according to the judicial practice, an anomaly can be identified in Part 6. of this article. According to the authors of this article, a special interpretation and regulation of the statute of limitations would be legitimate in environmental administration, since this objective circumstance (time lapse) cannot override the fact of environmental pollution that has occurred in a given case.

The application of administrative sanctions is impossible after six months have elapsed since the authority had become aware of the illegal behaviour. This limitation period is interrupted by any procedural act of the authority. Upon interruption of the limitation period, the limitation period starts again. Administrative sanctions cannot be imposed if a period of three years has elapsed since the commission of the offense.

It is important to note that the three-year limitation period includes repeated proceedings in the same case. It means: in case during administrative proceedings, the court sets aside the decision and orders the authority to conduct new proceedings, or even if the Supreme Court does so during the review proceedings, it is quite possible that the final decision or court decision will be taken after the three-year limitation period has expired, and the sanction will therefore be imposed after the legal deadline.

The principle of *ne bis in idem*, based on Art. XXVII(6) of the Fundamental Law,¹⁴ is enforced through the provision of the Szankció tv., which states that if the court has convicted a natural person who has committed an unlawful act on the basis of the same facts in a final decision and imposed a penalty on him or her, or if it acquits the defendant on the grounds that the criminal offense was not committed by the defendant, no fines or disqualifications may be imposed as administrative sanctions. If the authority imposing the administrative sanction becomes aware that criminal proceedings are pending for the unlawful conduct on which its proceedings are based and that the imposition of the administrative sanction depends on the outcome of the criminal proceedings, it shall suspend its proceedings until the criminal proceedings have been concluded.¹⁵

According to the practice of the Constitutional Court, the *ne bis in idem* principle is a fundamental principle that applies not only in criminal proceedings but also throughout the legal system as a whole and derives from the principle of legal certainty. The *ne bis in idem* principle is, on the one hand, a fundamental right against the abusive exercise of state criminal power and, on the other hand, a rule serving the enforcement of legal certainty, as it guarantees the finality of substantive court decisions {33/2013. (XI. 22.) AB decision, Reasoning [19]}.

The Constitutional Court emphasised that Art. XXVIII(6) of the Fundamental Law does not in itself prohibit the conduct of multiple proceedings of different functions belonging to different branches of law against a person for the same unlawful act and the application of legal consequences as a result thereof {8/2017. (IV. 18.) AB decision, Reasoning [35]}. However, it does prohibit proceedings aimed at imposing multiple criminal sanctions on a person for the same unlawful act, either consecutively or in parallel, which result in the application of multiple criminal consequences {18/2022. (VIII. 1.) AB decision, Reasoning [66], 13/2024. (V. 30.) AB decision, Reasoning [57] – [58]}.[Section 104(4)].

4. System of legal remedies

4.1. Legal remedies against administrative sanctions

The legislator guarantees the right to legal remedies for clients in the manner specified below in Art. XXVIII(7) of the Fundamental Law.¹⁶ The review of a decision

14 | “With the exception of extraordinary cases of legal remedy laid down in an Act, no one shall be prosecuted or convicted for a criminal offence for which he or she has already been finally acquitted or convicted in Hungary or, within the scope specified in an international treaty and a legal act of the European Union, in another State, as provided for by an Act.”

15 | See also: Uhri & Nemes 2024, 225–253.

16 | “Everyone shall have the right to seek legal remedy against any court, authority or other administrative decision which violates his or her rights or legitimate interests.”

within the administrative system is only available in a limited number of cases. An appeal may be filed if the decision was taken by local governments' organisations or local law enforcement agencies, except for the local representative bodies.

The general remedy against an administrative authority decision is a judicial review according to the Ákr. The client is entitled to initiate judicial procedure, by claiming that the final decision is unlawful. If an appeal was admissible in the given case as described above, judicial review is possible after the appeal has been finished. Another important guarantee, according to the Ákr., is that the public prosecutor may also initiate judicial procedure if, despite calling on the administrative authority to eliminate the unlawful practice, the authority had failed to do so. The basic rules of administrative judicial review are laid down in Act I of 2017 on the Code of Administrative Litigation.

4.2. Legal remedies in misdemeanor proceedings

The person subject to the proceedings and his or her representative, and in the case of an order for compensation for the damage caused, the victim, may lodge an objection to the decision on the merits only against this provision with the authority which issued the decision on its merits, within eight days of the notification of the decision. If the sum of the fine is set by a specific legal provision, no objection may be lodged on the basis of the sum of the fine. The person subject to the proceedings and his or her representative may lodge a new objection against the decision of the infringement authority which has been changed on the basis of an objection within eight days of the notification. In a repeated objection, only the establishments of the decision affected by the amendment may be challenged.

5. Enforcement of administrative decisions

If the obligated person fails to comply with the obligation imposed by the final decision of the authority, it shall be enforceable. In this case, enforcement shall be ordered by the authority that issued the decision or, in the case of a second-instance decision, by the first-instance authority, either *ex officio* or at the request of the entitled person. Enforcement ordered in this manner shall be carried out by the state tax authority, the National Tax and Customs Administration.

In addition to ordering enforcement, if the obligated person fails to fulfil its payment obligation by the deadline, it shall pay the entitled a late payment penalty equal to the statutory interest rate for the period of the advance payment made by the state.

The right of enforcement expires three years after the last day of the performance deadline. A shorter limitation period may be set by act or government decree.

6. Challenges

From our point of view, the efficiency of administrative procedures in relation with this topic can be examined on two levels: on the one hand, at the level of the regulation of administrative procedures in general; on the other hand, at the level of the regulations applicable to environmental protection administration.

6.1. Challenges in connection with general administrative procedure – the role of digitalism

In the case of general administrative procedures, it must be mentioned that the legislator created Act CIII of 2023 on the digital state and certain rules for the provision of digital services (hereinafter: Dáp tv.) with the aim of facilitating electronic communication with clients.

The constitutional basis of the Dáp tv. is Art. XXVI of the Fundamental Law, which was incorporated into the constitutional provisions in December 2023 during the twelfth amendment to the Fundamental Law.¹⁷ “The two paragraphs of Art. XXVI form an organic whole. Thus, the pursuit of new technical solutions as a state objective is contained in paragraph (1), whereas paragraph (2) already links a different type of regulation, which not only sets out abstract state objectives, but also specific rules relating to digital administration by defining the principle of the general primacy of digital administration.”¹⁸

In the Dáp tv., the legislator has set out as a clear objective the provision of convenient and efficient services and the facilitation of administration, which will also make it easier for citizens to access official registry. It is important to emphasise that, according to the personal scope of the Dáp tv. (Section 2), this option is available to both natural persons and business entities, as well as other legal entities.

6.2. Challenges in connection with fines (as sanctions)

Another question is whether state assistance is available in cases where a client (e.g. as an investor or resident of a municipality) wishes to know in an administrative official procedure, what emissions a business involved in a case has on the environment or what environmental emissions can be expected in the

17 | “Art. XXVI: (1) The State shall strive to use the latest technical solutions and the achievements of science to make its operation efficient, raise the standard of public services, improve the transparency of public affairs and promote equality of opportunity.

(2) To further the objectives set out in paragraph (1), priority shall be given to the digital administration of affairs in Hungary; to this end, the State shall secure for everyone a unique digital identifier as provided for in an Act. The State shall process the data necessary for the digital administration of affairs in a manner and within the scope determined in a decree of the Government.”

18 | Árva 2025.

immediate vicinity of a given location. What industrial plants are located in the vicinity of a geographical area, what activities do they carry out, and what emissions affect the environment as a result? The National Environmental Information System (hereinafter: OKIR) provides assistance in answering the aforementioned questions.

The OKIR database covers data stored by authorities in connection with environmental pollution and the state of the environment, including authorities responsible for environmental protection, nature conservation, waste management, and water protection. Some of the available data comes from the regional state administration bodies' own measurements, while other data comes from data provided by environmental users in accordance with legal requirements. The data is entered into a central computer database in such a way that the bodies performing the measurements and processing the data reports upload the data directly to the central database via the IT system operated by the Ministry of Energy.

By clicking on a specific geographical area in the environmental data browser, customers can find out, for example, about waste generation and waste management data, air pollutant emissions, or the quality of groundwater and activities affecting it, and can view the environmental authority decisions relating to the area concerned.

The data browser can also be used to display the searched geographical area on a map, and after selecting an area, the data recorded in the system can be queried in tabular form. The data that can be queried includes the basic data of the geographical area and the associated customers, as well as, among other things, air pollutant emissions, the quantities of waste generated, transferred, received or treated, and the related environmental authority decisions.

By searching based on the site and company data, you can find out the Environmental Customer Number associated with the customer name and tax number, and the Environmental Area Number associated with the area.

You can search either by customer name or by geographical location. Searching by customer name, you can select all objects registered to the customer in the register. When searching by location, you must enter a postal address, after which the objects in the vicinity of the address will be displayed. By clicking on an object on the map, you can view a table containing the object's data.

Based on the above, it can be concluded that citizens can easily access data concerning all areas and affecting the environment, even independently of any ongoing administrative (official) proceedings.

On the other hand, the effectiveness of environmental administrative procedures may be promoted by the sanctions applied in these procedures, especially the amount of fines. Certain areas covered by environmental protection, such as air protection, groundwater protection, water protection, protection against noise and vibration, and waste management, are regulated separately in terms

of the imposition of fines. We can also conclude that these fines are determined at a higher level in the legislative hierarchy, but at a relatively easier to amend level of government regulation. From our point of view, determining the level of the norm is important because it allows the executive power, as the legislator, to respond more easily to social and environmental changes that may pose a threat to the existing state of the environment. Examining the level of sanctions in the environmental protection field that can be imposed in the last decade shows that environmental fines have increased significantly, at least doubling, but in line with the severity of the violation, even increasing fortyfold, based on Government Decree 61/2025. (III. 31.) on the amendment of government decrees on individual environmental fines.

The latter was addressed by the Constitutional Court in its decision 5/2017. (II. 10.) AB.¹⁹ The case underlying this decision raised the issue of the connection between the time limit for imposing sanctions and the right to a fair trial. It should be emphasised that the basis of the constitutional court proceedings was the constitutional background the imposition of an environmental pollution fine after the deadline according to the relevant act.

The Constitutional Court stated that the right to a fair administrative procedure requires that the administrative authority may not exceed the time limit for imposing sanctions laid down in specific procedural rules.

The Constitutional Court's decision on the observance of the deadline for the imposition of sanctions by public authorities is significant because it defines the content of the right to fair administrative proceedings guaranteed by Art. XXIV(1) of the Fundamental Law. In its decision, the Constitutional Court formulated a requirement arising from the right to fair administrative proceedings, taking into account Art. R(3) of the Fundamental Law,²⁰ in relation to compliance by administrative authorities with the time limit for imposing sanctions. The Constitutional Court interpreted the right of the client to a final decision within the time limit set by the given act, as enshrined in Art. XXIV(1) of the Fundamental Law, in conjunction with the obligation of the authorities to comply with the time limit for imposing sanctions. As a result, the obligation to comply with the time limits laid down in specific provisions on the imposition of sanctions is supported by a constitutional system of guarantees in order to protect the rights of clients. Under the Fundamental Law, the Constitutional Court has taken its opinion in this decision about administrative fines imposed by administrative authorities may (in certain cases) violate fundamental rights.

19 | See: Szabó 2021, 705–719.

20 | "The provisions of the Fundamental Law shall be interpreted in accordance with their purposes, the National Avowal contained therein and the achievements of our historic constitution."

7. Conclusions in connection with future legislation

Based on the analysis of legal background and judicial practice of the field of environmental administration, it can be established that the legal consequences affecting the client arise in two areas: namely in administrative proceedings and in misdemeanour proceedings.

According to the authors' point of view, a fundamental legislative obligation for the future – primarily related to Art. XXIV(1), and indirectly to Art. B(1) of the Fundamental Law – is to provide a more precise regulation of these procedural rules, including and in particular, the time limits applicable to the imposition of sanctions.

There can be no overlap between the two areas, because while the sanctions imposed as a result of administrative proceedings are the consequence of acts against the administration, administrative offense proceedings and sanctions are the consequence of acts that are less dangerous to society (compared to criminal offenses). In the field of environmental protection, the unlawful activity of the clients, concluded in sanctions must in all cases cause damage or danger to the environment, which is irreversible in nature. This irreversible characteristic must be reflected in the amount of the fine and also in the proceeding. The fairness of the procedure depends not only on the full enforcement of the client's rights, but also on the assessment of the damage caused.

The examination also pointed out the legislator's obligation, not only in relation between the examined fields, but also between the regulations in connection with specific administrative proceedings and the general administrative proceeding. It can also be concluded that coherent regulation is necessary not only between administrative and misdemeanour proceedings, but also between the general and special rules of administrative proceeding law.

Reference list

1. Árva Zs (2025) Nagykomentár Magyarország Alaptörvényéhez. 2025. évi jogtár formátumú kiadás.
2. Bándi Gy & Szamek G (2020) Környezetvédelmi igazgatás, in: Lapsánszky A (ed.) *Közigazgatási Jog Szakigazgatásaink elmélete és működése*, Wolters Kluwer Hungary Kft., Budapest, pp. 682–705.
3. Bándi Gy (2020) Interests of Future Generations, Environmental Protection and the Fundamental Law, *JAEL* 15(29), pp. 7–22, DOI: <https://doi.org/10.21029/JAEL.2020.29.7>.
4. Fodor L (2020) Sötét vizeken? A környezetvédelmi felelősség helye a környezetpolitika eszköztárában (Szabályozásmódszertani és alapelvi kérdések), *Pro Futuro*, 2/2020, pp. 42–66, DOI: doi.org/10.26521/PROFUTURO/2020/2/8436.
5. Hojnyák D (2021) Current tendencies of the development of the right to a healthy environment in Hungary in the light of the practice of the Constitutional Court in recent years, *JAEL* 16(31), pp. 39–54, DOI: <https://doi.org/10.21029/JAEL.2021.31.39>.
6. Kalas T (ed.) (2006) *Közigazgatási Jog 2. Magyar Közigazgatási jog Általános rész II*, Virtuóz Kiadó.
7. Lapsánszky A, Patyi A & Varga Zs A (2024) Az eljárás és az eljárásjog fogalma és általános jellemzői, in: *A Magyar Közigazgatási Jog Általános Tanai – Második, bővített kiadás*, UNIVERSITAS-Győr Nonprofit Kft. pp. 327–346.
8. Nagy M (2000) *A közigazgatási jogi szankciórendszer*, Osiris Kiadó, Budapest.
9. Olajos I & Mercz M (2022) The use of the precautionary principle and the non-refoulement principle in public law – Or how far the boundaries of constitutional principles extend, *JAEL* 17(32), pp. 79–97, DOI: <https://doi.org/10.21029/JAEL.2022.32.79>.
10. Paulovics A (2022) Eljárási jogok, in: Paulovics A & Jámbor A (eds.) *Alkotmányosság és emberi jogok*, Miskolci Egyetemi Kiadó, Miskolc, pp. 85–88.
11. Paulovics A & Jámbor A (2022) The Right to a Healthy Environment in the Hungarian Constitution, *JAEL* 17(32), pp. 98–111, DOI: <https://doi.org/10.21029/JAEL.2022.32.98>.
12. Szalai É & Rozsnyai K F (2017) Eljárás, eljárásjog fogalma. – A közigazgatási hatósági eljárásjog fejlődése, in: Fazekas M (ed.) *Közigazgatási Jog Általános rész III*, pp. 159–161.

13. Szabó A E (2021) 5/2017. (II. 10.) AB határozat-szankcióalkalmazás határideje, in: Gárdos-Orosz F & Zakariás K (eds.) *Az Alkotmánybírósági Gyakorlat Az Alkotmánybíróság 100 elvi jelentőségű határozata 1990-2020 – Második kötet*, Társadalomtudományi Kutatóközpont HVG-ORAC Lap- és Könyvkiadó, Budapest, pp. 705–719.
14. Szilágyi J E (2021) The Protection of the Interests of Future Generations in the 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues, *JAEL* 16(31), pp. 130–144, DOI: <https://doi.org/10.21029/JAEL.2021.31.130>.

Administrative Procedural Law in the Czech Republic

Abstract

This article examines the administrative procedural law in the Czech legal system. It first defines the concept, its position within the legal system, and the key sources of legal regulation. It then addresses proceedings concerning offences, from their detection and investigation to the initiation of proceedings and the procedural steps involved in transferring cases between administrative and criminal justice authorities. Further, it analyses the procedural rights of the accused, including the rights of both natural and legal persons, as well as the related guarantees intended to ensure the predictability, reviewability, and fairness of the exercise of the state power. It also discusses the possibilities of reviewing administrative decisions, including ordinary and extraordinary remedies, and the stages of enforcement of administrative decisions together with the mechanisms designed to ensure compliance. The final section addresses the main challenges of administrative procedural law, especially the effectiveness of proceedings, the uniformity of sanctions, the demarcation between administrative and criminal law, and cooperation among authorities. The article also outlines prospects, particularly the standardisation of administrative penalties and the potential role of automation and artificial intelligence in administrative decision-making.

Keywords: Administrative procedural law, offence proceedings, procedural rights of the accused, review of administrative decisions on offences, enforcement of administrative decisions

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1. Introduction

Administrative law is a branch of public law regulating the status and conduct of entities in relationships arising from the exercise of power in the state within the sphere of public administration.¹ Administrative procedural law constitutes its subsystem and governs the procedures of administrative authorities when applying substantive administrative law. Its function is to ensure that public administration acts lawfully, transparently, and fairly, in accordance with the rule of law. While substantive administrative law defines public rights and obligations, procedural law governs their implementation in individual proceedings. Together with organisational norms, it forms one of the fundamental pillars of administrative law.²

Administrative procedural law is particularly significant in environmental protection, which is primarily implemented through administrative decision-making. Environmental legislation relies on procedural rules to apply substantive norms of nature conservation. A practical example is the felling of trees growing outside forests, which requires prior consent of a competent nature protection authority pursuant to § 8 of Act No. 114/1992 Sb., on Nature and Landscape Protection. During such proceedings, the applicant submits a request, the authority initiates the proceedings, allows participants to raise objections, and issues a reasoned and reviewable decision. The decision may be challenged by an appeal under Act No. 500/2004 Sb., the Administrative Procedure Code (hereinafter the Administrative Procedure Code), and subsequently by an administrative action. Even seemingly minor environmental interventions therefore take place within a procedural framework safeguarding both individual rights and the public interest in preserving greenery.

Administrative procedural law is not comprehensively codified. Its primary source is the Administrative Procedure Code, which governs administrative proceedings. Due to the diversity of administrative relations, numerous special laws contain procedural provisions, the most important of them being Act No. 250/2016 Sb., on Liability for Offences and Proceedings Concerning Them (hereinafter the Act on Liability for Offences), and Act No. 251/2016 Sb., on Certain Offences. In environmental matters, relevant legislation includes, for example, Act No. 283/2021 Sb., the Building Act. These special regulations operate as *leges speciales* in relation to the Administrative Procedure Code; where they lack specific provisions, the general regulation applies subsidiarily.

In certain areas, such as tax administration under Act No. 280/2009 Sb., the Tax Code, special procedural regimes prevail over the general administrative

1 | Průcha 2024, 14.

2 | Skulová et al. 2020, 15–18.

framework. Judicial review of administrative decisions is governed primarily by Act No. 150/2002 Sb., the Code of Administrative Justice,³ as well as by Act No. 182/1993 Sb., on the Constitutional Court,⁴ and Part Five of Act No. 99/1963 Sb., the Code of Civil Procedure.⁵ Constitutional sources, including the Constitution of the Czech Republic and the Charter of Fundamental Rights and Freedoms, form an essential normative framework for administrative proceedings.

Provisions of several substantive laws are also relevant to administrative procedural law. In the field of environmental protection, these include, for example, Act No. 148/2023 Sb., on a Unified Environmental Opinion,⁶ and Act No. 100/2001 Sb., on Environmental Impact Assessment.⁷ The final group of sources of administrative procedural law consists of implementing regulations, such as Decree No. 149/2024 Sb., on the Implementation of Certain Provisions of the Building Act.^{8,9}

International treaties, European Union law, Constitutional Court rulings, and the case law of the Court of Justice of the European Union and the European Court of Human Rights¹⁰ may also be included among the sources of administrative procedural law.¹¹

2. Proceedings concerning offences

The recodification of administrative punishment, effective from 1 July 2017, fundamentally transformed Czech offence law. The traditional category of 'administrative offences' was abandoned and replaced by the unified concept of an 'offence', encompassing all unlawful acts that are not criminal offences.

3 | It regulates the organization of administrative justice and the court procedures for reviewing decisions made by administrative authorities, as well as protection against inaction and unlawful interference.

4 | It contains rules governing proceedings before the Constitutional Court, which may also review decisions of administrative authorities if they violate the constitutionally guaranteed rights and freedoms of individuals.

5 | This section sets out rules for the review of decisions of administrative authorities by civil courts, particularly in cases where administrative court procedures do not apply (e.g. in matters of pension insurance or state social support).

6 | The Act regulates the procedure for applicants and administrative authorities in issuing a unified environmental opinion.

7 | The Act regulates the process of assessing the impact of planned constructions, facilities, activities, and strategic documents on the environment and on public health.

8 | Horzinková & Novotný 2019, 27–29.

9 | They specify the application of substantive and procedural provisions of administrative regulations or special laws, thereby supplementing the framework of administrative proceedings in specific areas (e.g. building permit proceedings).

10 | For an analysis of the case law of the European Court of Human Rights and the European Court of Justice relevant to environmental administrative matters, see Újhelyi-Gyurán, Lelle & Pártai-Czap 2024, 203–224.

11 | They have a fundamental impact on the interpretation and application of administrative procedural law, particularly regarding the protection of fundamental rights.

Only so-called other administrative offences remain outside the category of offences under the new legislation. These may be further divided into disciplinary offences (unlawful acts committed by a natural person who is bound by a special relationship to an organisation, e.g. an employee or a student) and public order offences (a type of administrative delict whose purpose is to enforce compliance with an imposed obligation, e.g. refusal to provide an explanation to an administrative authority).

The reform clarified terminology and strengthened legal certainty while introducing a coherent system of liability, sanctions, and protective measures under the Act on Liability for Offences. The general part of this Act applies subsidiarily to offences defined in special legislation, unless such legislation provides otherwise. The specific elements of individual offences remain regulated in special laws.¹²

2.1. The concept of an offence

According to the law, an offence is a socially harmful unlawful act expressly designated by law and exhibiting specified characteristics, but which is not a criminal offence.¹³ Czech law applies a material-formal concept, meaning that an offence exists only if both the substantive element (social harmfulness) and all formal elements are fulfilled.¹⁴

The material element means that the act must threaten or harm interests protected by law.¹⁵ Liability for an offence therefore does not arise merely from the fulfilment of formal criteria; the act must also reach a certain minimum degree of social harmfulness, which is why this requirement is sometimes referred to as a material corrective.

The degree of social harmfulness has a dual meaning. On the one hand, it allows for the non-prosecution of the so-called minor offences, i.e. those whose severity is negligible and whose consequences are insignificant. This is particularly relevant in borderline cases where a purely formalistic application of the elements of an offence could be disproportionate or unfair.¹⁶

A practical example would be minor traffic violations such as failing to carry an identification document during a roadside police check or crossing the road outside a crosswalk. Although these acts may formally appear to be unlawful, they do not necessarily reach the threshold of social harmfulness in every case.

12 | Within the framework of the new legislation, the option of separate procedural legislation was also considered, whereas the option of applying the Criminal Code subsidiarily appeared to be completely unsuitable.

13 | See § 5 of the Act on Liability for Offences.

14 | Strakoš & Kroupová 2017, 24.

15 | Jemelka & Vetešník 2017, 58–59.

16 | Prášková 2022, 137.

The second function of the material element of an offence is that it allows an offence to be distinguished from a criminal offence in situations where the formal characteristics of both may appear identical.¹⁷

The formal characteristic of an offence are divided into general and specific characteristics. The category of formal specific characteristics includes object, objective aspect, subject, and subjective aspect.¹⁸ In contrast, the category of formal general characteristics includes illegality, general requirements concerning the perpetrator, and the explicit designation of the act as an offence by law. The illegality of an act is a mandatory characteristic of every punishable act, whether an offence or a criminal offence. The absence of unlawfulness means that no offence has been committed. Not every socially harmful act must be declared a criminal offence. Conversely, unlawful conduct is always socially harmful to a certain extent, even if it does not constitute a criminal offence.

The general requirements for perpetrators stipulate that a natural person, a legal entity, or a self-employed person may be a perpetrator. In the case of natural persons, liability requires the attainment of the statutory age and mental capacity at the time the act has been committed.¹⁹ The procedural capacity of legal entities is the subject of debate in the Czech legal environment.²⁰ The prevailing view is that legal entities do not distinguish between legal personality and legal capacity, and therefore their capacity to be parties to legal proceedings coincides with their procedural capacity.²¹ The Act on Liability for Offences does not regulate specific rules for the procedural conduct of legal entities, and it is therefore necessary to proceed from the general provisions of the Administrative Procedure Code, according to which acts on behalf of a legal entity are performed by a person authorised to act for it in proceedings before a court.²²

In practice, administrative authorities first assess whether the formal requirements are met and subsequently evaluate the degree of social harmfulness.²³ The seriousness of the offence is then reflected in the type and severity of the administrative penalty.²⁴ In borderline cases, the authority must explicitly justify its assessment of social harmfulness.

17 | Prášková 2022, 135.

18 | Regarding the formal characteristic of an offence consisting in the subjective aspect, it should be noted that this element applies only where the perpetrator is a natural person.

19 | Jemelka & Vetešník 2017, 53–54.

20 | For example, Dvořák 2016, 649–655, and the literature cited therein.

21 | For example, Winterová, Macková & Zoulík 2018.

22 | See § 30 of the Administrative Procedure Code.

23 | For example, the judgment of the Supreme Administrative Court dated September 5, 2011, ref. no. 8 As 41/2010-110, or the judgment dated May 31, 2011, ref. no. 8 As 44/2010-70.

24 | For example, the judgment of the Supreme Administrative Court dated August 9, 2012, ref. no. 9 As 34/2012-28.

2.2. Relationship between offences and criminal offences

As mentioned above, an act constitutes an offence only if it is not a criminal offence. Where the same unlawful act fulfils the elements of both, criminal liability takes precedence, and liability for an offence is subsidiary.²⁵

In contrast to offences, the concept of a criminal offence in Czech law is based on a formal concept. This formal concept is balanced by the principle of subsidiarity of criminal repression, according to which criminal liability may be applied only in socially harmful cases where the application of liability under other legal regulations is insufficient.²⁶ However, according to the case law of the Constitutional Court, the principle of subsidiarity of criminal prosecution is relevant only where it is possible to refrain from punishing the perpetrator's conduct by means of criminal law instruments.²⁷ This principle therefore does not alter the subsidiarity of offences in relation to criminal offences, even though it entails certain interpretative difficulties (e.g. in assessing whether particular conduct is sufficiently socially harmful).²⁸

2.3. Detection, investigation, and prosecution of offences

Proceedings concerning offences aim to determine whether an offence has been committed, identify the perpetrator, legally classify the act, and impose an appropriate administrative penalty. Unlike adversarial criminal proceedings, offence proceedings follow the principle of investigation, meaning that the administrative authority acts *ex officio* and is responsible for establishing the relevant facts. Its position is traditionally described as that of “prosecutor and judge in its own case”.²⁹

Before initiating proceedings, the administrative authority assesses whether the available information indicates that an offence may have been committed and who is suspected of committing it. Suspicion may arise from the authority's own supervisory activities, complaints by private persons, or notifications from other authorities, including the Police or Military Police. Such authorities are obliged to notify the competent administrative body if they have a reasonable suspicion of an offence falling outside their competence.³⁰ This constitutes the so-called simple

25 | Prášková 2013, 169.

26 | See § 12(2) of Act No. 40/2009 Sb., the Criminal Code.

27 | See the ruling of the Constitutional Court of July 28, 2014, ref. no. I. ÚS 1521/14, and the ruling of the Constitutional Court of July 26, 2012, ref. no. III. ÚS 1148/09.

28 | Prášková 2022, 140–141.

29 | Prášková 2022, 344–345.

30 | According to § 75 of the Act on Liability for Offences, a public authority shall, without undue delay and upon request of the competent administrative authority, take the necessary steps to investigate a report of an offence, to hear the offence, and to enforce the decision. This cooperation may occur at various stages of the procedure, including the phase prior to the initiation of proceedings, during the administrative proceedings themselves, or during the enforcement stage.

reporting of an offence, i.e. the reporting authorities are not obliged to investigate the reported offence.³¹ The law does not require certainty at this stage; credible indications of unlawful conduct are sufficient to consider further action.³² Other forms are provided for in the Administrative Procedure Code, which states that the information may take the form of a report of an offence submitted by natural or legal persons who are not required by law to report it, referred to as a motion to initiate proceedings.³³ Anyone may file such a motion, not only a future participant in the proceedings, and it may also be filed against an unknown perpetrator.

During the preliminary phase, the authority may request explanations pursuant to § 137 of the Administrative Procedure Code, provided that the relevant facts cannot be established otherwise. Persons requested to provide explanations are obliged to do so; failure to comply without sufficient reason may result in a fine of up to 5,000 CZK (approx. 206 EUR).³⁴ Failure to appear to provide explanations without a good reason may result in the person being brought before the authority.³⁵ An official record is drawn up; however, it does not constitute evidence in subsequent proceedings.^{36,37}

If the authority concludes that the proceedings would not lead to the offender being punished³⁸ or would be manifestly uneconomical, the administrative authority shall not initiate proceedings and shall dismiss the matter by means of a resolution,³⁹ thereby applying the principles of speed and procedural economy.⁴⁰

2.4. Initiation of proceedings for an offence

Proceedings for an offence are always initiated *ex officio*⁴¹ and are governed by the principle of legality.⁴² Once the authority becomes aware of facts that justify suspicion and identifies the person concerned, it must initiate proceedings without

31 | Frumarová, Pouperová & Škurek 2021, 427–428.

32 | Guide to Act No. 250/2016 Sb. on Liability for Offences and Proceedings Concerning Them 2022.

33 | See § 42 of the Administrative Procedure Code.

34 | All amounts originally stated in CZK have been converted into EUR using the exchange rate applicable at the time of writing (1 EUR ≈ 24.25 CZK). The converted figures are rounded and are provided for illustrative purposes only.

35 | 'Appearance' refers to the compelled transport of a person to the competent authority when that person has failed to appear upon summons without a valid excuse or sufficient justification.

36 | See § 137(4) of the Act on Liability for Offences.

37 | See, for example, the judgments of the Supreme Administrative Court of January 22, 2009, ref. no. 1 As 96/2008-115 (no. 1856/2009 Sb. NSS); June 21, 2007, ref. no. 1 As 16/2007-106; and February 26, 2014, ref. no. 3 As 80/2013-18.

38 | For example, the suspect may not be prosecuted due to legal impediments, or if a final decision has already been rendered in the matter.

39 | See § 76 of the Act on Liability for Offences.

40 | Prášková 2022, 422.

41 | See § 78 of the Act on Liability for Offences.

42 | Fiala et al. 2021, 159.

undue delay, generally within 30 days.⁴³ However, there is no legal entitlement to initiate proceedings for an administrative offence, as there is no public subjective right to require an administrative authority to act *ex officio*.⁴⁴

Proceedings for an offence are initiated by delivering a notice of initiation of proceedings to the suspect or by verbally announcing such notice. Unlike criminal proceedings, the notice of initiation of offence proceedings does not take the form of a formal resolution, and therefore it cannot be challenged by legal remedies.⁴⁵ The notice must contain a sufficiently specific description of the alleged act in order to prevent confusion with other conduct and to allow the application of procedural obstacles such as *lis pendens* and *res judicata*. Absolute identity between the initial description of the act and the final decision is not required, as the factual circumstances may be clarified during the proceedings.⁴⁶ The principle of *lis pendens* prevents parallel proceedings concerning the same act against the same person,⁴⁷ while *res judicata* precludes the renewed prosecution of a matter that has already been finally decided. If such obstacles are identified, the administrative authority must either refrain from initiating proceedings or discontinue them.⁴⁸

Where the facts indicate that the act may constitute a criminal offence, the administrative authority must refer the matter to the competent criminal justice authority. Such a referral results in the discontinuation of the administrative proceedings, but it does not prevent the initiation of administrative proceedings if criminal liability is ultimately excluded.⁴⁹ A similar procedural approach applies to criminal proceedings. If the criminal authorities conclude that the act does not constitute a criminal offence, the case may be referred to the competent administrative authority.⁵⁰ However, referring the case after the charges have been communicated creates a *res judicata* obstacle, and renewed prosecution for the same

43 | This deadline is provided for in § 80(2) of the Administrative Procedure Code.

44 | See, for example, the Constitutional Court's resolution of January 15, 2019, ref. no. I. ÚS 4145/18, or the resolution of June 26, 2001, ref. no. II. ÚS 345/01.

45 | Prášková 2022, 429.

46 | See, for example, the judgments of the Supreme Administrative Court of June 8, 2005, ref. no. 3 As 51/2004-72; July 28, 2010, ref. no. 5 Afs 89/2009-120; and October 5, 2011, ref. no. 1 As 110/2011-74.

47 | See § 77(1) of the Act on Liability for Offences.

48 | According to Section 77(2) of the Act on Liability for Offences, a final decision is a decision establishing that the act did not occur, that the accused did not commit it, that the accused could not be proven to have committed the act, or that the act constitutes a criminal offence, the same offence, or is not an offence. This definition also encompasses decisions on the conditional suspension of criminal proceedings, the suspension of proceedings based on an approved settlement, the conditional postponement of filing a motion for punishment, or the withdrawal of criminal proceedings against a juvenile.

49 | Jemelka 2025, 513–519.

50 | See § 159a of Act No. 141/1961 Sb., the Criminal Procedure Code. Submission to the competent administrative authority serves as a stimulus and may be followed by a notice of the commencement of proceedings.

act is possible only if that decision is overturned through extraordinary remedies.⁵¹ The referral simultaneously initiates administrative proceedings, after which the administrative authority assesses liability and, where appropriate, imposes a sanction.

In cases specified by law,⁵² proceedings may require the consent of the person directly affected by the offence. If such consent is not granted, the authority must refrain from initiating the proceedings or must discontinue them.⁵³

Proceedings concerning an offence may be initiated either by a notice of the initiation of proceedings (in writing or by announcement) or by issuing a so-called order. An order serves as a summary procedural instrument and may constitute the first procedural act, thereby simultaneously initiating the proceedings without prior notification.⁵⁴ It is typically used in straightforward cases, including those handled by public guards in environmental protection (e.g. forest or fishing guards). The order is issued in a summary proceeding and must meet general formal requirements,⁵⁵ and include, *inter alia*, a description and legal classification of the act.⁵⁶

Another form of summary proceedings for an offence is an administrative order on the scene, in which the administrative authority, immediately after sufficiently establishing the facts of the case, issues a so-called administrative block. In such cases, once the facts are sufficiently established, the decision is issued immediately, and its notification, legal effect, enforceability, and payment of the fine occur simultaneously. This form of handling has a preventive effect and is advantageous for the accused, as the fine is limited,⁵⁷ and the matter is resolved swiftly with reduced procedural formalities. The issuance of an administrative block creates *res judicata* and excludes re-prosecution. Once the administrative block has been issued and signed by the accused, it is no longer possible to stop the proceedings.⁵⁸ It may be imposed only if the facts are reliably established and the accused is present and consents to this form of resolution; otherwise, standard proceedings must be conducted.⁵⁹

51 | Such extraordinary remedies include appeal proceedings (where the case was decided in the main hearing), proceedings concerning a complaint for violation of the law, and proceedings concerning the authorisation of a retrial; see Šámal et al. 2013, 493–517.

52 | For example, under Act No. 251/2016 Sb., on Certain Offences, these include offences of bodily harm (where the offence is committed by a natural person) and offences consisting of the intentional disruption of civil coexistence, such as threats of bodily harm, false accusations of an offence, malicious conduct, or other gross misconduct.

53 | See § 86(1)(m) of the Act on Liability for Offences.

54 | Prášková 2020, 122.

55 | The general requirements of a decision are the operative part, the statement of reasons, and instructions to the parties (§ 68 of the Administrative Procedure Code).

56 | See § 93 of the Act on Liability for Offences.

57 | A fine of up to 10,000 CZK (approx. 412 EUR) may be imposed by an order on the spot.

58 | See § 92 of the Act on Liability for Offences.

59 | Prášková 2022, 512–518.

3. Procedural rights of the accused

Procedural guarantees in offence proceedings serve to protect individuals and legal entities from the arbitrary or disproportionate exercise of public power. Given the asymmetrical relationship between the administrative authority and the accused, these safeguards are essential to ensure fairness, predictability, and reviewability of decision-making. A fundamental guarantee is the principle of transparency and predictability. The accused must be informed, in a timely and comprehensible manner, of the nature of the accusation, the legal basis of the proceedings, and the evidence gathered. Transparent proceedings allow the accused to prepare their defence and respond to factual allegations and legal assessments.⁶⁰ The principle of predictability requires administrative authorities to avoid unjustified differences in factually identical or similar cases by ensuring legal certainty through consistent decision-making, which may be departed from only for justified reasons.⁶¹ Closely linked to this principle is the requirement of equality of arms. The accused must be given a genuine opportunity to present arguments and evidence under conditions that do not place them at a substantial disadvantage. The administrative authority may not give preference to evidence obtained *ex officio* while disregarding evidence proposed by the accused.⁶² Decisions must be properly reasoned, including an explanation of how the authority evaluated the evidence and addressed the objections raised. The principle of two-stage (two-instance) administrative proceedings can also be regarded as a procedural guarantee. Its general purpose is to achieve a devolutive effect, i.e. for the matter to be reviewed by a higher-level administrative authority at the initiative of the lower-level authority, thereby strengthening objectivity and legality.⁶³ The presumption of innocence applies fully in offence proceedings. The burden of proof lies with the administrative authority, which must establish the facts beyond a reasonable doubt and by lawful means. The accused is not obliged to prove innocence and may not be compelled to confess or provide self-incriminating statements. No adverse consequences may be inferred from silence.⁶⁴ The rule of *in dubio pro reo* (when in doubt, in favour of the accused) implies that unproven guilt has the same effect as proven innocence.⁶⁵

60 | Černín 2019, 137.

61 | However, the principle of legitimate expectations does not imply that decisions are immutable, as it is always necessary to seek an appropriate and proportionate solution, which may also justify a change in established practice. Skulová et al. 2020, 71.

62 | See Constitutional Court ruling of January 19, 2010, ref. no. Pl. ÚS 16/09.

63 | Skulová et al. 2020, 81–90.

64 | Prášková 2017a, 37–41.

65 | Doubts concerning guilt must relate only to questions of fact, not to questions of law.

3.1. The person accused of an offence

A substantive legal relationship between the state and the perpetrator arises at the moment the offence is committed. In contrast, a procedural relationship arises once proceedings are initiated against a specific person, who thereby acquires the status of the accused.⁶⁶ The accused is the central participant in offence proceedings. As mentioned above, the perpetrator of the offence may be a natural person,⁶⁷ a self-employed person,⁶⁸ or a legal entity.⁶⁹ Juveniles (persons aged between 15 and 18 at the time of when the act was committed)⁷⁰ constitute a specific category, while persons under 15 are not liable under the Act on Liability for Offences.⁷¹ A person becomes an accused when the administrative authority takes the first procedural step against them, typically by delivering a notice of the initiation of proceedings.⁷² This moment is decisive for the application of procedural rights, including the right to defence, access to the file, and the right to comment on the evidence. In a substantive legal relationship, the party is the perpetrator of the offence; in a procedural relationship, the party may also be an individual who did not commit the act but is subject to offence proceedings on suspicion of having committed it. Offence proceedings may also be conducted against a person for whom, for example, circumstances excluding liability exist. A person accused of an offence has the general rights of a party to the proceedings (e.g. the right to propose evidence and make submissions, express their opinion, inspect the file and make extracts from it, and the right to comment on the basis for the decision). In addition, however, they also have specific rights, and some general rights and obligations may be modified. The Act on Liability for Offences, the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms confer specific rights on persons accused of offences, in particular the right to be informed promptly, and in a language they understand, of the nature and cause of the accusation against them; the right to be informed of their rights; the right to be present at the hearing; the right to adequate time and facilities for the preparation of their defence; the right to defend themselves in person or through legal assistance of their own choosing or, if they do not have sufficient means to pay for legal assistance, to be provided with it free of charge when the interests of justice so require; the right to examine witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them; and the right to be presumed

66 | Prášková 2022, 344.

67 | See § 13 et seq. of the Act on Liability for Offences.

68 | See § 22 et seq. of the Act on Liability for Offences.

69 | See § 20 et seq. of the Act on Liability for Offences.

70 | See § 55 of the Act on Liability for Offences.

71 | See § 18 of the Act on Liability for Offences.

72 | See § 69(1) of the Act on Liability for Offences.

innocent until proven guilty according to law (the principle of presumption of innocence), including the right not to incriminate themselves. These rights reflect the minimum standard of a fair trial in administrative penalty proceedings.⁷³

Special problems arise where a legal entity is accused. Representation must comply with general procedural rules, and persons whose interests are in conflict with those of the legal entity cannot act on its behalf.⁷⁴ Many procedural questions arise in the application of concurrent liability for an offence committed by a legal entity and an offence committed by a natural person. In such a case, the accused natural person cannot also act as a person representing the legal entity in the proceedings.⁷⁵

3.2. Principle of proportionality

The principle of proportionality requires that administrative penalties correspond to the nature and severity of the offence and to the circumstances of the offender. The basic criteria are especially the circumstances and the way the offence was committed, as well as the significance and scope of the protected interest.⁷⁶

The principle of proportionality is closely related to the principle of individualisation of administrative penalties, which requires that the type and severity of the administrative penalty imposed correspond to the specific circumstances of the offence committed and the person who committed it. This requirement is reflected in the Act on Liability for Offences through provisions specifying the criteria for selecting the type and severity of the penalty,⁷⁷ a demonstrative list of mitigating and aggravating circumstances,⁷⁸ and the possibility of applying alternatives to punishment. The administrative authority must not proceed arbitrarily when individualising an administrative penalty, but must base its decision on legal considerations, established administrative practice, case law, and its own experience.⁷⁹

4. Review of decisions on offences

The system of remedies in offence proceedings reflects the principle of two-instance administrative decision-making and ensures the review of legality and correctness. Czech law distinguishes between ordinary and extraordinary remedies. Ordinary remedies are available before a decision becomes final, whereas

73 | Prášková 2022, 368–370.

74 | Grygar 2020, 41.

75 | Prášková 2022, 402–403.

76 | See § 38 of the Act on Liability for Offences.

77 | See § 37 and § 38 of the Act on Liability for Offences.

78 | See § 39 and § 40 of the Act on Liability for Offences.

79 | Prášková 2022, 67–68.

extraordinary remedies apply to final decisions. When applying extraordinary remedies, it is generally irrelevant whether an ordinary remedy has been used.⁸⁰

Ordinary remedies against a decision on an administrative offence include an appeal and, in the case of summary proceedings, an opposition to the order. Extraordinary remedies include review proceedings and the reopening of proceedings.

4.1. Ordinary remedies

The proper remedy against an order is an opposition to the order. The timely filing of an opposition (within an eight-day period) annuls the order *ex lege* and converts the proceedings into standard proceedings; if no opposition is filed within the statutory period, the order becomes final.⁸¹ The accused may appeal against the decision on the offence in its entirety, i.e. they may challenge all statements in the contested decision and object to procedural defects that preceded the decision (within 15 days of notification of the decision on the offence).⁸² Until the Act on Liability for Offences entered into force, the admissibility of novelties in appeal proceedings was disputed. The administrative doctrine and case law have since confirmed that, given the punitive nature of offence proceedings, the prohibition of novelties does not apply.⁸³ The Act now expressly allows new facts and evidence to be submitted on appeal.⁸⁴ A timely and admissible appeal against a decision on an offence has a suspensive effect, which cannot be excluded.⁸⁵ The appellate authority conducts a full review of the contested decision, including all findings, all persons concerned, and the preceding proceedings.⁸⁶ The Act on Liability for Offences also expressly regulates the principle of *beneficia cohaesionis* (benefits arising from context), requiring that a favourable appellate decision extend to other parties where the same grounds apply.⁸⁷ Logically, this principle cannot be applied in the case of an opposition to an order, as filing an opposition annuls the order and results in the continuation of the proceedings.⁸⁸

Another important safeguard is the prohibition of *reformatio in peius*. If appeal proceedings are conducted solely in favour of the accused, their position may not be worsened.⁸⁹ This protection does not apply where another party appeals to

80 | Skulová et al. 2020, 286–287.

81 | Prášková 2022, 510–512.

82 | See § 83(1) of the Administrative Procedure Code.

83 | See the judgments of the Supreme Administrative Court of January 22, 2009, ref. no. 1As 96/2008-115 (no. 1856/2009 Sb. NSS); September 23, 2011, ref. no. 8 As 19/2011-94; and November 27, 2012, ref. no. 1As 136/2012-23.

84 | See § 97(1) of the Act on Liability for Offences.

85 | Jelínek et al. 2021, 662.

86 | Pipek 1998, 32.

87 | See § 98(3) of the Act on Liability for Offences.

88 | Prášková 2022, 520–528.

89 | See § 98(2) of the Act on Liability for Offences.

the detriment of the accused. Mitigating and aggravating penalties of different types does not *a priori* violate the principle of the prohibition of *reformatio in peius*. However, the penalty imposed, or the aggregate of penalties, must not be more severe in its entirety than the penalty originally imposed.⁹⁰ The principle also applies after an opposition to an order, when no other type of administrative penalty may be imposed on the accused except for a reprimand or a higher administrative penalty than that imposed by the order.⁹¹ If the administrative appellate authority finds that the administrative penalty is in direct conflict with the law or is clearly incorrect in favour of the accused, it will revoke the decision as a whole and return the case to the first-instance administrative authority for reconsideration. It should be noted that the prohibition of changes for the worse is regulated by the Act on Liability for Offences only for proceedings before the administrative appellate authority and does not impose any restrictions on the procedure and decision of the first-instance authority after the decision has been overturned in appeal proceedings. The first-instance administrative authority may therefore impose a more severe penalty in its new decision. However, the accused may again appeal against the new decision on the offence.⁹²

4.2. Extraordinary remedies

An extraordinary remedy is review proceedings, which is regulated by the Act on Liability for Offences and applies in cases where a final decision has already been made on the act and it subsequently becomes apparent that the act is likely to constitute a criminal offence,⁹³ or where it is found that a criminal justice authority has finally decided the same act in such a way that the act did not occur, was not committed by the accused, the commission of the act by the accused could not be proven, or that the act constitutes a criminal offence. Review proceedings may also be initiated where criminal prosecution was conditionally suspended, criminal proceedings were discontinued on the basis of an approved settlement, the filing of a motion for punishment was conditionally postponed, or criminal proceedings against a juvenile were withdrawn. In the first case, the purpose of the administrative authority's decision is merely to remove the obstacle created by a matter previously decided with finality and to enable a decision on the act as a criminal offence.⁹⁴ The second option addresses situations in which the same act has been punished twice. As a result of the subsidiarity of penalties for offences

90 | Prášková 2022, 528–530.

91 | § 90(3) of the Act on Liability for Offences.

92 | Prášková 2022, 537.

93 | As mentioned above, a final decision on an offence prevents criminal proceedings from being brought.

94 | See, for example, the judgment of the Regional Court in Prague of February 10, 2021, ref. no. 44 A 58/2019-50.

vis-à-vis criminal offences, it is necessary to revoke a later decision of an administrative authority on the offence. This solution is expressly provided for in the Act on Liability for Offences and serves to prevent conflicts with the principle of the primacy of criminal penalties and the principle of *ne bis in idem* (i.e. the prohibition of double punishment for the same offence).⁹⁵

Extraordinary remedies also include the reopening of proceedings, which is governed by the general provisions of the Administrative Procedure Code. Reopening of proceedings allows the administrative authority to overcome the *res judicata* obstacle and decide the matter again. Proceedings may be reopened if new facts or evidence emerge that existed at the time of the original decision but could not have been invoked, or if the evidence used is later found to have been false.⁹⁶ Proceedings may also be reopened if the decision that formed the basis for the challenged decision has been revoked or amended.⁹⁷ In both cases, the condition is that the facts, evidence, or decision forming the basis for the original decision, could lead to a different resolution of the issue that was the subject of the original proceedings. Reopening of proceedings cannot be applied if the participant could have objected to the facts in question during appeal proceedings, or if they became aware of them at a time when they had the opportunity to use available remedies.⁹⁸ The purpose of reopening proceedings is to examine whether the legal conditions for reopening are met. The decision to allow reopening (whether positive or negative) is of a first-instance nature and may be appealed by means of an ordinary remedy (appeal).⁹⁹ No special motion or proposal is required for the new proceedings; the administrative authority must conduct new proceedings based on the legal force of the decision allowing the reopening.

The possibility of reviewing the legality of the administrative block is limited. By signing the administrative block, the administrative order on the scene becomes a final and enforceable decision, and no objection or appeal may be lodged against it. However, review proceedings are not excluded and must be initiated within six months of the administrative block becoming final, i.e. from the date of signing the administrative block.¹⁰⁰ The possibility of reopening proceedings after the issuance of the administrative block has been inferred from the case law of the Supreme Administrative Court, which stated that it is only possible if the applicant did not consent to the imposition of a fine in the administrative order on the scene (e.g. in cases of alleged forgery of a signature or confusion regarding the identity of the person accused of the offence against the administration).¹⁰¹

95 | See § 100(1) of the Act on Liability for Offences.

96 | See § 100(1)(a) of the Administrative Procedure Code.

97 | See § 100(1)(b) of the Administrative Procedure Code.

98 | See § 100(2) of the Administrative Procedure Code.

99 | See § 100(6) of the Administrative Procedure Code.

100 | See § 101 of the Act on Liability for Offences.

101 | Prášková 2022, 518–519.

The filing of appeals, whether ordinary or extraordinary, is not subject to fees under Czech law; therefore, the Czech system ensures the accessibility of appeals.

5. Enforcement of administrative decisions

Enforcement (or compulsory enforcement) of obligations imposed in administrative proceedings that have not been voluntarily fulfilled within the specified time limit is referred to in Czech law as administrative enforcement. Administrative enforcement is a fundamental and indispensable component of public administration and represents the final stage of the administrative procedure. Without enforcement mechanisms, administrative decisions would remain merely declaratory. It is through administrative enforcement that one of the conceptual features of law is clearly manifested, namely its enforceability by the state coercion in the event of non-compliance. Administrative enforcement is usually carried out through so-called factual acts. A prerequisite for any administrative enforcement is always the existence of a so-called enforcement title. In administrative proceedings concerning an offence, the enforcement order constitutes an enforceable administrative decision. The enforcement order will usually be final, but it must always be enforceable.¹⁰² Therefore, if the obligated party does not voluntarily fulfil the obligation imposed by the enforcement order within the specified period, administrative enforcement is appropriate. The Administrative Procedure Code allows the administrative authority that issued the decision on the offence – or the entitled party under the enforcement order – to apply to the court at their discretion for an order to execute enforcement,¹⁰³ or to request the involvement of a court bailiff.¹⁰⁴ The same entities are actively entitled, if administrative enforcement is chosen, to enforce the enforcement order through the administrative enforcement authority.¹⁰⁵ In the case of non-monetary enforcement, the enforcement authority is the administrative authority that issued the decision on the offence; in the case of monetary enforcement, the enforcement authority is the general tax administrator (customs office). Administrative enforcement of monetary payments is not regulated by the Administrative Procedure Code or the Act on Liability for Offences. Therefore, the procedure for tax administration applies

102 | The legal force of an administrative decision means that the decision can no longer be changed or revoked through ordinary legal remedies. The enforceability of an administrative decision means that a decision imposing an obligation to perform may be enforced by state authority.

103 | See Act No. 99/1963 Sb., the Code of Civil Procedure.

104 | See Act No. 120/2001 Sb., the Enforcement Code.

105 | While enforcement of an enforcement order by an entitled party constitutes their subjective right, enforcement by an administrative authority is a legal obligation.

to the enforcement, collection, and recording of monetary payments, primarily governed by Act No. 280/2009 Sb., the Tax Code. Tax enforcement is carried out by issuing an enforcement order and other legally prescribed methods, such as deductions from income, seizure of claims or property rights, or the sale of assets.¹⁰⁶ Non-monetary obligations are enforced under the Administrative Procedure Code. It should be noted that, in principle, non-monetary obligations can only be enforced against the obligated party.¹⁰⁷

Deadlines play an important role. Once they expire, the right to enforce the fulfilment of a financial obligation is forfeited. The administrative authority may order enforcement no later than five years from the date on which the obligation should have been fulfilled voluntarily and may carry it out for a maximum of ten years from that date. After these deadlines have expired without result, the right to carry out administrative enforcement expires. Administrative enforcement itself is ordered by an enforcement order in the form of a resolution, which cannot be appealed. Enforcement to recover a non-monetary obligation may be carried out exclusively by: substitute performance, in the case of substitutable obligations (e.g. entrusting the performance to another person); direct enforcement, in the case of non-substitutable obligations (e.g., eviction from real estate, an apartment, or a building); or imposition of coercive fines, up to the amount of the costs of substitute performance or up to 100,000 CZK (approx. 4,120 EUR).¹⁰⁸ Administrative enforcement also involves enforcement costs, which are imposed on the accused by the decision of the enforcement authority and consist of a lump-sum payment¹⁰⁹ and reimbursement of actual expenses incurred in the course of enforcement. The debtor or another person may lodge objections against decisions or other acts of the enforcement authority that are not subject to appeal.¹¹⁰ However, these objections cannot challenge the substantive correctness or legality of the enforcement order. The enforcement authority may assess whether the enforcement order was issued by the competent administrative authority and whether it is enforceable, a duty that the authority must perform even in the absence of objections. The enforcement authority decides on the objections, and the decision on such objections cannot be appealed.¹¹¹

106 | Skulová et al. 2020, 347–348.

107 | Under certain circumstances, enforcement may also be ordered against another person. This applies, for example, if a non-monetary obligation has been transferred or assigned to that person (i.e. in the case of legal succession), or if the obligated person has died or ceased to exist after the enforcement order was issued; in such cases, the administrative authority may continue enforcement against the heir or their legal representative. In the event of the dissolution of a legal entity, the enforcement authority may continue enforcement against its legal successors.

108 | See § 129 of the Administrative Procedure Code.

109 | This is a lump sum of 2,000 CZK (approx. 82 EUR).

110 | See § 117 of the Administrative Procedure Code.

111 | Skulová et al. 2020, 348–354.

6. Challenges in the field of administrative procedural law

One of the main challenges in administrative procedural law is the efficiency of proceedings, as administrative proceedings are, by their nature, inherently burdened by procedural formalities and bureaucratic requirements. Compliance with numerous procedural rules (some of which were outlined in the previous chapters) can result in proceedings being perceived as unnecessarily complex and time-consuming. Although the principles of speed and economy of proceedings are intended to streamline the process, Czech administrative practice still relies heavily on time-consuming manual procedures.¹¹² Even in routine and repetitive matters – such as minor traffic offences detected by automated speed control systems, late payment penalties, or cases in which the authority merely verifies objectively ascertainable data from public registers – the administrative authority is required to conduct full proceedings and issue an individual decision. In such cases, the authority often does not exercise administrative discretion but simply applies a clear legal rule to a standardised factual situation. From the perspective of modernising public administration, it would therefore be appropriate to consider legislative changes enabling automated or algorithm-based decision-making mechanisms in strictly defined categories of cases where no discretionary assessment is involved. Properly regulated automation could increase procedural efficiency, reduce the administrative burden on officials, and enhance predictability and legal certainty for participants, provided that safeguards for review and human oversight are maintained.

Another challenge in administrative procedural law is the uniform imposition of sanctions across the various sectors regulated by administrative law. In the area of administrative punishment, it is always necessary to respect and take into account the specific characteristics of the individual fields or sectors of public administration in which liability is enforced. These specific characteristics are particularly evident in tort law, where the individual elements of offences correspond both to the subject matter of public administration in the given area and to the specific public interests that are protected and enforced there. The procedural aspects of individual liability systems are generally the most similar.¹¹³ The hearing of an offence – regardless of the branch of law concerned – is always an administrative proceeding that must meet certain basic standards (see above). These requirements and established practice ensure that public authorities conduct offence proceedings in a manner that respects the right to a fair trial. The uniform application of sanctions within individual regulated areas should be strictly

112 | Česko, funguj! 2025.

113 | Boháč et al. 2017, 375–376.

respected, especially when based on the principles of equality among participants, proportionality, legitimate expectations, and the prohibition of arbitrariness.

Defining a clear boundary between a criminal offence and an administrative offence is another significant challenge in administrative procedural law. As mentioned above, an unlawful act is considered an administrative offence only if it does not constitute a criminal offence. If an unlawful act fulfils the characteristics of both a criminal offence and an administrative offence, liability for the criminal offence takes precedence, while liability for the administrative offence remains subsidiary. The subsidiarity of administrative offences to criminal offences is thus preserved, but some concepts – such as the notion of ‘socially harmful’ – can create interpretative difficulties. In certain cases, the distinction between a criminal offence and an administrative offence is straightforward, for example, based on the amount of damage caused; in other cases, however, the decision may be much more complex. Regarding cooperation between administrative authorities and law enforcement agencies, the law establishes the obligations of the competent authorities for referring cases when a criminal offence or an administrative offence is detected, so that the matter is considered by the appropriate body. Nevertheless, case law shows that practical problems still arise, such as violations of the *ne bis in idem* principle when the same perpetrator is punished twice for the same act.¹¹⁴ It is therefore necessary to strengthen cooperation between administrative and criminal authorities through clearly defined procedural rules, effective information exchange, and interdepartmental agreements. Such measures would not only prevent duplication of proceedings but also ensure that administrative and criminal penalties are applied fairly, proportionately, and in accordance with the principle of legality.

7. Prospects and conclusions

Administrative procedural law is a key instrument for ensuring the proper exercise of public administration and provides the fundamental framework within which substantive administrative law is implemented. In the area of offences, it plays a crucial role in detecting, investigating, and prosecuting unlawful conduct, while always emphasizing the principle of legality and respect for the rights of the accused. The recent legislation, which has unified the concept of an offence, has brought greater clarity and strengthened legal certainty. At the same time, the application of substantive corrective measures enables a fair distinction between minor cases and acts that are truly socially harmful.

114 | See, for example, the judgments of the Supreme Administrative Court of June 3, 2015, ref. no. 6 As 106/2014-25; January 24, 2014, ref. no. 7 As 34/2013-29; or the resolution of the Supreme Court of September 19, 2018, ref. no. 5 Tdo 1534/2017-50.

Proceedings concerning administrative offences are distinctive in that they are conducted in accordance with the principle of investigation, making it essential to emphasise procedural safeguards that balance the asymmetrical relationship between the accused and the administrative authority. Ensuring the right to defence, the presumption of innocence, proportionality in the imposition of penalties, and transparency and predictability in decision-making are indispensable elements for guaranteeing a fair trial. Equally important is the system of ordinary and extraordinary remedies, which ensures a two-instance system and allows for the review of decisions, thereby strengthening the control of the legality and objectivity of administrative penalties. Administrative procedural law thus not only protects individuals from the arbitrary exercise of public power but also enables effective enforcement of the public interest. It strikes a balance between the repression of rights and the protection of parties' rights in proceedings and represents an irreplaceable pillar of a democratic state governed by the rule of law.

In recent years, there have been efforts within the European Union to standardise criminal law, particularly in areas with cross-border implications or in harmonising the definitions of criminal offences and penalties, with a view to ensuring equal treatment of citizens and effective law enforcement across Member States. For example, the European Union Directive 2024/1203¹¹⁵ sets minimum rules for defining environmental crimes and imposing penalties throughout the European Union, aiming to improve environmental protection and more effectively prevent and combat environmental crime. However, similar standardisation has not yet been evident in the field of administrative penalties. Individual regulatory areas – such as construction law, environmental law, and financial regulation – operate under different sanction regimes, and significant variability therefore remains in the application of administrative sanctions. At the same time, it is evident that Czech administrative procedural law already incorporates principles aligned with European standards, such as the prohibition of *reformatio in peius*, the prohibition of abuse of power, and the principle of legality.¹¹⁶ These principles ensure that, despite differences between regulatory areas, a certain degree of predictability, equality, and procedural fairness is maintained, providing a foundation for future standardisation of decision-making across jurisdictions. In the author's view, it would be beneficial to standardise administrative penalties across jurisdictions, both within the framework of international cooperation among the V4 countries and potentially across the European Union. Such standardisation would promote equal treatment of participants in proceedings, ensure predictability and

115 | Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law, repealing Directives 2008/99/EC and 2009/123/EC.

116 | European Ombudsman, 2002.

proportionality of sanctions, and facilitate inter-state cooperation in addressing cross-border issues.¹¹⁷

With the advancement of artificial intelligence (AI) technologies to a high level of sophistication, it is both feasible and desirable to apply automation and AI in the field of administrative procedural law. Modern technologies can significantly streamline administrative decision-making. For example, automated systems can accelerate the processing of routine applications, verify the formal requirements of submissions, or pre-fill draft decisions, while the final decision remains under the authority of the administrative body. Moreover, AI enables an analysis of large volumes of data, the identification of patterns, and the formulation of preliminary conclusions, thereby improving consistency in decision-making across jurisdictions and reducing the risk of subjective bias. Nevertheless, it is essential that technological tools complement rather than replace human decision-making, ensuring that transparency and human oversight remain integral to the final decision.

117 | See Uhri & Nemes 2024, 225–253.

Reference list

1. Boháč R, Burzec M, Dienstbier F, Fiala Z, Frumarová K, Grygar T (2017) *Správní trestání*, Leges, Praha.
2. Černín K (2019) *Principy dobré správy*, Walters Kluwer, Praha.
3. Česko, funguj! (2025) *Zrychlení úřadů z nuly na sto? Potřebujeme automatizovat správní řízení*, 19 March, <https://tinyurl.com/mu8uhufy> [30.08.2025].
4. Department of Legislation and Regulation Coordination (2022) *Guide to Act No. 250/2016 Coll. on liability for offences and proceedings concerning them*, 1 February, <https://tinyurl.com/yc2pevhp> [29.08.2025].
5. Dvořák B (2016) K problematice procesního jednání právnických osob, *Právní rozhledy* 19/2016, pp. 649–655.
6. European Ombudsman (2002) *The European Code of Good Administrative Behaviour*, 1 March, <https://tinyurl.com/36ssafaf> [25.08.2025].
7. Fiala Z, Frumarová K, Horzinková E & Škurek M (2021) *Správní právo trestní*, Leges, Praha.
8. Frumarová K, Pouperová O & Škurek M (2021) *Správní právo procesní*, C. H. Beck, Praha.
9. Grygar T (2020) *Specifika řízení o přestupku právnické osoby*, C. H. Beck, Praha.
10. Horzinková & Novotný (2019) *Správní právo procesní*, Leges, Praha.
11. Jelínek J, Draštíř A, Galovcová I, Hasch K, Heranová S, Jirásek J et al. (2021) *Trestní právo procesní*, Leges, Praha.
12. Jemelka L & Vetešník P (2017) *Zákon o odpovědnosti za přestupky a řízení o nich, Zákon o některých přestupcích. Komentář*, C. H. Beck, Praha.
13. Jemelka L (2025) *Zákon o odpovědnosti za přestupky a řízení o nich. Zákon o některých přestupcích*, C. H. Beck, Praha.
14. Kopecký M (2014) K některým otázkám postavení obviněného v přestupkovém řízení, *Správní parvo* 47(1–2), pp. 89–96.
15. Pipek J (1998) *Rozsah přezkoumávání rozhodnutí v trestních věcech (revizní princip)*, Univerzita Karlova, Praha.
16. Prášková H (2013) *Základy odpovědnosti za správní delikty*, C.H. Beck, Praha.
17. Prášková H (2017a) *Nové přestupkové právo*, Leges, Praha.
18. Prášková H (2017b) *Jednání za právnickou osobu ve správním řízení, Správní parvo*, 22/2017, pp. 137–154.

19. Prášková H (2020) Příkaz v řízení o přestupku, *Acta Universitatis Carolinae Iuridica* 60(2), pp. 121–144, DOI: <https://doi.org/10.14712/23366478.2020.16>.
20. Prášková H (2022) *Přestupkové právo*, Leges, Praha.
21. Průcha P (2024) *Správní právo – obecná část*, Masarykova univerzita, Brno.
22. Skulová S, Průcha P, Havlan P, Jurníková J, Kadečka S, Kliková A et al. (2020) *Správní právo procesní*, Aleš Čeněk, Plzeň.
23. Strakoš & Kroupová (2017) *Základy správního trestání*, Institut pro veřejnou správu Praha.
24. Šámal P, Baxa J, Fryšták M, Kalvodová V, Kuchta J, Novotná J et al. (2013) *Trestní právo procesní*, C. H. Beck, Praha.
25. Uhri L & Nemes O (2024) Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia), *JAEL* 19(36), pp. 225–253, DOI: <https://doi.org/10.21029/JAEL.2024.36.225>.
26. Újhelyi Gyurán I, Lelle Zs, Pártai Czap S (2024) Locus standi in administrative proceedings concerning environment protection, in the case law of the CJEU and the ECtHR, *JAEL* 19(36), pp. 203–224, DOI: <https://doi.org/10.21029/JAEL.2024.36.203>,
27. Winterová A, Macková A & Zoulík F (2018) *Civilní právo procesní. Část první: řízení nalézací*, Leges, Praha.

ENVIRONMENTAL INSPECTORATES AND REGULATORY OVERSIGHT

The Role, Powers and Challenges of the Environmental Inspectorate in the Czech Republic¹

Abstract

This comprehensive analysis examines the Czech Environmental Inspectorate (CEI), established under Act No. 282/1991 Coll., as the primary regulatory authority responsible for environmental compliance monitoring in the Czech Republic. The article explores CEI's institutional framework, encompassing its organisational structure with ten territorial inspectorates and central headquarters, alongside its broad regulatory mandate covering nature protection, water and air quality, waste management, and chemical safety oversight. The analysis details CEI's enforcement mechanisms, including routine inspections, targeted investigations, and emergency response protocols, while examining the administrative procedures governing environmental offense adjudication. Key findings reveal both the strengths and limitations of the current system, highlighting CEI's crucial role in environmental protection along with significant operational challenges including resource constraints, staffing inadequacies, and jurisdictional complexities that impede optimal performance. The research identifies critical improvement opportunities through enhanced legal mandates, technological modernisation including artificial intelligence integration, and structural reforms to strengthen inter-agency coordination. The article concludes that strategic institutional development and technological advancement are essential for maintaining effective environmental governance and ensuring sustainable protection of natural resources in the Czech Republic.

Keywords: Czech Environmental Inspectorate, environmental enforcement, administrative law, inspection powers, environmental protection

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1. Introduction and legal basis

1.1. Environmental inspection as a regulatory tool

The Czech Environmental Inspectorate (Česká inspekce životního prostředí, CEI) is a fundamental regulatory instrument with the task of verifying and ensuring compliance by individuals, legal entities, and public authorities with the applicable environmental legislation and standards. Within the legal framework of the Czech Republic, environmental inspection functions as a supervisory and enforcement tool aimed at monitoring, assessing, and guaranteeing the observance of statutory obligations in critical domains including nature, forest, air and water protection, waste management and chemical safety. This systematic and preventive oversight is essential for mitigating environmental risks, fostering sustainable development, and safeguarding public health interests.

1.2. Role and legal mandate of CEI

CEI is the central authority responsible for environmental inspection in the Czech Republic. Established by Act No. 282/1991 Coll.² the CEI operates as an independent professional body subordinate to the Ministry of the Environment. Its mandate covers:³

- | Supervision of Compliance: Overseeing adherence to environmental legislation and administrative decisions.
- | Inspection Activities: Conducting planned and ad hoc inspections, investigations, and audits in all environmental sectors.
- | Sanctions and Remedial Measures: Imposing fines and corrective actions for violations of environmental laws.
- | Specialised Supervision and Intervention: Supervising the handling and trade of endangered species, enforcing chemical safety and product safety standards, and restricting or halting operations that pose a serious risk to the environment.
- | Environmental Protection and Risk Management: Participating in addressing historic environmental burdens, responding to environmental accidents, and implementing remedial actions to mitigate environmental threats.
- | Public Engagement and Information Provision: Investigating reports and initiatives submitted by both individuals and legal entities, providing information

2 | Act No. 282/1991 Coll., on the Czech Environmental Inspectorate and its competencies in forestry protection.

3 | Česká inspekce životního prostředí 2025a.

pursuant to relevant legal provisions, and communicating environmental data to the public, media, and state administration.⁴

- | Expert Consultation and Cooperation: Issuing expert opinions for other administrative authorities and cooperating with domestic and international inspection bodies,⁵ particularly within the network of EU inspection authorities (IMPEL), to enhance the effectiveness of environmental protection.⁶

The CEI's legal authority is defined by Act No. 282/1991 Coll., as well as sector-specific laws such as the Waste Act (Act No. 541/2020 Coll.), the Water Act (Act No. 254/2001 Coll.), the Air Protection Act (Act No. 201/2012 Coll.), the Nature and Landscape Protection Act (Act No. 114/1992 Coll.), the Act on Prevention and Remedying of Environmental Damage (Act No. 167/2008 Coll.) etc.

1.3. Importance of environmental supervision in Czech regulatory enforcement

Environmental supervision plays a pivotal role in the effective enforcement of environmental regulations within the Czech Republic. Through systematic and regular inspections, alongside continuous monitoring, environmental authorities (notably CEI) are able to identify violations promptly, thereby deterring non-compliance and fostering adherence to established environmental standards. This oversight is fundamental not only for the protection of public health and the environment – by reducing pollution and preserving ecosystems – but also for preventing broader environmental degradation. Crucially, transparent and consistent supervision contributes to legal certainty by reinforcing the rule of law and cultivating trust among regulated entities and the general public. The capability to impose sanctions serves as an essential deterrent against potential violators, promoting a culture of responsibility and compliance. An even more significant instrument for the protection of the environment is the power to impose remedial measures, which may be ordered concurrently with fines without violating the principle of *non bis in idem*. These measures are conceptually distinct from punitive sanctions, as their purpose is the restoration or mitigation of damage in accordance with the 'polluter pays' principle, rather than the imposition of punishment as a primary objective.⁷ Additionally, the information gathered through supervisory activities provides critical feedback to policymakers, facilitating ongoing refinement of environmental legislation and enforcement strategies. Consequently, environmental supervision is indispensable in bridging the gap between legislative

4 | Klemperová 2015, 29–30.

5 | Kremplová Mendrygalová 2018, 56–57.

6 | Benešová 2020, 29–30.

7 | Zdráhalová & Vomáčka 2025, 239.

intent and practical implementation, ensuring that environmental protection is actively realised rather than remaining a theoretical objective.⁸

2. Institutional structure

2.1. Legislative framework defining CEI's role and authority

CEI was established in 1991 by Act No. 282/1991 Coll. (forestry protection competences), as an independent organisation subordinate to the Ministry of the Environment⁹ and funded from the state budget. The other environmental sectors – air and nature protection as well as waste management – were incorporated gradually in 1991–1992.¹⁰ Since its inception, the CEI's competencies have been continuously adjusted and refined in response to evolving legislative frameworks, as set forth in various sectoral laws.¹¹ For example, certain competencies have been modified or discontinued over time, such as the termination of authority to provide statements within the Environmental Impact Assessment (EIA) process.¹² This gradual adaptation of competences reflects both legislative developments and policy shifts up to the present structure. In the various domains of environmental protection, the competencies of CEI are currently regulated by numerous legal instruments, including laws, decrees, and European Union regulations. These encompass: Nature, landscape, forest protection, and CITES – governed by 9 legal provisions; Air protection, ozone layer protection, and the Earth's climate system – covered by 16 legal provisions; Water protection – regulated by 3 legal provisions; Waste management – subject to 7 legal provisions; and integrated agendas – governed by 4 legal provisions.¹³

Among the general legal instruments relevant to the activities of the CEI is Act No. 500/2004 Coll., the Administrative Procedure Code, which establishes the general framework for administrative proceedings and constitutes a fundamental legal norm within administrative law in the Czech Republic. Another key general statute governing CEI operations is Act No. 255/2012 Coll., on Control Activities (the Control Code), which regulates the procedure for conducting inspections. Equally significant is Act No. 250/2016 Coll., on Liability for Offenses and Proceedings Thereon, which governs the adjudication of administrative offenses. The public's right to information, including environmental information, is primarily exercised through Act No. 123/1998 Coll., on the Right to Information on the Environment, and Act No. 106/1999

8 | Gunningham & Sinclair 1999, 8–16, 45–49, 55–58.

9 | Jelínková & Buchta 2020.

10 | Česká inspekce životního prostředí 2025b.

11 | Klemperová 2015, 22–23.

12 | Act No. 465/2023 Coll., which amended Act No. 100/2001 Coll., on Environmental Impact Assessment and removed CEI from the list of concerned authorities.

13 | CEI 2025a, 5, 11–12, 16, 21, 28.

Coll., on Free Access to Information. Given the role of CEI, *inter alia*, as a preventive authority in environmental protection, it is necessary to further include among the general legal instruments Act No. 224/2015 Coll., on the Prevention of Major Accidents Caused by Selected Hazardous Chemical Substances or Chemical Mixtures. Additionally, Act No. 167/2008 Coll., on the Prevention of Environmental Damage and its Remediation, constitutes another fundamental statute shaping the preventive and remedial functions of CEI. Moreover, this Act is the only statute that provides an explicit definition of a remedial measure and establishes specific procedural rules governing its imposition.¹⁴ Together, these laws form an integral part of the CEI regulatory mandate in safeguarding the environment through proactive risk management and enforcement measures.¹⁵

2.2. Organisational structure

CEI is an institution with a nationwide scope operating as a single entity. Its organisational structure consists of ten territorial inspectorates, two branches and headquarters.¹⁶ The territorial jurisdiction of the inspectorates and the competencies of the headquarters are defined internally; externally, CEI functions as one unified administrative authority without territorial distinctions.

CEI organises each of its territorial inspectorates into four distinct specialised departments: Air Protection, Water Protection, Waste Management, and Nature and Forest Protection. These inspectorates handle the majority of the operational agenda including inspections, investigation of reports, and conducting administrative proceedings. At the helm of the headquarters is the Director of CEI, who oversees a number of departments and units responsible both for the organisational management and operational functioning of the institution, as well as for providing methodological expertise and support to the territorial inspectorates. In exceptional cases involving the aforementioned environmental sectors, as well as in specific areas such as CITES¹⁷ and fluorinated greenhouse gases, the inspections and administrative proceedings are conducted directly by the Headquarters itself.

The decentralised structure provides several operational advantages. Territorial inspectorates can respond more rapidly to environmental incidents and complaints within their territories, develop specialised knowledge of local environmental conditions and challenges, and maintain closer working relationships with regional and local authorities. The central office ensures consistency in inspection methodologies, legal interpretation, and enforcement standards across all regions, while also coordinating complex cases that may span multiple jurisdictions or require specialised technical expertise.

14 | Zdráhalová & Vomáčka 2025, 241.

15 | CEI 2025b.

16 | Section 1, para. 2 of Act No. 282/1991 Coll.

17 | The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

This structure ensures coherent nationwide enforcement while maintaining specialised focus areas within each inspectorate.

2.3. Inter-agency relationships and cooperation mechanisms

CEI operates under the authority of the Ministry of the Environment, which functions as its methodological body, supervises its activities, and serves primarily as the appellate body in administrative proceedings. In accordance with the principle of administrative cooperation,¹⁸ CEI collaborates with other administrative authorities – including ministries, regional and municipal offices, and specialised institutions. This cooperation encompasses the coordination of inspections and mutual assistance in administrative affairs. CEI responds to requests for opinions from these authorities and, conversely, relies on them to obtain necessary factual information in the course of inspections or administrative proceedings, thereby ensuring an integrated and efficient enforcement of environmental regulations. CEI holds the authority, in certain areas of environmental protection, to oversee and verify compliance with legal provisions not only by regulated entities but also by the other cited state administration bodies (with the explicit exception of central government authorities).¹⁹

In the field of criminal law, CEI cooperates closely with both the Police and the Public Prosecutor's Office. CEI files criminal charges upon identifying the commission of a criminal offense – that is, when unlawful conduct exceeds the threshold of an administrative offense. It actively participates in criminal proceedings as a specialised expert institution by performing evidentiary and investigative acts, such as collecting samples, conducting measurements, capturing animals, producing drone recordings, etc. Furthermore, CEI provides expert opinions and positions relevant to the criminal investigations.

3. Scope of competencies and inspection powers

3.1. Powers of individual environmental inspectors

The primary function of CEI inspectors is to conduct inspections within the field of environmental protection. The Control Code (Act No. 255/2012 Coll.) provides the foundational procedural framework for all inspection activities conducted by public administration bodies. It confers relatively broad and robust powers upon inspectors, including the right to enter buildings, transport vehicles, land, and other premises (excluding residential dwellings unless used for business

18 | The principle of administrative cooperation is enshrined in sec. 8 of the Administrative Procedure Code (Act No. 500/2004 Coll.).

19 | Section 80, para. 1 of the Protection of Nature and Landscape Act (Act No. 114/1992 Coll.).

purposes) when necessary for inspection activities.²⁰ They can demand identity verification from individuals present at inspection sites, conduct sampling operations, perform measurements and examinations, and require the submission of documents and materials relevant to the inspection subject.²¹ Inspected entities are obliged to comply with the inspector's requests²² under the threat of a penalty for non-cooperation of up to 500,000 CZK.²³ Certain legal regulations confer additional inspection powers on the inspectors.²⁴ Inspectors are authorised to oversee compliance with environmental legal regulations by all natural persons, legal entities, entrepreneurs, and, in certain cases, administrative authorities. During inspections, CEI inspectors have competence to assess the environmental impacts of activities and to conduct monitoring of the quality of environmental components such as air, water, soil, and biodiversity.

At the site where CEI inspectors identify breaches of legal provisions, they may immediately undertake measures to halt, rectify, or sanction the offending activity. In so-called on-the-spot proceedings,²⁵ inspectors may impose provisional measures aimed at preventing further harmful conduct or order urgent interventions. They are also empowered to seize specimens of specially protected animals or plants to prevent the owner or possessor from handling them further.²⁶ In the context of environmental emergencies related to water protection, the CEI may issue immediate instructions for dealing with such incidents.²⁷ A frequently employed sanctioning tool for addressing less serious violations is the on-the-spot order, which allows for the imposition of a fine of up to 10,000 CZK. In cases of minor violations of environmental legislation that do not reach the threshold of an administrative offense, the situation may be resolved through an informal agreement.²⁸

However, in the majority of cases, the matter cannot be concluded directly on site. Further inspection is either required – for example, to verify additional facts, await laboratory analysis results, or process collected data – or the findings necessitate the imposition of more complex remedial measures, a higher degree, or a different type of administrative sanction. In such instances, it is necessary to conduct standard or expedited administrative proceedings in a remote (non-presential) form.

20 | Section 7 of the Control Code.

21 | Section 8 of the Control Code.

22 | Kremplová Mendrygalová 2018, 21–22.

23 | Section 15, para. 1 of the Control Code.

24 | For example, section 17, para. 2 the Air Protection Act permits inspectors, under specific conditions, to enter the residences of natural persons directly.

25 | Section 143 of the Administrative Procedure Code.

26 | In the case of specimens protected under the CITES Convention, the measure constitutes detention pursuant to section 34 of the CITES Act (Act No. 100/2004 Coll.). For species protected by national legislation, the specimen may be confiscated pursuant to section 89 of the Act on the Protection of Nature and Landscape.

27 | Section 41, para. 2 of the Water Act.

28 | Section 91, para. 1 of the Act on Liability for Offenses and Proceedings Thereon.

3.2. Nature, time requirements, and types of inspections conducted by CEI

CEI operates a comprehensive system of environmental compliance monitoring through three distinct categories of inspections, each designed to address different aspects of environmental protection and enforcement needs: Routine monitoring inspections, Targeted enforcement inspections and Emergency response inspections. This systematic approach ensures thorough coverage of environmental regulations while maintaining efficient resource allocation and rapid response capabilities when environmental threats arise.²⁹

Pursuant to the Administrative Procedure Code³⁰ and the applicable sectoral legislation, CEI accepts and processes environmental violation notices that must specify the nature, location, and timeframe of the suspected infringement along with, if known, the responsible party.³¹ These reports can be submitted in various forms including written submissions, oral statements into the record, electronic communication, or anonymously. The CEI's investigative process involves gathering evidence, such as photographs or expert assessments, to verify non-compliance. Upon establishing a violation, CEI documents the findings and initiates administrative proceedings. Transparency and timeliness are ensured by CEI's statutory obligation to inform reporting parties on the outcome within a prescribed 30-day period.

The time required for individual inspections and the subsequent administrative proceedings varies significantly depending on the type of inspected entity (e.g. energy facilities, wastewater treatment plants, landfills, waste producers, etc.) and the applicable legislation.

The size of the entity and the scale of its operations also play a crucial role – for instance, in packaging waste: the import of a few hundred kilograms versus nationwide retail chains handling thousands of tons. Additional factors affecting inspection complexity include the level of cooperation from the entity (e.g. provision of documents, facilitation of the inspection) and legislative ambiguities in the relevant area.

Average inspection durations differ across environmental protection sectors. For example, at regional CEI inspectorates, waste management inspections typically last around 4.5 days; water protection divisions around 3 days; air protection approximately 2 days; and international biodiversity and CITES inspections range from one hour at the Václav Havel Airport branch to up to 3 days for inspections under the Act on the Protection of Nature and Landscape, and about 6.5 hours for forest protection inspections.³²

29 | Beranová 2014, 37–38.

30 | Section 42 of the Administrative Procedure Code.

31 | Jemelka, Pondělíčková & Bohadlo 2016, 231.

32 | CEI 2025a, 3.

Generally, 40–45% of inspectors' available time is allocated for routine supervisory and inspection activities.³³ The remaining capacity is reserved for unforeseen tasks and mandatory duties arising throughout the year, including handling environmental damage reports, unplanned inspections (such as authorised emission measurements), and ad hoc thematic assignments requested by the Ministry of the Environment. Incident investigations – such as chemical industry accidents or waste landfill fires – are particularly time-intensive.

Routine monitoring inspections constitute the foundation of CEI's oversight activities, involving systematic verification of compliance with environmental regulations by public administration bodies, legal entities, and natural persons engaged in business activities in all environmental sectors. CEI develops annual inspection plans that coordinate these activities with other enforcement bodies to maximise effectiveness and prevent regulatory gaps. According to the 2025 activity plans,³⁴ the CEI conducts both scheduled and operational repeat on-site inspections, maintaining continuous surveillance of environmental compliance across various sectors. A special category is constituted by the inspection of facilities regulated by the Integrated Prevention Act,³⁵ under which the CEI is directly mandated by law to conduct regular inspections. For facilities presenting the highest environmental risk, the interval between regular inspections shall not exceed one year, whereas for facilities presenting the lowest risk, this interval shall not exceed three years.³⁶

Targeted enforcement inspections represent focused interventions based on specific intelligence, complaints, risk assessments, or previously identified violations. These inspections concentrate CEI resources on entities or activities with elevated probability of non-compliance or potential for significant environmental impact. The targeted approach includes specialised oversight of hazardous waste property assessments, transboundary waste shipments, and complex environmental violations requiring thorough investigation. These inspections often involve cooperation with customs authorities, law enforcement agencies, and other specialised bodies to address sophisticated environmental crimes or cross-border environmental violations. The enforcement activities may include comprehensive evidence gathering, witness interviews, detailed technical assessments, and coordination with various specialists when investigating wildlife crimes or complex environmental damage cases. This category of inspections also encompasses follow-up checks of imposed remedial measures as well as specifically thematically targeted actions responding to deficiencies identified in other entities.³⁷

33 | Ibid.

34 | CEI 2025a, 3–4.

35 | The Act on Integrated Prevention and Pollution Control, and on the Integrated Pollution Register (Act No. 76/2002 Coll.).

36 | Section 20b of the Integrated Prevention Act.

37 | Česká inspekce životního prostředí 2025c.

Emergency response inspections provide immediate intervention capabilities when environmental incidents pose imminent threats to ecological systems or public health. These inspections are triggered by environmental emergencies such as chemical spills, illegal waste disposal, industrial accidents, or natural disasters requiring immediate assessment and mitigation. Environmental inspectors possess the above-mentioned emergency powers to immediately restrict or completely halt harmful activities. Emergency inspections involve coordination with integrated rescue system components, including fire departments, the Police,³⁸ emergency medical services, and specialised hazardous materials response teams.

All inspection categories operate under the procedural framework established by the aforementioned Control Code. Following the completion of the inspection, detailed protocols must be prepared within 30 to 60 days from the date the last inspection action was carried out.³⁹ The protocol primarily contains the findings of the inspection, presenting the factual circumstances with identified deficiencies and references to the violated legal provisions, including the evidentiary basis for these findings, as well as instructions on the right to file objections against the inspection findings.⁴⁰ Objections must be submitted within 15 days unless a longer period is specified. Generally, objections are formally processed by the superior of the inspecting officer.⁴¹

CEI's inspection system reflects contemporary European Union standards emphasising risk-based approaches, systematic planning, and coordination between enforcement authorities to ensure consistent environmental law application. This comprehensive approach enables effective environmental protection through preventive monitoring, targeted enforcement of specific violations, and rapid emergency response capabilities essential for safeguarding Czech Republic's environmental resources.

4. Interaction with administrative sanctioning and compliance mechanisms

4.1. Identification and reporting violations

As previously noted, CEI detects violations of environmental regulations primarily through its own investigative activities, submissions from the public, and information received from other state authorities. Upon receiving a report or other relevant information, CEI typically undertakes preliminary actions preceding the

38 | For example – cooperation within the framework of addressing an emergency under the Water Act – Section 41, paras. 2 and 3 of the Water Act.

39 | Section 12, para. 2 of the Control Code.

40 | Kremplová Mendrygalová 2018, 39–40.

41 | Section 14, para. 1 of the Control Code.

formal inspection to verify the accuracy and relevance of the data provided⁴² or initiates the inspection process in accordance with the Control Code. Although the Administrative Procedure Code allows for proceedings to be initiated without sufficient evidence and for evidence gathering to occur during the administrative process, CEI preferentially follows the Control Code procedures for practical reasons, as the inspection protocol prepared during the inspection often serves as the sole evidentiary basis for issuing administrative decisions.⁴³ In certain cases – such as when receiving a highly detailed and well-substantiated report, when another authority has already conducted an inspection, or following the transfer of a matter by bodies active in criminal proceedings – CEI may find the existing documentation sufficiently comprehensive to forego initiating a formal inspection and proceed directly to the commencement of administrative proceedings.

In certain instances, it may only become apparent during or at the conclusion of an inspection that CEI lacks the competence to conduct the subsequent administrative proceedings, such as administrative offense proceedings, proceedings aimed at restricting or discontinuing activities, or proceedings concerning remedial measures.⁴⁴ In such cases, if the established facts indicate the commission of a criminal offense, CEI transfers the matter to the bodies active in criminal proceedings. Alternatively, the case is referred to the authority competent under another legal provision for the adjudication of the offense or the conduct of other administrative proceedings. This procedural channel⁴⁵ ensures that matters are handled by the appropriate competent authorities in accordance with the applicable legal framework, preserving the legality and efficiency of enforcement processes within the environmental protection system.

In situations where it is established that no offense has been committed and there is no need to initiate other proceedings, a resolution to discontinue the case is issued. Discontinuation also occurs in various other circumstances, such as when it is found that the offender has died, has not reached the age of fifteen, lacked mental capacity, enjoys privileges or immunity, liability for the offense has expired, or if an obstacle such as *litispendence* (pending proceedings) or *res iudicata* (a matter already adjudicated) has been identified, among other reasons.

4.2. CEI's role in administrative offense proceedings

CEI is not only vested with inspection powers but also constitutes an autonomous administrative authority with nationwide jurisdiction, empowered to

42 | Section 3, para. 1 of the Control Code.

43 | Section 81 of the Act on Liability for Offenses and Proceedings Thereon.

44 | E.g. if it is determined that the violation was committed by a natural person not engaged in business; in cases involving criminal offenses; or in cases of offense related to forestry that fall outside section 4, para. 1 of Act No. 282/1991 Coll.

45 | Section 64, para. 1 of the Act on Liability for Offenses and Proceedings Thereon.

conduct various types of administrative proceedings, most notably administrative offense proceedings.⁴⁶ When a case subject to inspection is neither transferred to another authority nor discontinued, CEI is authorised to conduct administrative offense proceedings, which represent one of its most frequent formal activities. This dual role underscores CEI's comprehensive mandate that extends beyond mere supervisory functions, enabling it to impose sanctions, order remedial measures, and ensure compliance through legally binding administrative decisions at the national level.

In numerous sectoral laws,⁴⁷ CEI shares concurrent jurisdiction to conduct administrative offense proceedings with other administrative authorities, which include municipal authorities, military district authorities, regional authorities, national park administrations, and the Nature Conservation Agency of the Czech Republic. In such cases, the authority competent to conduct the proceedings is the one that first became aware of the violation of legal obligations. In practice, however, it is common for municipal authorities, for example, to forward reports of alleged offenses to CEI as a specialised and highly qualified authority for investigation and adjudication.

CEI may conduct several types of administrative offense proceedings depending on the type, severity, and circumstances of the offense, as well as the evidence gathered. These include abbreviated proceedings, standard proceedings, and joint proceedings:

- | Proceedings for issuing an on-the-spot order: This is the simplest form of formal resolution of an administrative offense. CEI may exercise it when the factual situation is sufficiently established, the accused agrees with the established facts, the legal qualification of the offense, the imposition of the fine, and its amount. An on-the-spot order may impose a fine up to 10,000 CZK (up to 2,500 CZK for juveniles under 18).⁴⁸ By signing the order block, the order becomes final and cannot be challenged by ordinary legal remedies.
- | Proceedings for issuing an order: This is another expedited form that completely bypasses the full administrative process, allowing CEI to issue the order as the first act in the administrative proceedings.⁴⁹ The order may be issued if the factual situation is properly established, typically after an inspection.⁵⁰ The order may impose an administrative sanction such as a reprimand, fine, prohibition of activity, or forfeiture of an item. An objection may be filed against the order within eight days, which automatically annuls the order by operation of law, and CEI then proceeds with the standard administrative offense

46 | Damohorský et al. 2010, 68.

47 | E.g. the Air Protection Act, the Water Act, the Act on the Protection of Nature and Landscape.

48 | Section 91, para. 1 of the Act on Liability for Offenses and Proceedings Thereon.

49 | Section 150, para. 1 of the Administrative Procedure Code.

50 | As noted previously, the inspection protocol could serve as the sole evidentiary basis for issuing an order.

proceeding. An order may not be used if the administrative sanction is to be imposed on a juvenile or if a decision is to be made regarding a claim for compensation for damages or a claim for the restitution of unjust enrichment etc.⁵¹

| Standard proceedings for issuing a decision on an administrative offense: This is the basic form of administrative offense proceedings, which allows for the accomplishment of all phases of the administrative process and guarantees the participants⁵² the highest level of protection of their procedural rights. CEI may apply this procedure in all situations, but it is typically used when evidence needs to be gathered during the proceedings – such as oral hearings with the parties involved, witness interrogations, site or property inspections, or the preparation of expert opinions. Beyond the sanctions referred to in the previous paragraph, CEI may theoretically⁵³ also impose, by decision on the offense, the administrative penalty of publishing the decision on the offense.⁵⁴ The first act in standard proceedings is the notification of the initiation of proceedings delivered to the accused or by oral announcement of such notification.⁵⁵ During the proceedings, participants may exercise their procedural rights, such as proposing evidence, raising objections, requesting oral hearings, and so forth. Before issuing a decision, participants must be given the opportunity to review the materials on which the decision is based and to comment on them.⁵⁶ An appeal against a decision on an administrative offense issued by CEI may be filed within 15 days, with the Ministry of the Environment deciding on the appeal.

| Joint proceedings for issuing a decision on an administrative offense: This is the standard form of administrative offense proceedings used in cases where a single offender commits multiple offenses or when related offenses committed by several offenders are adjudicated together. CEI is obliged to conduct joint proceedings for reasons of efficiency as well as to safeguard the specific rights of the offender. Joint proceedings involving multiple offenses by one offender are governed by the so-called absorption principle,⁵⁷ which ensures that the offender receives a penalty for the most serious offense committed, taking into account that they have also committed other offenses. In cases involving multiple offenders, joint proceedings adjudicate offenses of co-offenders or

51 | Section 90, para. 2 of the Act on Liability for Offenses and Proceedings Thereon.

52 | Pursuant to section 68 of the Act on Liability for Offenses and Proceedings Thereon, the participants in the proceedings always include the accused, and additionally may include the injured party and the owner of the item which may be subject to seizure. Furthermore, other persons may be recognised as participants in the proceedings if sectoral legislation confers such status upon them.

53 | None of the current sectoral laws provide for the possibility of imposing a penalty of prohibition of activity or the administrative penalty of publishing the decision, which is a necessary condition for their use, so CEI will only be able to use these penalties in the event of future amendments.

54 | Section 50 of the Act on Liability for Offenses and Proceedings Thereon.

55 | Section 78, para. 2 of the Act on Liability for Offenses and Proceedings Thereon.

56 | Section 36, para. 3 of the Administrative Procedure Code.

57 | Section 41, para. 1 of the Act on Liability for Offenses and Proceedings Thereon.

offenses that are materially related. CEI must conduct joint proceedings only if it has jurisdiction over all offenses and all offenses are under the same sectoral law.⁵⁸ A standard decision is issued in joint proceedings, as in the previous paragraph.

Resolving an offense through agreement is entirely separate from the types of administrative offense proceedings mentioned above. An agreement is an entirely informal resolution of minor offenses that cause minimal social harm. The agreement takes place orally directly on site and does not constitute *res judicata*; in the case of new evidence, it allows CEI to initiate one of the aforementioned proceedings.

It is important to distinguish between administrative penalties imposed in administrative offense proceedings and special types of sanctions of a so-called non-punitive nature regulated by certain environmental protection laws.⁵⁹ These sanctions are *sui generis*, meaning they are unique in nature and therefore do not constitute administrative penalties subject to the Act on Liability for Offenses and Proceedings Thereon.

An example of a special type of sanction involving the possibility to suspend or prohibit certain activities can be found in the following laws: the Air Protection Act,⁶⁰ which grants CEI the authority to issue a decision to suspend the operation of a stationary source of air pollution operated without a permit; the Nature and Landscape Protection Act,⁶¹ which authorises CEI to prohibit activities that could cause unauthorised changes to generally or specially protected natural areas; the Nature and Landscape Protection Act⁶² again, which empowers CEI to order restrictions or suspension of harmful activities in cases of imminent damage; and Act No. 282/1991 Coll.⁶³ that allows the CEI to order restrictions or stoppages in production or other activities in the event of imminent damage to forests.

Another special sanction is the seizure of specimens pursuant to Section 34a of the CITES Act and the removal of individuals pursuant to Section 89 of the Nature and Landscape Protection Act. While these specimens may, under certain conditions, be confiscated in administrative offense proceedings, in practice it is usually more expedient to apply the special procedures prescribed by the relevant sectoral laws. Seizure or removal is subject to different conditions (e.g. it can be executed against mere possessors), does not require a finding of guilt for an offense (absence of fault, etc.), is not subject to limitation periods, and so forth.

58 | Section 88, para. 1 of the Act on Liability for Offenses and Proceedings Thereon.

59 | Damohorský et al. 2010, 37.

60 | Section 22, para. 2 of the Air Protection Act.

61 | Section 66 of the Nature and Landscape Protection Act.

62 | Section 80, para. 2 of the Nature and Landscape Protection Act.

63 | Section 3, para. 4 of Act No. 282/1991 Coll.

4.3. Cooperation with other administrative authorities and law enforcement authorities in criminal proceedings

Regarding other administrative authorities conducting administrative offense proceedings, CEI holds no special procedural status, powers, or obligations in relation to them. Under the general principle of cooperation among administrative authorities,⁶⁴ CEI may be requested to provide its opinion on a particular matter. Additionally, if CEI encounters violations of legal regulations outside its jurisdiction during its activities, it is obliged to notify the competent administrative authority. CEI does not otherwise participate in administrative offense proceedings that it does not itself conduct.

CEI cooperates with law enforcement authorities in criminal proceedings through several key mechanisms established by the Criminal Procedure Code (Act No. 141/1961 Coll.). CEI operates as a specialised reporting entity that notifies police authorities of suspected environmental crimes, fulfilling its statutory notification obligation under criminal law provisions.⁶⁵ This cooperation encompasses the provision of expert testimony, technical evidence, and specialised knowledge during investigations of environmental offenses. A critical aspect of this collaboration involves the transfer of seized items when law enforcement authorities confiscate specimens of protected plant or animal species, regulated furs, or other items subject to endangered species legislation that are no longer required for evidentiary purposes, these materials are transferred to CEI custody for proper handling and disposal.⁶⁶ Additionally, CEI may participate in preliminary criminal proceedings to clarify facts suggesting potential criminal activity and can provide inter-agency support through coordination with customs authorities and criminal police units, strengthening the overall enforcement framework for environmental law violations. This cooperative structure ensures that environmental crimes are addressed through both administrative and criminal law mechanisms, with CEI serving as the bridge between technical environmental expertise and criminal justice procedures.

5. Challenges and shortcomings of the CEI

5.1. Practical and technical limitations

CEI faces significant practical limitations in the Czech Republic that impair their overall effectiveness. Limited financial resources constrain the capacity to maintain adequate inspection frequencies and to invest in advanced monitoring

64 | Section 8 of the Administrative Procedure Code.

65 | Section 158 of the Criminal Procedure Code.

66 | Section 81b, para. 2 of the Criminal Procedure Code.

technologies. Moreover, a persistent shortage of qualified personnel willing to work within the public administration, particularly under current salary conditions, exacerbates staffing challenges. This shortage undermines the ability to deploy sufficiently skilled inspectors who can effectively detect and assess environmental non-compliance and also draft legally complex acts in administrative proceedings.⁶⁷

Technical resources are also highly limited. These include the availability of vehicles, a limited number of drones, measuring instruments, and a constrained budget for commissioning expert assessments, laboratory analyses, or even DNA testing.⁶⁸

Current inspection methods and resource allocations are often insufficient for the comprehensive detection of violations. Risk-based inspection approaches are employed to prioritise scarce resources, but the complexity and diversity of environmental obligations frequently exceed existing capacities. Much of CEI's work is focused on responding to often trivial complaints from the public. Consequently, many offenses – especially those of a diffuse or technical nature – may remain undetected or inadequately addressed.

5.2. Legal and procedural barriers

Legal and procedural barriers further hinder enforcement efforts. Aforementioned overlapping competencies among multiple regulatory authorities create jurisdictional ambiguities and complicate coordinated enforcement. In other areas, CEI's competencies are insufficient. For example, limited CEI jurisdiction in the forest sector, due to a narrowly defined list of administrative offenses,⁶⁹ restricts its ability to fully address unlawful forestry activities. Additionally, the expansion of CEI's agenda to include non-environmental tasks, such as market surveillance under separate legislation,⁷⁰ stretches focus and strains resources essential for core environmental protection functions.

Additional legal barriers limiting the effectiveness of CEI include the complexity and fragmentation of the legal framework, which hampers consistent application and enforcement; prolonged durations of administrative proceedings,

67 | The majority of inspectors without legal education are also responsible for drafting all administrative decisions and procedural acts. Territorial inspectorates typically employ only one or two in-house lawyers.

68 | E.g. for the purpose of assessing the origins of specimens of animal species protected by the CITES Convention.

69 | Section 4 of Act No. 282/1991 Coll. comprises only five administrative offenses that CEI is authorised to address in the field of environmental forest protection.

70 | Pursuant to the Act on Market Surveillance of Products (Act. No. 87/2023 Coll.) CEI exercises market surveillance in a specific segment of the market, which by its nature corresponds to the supervisory activities of the Czech Trade Inspection Authority and differs significantly from all other inspection activities conducted by CEI.

delaying corrective action; inconsistent decision-making practices by the superior authority,⁷¹ leading to legal uncertainty; insufficient upper limits for fines imposed for administrative offenses, that weaken the deterrent effect and the possibility of a just punishment; and challenges in enforcing decisions, which undermine overall regulatory effectiveness.

Together, these constraints accentuate the systemic challenges faced by environmental inspectors, calling for enhanced funding, clearer legislative mandates, and inter-agency cooperation to strengthen compliance assurance frameworks.

6. Future perspectives and conclusions

Modern trends, the continuously intensifying pressure to protect the environment, the increasingly complex legal framework both in the Czech Republic and the European Union, as well as the increasingly sophisticated legal defences employed by offenders, necessitate the enhancement of CEI activities and a continuous elevation of its operational standards. Achieving these improvements can be approached by various means, some of which are outlined below:

At the legislative level, the improved functioning of CEI could be supported by a clearer definition of its competencies for adjudicating administrative offenses, the elimination of dualities, and the expansion of certain powers – such as in the field of environmental forest protection. A certain effort to eliminate duality was made through Act No. 465/2023 Coll.; unfortunately, this amendment regrettably deprived CEI of all its competencies concerning non-entrepreneurial natural persons in the field of nature and landscape protection.⁷² There are also considerations⁷³ regarding a change in CEI's organisational structure and status so that, following the model of other administrative authorities,⁷⁴ it could become a two-tier body. However, there is currently no political will from the Ministry of the Environment to implement changes whereby, for example, first-instance decisions by territorial inspectorates would be reviewed by CEI Headquarters. At present, CEI is at least making efforts to unify decision-making practices across its ten territorial inspectorates through methodological and legal guidance provided by CEI Headquarters. Furthermore, CEI's effectiveness would be enhanced by strengthening its powers during inspections, for instance by allowing the use of covert identities and the ability to demand compensation for purchased samples of goods. In some areas,⁷⁵ the statutory upper limits for fines imposed for administrative offenses

71 | The Ministry of the Environment, as the superior authority, has five territorial state administration departments that decide on appeals in similar cases, often in divergent ways.

72 | Jelínková 2024, 21–24.

73 | Klemperová 2015, 67–69.

74 | E.g. the Czech Trade Inspection Authority, the Czech Agriculture and Food Inspection Authority.

75 | Particularly in the area of nature and landscape protection.

are perceived as wholly insufficient and should be periodically increased, if only to keep pace with inflation.

Modern technologies and tools already assist CEI in enhancing its efficiency, but there remains ample room for even greater integration.⁷⁶ Currently, CEI employs artificial intelligence⁷⁷ for non-binding legal research and analyses; however, direct incorporation of AI into the decision-making process could further support regular inspectors, potentially enabling AI to issue decisions in straightforward cases, subject to human oversight of AI outputs. AI tools could be employed to analyse the entirety of existing judicial case law and legal doctrine, supporting CEI legal argumentation and helping to dismantle the sophisticated defences employed by offenders during administrative proceedings or litigation before courts.

Regarding technologies, CEI regularly utilises monitoring, photographic and video capture, as well as 3D modelling through drone technologies. Additionally, CEI participated in the launch of the TROLL satellite equipped with a hyper-spectral camera, which can assist in detecting illegal waste sites, unauthorised constructions, deforestation, and water pollution.⁷⁸ The future use of this unique device, as well as potentially other similar technologies, is poised for continued development.

In conclusion, while CEI plays a vital role in the protection of the environment, many areas present opportunities for improvement. Enhanced legal mandates, technological modernisation, and institutional reforms collectively could substantially improve the effectiveness, fairness, and public trust in environmental inspections, ensuring better protection of natural resources for present and future generations.

7. Conclusion

CEI represents a cornerstone of environmental governance in the Czech Republic, serving as the primary enforcement mechanism for environmental legislation across multiple sectors. Despite its established legal framework and comprehensive competencies, CEI faces significant challenges that limit its operational effectiveness, including resource constraints, staffing shortages, and occasional jurisdictional overlaps with other regulatory bodies.

The path forward for CEI requires a multifaceted approach combining legislative refinements, technological advancement, and institutional strengthening. The integration of artificial intelligence and modern monitoring technologies

76 | Benešová 2020, 69.

77 | Czech start up project LawrenceAI.

78 | Česká televize 2025.

presents particularly promising opportunities for enhancing inspection efficiency and decision-making processes.

Ultimately, the success of environmental protection in the Czech Republic depends on CEI's continued evolution and adaptation to emerging environmental challenges. By addressing current limitations through strategic reforms and embracing innovative approaches, CEI can strengthen its role as a guardian of environmental compliance and contribute meaningfully to sustainable development objectives.

Reference list

1. Beranová L (2014) *Česká inspekce životního prostředí*, Master's thesis, Charles University, Prague.
2. Benešová D (2020) *Ekonomika a kontrolní činnost České inspekce životního prostředí*, Master's thesis, Technical University of Ostrava, Ostrava.
3. Česká inspekce životního prostředí (2025a) *About us*, <https://www.cizp.cz/en/cei/about-us> [15.07.2025].
4. Česká inspekce životního prostředí (2025b) *Who we are*, <https://www.cizp.cz/en/who-we-are> [15.07.2025].
5. Česká inspekce životního prostředí (2025c) *HZS ČR a ČIŽP spojují síly: Společné kontroly rizikových skládek a skladů odpadů mají snížit nebezpečí požárů*, 17 May, <https://www.cizp.gov.cz/aktuality/hzs-cr-a-cizp-spojuji-sily-spolecne-kontroly-rizikovych-skladek-a-skladu-odpadu-maji> [22.07.2025].
6. Česká televize (2025) *Do kosmu zamířila česká družice TROLL* <https://ct24.ceskatelevize.cz/clanek/veda/do-kosmu-zamirila-ceska-druzice-troll-odhali-nelegalni-stavby-i-znecisteni-vody-357074>, [15.07.2025].
7. CEI (2025a) *Plán činnosti na rok 2025*, <https://www.cizp.cz/plany-cinnosti>.
8. CEI (2025b) *Výroční zpráva ČIŽP 2024*, <https://www.cizp.gov.cz/cizp/vyrocnizpravy>.
9. Damohorský M, Drobník J, Smolek M, Sobotka M & Stejskal V (2010) *Právo životního prostředí*, C. H. Beck, Praha.
10. Gunningham N & Sinclair D (1999) Regulatory Pluralism: Designing Policy Mixes for Environmental Protection, *Law Policy* 21(1), pp. 49–76, DOI: <https://doi.org/10.1111/1467-9930.00065>.
11. Jelínková J (2024) Omezení působnosti České inspekce životního prostředí, *Ochrana přírody* 1/2024 pp. 21–24, <https://www.casopis.ochranaprirody.cz/vyzkum-a-dokumentace/omezeni-pusobnosti-cizp/>.
12. Jelínková J & Buchta N (2020) *Zákon o České inspekci životního prostředí: Komentář*, Wolters Kluwer, Praha.
13. Jemelka L, Pondělíčková K & Bohadlo D (2016) *Správní řád*, C. H. Beck, Praha.
14. Klemperová H (2015) *Česká inspekce životního prostředí*, Master's thesis, Charles University, Prague.
15. Kremplová Mendrygalová N (2018) *Česká inspekce životního prostředí*, Master's thesis, Charles University, Prague.
16. Zdráhalová L & Vomáčka V (2025) One System, Many Rules: A Critical Examination of Environmental Remedial Measures in the Czech Republic, *JAEL* 20(39), pp. 237–260, DOI: <https://doi.org/10.21029/JAEL.2025.39.237>.

The Role, Powers and Challenges of the Slovak Environmental Inspectorate¹

Abstract

The Slovak Environmental Inspectorate (hereinafter 'SEI') is the main authority responsible for enforcing environmental legislation in the Slovak Republic. This article provides legal and institutional analysis of the SEI, tracing its historical development from its establishment in 1991 to its current role. The study examines the SEI's organisational structure, including its vertical and horizontal divisions, and its jurisdiction across six specialised areas of competence: water protection, air protection, waste management, nature and landscape protection, biological safety and environmental assessment and permitting. Particular attention is paid to the procedural framework governing inspections and the sanctioning of administrative proceedings, highlighting inconsistencies and outdated legal instruments. The article also explores the SEI's interactions with other administrative and criminal authorities and identifies systematic challenges such as fragmented competencies, insufficient modernisation and a lack of unified enforcement mechanisms. The author proposes targeted reforms to strengthen the SEI's mandate, improve procedural efficiency, and enhance environmental law enforcement effectiveness.

Keywords: Slovak Environmental Inspectorate, environmental law, administrative liability, environmental enforcement, inspection

1. History of the SEI

To understand the role of the SEI within the system of Slovak environmental enforcement authorities, an overview of the history of the SEI and its gradual

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changes must be provided. As mentioned by Michalovič and Maslen, the recognition of environmental law as an autonomous and coherent branch of Slovak legal doctrine forms the conceptual basis for understanding the institutional development of environmental authorities, including the SEI. Their analysis highlights that the evolution of environmental governance in Slovakia has been marked by a gradual consolidation of fragmented competences into a distinct and systematically structured field of law, enabling the establishment of specialised enforcement institutions, such as the SEI.²

The establishment of the SEI was a result of broader societal changes following the fall of the socialist regime in Czechoslovakia in 1989. Environmental protection was one of the key characteristics of the change of regime. Based on Act No. 96/1990 Coll. on the Establishment of the Slovak Commission for the Environment and on Changes in the Competence of the Ministries of the Slovak Republic,³ the Slovak Commission for the Environment (hereinafter the 'SCE') was established as an independent cross-sectoral central body of state administration of the Slovak Republic. It was a comprehensive executive authority, with a defined jurisdiction in matters related to the environment and activities directly connected to the development and protection of the environment. Given that the issue of environmental development and protection has a cross-sectoral nature, and that other ministries, through their activities, also influence the state of the environment in various areas of state administration,⁴ the SCE was established as a new collective body headed by the Deputy Prime Minister. It served as a central authority of state administration responsible for ensuring the government's coordinating activities in environmental matters.

Legally, the SEI was established by Act No. 575/1990 Coll. on State Administration for the Environment as a specialised supervisory authority through which the SCE exercised state supervision in matters of environmental care. As a sovereign public body and legal entity, the SEI began operating on 1 September 1991.⁵ Effective from 25 September 1992, the SCE was dissolved by Act No. 453/1992 Coll., which amended Act No. 347/1990 Coll. of the Slovak National Council on the Organisation of Ministries and Other Central Bodies of State Administration of the Slovak Republic, and was replaced by a regular ministry of the environment. The SEI continued to operate as the ministry's specialised supervisory authority even after the dissolution of Czechoslovakia and the establishment of the independent Slovak Republic and remains active to this day.

The SEI was originally established by a merger of two previously independent organisations – the Slovak Water Management Inspectorate and the State

2 | Michalovič & Maslen, 2024, 1–26.

3 | The Slovak Republic as a federative republic within the Czechoslovak Federative Republic.

4 | Slovak National Council 1990.

5 | Štefánek 2006, 24.

Technical Air Protection Inspectorate.⁶ Previously, both inspectorates operated independently and separately under their respective acts,⁷ with their jurisdictions primarily focused on investigating the compliance of industry and other legal entities⁸ from a technical and expert standpoint. None of these inspectorates had the power to impose fines; they were merely helping authorities for National Committees,⁹ which had the actual power to impose fines.

The newly established SEI adopted the organisational structure and territorial jurisdiction of the Slovak Water Management Inspectorate and its local water management inspectorates, which had been established in the locations of local state water management enterprises – a structure that has, interestingly, been preserved to this day. Regional environmental inspectorates, as organisational units and first-instance authorities, are located in:

1. Bratislava, which was the seat for the Danube River Basin state water management enterprise,
2. Žilina, which was the seat for the Váh River Basin state water management enterprise,
3. Banská Bystrica, which was the seat for the Hron River Basin state water management enterprise,
4. Košice, which was the seat for the Hornád River and Bodrog River basins state water management enterprise.

The head office of the SEI, as a second-instance appeal authority and governing body for the whole organisation, was located in Bratislava. Originally, the SEI had two main departments, the Department of Water Protection Inspection and the Department of Air Protection Inspection. The intensive development of environmental legislation in the 1990s and early 2000s, which resulted from Slovakia's ambition to join the EU, gradually led to the establishment of additional departments. In 1992, the Department of Waste Management Inspection was created, followed by the Department of Nature and Landscape Protection Inspection in 1995. In 2003, two more units were added to the existing four specialised departments – the Department of Biological Safety Inspection and the Department of Integrated Permitting and Control.¹⁰ The establishment of the Department of Integrated Permitting and Control represents an important milestone in functioning of the SEI, because it changed the nature of the SEI from solely a supervisory authority

6 | Hornák 2005, 3.

7 | Act No. 135/1974 Coll. on State Administration in Water Management, as amended and Act No. 35/1967 on Measures Against Air Pollution, as amended.

8 | For the purposes of this Article the term 'legal entity' also includes self-employed persons.

9 | National Committees were local government bodies that operated from the end of the Second World War until the fall of communism in 1989. They were a part of the centralised state administration and acted as extensions of the Communist Party's control over society.

10 | Štefánek 2006, 24.

to also a permitting authority.¹¹ In November 2025 the Department of Integrated Permitting and Control underwent a substantial change regarding addition of environmental assessment into its agenda and transformed into the Department of Environmental Assessment and Permitting.

From the international point of view, the SEI gained importance in 2003 when Slovakia became a full member of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), with SEI being its representing authority.

In its history, the SEI has had to face major challenges, and its role has been greatly defined by the changing regime in Czechoslovakia in 1990, the establishment of the independent Slovak Republic in 1993 and its subsequent accession to the EU in 2004.

2. Role and legal mandate of the SEI

Within its almost 35 years of operation, the SEI has also had to face frequent changes in respective legislation. Currently, the general legal mandate of the SEI is based on Act No. 525/2003 Coll. on State Administration of Environmental Care and on Amendments to Certain Acts, as amended (hereinafter 'Act No. 525/2003 Coll.').

Pursuant to Art. 9 para. 1 of Act No. 525/2003 Coll., the SEI is a specialised supervisory authority that:

- a) carries out state supervision in matters of environmental protection within the scope and under the conditions established by specific acts,
- b) imposes fines in matters related to environmental protection,
- c) performs local state administration in the area of integrated pollution prevention and control in accordance with specific acts,
- d) engages in other activities related to environmental protection as defined by specific acts,
- e) acts as a control authority under specific acts,
- f) conducts state supervision over the achievement of the objectives of national environmental policy at both the national and regional levels, specifically in relation to actions supported by the Environmental Fund.

A more exact description of the legal mandate of the SEI is offered in the following chapters describing the institutional structure and jurisdiction of the SEI within respective areas of competence according to the specific acts.

11 | The permitting role for a state authority required according to the Directive 96/61/EC concerning integrated pollution prevention and control.

3. Organisational structure of the SEI

The organisational structure of the SEI can be analysed from two perspectives. First, institutionally, as a state-established legal entity with a management structure responsible for the organisation's daily operation. Second, functionally – as a state authority exercising its powers in accordance with specific legal acts.

Institutionally, the SEI is a state budgetary organisation, financially integrated into the budget of the Ministry of Environment of the Slovak Republic (hereinafter the 'MoE'), which also serves as its founding authority.¹² Details regarding the organisation of the SEI are defined by a statute issued by the MoE.¹³ To fulfil its tasks, the SEI uses property owned by the Slovak Republic, which it manages in accordance with specific legislation.¹⁴

The SEI is divided into a head office and subordinate regional environmental inspectorates.¹⁵ The SEI is governed and its activities are overseen by the director general, who is appointed and dismissed by the secretary general of the MoE.¹⁶ Each regional inspectorate is headed by a director, appointed and dismissed by the Director General of the SEI.¹⁷ Regional inspectorates are the organisational units of the SEI, and they manage their resources within the scope defined by the head office of the SEI in its budget.¹⁸ The organisational structure of the head office of the SEI and regional inspectorates is defined by the Organisational Order of the SEI, issued by the Director General.

Generally, two types of departments may be distinguished – supporting and executing. Supporting departments are established mainly at the head office of the SEI and as of December 2025 include:

1. Office of the Director General,
2. Human Resources Department,
3. Audit Department,
4. Information Technology Department,
5. Legal Department,
6. Department of Projects and Recovery Plan,
7. Budget, Finance and Public Procurement Department and
8. Property Management Department.¹⁹

12 | Art. 9 para. 6 of Act No. 525/2003 Coll.

13 | Art.10 para. 7 of Act No. 525/2003 Coll.

14 | Art. 9 para. 8 of Act No. 525/2003 Coll.

15 | Art. 9 para. 3 first sentence of Act No. 525/2003 Coll.

16 | Art. 9 para. 4 of Act No. 525/2003 Coll.

17 | Art. 9 para. 5 of Act No. 525/2003 Coll.

18 | Art. 9 para. 7 of Act No. 525/2003 Coll.

19 | Art. 2 para. 2 subpara. a) to h) of the Organisational Order of the SEI.

These departments do not serve only the needs of the head office of the SEI but also provide support to the subordinate regional inspectorates. At the regional level, there is only one supporting department for each inspectorate, and that is the Office of the Director.

However, the structure of all of these supporting departments may vary relatively freely based upon current needs and tasks of the SEI. One such example is the Department of Projects and Recovery Plan, which was established relatively recently for a specific purpose related to the management of projects financed by European funds and the Recovery and Resilience Plan. Another example is the establishment of a temporary or permanent branch of the regional inspectorate, which may be directly managed either by the director of the regional inspectorate or it may have a specifically appointed head officer with their own office, which also serves mostly a supporting function.

Functionally, the structure of the SEI may be analysed from a vertical and from horizontal point of view. Vertically, the SEI has a head office and regional inspectorates, both of which perform state administration in the field of environmental protection within the scope defined by Art. 9 para. 1 and 2 of Act No. 525/2003 Coll. within their respective territorial jurisdictions.²⁰ The territorial jurisdiction of the head office of the SEI entails the entire Slovak Republic. The seats of regional inspectorates and their territorial jurisdictions are specified in Annex No. 2 to Act No. 525/2003 Coll.²¹

For first-instance proceedings, the respective regional inspectorate is the competent authority; the head office of the SEI is competent for second-instance proceedings.²² In administrative proceedings, regional inspectorates act independently.²³ The head office of the SEI is authorised, for the purpose of harmonising the execution of activities under Art. 9 para. 1 of Act No. 525/2003 Coll., to provide methodological guidance to the regional inspectorates.²⁴ The Director General of the SEI may, in justified cases – particularly in situations involving doubts about the impartiality of regional inspectorate, suspected violations of legal procedures during inspections or the need to carry out specific tasks – authorise a regional inspectorate to conduct inspections, impose corrective measures and issue fines outside its designated territorial jurisdiction.²⁵ The Director General may also establish a permanent or temporary branch of a regional inspectorate outside its official seat for the purpose of performing state administration in environmental protection. In such cases, the Director General shall also define the seat,

20 | Art. 10 para. 1 of Act No. 525/2003 Coll.

21 | Art. 10 para. 2 of Act No. 525/2003 Coll.

22 | Art. 10 para. 5 of Act No. 525/2003 Coll.

23 | Art. 10 para. 6 of Act No. 525/2003 Coll.

24 | Art. 9 para. 3 second sentence of Act No. 525/2003 Coll.

25 | Art. 10 para. 3 of Act No. 525/2003 Coll.

organisational structure and substantive and territorial jurisdiction of the temporary or permanent branch of the respective inspectorate.

The head office of the SEI is located in Bratislava, and there are four regional environmental inspectorates located in:

1. Bratislava,
2. Žilina,
3. Banská Bystrica and
4. Košice.

As of December 2025, there were two permanent branches located in:

1. Nitra, which is a branch of the inspectorate in Bratislava and
2. Spišská Nová Ves, which is a branch of the inspectorate in Košice.

From the horizontal point of view, interestingly, Annex No. 2 to Act No. 525/2003 Coll. does not mention anything regarding the head office of the SEI. The act only determines the departments of regional inspectorates and presumes the existence of seven types of departments, namely:

1. Department of Water Protection Inspection,
2. Department of Air Protection Inspection,
3. Department of Waste Management Inspection,
4. Department of Nature and Landscape Protection Inspection,
5. Department of Biological Safety Inspection,
6. Department of Integrated Permitting and Control and
7. Department of Landscape Planning.

The Department of Landscape Planning, however, has never existed; the author only presumes that at the time of creation of Act No. 525/2003 Coll., the legislator intended to incorporate the agenda of landscape planning within the scope of the work of the SEI by a specific act, but it never came to a successful end. Moreover, in November 2025 the Departments of Integrated Permitting and Control formally ceased to exist and were transformed into two departments, the Department of Environmental Assessment and Permitting and the Department of Integrated Inspection. Overall, there are seven types of functional executing departments at the regional level, but they differ from that which Act No. 525/2003 Coll. actually prescribes.

It must also be noted that the Department of Biological Safety Inspection is only established at inspectorates in Bratislava and Banská Bystrica.

Also, two existing permanent branches of inspectorates, those in Bratislava and Košice, do not have all the departments; they only have those that reflect the workload specific to their territory.

To summarise, none of the four existing regional environmental inspectorates has the same organisational structure as any other.

As of December 2025, the organisational structure of regional inspectorates is partially reflected in the horizontal organisational structure of the head office of the SEI, even though the head office does not have departments, but units, namely:

1. Unit of Water Protection Inspection,
2. Unit of Air Protection Inspection,
3. Unit of Waste Management Inspection,
4. Unit of Nature and Landscape Protection Inspection,
5. Unit of Biological Safety Inspection and
6. Unit of Environmental Assessment and Permitting.

These units serve as appellate bodies for decisions made by first-instance departments at the regional environmental inspectorates. The units are managed by six chief inspectors who are responsible for the harmonised execution of activities within their areas of substantive jurisdiction. The chief inspector of the Unit of Environmental Assessment and Permitting at the head office level is responsible for coordinating both the Department of Environmental Assessment and Permitting and the Department of Integrated Inspection.

4. Relations to other environmental authorities

The SEI is not the only state environmental enforcement authority in the Slovak Republic. Alongside the SEI, a separate structure of district and regional environmental authorities²⁶ (hereinafter 'D/REA') has been evolving, as well as specialised enforcement corps, such as the Nature Guard, the Water Guard, the Fisheries Guard and others. In the area of imposing administrative legal liability, these authorities have a jurisdiction similar to that of the SEI. This ambiguity often causes uncertainty in identifying the competent authority responsible for imposing environmental legal responsibility or even leads to jurisdictional conflicts. In such cases, the general rule is that if several administrative authorities have territorial jurisdiction, the proceedings shall be conducted by the authority that initiated the proceedings first, unless the competent authorities agree otherwise.²⁷ If several administrative authorities have territorial jurisdiction and each of them refuses to conduct the proceedings, the higher-level administrative authority directly superior to both of them shall designate which of them shall conduct the

26 | District and regional environmental authorities were originally established as separate structure of state administration bodies founded and governed by the MoE. However, in 2013 they were organisationally integrated into the structure of district and regional authorities, which are part of the Ministry of the Interior of the Slovak Republic.

27 | Art. 7 para. 3 of Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Procedure Code), as amended (hereinafter 'Administrative Procedure Code').

proceedings.²⁸ The only exception to this general rule, specifically regarding the relationship between the SEI and competent D/REA, is that if proceedings are initiated simultaneously by the D/REA and the SEI and no agreement is reached among them as to which authority shall conduct the proceedings, the SEI is the competent authority to continue the proceedings.²⁹ From such a wording of the relevant legal provision, it may be assumed that legislator's intent is to designate the SEI as the primary and preferred environmental enforcement authority. As long as the relationship between specialised environmental enforcement corps and the SEI is concerned, it must be clarified that these corps are not established as a separate legal entities with a strict organisational structure. They are created as a collective of individually designated persons vested with enforcement authority in accordance with respective acts. Most relevant to the work of the SEI is the Nature Guard and the Water Guard, because both of these corps act according to the acts relevant to the operation of the SEI, i.e. Act No. 543/2002 Coll. on Nature and Landscape Protection, as amended (hereinafter the 'NLP Act') and Act No. 364/2004 Coll. on Waters and on the Amendment of Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended (Water Act), as amended (hereinafter the 'Water Act'). Moreover, the Slovak legal system also enables individual employees of the SEI to be both inspectors and members of the named corps.

Generally speaking, with minor exceptions,³⁰ the SEI was established and is still seen as the primary environmental enforcement authority focusing on the industry and the supervision of legal entities, while the D/REA were tasked with agenda regarding rather smaller businesses and natural persons. The specialised environmental enforcement corps focus mainly on natural persons.

The SEI has no powers regarding the criminal investigation; however, it is not rare that after an inspection conducted by the SEI, the SEI obtains information that gives rise to the suspicion that the identified violation may be qualified as an environmental criminal offence. In these cases, the SEI does not conduct sanctioning proceedings for administrative offence but forwards the case to the criminal authorities.

Any activity of the SEI may be subject to internal supervision by the MoE as its founding and supervisory authority. The SEI is also a subject to the supervisory authority of the Prosecutor's Office in the exercise of its non-criminal review functions,³¹ as well as to judicial review of its decisions within the framework of general administrative judiciary.³²

Apart from above-mentioned specific relations to other state authorities, in the performance of its duties, the SEI cooperates with other state authorities, with

28 | Art. 7 para. 4 of the Administrative Procedure Code.

29 | Art. 7 para. 2 of Act No. 525/2003 Coll.

30 | Mainly in the area of nature and landscape protection and CITES.

31 | Art. 7 para. 3 of Act No. 153/2001 Coll. on the Prosecution Service, as amended.

32 | Art. 2 para. 1 of Act No. 162/2015 Coll. Administrative Judicial Procedure Code, as amended.

local self-government bodies and with other legal entities and civic associations active in matters of environmental protection.³³

5. Procedural framework of the SEI

From the procedural point of view, the SEI usually proceeds in two steps when imposing environmental legal liability. First, the SEI conducts an inspection – a supervisory proceeding – whether the inspected subject violated the law, its implementing regulation or a decision issued on its basis. Second, if a violation has been identified, the SEI conducts a sanctioning administrative offence proceedings.

The general regulation governing the exercise of an inspection is Act No. 10/1996 Coll. on Control in State Administration, as amended (hereinafter 'Act No. 10/1996 Coll.'). Formerly, fundamental rules for supervision and inspections conducted by various state authorities, including those conducted by the SEI, were established by Act No. 418/1991 Coll. on State Control (hereinafter 'Act No. 418/1991 Coll.'). adopted in 1991. In that time, shortly after the change of the regime, industry was still mostly state owned. The relationship between the SEI and industrial operations as inspected subjects during an inspection conducted in accordance with Act No. 418/1991 Coll. may have been considered as a government-to-government relationship. Such a relationship between the inspecting and inspected subject – both being tightly connected to the state administration – implies greater transparency on the part of the inspected entity and less effort to conceal potential violations of the law. In such a legal framework, the application of less stringent instruments was sufficient when conducting inspections, and even a higher degree of procedural rigidity was acceptable.

However, a significant turning point occurred in the 1990s with the privatisation of the industry, which also brought a substantial shift a relationship between the SEI and the inspected subjects, which from that moment on can be characterised more as a government-to-business relationship. Moreover, the existing Act No. 418/1991 Coll. was replaced by the new Act No. 10/1996 Coll., which focuses on supervisory processes within the structure of state administration bodies. A fundamental difference in the conduct of state administration bodies and private entities and natural persons is that, according to the Constitution of the Slovak Republic No. 460/1992 Coll., as amended (hereinafter 'Slovak Constitution'), state administration bodies are allowed to act solely within the scope authorised by law, while private persons may engage in any conduct not explicitly forbidden by law. The new Act No. 10/1996 Coll., regrettably, did not reflect this change, and even its wording significantly 'over-ceremonialised' the entire inspection process. In this new legal framework, the application of inefficient instruments significantly

33 | Art. 11 of Act No. 525/2003 Coll.

hinders and prolongs inspections conducted by the SEI. A significant shortcoming of the procedure under Act No. 10/1996 Coll. is that it automatically assumes knowledge of the inspected entity. Especially in cases based on complaints that document the consequences of unlawful conduct without identifying the violator, it is impossible to carry out an inspection relying solely on the procedure under Act No. 10/1996.

Even the powers granted to the inspectors by Act No. 10/1996 Coll. are rather basic. Inspectors are entitled to enter buildings, facilities, operations and other premises of the inspected subject, request documents, statements and information and make photocopies of collected material or, in some rare cases, even take the materials outside the premises of the inspected subject.

On the other hand, in some cases, specific acts move away from Act No. 10/1996 Coll. but the pace of such change is very slow. For example, an inspection conducted by the SEI in accordance with the Water Act is strictly governed by Act No. 10/1996 Coll., whereas an inspection conducted by the SEI in accordance with the NLP Act uses Act No. 10/1996 Coll. only in relation to circumstances concerning the potential conflict of interests of the employees conducting the inspection.

Act No. 10/1996 presumes two ways for concluding an inspection. If a violation of the law is identified, a protocol is issued.³⁴ If an inspection is carried out without detecting any violation of the law, the SEI issues a record of the inspection.³⁵

The general legal framework of SEI procedures arises from the rather inappropriate Act No. 10/1996 Coll., which is being applied in a different scope based on the specific acts according to which an actual inspection is conducted. The purpose of an inspection is to ascertain the factual circumstances that constitute the foundation for the adjudication of rights and obligations in the subsequent administrative proceeding.³⁶ Nevertheless, the conclusions drawn during the inspection are not final and may be fully overturned in the course of the administrative proceeding. Given these circumstances, the over-ceremonialisation and unnecessary prolongation of the inspection process appear redundant and constitute an obstacle to the timely and targeted imposition of legal liability.

As long as the sanctioning-administrative offence proceedings are regarded, the existing regulation of administrative liability lacks a unified foundation, resulting in a broad category of unlawful conducts designated as administrative offences, encompassing acts of diverse character.³⁷ For the purposes of a correct understanding of administrative proceedings conducted by the SEI, a distinction on the legal status of the violator must be made. A different procedural legal framework applies to natural persons than to legal entities. This dual-track approach stems from the tradition of Slovak administrative law, which distinguishes

34 | Art. 13 para. 1 of Act No. 10/1996 Coll.

35 | Art. 13 para. 7 of Act No. 10/1996 Coll.

36 | Hendrych 2009, 52.

37 | Hamuláková 2025, 212.

between administrative offences of natural persons³⁸ and other administrative delicts,³⁹ applying a different set of procedural acts and provisions to each type of unlawful conduct.

The most general act applying to both types of unlawful conduct is the Administrative Procedure Code. Sanctioning proceedings against natural persons are also governed by the specific Act No. 372/1990 Coll. on Administrative Offences of Natural Persons, as amended. There is no such act regarding other administrative delicts, which is generally considered a drawback that should be addressed by the legislator. Each type of unlawful conduct may be subject to an even more specific regulation set out in the individual environmental legal acts. Some of these acts are outdated. Others, however, are viewed as modern and innovative even outside environmental law, e.g. payment order proceedings and the reduced-fine system for timely payments⁴⁰ introduced by Act No. 146/2023 Coll. on Air Protection and on Amendments and Supplements to Certain Acts (hereinafter the 'Air Protection Act').

Financial penalties imposed by the SEI are revenue of the Environmental Fund, an independent state fund administered by the MoE, with a mandate to financially support measures for environmental protection.

6. Specific areas of competence of the SEI

The individual areas of competence of the SEI share a common legal framework only to a very limited extent. To enhance clarity in the inspectorate's operations, individual departments are presented according to their statutory competences, while identifying the strengths and weaknesses of the relevant legal frameworks.

6.1. Water protection

Duties related to water protection are executed by six departments of water protection inspection on the first-instance level as organisational parts of regional inspectorates and permanent branches and by one unit of water protection inspection at the head office of the SEI. The agenda of the water protection division⁴¹ within the SEI includes responsibilities arising mainly from:

1. the Water Act,
2. Act No. 128/2015 Coll. on the Prevention of Major Industrial Accidents and on Amendments to Certain Acts, as amended (hereinafter the 'SEVESO Act'),

38 | Sometimes referred to as misdemeanours, in Slovak language 'priestupok'.

39 | In Slovak language 'iný správny delikt'.

40 | Michalovič & Jenčo 2024, 35–36.

41 | In this context both the departments and the unit.

3. Act No. 7/2010 Coll. on Conditions Applicable to the Placing on the Market of Chemical Substances and Chemical Mixtures and on Amendments to Certain Acts (Chemicals Act), as amended,
4. Act No. 319/2013 Coll. on Competencies of National Administrative Authorities for the Making Available on the Market and Use of Biocidal Products and on Amendments to Certain Acts (Biocides Act), as amended and
5. Regulation (EC) 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as amended and
6. Regulation (EC) 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) 1907/2006, as amended.⁴²

Despite the relatively large number of regulations governing the water protection division, the majority of their work consists of enforcing the Water Act and the SEVESO Act. The Water Act primarily aims to:⁴³

1. protect both underground and surface water,
2. protect water-dependent ecosystems,
3. preserve and improve the condition of water resources,
4. ensure the efficient and sustainable use of water,
5. manage river basins and watercourses,
6. regulate the handling of pollutants.

The water protection division is the only division within the whole SEI that maintains a permanent emergency readiness. The purpose of this emergency readiness is to be able to respond immediately in the event of a critical water deterioration, which refers to a sudden, unforeseen and significant decline or threat to water quality caused by the discharge of wastewater or specific water without authorisation, or by an uncontrollable release of pollutants. These impacts are typically manifested through discolouration or odour of the water, oily films, foam formation on the surface, the presence of dead fish or the occurrence of pollutants in environments connected to surface or groundwater.⁴⁴ The SEI identifies the causes of critical water deterioration, coordinates response efforts and issues orders to implement corrective measures.⁴⁵ The response to critical water deterioration is not considered an inspection, however; its occurrence and investigation may lead to regular inspection of the responsible party.

42 | Art. 33 para. 1 subpara. 1 of the Organisational Order of the SEI.

43 | Art. 1 paras. 2, 3 and 4 of the Water Act.

44 | Art. 41 para. 1 of the Water Act.

45 | Art. 41 para. 10 of the Water Act.

Inspections conducted by the water protection division are more formal in nature, since they are carried out under the provisions of Act No. 10/1996 Coll. Although the Water Act does not explicitly regulate the personal jurisdiction of the SEI, the SEI conducts inspections only in relation to legal entities. Formally, the inspections conducted by the SEI are designated as the main state water protection supervision and are carried out on behalf of the MoE. Other D/REA may conduct 'only' state water protection supervision under somewhat different conditions but interestingly with stronger competences, such as restriction or prohibition of activity until the violation or its causes are eliminated.⁴⁶ Both types of inspections are conducted either on their own initiative or based on a complaint, and they typically focus on all obligations arising from the Water Act that apply to the inspected subject.

Apart from powers granted by Act No. 10/1996 Coll., inspectors may carry out necessary findings,⁴⁷ which is a relatively vague formulation but a suitable one for inspection purposes, as it allows broad interpretation. The inspector may also, with the participation of a representative of the Transport Authority, enter vessels and facilities used for water transport. Even though the Water Act allows designated employees of the SEI to hold the powers of a member of the Water Guard which are broader than those granted to an employee performing inspections – this legal instrument is not applied in the SEI's practice.

Following a finding of a violation of the Water Act during an inspection, the SEI conducts an administrative proceeding to impose a financial penalty. Rates for financial penalties set by the Water Act are rather low; however, in some specific cases, such as unlawful discharge of wastewater, the financial penalty is determined by calculation, which is also the case of the highest financial penalty ever imposed by the SEI in the sum of 743,018 EUR.⁴⁸

The SEVESO Act sets out the conditions and procedures for the prevention of major industrial accidents in installations where dangerous substances are present.⁴⁹ Given the focus of the SEVESO Act, it primarily applies to legal entities. Inspections conducted under Act No. 10/1996 Coll. are either regular, scheduled inspections or extraordinary, unscheduled inspections based on the own initiative of SEI or a complaint. Inspections conducted according to the SEVESO Act are specific in that they usually take the form of joint inspections coordinated by the SEI with the participation of representatives from the labour inspectorate, the fire and rescue corps, the public health authority or even the mining office.

Generally speaking, the water protection division as a whole is closely related to the topic of public safety and health; thus, water protection inspectors often cooperate in their work with other units of the integrated rescue system. Combined

46 | Art. 66 para. 6 of the Water Act.

47 | Art. 68 para. 1 of the Water Act.

48 | SEI 2022.

49 | Art. 1 para. 1 of the SEVESO Act.

with 24/7 emergency readiness, the experience of this division should serve as a good example for other divisions of the SEI, although the amendment and modernisation of the related legal regulations should have taken place a long time ago.

6.2. Air protection

Duties related to air protection are executed by four departments of air protection inspection on the first-instance level and by one unit of air protection inspection on the second-instance level. The agenda of the air protection division within the SEI includes responsibilities arising mainly from:

1. the Air Protection Act,
2. Act No. 286/2009 Coll. on Fluorinated Greenhouse Gases and on Amendments and Supplements to Certain Acts, as amended,
3. Regulation (EU) 2024/573 of the European Parliament and of the Council of 7 February 2024 on fluorinated greenhouse gases, amending Directive (EU) 2019/1937 and repealing Regulation (EU) No 517/2014.⁵⁰

Naturally, the most frequently used regulation is the Air Protection Act adopted in 2023, which makes it one of the newest legislations governing the operation of the SEI. Air protection shall be understood as the adoption and implementation of policies and measures aimed at preventing the release of air pollutants and reducing emissions from sources of air pollution, with the objective of ensuring compliance with national emission reduction commitments and mitigating overall air pollution levels.⁵¹ A rather comprehensive description of this act and its modern features has been prepared by Hamuláková, Sokolová & Noskovičová⁵² and Michalovič & Jenčo.⁵³ The most advanced features would be its own regulation regarding the whole process of inspection, mostly excluding the application of Act No. 10/1996 Coll. The Air Protection Act includes all potential subjects – natural persons as well as legal entities – within the personal jurisdiction of the SEI. Inspectors are vested with a robust set of powers; they may require proof of identity, summon individuals, produce photo documentation, video recordings and audio recordings, collect samples, monitor emissions and operational indicators, impose corrective measures by verbal declaration into the inspection record, restrict or suspend operations, impose a procedural fine and request cooperation from the police and the fire and rescue corps.

A specific feature of the air protection division is the establishment of technical workplaces, which are part of the Departments of Air Protection Inspection at each regional inspectorate. These technical groups conduct accredited

50 | Art. 34 para. 1 subpara. 1 of the Organisational Order of the SEI.

51 | Art. 2 para. 1 subpara. a) of the Air Protection Act.

52 | Hamuláková, Sokolová & Noskovičová 2024.

53 | Michalovič & Jenčo 2024.

emission measurements directly at the installations and also oversee commercial measurement providers. They are equipped with their own dedicated laboratory instruments and vehicles equipped with pollutant analysers to make on-site measurements. In this way, the SEI is able to independently obtain nearly indisputable evidence in the field of air protection using its own resources. Such evidence significantly facilitates further proceedings aimed at imposing sanctions in cases of identified legal violations.

As long as administrative proceedings regarding the imposition of a sanction are concerned, the Air Protection Act offers many innovative features, such as the already mentioned summary administrative procedure and system for reducing fines if timely payments are made. Thanks to the progressive character of the Air Protection Act and the advanced technical infrastructure, the air protection division of the SEI may be considered as both the legally and technically most advanced division of the SEI.

6.3. Waste Management

Duties related to waste management are executed by six departments of waste management inspection on the first-instance level and by one unit of waste management inspection at the head office of the SEI. The agenda of the waste management division within the SEI includes responsibilities arising mainly from:

1. Act No. 79/2015 Coll. on Waste, as amended (hereinafter the 'Waste Act'),
2. Act No. 127/2006 Coll. on Persistent Organic Pollutants and on Amendments to the Waste Act, as amended,
3. Regulation (EC) 1013/2006 on Shipments of Waste, as amended,
4. Regulation (EU) 2019/1021 on Persistent Organic Pollutants, as amended.⁵⁴

Beyond the legal acts and regulations governing the waste management division of the SEI, it is necessary to highlight the specific nature of the Waste Act, which not only transposes Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain directives (hereinafter the 'Waste Framework Directive') itself but also transposes a number of other directives regulating the extended producer responsibility for dedicated products, such as batteries, tyres, cars, electronic appliances, etc. The Waste Act also regulates:⁵⁵

1. the rights and obligations of legal entities and natural persons in preventing waste generation and in waste handling,
2. the handling of municipal waste,
3. the transboundary movement of waste, etc.

⁵⁴ | Art. 35 para. 1 subpara. 1 of the Organisational Order of the SEI.

⁵⁵ | Art. 1 para. 1 of the Waste Act.

Since everyone produces waste, the legal regulation on waste management affects every legal entity as well as every natural person. Regarding inspections conducted by the SEI, the Waste Act explicitly states that state supervision is carried out only in relation to legal entities. The Waste Act also stipulates the conducting of scheduled inspections at entities that have been granted a permit or an authorisation in accordance with the Waste Act at least once every four years.⁵⁶ Apart from that, the inspections are unscheduled and mostly based on the own initiative of the SEI or, less often on a complaint.

Procedurally, the waste management division of the SEI conducts inspections according to Act No. 10/1996 Coll.; however, the Waste Act gives inspectors stronger powers, such as the right to require proof of identity, to make photo documentation and video recordings, to require necessary assistance of the designated employee of inspected entity and, if the inspected entity refuses to provide such an assistance, the SEI is entitled to request the assistance of the police.

If the inspection results in the SEI identifying a violation of the Waste Act, the SEI is obliged to impose a sanction.⁵⁷ However, Act No. 300/2005 Coll. the Criminal Code, as amended (hereinafter the ‘Criminal Code’), defines environmental criminal offences in waste management incredibly strictly. Before amendment of the Criminal Code in 2024, negligent handling of waste in violation of the Waste Act exceeding the amount of 266 euros was considered a criminal offence. Since the amendment, the threshold for this offence has been raised to 700 euros. Nevertheless, this amount still remains relatively low, and many violations of the Waste Act identified by the SEI must be referred to the police for criminal investigation.

Generally, the topic of waste management is gaining increasing importance, particularly in connection with the circular economy, which in Slovakia, sadly, is generally understood as being synonymous with more efficient waste management.⁵⁸ Nevertheless, proper waste management enforcement is crucial for industrial transformation and raw material independence. Given that many unlawful activities are concealed within legal business operations,⁵⁹ uncovering violations of the Waste Act requires substantial analytical capacity and a flexible legal framework that enables effective inspections. The fight against illegal waste handling is complex and multilevel, and Slovakia must use different tools and strategies to effectively tackle the threat.⁶⁰ The current, rather conservative, legal regulation of the SEI does not reflect these needs and will require significant changes in the future, including a redefinition of the relationship between administrative and criminal offences.

56 | Art. 112 para. 1 of the Waste Act.

57 | Art. 112 para. 2 of the Waste Act.

58 | Michalovič 2024.

59 | Europol 2025.

60 | Uhri & Nemes 2024.

6.4. Nature and Landscape Protection

The nature and landscape protection division of the SEI consists of five departments of nature and landscape protection inspection on the first-instance level and one unit of nature and landscape protection inspection at the head office of the SEI. The area of competence of the nature and landscape protection division is defined mainly by:

1. the NLP Act,
2. Act No. 15/2005 Coll. on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein and on Amendments to Certain Acts, as amended (hereinafter 'CITES Act') and
3. Regulation (EC) 338/97 on the Protection of Species of Wild Fauna and Flora by Regulating Trade Therein, as amended.⁶¹

Although the mandate of this division is based on only two acts and respective European secondary legislation, it represents the most operationally burdened division within the SEI. Both the NLP Act and the CITES Act establish the SEI's personal jurisdiction over both legal entities and natural persons. The enforcement of the NLP Act constitutes a significantly larger portion of operations than enforcement of the CITES Act.

The NLP Act regulates, among others, the rights and obligations of legal entities and natural persons in the field of nature and landscape protection, and its objective is to ensure the long-term preservation of natural balance and the protection of the diversity of conditions and forms of life, natural values and beauty and to create conditions for the sustainable use of natural resources and the provision of ecosystem services, taking into account economic, social and cultural needs, as well as regional and local circumstances.⁶²

The principal mandate of the nature and landscape protection division of the SEI is directed toward the enforcement of legal requirements concerning the territorial protection of protected areas, the conservation of protected species and the protection of non-forest woody vegetation. The last named constitutes the subject of the highest number of complaints on violations of the law. The operational workload necessitated amendments to the NLP Act, aiming to adapt its provisions to the need for swift and effective inspections followed by the imposition of sanctions.

The NLP Act contains its own procedural framework for the conduct of inspections, which in practice almost completely supersedes the provisions of Act No. 10/1996 Coll. It also served as a good practise example during creation of the Air Protection Act, in regard to the powers of inspectors. Inspectors of the SEI are entitled to request proof of identity, statements, information, data and explanations,

61 | Art. 36 para. 1 subpara. 1 of the Organisational Order of the SEI.

62 | Art. 1, para. 1 subpara. 1 of the NLP Act.

conduct necessary inquiries, summon individuals, produce photo documentation, video and audio recordings, collect samples and restrict or prohibit activities.

Given that this division is significantly overburdened, its inspection activities are conducted almost exclusively in response to filed complaints. Since many of the inspections cannot lead to identification of the violator, the NLP Act recognises, apart from protocol and a record of inspection, a third possible output, which is a record of investigation.⁶³

Unlike the already mentioned divisions, the nature and landscape protection division is entitled to impose not only a financial penalty but also the sanction of forfeiture of property and in less serious cases, a warning may also be imposed on a natural person.

6.5. Biological Safety

Organisationally, the smallest division of the SEI, the division of biological safety, consists of two departments of biological safety inspection on the first-in-stance level and one unit of biological safety inspection at the head office of the SEI.

The Biological Safety Division is responsible for enforcing mainly of:

1. Act No. 151/2002 Coll. on the Use of Genetic Technologies and Genetically Modified Organisms, as amended,
2. Act No. 150/2019 Coll. on the Prevention and Management of the Introduction and Spread of Invasive Alien Species and on Amendments to Certain Acts, as amended (hereinafter the 'Invasive Alien Species Act'),
3. Act No. 469/2002 Coll. on Environmental Labelling of Products, as amended,
4. Act No. 3/2010 Coll. on the National Infrastructure for Spatial Information, as amended,
5. Regulation (EC) No 1946/2003 on Transboundary Movements of Genetically Modified Organisms, as amended,
6. Regulation (EU) No 1143/2014 on the Prevention and Management of the Introduction and Spread of Invasive Alien Species, as amended and
7. Regulation (EC) No 66/2010 on the EU Ecolabel, as amended.⁶⁴

Unlike the other above-mentioned areas of competence of the SEI, in the field of genetic technologies and genetically modified organisms, the SEI does not share this competence with other D/REA. At the time of its establishment, this division faced a difficult task to address the highly specialised topic of regulating the handling of genetic technologies and genetically modified organisms. The lack of available experts was significant; however, the SEI successfully tackled

⁶³ | Art. 71 para. 15 of the NLP Act.

⁶⁴ | Art. 37 para. 1 subpara. 1 of the Organisational Order of the SEI.

this challenge and assembled a dedicated team of experts, providing them with comprehensive training and thereby ensuring the safe use of genetically modified organisms without endangering human health or the environment.⁶⁵

Having succeeded in a very unique agenda compared to other divisions of the SEI, the biological safety division of the SEI was later tasked with enforcing other, not necessarily connected, however highly specialised, legal acts, adding into its agenda topics such as invasive alien species, environmental labelling and enforcing the INSPIRE directive.

At present, the majority of the biological safety division's activities are focused on the enforcement of the Invasive Alien Species Act which regulates, among others:

1. restrictions on the possession and handling of invasive alien species,
2. the obligations and authorisations of persons and
3. measures to prevent the introduction and spread of invasive alien species.

The SEI conducts inspections exclusively in accordance with the Invasive Alien Species Act, excluding the application of Act No. 10/1996 Coll. The SEI is entitled to inspect and sanction both legal entities and natural persons. Exactly the same competence is given to the D/REA as well.

The inspectors of biological safety share very similar powers as nature and landscape protection inspectors both in supervisory and administrative proceedings.

To summarise, the biological safety division of the SEI handles a broad and diverse agenda stemming from a wide range of thematically distinct legislative acts. Over time, its primary focus has evolved from its original mandate and may currently be regarded as the 'division of everything else'. Reorganisation or redistribution of some of its tasks might bring more effective enforcement of all the respective responsibilities arising from the relevant legislation.

6.6. Environmental Assessment and Permitting

Chronologically, the latest addition to the competences of the SEI was the agenda of integrated permitting and control, which had its own division structurally designed similarly to other divisions. In November 2025 the whole system of environmental assessment, construction permitting and integrated permitting underwent significant changes. Environmental assessment was merged into integrated permitting which created a need to change the whole organisational structure of the SEI's division regarding this agenda.

Currently, duties related to integrated permitting and control are executed on the first-instance level by five departments of environmental assessment

65 | Horecká 2010, 15.

and permitting and five departments of integrated inspection and by one unit of environmental assessment and permitting on the second-instance level. The environmental assessment and permitting division is mainly responsible for enforcement of:

1. Act No. 39/2013 Coll. on Integrated Prevention and Control of Environmental Pollution and on Amendments and Supplements to Certain Acts, as amended (hereinafter the 'Integrated Prevention Act'),
2. Act No. 24/2006 Coll. on Environmental Impact Assessment and on Amendments and Supplements to Certain Acts, as amended and
3. Act No. 359/2007 Coll. on the Prevention and Correction of Environmental Damage and on Amendment of Certain Acts, as amended.⁶⁶

The main agenda of this division is based on the Integrated Prevention Act, which represents a national transposition of Directive 2010/75/EU on industrial and livestock rearing emissions (integrated pollution prevention and control), as amended, and sets measures aimed at preventing environmental pollution, reducing emissions into air, water and soil, limiting waste generation and ensuring the recovery and disposal of waste, with the objective of achieving a high level of overall environmental protection.⁶⁷ The environmental assessment and permitting division of the SEI is unique in that within the organisational structure of the SEI, it is the only permitting authority. This division performs environmental assessment and issues integrated permits allowing operation of the biggest industrial and agricultural farming installations. These integrated permits combine all the required environmental permits and construction permits. Based on that, this division also executes tasks that would otherwise fall under the competence of the D/REA according to the specific environmental legislation and general administrative authorities based on Act No. 25/2025 Coll. on Construction (Building Act) and on Amendments and Supplements to Certain Acts, as amended.

So far as inspections are concerned, the SEI conducts environmental inspections based primarily on a schedule according to the risk assessment of each installation. High-risk installations are inspected every year, while low-risk installations are inspected once in three years. The SEI is also entitled to conduct an unscheduled inspection, mainly based on a complaint. It must be noted that the SEI inspects only compliance with the conditions stipulated in the integrated permit. The usual practice of the SEI is that even though the jurisdiction of other specific divisions of the SEI over an 'integrated' installation is not excluded, these installations are inspected only by the environmental assessment and permitting division of the SEI. This results in a rather peculiar situation in which, from the perspective of environmental protection, the potentially most hazardous installations

66 | Art. 38 para. 1 of the Organisational Order of the SEI.

67 | Art. 2 para. a) of the Integrated Prevention Act.

are inspected only by a single unit for compliance with all relevant environmental regulations, whereas smaller and less significant installations may be subject to several separate inspections not only by specific divisions of the SEI but also by the D/REA.

The whole inspection procedure has its own legal framework arising from the Integrated Prevention Act, resulting in an inspection report which specifies whether the conditions stipulated in the integrated permit were complied with. If a violation of the conditions has been identified, then the SEI follows with:

1. imposing corrective measures,
2. a sanctioning procedure resulting in financial penalties,
3. a request to submit an application for a permit amendment within a specified period or
4. a restriction or suspension of the activity, if the operation has caused or poses a threat of serious harm to human health or the environment, or if there is a risk of significant material damage.⁶⁸

Generally, the environmental assessment and permitting division of the SEI stands out as a very influential permitting authority and has a significant impact on compliance with environmental legislation. Within this area of competence of the SEI, the inspecting part is less complicated, and significant changes shall be made within the legislation regarding the permitting processes, which is complicated and focuses on unnecessary details rather than on the broader impacts of the operation on the surrounding environment.

7. Challenges

Breaking the law is always easier than proving that the law has been broken. In order to effectively identify violations of environmental legislation, it is necessary that the enforcement authorities, including the SEI, have available proper legal instruments, technical instruments and personal capacities.

Particular legal oddities regarding the operation of the SEI have been identified in a previous description of the SEI. A rather complex analysis on legal challenges and suggestions on how to address them were already identified in the strategic material 'Concept for Combating Environmental Illegal Activities' adopted by the MoE in May 2023;⁶⁹ however, it was revoked without any replacement due to political interests later in 2023. Due to the revocation of the document, the MoE was a subject to criticism by the Supreme Audit Office of the Slovak Republic in 2025 for

68 | Art. 35 para. 2 subpara. d) of the Integrated Prevention Act.

69 | MoE 2023.

the lack of a conceptual approach in governing the environmental enforcement.⁷⁰ The topic of the Concept for Combating Environmental Illegal Activities was thoroughly elaborated by Michalovič and Jenčo.⁷¹ The strategic material formulated four requirements:

1. a clear and transparent definition of the competencies among various environmental state bodies,
2. a well-functioning system of state supervision and the imposing of liability,
3. effective environmental corrective measures and
4. rational management of public finances.

The lack of clear jurisdictional boundaries should be addressed. One of the suggestions was to establish two separate structures of state bodies, one for permitting authorities and one for inspecting authorities.

A clear drawback of the whole inspection procedure is some obsolete statutes and particularities in specific acts which differ in the work of inspectors, even within one organisation. Rules that have roots in a different social era more than 35 years ago, naturally, cannot compete with the ingenuity of those who want to violate the law in current times. Moreover, the use of innovative technologies and digitalisation of processes must be fully implemented within the daily operations of the SEI.

Although the principles of restorative justice are prioritised even in the field of environmental liability, their actual realisation has not yet happened; thus, environmental liability can hardly fulfil its reparative, compensatory or satisfactory functions.

Finally, rational distribution of public money within various state enforcement bodies is required hand in hand with redefining the relationship between administrative and criminal enforcement authorities.

8. Conclusion

Since its establishment, the SEI has undergone substantial institutional and functional transformation, resulting in a significant expansion of the organisation and its competencies. Over nearly 35 years of operation, its role in environmental protection has become difficult to replace by any other authority.

Nonetheless, it must be acknowledged that it is not the only state body responsible for the enforcement of environmental law. It remains a subordinate institution of the MoE, which serves as the central authority for the formulation and implementation of environmental policy. Accordingly, the SEI primarily acts as

70 | Supreme Audit Office of the Slovak Republic 2025.

71 | Michalovič & Jenčo 2022, 15–18.

an executive arm of the MoE's strategic and regulatory agenda. If the MoE intends to pursue a genuinely effective environmental protection policy, it must adopt a comprehensive and systematic approach to environmental liability – one that encompasses all relevant public authorities, including enforcement corps, and extends, where appropriate, into the domain of criminal justice authorities.

Furthermore, environmental protection must be approached rather holistically instead of through fragmented protection of individual environmental components. The prevailing regulatory framework tends to prioritise the protection of specific environmental elements, which is reflected in the uneven quality of legislation governing the activities of SEI's divisions – ranging from the scope of personal jurisdiction, procedural rules for inspections, to the methods and rates of financial sanctions. However, this inconsistency is symptomatic of structural deficiencies within the MoE itself, which creates governance gaps in separate policies.

Although the SEI is formally classified as a state administration authority, similar in status to D/REA, it benefits from a more centralised organisational structure. This allows for the concentration of expert capacities and facilitates more effective operational management and strategic oversight. Such a structure provides a sound institutional foundation for the further development of SEI. However, the coexistence of two distinct structures of authorities with overlapping mandates in the area of environmental liability enforcement frequently leads to operational inefficiencies. The absence of a formalised mechanism for inter-agency cooperation at the national level further complicates these challenges.

In terms of its supervisory powers, the SEI lacks investigative authority in several key areas. It is generally empowered to conduct inspections only on identified entities and is then required to follow a procedurally burdensome inspection process. This significantly impedes its operational efficiency, particularly in cases where the perpetrator must first be identified before being held accountable. Moreover, SEI's vertical organisational structure is defined by law and does not permit the establishment of specialised inspection units at the head office level in order to address complex or high-risk cases. Paradoxically, enforcement corps tasked with addressing less serious violations often possess broader powers than SEI inspectors. Expanding the legal powers of inspectors to enable them to carry out their duties effectively is therefore both necessary and urgent.

Through its participation in various externally funded projects and the Recovery and Resilience Plan, the SEI has undergone a process of equipment modernisation. However, the integration of these technologies into routine inspection activities remains limited. To fully leverage modern technological tools, it is essential to invest in the development of SEI's expert capacities. In certain instances, ambiguities in the legal framework hinder the use of such technologies due to concerns about compromising the validity of inspection procedures.

If the SEI is to evolve into a modern environmental enforcement authority focused on remedying identified deficiencies and working on restorative principles, the legal instruments governing environmental liability enforcement must be capable of fulfilling the full range of its functions – not only in terms of repressive measures, but also in prevention, education, compensation, satisfaction and reparation of adverse environmental impacts. The potential for innovative approaches to liability enforcement certainly deserves deeper inquiry.

Environmental illegal activities have dire effects not just on the environment itself but also on mankind. The legal maxim “justice delayed is justice denied” applies here just as in any other legal field. Without a proper system for imposing environmental legal liability and strong institutions enforcing it, efforts to protect the environment will always remain a hopeless struggle. The SEI has the capacity to be a truly formidable guardian of the environment, but only if it continues to keep its finger on the pulse of the latest developments and challenges in environmental protection.

Reference list

1. Europol (2025) *Environmental crime*, <https://www.europol.europa.eu/crime-areas/environmental-crime> [13.10.2025].
2. Hamuláková Z, Sokolová, V & Noskovičová, D (2024) Zákon o ochrane ovzdušia ako priekopník skrátených konaní správneho trestania v oblasti životného prostredia, in: *Bratislavské právnické fórum 2024: Zborník príspevkov z konferencie konanej 17–19. septembra 2024 na Právnickej fakulte Univerzity Komenského v Bratislave*, 1st edn., Bratislava: Právnická fakulta Univerzity Komenského v Bratislave, pp. 14–28. [online] <https://tinyurl.com/ycy6yed5> [13.10.2025].
3. Hendrych D et al. (2009) *Správní právo – Obecní část*, C. H. Beck, Praha.
4. Horecká T (2010) Geneticky modifikované organizmy a Slovensko: našlo sa riešenie (!), *Enviromagazín* 4/2010, pp. 15–17.
5. Hornák O (2005) Staviame na dôvere, *Enviromagazín special edition 2005 mimoriadne vydanie*.
6. Ministry of Environment of the Slovak republic (2023) *Stručný odpočet MŽP SR pod vedením Jána Budaja*, 15 May 2023, <https://tinyurl.com/29fee6av> [13.10.2025].
7. Michalovič M (2024) Legal regulation facilitating the transition to a circular economy in the legal system of Slovakia, *JAEL* 19(36), pp. 57–80, DOI: <https://doi.org/10.21029/JAEL.2024.36.57>.
8. Michalovič M & Jenčo J (2024) Innovative Legal Mechanisms for Environmental Accountability: Slovakia's Air Protection Act, in: *Bratislavské právnické fórum 2024: Zborník príspevkov z konferencie konanej 17–19. septembra 2024 na Právnickej fakulte Univerzity Komenského v Bratislave*, 1st edn., Bratislava: Právnická fakulta Univerzity Komenského v Bratislave, pp. 29–40. [online], <https://tinyurl.com/ycy6yed5> [13.10.2025].
9. Michalovič M & Jenčo J (2022) Koncepcia boja proti environmentálnej protiprávnej činnosti ako základný kameň revízie starostlivosti o životné prostredie v podmienkach Slovenskej republiky, in: Novotná V & Durec Kahounová M (eds.), *Bratislavské právnické fórum 2022: Zefektívňovanie boja proti nelegálnej činnosti v oblasti starostlivosti o životné prostredie*, 1st edn., Bratislava: Právnická fakulta Univerzity Komenského, pp. 96–106. [online], <https://tinyurl.com/38f733rx> [13.10.2025].

10. Michalovič M & Maslen M (2024) *Advocating for environmental law – grounds for its status as an independent branch of law in Slovak legal doctrine*, *Prawne Problemy Górnictwa i Ochrony Środowiska*, 2/2024, pp. 1–26, DOI: <https://doi.org/10.31261/PPGOS.2024.02.06>.
11. Slovak Environmental Inspectorate (2022) *Slovenská inšpekcia životného prostredia uložila prevádzkovateľovi odkaliska Poša rekordnú pokutu*, 7.6.2022, <https://tinyurl.com/3ckfu8at> [14.09. 2025].
12. Slovak Environmental Inspectorate (2025) *Organisational Order of the Slovak Environmental Inspectorate*, <https://tinyurl.com/2zv24zkf> [30.12. 2025].
13. Slovak National Council (1990) *Background Document to the draft of the Act No. 96/1990 Coll. on the Establishment of the Slovak Commission for the Environment and on Changes in the Competence of the Ministries of the Slovak Republic*, <https://tinyurl.com/ac628258> [26.08.2025].
14. Supreme Audit Office of the Slovak Republic (2025) *Nesystémový prístup rezortu ohrozuje ochranu životného prostredia a zdravie občanov*, 07.3.2025, https://www.nku.gov.sk/-/zivotne_prostredie_potrebuje_systemovy_prístup [15.10. 2025].
15. Štefánek M (2006) Pätnásť rokov Slovenskej inšpekcie životného prostredia, *Enviromagazín*, 4/2006, pp. 24–25.
16. Uhri L & Nemes O (2024) Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia), *JAEL* 19(36), pp. 225–254, DOI: <https://doi.org/10.21029/JAEL.2024.36.225>.
17. Vrabko M et al. (2008) *Správne právo hmotné, Všeobecná časť*, 3 edn., C. H. Beck, Bratislava.

The Role, Powers and Challenges of Environmental Protection Authorities in Poland

Abstract

This article analyses the environmental control system in Poland. It aims to present the key legal acts related to environmental protection, as well as the institutions, services, and bodies responsible for environmental control. Particular attention is paid to the Environmental Protection Inspectorate. The legal basis for its activities, institutional structure, competences, and rules of cooperation with other control entities are presented. The tools used by the Environmental Protection Inspectorate in the areas of administrative law, misdemeanour law, and criminal law are outlined. The main challenges facing this service and the prospects for its future functioning are also discussed. First and foremost, an assessment was made of the latest legal change, which granted the Environmental Protection Inspectorate the powers of a law enforcement agency. This amendment was intended to be a step in the right direction, but in practice the solutions therein do not work. The achievements of green criminology in environmental protection were also highlighted.

Keywords: Environmental control, Environmental Protection Inspectorate, criminal law, misdemeanour law, administrative law, green criminology

1. Introduction and legal background

This study examines the role, powers, and challenges of environmental protection which the authorities in Poland face. The study aims to present key legal acts related

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to environmental protection, as well as the institutions, services, and authorities responsible for environmental control. The authors aim to determine whether the Polish model of environmental protection and control is effective and whether it can serve as a model for other V4.¹

The article presents the legal basis for environmental protection in Poland, the institutional structure of the Environmental Protection Inspectorate, the scope of competences and control powers of this institution, interaction with administrative sanctions and compliance mechanisms, as well as challenges and shortcomings in the field of environmental control.

The following research methods were applied for the purposes of this study: literature analysis, which provided an overview of publications on the subject of the paper, dogmatic-legal analysis, which involved an analysis of legal regulations, and historical-legal analysis, which presented the background of evolving legal institutions and provisions.

Environmental protection is one of the most important challenges the state is facing.² The international community and the administrations of individual countries have demonstrated their concern and commitment to environmental protection by undertaking various initiatives. In Poland, these include the development of administrative and criminal law on environmental protection, as well as the establishment of an institutional system for environmental protection.³

In Art. 5, the Constitution of the Republic of Poland defines the main tasks of the state, which, in addition to safeguarding independence and territorial integrity, ensuring freedom and human and civil rights, and ensuring the safety of citizens, include safeguarding national heritage and ensuring environmental protection, guided by the principle of sustainable development. Therefore, environmental protection is a constitutional principle in Poland. It affects the activities of both the legislative branch (by establishing environmental protection laws) and the executive branch (by enforcing environmental protection regulations).⁴

Furthermore, Art. 74 of the Constitution specifies the principles of environmental protection by stating that 1) Public authorities shall pursue a policy ensuring ecological safety for present and future generations, 2) Environmental protection is the duty of public authorities. 3) Everyone has the right to information on the state and protection of the environment, 4) Public authorities shall support citizens' activities aimed at protecting and improving the state environment.

1 | Comparative analysis of environmental inspection solutions in Poland, the Czech Republic, and Slovakia is presented in: Danecka 2021, 53–68.

2 | Pływaczewski, Narodowska & Duda 2024, 58–75.

3 | Pływaczewski, Duda & Narodowska 2020, 281–298.

4 | Rakoczy 2013, 24–25.

Art. 68 of the Constitution, which states that public authorities are obliged to combat epidemic diseases and prevent the adverse health effects of environmental degradation, is equally important in terms of environmental protection.

The obligation to protect the environment is imposed not only on public authorities but also on citizens. Pursuant to Art. 86 of the Constitution, everyone is obliged to care for the environment and is responsible for any deterioration caused by them. The principles of this liability are specified in statutes.

With the above in mind, the Polish Constitution defines the state's obligations in the field of environmental protection quite 'loosely', imposing on the state the obligation to secure and organise such protection. It is only the statutes that specify the areas in which state authorities take an active role.⁵

The environment is a common subject to special protection. This issue also appears in the case law of Polish courts. An example of this is the ruling of the Constitutional Tribunal, which stated that the obligation to care for nature, as national heritage and wealth, rests with public administration bodies, legal entities (other organisational units), and natural persons.⁶

The literature indicates that there is a difference between the concepts of nature and the environment.⁷ According to Art. 5(20) of the Nature Conservation Act, nature is defined as the landscape together with inanimate natural features and natural and transformed natural habitats with their associated plants, animals, and fungi. On the other hand, according to Art. 3(39) of the Environmental Protection Act, the environment is the entirety of natural elements, including those transformed as a result of human activity, in particular the earth's surface, minerals, water, air, landscape, climate, and other elements of biological diversity, as well as the interactions between these elements. Consequently, environmental protection is a broader concept than nature conservation. Legal nature conservation is part of legal environmental protection. The distinction between these concepts affects the separate tasks and competencies of nature conservation authorities and environmental protection authorities.⁸ According to Art. 3(15) of the Environmental Protection Law Act, environmental protection authorities are administrative bodies established to perform public tasks related to environmental protection. Environmental protection primarily involves preventing environmental pollution, rationally shaping the environment, and managing its resources in accordance with the principle of sustainable development, as well as restoring natural elements to their proper condition.

In Poland, environmental law is a part of the most extensive branch of law, namely administrative law. It consists of statutory legal acts and their implementing

5 | Bojar-Fijałkowski 2017, 111.

6 | Judgment of the Constitutional Tribunal of 13 May 2009, reference number Kp 2/09, OTK ZU nr 5/A/2009, item 66.

7 | Pływaczewski, Zębek & Narodowska 2020, 137.

8 | Stelmasiak 2024, 717.

regulations. The vast majority of these were passed after the socio-political changes of 1989. The most important legal acts shaping Polish environmental law include the following statutes:

- | Act of 27 April 2001 on Environmental Protection Law⁹ – the basic legal act that defines the principles of environmental protection, liability for damage, environmental impact assessment procedures, and the system of environmental fees and penalties,
- | Act of 20 July 1991 on Environmental Protection Inspection¹⁰ – establishes an institution responsible for monitoring compliance with environmental protection regulations and for researching and assessing the state of the environment,
- | Act of 16 April 2004 on Nature Conservation¹¹ – regulates, among other things, national parks, nature reserves, natural monuments, protected species and Natura 2000 sites,
- | Act of 21 August 1997 on Animal Protection¹² – provides for liability for, among other things, cruelty to animals,¹³
- | Act of 18 April 1985 on Inland Fisheries¹⁴ – sets out the rules for fishing and angling in public inland waters,
- | Act of 13 October 1995 on Hunting Law¹⁵ – regulates the rules for hunting,
- | Act of 28 September 1991 on Forests¹⁶ – regulates the rules for the use of forests,
- | Act of 14 December 2012 on Waste¹⁷ – sets out the rules for waste management, recycling, storage and disposal,
- | Act of 20 July 2017 on Water Law¹⁸ – regulates water protection, water management and the competences of State Water Holding – Polish Waters,
- | Act of 13 September 1996 on Maintaining Cleanliness and Order in Municipalities¹⁹ – concerns, among other things, municipal waste management,
- | Act of 10 July 2007 on Fertilisers and Fertilisation²⁰ – contains provisions on the protection of soil and water against pollution,

9 | Journal of Laws of 2025, item 647.

10 | Journal of Laws of 2024, item 425.

11 | Journal of Laws of 2024, item 1478, item 1940; of 2025, item 884.

12 | Journal of Laws of 2023, item 1580.

13 | Animal protection is one of the competencies of the authorities responsible for environmental protection. Narodowska 2025, 185–199; Narodowska 2021, 295–308.

14 | Journal of Laws of 2022, item 883.

15 | Journal of Laws of 2025, item 539.

16 | Journal of Laws of 2025, item 567.

17 | Journal of Laws of 2023, item 1587, item 1597, item 1688, item 1852; item 2029; of 2024, item 1834, item 1911, item 1914.

18 | Journal of Laws of 2025, item 960.

19 | Journal of Laws of 2025, item 733.

20 | Journal of Laws of 2024, item 105.

- | The Act of 28 April 2011 on the Greenhouse Gas Emission Allowance Trading System²¹ – implements the EU ETS,
- | Act of 25 August 2006 on biocomponents and liquid biofuels²² – concerns regulations on the production and marketing of biocomponents and liquid biofuels,
- | Act of 3 October 2008 on Access to Information on the Environment and its Protection, Public Participation in Environmental Protection and Environmental Impact Assessments²³ – concerns so-called environmental impact assessments and regulates the status of the General Directorate for Environmental Protection and the Provincial Directorates for Environmental Protection,
- | Act of 9 June 2011 on Mining Law²⁴ – concerns, among other things, the reclamation of areas after mining operations,
- | Act of 15 May 2015 on Substances that Deplete the Ozone Layer and on Certain Fluorinated Greenhouse Gases²⁵ – dedicated to the control and reduction of emissions of ozone-depleting substances.

In Poland, environmental protection is based on administrative and criminal law instruments. It should be noted, however, that criminal law, as a tool of ultima ratio, is used for the most serious offences against the environment, in a repressive manner. Therefore, the primary role is played by administrative law instruments, which are preventive and restitutive in nature.²⁶

The public administration bodies responsible for environmental protection in Poland are:

- | Head of the local authority (Commune Administrator, Mayor or City President),
- | District Administrator,
- | Provincial Council,
- | Provincial Marshal,
- | Provincial Governor,
- | Minister of Climate and Environment,
- | Director General for Environmental Protection,
- | Regional Director for Environmental Protection,
- | authorities of Inspectorate for Environmental Protection Inspectorate.²⁷

The tasks of public administration in the field of environmental protection, due to their content, can be classified into the following groups: environmental management (indirect protection) and executive tasks (direct protection). The first group

21 | Journal of Laws of 2011, no 122, item 695; of 2013, item 1238.

22 | Journal of Laws of 2024, item 20, item 1946, item 834.

23 | Journal of Laws of 2024, item 1112, item 1881, item 1940.

24 | Journal of Laws of 2024, item 1290; of 2025, item 769, item 1023.

25 | Journal of Laws of 2020, item 2065.

26 | Łyżwa 2018, 377.

27 | Walas 2009, 42–43.

includes: organisational tasks, regulatory and binding tasks, as well as control and supervisory tasks. The second group includes: tasks performed on behalf of the local community and so-called substitute performance.²⁸ This study focuses primarily on control and supervisory tasks. These consist of examining the state of the environment and compliance with the protection obligations imposed by law on specific entities. These tasks are mainly performed by a special administrative body – the Environmental Protection Inspectorate. In addition, pursuant to Arts. 379 and 380 of the Environmental Protection Law, certain public administration bodies operating within the local government system are also obliged to monitor compliance with environmental protection regulations. Such competencies are granted to the Provincial Marshal in the province, the District Administrator in the district, and the Commune Administrator (rural commune), Mayor (urban commune), or President (city with county rights). They monitor compliance with and application of environmental protection provisions, within the scope of the local jurisdiction of these authorities.

In Poland, the government administration is divided into departments headed by ministers. One of the departments provided for in the Act on Government Administration Departments is 'environment'. Since 2020, Poland has had a Ministry of Climate and Environment responsible for matters related to environmental protection.²⁹ Both the General Directorate for Environmental Protection and the Chief Inspectorate for Environmental Protection report to this Ministry.

The General Directorate for Environmental Protection and the Provincial Directorates for Environmental Protection are responsible for ensuring an effective and uniform environmental management system. At the same time, they are responsible for obtaining funds for environmental protection from the European Union. It is a central government administration body subordinate to the Ministry of Climate and Environment. It implements the government's environmental policy, conducts environmental impact assessments, and exercises control over liability for damage caused to the environment.³⁰

The leading institution responsible for environmental control in Poland is the Inspectorate for Environmental Protection. It was established in 1991 by the Act on Environmental Protection Inspection, but its origins can be traced back to the invalid Act on Protection and Shaping of the Environment of 1980.³¹ Until 1998, when the country underwent its administrative reform, this service operated under the name of the State Inspectorate for Environmental Protection. Today, the

28 | Górski 2015, 13–14.

29 | Stelmasiak 2024, 717–724.

30 | Walas 2009, 49.

31 | As an aside, it should be added that the issue of establishing an effective and modern Inspectorate for Environmental Protection was discussed during the deliberations of one of the subgroups of the so-called 'Round Table Agreement', which led to democratic changes in Poland in 1989, which underlines the importance of environmental protection issues.

Inspectorate for Environmental Protection is the body responsible for monitoring compliance with environmental protection regulations and for researching and assessing the state of the environment.

2. Institutional structure

The legal framework for the activities of the Inspectorate for Environmental Protection is defined by:

- | Act of 27 April 2001 on Environmental Protection Law,
- | Act of 20 July 1991 on Environmental Protection Inspection,
- | Regulation of the Prime Minister of 31 December 2018 on granting the statute of the Chief Inspectorate for Environmental Protection.³²

The Environmental Protection Inspectorate is a two-tier service consisting of the Chief Environmental Protection Inspectorate based in Warsaw and sixteen Provincial Inspectorates for Environmental Protection, one in each province. The Chief Inspector of Environmental Protection is a central government administration body supervised by the minister responsible for climate issues. He/she is appointed and dismissed by the Prime Minister from among candidates selected through an open and competitive recruitment process, at the request of the minister responsible for climate issues. Deputies to the Chief Inspector of Environmental Protection are appointed by the minister responsible for climate from among persons short-listed by means of an open and competitive recruitment process, at the request of the Chief Inspector of Environmental Protection. Furthermore, the Chief Inspector of Environmental Protection prepares, at least once every four years, a report on the state of the environment in Poland, taking into account, in particular, data from state environmental monitoring.

The Provincial Inspector of Environmental Protection manages the activities of the Inspectorate for Environmental Protection within the province. At the regional level, it is an institution operating within the framework of the joint government administration, subordinate to the provincial governor. The Provincial Inspector of Environmental Protection is appointed and dismissed by the provincial governor, with the consent of the Chief Inspector of Environmental Protection. Besides the Provincial Inspectorates for Environmental Protection, located in provincial capitals, it is also possible to establish branch-offices in smaller towns.

The following Departments operate within the structure of the Chief Inspectorate for Environmental Protection:

- | Inspection,

³² | Amendments introduced by subsequent Regulations of the Prime Minister on Granting the statute of the Chief Inspectorate of Environmental Protection from 2020, 2022 and 2024.

- | Waste Control,
- | Transboundary Movement of Waste,
- | Environmental Monitoring,
- | Combating Environmental Crime,
- | Legal,
- | Administrative, Economic and Public Procurement,
- | Budget and Finance,
- | Information Technology,
- | International Cooperation.

In addition, the following teams and laboratories operate within the Chief Inspectorate for Environmental Protection:

- | Central Research Laboratory,
- | National Reference Laboratory for Air Quality,
- | National Reference Laboratory for Surface Water Quality,
- | Director General's Office,
- | Control and Audit Team.

It is worth noticing that the costs of analyses and measurements, including the collection of samples, which constitute the evidence for infringement of environmental protection requirements, are borne by the organisational units or natural persons whose activities are the source of the violation. The amount of the cost is determined by the decision of the Inspectorate for Environmental Protection, which identifies the violation of environmental protection requirements or estimates the amount of emissions from the installation or aviation operations, which is a manifestation of the 'polluter pays' principle.

Inspection employees are divided into civil servants and non-civil servants. The first group is further divided into inspectors of Environmental Protection Inspection and persons employed in the central research laboratory.

In terms of electronic environmental protection tools, the Inspectorate for Environmental Protection has developed the 'Ekoinfonet' IT system, which is used to collect, store, process, and share data on compliance with environmental protection regulations and environmental research and assessment. The Inspectorate for Environmental Protection also runs the publicly accessible Air Quality Portal.

It is worth noting that the Act on Environmental Protection Inspection has been amended over 70 times during its 24 years of existence. Most of the changes concerned the list of tasks performed by the Inspection.³³

Currently, the tasks of the Inspectorate for Environmental Protection include:

- | inspecting entities using the environment,

33 | Danecka & Radecki 2020, 35.

- | inspecting compliance with regulations on maintaining cleanliness and order in municipalities,
- | conducting state environmental monitoring,
- | conducting laboratory activities,
- | making decisions, suspending activities carried out in violation of environmental protection requirements or in violation of the conditions for using the environment,
- | preventing serious accidents and supervising the removal of their effects,
- | performing tasks related to the collection of data for the European Pollutant Release and Transfer Register (E-PRTR) and maintaining the National Pollutant Release and Transfer Register (PRTR),
- | performing tasks related to providing information on the environment and its protection, public participation in environmental protection, and environmental impact assessments,
- | participating in the commissioning of facilities or installations implemented as projects that may always have a significant or potentially significant impact on the environment,
- | performing tasks related to the prevention and repair of environmental damage,
- | performing tasks specified in the regulations on international waste shipments,
- | performing tasks related to mining waste,
- | performing tasks related to large-scale degraded areas,
- | inspecting products placed on the market or put into service, subject to conformity assessment in terms of their compliance with essential or other environmental protection requirements,
- | performing tasks related to the placing on the market of timber and timber products,
- | performing tasks related to monitoring compliance with regulations on greenhouse gas emissions covered by the system and estimating greenhouse gas emissions from installations or aviation operations,
- | checking the compliance of paints and varnishes containing volatile organic compounds,
- | measuring emissions and levels of substances or energy present in the environment,
- | cooperating in the field of environmental protection with other control authorities, law enforcement and judicial authorities, other state administration and local government authorities, civil defence authorities, as well as social organisations,
- | performing tasks related to water law,
- | performing tasks related to access to genetic resources,
- | performing tasks related to spatial information infrastructure,
- | performing tasks related to preventing food waste,

- | performing tasks related to EU type-approval systems and market surveillance of internal combustion engines for non-road mobile machinery,
- | performing tasks related to the release of gases or dust into the air by entrepreneurs,
- | performing other tasks specified in separate regulations,
- | prosecuting environmental crimes specified in the Criminal Code and offences specified in the Code of Misdemeanours and non-code laws, including bringing and supporting indictments.

An overview of the above catalogue indicates that the role and powers of the environmental control authority in Poland are extensive. The most controversial issue is the fact that the power to prosecute environmental crimes defined by the Criminal Code and environmental offences defined by the Code of Misdemeanours and non-coded laws is vested in the Inspectorate for Environmental Protection. In theory, the Inspectorate has the powers of a law enforcement agency, but in practice, the exercise of these powers encounters difficulties, which will be discussed later in this study.³⁴

3. Scope of competencies and inspection powers

Undoubtedly, the main priority of the³⁵ is to ensure ecological safety. The Inspectorate for Environmental Protection conducts scheduled and unscheduled inspections. Scheduled inspections are planned to ensure a systematic assessment of threats to human life and health as well as to the environment, in particular those resulting from the activities of entities using the environment, and they are set out in inspection plans. Unscheduled inspections include those carried out at the request of public administration bodies or entities, provided that specific regulations permit such a request, and intervention inspections. Intervention inspections are understood as inspections carried out in the case of examination of complaints and interventions concerning environmental pollution or suspected pollution, the occurrence of serious accidents, or in order to prevent the commitment of a crime or petty offence.

Inspections are carried out by the Chief Inspector of Environmental Protection, Provincial Inspectors of Environmental Protection, and inspectors authorised by them. Employees of the Inspectorate for Environmental Protection, while

34 | The key law enforcement agencies in Poland are the police and the prosecutors. The role of the public prosecutor's office is to conduct or supervise preliminary investigations into environmental crimes and to act as a public prosecutor in court. The role of the police is to conduct investigations and inquiries into environmental crimes under the supervision of the public prosecutor, as well as to refer cases of environmental petty offences to the courts and to act as a public prosecutor in such cases.

35 | Modrzejewski & Dobkowski 2024, 105–126.

performing their official duties and in connection with the performance of those duties, are subject to the protection provided for in the Criminal Code for public officials. When inspecting compliance with environmental protection requirements, the inspector is authorised to:

- | access, 24 hours a day, with the necessary equipment, the premises, facilities or parts thereof where economic activity is conducted; means of transport, areas not related to economic activity,
- | carry out necessary measurements or tests such as sampling or other control activities, involving the use of unmanned flying machines, in order to determine an object or a part thereof on the premises of the inspected property, or inspected means of transport, and to assess its condition in the light of environmental protection provisions, as well as to assess the conditions for carrying out activities affecting the environment, as specified in administrative decisions,
- | request the suspension of traffic or the operation of installations or equipment, including means of transport, and refrain from performing other activities to the extent necessary to carry out investigations, including taking samples and performing measurements,
- | assess the manner of operation of installations or equipment, including means of transport,
- | assess the technologies and technical solutions used,
- | request written or oral information and summon and question persons to the extent necessary to establish the facts, while informing them of the criminal liability for giving false testimony, as referred to in the Criminal Code,
- | request the presentation of documents, including financial documents, and access to all data related to the subject matter of the inspection,
- | establish the identity of persons and requesting the presentation of documents necessary to impose a fine by way of a penalty notice or to draw up a request for punishment,
- | impose fines in summary proceedings for offences against the environment specified in separate regulations,
- | assess the method of measuring emissions, the amount of water collected and wastewater discharged by the entity conducting the measurements, including the correctness of the method of sampling and analysis,³⁶
- | determine the morphological composition of waste based on expert knowledge.³⁷

36 | The literature argues that the powers of the Environmental Protection Inspectorate in the field of water protection were insufficient. In 2022, an ecological disaster occurred on the Oder River. The legislator responded by amending the Water Law in 2023 and establishing the Water Inspectorate (Arts. 251a–251i). Popławska 2024, 74–77.

37 | Hać 2024, 153–164; Haładaj 2018, 261–280.

The Provincial Inspector of Environmental Protection may submit a request to the police or public administration bodies, including the National Revenue Administration, Road Transport Inspection, mining supervision offices, National Labour Inspectorate, Trade Inspection, State Sanitary Inspection, Veterinary Inspection, State Plant Protection and Seed Inspection, Border Guards, State Fire Service, for assistance if it is necessary to carry out control activities. Such assistance may consist, among other things, in: allowing the inspector to enter the inspected area, facility or means of transport; collecting and securing evidence of a crime or offence; establishing the identity of persons and questioning them in order to establish the facts relevant to the proceedings; ensuring the safety of the inspector.

Furthermore, in the case of the most serious acts harmful to the environment, i.e. crimes and petty offences against the environment, the Inspectorate has an even broader range of powers than when carrying out inspections. In the event of a reasonable suspicion that a crime or offence against the environment has been committed, the Chief Inspector of Environmental Protection, the Provincial Inspector of Environmental Protection, or authorised inspectors of the Inspectorate for Environmental Protection may take the following actions:

- | observing and recording, using technical means, including satellite technology and unmanned flying machines, images of events and the sound accompanying those events,
- | collecting and securing evidence of a crime or offence,
- | requesting written or oral information and questioning persons to the extent necessary to establish the facts, while informing them of their criminal liability for giving false testimony, as referred to in the Criminal Code,
- | establishing the identity of persons and requesting the presentation of documents necessary to impose a fine by means of a penalty notice or to draw up a request for punishment,
- | imposing fines in summary proceedings for offences specified in the procedure provided for in the provisions on proceedings in cases of petty offences,
- | inspecting premises and other places,
- | stopping or searching vehicles transporting goods and checking documents related to the transport of goods if there is a suspicion of waste being transported,
- | giving instructions, reprimanding, issuing warnings, or applying other educational measures.

4. Interaction with administrative sanctioning and compliance mechanisms

Considering the nature of the violation of environmental protection regulations, the Inspectorate for Environmental Protection may apply measures under administrative law, misdemeanour law, or criminal law.³⁸ In terms of administrative law, relying on the findings of the inspection, the provincial environmental protection inspector may:

- | issue a post-inspection order to the manager of the inspected organisational unit or natural person,
- | issue post-inspection recommendations based on separate regulations,
- | issue an administrative decision based on separate regulations,
- | initiate execution if it is required by the law or an administrative decision.

Administrative penalties imposed for environmental violations appear to be the primary instrument of administrative sanctions. These penalties range from 10,000 PLN (2,500 EUR) to 1,000,000 PLN (250,000 EUR). It should be noted that this liability is not based on the principle of guilt, as in criminal law, but on objective damage. In the first instance, the decision is issued by the Provincial Inspector of Environmental Protection and in the second instance, by the Chief Inspector of Environmental Protection. Administrative decisions and post-inspection orders issued by the Environmental Protection Inspectorate may be appealed to the Provincial Administrative Court and, subsequently, to the Supreme Administrative Court.³⁹

If the Inspectorate for Environmental Protection finds irregularities in the activities of public administration bodies in the field of environmental protection, it may request an explanation of the reasons for the irregularities or their removal, or initiate administrative proceedings, make a complaint to the administrative court, and participate in these proceedings having the same authority as a public prosecutor.

In terms of misdemeanours, inspectors of Environmental Protection have the power to impose fines in summary proceedings for petty offences specified in the provisions on proceedings in misdemeanour cases. Furthermore, in cases of offences against the environment, the Inspectorate for Environmental Protection authorities have the power of a public prosecutor even if the request for punishment for the petty offence has been submitted by another authorised prosecutor.

38 | Recently, Polish law has exhibited a trend toward conversion, whereby the legislator reclassifies misdemeanours or crimes as administrative offenses punishable by financial penalties. Examples of such conversion in environmental law are discussed, *inter alia*, in Danecka 2028, 191–245.

39 | Niżnik-Dobosz 2018, 211–223; Czech 2011, 89–100; Klimek & Pieńczykowski 2014, 29–49.

In case of discovering that the action or failure to notify the manager of the controlled organisational unit, either its employee, or other natural person meets the criteria for an environmental crime, the Inspectorate for Environmental Protection authorities shall refer the case to the authority appointed to prosecute crimes (police, prosecutor) with a report of the offence, attaching evidence proving the suspicion.

Within the scope of its control activities, including detection of environmental violations, combating petty offences and crimes against the environment, the Inspectorate for Environmental Protection cooperates with other state authorities. In addition, the Inspectorate for Environmental Protection authorities may request any public administration authority or the police to provide information or make documents and data related to environmental protection available for scrutiny. These authorities or the police are obliged to provide information, documents, and data immediately, but no later than within 14 days of the date of submission of the request. Environmental Protection Inspection authorities may also use criminal record prepared by the National Criminal Register.

The Inspectorate for Environmental Protection cooperates in carrying out control activities with other control bodies, state and government administration bodies, local government bodies, civil defence bodies, and social organisations. The institutions cooperating with the Inspectorate include:

- | State Sanitary Inspection (epidemiological and food hazards),
- | National Revenue Administration (importing goods into the country whose import is prohibited or restricted for environmental protection reasons),
- | Border Guard (carrying out inspections in the border zone),
- | State Fire Service (counteracting serious accidents),
- | Internal Security Agency (loss, disappearance, abandonment, or theft of waste containing biological or chemical agents that could be used to prepare or assist in the commission of a terrorist crimes).

Cooperation between the Inspectorate for Environmental Protection and local government units is particularly close. For example, the Provincial Inspector of Environmental Protection, upon the consent of the Chief Inspector of Environmental Protection, may agree to allow the districts located within the province to resolve the matters belonging to the competence of the Provincial Inspector of Environmental Protection comprising the issuance of administrative decisions. At the same time, the Inspectorate has reporting obligations towards local government units. The Provincial Inspector of Environmental Protection provides the Municipal Council, the County Council and the Provincial Council at their request, with information on the results of inspections of the strategic facilities which are of fundamental importance to the province. The County Council has the right to determine, by means of an ordinance/ a resolution, the activities of the Provincial Inspector of Environmental Protection ensuring efficient environmental protection in a given area. In the event of a direct threat to the environment, the head of

the local authority (Commune Administrator, Mayor, City President) may submit a request with justification to the Provincial Inspector of Environmental Protection for taking measures, being within his or her scope of duties and competences, to remove the threat. The Municipal Council, County Council and Provincial Council should review the information provided by the Provincial Inspector of Environmental Protection on the state of the environment in the province at least once a year. The Provincial Inspector of Environmental Protection is also obliged to inform the head of the local authority (Commune Administrator, Mayor, City President), the County Board and the Provincial Board about the results of the inspections conducted at the facilities which are of fundamental importance for the area and to submit relevant reports issued by provincial inspectors and to provide the above authorities with instructions regarding the performance of inspections.

The Provincial Governor or the Provincial Inspector of Environmental Protection may order an inspection not included in the Environmental Protection Inspectorate's inspection plan. In addition, the Inspectorate for Environmental Protection shall assist local government authorities in carrying out their environmental protection inspection tasks.

The greatest challenge for the Inspectorate for Environmental Protection constitutes the most serious category of illicit activities against the environment, i.e. crimes. Environmental crime is currently becoming one of the most profitable branches of crime.⁴⁰ At the same time, this crime is increasingly taking on organised forms.⁴¹ Therefore, detecting and combating it constitute key tasks for both law enforcement and environmental protection authorities.

As for the fight against environmental crime, cooperation between the Inspectorate for Environmental Protection and the police is of utmost importance. It is based on an agreement signed on the 21 August 2021, between the Chief Commander of the Police and the Chief Inspector of Environmental Protection. The agreement regulates the scope of collaboration and exchange of information with the Inspectorate of Environmental Protection, in particular, the information concerning cooperation between the Police and the Department for Combating Environmental Crime at the Inspectorate for Environmental Protection. One of the most important areas of cooperation is combating environmental crime through the mutual exchange of information in the course of their own investigative activities. To accomplish these goals, national and international initiatives are being organised. In Poland, these tasks are carried out primarily by the Police

40 | UNODC estimates that environmental crime is the fourth most significant source of income for organised crime groups after drug trafficking, arms trafficking, and human trafficking. Duda 2021, 67–83.

41 | In Poland, participation in an organised criminal group is punishable by 6 months to 8 years' imprisonment, and if the group is armed or terrorist in nature, by 1 year to 10 years' imprisonment. Establishing or leading such groups is punishable by 2 to 15 years' imprisonment or 3 to 20 years' imprisonment, respectively. Duda 2025a, 169–184.

and the Chief Inspectorate of Environmental Protection, with the participation of other services and institutions engaged in combating environmental crime. These undertakings aim to organise training courses and workshops for national and regional coordinators responsible for coordinating activities, combating environmental offences, and implementing preventive and control measures. These activities are also useful for the cooperation between Europol and Interpol with regard to environmental protection. Following the example of the cooperation agreement signed by the Chief Commander of the Police and the Chief Inspector of Environmental Protection, similar agreements have been signed by all Provincial Police Commanders and Provincial Inspectors of Environmental Protection.⁴²

It should be emphasised that the Environmental Protection Inspection Act also contains provisions criminalising one petty offence, one crime related to environmental protection, and one administrative offence.⁴³

A petty offence under Art. 31a consists of failing to discharge the obligation to report on the implementation of control orders or providing false information about their implementation. This offence is punishable by imprisonment, restriction of liberty, or a fine.

Pursuant to Art. 31b, crime consists in failing to collect, process, or disclose information for the purposes of state environmental monitoring. This act is punishable by a fine.⁴⁴

An administrative offence involving preventing or delaying the Inspectorate for Environmental Protection in carrying out inspections. This offence is punishable by a fine of between 10,000 PLN and 100,000 PLN (2,500–25,000 EUR).⁴⁵

5. Challenges and shortcomings in environmental inspections

The Inspectorate for Environmental Protection faces the same problems as most institutions, services and state authorities in Poland. The main challenges and limitations related to the functioning of the Inspectorate for Environmental Protection

42 | Zalewski 2023, 28.

43 | Environmental criminal law in Poland is semi-codified. Some of the provisions concerning environmental crimes are contained in the Criminal Code of 1997 (Chapter XXII entitled 'Crimes against the environment' containing Arts.181–188) and the Code of Misdemeanours of 1971 (provisions scattered across several chapters, e.g. Arts. 144, 145, 148–166), while some are found in non-code laws.

44 | There is some doubt as to whether this act constitutes a crime or a misdemeanour, as 'fines' are provided for in both criminal law and misdemeanour law, which should be considered a legislative shortcoming. Danecka & Radecki 2020, 45.

45 | An administrative offence is the third, mildest measure of repressive liability in the gradation: crime – misdemeanour – administrative offence. It is an institution of administrative law, not criminal law. The sanction for an administrative offence is a financial penalty. The essence of this third form of liability is that it is objective in nature (regardless of fault) and that the liable entity may be not only a natural person, but also a legal person or an organisational unit without legal personality. Szumiło-Kulczycka 2004, 29; Prusak 2013, 3–15.

include staff and financial shortages, as well as legal and procedural barriers, which significantly affect the effectiveness of the Inspectorate's activities.

One of the most severe obstacles is undoubtedly the shortage of personnel. The current number of inspectors is insufficient to meet the growing needs associated with the effective performance of the tasks assigned to the Environmental Protection Inspectorate by law. It should be emphasised that the execution of environmental protection activities requires inspectors to have specialised knowledge. Employees should therefore not only have legal background, but also knowledge related to, e.g. biology, ecology, chemistry. In addition, a diverse range of subjects covered by the inspections, including waste management, pollutant emissions, and cross-border waste shipments, requires interdisciplinary expertise and operational flexibility, which poses another organisational challenge. The consequences of a limited number of qualified inspectors include: extended waiting period for inspections and a reduced scope of inspections.

Staff shortages are primarily related to limited financial resources at the disposal of the Inspectorate for Environmental Protection.⁴⁶ As an employer, the state, is unable to offer salaries comparable to those offered by the private sector. This leads to a significant risk of inspectors leaving the profession. What is also worth mentioning is the fact that the inspectors are viewed by society as the so-called 'bad cops', which results in disrespect for this profession. As a result, the best employees decide to work for private companies. At the same time, these shortages cannot be filled by educated specialists from, for example, Ukraine, because according to Polish law, a civil servant must have Polish citizenship.⁴⁷

It is also worth emphasizing that employees who are not inspectors belong to the administrative personnel and work only during office hours (usually until 3:00/3:30 p.m.). Consequently, tasks such as laboratory analysis or intervention inspections involving measurements cannot be carried out outside these hours (in the afternoon and at night). Currently, Polish law excludes the possibility of shift work in this area, which significantly limits the effectiveness of control activities.

Poor funding for the Environmental Protection Inspectorate also affects the technical resources and equipment available to the service. The lack of investment in staff training, modern equipment, and new technologies makes it impossible to detect environmental violations quickly and accurately. The nature of environmental crime, characterised by a high degree of organisation and dynamism, significantly hinders the detection and effective prevention of infringements. Limited access to advanced analytical and technological tools, as well as lack of an integrated system for exchanging information between institutions, further affect the effectiveness of controls.

46 | For instance, the Polish police force is short of approximately 15,000 employees.

47 | It is estimated that Poland has taken in approximately 1,500,000 refugees from Ukraine.

Enforcement of environmental protection regulations in Poland is significantly hindered by several legal and procedural barriers that complicate and prolong administrative processes. Above all, the lengthy administrative procedures and appeal options generate significant delays in the implementation of control decisions, which creates the risk of repeated violations during the prolonged investigation procedures. Additionally, existing gaps and inconsistencies in the interpretation of regulations, particularly across different regions of the country, lead to inconsistencies in the application of the law and hinder the uniform enforcement of environmental standards. Furthermore, the complexity and constant changes in the legal system force supervisory authorities to continuously adapt to new regulations, which, in practice, generates additional interpretative and operational difficulties.

However, on the positive note, since 2018, the Inspectorate for Environmental Protection has been authorised to conduct preliminary investigations into crimes and petty offences against the environment and to bring and support indictments. In fact, inspectors have significantly more experience, knowledge and competence in this area than, for example, police officers or prosecutors.

The Inspectorate for Environmental Protection has thus become a law enforcement agency with the powers to conduct preliminary investigations and carry out specific operational and procedural activities. This solution fulfils the postulate that in such special types of proceedings as environmental crimes, the Inspectorate authorities should be able to take full advantage of their specialist knowledge, skills and equipment.⁴⁸

The legislator's intention to grant new powers of prosecution was entirely justified, but in practice its application is limited. Practical problems arise from the fact that the legal measures adopted by the legislator have enabled the inspectorate to apply its new powers of prosecution only in relation to certain crimes committed against the environment. Hence, a postulate to amend the Code of Criminal Procedure in order to grant the Inspectorate for Environmental Protection the same powers as the Police in this area seems justified. The amendment will help avoid interpretation problems and enable the Inspectorate to act effectively in the field of environmental protection.⁴⁹

The environmental protection control system in Poland is fragmented across various services and authorities, often resulting in overlapping competencies between institutions. As far as the administrative sanctions are concerned, it should be noted that the penalties are too low. As a result, low effectiveness of the administrative penalties imposed and the difficulties in executing them, fail to have a preventive role. Companies may perceive violations of regulations as a calculated risk that is included in their business activities.

48 | Jasińska 2019, 119–135.

49 | Zalewski 2023, 23–29.

In terms of ensuring environmental protection under criminal law, it should be noted that the attempt made in 2018 to grant the Inspectorate for Environmental Protection law enforcement powers failed. According to experts, the legal solutions adopted by the legislator under this amendment proved to be misguided and insufficient to establish this inspection as a significant investigative body for combating environmental crime. An opportunity to fully and effectively use the capacity of the Environmental Protection Inspectorate to combat environmental crime has thus been foregone. An opportunity to fully and effectively use the capacity of the Environmental Protection Inspectorate to combat environmental crime has thus been foregone. Therefore, another amendment to the law in this area is necessary.⁵⁰

A significant barrier in providing a stable environmental protection policy also lies in frequent management changes, which are linked to political circumstances, at the position of Chief Inspectorate for Environmental Protection. These changes also result in altering the priorities of the Environmental Protection Inspectorate, which may destabilise long-term strategies. Finally, local economic conditions and social pressure constitute the external factors that influence decisions and the scope of inspections, which, in certain situations, may limit the objectivity and effectiveness of environmental protection enforcement.

Finally, it is also worth mentioning that the ongoing debate in Poland as to whether the Inspectorate for Environmental Protection should be a type of police enforcement agency with the powers of uniformed service as well as the right to use weapons and other means of direct coercion. Opinions on this issue are divided in legal doctrine. It seems that the current division of tasks between the Inspectorate and the Police is justified. It is expected that in the next few years, as Inspectors form the Environmental Protection Inspection gain experience, there will be a significant increase in the number of simple criminal cases they handle, while the Police will focus on investigating organized crime in this area.⁵¹

6. Future perspectives and conclusions

There are several control authorities in the Polish legal system responsible for environmental protection. It is essential to clearly and precisely define the competences and responsibilities of individual institutions involved in the environmental control system, which will reduce the risk of conflicts of competence and will facilitate the coordination of activities. The most important institution in this field is the Inspectorate for Environmental Protection. It has the power to issue administrative decisions or declare administrative liability for infringements in the area

50 | Łyżwa 2023, 109–126.

51 | Mądrzejowski 2023, 69–104.

of environmental protection. In addition, the inspectorate has the power to hold persons liable for petty offences and crimes against the environment by referring cases to law enforcement authorities, conducting investigations into offences or preparatory proceedings in criminal cases, and then supporting indictments in these cases in court.

Although there exist guidelines issued by the Chief Inspectorate for Environmental Protection, they are not binding, and there are noticeable discrepancies in their application in different regions of the country. The standards for control activities should be harmonised throughout the country, which will ensure consistency and uniformity of the procedures applied and will facilitate the comparability of control results. The issue of diversifying the scope of competences and responsibilities in the area of environmental protection and control among various services in Poland is also discussed in foreign literature.⁵²

In view of the above, the doctrine postulates the creation of a single authority in the form of an Environmental Protection Agency, which will exercise all control powers in the environmental area.⁵³ However, the employees of environmental protection authorities are against such consolidation owing to the fact that it may reduce the number of jobs. This solution also gives rise to political disputes, as it is no secret that key director and management positions in such institutions are filled in by representatives and supporters of the currently ruling political parties. The liquidation of many existing institutions would result in fewer positions to be filled in according to the political affiliation.

Another concept currently promoted by the Ministry of Climate and Environment is the merger of the Chief Inspectorate for Environmental Protection with the Provincial Inspectorates for Environmental Protection. This idea emerged after a major fire at a waste disposal site in 2024, which covered 6.000 m² and caused enormous damage to the environment. This incident revealed the weakness of the regional structures of the Environmental Protection Inspectorate. Proponents of this concept argue that such merger aims to improve coordination of activities and to strengthen the structures of the Inspectorate for Environmental Protection.

At the same time, in practice, the state is gradually reducing its environmental protection activities. The claim is based on the fact that government and local government fundings for environmental protection are decreasing. Increasingly, investments in environmental protection in Poland are financed by private individuals and businesses. With the view of the above context, it is positive that the share of foreign funds, mainly from the European Union, remains high. In terms of monitoring the state of the environment and controlling its impact, the state has allowed non-governmental organisations and entrepreneurs to carry out such activities. What is more, the state encourages these entities to undertake

52 | Uhri & Nemes 2024, 235.

53 | Stelmasiak 2024, 724.

such activities through appropriate legislation and additional benefits, such as the implementation of the EMAS (Eco-Management and Audit Scheme).⁵⁴

In order to improve the effectiveness of the Inspectorate's activities, it is necessary to invest in modern technologies, including the use of digital tools, artificial intelligence (AI) and remote monitoring systems. Digital data analysis systems enable automatic detection of irregularities by integrating and processing various sources of information, allowing faster and more accurate identification of potential infringements. Monitoring and the use of drones ensure continuous and detailed observation of areas prone to environmental degradation, enabling rapid response to detected threats. These technologies make it possible to target control measures more precisely by moving from traditional, reactive methods, toward proactive and preventive environmental management strategies.

De lege ferenda, consideration should also be given to aligning Polish environmental law with international environmental law.⁵⁵ In terms of criminal liability for the most serious crimes against the environment, there are also calls for the establishment of an International Environmental Court or an International Climate Court. Between 1993 and 2006, the International Court of Justice had a chamber for environmental matters, but no cases were filed, which led to its dissolution.⁵⁶ It is also problematic to define the very concept of 'environmental crime', 'ecocide'.⁵⁷

What is also worth emphasising is the importance of public participation in environmental protection.⁵⁸ Recently, a mobile application integrating various administrative services, called 'mObywatel' (mCitizen), has been launched in Poland. One of its features is the ability to report environmental infringements. Its users can describe an event that has a negative impact on the environment, add a photo, and mark the location. Reports can be made either with personal details or anonymously and are forwarded to the Inspectorate for Environmental Protection.⁵⁹ According to the Department for Combating Environmental Crime at the Inspectorate for Environmental Protection, there has been a significant increase in the number of intervention reports from citizens. In 2024, there were 7,324 reports, most of which concerned illegal waste storage. A similar option for reporting environmental violations is available via an electronic form on the website of the Chief Inspectorate for Environmental Protection. Undoubtedly, the growing public awareness of environmental protection is a positive trend. At the same time, social acceptance of actions harmful to the natural environment is decreasing.⁶⁰

54 | Bojar-Fijałkowski 2017, 111–112.

55 | Provost 1999, 453.

56 | Stephens 2009, 56.

57 | Krzan 2023, 151–165.

58 | Pływaczewski, Narodowska & Duda 2021, 275–292.

59 | Kwiatek & Skóra 2025, 311–324.

60 | Duda 2025, 106–115.

The growing interest in environmental protection among legal scholars is also significant for the public perception of environmental threats and for raising legal awareness in this area. In recent years, there has been a dynamic development of a new subdiscipline of criminology known as green criminology. 'Green criminology' focuses on questions about the nature and dynamics of environmental crimes and harms (this provides a broader definition of crime), environmental laws (enforcement, prosecution, sentencing), environmental regulations (protection and conservation of the environment by administrative, civil, and criminal law measures), and eco-justice (valuing and respecting humans, animals, plants, and ecosystems).⁶¹ This trend is also noticeable throughout European criminology.⁶²

In order to combat environmental crime, it is essential to establish a coherent, integrated, and complementary system. It should be based on three principles: precisely defining the scope of tasks and powers of individual institutions and services, implementing mechanisms for cooperation and coordination of projects in specific areas, and defining the rules for information exchange and cooperation in the areas of prevention, control, procedural activities, and training.⁶³

Concluding, the most significant obstacles to ensuring effective fulfilment of tasks by the Inspectorate for Environmental Protection are the unclear legal basis for procedural competencies, insufficient financial, human and technical resources, as well as the lack of standardised practices and procedures for cooperation with law enforcement agencies and criminal courts.

61 | Banach-Gutierrez, Pływaczewski, Narodowska, Duda & Retkowski 2025, 5–25.

62 | Papers on green criminology now account for almost a quarter of the presentations given at the annual congresses of the European Society of Criminology. In addition, the European Society of Criminology has established a Green Criminology Working Group, of which the author of this study is a board member.

63 | Mądrzejowski 2023, 69–104.

Reference list

1. Banach-Gutierrez J B, Pływaczewski W, Narodowska J, Duda M & Retkowski P (2025) 'Green criminology' – a question about transnational environmental crime in Poland, *Studia Prawnoustrojowe* 68/2025, pp. 5–25, DOI: <https://doi.org/10.31648/sp.10990>.
2. Bojar-Fijałkowski T (2017) O wycofywaniu się państwa z aktywności w sferze ochrony środowiska i gospodarki komunalnej, *Studia Prawnoustrojowe* 37/2017, pp. 101–114.
3. Czech T (2011) Zarządzenie pokontrolne organów Inspekcji Ochrony Środowiska, *Zeszyty Naukowe Sądownictwa Administracyjnego* 7(3), pp. 89–100.
4. Danecka D & Radecki W (2020) *Inspekcja Ochrony Środowiska. Komentarz*, Wolters Kluwer, Warszawa.
5. Danecka D (2018) *Konwersja odpowiedzialności karnej w administracyjną w prawie polskim*, Wolters Kluwer, Warszawa.
6. Danecka D (2021) Organizacja inspekcji środowiska w Polsce, Czechach i Słowacji, in: Bukowski Z, Bojar-Fijałkowski T (eds.) *Kontrola przestrzegania przepisów o ochronie środowiska. W Czechach, Polsce i Słowacji*, Wydawnictwo Uniwersytetu Kazimierza Wielkiego w Bydgoszczy, Bydgoszcz, pp. 53–68.
7. Duda M (2021) CITES crimes in Poland – causes, manifestation, counteracting, *Studia Prawnoustrojowe* 52/2021, pp. 67–83, DOI: 10.31648/sp.6566.
8. Duda M (2025a) Organised crime in the cross-border amber traffic, in: van Duyne P C, Banach-Gutierrez J B, Antonopoulos G A, von Lampe K, Larson P & Harvey J (eds.) *Green and Transnational Crime in Europe and Beyond*, Routledge, pp. 169–184, DOI: <https://doi.org/10.4324/9781003530824>.
9. Duda M (2025b) Ritual slaughter – legal and ecocriminological aspects, in: Dajnowicz-Piesiecka D (ed.) *Animal Protection in Poland as a Challenge for Criminal Law and Criminology*, Difin, Warszawa, pp. 105–116.
10. Górski M (2015) *Prawo ochrony środowiska*, Wolters Kluwer, Warszawa.
11. Hać H (2024) Uprawnienia wojewódzkich inspektorów ochrony środowiska w zakresie kontroli przedsiębiorców, *Roczniki Prawa i Administracji* 24/2024, pp. 153–164, DOI: <https://doi.org/10.5604/01.3001.0054.9694>.
12. Haładyj A (2018) Uprawnienia kontrolne Inspekcji Ochrony Środowiska a problem udatności jej struktury organizacyjnej, in: Federczyk W (ed.) *Stulecie polskiej administracji. Doświadczenia i perspektywy*, Krajowa Szkoła Administracji Publicznej, Warszawa, pp. 261–280.

13. Jasińska M (2019) Rola Inspekcji Ochrony Środowiska w zakresie ścigania karnego, *Studia Prawnoustrojowe*, 45/2019, pp. 119–135, DOI: <https://doi.org/10.31648/sp.5195>.
14. Klimek G & Pieńczykowski M (2014) Problematyka zaskarżania zarządzenia pokontrolnego organów Inspekcji Ochrony Środowiska, *Przegląd Prawa Ochrony Środowiska* 2/2014, pp. 29–49.
15. Krzan B (2023) Ochrona środowiska naturalnego przez międzynarodowe prawo karne, *Acta Universitatis Wratislaviensis* 45(3), pp. 151–167, DOI: <https://doi.org/10.19195/2300-7249.45.3.10>.
16. Kwiatek B & Skóra A (2025) *Aplikacja mObywatel. Komentarz*, Wolters Kluwer, Warszawa.
17. Łyżwa R (2018) Karnoprawne instrumenty ochrony środowiska, *Studia Prawnoustrojowe* 42/2019, pp. 377–388, DOI: <https://doi.org/10.31648/sp.4824>.
18. Łyżwa R (2023) Kompetencje i zadania Inspekcji Ochrony Środowiska w zwalczaniu przestępstw przeciwko środowisku, *Prawo i Klimat* 1/2023, pp. 109–126.
19. Mądrzejowski W (2023) Karnoprawna ochrona środowiska w Polsce – system instytucji, *Przegląd Polityjny*, 2(150), pp. 69–104, DOI: 10.5604/01.3001.0053.8543.
20. Modrzejewski AK & Dobkowski J (2024) Kontrola wojewódzkiego inspektora ochrony środowiska w zakresie gospodarki odpadami a zapewnienie bezpieczeństwa ekologicznego w polskim systemie prawnym, *Zeszyty Prawnicze* 1(81), pp. 105–126, DOI: <https://doi.org/10.31268/ZPBAS.2024.06>.
21. Narodowska J (2021) Aggression towards animals and aggression towards people – report from research records, *Studia Prawnoustrojowe* 52/2021, pp. 295–308, DOI: <https://doi.org/10.31648/sp.6618>.
22. Narodowska J (2025) Criminological and legal aspects of the illegal dog market in Poland, in: van Duyne P C, Banach-Gutierrez J B, Antonopoulos G A, von Lampe K, Larson P, Harvey J (eds.) *Green and Transnational Crime in Europe and Beyond*, Routledge, pp. 185–199, DOI: 10.4324/9781003530824-11.
23. Niżnik-Dobosz I (2018) Sądowa kontrola aktów kontroli Inspekcji Ochrony Środowiska wobec podmiotów zewnętrznych jako gwarancja przestrzegania prawa obiektywnego i praw podmiotowych kontrolowanych, *Przedsiębiorczość i Zarządzanie* 19(9), pp. 211–223.
24. Pływaczewski W, Duda M & Narodowska J (2020) Criminal Climatology – New Tool for Identification of Civilization Threats in the Environmental Protection Areas. National, Regional and Global Perspective, *Internal Security* 12(1), pp. 281–298, DOI: 10.5604/01.3001.0014.3204.

25. Pływaczewski W, Narodowska J & Duda M (2021) Assessing the Viability of Environmental Projects for a Crime Prevention-Inspired Culture of Lawfulness, in: Kury H & Redo S (eds.) *Crime Prevention and Justice in 2030. The UN and the Universal Declaration of Human Rights*, Springer, Cham, pp. 275–292.
26. Pływaczewski W, Narodowska J & Duda M (2024) Some remarks on protection of cultural and natural heritage in the light of threats posed by tourism, in: Abubakar M, Szewczak M & Laki I (eds.) *Social Sciences and the Crises of the 21st Century*, WSGE University of Applied Sciences, Józefów, pp. 58–75, DOI: 10.13166/HR/QENN6035.
27. Pływaczewski W, Zębek E & Narodowska J (2020) *Odpowiedzialność za środowisko z perspektywy prawa, kryminologii i nauk przyrodniczych*, Difin, Warszawa.
28. Popławska A (2024) Kontrola Inspekcji Ochrony Środowiska w branży wodno-ściekowej, *Forum Eksploatatora* 2(127), pp. 74–77.
29. Provost R (1999) International criminal environmental law, in: Goodwin-Gill G S, Talmon S (eds.) *The Reality of International Law: Essays in Honour of Ian Brownlie*, Oxford University Press, Oxford, pp. 453–468.
30. Prusak F (2013) Rozgraniczenie prerogatyw wykroczeniowych organów policji administracyjnej, *Studia Prawnicze i Administracyjne* 6(2), pp. 3–15.
31. Rakoczy B (2013) Komentarz do Konstytucji Rzeczypospolitej Polskiej, in: Bukowski Z, Czech E, Karpus K, Rakoczy B (eds.) *Prawo ochrony środowiska. Komentarz*, Wolters Kluwer, Warszawa, pp. 12–21.
32. Stelmasiak J (2024) Model organizacyjno-prawny organów w zakresie ochrony przyrody: Zagadnienia podstawowe, in: Lisowski P, Kusiak-Winter R & Jakimowicz W (eds.), *Administracja publiczna wobec procesów zmian w XXI wieku: Księga jubileuszowa Profesora Jerzego Korczaka*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław, pp. 717–724.
33. Stephens T (2009) *International Courts and Environmental Protection*, Cambridge University Press, Cambridge.
34. Szumiło-Kulczycka D (2004) *Prawo administracyjno-karne*, Wolters Kluwer, Kraków.
35. Uhri L & Nemes O (2024) Examination of environmental legislation (related administrative law and some criminal and civil law) and sanctions for illegal waste dumping in the V4+ countries (Czech Republic, Poland, Hungary, Slovakia and Slovenia), *JAEL* 19(36), pp. 225–253, DOI: <https://doi.org/10.21029/JAEL.2024.36.225>.

36. Walas M (2009) Organy ochrony środowiska w Polsce, *Przegląd Prawa Ochrony Środowiska* 1/2009, pp. 41–49.
37. Zalewski P (2023) Inspekcja Ochrony Środowiska jako organ postępowania przygotowawczego w zakresie prawnokarnej ochrony środowiska, *Policja* 2/2023, pp. 22–29.

The Role, Powers and Challenges of Environmental Authorities in Environmental Inspections in Hungary¹

Abstract

This article provides a detailed analysis of the environmental inspection system in Hungary, focusing on its competencies, enforcement mechanisms, and practical challenges. It outlines the current governmental institutional framework for environmental protection, from ministries responsible for professional oversight to environmental protection authorities integrated with county-level Government Offices. Building on an overview of the fundamental legal provisions governing inspections, the article explains how inspections are conducted in practice across individual and sector-specific areas of environmental protection, as well as in so-called complex or horizontal cases. Within this framework, it examines the tasks and powers of inspectors in ensuring effective inspections, the organisations involved in the inspection process, the aspects subject to examination, and the documents and evidence generated, as well as their contribution to the application of administrative sanctions. The article also discusses the difficulties faced by authorities, for example when on-site inspections are obstructed, and considers the practical and legal measures available to address such challenges. Furthermore, it explores new opportunities for gathering and presenting evidence through digital tools and highlights their potential benefits. The article reviews recent legislative amendments, considers anticipated future reforms, and identifies measures necessary to improve procedural efficiency. Additionally, it highlights best practices that are recommended for future implementation.

Keywords: Environmental inspections, environmental authorities, inspectors' powers, violation reporting, digital tools digital evidence, best practices, inter-agency cooperation

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1. Introduction and legal basis

1.1. The concept of environmental inspection as a regulatory tool in Hungary

Environmental inspection is a systematic assessment that evaluates project developers' or businesses' (hereinafter collectively referred to as 'users of the environment') compliance with environmental laws, regulations, standards, and permits. In Hungary, environmental inspection mostly refers to environmental licensing as an administrative procedures and their judicial review. These inspections ensure that industries, businesses, and public facilities comply with prescribed environmental practices to protect the environment, for example by minimising air and noise pollution, reducing waste, promoting the circular economy, protecting biodiversity and ecosystems, mitigating the effects of climate change, and promoting sustainability.

Environmental inspections ensure that the activities of users of the environment comply with the above-mentioned requirements. Inspections also play an important role in identifying environmental hazards so that ecological damage can be prevented. In addition, environmental inspections are crucial for protecting both public health and natural ecosystems. Without these inspections, the consequences may have lasting and irreversible effects on the services provided by environmental elements.

1.2. Legal background and dogmatics of environmental law

When defining environmental law, it is important to acknowledge that the environment is a system. The elements of this system are interconnected; therefore, the environment is much more than merely the sum of its elements, and its protection must also extend to the relationships among those elements.²

The aim of the article is to present the role, powers, and challenges of environmental authorities in the field of environmental inspections, examine the applicable legal framework and its adequacy, assess whether existing capacities are sufficient, and analyse the challenges faced by authorities and the ways in which these may be addressed within the current regulatory environment.

Methodologically, the article is based on an examination of the operational practices of the current environmental protection authorities, with particular emphasis on the procedural rules governing environmental inspections, including both general administrative procedural control rules and the specific procedural rules applicable to environmental inspections.

Although environmental inspection is inseparable from permitting, as it primarily concerns activities that deviate from permit conditions or are carried

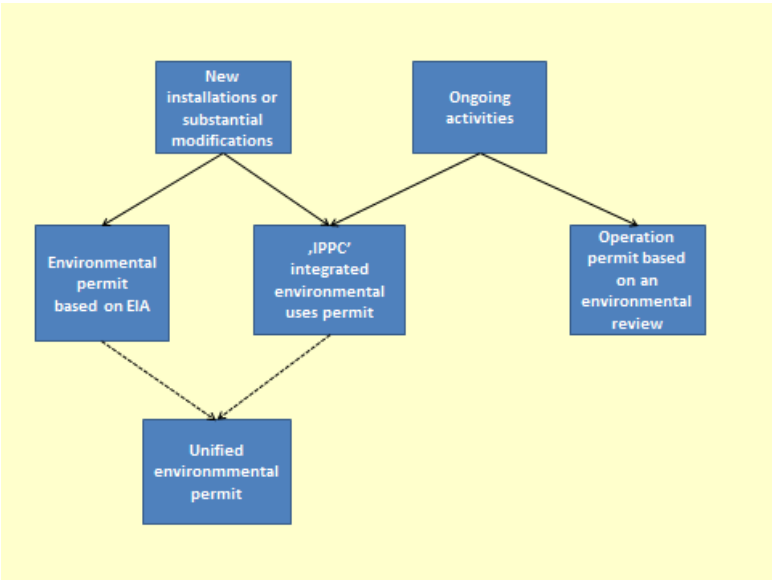
2 | Paulovics 2022, 2; Fodor 2015, 18.

out without permits, this article focuses mainly on the inspection procedure itself rather than on the permitting procedures that form its basis, particularly sectoral permitting or co-decision-making procedures relating to the protection of individual environmental elements.

However, without discussing in detail the legislative background governing the licensing of individual environmental elements, it should be briefly noted that public administration has several tools in the field of environmental protection. Tools specifically aimed at prevention include licensing mechanisms, such as sectoral permits, permits relating to environmental elements, co-decision licences involving specialised authorities, and horizontal or complex (integrated) permits, such as Environmental Permits based on Environmental Impact Assessment, Integrated Pollution Prevention and Control Permits, Environmental Operation Permits based on environmental review or audit, and Unified Environmental Permits. Other preventive tools include related registers, instruments imposing obligations (obligations, prohibitions, and restrictions), cooperation-based instruments, and inspection as a prerequisite for all of these, as well as economic regulatory and market-influencing instruments. Finally, there are sanctioning and liability instruments.³

The cases of so-called complex or integrated permitting, and the permits related to them, are shown in Figure 1 below.

Figure 1: Table of complex or integrated permitting⁴



3 | Bándi 2024.

4 | Bándi 2018.

1.3. The role and legal mandate of the environmental inspection authority in Hungary and the importance of environmental supervision in regulatory enforcement

According to Art. P of the Fundamental Law of Hungary, natural resources, particularly arable land, forests, and water resources, as well as biological diversity, especially native plant and animal species, and cultural values, constitute the nation's common heritage. Responsibility for protecting and preserving them for future generations lies with both the State and every individual.

The Fundamental Law further emphasises in Art. XXI that Hungary shall recognise and implement the right of everyone to a healthy environment. Any environmental damage must, as a priority, be rectified at its source in accordance with the relevant legislation and the principle that the polluter shall pay. The importation of waste into Hungary for the purpose of disposal is prohibited.

These provisions of the Fundamental Law reflect the importance of environmental protection and nature conservation and their place within the Hungarian legal system. Regulations relating to this area appear in several sectoral laws, and their implementation is ensured through both legislative and enforcement processes, including the role and legal mandate of the environmental inspection authority.

Currently,⁵ in Hungary, the Capital and County Government Offices serve as the territorial administrative bodies, including the main environmental authorities, pursuant to Section 2(2) of Act CXXV of 2018 on Government Administration. The legal status, management, and functions of the Government Offices are regulated by Government Decree 568/2022 (XII. 23) on the Capital and County Government Offices and the District (Capital District) Offices, and by KTM Instruction No. 15/2024 (VI. 28) on the organisational and operational regulations of the Capital and County Government Offices.⁶

According to KTM Instruction No. 15/2024 (VI. 28) on the organisational and operational regulations of the Capital and County Government Offices, the Capital and County Government Offices are, pursuant to Art.17(3) of the Fundamental Law of Hungary, territorial state administration bodies of the Government with general competence.⁷

5 | Formerly, the regional Environmental Protection Inspectorates were the authorities responsible for environmental inspections. These inspectorates were established in 1991 following the societal changes. In 2005, the water management and nature conservation authorities were incorporated into the inspectorates. Following the State Territorial Administration Reform in 2010, the environmental protection and nature conservation functions of these deconcentrated regional inspectorates were integrated into the County Government Offices in 2015. The water protection authorities were merged into the Government Offices only in 2024. Due to space constraints, this study does not provide a detailed historical overview of the organisational system of environmental inspections, which has undergone numerous changes over time. The article is based on the legislation in force during the second half of 2025.

6 | Annex, Section 1(1).

7 | The map shows the areas of jurisdiction of the Capital and County Government Offices. See: Hungarian Central Statistical Office 2026.

Map 1: Area of jurisdiction of Government Offices



The organisational units of Government Offices perform, within the scope of their general official duties, those tasks and exercise those powers for which the Government Offices are designated by law as the competent authority or inspection body. They perform, in particular, the tasks specified in Act LIII of 1995 on the General Rules for Environmental Protection (hereinafter: the Environmental Protection Act), Act LIII of 1996 on Nature Protection (hereinafter: the Nature Protection Act), Act CLXXXV of 2012 on Waste (hereinafter: the Waste Management Act), and Act LVII of 1995 on Water Management (hereinafter: the Water Management Act), as well as further government and ministerial decrees issued pursuant to their authorisation.

I. Based on the authorising provision of the Environmental Protection Act, the Government designated the bodies performing environmental protection authority and administrative tasks in Sections 5–10 of Government Decree 624/2022 (XII. 30), which are as follows:

The environmental protection authorities are:

- | the Minister of Energy,
- | the Pest County Government Office (national environmental authority),
- | the Budapest Metropolitan Government Office,
- | the 19 county government offices (territorial environmental authorities),
- | the district environmental authorities,
- | HungaroMet Nonprofit Co. (Hungarian Meteorological Service Nonprofit Corporation),
- | the Lord Mayor and the Mayor,

- | the Notary of the Capital, the District Municipality, and the Municipality (local government), and
- | the Deputy State Secretary.

Generally, the territorial environmental protection authority acts as the environmental protection authority (main environmental authority). The Budapest Metropolitan Government Office acts in cases involving integrated construction and environmental permits. The national environmental protection authority acts, for example, in cases concerning the construction of expressways. The Deputy State Secretary acts as a second-instance authority and exercises supervisory powers, a function that was restored by Government Decree 119/2024 (VI. 10).

In certain areas of air protection, the district environmental protection authority acts as the competent authority, while in certain areas of noise protection, the notary of the municipality (local government), or in the capital the notary of the district municipality (local government), acts as the competent authority. The mayor, or in the capital the Lord Mayor, acts in air-quality protection cases relating to the implementation of the smog alert plan.

The environmental protection administrative bodies are as follows:

- | the Deputy State Secretary (e.g. in relation to tasks connected with IMPEL (European Union Network for the Implementation and Enforcement of Environmental Law)),
- | the national environmental protection authority itself (e.g. maintenance of national registers),
- | the territorial environmental protection authorities (noise, air, water, and radiological laboratory activities), and
- | HungaroMet Nonprofit Co. (air protection and state meteorological activities).

These administrative bodies also play an important role in inspections.

II. The waste management authority is designated by Government Decree 124/2021 (III. 12). Under this decree, the Government designates the county Government Office (territorial waste management authority) as the main waste management authority acting in administrative matters. In addition, the minister is also responsible for waste management. In cases specified by legislation, the Pest County Government Office (national waste management authority) acts with national competence. In certain priority areas, such as radioactive emissions, waste management issues related to national defence, and military construction projects, designated territorial waste management authorities exercise competence throughout the country.

III. A separate government decree, Government Decree 625/2022 (XII. 30), provides for the designation of bodies performing nature conservation authority and management tasks. According to Section 6(1), the Government designates the following as nature conservation authorities:

- | the Minister of Agriculture,
- | the Pest County Government Office (national nature conservation authority),
- | the 19 county government offices (territorial nature conservation authorities),
- | the Chief Notary of the Capital (in the case of protected natural areas of local importance),
- | the notary of the local government (in the case of protected natural areas of local importance).

Unless otherwise provided by government decree, the territorial nature conservation authority acts as the nature conservation authority (main nature conservation authority).

The Government designates the National Park Directorate as the body responsible for the nature conservation management of protected areas of national importance and Natura 2000 habitats, as well as for the conservation of protected species. There are 10 National Park Directorates in Hungary. The National Park Directorate usually participates in inspections involving protected areas and protected values.

IV. The Government designated the following water protection authorities and administrative bodies in Section 1 of Government Decree 366/2015 (XII. 2):

- | the National Directorate of Water (OVF),
- | the regional water management directorates, and
- | the 19 county government offices with water protection competence (territorial water protection authorities).

The main rules governing the conditions for and licensing of environmental use are regulated by the Environmental Protection Act, the Nature Protection Act, the Waste Management Act, and the Water Management Act. The environmental protection authorities act in licensing procedures and in declaratory and compulsory decision-making procedures designated in the Environmental Protection Act, the Waste Management Act, Government Decree 314/2005 (XII. 25) on the Environmental Impact Assessment and Integrated Pollution Prevention and Control Licensing Procedure (hereinafter: Government Decree 314/2005), and other sectoral legislation relating to air, noise and vibration, waste, water quantity and quality, radiation, and remediation. Most authorities operate laboratories to carry out inspections.

The nature conservation authorities exercise the powers prescribed in the Nature Conservation Act and other sectoral legislation relating to landscape protection, Natura 2000 habitats, protected plant and animal species, caves, and protected mineral formations. The water management authorities act in accordance with the Water Management Act and, in particular, Government Decree 72/1996 (V. 22) on the exercise of water management authority powers, as well as numerous other sectoral regulations.

Each of the above-mentioned authorities also exercises inspection powers in matters within its competence.

2. Institutional structure

2.1. The structure of the environmental inspection body and the organisational system in Hungary

Hungary is a centralised state with a continental legal system,⁸ consistent with the EU environmental acquis.⁹ Parliament, *inter alia*, enforces environmental interests through legislation and determines the environmental duties of the Government and local governments. In addition, it approves the funds used to achieve environmental objectives and oversees their use.¹⁰

Hungary has no dedicated Ministry of Environment. Three ministries deal with environmental issues.¹¹ The Ministry of Energy is responsible for environmental policy, including air quality, noise, climate policy, Environmental Impact Assessment, Strategic Environmental Assessment, the circular economy, and waste management. It is also responsible for water management, including drinking water, flood prevention, and remediation, as well as energy-related matters. The Ministry of Agriculture is responsible for nature conservation, forestry, fisheries, land affairs, and agricultural subsidies. The Ministry of the Interior is responsible for disaster management and agricultural irrigation. These ministries work closely together to address environmental issues. The Ministry of Public Administration and Regional Development coordinates the territorial authorities that operate under the professional supervision of the above-mentioned ministries.

At first-instance level, the Departments of Environmental Protection, Nature Conservation, and Waste Management are responsible environmental protection within the relevant Government Offices. In Budapest, this responsibility lies with the Pest County Government Office, while in each of the 19 counties the relevant department of the county Government Office performs these functions at territorial (county) level. The national environmental protection authority is located in Budapest. It is integrated into the Pest County Government Office and deals with matters of national significance.

There is second-instance environmental authority within the Ministry of Energy for certain matters, specifically decisions concerning preliminary examination procedures, environmental permits, environmental operating permits, Integrated Pollution Prevention and Control (IPPC) permits, unified environmental permits, restrictions, suspensions, prohibitions of unlawful activities, and obligations to pay fines. The Deputy State Secretary responsible for these decisions acts independently in exercising these powers.

8 | Country fiche 2019, 8.

9 | OECD 2018, 86.

10 | Environmental Protection Act Section 39.

11 | Government Decree 182/2022 (V. 24.) on the duties and powers of Government members.

In addition, the notary of the local government, as well as the Chief Notary in the capital, acts as a local government environmental protection authority in matters assigned to their competence by government decree. Their supervisory authority is the county Government Office. See the previous chapter for details.

2.2. Laws and regulations that define the role and authority of environmental inspections

In Hungary, Act CL of 2016 on General Public Administrative Procedure (hereinafter: the Act on General Public Administrative Procedure) regulates the general procedural rules governing official inspection procedures, including environmental inspections.

Accordingly, the authority monitors compliance with legal provisions and the fulfilment of the requirements set out in enforceable decisions.

Under the Act, the authority may initiate proceedings of its own motion if any circumstance giving rise to such proceedings exists, particularly if it obtains information regarding an environmental threat or damage, or where otherwise prescribed by law.

Among the environmental laws, Government Decree 314/2005 should be mentioned, as it determines the purpose, frequency, and types of inspections, as well as the organisations that should be involved in the processes. Within the framework of inspections, compliance with legislation and permit conditions, fulfilment of data-reporting obligations, maintenance of operating logbooks, and compliance with best available techniques (BAT) are examined. Emission measurements performed by the operator are also checked. In addition, the authority conducts its own emission measurements.¹²

Government Decree 306/2010 (XII. 23) on Air Protection defines the purpose of air-quality inspections. During such inspections, the authorities examine compliance with the provisions of the Government Decree and relevant ministerial decrees, fulfilment of data-reporting obligations, measurement protocols, the technology used, material balance documentation, maintenance of operating logs, and compliance with permit conditions. Emission measurements may also be performed.¹³

During noise-protection inspections, compliance with the provisions of Government Decree 284/2007 (X. 29) is verified. Facilities emitting noise or vibration into the environment must be designed and operated in such a manner that the resulting noise and vibration levels comply with legal requirements in protected areas, buildings, or rooms.

Within this framework, compliance with permit requirements, the technology used, and, where necessary, implementation of the measures included in the action

¹² | Tóth, Simkó, Riskó & Bibók 2016, 12.

¹³ | Ibid., 14–15.

plan (fulfilment of noise-protection requirements) are examined. Standard noise measurements are used to determine whether noise emissions and noise levels comply with the prescribed limit values.¹⁴

The water protection authority investigates information concerning burdens placed on the geological environment and groundwater, including threats to quality, pollution, and environmental damage, in cooperation with the environmental authority and the water management directorate, in order to carry out official measures and procedures.

Taking into consideration material flows and waste management practices, technological processes and emissions, information contained in emergency response plans, and groundwater and soil-monitoring data, the authority conducts on-site inspections to investigate pollution and determine measures for damage prevention and remediation based on risk assessments. A protocol is drawn up following the on-site investigation in accordance with legal requirements.¹⁵

The main objective waste-management inspections is to monitor waste from its point of origin to its final treatment, whether through disposal or recovery resulting in the cessation of waste status. Until waste reaches one of these final stages, its producer or holder remains legally responsible for the environmental risks associated with it throughout the chain of transfers. There must be no gaps in the chain, and the waste cannot simply 'disappear' at its end.

During on-site inspections, the authority examines either individual parts of this chain or the entire chain. Within this framework, it inspects the site itself, the environmental use carried out there in relation to all environmental elements, waste generation and waste-management processes, on-site waste collection, the design of collection points, compliance with permit conditions, site registers, documentation proving waste movements, and possible illegal waste incineration.¹⁶

During nature conservation inspections, compliance with legislation and permit conditions is usually checked with the assistance of the Nature Conservation Guard Service operating within the framework of the National Park Directorates. In this context, the condition, characteristics, and wildlife of a given area are examined, together with the exact location, timing, method, and technical parameters of the activity concerned, including prohibitions, restrictions, or suspensions of certain activities, the methods and materials used, and regulations relating to the preservation, development, and management of green areas. More generally, the impact of the activity on habitats and wildlife is assessed.¹⁷

In addition to inspections carried out by environmental authorities, certain specialised inspections fall within the competence of other authorities.

14 | *Ibid.*, 16.

15 | *Ibid.*, 17.

16 | *Ibid.*, 33–34.

17 | *Ibid.*, 60.

Official inspections of hazardous plants are carried out by the disaster management directorates. For example, in the field of hazardous plants, the National Directorate General for Disaster Management has installed a national meteorological and chemical monitoring system, as well as a public alert system (Monitoring and Public Alert – MoLaRi). In the event of a malfunction or accident at a hazardous plant, dangerous chemical substances may be released into the air. Their concentration is measured by installed probes and simultaneously reported to the emergency services of the disaster management directorate. Following evaluation of the data, the affected population may, if necessary, be alerted through the siren system and informed of the required safety measures.¹⁸

2.3. The relationship with other administrative bodies (e.g. ministries, environmental agencies, prosecutor's offices)

The system of environmental administrative authorities and their competences in Hungary is quite complex.¹⁹ As mentioned above, the authorities primarily responsible for the implementation and enforcement of environmental inspections are the territorial and national Environment Protection, Nature Conservation and Waste Management Departments of the Government Offices. Due to the need for professional and functional management and control, the four ministries discussed in Chapter 2 must work closely together.

According to the legislation, the following organisations (administrative or management bodies) are also involved in environmental inspections:

- | regional water management directorates, supervised directly by the National Directorate of Water and indirectly by the Ministry of Energy,
- | national park directorates, supervised directly by the Ministry of Agriculture,
- | disaster management directorates, supervised directly by the National Directorate General for Disaster Management and indirectly by the Ministry of the Interior,
- | county public health administration bodies, supervised directly by the National Centre for Public Health and Pharmacy and indirectly by the Ministry of the Interior,
- | the National Food Safety Office, acting as the competent authority in fisheries and forestry matters and supervised directly by the Ministry of Agriculture,
- | Herman Ottó Institute Nonprofit Ltd., a nonprofit company owned by the Ministry of Agriculture and active in nature conservation, rural development, and agricultural vocational education, and

¹⁸ | NKP 5. 2023, 121.

¹⁹ | Country fiche 2019, 10.

- | HungaroMet Nonprofit Zrt., supervised directly by the Ministry of Energy and active in the field of air protection, particularly in assessing compliance with national air-pollution emission-reduction obligations.

In addition to the cooperation outlined above, the national and territorial environmental protection authorities cooperate with municipal environmental protection authorities in matters affecting the tasks and powers of local governments and assist them in carrying out their environmental protection responsibilities. The competent departments of the territorial authorities also cooperate with one another in both licensing and inspection procedures.

The prosecutor's office contributes to ensuring the legality of the procedures and decisions of environmental protection authorities. In order to fulfil this function, it is necessary for the prosecution service to receive decisions concerning sanctions, including fines and obligations. In Hungary, an agreement exists between the ministry responsible for environmental protection and the Office of the Prosecutor General under which authorities automatically transmit such decisions to the prosecution service.

Based on these decisions, prosecutors may initiate various legal procedures.²⁰ In cases of environmental endangerment, the prosecutor is entitled to bring legal action seeking the prohibition of an activity or compensation for damage²¹ caused by environmentally hazardous activities. The prosecutor's office also acts in accordance with the provisions of the Criminal Procedure Act where environmental elements have been harmed in a manner prohibited by the Criminal Code.

3. Scope of competencies and inspection powers

3.1. The key responsibilities and powers of environmental inspectors

In legal terms, the key responsibilities and powers of environmental inspectors are primarily defined in their job descriptions and, naturally, in the relevant sectoral legislation. These include the following:²²

20 | Environmental Protection Act, Section 109, Nature Conservation Act Section 60(2).

21 | A good example of the latter is Section 81 of the Nature Conservation Act, which provides that the prosecutor may initiate legal proceedings for compensation for non-material harm arising from the deterioration of the living conditions of society or specific social groups. Any compensation awarded must be paid into a central nature conservation fund. This compensation may be used for nature conservation purposes, development projects, and monitoring activities.

22 | Section 86, para. 2 i) and 3 of Act CXXV of 2018 on Government Administration.

1. Performing environmental licensing²³

- | Performing licensing tasks in individual sectoral permitting procedures (e.g. waste management, air protection, noise protection, and nature conservation),
- | Assisting in the performance of official tasks pursuant to Government Decree 314/2005,
- | Conducting on-site inspections in connection with licensing activities to establish the facts of the case and examine compliance with applicable legislation and previous decisions. Where necessary, proposing or initiating measures to eliminate irregularities.

2. Conducting Environmental Inspections

- | Performing inspection tasks,
- | Participating in the investigation of reports and complaints submitted to the authority, as well as in the implementation of the department's annual inspection plan and other inspection programmes,
- | Carrying out on-site evaluations of industrial facilities, construction sites, waste-management centres, livestock farms, and similar facilities,
- | Assessing compliance with environmental regulations, permits, and safety standards,
- | Identifying potential environmental hazards, damage to nature, environmental threats, hazardous-waste mismanagement, and soil contamination.

3. Enforcing Environmental Regulations

- | Participating in official inspections and arranging procedural actions necessary for conducting proceedings,
- | Initiating enforcement proceedings, fine procedures, and other official measures where violations are detected during inspections,
- | Monitoring compliance with deadlines set out in official permits and, where necessary, initiating measures to restore lawful operation,
- | Issuing warnings and, where authorised, imposing fines or on-the spot fines for non-compliance with environmental legislation,
- | Recommending corrective measures to mitigate environmental damage,
- | Initiating the prohibition, restriction, or suspension of unlawful activities,
- | Cooperating with other authorities and organisations (e.g. water management directorates, national park directorates, and the police) to ensure enforcement and legal compliance.

4. Reporting and Documentation

- | Preparing detailed reports on inspection findings, violations, and corrective measures,
- | Maintaining records of site visits, test results, and compliance history,
- | Providing testimony in legal proceedings where necessary.

23 | In Hungary, the officials responsible for licensing generally also perform inspection tasks. These responsibilities also derive from their job descriptions.

5. Collecting and Analysing Data

- | Working with laboratories operating in county government offices or regional centres in fields such as environmental noise and vibration and air protection. A nationwide radiological laboratory also operates in Hungary,²⁴
- | Taking air, water, soil, and waste samples for laboratory analysis,
- | Using specialised monitoring equipment to measure pollutants and emissions,
- | Analysing environmental conditions in order to assess environmental risks and impacts.

3.2. Types of inspections (e.g. routine monitoring, targeted enforcement, emergency response)

Inspections can be scheduled or unannounced. Each county government office produces an annual inspection master plan (including the frequency and types of inspections) for all departments. Based on this master plan, the environmental department prepares and implements an annual programme of routine environmental inspections.²⁵

The master plan is published on the office's website and covers waste management, air protection, noise protection, nature conservation, monitoring of permanent environmental damage, remediation interventions, and monitoring activities in general, with or without specifying the facilities to be inspected or the inspection dates.²⁶ For installations requiring an IPPC permit, planning is coordinated with the water management directorates, as they are responsible for related matters.²⁷ Inspection frequency varies from annually to once every three years. For non-IPPC installations, priority is given to facilities that create nuisances in residential areas, waste-handling facilities, and operators that have previously been subject to enforcement action. The frequency of inspections relating to water permits is prescribed by regulation.²⁸

Another type of inspection is the targeted inspection of compliance with the requirements of specific environmental fields (waste management, air protection, noise and vibration protection, water and soil protection, and nature conservation).

Unannounced inspections are also carried out, for example, in cases involving serious irregularities and complaints,²⁹ or when the authority renews or modifies

24 | Government Decree 624/2022, Annex 2.

25 | OECD 2018, 91.

26 | E.g. For planned and unannounced inspections relating to horizontal (integrated) or sectoral environmental matters, see Nógrád County Government Office 2024.

27 | Government Decree 314/2005, Section 22(3).

28 | EIR 2022, 45.

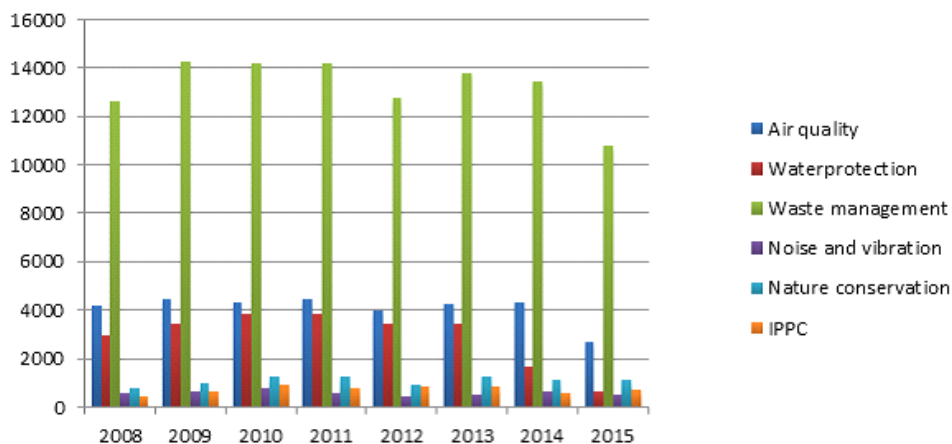
29 | According to research conducted by the National Institute of Criminology on behalf of the Ministry of Agriculture concerning nature conservation cases between 2020 and 2024, the distribution of public interest reports and complaints (which may trigger unannounced inspections) was as follows.

an existing permit. The public has a formal right to notify the environmental authorities of incidents involving environmental damage or the risk of environmental damage. Such complaints are also followed up through inspections.

Table 1: Total number of inspections in Hungary per category³⁰

	Planned	Random	Sum	Non-compliance
Air quality	29954	2678	32632	2208
Water protection	21492	1783	23275	4129
Waste management	100770	5436	106206	9995
Noise and vibration	3271	1344	4615	569
Nature conservation	7971	660	8631	1127
IPPC	5395	321	5716	731
SUM	168853	12222	181075	18759

Graph 1: Total number of inspections per category per year [pieces], 2008–2015³¹

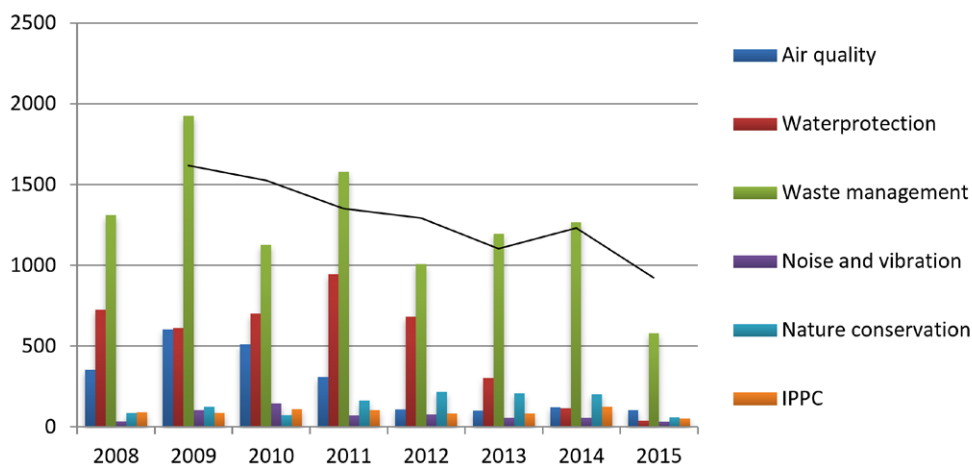


Of the 730 cases examined, proceedings were most often initiated by the National Park Directorates (233 cases), Government Offices (214 cases), and the Airport Directorate of the National Tax and Customs Administration (43 cases). Public interest reports or complaints led to the initiation of 64 cases. The Anglers' Association and Federation initiated proceedings in 29 cases, the police in 16 cases, the Hungarian State Treasury in 9 cases, and members of the public in 7 cases. In addition, the National Bureau of Investigation (5 cases), the competent Chief Prosecutor's Office (4 cases), the disaster management directorate (4 cases), and Balaton Fisheries Management Nonprofit Ltd. (3 cases) also approached the Government Offices to initiate proceedings. In 99 cases, no information was available regarding the source of the initiation.

³⁰ | According to the data collected for OECD Environmental Performance Reviews: Hungary (2018).

³¹ | Ibid.

Graph 2: Total number of non-compliance cases per category per year [pieces], 2008–2015³²



3.3. Inspectors' powers to access facilities, request data, and conduct environmental assessments

According to the Act on General Public Administrative Procedure,³³ the client must disclose the data necessary for conducting an inspection or reaching a decision when requested by the authority. Failure to comply with disclosure obligations, or the provision of false information, may be sanctioned under the Act.

Where establishing the relevant facts of a case requires the inspection or surveillance of property, the authority may order an inspection. The client or user of the environment must be notified in advance of the inspection if such notification does not jeopardise the success of the inspection. The absence of the client or user of the environment does not prevent the inspection from being carried out, provided that his or her presence is not required.

During an inspection, the inspector is, in particular, empowered:

- | to enter the premises, buildings, and other establishments affected by the inspection,
- | to examine any document, article, or work process,

³² | According to the data collected for the review: The most common reasons for cases of non-compliance were the following: partial or complete operation of the organisation without valid licenses; inadequate infrastructure or facilities (e.g. leakages); carrying out activities not covered by the relevant licenses; failure to maintain inventories of certain facilities, objects, or activities; exceeding prescribed limit values; altering the natural condition of protected areas; and disturbing protected species and their habitats.

³³ | Chapters 6–8.

- | to request information, and/or
- | to take samples.

The Waste Management Act contains similar provisions and provides a more detailed description of inspectors' powers.³⁴

There is also an important provision in Act V of 2013 on the Civil Code that enables employees of public authorities to access facilities for inspections. Art. 5:27 states that the owner of real property is obliged to allow inspectors to enter the property and must tolerate their use of the property for a period of time, the acquisition of rights of use, or other restrictions on ownership rights to the extent necessary for the performance of their duties.

To gain access to property, or where an inspection is obstructed, inspectors may request police assistance. If necessary, the authority is authorised to seize possession of an item (sequestration) and may also seize or confiscate it. In cases of obstruction, a procedural fine may be imposed.

The police may, without prior notice, immediately participate in an inspection at the location and time determined by the authority. If an on-site inspection is necessary in a life-threatening situation, or in a potentially devastating situation requiring immediate procedural action, or where otherwise permitted by law, the authority may conduct the inspection by forcibly opening a locked area, building, or room against the will of the persons present.

When an inspection is conducted in the manner described above, the public prosecutor must be notified in advance, immediately upon the authority's decision to conduct the inspection. The inspection must be carried out with police assistance and, where possible, in the presence of an official witness. If the public prosecutor disagrees with the inspection, he or she may prohibit it.

According to the Waste Management Act, where there is reasonable suspicion that waste abandoned on residential property endangers human life, physical integrity, health, soil, water, air, their components, or living organisms, the waste management authority may enter the property without police intervention.³⁵ This provision significantly facilitates the conduct of inspections.

The Act on General Public Administrative Procedure also contains additional legal instruments relating to inspections. Irrespective of its competence or jurisdiction, an authority may take provisional measures of its own motion without delay where a situation or act is likely to result in irreparable damage or danger. In such cases, the authority must promptly inform the competent authority of the action taken.

34 | Para. 78/F(1)–(2): e.g. to inspect equipment, tools, and technological processes; to make photographic or audio recordings to document the procedure; and to take a counter-sample at the request of the client in the case of official sampling.

35 | Para. 78/F(3).

If fulfilment of an obligation is at risk, the authority may order protective measures before the deadline for fulfilment, such as requiring security for pecuniary claims or ordering the seizure or sequestration of specific assets.

The authority also has the right to carry out protective measures and to conduct inspections, seizures, sequestrations, and regulatory inspections in the presence of an official witness in order to corroborate the events occurring during the procedural action and to provide an account of the facts witnessed.

4. Interaction with administrative sanctioning and compliance mechanisms

4.1. Identifying and reporting violations

During inspections, the authorities use the Recommendation of 4 April 2001 of the European Parliament and of the Council providing for minimum criteria for environmental inspections in the Member States.

According to this Recommendation, environmental inspection is an activity that entails, as appropriate:

- (a) checking and promoting the compliance of controlled installations with relevant environmental requirements set out in legislation,
- (b) monitoring the impact of controlled installations on the environment to determine whether further inspection or enforcement action (including the issuing, modification, or revocation of any authorisation, permit, or licence) is required,
- (c) carrying out activities for the above purposes, including:
 - | site visits,
 - | monitoring the achievement of environmental quality standards,
 - | consideration of environmental audit reports and statements,
 - | consideration and verification of any self-monitoring carried out by or on behalf of operators of controlled installations,
 - | assessment of the activities and operations carried out at the controlled installation,
 - | checking the premises and relevant equipment (including the adequacy of maintenance) and the adequacy of environmental management at the site, checking the relevant records kept by operators of controlled installations, and

| investigating environmental damage, determining environmental damage, and taking damage-prevention and remediation measures based on official sampling and comparison of monitoring data.³⁶

A report is prepared during the inspection, also in accordance with the Recommendation of the European Parliament and of the Council. The report includes the purpose, location, date, type of inspection, and the person or activity inspected. It also contains the main findings of the inspection, including whether a legal violation occurred and whether further action is required in the case.

4.2. The role of inspectors in initiating administrative offence proceedings

As noted in Chapter 3, among the key responsibilities and powers of inspectors is the proposal or initiation for measures necessary to eliminate irregularities. For this purpose, inspectors arrange the circumstances necessary for conducting the procedure. As explained in the previous chapter, the inspection report may serve as the basis for initiating proceedings and imposing administrative sanctions.

Once proceedings have been initiated, the authority may, if necessary, amend a license *ex officio* where changes in the circumstances existing at the time of licensing do not require withdrawal of the previously issued permit. The authority may also order an environmental audit to be carried out by the user of the environment.

In addition, the authority may require compliance with the conditions set out in the license and may oblige the user of the environment to prepare an action plan to remedy non-compliance and, if necessary, revise the licence. If the user of the environment fails to comply with this decision, the authority may withdraw the license.

If during an on-site inspection, the environmental protection authority identifies environmental endangerment or pollution, it will repeat the inspection within six months.

For activities covered by an IPPC permit, the authority assesses the results of emission monitoring at least annually. If necessary, it may review previously established emission standards and set new standards. Where the use of the best available techniques no longer ensures compliance with the applicable standards, the authority may require the user of the environment to carry out an environmental review.

36 | See: Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, pt. 2.

Pursuant to the Environmental Protection Act,³⁷ an environmental review may also be carried out to verify compliance with environmental requirements or where the authority identifies environmental endangerment, pollution, or activities carried out without the required permit.

Depending on the significance of the environmental impact, administrative sanctions may include the prohibition, restriction, or suspension of unlawful activities and/or the imposition of a fine. In determining the amount of the fine, the authority takes into account, *inter alia*, the circumstances of the breach or omission and the potential environmental effects of the activity. Where the legal conditions are met, the authority or the inspector may also initiate criminal or infringement proceedings.³⁸

4.3. Cooperation with other administrative authorities and enforcement bodies

Government Offices consolidate inspections falling within their respective tasks and powers where joint procedures are possible, subject to coordination of the location and timing of inspections. An annual consolidated inspection plan is prepared in advance for each calendar year. Government Offices ensure the coordination and implementation of consolidated inspection plans, the joint analysis of experiences, and the development and application of economical and complementary inspection methods.³⁹

Authorities that were previously involved in decision-making, particularly in horizontal licensing procedures, are also involved in inspections in order to verify compliance within their specific fields of competence. These co-decision authorities are designated in the government decrees referred to in Chapter 2:

- | Government Decree 624/2022 (XII. 30),
- | Government Decree 625/2022 (XII. 30),
- | Government Decree 24/2021 (III. 12), and
- | Government Decree 72/1996 (V. 22).

37 | Environmental Protection Act Sections 73–74.

38 | Environmental Protection Act Section 82, Government Decree 314/2005, Sections 22 and 26.

39 | Government Decree 568/2022 (XII. 23), Sections 29 and 39.

Table 2: Questions examined during the following procedures:⁴⁰

– Preliminary examination procedure, – Environmental impact assessment procedure, – Unified environmental permitting procedure, – Integrated Pollution Prevention and Control permitting procedure, and – Environmental operating permit procedure	These procedures typically involve examination of: 1. Environmental and public health impacts, including health-related risks and effects, 2. Public health requirements relating to waste, 3. Protection of cultural heritage, 4. Nature and landscape protection, 5. Impacts on agricultural land and forests, 6. Consistency with spatial planning instruments, 7. Protection of surface water and groundwater, 9. Industrial accident risks, and 10. Other relevant issues

The authorities involved include the building authority, heritage protection authority, land and agricultural authorities (including forestry, game management, fisheries, agricultural land, and soil protection), nature and landscape protection authorities, waste management authorities, public health authorities, water management authorities, disaster management authorities, animal health authorities, plant protection authorities, the transport authority, and the notary.

Naturally, there is also the possibility of verifying compliance with environmental requirements in co-decision procedures, for example in building and mining permits, although this depends on the authority's capacity. This is facilitated by a Constitutional Court decision stating that the decision issued by the permitting authority must include the environmental authority's requirements and the justification for those requirements.⁴¹

In addition to the co-decision authorities involved in permitting procedures, the management organisations and bodies described in Chapter 2 may also participate in inspections within their respective fields of expertise. These include, for example, water management directorates, regional disaster management bodies, employees of national park directorates, and nature conservation rangers.

As provided by Government Decree 366/2015 (XII. 2), water management directorates participate in the procedures of environmental protection and water protection authorities and assist their activities, for example in connection with environmental liability rules based on the Environment Liability Directive.⁴²

According to Government Decree 625/2022. (XII. 30),⁴³ where, during a nature conservation authority procedure, information or facts are required for decision-making or clarification of the facts, such as data concerning the condition, structure, and functions of a protected site, the protected species present there, or

40 | Government Decree 624/2022. (XII. 30.) Annex 3.

41 | Constitutional Court Decision No. 4/2019 (IX. 4), initiated by the Ombudsman in connection with the integration of Government Offices, which emphasised the need to ensure that environmental requirements are taken into account in other types of permitting procedures.

42 | Section 5; Section 8 sets out the water protection tasks of the disaster management directorate.

43 | Section 20.

nature conservation objectives, and such information is available to the National Park Directorate or Herman Ottó Institute Nonprofit Ltd., the nature conservation authority shall consult those bodies.

Map 2: Name and area of operation of the National Park Directorates⁴⁴



The Government Office may also conduct simplified official inspections in matters exhaustively listed in government decrees (e.g. consumer protection and food-chain safety) where permitted by law. However, in the field of environmental protection, there is no legal possibility for simplified inspections due to the complexity of the matters involved and the expertise required.⁴⁵

4.4. Cooperation with law enforcement authorities in criminal proceedings

In 2018, Hungary launched a project aiming at establishing a cooperation platform among public authorities, including the police, active in the field of environmental law enforcement. In 2021, a memorandum of understanding was signed by seven bodies establishing a cooperation platform for combatting environmental crime, including the sharing of information and training resources.

The participating bodies are the Ministry of Agriculture, the National Tax and Customs Authority, the Hungarian National Police Headquarters, the Ministry of

44 | Government Decree No. 625/2022 (XII. 30), Annex 2, Parts I–II.

45 | Government Decree 568/2022. (XII. 23), Annex 6.

Innovation and Technology, the National Directorate General for Disaster Management, the Ministry of the Interior, the Pest County Government Office, and the National Food Chain Safety Office.

The role of the National Environmental Security Taskforce includes improving the enforcement of legislation relating to environmental protection, the protection of natural values and natural areas, and the conservation of biodiversity. The taskforce provides these authorities with an improved framework for cooperation in implementing international operations targeting transnational environmental crime.⁴⁶

The aim of this cooperation is to ensure that ministries, Government Offices, and law enforcement, crime prevention, investigative, and prosecutorial authorities performing professional and official environmental protection and nature conservation tasks exchange information and coordinate their activities accordingly.

To this end, they ensure the exchange of information regarding legal violations and unlawful activities that come to their attention. They hold annual working-group meetings at which priorities and other tasks are determined. Their work is organised around two main thematic groups: the Environmental Protection Thematic Group and the Nature Conservation Thematic Group.

External experts and strategic partners, such as non-governmental organisations, may participate in meetings in an advisory capacity (e.g. BirdLife Hungary and TRAFFIC (Wildlife Trade Monitoring Network)).

The main areas of cooperation include both legal and illegal cross-border waste shipments, trade in endangered plant and animal species, pets, hazardous and radioactive substances, and illegal timber trade. These organisations also cooperate in combatting domestic environmental crime.

The participating organisations jointly conduct on-site inspections and procedural actions. They provide professional support to one another within their respective fields. For example, environmental protection authorities provide information from their registers, such as permit data, while the police pay particular attention to inspecting clothing, vehicles, and packages during enforcement activities.

Within the framework of EMPACT ENVICRIME, Hungary has participated in several successful operations in the above-mentioned areas in recent years. In addition, these authorities also conduct joint crime-prevention campaigns.⁴⁷

46 | EIR 2022, 45.

47 | EMPACT (European Multidisciplinary Platform Against Criminal Threats) is a security initiative driven by EU Member States to identify, prioritise, and address threats posed by organised and serious international crime. It is supported by all relevant EU institutions, bodies, and agencies, including Europol, Frontex, Eurojust, CEPOL, OLAF, EU-LISA, and the European Fisheries Control Agency (EFCA). Third countries, international organisations, and other public and private partners also participate in the initiative.

5. Challenges and shortcomings in environmental inspections

5.1. Limitations that affect the effectiveness of inspections and possible solutions

In Hungary, inspections are mostly carried out by colleagues involved in licensing. This has the advantage that, in the case of a licensed activity, it is easier to monitor compliance with decisions; however, it also reduces the capacity available for licensing tasks.

Exceeding the statutory deadline for authorisation procedures results in reimbursement of the fee paid for the procedure, making it challenging for colleagues to perform both tasks simultaneously. However, some Government Offices have separate colleagues responsible for inspections, or for inspections in certain specialised areas. Since the majority of inspections are planned in advance, personnel capacities can generally be planned and allocated accordingly. An exception is the investigation of public alerts or other ad hoc reports, especially during the summer period (e.g. odor nuisance), which may hinder the implementation of the inspection master plan.

Assessing environmental issues requires expertise involving not only diverse professional knowledge but also legal knowledge, without crossing the boundaries between the two fields of expertise, as each has its own responsibilities. From the State's perspective, retaining qualified professionals through competitive salaries, or salaries close to competitive levels, remains a continuous challenge. A shortage of professionals makes it difficult not only to carry out licensing tasks but also to conduct inspections. At the same time, it can be stated that many professionals fulfil their duties out of dedication.

However, in the case of integrated authorities, it may be advantageous that, during an inspection, if an inspector identifies shortcomings related to another area of expertise, he or she can request the assistance of the relevant colleague or, if that is not possible, record the identified shortcomings in the on-site inspection report.

Another problem is that certain types of inspections can only be carried out during specific periods. For example, in the field of nature conservation, inspections often need to be conducted during the vegetation period. The short licensing deadline does not allow for examination of a complete vegetation cycle, so investors and planners can only rely on data from the databases of the authorities or National Park Directorates, which may subsequently lead to restrictions or prohibitions. The same issue arises in relation to activities, such as construction works and forest management operations, that are subject only to notification rather than licensing requirements.

Similarly, in the field of nature conservation, specialised knowledge of a habitat or species is often required to conduct an inspection, which necessitates the involvement of a member of the Nature Conservation Ranger Service. The involvement of a ranger may be beneficial because, compared with inspectors, rangers have additional powers.⁴⁸

The Act on General Public Administrative Procedure also imposes certain limitations. In *ex officio* proceedings, if the authority exceeds twice the applicable administrative time limit, apart from establishing the infringement and issuing an order to terminate the infringement or restore legality, no other sanctions may be imposed (e.g. a fine). In such cases, new proceedings may not be initiated against the same client on the basis of the same facts and legal grounds.⁴⁹

According to Act CXXV of 2017 on Sanctions for Administrative Violations (hereinafter: the Act on Sanctions), the general limitation period is six months, except in cases involving the maintenance of an unlawful state. In the latter case, the limitation period begins when the unlawful state ceases.⁵⁰ No sanctions may be imposed after the expiry of the limitation period.

According to the Act on General Public Administrative Procedure,⁵¹ if the obligor fails to comply with the authority's instruction set out in its definitive decision, the decision becomes enforceable. Unless otherwise provided by an Act or Government Decree, enforcement is ordered by the authority that issued the decision, or by the first-instance authority in the case of a second-instance decision. Enforcement is generally carried out by the state tax authority.

However, given that the state tax authority often does not possess the necessary tools or expertise for environmental enforcement, the Environmental Protection Act provides,⁵² contrary to the general rule, that enforcement must be carried out by the environmental protection authority itself, which may request the assistance of the state tax authority where necessary. This contributes to more effective enforcement. Similarly, the Waste Management Act explicitly provides that enforcement is the responsibility of the waste management authority.⁵³

48 | Based on Act CLIX of 1997 on Armed Security Guards, a ranger carrying out a nature conservation inspection is entitled and obliged to take certain measures against a person who endangers or damages a protected natural area or species, a vehicle transporting such specimens, or anyone reasonably suspected of doing so.

These measures include guarding buildings, facilities, and other property; preventing unlawful acts; detaining or bringing in an apprehended person; and temporarily taking possession of items. Additionally, rangers are authorised to require identification, inspect clothing, packages, and vehicles, and use coercive measures (e.g. chemical agents, service dogs, and handcuffs). They may also close off protected areas and impose on-the-spot fines. Rangers are further entitled to carry a handgun, which may be openly displayed, thereby supporting the effective performance of their inspection duties.

49 | Section 103(4).

50 | Section 5.

51 | Chapter XI.

52 | Section 91/D.

53 | Section 61.

In environmental protection cases, however, enforcement is often very costly, and in many cases environmental damage accumulated over decades must be restored and remediated. According to a recent amendment to the Environmental Protection Act, remediation tasks are now expressly assigned to the Hungarian National Asset Management Inc. in cases involving significant environmental damage or other extraordinary environmental events where responsibility cannot be transferred to another party. The amendment is expected to simplify and accelerate environmental remediation procedures.

The Waste Management Act also provides that, where the waste management authority removes illegally deposited waste, the costs may be charged to the property concerned. In such cases, the waste management authority may register a mortgage in favour of the Hungarian State over the property owned by the person who illegally disposed of or abandoned the waste, up to the amount of the claim and interest.⁵⁴

The implementation of the above-mentioned tasks is funded primarily from the state budget and, in certain cases, through chapter-managed appropriations or grant schemes.

5.2. Current inspection methods and resources for detecting non-compliance

In addition to the shortage of professionals, the shortage of technical resources should also be mentioned (e.g. availability of vehicles, analytical and technological equipment, and measuring instruments, particularly for laboratory analyses). Currently, Government Offices perform laboratory or laboratory-type tasks at more than 49 locations, but only 10 Government Offices operate accredited laboratories.

In addition, laboratory coverage differs across the country. Laboratories are assigned to counties, and not every county has a specialised laboratory, creating a strong interdependence among them. At the same time, the available infrastructure, operating conditions, and professional capacities differ considerably. In some areas, such as waste management, authorities require reliable, precise, and scientifically robust results to support regulatory decisions (e.g. waste classification, waste assessment, and compliance testing). This requires well-equipped and modern laboratories staffed by highly qualified personnel.

Government Offices carry out inspection tasks using state budget resources. In addition, the chapter-managed appropriation entitled 'Environmental Tasks'⁵⁵ provides funding for activities relating to the protection of environmental elements; implementation of the National Air Pollution Reduction Programme and other

54 | Section 64(24).

55 | Decree No. 15/2023 (VII. 25) of the Minister of Energy on the management and use of chapter-based and centrally managed allocations.

air-quality measures; support for the objectives of the National Environmental Protection Programme; preparation of strategic urban noise maps and action plans; and public tasks performed by HungaroMet Co.

The appropriation also covers funding for waste-related mapping, exploration, planning, and remediation activities; water, environmental, and natural-disaster recovery measures; and actions aimed at the eradication of invasive species.

An example of supplementary funding is provided by the Waste Management Act and the above-mentioned decree, which ensures financial resources for the collection and management of waste placed or abandoned under uncontrolled circumstances. Based on these provisions, funds are available annually to cover the costs of waste removal. Ultimately, however, the costs are recovered from the property concerned, as described in the previous section.⁵⁶

5.3. Legal and procedural barriers that hinder enforcement

Not only enforcement but also, in certain cases, decision-making processes may face procedural barriers. In its Decision 8/2017 (IV. 18) AB, the Constitutional Court stated that the legislator must regulate clearly and in sufficient detail the relationship between different procedures, taking into account the *ne bis in idem* principle.

The Act on Sanctions regulates the relationship between sanctions applicable in administrative and criminal proceedings. Accordingly, where a court has convicted a natural person in a final decision based on the same facts and imposed a penalty or measure, or has acquitted that person on the grounds that the offence was not committed by the accused, administrative fines and prohibitions on activity may not be imposed as administrative sanctions.⁵⁷

This may create difficulties because administrative sanctions can often be imposed and enforced more quickly than criminal sanctions and may also have a stronger deterrent effect due to the level of fines that can be imposed.⁵⁸ In addition,

56 | Section 61.

57 | Section 5/A, Section 5/B.

58 | In comparison, the penalty for the offence of damaging the natural environment under the Hungarian Criminal Code is generally a maximum three years' imprisonment. A scientific study examined judicial practice in nature conservation crime cases before the courts and reached the following conclusions. The investigation was based on 123 cases involving 166 defendants who committed offences causing damage to the natural environment. In their final judgements, the courts most commonly imposed suspended prison sentences (55 individuals). The duration of the suspended prison sentences was six months or less for 7 individuals, between seven months and one year for 23 individuals, and between more than one year and two years for 25 individuals. Executable terms of imprisonment were imposed on 5 individuals, mostly as part of cumulative sentences. Fines were imposed on 50 defendants, ranging from 30,000 HUF (75 EUR) to 600,000 HUF (1,501 EUR). Among the measures applied, the court primarily ordered conditional sentences for 35 individuals, confiscation for 27 individuals, and warnings for 10 individuals. Additionally, the courts imposed probation supervision on 7 individuals, community service on 1 individual, and confiscation of assets

environmental law is generally based on objective liability, whereas criminal liability is not, which creates inconsistencies between the two systems in the field of environmental protection.

Prosecutors have also pointed out that special attention should be paid to the cumulative application of sanctions across different legal fields in environmental prosecution. It should also be recognised that the scope of unlawful conduct giving rise to administrative sanctions is significantly broader than the range of criminally punishable conduct. Therefore the absence of criminal liability does not automatically exclude the possibility of administrative sanctions.⁵⁹

In Hungary, criminal measures may be applied not only to natural persons but also to legal persons under Act CIV of 2001 on Criminal Law Measures Applicable to Legal Persons. Due to the *ne bis in idem* principle, double sanctioning is also prohibited in relation to legal persons. Under this Act, the measures that may be imposed include a fine, restriction of activities, or, in more serious cases, termination of the legal person.

To address this issue, an amendment to the Act will enter into force on 1 January 2026. Under the amendment, the application of a criminal measure against a legal person may be omitted where a legal disadvantage has already been imposed by a final decision of an administrative authority or administrative court. In such cases, any payment obligation established by the administrative authority or court must be taken into account when determining the amount of the fine in the criminal proceeding.⁶⁰

6. Future perspectives and conclusions

6.1. Expanding or restructuring environmental inspection powers for better enforcement

Since the article is based on the presentation of the operational practices of the authorities, this chapter, in addition to the matters discussed in Chapter

on 1 individual. Overall, the study found that the entire process, from the filing of a report to the final court judgement, was most frequently completed within one year (51 cases), followed by between one and two years (30 cases), between two and three years (18 cases), and more than four years (6 cases). Furthermore, in 5 cases the proceedings lasted for more than three years, with the longest case taking six years and two months to conclude. See: Tilki 2024.

By comparison, under Hungarian administrative law, the time limit for imposing a nature conservation fine is 60 days. The amount of the fine ranges from 125,000 HUF (312 EUR) to 500,000 HUF (1,251 EUR) per hectare for activities carried out without a permit or in violation of the permit issued for the area. In the case of unlawful acts affecting protected species, the fine may range from 5,000 HUF (12.5 EUR) to 1,500,000 HUF (3,754 EUR) per specimen, depending on the vulnerability of the species and the severity of the violation.

59 | Teszár 2022.

60 | Section 3 (6)–(7).

5, primarily presents already implemented or planned modifications aimed at making practice more efficient.

The Government has recently reorganised environmental enforcement powers, primarily focusing on permitting procedures while also affecting sanctioning procedures. With the promulgation of Act CXV of 2023 on Specific Regulatory Matters, appeals against certain first-instance decisions of environmental authorities became possible,⁶¹ thereby reintegrating the second-instance administrative level into the system of legal remedies. This should help eliminate inconsistent decision-making practices among first-instance authorities and the resulting legal uncertainty. As noted in Chapter 1, the Deputy State Secretary became the national competent second-instance environmental authority.

In the future, it may be necessary to develop laboratory capacity in order to increase the effectiveness of inspection powers and address the shortcomings mentioned in the previous chapter. A well-functioning laboratory network is essential to support the legitimacy of administrative procedures.

In the field of environmental protection, tasks relating to air, water, noise, vibration, waste, and geological medium protection include activities such as examining emissions from air-polluting sources, testing surface water and groundwater, conducting noise and vibration measurements, and assessing the sound pressure levels of industrial, construction, and recreational noise sources. Other tasks involve the qualitative and quantitative analysis of water, including drinking water, bathing water, and natural waters. Monitoring the water quality of rivers and maintaining the Danube River Basin are continuous duties based on international agreements and EU requirements. The fulfilment of these tasks also requires improvement, and nature conservation is no exception.

Significant industrial investments affecting the counties have led to increased and changing measurement requirements. With the continuous evolution of legal requirements in these fields, new measurement tasks and threshold values arise, requiring the review and development of technological, measurement, and technical methodologies, as well as the development of IT infrastructure to align with the specialised systems used by Government Offices. All these requirements and needs call for longer-term reforms.

6.2. Digital tools, AI, or remote monitoring to improve inspection efficiency

Advances in technology have significantly improved the effectiveness, efficiency, and scope of environmental inspections. These innovations have transformed environmental inspections from labour-intensive manual processes into

61 | With the entry into force of the Act on General Public Administrative Procedure on 1 January 2018, appeals as the most common form of legal remedy was abolished and restricted to specific cases, such as appeals against notaries' decisions in the fields of environmental and nature conservation protection.

high-tech, data-driven operations. As technology continues to advance, environmental inspections will become even more proactive, predictive, and effective in safeguarding public health and nature.

A good practice can be mentioned in this regard. A study prepared within the framework of the IMPEL⁶² GIEDA (Geospatial Intelligence for Environmental Damage Assessment) Project⁶³ demonstrates how digital tools, AI, remote sensing, and monitoring can improve inspection efficiency. The GIEDA Report (hereinafter: the Report) presents good practices that contribute to knowledge-sharing and support the development of technical and procedural capacity for producing ex post evidence of environmental damage caused by environmental incidents, violations, and environmental crimes, as well as supporting environmental damage remediation planning.⁶⁴

New technologies and methods for detecting and analysing environmental changes, such as geospatial intelligence, can significantly strengthen monitoring and inspection capacity and support the assessment of environmental damage by providing both qualitative and quantitative information. The combined use of information obtained from various repositories, collected during in situ surveys, or acquired through very high-resolution sensors mounted on satellites or drones enables a more detailed assessment of environmental damage.⁶⁵

The Report collected real cases⁶⁶ demonstrating the use of geospatial intelligence techniques through various approaches, including GIS, remote sensing, spatial analysis, geostatistics, orthophotography, and Google Earth, in order to demonstrate their usefulness in detecting environmental damage such as illegal landfills, waste deposits, unlawful buildings or constructions, drainage works, and vegetation damage.

62 | IMPEL is a Network of the European Union for the Implementation and Enforcement of Environmental Law.

63 | IMPEL Final Report 2024.

64 | *Ibid.*, 7.

65 | *Ibid.*, 6.

66 | Based on a report prepared by Hungarian national park rangers, one case concerned grassland damage caused by forestry machinery, resulting in the endangerment of protected species within a natural area. Copernicus Sentinel-2 MSI satellite imagery, available under a free and open-access distribution policy, was first used to determine the timing of the event and estimate the extent of the damaged area. The affected area was then surveyed using UAS imagery to produce an orthomosaic. The orthomosaic was subsequently used to calculate the spatial extent of the damage using QGIS software. The extent of the damaged area was also compared with the biotic database of the National Park Directorate. Due to the large area involved and the difficult terrain conditions, traditional field surveys and handheld GPS measurements were not considered appropriate. Satellite imagery was successfully used to establish the onset of the event, taking advantage of the revisit frequency of the Copernicus Sentinel satellites. UAS surveys and geostatistical analyses can also be repeated over time. These tools make it possible to compare the condition of the natural area before the damage occurred with its condition afterwards, as well as to compare impacted and non-impacted areas. See: Filippini et al. 2024, 63–64.

The Report identified the following benefits of geospatial intelligence techniques:⁶⁷

- | increasing environmental surveillance through the early detection of environmental crimes,
- | provide evidence of imminent threats of environmental damage or of damage that has already occurred,
- | providing evidence to support the confirmation of environmental crime,
- | providing quantitative information to support the assessment of environmental damage or environmental crime,
- | supporting the establishment of environmental damage,
- | supporting the monitoring of remediation measures, and
- | providing ex post information through satellite remote sensing to analyse the condition of natural resources.

According to the Report, although environmental authorities and management bodies already use these techniques to detect and prove environmental damage, they have not yet been fully adopted in judicial practice. One of the aims of the project was therefore, inter alia, to raise awareness among prosecutors and judges regarding reliable products and evidence generated through geospatial intelligence.⁶⁸

As the report demonstrates, these tools have become essential resources for precise and effective administrative work.

6.3. Transparency and accountability in environmental inspections

The Act on General Public Administrative Procedure regulates a so-called exclusion mechanism, which may be invoked by any party at any stage of the procedure and applies to both the competent official and the competent authority.⁶⁹ The purpose of this mechanism is to ensure that decision-making is not influenced by personal interests.

For the sake of transparency, it should be noted that, under the Environmental Protection Act, non-governmental environmental organisations are entitled to client status in environmental authority proceedings.⁷⁰ Furthermore, management organisations and administrative bodies are automatically recognised as clients by operation of law, which serves not only transparency but also expertise. In addition, environmental legislation, primarily the Environmental Protection Act and Government Decree 314/2005, ensures public participation in decision-making processes, thereby promoting transparency and accountability.

67 | Ibid., 21.

68 | Ibid., 16–17.

69 | Section 22.

70 | Section 98.

Although environmental decisions are generally made at first instance level, clients and other interested parties have access to legal remedies provided under the Act on General Public Administrative Procedure, including administrative actions, amendment or withdrawal of decisions,⁷¹ supervisory procedures, and prosecutorial intervention and action.⁷² Counterpart clients may challenge decisions, and unlawful decisions may also be rectified through the application of nullity rules.⁷³

Nullity applies, for example, where a decision has been made without consulting the specialist authority in a co-decision procedure, without taking into account the specialist authority's assessment, where the content of the decision was influenced by a criminal act, where it is contrary to the judgement of the administrative court in the same case, or where other clients should have participated in the procedure.

As previously mentioned, an amendment to the Environmental Protection Act effective from 1 August 2024 reintroduced the possibility of appeals in certain environmental matters.

Expertise in environmental matters is essential for those preparing licensing documentation in accordance with the detailed and stringent requirements outlined in Government Decree 297/2009 (XII. 21) regarding expert activities. High-quality project documentation facilitates both the permitting process and the subsequent monitoring and inspection of activities. Similarly, the participation of experts in sanctioning procedures may be important.

The revision of legislation governing expert activities is currently underway in order to improve transparency and professional standards, for example through continuous training and examinations and more effective enforcement of liability rules applicable to experts. In addition, every decision is subject to legal review before issuance, involving multiple professionals who assess applications from both technical and legal perspectives.

During the annual comprehensive inspection of environmental authorities within Government Offices, any incorrect or unlawful decisions that come to light are examined *ex officio* by the supervisory authority. In addition, prosecutors and the State Audit Office of Hungary also oversee the work of Government Offices.

According to Government Decree 370/2011 (XII. 31) on the Internal Control System and Internal Audit of Budgetary Bodies, Government Offices are required to establish, operate, and continuously improve their internal control systems, including risk management procedures and audit trails for all activities, including public administration procedures.

71 | Section 114–115.

72 | Section 120–122.

73 | Section 123.

In fields such as environmental protection, nature conservation, and waste management, numerous guidelines have been developed by supervisory bodies (e.g. remediation intervention plans, the Landscape Protection Manual, and supplementary guidance on wetland conservation) or by the authorities themselves, often drawing on EU guidance. These documents are publicly available and promote transparency and accountability through their application. The development of additional guidance would be desirable in order to introduce best practices and facilitate more consistent application of the law.

7. Conclusion

This article examines the regulation, organisational framework, suitability, and adequacy of environmental inspections in Hungary. There has long been debate within the Hungarian institutional system as to whether greater emphasis should be placed on licensing procedures or on inspections. Different organisational solutions have been adopted throughout the history of environmental protection in Hungary. At times, inspections were carried out by the same officials responsible for licensing, while at other times they were conducted by a separate organisational unit. Both approaches have advantages and disadvantages.

In the former case, as discussed in Chapter 5, officials responsible for issuing permits have greater insight into compliance with permit conditions. However, inspection responsibilities reduce the capacity available for licensing procedures, which are already subject to short statutory deadlines. In the latter case, inspectors can focus exclusively on inspection activities, but they may lack knowledge of the reasons underlying specific permit conditions. To understand those requirements, they must first become familiar with the circumstances of the case and the facility being inspected.

In extreme cases, the inspection unit may focus not on examining the lawful operation of the operator or site but on questioning whether the permit conditions themselves were appropriate. This may lead to institutional dysfunction and, ultimately, undermine the effective protection of environmental elements.

Although this article focuses on inspections, Hungarian environmental legislation is largely based on EU standards, and the principles of precaution and prevention must remain paramount. The primary guarantee of these principles continues to be prior authorisation.

At the same time, on 10 December 2025, the European Commission published a draft Regulation of the European Parliament and of the Council on the acceleration of environmental assessments⁷⁴ as part of the environmental simplification omnibus package, which would amend several environmental directives. The

74 | See: European Commission 2025.

general objective of the proposed amendments is to accelerate and simplify environmental assessment procedures while ensuring consistency between different legislative instruments.

The proposals include, *inter alia*, reducing administrative burdens and procedural deadlines, expanding the use of tacit approval mechanisms,⁷⁵ establishing Single Points of Contact (SPOCs), and creating comprehensive digital platforms for service users. The amendments also affect substantive environmental legislation. For example, in certain cases, a Strategic Environmental Assessment would be considered sufficient without requiring an Environmental Impact Assessment. Such changes would affect the Environmental Assessment, Habitats, Wild Birds, and Water Framework Directives and, consequently, Hungarian legislation if the proposed amendments are adopted and enter into force.

The objective of these reforms is to enhance competitiveness without undermining environmental protection goals. While the final outcome of the legislative process remains uncertain, it can already be anticipated that the role of environmental inspections will become increasingly important in the future.

To support this development, adequate budgetary resources and qualified professionals must be provided. Although ensuring such resources remains the responsibility of the Member States, doing so will continue to present challenges for both authorities and governments.

Regardless of how the legal and organisational framework evolves, the organisational structure, including that relating to inspections, must continue to take into account Constitutional Court Decree No. 28/1994 (V. 20), which held that the right to environmental protection is

“primarily an independent and institutional protection in itself, i.e. a specific fundamental right of which the objective, institutional protection side is predominant and determining. The right to the environment raises the guarantees of the fulfilment of the state’s environmental protection obligations to the level of fundamental rights, including the conditions for the derogation of the protection of the environment achieved. Due to the peculiarities of this right, all the tasks that the state performs elsewhere with the protection of subjective rights must be performed here by providing legal and organisational guarantees.”⁷⁶

75 | Tacit approval is one of the most controversial aspects of the proposal. Although it is reportedly not intended to apply to environmental permits, the question remains what should be regarded as an environmental permit and whether permits issued through co-decision procedures should also fall within this category.

76 | Justification III/3.

Reference list

1. Bándi Gy (2018) Questionnaire to the OECD Environmental Performance Reviews: Hungary, <https://avosetta.oer2.rw.fau.de/hungaryquest2016.pdf>. [08.06.2026].
2. Bándi Gy (2022) Szabályozási módszerek, <https://jak.ppke.hu/storage/tinymce/uploads/old/uploads/articles/11861/file/Szab%C3%A1lyoz%C3%A1si%20m%C3%B3dszerek%202022.ppt> [10.08.2025].
3. Bándi Gy (2024) Environmental permitting, <https://jak.ppke.hu/storage/tinymce/uploads/old/uploads/articles/11861/file/K%C3%B6rnyezetv%C3%A9delmi%20enged%C3%A9lyez%C3%A9s.ppt> [10.08.2025].
4. Csák Cs (2025) A környezetvédelmi szabályozás módszertana (lecture for 3rd-year law students), University of Miskolc.
5. EMPACT fighting crime together – European Commission (2025), https://home-affairs.ec.europa.eu/policies/internal-security/law-enforcement-cooperation/empact-fighting-crime-together_en [08.06.2026].
6. European Commission (2022) Environmental Implementation Review Country Report – Hungary (2022), Commission Staff Working Document SWD (2022) 259 final, 8 September, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022SC0259> [08.06.2026].
7. European Commission (2017) The EU Environmental Implementation Review, Country Report – Hungary, Commission Staff Working Document SWD (2017) 46 final, 3 February, https://ec.europa.eu/environment/eir/pdf/report_hu_en.pdf [08.06.2026].
8. European Commission (2025) Promoting sustainable growth with simpler and smarter environmental legislation, 10 December, https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2997 [08.06.2026].
9. Environmental Science and Engineering (2023) 5th National Environmental Programme for 2026, <https://www.esed.iitb.ac.in/event/5th-national-environmental-conference-nec-2026> [08.06.2026].
10. Farkas Csamangó E (2020) Környezetvédelmi engedélyezés, <https://eta.bibl.u-szeged.hu/1523/7/K%C3%B6rnyezetv%C3%A9delmi%20jog%207%20A%20k%C3%B6rnyezetv%C3%A9delmi%20enged%C3%A9lyek%20rendszer.pdf> [15.08.2025].

11. Fiknérné Sulcz Á (2024) A környezetvédelmi hatósági és igazgatási szervek Environmental protection authority and administrative bodies, 6 August, https://www.muszakiforum.hu/33/kornyezetvedelmi-hatosagi-es-igazgatasi-szervek-uniqueidRCViWTptZHK7UOPEgn4QjLfz8Ua3rDF51UWBS0tIgLw/?uri_view_type=44&uid=1piGbWeLcARh5kM6cI1qPrw&e=1Aijw46z_qPUipa2FTx7UPNrsz4LTki4U [09.06.2026].
12. Filipponi F, Calgani L, Gomes F, Lima E, Sacchetti V, Bellinger D & Takács A A (2024) Geospatial Intelligence for Environmental Damage Assessment, IMPEL Final Report, 11–12 June.
13. Fodor L (2015) *Környezetjog*, Második, javított Kiadás, Debrecen.
14. Government Decree No. 625/2022. (XII. 30) Annex 2, Parts I–II, <https://turaoldal.hu/?t=magyarorszag-nemzeti-parkjai> [08.06.2026].
15. Hungarian Central Statistical Office (2026) Territorial Atlas – Counties, https://www.ksh.hu/teruletiatlasz_varmegyek [09.06.2026].
16. Nógrád County Government Office (2024) KVTHFŐ 2024 Annual Inspection Plan, https://kormanyhivatalok.hu/system/files/dokumentum/nograd/2024-02/kvthfo_ellenorzesi_terv_2024.pdf [09.06.2026].
17. OECD Environmental Performance Reviews Hungary 2018 (2018), 28 June, https://www.oecd.org/en/publications/hungary-2018_9789264298613-en.html [08.06.2026].
18. Paulovics A & Jámbor A (2022) The Right to a Healthy Environment in the Hungarian Constitution, *JAEL* 17(32), pp. 98–111, DOI: <https://doi.org/10.21029/JAEL.2022.32.98>.
19. Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001H0331> [08.06.2026].
20. Support for the REFIT actions for the ELD phase 2 Hungary Country fiche (2019).
21. Teszár L (2022) A természetvédelem az ügyészi feladatok tükrében, in: Katalin T (ed.) *Természetkárosítás a jogalkalmazók aspektusából*, Országos Kriminológiai Intézet, Budapest, pp. 29–41.
22. Tilki K (2024) A természetkárosítás bűncselekmények elbírálásának gyakorlata, *Ügyészek lapja* 31(5), pp. 43–56.
23. Tóth K, Simkó T, Riskó A & Bibók Zs (eds.) (2016) *Környezetvédelmi és természetvédelmi ellenőrzés* (KÖFOP-2.1.3-VEKOP-15-2016-00002 „A területi államigazgatási szervek humánerőforrásának fejlesztése”).

VARIOUS TOPICS

Impact of the Nord Stream Gas Pipeline Sabotage on the Energy Security of Germany and the V4 Countries

Abstract

The Nord Stream pipelines have long played a pivotal role in Europe's natural-gas supply, symbolising both strategic interdependence and geopolitical tension. The 2022 sabotage, which disabled most of the system, triggered unprecedented supply-security challenges and market volatility. This study adopts a multidisciplinary qualitative approach, combining legal analysis, geopolitical assessment, and systematic evaluation of energy-security data. Primary sources include EU legislation, Court of Justice case law, environmental assessments, and comparative data on V4 and German natural-gas systems. Findings show that the sabotage accelerated Europe's shift toward diversified gas sources, including LNG and alternative pipeline corridors. V4 countries display varying resilience: Poland has markedly reduced Russian dependence, while Hungary, Slovakia, and Czechia remain more structurally constrained. Legally, the analysis of case T-526/19 confirms the EU's authority to apply internal-market rules to pipelines from third countries. Nord Stream exemplifies the intersection of infrastructure, law, and

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geopolitics, underscoring the need for diversified supply routes and adaptable regulatory frameworks.

Keywords: Nord Stream, Nord Stream 2, Baltic Sea pipeline, gas pipeline sabotage, European energy security, EU energy law, EU internal energy market, diversification of energy sources, gas import dependency, energy transition, Energy Policy Triangle, supply security, sustainable energy, energy diversification

1. Introduction

More than three years have passed since 26 September 2022, when unknown perpetrators¹ carried out an act of sabotage against four Nord Stream gas pipelines² in the depths of the Baltic Sea near the Danish island of Bornholm, resulting in the destruction of three of them, seriously damaging one of Europe's most important energy infrastructures. In this study we will attempt to explore the legal and political lessons that can be learned from what happened.

Energy security has become one of the most complex and pressing strategic challenges for the European Union in the 21st century. Natural gas, as a transitional energy source, plays a key role in achieving the EU's climate policy objectives and maintaining its industrial competitiveness. To support these efforts, in the summer of 2022, the European Commission adopted, under certain conditions, supplementary legislation to the EU Taxonomy,³ which classifies natural gas and nuclear energy as sustainable, and which subsequently entered into force on 1 January 2023, thus promoting economic stability and a sustainable transition.⁴

In this context, the Nord Stream pipelines – especially Nord Stream 2 – were not just technical facilities, but became symbols of geopolitical significance. The construction of the pipelines and their subsequent physical damage as a result of the 2022 sabotage operation brought the issue of European security of supply into a new dimension. It also highlighted the strategic importance of international and EU law in protecting energy infrastructure.

Energy security, as an important factor influencing international energy supply and demand, is closely linked to geopolitics and has always been the subject of widespread global attention. Energy crises not only have a significant impact on the national economy but also alter the structure of supply and demand in the energy market, especially amid rapid economic development. In a study on the

1 | Proceedings have been initiated against the alleged perpetrators, which were still ongoing at the time of finalising the manuscript of this study.

2 | Nord Stream 1 and Nord Stream 2 pipeline pairs.

3 | Commission Delegated Regulation (EU) 2022/1214.

4 | European Commission, EU taxonomy: Complementary Climate Delegated Act to accelerate decarbonisation, 2022.

Nord Stream project, Goodell W. John and his research colleagues highlighted that risks of geopolitical significance some times have irreversible effects on energy market prices and the development of supply and demand.⁵ Therefore, energy security objectives remain a fundamental element of every country's long-term strategy. Political factors influence a country's access to energy, which is why it is particularly important to study energy security from the perspective of geopolitical conflicts.⁶ Energy security is one of the three pillars of the Energy Policy Triangle, alongside environmental sustainability and economic competitiveness. Within this framework, energy security refers to ensuring a reliable, uninterrupted, and affordable supply of energy for a country or region – both in the short and long term.⁷

The aim of the study is to present the licensing and implementation conditions of the Nord Stream pipeline pairs in a factual and descriptive manner, with particular regard to their impact on European energy security. During the research, we used qualitative document analysis methods, supplemented by the examination of legal cases, to enable a deeper understanding of the relevant legal conflicts and decision-making mechanisms. Due to the significant geopolitical weight and ongoing relevance of the topic, in addition to the available articles and studies, daily monitoring of the international press proved essential, effectively supporting the tracking of dynamic developments and keeping the analysis up to date. For readers with a deeper interest in the relevant regulatory background and the development of the gas industry, the literature cited in the study's footnotes serves as a starting point.⁸

The aim of the research was to present the legal and implementation aspects of one of the most divisive energy investments of our time, the Nord Stream project, which is controversial from both an environmental and geopolitical perspective due to its high methane emissions. The study focused not on the historical development of the regulatory environment, but on a specific legal case and its environmental, political and economic implications. In this way, the study aims to contribute to the professional discourse on energy security and sustainability.

5 | Goodell et al. 2023.

6 | Qingjun et al. 2024.

7 | For details on energy security in the V4 countries, see: Łoskot-Strachota et al. 2024.

8 | See, for example: Czékmann 2020; Csáki-Hatalovics 2026; Rátky & Tóth 2022; Fazekas 2022; Szuchy 2019.

2. Challenges related to the construction and operation of the Nord Stream pipeline pairs

2.1. About the Nord Stream pipeline in general

Nord Stream 2⁹ is a 1,224-kilometre-long natural gas pipeline with an internal diameter of 1,153 mm, which runs from Russia through the Baltic Sea to Germany.¹⁰ The project was led by Gazprom, which held a 51% stake, while the remaining financing was provided by several European energy companies, including Germany's Wintershall Dea AG and PEGI/E.ON each with a 15.5% stake, and the Netherlands' N.V. Nederlandse Gasunie and France's ENGIE each with a 9% stake.¹¹

The 7.4 billion EUR Nord Stream AG project aimed to create a stable link between the European gas network and Russia's world-leading natural gas reserves for the next 50 years.¹² The pipeline pairs ran through the territorial waters of Russia, Finland, Sweden and Denmark before reaching the north-eastern coast of Germany.¹³

Although the pipeline route avoided the chemical warfare agent (CWA) disposal sites located in the depths of the Baltic Sea near the island of Bornholm, which were sunk after World War II,¹⁴ serious environmental concerns arose during the planning stage. Experts feared that disturbing the contaminated sediments¹⁵ and stirring them up could pose a risk to the marine ecosystem.¹⁶ One of the starting points for the geopolitical disputes surrounding the Nord Stream 2 gas pipeline was environmental risk. Nord Stream 2 was one of the most

9 | Larsson 2007.

10 | Poursanidis et al. 2024.

11 | Nord Stream AG.

12 | Sanderson et al. 2012, 217–226.

13 | Farmer 2021.

14 | Chemical Warfare Agent (CWA) disposal sites are used to store or destroy chemical weapons and their residues, playing a key role in safe handling. After World War II, thousands of tonnes of such substances were dumped in the Baltic Sea, which still poses a significant environmental and safety risk today. For more information, see: Liu et al. 2024.

15 | The deep-sea basin known as the Bornholm Deep, located in the Baltic Sea near the Danish island of Bornholm, became a dumping ground for large quantities of chemical warfare agents after the Second World War. According to historical sources, around 32,000 tonnes of German chemical weapons were dumped in this area, containing a total of approximately 11,000 tonnes of highly toxic active ingredients. This disposal practice, which involved dumping at sea, was later banned internationally by the 1973 London Convention on the Prevention of Marine Pollution, as it posed serious environmental risks to marine ecosystems. For details, see: <https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-%28MARPOL%29.aspx> [08.10.2024].

16 | Liu et al. 2024, 559.

divisive energy investments of the past decade.¹⁷ It not only affected the economic interests of the countries directly involved, such as Germany and Russia, but also had broader geopolitical implications. The controversies surrounding the project clearly demonstrated that the issue of energy supply is not merely economic but also strategic and political.¹⁸ While Germany had previously supported the project, in 2021, the then German Foreign Minister, representing the Green political position, stated on several occasions that he did not wish to support the issuance of the final permit required for the pipeline to become operational. The German federal government ultimately did not approve the permit, citing environmental and geopolitical considerations. Geopolitical and environmental considerations also influenced Denmark's attitude towards the controversial project. The concerns raised significantly delayed the granting of the pipeline construction permit in the maritime area affecting Denmark. Ultimately, Denmark also granted the permit required for construction.¹⁹ In response to strong protests from various environmental organisations, Nord Stream AG launched five comprehensive environmental monitoring programmes. The aim of these programmes was to investigate and document the environmental impact of the construction and operation of the pipelines in the countries concerned, such as Russia, Finland, Sweden, Denmark and Germany. According to the company, more than twenty independent research companies participated in the programme, analysing the impact on the Baltic Sea's wildlife.²⁰ The research results ultimately confirmed that the project met the environmental conditions required by national licensing procedures.²¹

The aim of the Nord Stream 2 project was to further increase the security of Europe's gas supply and diversify import routes. According to the original plans, the Nord Stream 1 pipeline's annual capacity would have been doubled, enabling the transport of 110 billion cubic metres of natural gas to Europe per year. Accordingly, the newly built pipeline pair would have transported 55 billion cubic metres of natural gas to Europe annually,²² provided it was not sabotaged.

17 | Csáki-Hatalovics 2026.

18 | Fetisov et al. 2021, 413–425.

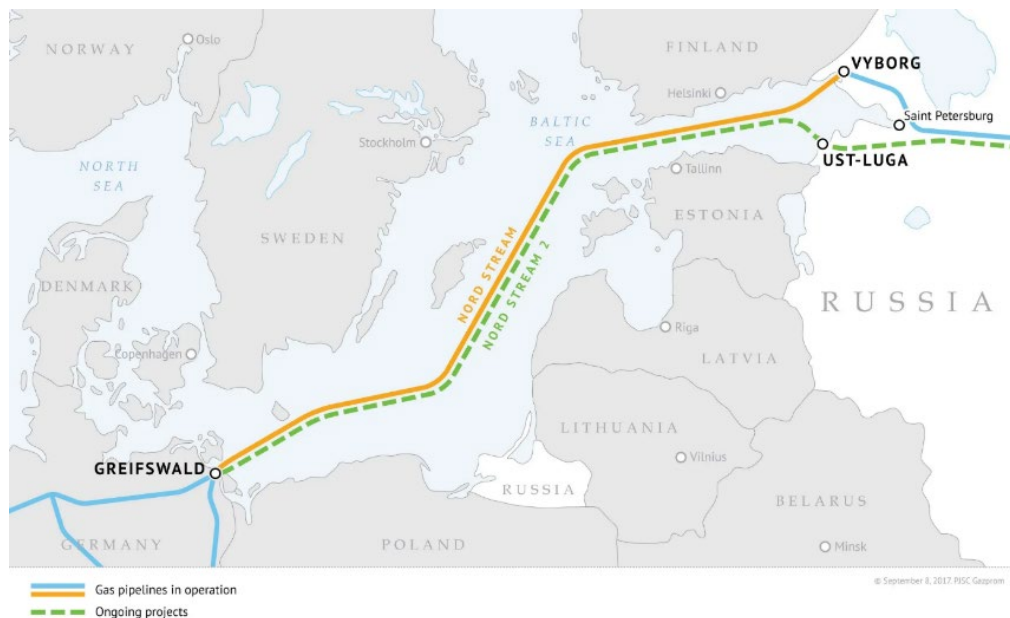
19 | Wood & Henke 2021.

20 | Sampling tests were carried out in Russia, Finland, Sweden, Denmark, and Germany along the entire route of the planned pipeline at approximately 1,000 designated points. This was done because the offshore section passed through the exclusive economic zones of the countries concerned – 118 km in Russia, 374 km in Finland, 510 km in Sweden, 147 km in Denmark and 85 km in Germany – and also affected the territorial waters of Russia, Denmark and Germany. The purpose of the sampling was to map environmental conditions and identify potential ecological risks associated with the pipeline's construction and operation.

21 | Fetisov et al. 2021.

22 | Larsson 2007.

Figure 1: The route of the Nord Stream pipeline²³



Nord Stream AG, registered in Zug, Switzerland,²⁴ is an international consortium of six large companies, established in 2005 to plan, build and operate two natural gas pipelines in the Baltic Sea, Nord Stream 1 and 2.²⁵

The project was led by Russia's Gazprom, while the other members of the consortium were European energy companies Uniper, Wintershall Dea, OMV, Engie and Shell. Under international environmental agreements, it was mandatory to consult with several other affected states, including Poland, Estonia, Latvia, and Lithuania, during the preparation of the project to assess potential environmental impacts. Consultations on Nord Stream 1 began in 2006, and although the project was already controversial at that time, construction progressed steadily, and the pipeline pair entered service in 2011. According to the original plans, this would have ensured a reliable supply of Russian natural gas to Europe for 50 years. The Nord Stream 2 project was officially launched in the same year, but it took several years for²⁶ to obtain the necessary construction permits.²⁷ Construction finally began in 2018 and was completed in September 2021. The project generated political tensions from the outset, as several countries feared

23 | Euromaidanpress, 2021.

24 | Nord Stream AG.

25 | Ibid.

26 | Farmer 2021.

27 | Nord Stream AG.

that Russia would use the pipeline to gain geopolitical influence over Europe, particularly Ukraine. Although the pipeline was technically completed and pressurised, the German authorities did not issue the final permit required for commissioning.²⁸ Ultimately, due to sabotage in 2022, the Nord Stream 2 pipeline pair never became operational. The attack on Nord Stream in the Baltic Sea can be considered one of the most serious acts of sabotage in the history of European energy infrastructure.

2.2. The sabotage

On 26 September 2022, the Danish and Swedish authorities reported several explosions on the Nord Stream 1 A and 1 B, and Nord Stream 2A gas pipelines, causing significant gas leaks.²⁹ At the time of the leak, none of the pipelines were officially transporting natural gas, yet they contained large amounts of methane under high pressure, which was expelled and created large bubbles on the sea surface. Between 26 September and 1 October, bubbles with a diameter of nearly 0.7 km were observed at the explosion sites on various satellite platforms. On 2 October, the Danish Energy Agency announced that, based on their measurements, the gas leak from the pipelines had stopped.³⁰ The European Union classified the incident as sabotage against key European energy infrastructure. This incident resulted in the most serious methane gas emission in human history.³¹ The Copernicus Atmosphere Monitoring Service (CAMS), the Laboratoire des Sciences du Climat et de l'Environnement (LSCE) and the Norwegian Institute for Air Research (NILU) have carried out several computational experiments to estimate the amount of methane released into the atmosphere from the Nord Stream pipelines. According to analyses, approximately 478,000 tonnes of methane gas were released from the three affected pipeline sections,³² making this the largest methane leak event to date.³³ This emission exceeded even the environmental impact of the 2015 Aliso Canyon incident in California.³⁴ The explosions occurred near the Danish island of Bornholm, where the pipelines turned towards the north-eastern coast of Germany. Two of the four leak sites were in Sweden's exclusive economic zone and two in Denmark's.³⁵

28 | Csallóközi 2022a, 59.

29 | There were four explosions in total. On the Nord Stream 1 A and B and Nord Stream 2 A pipelines.

30 | Jia 2022. The Nord Stream pipeline gas leaks released approximately 220,000 tonnes of methane into the atmosphere.

31 | Mathiesen & Weise 2022.

32 | Poursanidis et al. 2024.

33 | Jia 2022.

34 | Conley, 2016.

35 | Poursanidis et al. 2024.

2.3. Investigations on sabotage

The 2022 sabotage of the Nord Stream gas pipelines triggered three separate national investigations: Germany, Sweden and Denmark launched criminal proceedings within their own jurisdictions. The German Federal Public Prosecutor's Office took action because the pipelines had previously been a strategic pillar of the country's energy supply. As the pipeline landed on German territory, the authorities had direct legal and criminal jurisdiction. Although the explosions took place in international waters in the Baltic Sea, Berlin could not ignore the case due to Germany's involvement. Three years after the sabotage, the German authorities identified several suspects, including Ukrainian citizens. As a result of the investigation, a European arrest warrant was issued, leading to the arrest of a Ukrainian man in Italy. The German public prosecutor's office considers him to be one of the organisers of the explosions and has requested his extradition. Following the conclusion of the extradition proceedings, the Berlin court began hearing the case.³⁶ Given that some of the explosions took place in Sweden's exclusive economic zone, the Swedish authorities also launched a separate investigation. The Swedish authorities concluded their investigation into the explosions of the Nord Stream gas pipelines relatively quickly. According to their report, they found traces of explosives on the damaged pipelines and concluded that sabotage had taken place. The investigation found that the Swedish prosecutor's office lacked jurisdiction to proceed with the case, as no Swedish citizens had been harmed. The Swedish prosecutor's office closed its investigation in October 2023, but did not name any perpetrators or share detailed information with the public. The other explosions took place in Danish territorial waters near Bornholm, and the Danish authorities also conducted their own investigation. The Danish investigation also did not lead to any public charges, but it did cooperate with the other countries involved. The aim of the investigations was not only to identify the perpetrators, but also to strengthen the protection of critical infrastructure.

In October 2022, Russia officially confirmed that the Nord Stream 2 gas pipeline's B pipe had not been fatally damaged in the explosions, and Moscow offered to resume gas deliveries to Europe through it, but Germany immediately rejected this, primarily for geopolitical reasons.³⁷

³⁶ | Rugli 2025.

³⁷ | de Jong 2023.

3. The geopolitical impact of Nord Stream 2 on Germany and the V4 region

The intense conflicts of recent years have had a particularly severe impact on energy supplies throughout Europe, jeopardising the security of the European Union's primary energy supply. It should be noted that Europe consumes more than 14% of the world's natural gas production but accounts for only 5.7% of total production; it therefore imports a significant proportion of its annual natural gas consumption.³⁸ The available data for 2018 clearly showed that almost three-quarters of the EU's natural gas imports came from Russia, followed by Norway and Algeria. According to 2020 data, 82% of imported natural gas to European countries arrived by pipeline, with 48% coming from Russia, 24% from Norway and 10% from Algeria.³⁹ This ratio has changed today. Before the Ukrainian-Russian conflict, Algeria was Europe's third-largest supplier of natural gas after Russia and Norway.⁴⁰ According to the October 2023 report of the Gas Exporting Countries Forum⁴¹ (GECF), Algeria has become almost the second-largest supplier of gas to Europe after Norway,⁴² regarding gas arriving via pipeline. In 2024, Norway retained its position as the largest supplier, making up 53% of the region's pipeline gas imports, with Russia and Algeria each contributing around one-fifth.⁴³

Relevant literature reviews clearly show that Europe, especially the Visegrad countries, is heavily dependent on energy imports due to its limited domestic energy resources. This structural exposure results in considerable strategic vulnerability, as demonstrated by recent geopolitical events, particularly the Russian-Ukrainian conflicts and the associated supply disruptions, in terms of security of supply and energy policy autonomy. The figure below clearly shows how hectic natural gas import dependency grew between 2014 and 2024 in the EU and, within it, in the V4 countries.

38 | Magyar Földgázszállító Zrt., Statistical data 2020.

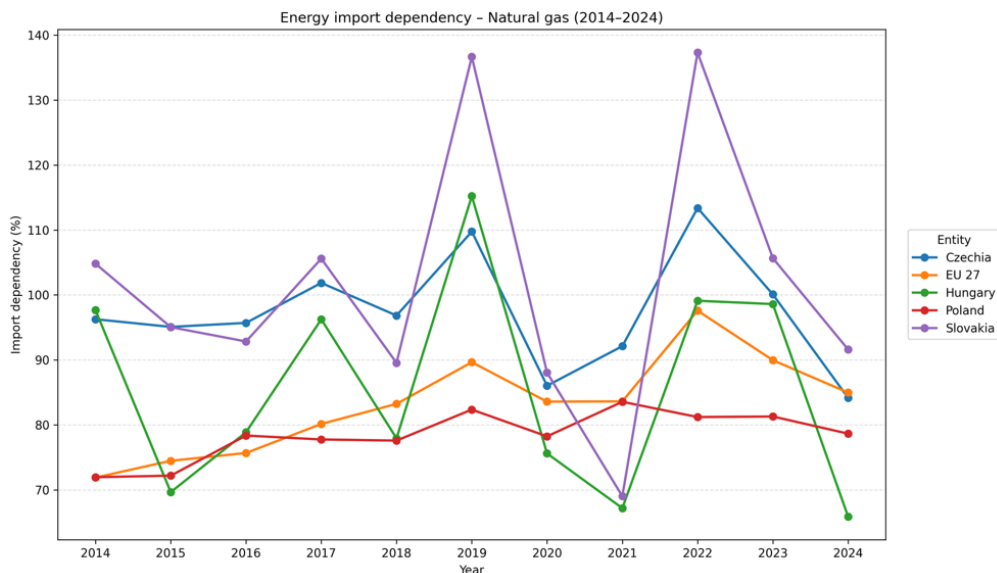
39 | Csallóközi 2022a.

40 | Csáki-Hatalovics 2019.

41 | GECF Annual Gas Market Report 2023, 90.

42 | Tahchi 2024.

43 | GECF Annual Gas Market Report 2025, 77.

Figure 2: Natural gas import dependency of Europe and the V4 countries⁴⁴

Regarding the natural gas supply of the V4 countries, it can be concluded that although their energy structures share many similarities, they also exhibit significant differences. A major common challenge is excessive dependence on a single supplier, which has become one of the most critical risk factors for security of supply in recent years. The table below shows the development of gas consumption in each country, the extent of import exposure, and the expiry dates of long-term natural gas contracts with Russia, based on 2020 data.⁴⁵ In light of the data below, it is particularly interesting to see how the provisions of the 19th sanctions package⁴⁶ adopted by the Council of the European Union in October 2025 will affect the security of supply of the countries concerned and the legal consequences of contractual obligations. After all, under previously planned EU measures, Member States must terminate their long-term contracts for Russian natural gas by 2027. This raises exciting questions about maintaining the security of supply in the countries concerned and may also necessitate a rethinking of the boundaries between national and EU competences.

44 | Data source: Eurostat.

45 | Csallóközi 2022b.

46 | Council Implementing Regulation (EU) 2025/2035 of 23 October 2025 implementing Regulation (EU) No 269/2014.

Figure 3: Natural gas consumption in the V4 countries and long-term Russian natural gas contracts⁴⁷

Country	Long-term contract with Russia ⁴⁸	Gas consumption in 2020 (billion m ³)	Gazprom gas exports in 2020 (billion m ³)	Share of Russian gas in annual consumption in 2020 (%)	Gas consumption in 2024 (billion m ³) ⁴⁹	Share of Russian gas in annual consumption in 2024 (%) ⁵⁰
Poland	1996-2022	22	9.7	44.1	21	0
Hungary	2021-2036	10	8.6	84.7	8.3	60
Czech Republic	1998-2035	9	7.8	91.8	6.7	2-5
Slovakia	2008-2032	5	5.0	99.0	4.3	50

Based on the above, it is clear that Russian natural gas imports to the V4 countries fell sharply after 2022, but the pace and depth of the decline varied significantly across countries. The shutdowns of transport routes in 2022 (see, for example, the Yamal pipeline) and the failure of the Nord Stream pipeline pairs fundamentally redrew the long-term contractual structures and created extremely strong diversification pressure on European countries. As a result, Poland has implemented the fastest and most complete decoupling among the V4 countries. The Czech Republic reduced its dependence on Russian gas to almost zero by 2024 through the establishment of alternative supply routes. Within the V4, Slovakia and Hungary continue to import Russian fossil fuels, but the share of natural gas has decreased compared to previous years.

Over the past 15 years, the European energy market has witnessed profound events and changes, particularly in the natural gas sector. This is mainly due to the mutual disputes between Russia and Ukraine.⁵¹ The year 2022 brought significant changes, with the shutdown of the Nord Stream pipeline and the Yamal gas pipeline supplying natural gas to Europe. These pipelines accounted for more than 50% of Russian gas imports to Europe.⁵² It is important to note that in December 2021, Russia halted westbound gas deliveries via Poland on the Yamal-Europe gas pipeline. The official reason was unclear, but geopolitical tensions and contractual disputes were behind the move.⁵³ The pipeline's operation was 'reversed', with Germany beginning to export natural gas to Poland. Finally, in February 2022, deliveries via the Yamal-Europe pipeline were completely halted in both directions. This marked the end of Russian gas imports to Poland

47 | Csáki-Hatalovics 2026.

48 | Csallóközi 2022b.

49 | Energy Institute – Statistical Review of World Energy 2025.

50 | Jarocińska 2024.

51 | Jirušek, 2020.

52 | Dajkó 2022a.

53 | Russia has warned Europe that if it refuses to pay for Russian natural gas in roubles, it risks having its supplies suspended or cut off altogether.

via the Yamal-Europe pipeline. This pipeline was responsible for 20% of Russian natural gas arriving in Europe. The Yamal-Europe gas pipeline transported natural gas from Western Siberia through Poland to Germany over a length of 4,107 kilometres. The pipeline has an annual capacity of 33 billion cubic metres and is still suitable for transport in terms of its physical condition.⁵⁴ Finally, in May 2022, Poland officially announced that it did not wish to extend the long-term gas contract signed with Gazprom in 1993.⁵⁵ By then, Poland was already relying on alternative sources, such as LNG terminals and the 115 km long Baltic Pipe pipeline, which was still under construction at the time and also runs under the Baltic Sea.⁵⁶ The pipeline was handed over on 27 September 2022, the day after the explosions that hit the Nord Stream pipelines. This gas pipeline connects Norway, Denmark and Poland.⁵⁷

With regard to Russian natural gas supply routes to Europe, it should be noted that from October 2021, Hungary will no longer be sourcing a significant portion of its natural gas needs via the Brotherhood pipeline, but rather via the Turkish Stream pipeline coming from the south. Given that the Russian transit agreement for the Brotherhood pipeline was not extended at the end of 2024, the Nord Stream 1,⁵⁸ the Yamal-Europe, and the Brotherhood pipelines have resulted in a total loss of approximately 100 billion cubic metres of transport capacity in the European supply chain. Although Russian natural gas supplies did not disappear completely, the reallocation of lost capacity to other routes significantly altered not only the infrastructure structure but also the actual volumes received. This change has created new supply patterns that will have a long-term impact on European energy security and market adaptability.

The map below shows the routes of the pipeline networks from Russia to Europe, without claiming to be exhaustive. The map is also intended to provide a visual reference for later sections of the article.⁵⁹

54 | Csallóközi 2022a, 55.

55 | Csallóközi 2022a, 80–82.

56 | Following construction work that began in 2019, the pipeline finally began operating at full capacity on 30 November 2022. With an annual capacity of 10 billion cubic metres, the pipeline can supply 50% of Poland's natural gas needs. This, together with 3.9 billion cubic metres of annual domestic production and 5 billion cubic metres of gas from the LNG terminal built on the Baltic coast, has secured Poland's natural gas supply.

57 | Csallóközi 2022a, 59.

58 | In this regard, since the Nord Stream 2 pipeline pair was never put into operation, we cannot include it in the calculation of lost volumes.

59 | Although the dotted lines on the map indicate routes that are still under construction, it is important to note that the route from the south, via the Turkish Stream to Hungary, through Bulgaria and Serbia, already provides a stable supply of natural gas to the region.

Figure 4: Network of natural gas pipelines from Russia to Europe⁶⁰



The construction of Nord Stream 2 sparked significant international debate. According to its supporters, the pipeline would have increased Europe's security of supply and offered economic benefits, while according to the staff of the Regional Energy Economics Research Centre (hereinafter REKK), the investment was primarily motivated by geopolitical considerations.⁶¹

Several Central and Eastern European countries, including the V4, expressed concerns about the geopolitical consequences of Nord Stream 2 as early as 2016. Poland was particularly active in opposing the project, arguing that bypassing the region would increase dependence on Russian gas and threaten European energy security. According to the Polish competition authority, the launch of the pipeline would also have undermined the stability of Poland's gas supply.⁶²

60 | Bailey 2009.

61 | REKK report on energy markets 2015.

62 | Rácz 2020.

In response to Polish and Ukrainian concerns, in July 2021, US President Joe Biden and German Chancellor Angela Merkel agreed⁶³ that the United States could impose sanctions if Russia used the Nord Stream 2 pipelines as a 'political weapon'. The agreement⁶⁴ also aimed to prevent Poland and Ukraine from losing transit revenues and gas supplies by bypassing their countries in the project.⁶⁵

In one of his studies, Martin Jirušek analysed the Visegrad countries' attitudes towards the Nord Stream 2 project, with particular regard to energy security and foreign policy preferences. The study concluded that the V4 member states had primarily shaped their positions in line with their national interests, largely determined by economic considerations and long-standing foreign policy orientations. The study found that Russia and Germany would have been the main beneficiaries of the project. As part of the European integration process, the Visegrad countries gradually shifted to a market-oriented approach to energy policy.⁶⁶ The estimates in the study also show that Slovakia faced the greatest energy security risks, while Poland and Hungary were and still are in a more favourable position and are expected to be able to adapt more flexibly to further disruptions in European gas supplies. Poland has invested in a number of infrastructure projects to diversify its supply, including the Świnoujście LNG terminal, which opened in 2016, and the Balti Pipe pipeline, commissioned in 2022. Poland completely switched away from Russian natural gas supplies in 2022, demonstrating its commitment to reducing geopolitical risks. In contrast, Hungary continues to regard the Russian supplier as a reliable strategic partner and emphasises maintaining long-term, stable bilateral cooperation in its energy policy decisions.⁶⁷

Like Poland, Slovakia initially considered the Nord Stream 2 project disadvantageous, as it feared a decline in transit revenues through Ukraine and an increase in Russia's influence in Europe.⁶⁸ However, the geopolitical realignment after 2022 and the end of Ukrainian transit at the end of 2024 presented the country with new challenges. Slovakia has historically been an important transit country for the transport of Russian gas to Central and Western Europe, but its role has declined in recent years as Russia has preferred non-Ukrainian routes. At the same time, temporary agreements before the sabotage concluded with Gazprom indicated that Slovakia could remain a transit country even after the handover of Nord Stream 2, which mitigated initial resistance. Since then, the country has been seeking to strengthen multidirectional gas flows and regional cooperation, as its geographical location limits its access to alternative supply routes. As a result, its future supply

63 | U.S. Department of State 2021.

64 | Euronews 2021.

65 | Farmer 2021.

66 | About the EU's energy policy in a Hungarian perspective see detailed: Mádl 2025.

67 | Jirušek 2020.

68 | Sziklai et al. 2020.

may depend to a large extent on the capacities and available resources of Austria, Hungary and the Czech Republic.⁶⁹

The Czech Republic and Hungary were initially cautious but concerned about the Nord Stream 2 project. However, they later recognised that the pipeline could offer indirect benefits, such as diversifying energy supplies and stabilising energy prices, thereby increasing economic competitiveness.⁷⁰ In the 1990s, the Czech Republic demonstrated an extraordinary ability to mitigate the consequences of its energy dependence on the USSR/Russian Federation. Specifically, the Czech Republic built new energy infrastructure, diversified its supplies, and took steps to join key international organizations, such as the IEA, WTO, or the EU.⁷¹ The Czech Republic's attitude towards the construction of the Nord Stream 2 pipeline gradually became more pragmatic and supportive. This was partly due to the country's successful integration into the Western European gas infrastructure, which had already significantly mitigated the effects of the 2009 supply disruption. The Gazelle gas pipeline, commissioned in 2012 and running from north to south across western Czechia, enabled the Czech Republic to connect directly to gas flows from northern Germany, in particular via the Nord Stream 1 pipeline. Although the gas crises of 2006 and 2009 drew attention to the need for diversification of supply, the Czech Republic's stable supply position did not justify a significant change in its energy policy strategy, nor did it have a significant impact on Russian-Czech relations. This situation was further reinforced in 2017 when Gazprom signed long-term gas transit framework agreements with the Czech Republic and Slovakia, which would have secured the two countries' dominant role in the European gas transmission network until 2040 and 2050, respectively. All this contributed to the Czech Republic acting as an interested party rather than an opponent in the Nord Stream projects.⁷² At the same time, the Czech Republic significantly reduced its imports of Russian gas after the events of 2022. The Czech government has set the diversification of energy supplies as a strategic goal. It is seeking to reduce its dependence through indirect access to LNG terminals and by increasing the share of renewable energy sources.

It can be said that Hungary is also confident about its future role as an unavoidable transit hub in Central Europe.⁷³ Since October 2021, Hungary's natural gas supply has been provided via the Balkan Stream,⁷⁴ which starts from the Turkish Stream and passes through Bulgaria and Serbia to reach the country. This route currently ensures a stable supply to the country and region, and its loss would pose

69 | Vakulenko 2024.

70 | Volkonsky & Kuzovkin 2021.

71 | Svec 2025.

72 | Jirušek 2020.

73 | Ibid.

74 | The Balkan Stream was opened in 2021 as a continuation of the Turkish Stream, transporting natural gas through Bulgaria to Serbia, and from there to Hungary and other Balkan countries.

a risk to the regional security of supply.⁷⁵ To manage this risk, it would be advisable to retain the option to use the Brotherhood, Nord Stream 2B, and Yamal pipelines in the future. In the long term, it is essential that Hungary and the region have access to further alternative transport routes, thereby increasing security of supply and reducing unilateral dependence.

As far as Germany is concerned, we have seen that it long considered the Nord Stream 2 project to be of strategic importance, which, alongside Nord Stream 1, would have played a key role in strengthening the country's energy security and economic stability. The pipeline pair would have made Germany an indispensable player in Europe's natural gas distribution. However, for geopolitical reasons, the new pipeline pair never received final commissioning approval, so commercial operation did not commence. German energy policy had already undergone a so-called energy transition in 2011, as Berlin began the gradual phase-out of nuclear energy and coal after the Fukushima disaster, thereby promoting the transition to a climate-neutral economy.^{76,77} In light of these decisions, the Nord Stream 2 project could have played a particularly important role, as the pipeline could have significantly strengthened Germany's natural gas supply security and supported the energy transition.

In the summer of 2022, Gazprom significantly reduced gas deliveries via the Nord Stream 1 pipeline due to maintenance work. Finally, according to official communications, gas deliveries on the Nord Stream 1 pipeline were completely halted at the end of August for an indefinite period due to a faulty Siemens turbine. At that time, based on the previous year's data, Germany sourced approximately 55% of its natural gas imports from Russia, so the pipeline shutdown caused a serious supply crisis for the country. Energy prices rose dramatically, multiplying several times over in both the natural gas and electricity markets. The situation caused supply disruptions in several countries. It also meant a serious loss for Germany, which was forced to turn to LNG imports, build new infrastructure, and seek alternative supply routes to maintain a stable supply. In 2023, more than 80% of Germany's LNG imports came from the United States.⁷⁸ In January–November 2025, 94.7 per cent of the total volume came from the US, up from a full year 2024 percentage of 91.9 per cent for US origins.⁷⁹ Increasing LNG imports helped diversify energy sources and reduce Germany's dependence on Russian gas, albeit at a much higher price.⁸⁰ In 2025, Russia was still the second-largest supplier of liquid fuels to Europe, after the United States.⁸¹ In light of the geopolit-

75 | Csallóközi 2022a, 88.

76 | Staudenmaier 2017.

77 | NESA Centre for Strategic Studies 2021.

78 | Zaretszkaja 2023.

79 | Baird Maritime 2025.

80 | Hancock & Tani 2023.

81 | Eurostat 2025.

ical conflicts that have arisen in recent years, liquefied natural gas has emerged as a new player in the European gas market, while liquefaction is an alternative method with a very different and varied cost structure. The infrastructure required for transport, gasification, and liquefaction is very costly and environmentally damaging.⁸² The European Union has given priority to expanding LNG imports and encouraging the development of renewable energy sources, which, in the long term, will strengthen security of supply and reduce dependence on fossil fuels. While the energy crisis is growing in scale in European markets, LNG exports from the United States have already reached historic levels. The EU has set itself the goal of becoming completely independent of Russian gas by 2027.⁸³ In order to achieve this goal, it is turning away from cheaper Russian gas in favour of premium-priced American LNG, placing a heavy burden on individual countries' economies.

In addition, it is important to note that, according to Robert W. Howarth,⁸⁴ a professor at Cornell University, American LNG can be up to 33% more polluting than coal, especially given methane leaks and the type of ship engines used for transport. Based on the research results of Vadim Fetisov et al.,⁸⁵ it can be stated that Russian natural gas arriving via the Nord Stream pipelines would have been more economical for the European Union than LNG due to its low production costs, as the regasification of LNG causes a further increase in the price of gas.⁸⁶

Overall, the European natural gas market has undergone profound structural and geopolitical changes since the energy crisis began in 2022. The drastic decline in Russian natural gas supplies has fundamentally reshaped European supply chains and the gas market system. As a result of these developments, EU Member States have turned to new supply routes and sources, while intensive pipeline development and LNG infrastructure expansion have begun in Central and Eastern Europe. The previously dominant eastern supply route has gradually been replaced by southern and western alternatives, creating a new dynamic in the triple objectives of security of supply, competitiveness and sustainability. The continuous construction of new infrastructure, solutions that promote source diversification, and efforts to achieve technological diversity are not only technical responses to the crisis but also reflect profound political and economic restructuring that may create new points of equilibrium in the European gas market in the long term. Today, the issue of security of supply has become a priority for almost every country, especially for the member states of the European Union, including the V4 countries.⁸⁷

82 | Sziklai et al. 2020.

83 | REPowerEU plan.

84 | Howarth 2024.

85 | Fetisov et al. 2021.

86 | Ibid.

87 | Pinto 2024.

4. Description of the Nord Stream 2 project based on case T-526/19

The above provides an overview of the Nord Stream pipeline system, with particular regard to the situation surrounding the construction, licensing and sabotage of Nord Stream 2, as well as the differing positions and attitudes of individual countries. Below, we will examine the controversial project in more detail through the analysis of a legal case, which will allow us to explore the security of supply and legal aspects in greater depth.

The European Court of Justice has heard several cases relating to the Nord Stream 2 project. One of the most significant and protracted cases concerned the EU Gas Directive, part of the third energy package. This case was concluded just under two years ago, when the General Court of the European Union dismissed the action in 2024 and ruled that the amendment to the directive did not violate legal certainty and that the EU had the right to extend the rules of the internal market to infrastructure from third countries. The 2019 amendment to the EU Gas Directive⁸⁸ changed the internal market rules to apply to new gas pipelines that had not yet been put into operation, which adversely affected the Nord Stream 2 project.⁸⁹ With this amendment, EU rules were extended to pipelines to and from third countries, including, for example, pipelines arriving by sea. This meant that Nord Stream 2 also had to comply with EU internal energy market rules, including ownership unbundling and third-party access. This change made the project more complicated, as from then on, the main owner and operator of Nord Stream 2 could not be both the owner of the gas pipeline and the gas supplier. In addition, under the new rules, part of the pipeline's capacity had to be made available to other suppliers. The project's financiers felt these changes unfairly restricted them and therefore took legal action. The project also faced several other legal challenges due to the new EU gas directive, which affected its regulatory framework. According to a study by REKK, the pipeline pairs were projected to reduce wholesale prices in the target countries and cause a slight increase in prices in Central Europe and the Balkans. It was shown that Germany, France and Switzerland would have been the biggest beneficiaries of the project, while Slovakia and Poland would have lost transit revenues. According to the study, the project would likely have further increased price differences between Western Europe

88 | Council of the European Union 2019.

89 | Directive 2009/73/EC entered into force on 3 September 2009 and contains common rules for the internal market in natural gas in the EU, with the aim of liberalising the EU natural gas market. Directive 2019/692 amending it entered into force on 23 May 2019, extending EU gas market rules to pipelines from third countries, such as Nord Stream 2. Under this directive, gas production and transmission activities cannot be carried out by the same entity.

and South-Eastern Europe.⁹⁰ Below, we will describe the case pending before the General Court of the European Union under number T-526/19,⁹¹ Nord Stream 2 AG v European Parliament and Council, in which the plaintiff challenged the 2019 amendment to the EU Gas Market Directive.⁹²

On 25 July 2019, Nord Stream 2 AG lodged an action with the General Court of the European Union under case number T-526/19, requesting the annulment of Directive 2009/73/EC as amended by Directive 2019/692, on the grounds that it adversely and discriminatorily affects the Nord Stream 2 project. Nord Stream 2 AG argued that the amendment violated the principles of legal certainty and legitimate expectations, as it could be applied retroactively to pipelines that had already been built or were under construction. In March 2020, the European Parliament and the Council filed a counterclaim requesting that the action be dismissed on the grounds that the applicant was not entitled to bring the action because, pursuant to the fourth paragraph of Art. 263 of the Treaty on the Functioning of the European Union (hereinafter: TFEU),⁹³ the legal act did not affect it individually and directly.

By order of 20 May 2020 in Case T-526/19, the General Court dismissed the action brought by the applicant as inadmissible on the grounds that the amended directive was of general application and did not concern the applicant exclusively or specifically. The applicant lodged an appeal against that decision under case number C-348/20 P. In its judgment of 12 July 2022 in case C 348/20 P, the Court of Justice annulled point 4 of the operative part of the order of 20 May 2020. However, the Court found that the applicant's action was admissible insofar as it was directed against Art. 36⁹⁴ and 49a,⁹⁵ which were incorporated into the original legislation. The applicant initially sought the annulment of the directive in its entirety, with the alternative annulment of Art. 49a. The General Court found that the annulment of the directive in its entirety was not justified, since the contested provisions, namely Arts. 36 and 49a, could be separated from the rest of the directive. It found that the action for annulment of Art. 49a was admissible and that its substance could be examined. Accordingly, the Court referred the case back to the General Court for it to rule on the substance of the annulment action. The Court found that these provisions have a direct

90 | REKK report on energy markets 2015.

91 | Curia, Nord Stream 2 v. Parliament and Council, Case T-526/19 RENV.

92 | For a detailed analysis of the case, see: Csáki-Hatalovics 2026.

93 | Art. 263(4) TFEU.

94 | Art. 36, competition condition (1)(e): exemption may only be granted if it does not distort competition in the relevant markets, does not jeopardise the efficient functioning of the natural gas market, the functioning of regulated systems or the security of natural gas supply in the EU.

95 | Art. 49a concerns derogations applicable to transmission pipelines to and from third countries. Under this article, the Member State concerned may derogate from certain EU rules if the transmission line was built before 23 May 2019 and the derogation is based on objective reasons, such as the return on investment or security of supply, provided that this does not distort competition, the functioning of the internal market or security of supply within the Union.

effect on the appellant's legal situation. In other words, Nord Stream 2 AG's action against certain provisions of Directive 2019/692 is admissible and can be examined on its merits. However, the request to annul the entire directive was unfounded.⁹⁶

The General Court delivered its judgment in the case on 27 November 2024 under case number T526/19. RENV. and made the following main findings.⁹⁷ The request for an exemption under Art. 36, as amended, was rejected because the applicant failed to prove that it had taken its investment decision before the application of EU legislation was foreseeable. The investment took place in a legal and political environment in which the EU institutions had already indicated their intention to apply the rules of Directive 2009/73 to gas pipelines between Member States and third countries. The Nord Stream 2 project had already received significant attention at that time, so the exemption was not justified.

The request for derogation under Art. 49a was also rejected because the pipeline was not fully completed by 23 May 2019 and therefore did not meet the conditions for derogation. The Directive is clear, objective, and legally sound, and does not undermine legal certainty or the principle of protecting legitimate expectations.

In examining the principle of equal treatment, the General Court found that pipelines already built and those still under construction do not belong to the same legal category, so the different rules are objectively justified. According to the applicant, Nord Stream 2 is comparable to existing pipelines. However, it was found that the applicant had failed to demonstrate that the regulation was disproportionate or unlawful.

On the basis of an examination of the principle of proportionality, the objectives of the directive – such as legal certainty, protection of competition⁹⁸ and security of supply – are lawful and proportionate. The regulation applicable to Nord Stream 2 does not go beyond what is necessary, and the investment can still be recouped.

The examination of the misuse of powers did not reveal any evidence that the directive served political objectives or was specifically directed against the applicant. The directive pursues legitimate objectives under Art. 194 TFEU, and there was no misuse of powers during the legislative process.

The examination of the procedural rules did not reveal any evidence of a breach of the principle of subsidiarity. Although no specific impact assessment was carried out, the Commission's prior consultations and analyses provided sufficient information for decision-making. Following the submission of the

96 | Judgment of the Court of Justice, Case C-348/20.

97 | Judgment of the General Court, Case T-526/19 RENV.

98 | On the competition law of central and eastern European member states see: Miskolczi & Szuchy 2017.

proposed directive, the Commission held a public consultation and hearing. The General Court found that the applicant had access to a number of relevant documents but did not make substantive use of them during the proceedings. Ultimately, the application for interim measures was rejected.⁹⁹

This case highlighted that the European Union is entitled to extend its internal energy market rules to infrastructure connecting third countries with Member States, even if such infrastructure is linked to international investments. This decision reinforced the EU's sovereignty in protecting the internal market.

It is noteworthy that although the European Court of Justice closed the EU legal proceedings initiated by Nord Stream 2 AG in 2024, the company had already initiated investor-state dispute settlement proceedings against the European Union before the Permanent Court of Arbitration (PCA) on 26 September 2019. The proceedings are taking place under case number 2020-07, pursuant to Article 3 of the UNCITRAL Arbitration Rules¹⁰⁰ and Art. 26(4)(b) of the Energy Charter Treaty,¹⁰¹ in connection with an investment in the oil and gas sector. The seat of the arbitral tribunal is Toronto.

The investment arbitration proceedings are currently ongoing at the time of writing this article. Nord Stream 2 AG argues that the regulatory changes adopted by the EU in 2019, in particular Directive 2019/692, have adversely affected the investment, which was already at an advanced stage. The claimant believes that the new rules were applied retroactively, thereby violating investment protection guarantees, in particular the principles of fair treatment and legal certainty. This raises the question of the extent to which EU legislation takes into account the legal protection of cross-border investments that are already underway.

The arbitration tribunal is examining the EU measures from an investment protection perspective. A favourable decision for Nord Stream 2 AG can be expected if the court finds that the EU regulation was indeed retroactive and violated investment protection principles, and that it was specifically disadvantageous and did not meet the requirement of proportionality. Such a decision would undoubtedly generate tension between EU regulations and the international investment protection system.

This case is a good example of how a legal dispute can be heard in parallel before an EU court and an international arbitration tribunal. It raises questions about the coordination of jurisdictions, the handling of parallel proceedings and

99 | Curia, Judgment of the General Court in Case T-526/19 RENV.

100 | UNCITRAL Arbitration Rules.

101 | The purpose of the Energy Charter Treaty is to protect international energy investments. Art. 26 regulates dispute settlement mechanisms. Paragraph 4(b) states that investor-state disputes may be brought before an arbitral tribunal, for example, under the UNCITRAL Rules.

the interaction of judgments. In addition, the decision could set a precedent for other energy investors seeking redress in similar legal disputes.

Based on the above, we believe the EU should establish clearer rules in the future on how to handle investments already underway in the event of legislative changes. A uniform procedural protocol would be needed to manage jurisdictional parallelism between the EU and international arbitration tribunals. Detailed impact assessments should be made mandatory during the legislative process, especially for regulations with significant economic implications.

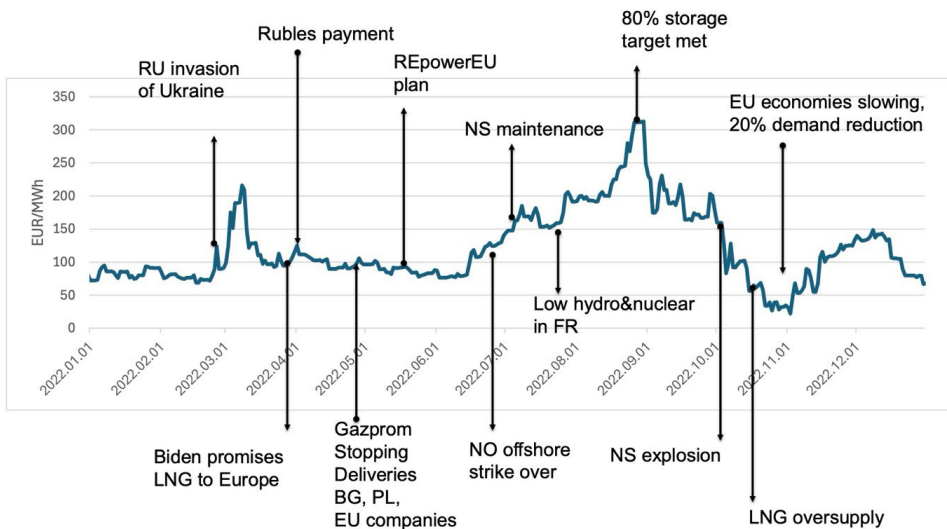
We have seen that one of the key points of legal and economic tension in the Nord Stream 2 case was the determination of the temporal scope of Art. 49a. Under the current rules, only gas pipelines built before 23 May 2019 can obtain an exemption. But even though this criterion is legally objective, it's not necessarily fair to the players who took the investment risks. Based on the principles of legal certainty and protection of legitimate expectations, it would have been justified to amend Art. 49a in such a way that the exemption is not linked exclusively to physical construction, but also takes into account the actual start of the investment. Projects that were already based on irreversible investment decisions and involved significant financial commitments could also legitimately have expected not to be adversely affected by new regulations. This approach would not only protect the legitimate expectations of economic operators but would also contribute to the predictability of EU legislation and the stability of the investment environment. Construction as the sole criterion is too rigid and does not reflect the real-time and financial risks of investments. In our opinion, a more flexible regulation taking into account multiple criteria, such as the date of commencement of the investment or the documentation of the final investment decision, would have resulted in a more balanced legal solution.

5. Future prospects for strengthening domestic natural gas supply

The combination of legal, political and physical events surrounding the Nord Stream 2 gas pipeline has shown that the supply of Russian natural gas to the European market has been deliberately obstructed for many years. The legal proceedings affecting the project, including the cases before the Court of Justice of the European Union, and the sabotage that resulted in the physical destruction of the pipeline, together give the impression that the infrastructure was rendered unusable not only for legal or economic reasons, but also for strategic reasons. The rise in energy prices following the explosion not only weakened Europe's economic competitiveness but also had a global impact. Geopolitical risks had an immediate and direct impact on global market prices,

as reflected in energy market exchange listings. In particular, the Dutch Title Transfer Facility (hereinafter: TTF) reference prices experienced an extraordinary increase, reaching unprecedented levels due to geopolitical conflicts and supply uncertainties.¹⁰² While prices did rise temporarily due to the incident, they did not reach unprecedented levels and shortly thereafter continued to decline:

Figure 5: The evolution of natural gas prices on TTF in 2022, EUR/MWh¹⁰³



The disruption of supply security, market uncertainty and limited access to alternative sources had a global impact. In our opinion, reusing pipeline pairs could be a forward-looking approach. Converting them to transport natural gas or hydrogen could significantly improve European security of supply and help achieve climate-neutrality goals. Putting such a technological and political re-evaluation on the negotiating table would require not only economic rationality but also diplomatic maturity. In our view, objective, calm intentions and dialogue based on mutual trust are essential for future solutions. The experience of the Nord Stream 2 project highlights the need to treat energy infrastructure not only as a technical but also as a strategic tool – in a responsible and transparent manner and with a view to mutual cooperation. This case also highlighted that energy policy is not just a technical or commercial issue, but also a cornerstone of international stability.

There are a number of future opportunities to further stabilise Hungary's natural gas supply, which could not only strengthen domestic security of supply

102 | Goodell et al. 2023.

103 | Loskot-Strachota et al. 2023.

but also contribute to strengthening the energy supply of the Visegrad countries at the regional level. With regard to security of supply, it is important to note that Hungary already has significant gas storage capacity, which has exceeded 90% in each of the last three years before the start of the heating season.¹⁰⁴ In June 2022, the European Parliament and the Council of the European Union issued a regulation stipulating that available storage facilities must be filled to 90% capacity before the winter months.¹⁰⁵ Of the V4 countries, Hungary has the largest storage capacity, which can fully cover the natural gas supply of the Hungarian households and more than half of the total domestic supply.¹⁰⁶

Regulation (EU) No 994/2010 of the European Parliament and of the Council concerning measures to safeguard security of natural gas supply and repealing Council Directive 2004/ 67/EC of the European Parliament and of the Council requires Member States to develop cross-border capacities ensuring bidirectional flow. As a result, Hungary already has bidirectional interconnectors with all its neighbours except Slovenia, which could provide a solution for either party in the event of a supply disruption.¹⁰⁷ The construction of the Hungarian-Slovenian natural gas cross-border pipeline is of strategic importance and has been given priority in the domestic network development plan.¹⁰⁸ The aim of the project is to give Hungary access to Italian LNG terminals and, via the Trans-Mediterranean¹⁰⁹ (hereinafter: Trans-MED) pipeline, to natural gas resources in the MENA (Middle East and North Africa)¹¹⁰ region, while Slovenia will have access to storage capacities in Hungary.¹¹¹ Trans-MED is a 2,475 km long natural gas pipeline,¹¹² built to transport natural gas from Algeria to Italy via Tunisia and Sicily, with a branch to Slovenia. Built in 1983, the system is one of the longest international gas pipeline systems and has a capacity of 33.5 billion cubic metres of natural gas per year.¹¹³ The pipeline route is shown on the map below. Thanks to its significant oil and natural gas production, the MENA region is an important part of global energy resources. According to OPEC data, the Middle East and North Africa region holds more than half of the world's oil reserves and two-fifths of its natural gas reserves.¹¹⁴ Physical access to the reserves in this region would help improve the security of supply.

104 | Council of the European Union 2024.

105 | Regulation (EU) 2017/1938.

106 | REMIT storage data.

107 | Csallóközi 2022a, 88.

108 | Hungarian Energy and Public Utility Regulatory Authority 2025.

109 | Offshore Technology 2024.

110 | Chen 2025.

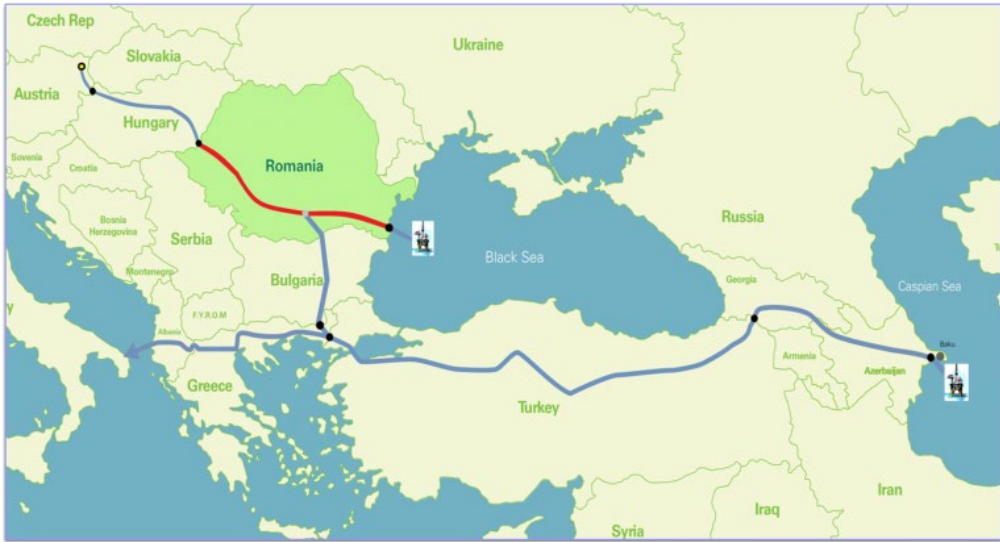
111 | Dyduch & Skorek 2020.

112 | Csallóközi 2022a, 54.

113 | Offshore Technology 2024.

114 | Chen 2025.

Figure 6: The Southern Gas Corridor, the BRUA pipeline, and the Neptun Deep and Shah Deniz 2 natural gas fields¹¹⁵



Further diversification includes, for example, the long-term energy agreements concluded between Hungary and Azerbaijan, which will enable the Hungarian market to receive up to 2–3 billion cubic metres of Azerbaijani natural gas per year. However, the necessary infrastructure developments must be implemented in a timely and efficient manner. The expansion of Azerbaijani production and European export capacities could help reduce the region's dependence on Russian natural gas, thereby strengthening security of supply and resource diversification.¹¹⁶

Another alternative is the natural gas from Azerbaijan mentioned above, which has outstanding production capacity. The Shah Deniz 2 field in the Caspian Sea¹¹⁷ provides sufficient quantities to significantly alleviate Europe's supply problems. The transport of natural gas to Europe is expected to be facilitated by the Southern Gas Corridor, which, through future developments, will be able to transport Azerbaijani and Romanian resources via the BRUA gas pipeline through Bulgaria and Romania to Hungary and then on to Austria and Slovakia. Hungary also has a stake in the project, recognising the field's future strategic importance and elevating Hungary's energy security to a new level, as it is interested in production not only as a buyer but also as an investor.¹¹⁸ It is clear that there are several alternative options for strengthening the region's energy security in the future. One promising source is the Neptun Deep natural gas field in the Romanian Black Sea region,

115 | Karimli 2018.

116 | Dajkó 2022b.

117 | British Petroleum.

118 | Government of Hungary 2024.

which has significant potential.¹¹⁹ Production would not only meet Romania's own needs, but would also facilitate supply to the wider region. However, the project has been delayed for years and, according to current forecasts, is not expected to start until 2027 at the earliest.

Through the development of transport routes and ongoing capacity expansions, Hungary has the potential to become the natural gas distribution hub of Central Europe.¹²⁰ The country is already a significant exporter and transit station for, particularly to Slovakia and Ukraine,¹²¹ thereby contributing to the security of supply in neighbouring countries.

Regarding domestic natural gas production, Hungary is encouraging a revival of extraction amid the energy crisis. It has set a target to maximise production, currently between 1.5 and 2 billion cubic metres. Despite its modest scale, it is an important cornerstone of our country's secure and affordable energy supply.¹²²

The North-South Gas Corridor is of paramount importance for Hungary's security of supply, connecting the Baltic and Adriatic LNG terminals and ensuring the Central European region's access to alternative gas sources. The corridor does not represent a new route, but rather the interconnection of existing national pipeline networks, particularly between Poland, Slovakia, Hungary and Croatia. The expansion of cross-border interconnectors, including the Polish-Slovak and Hungarian-Slovak connections, will enable flexible gas transport in both directions, facilitating further independence from Russian gas if necessary.¹²³ Access to the Krk and Świnoujście LNG terminals and the operation of the Drávaszerdahely-Donji Miholjac interconnector further strengthen Hungary's regional role. The strategic importance of the North-South Gas Corridor is also reflected in the Three Seas Initiative, which aims to promote regional economic integration and energy stability.¹²⁴

It is important to note that the expansion of the Southern Gas Corridor, which serves to diversify the European Union's natural gas supply, is also paramount for the security of supply. Hungary is indirectly connected to the Southern Gas Corridor due to its geographical location. In April 2025, in Baku, the EU and Azerbaijan reaffirmed their commitment to the further development of the project, treating the increase in Azerbaijani gas export capacity as a priority. The expansion of the corridor will allow Azerbaijani resources to have a greater presence on the European market, contributing to long-term energy security. This is particularly important for Hungary, as gas supply negotiations with Qatar and Oman also aim to diversify and complement supply options from Azerbaijan.¹²⁵ The Southern Gas Corridor offers a

119 | Neptun Deep 2024.

120 | Litkei 2023.

121 | Hungarian Natural Gas Transmission Ltd.

122 | Ibid.

123 | Csallóközi 2022a, 92.

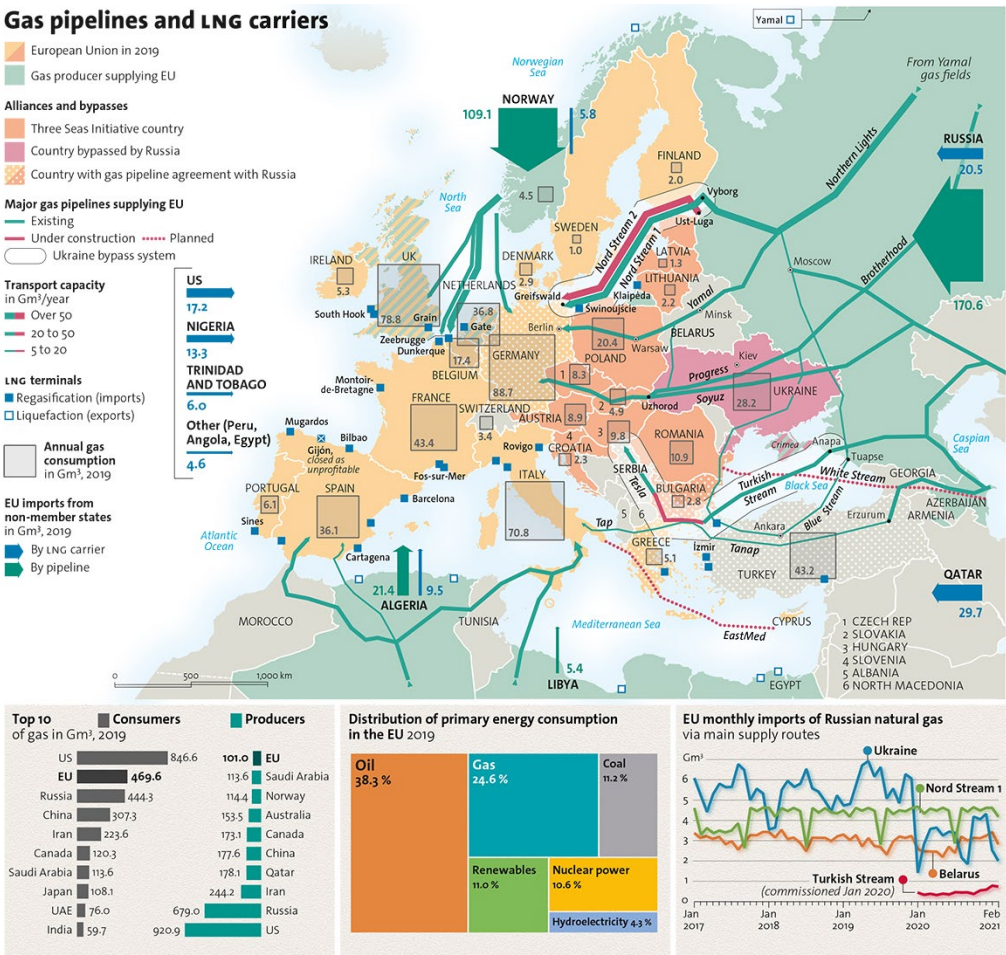
124 | Countries participating in the cooperation: Austria, Bulgaria, the Czech Republic, Estonia, Croatia, Hungary, Poland, Latvia, Lithuania, Romania, Slovakia and Slovenia.

125 | Directorate-General for Energy 2025.

strategic alternative from an energy and geopolitical perspective, supporting the EU's energy security, market stability, and climate-neutrality goals.

The map below clearly illustrates potential transport routes that could help diversify natural gas supplies in our region in the short term. In addition, the map clearly identifies existing LNG terminals, which are playing an increasingly important role in strengthening security of supply.

Figure 7: Major natural gas pipelines and LNG terminals affecting Europe¹²⁶



Based on the studies examined, we can conclude that natural gas remains the second most widely used energy source in the V4 countries.¹²⁷ Despite all sanctions

¹²⁶ | Marine 2021.

¹²⁷ | Németh 2022, 1–3.

against Russia, the country remains one of the leading exporters of fossil fuels.¹²⁸ In recent years, Hungary has taken numerous steps to reduce its dependence. Despite continuously expanding its supply structure and related transport routes, Hungary remains heavily dependent on Russian gas. Between 75% and 85% of Hungarian natural gas consumption still comes from Russia, as it is currently impossible to replace this volume entirely from other sources.¹²⁹

In our opinion, based on the above, the future of European energy security will be decided at the intersection of geopolitical realities and strategic rationality. The current situation, in which several key pipeline systems – including Nord Stream, Yamal and Brotherhood – have ceased to operate or become uncertain, underscores that security of supply is not just a technical or economic issue but a deeply political and diplomatic challenge. The diversification of sources advocated by the European Union is not sufficient on its own if, at the same time, existing infrastructure is neglected or rendered unusable for political reasons.

In our opinion, a forward-looking global energy policy lies not in ruling out the possibility of maintaining existing routes, but in developing southern and western alternatives alongside them. A dynamic, scenario-based regulatory framework – capable of responding to geopolitical changes across multiple scenarios – can ensure that energy sovereignty is not made a hostage to political sanctions, but serves the triple objectives of affordability, reliability and sustainability. Strategic flexibility, diplomatic dialogue and the development of transparent conditions can not only strengthen security of supply but also contribute to the development of a long-term European energy system based on trust. The question, therefore, is not whether to abandon the infrastructure of the past, but whether we are capable of integrating it into a future-oriented, diverse and adaptive energy policy. This decision may not only be technical and technological, but also of historical significance.

6. Summary

The study highlighted that although numerous established natural gas transport routes exist, geopolitical factors have rendered many of them inactive, posing a challenge to the secure energy supply of several countries.

To ensure security of supply, several countries have launched long-term infrastructure development programmes that, given the industry's specific nature, are expected to last 5–10 years. One proposal worth considering is the reactivation of existing routes, which could contribute to diversification and strengthen the security of supply. The concluding section of the study presents cooperation efforts

128 | Németh 2022, 5–6.

129 | Dajkó 2022b.

in the region aimed at developing existing infrastructure, building new transport routes, connecting pipelines and diversifying source contracts.

The analysis of the legal case examined in the study highlighted that the European Union has the legal authority to take decisions that directly affect the investment processes of Member States. This finding highlights the links between EU regulation and national economic interests and shows that EU decision-making mechanisms can have not only indirect but also direct economic consequences for Member States. The case is a good example of how a legal dispute can be heard simultaneously before an EU court and an international arbitration tribunal, raising issues of jurisdictional coordination, procedural parallelism, and interaction between judgments. The decision may set a precedent for other energy investors seeking redress in similar legal disputes.

The concluding section of the study presents cooperation efforts in the region aimed at developing existing infrastructure, building new transport routes, connecting pipelines and diversifying source contracts. In conclusion, Hungary has a favourable opportunity to further strengthen its transit role in Central and Eastern Europe, which could not only enhance the domestic security of supply but also contribute to the regional stabilisation of energy supply in the Visegrad countries.

Reference list

1. Bailey S (2009) Map of major existing and proposed Russian natural gas pipelines to Europe, *Wikimedia Commons*, https://commons.wikimedia.org/wiki/File:Major_russian_gas_pipelines_to_europe.png [23.09.2024].
2. British Petroleum (n.d.) *Shah Deniz Stage 2*, https://www.bp.com/en_az/azerbaijan/home/who-we-are/operationsprojects/shahdeniz/shah-deniz-stage-2.html [13.09.2024].
3. London Convention on the Prevention of Marine Pollution, 1973: <https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-%28MARPOL%29.aspx> [08.10.2024].
4. Chen J (2025) Middle East and North Africa (MENA), *Investopedia*, <https://www.investopedia.com/terms/m/middle-east-and-north-africa-mena.asp#citation-529> August 2024.
5. Commission Delegated Regulation (EU) 2022/1214.
6. Conley S, Franco G, Faloona I, Blake D R, Peischl J & Ryerson T B (2016) Methane emissions from the 2015 Aliso Canyon blowout in Los Angeles, *Science* 351(6279), pp. 1317–1320, DOI: <https://doi.org/10.1126/science.aaf2348>.
7. Council Implementing Regulation (EU) 2025/2035 of 23 October 2025 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
8. Council of the European Union (n.d.) *How much gas have EU countries stored?* <https://www.consilium.europa.eu/hu/infographics/gas-storage-capacity/> [23.09.2024].
9. Council of the European Union (2019) *Press release: Council adopts amendment to the Gas Directive: EU rules now cover pipelines to and from third countries*, <https://www.consilium.europa.eu/hu/press/press-releases/2019/04/15/council-adopts-gas-directive-amendment-eu-rules-extended-to-pipelines-to-and-from-third-countries/> [22.10. 2025].
10. Council of the European Union (n.d.) *REPowerEU plan: energy policy in the recovery and resilience plans of EU countries*, <https://www.consilium.europa.eu/hu/policies/eu-recovery-plan/repowereu/> [23.09.2024].
11. Csáki-Hatalovics É (2026) *A Magyar energiaszabályozás kihívásai és lehetőségei az energiaszuverenitás tükrében, európai kontextusban*, PhD Thesis, Károli Gáspár University of the Reformed Church, Faculty of Law and Political Sciences, Budapest.

12. Csáki-Hatalovics É & Gyula B (2019) Állami tulajdonú vállalatok rendszere és jogi szabályozása Norvégiában, in: Szikora V (ed.) *Állami vállalatok nemzetközi összehasonlításban*, Magyar Közlöny Lap- és Könyvkiadó, Budapest, pp. 223–230.
13. Csallóközi Z (2022a) Európai földgázszállító rendszerek, in: Fazekas O (ed.) *A magyar földgázszektor működése és szabályozása*, 2nd edn., ORAC, Budapest.
14. Csallóközi Z (2022b) Jelentős változások Magyarország gázellátásában, presentation, in: 28. *DUNAGÁZ Konferencia*, 7 June 2022, <https://dunagaz.hu/uploads/documents/gazipari-konferenciak/2022-Konferencia-eloadas-anyagok/DunagazKonf-Csallokozi.pdf> [16.09.2024].
15. Court of Justice of the EU, Case C-348/20, Reports of Cases before the Court of Justice, 12 July 2022, <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:62020CJ0348>.
16. Court of Justice of the EU, Judgment of the General Court, Case T-526/19 RENV, 27 November 2024.
17. Court of Justice of the EU, Case T-526/19 RENV, Nord Stream 2 v Parliament and Council, Case T-526/19 RENV, 12 July 2022.
18. Czékmann Zs (2020) Certain steps in regulating the gas market model change in Hungary, *Agricultural and Environmental Law* 15(28), pp. 149–164, DOI: <https://doi.org/10.21029/JAEL.2020.28.149>.
19. Dajkó F D (2022a) Honnan jön a földgáz Európába? – térképen mutatjuk a gázszállítási útvonalakat, *Növekedés, Analysis*, 11 May, <https://novekedes.hu/elemzesek/honnan-jon-a-foldgaz-europaba-terkepen-mutatjuk-a-gazszallitasi-utvonlakat> [14.09.2024].
20. Dajkó F D (2022b) Térképen mutatjuk, hogyan juthat azeri földgázhoz Magyarország, *Növekedés, Növekedés*, 23 November, <https://novekedes.hu/elemzesek/terkepen-mutatjuk-hogyan-juthat-azeri-foldgazhoz-magyarorszag> [14.09.2024].
21. de Jong M (2023) Tracing the downfall of the Nord Stream 2 gas pipeline, *Wires Energy and Environment*, 21 September, <https://doi.org/10.1002/wene.502>.
22. Directorate-General for Energy (2025) *Press statement of European Commissioner for Energy and Housing and Minister of Energy of the Republic of Azerbaijan*, 4 April, https://energy.ec.europa.eu/news/press-statement-european-commissioner-energy-and-housing-and-minister-energy-republic-azerbaijan-2025-04-04_en [10.11.2025].
23. Dyduch J & Skorek A (2020) Go South! The Southern Dimension of the Energy Policy Strategies of the V4 Countries – An Assessment of Viability and Prospects, *Energy Policy* 140/2020, pp. 1–11, DOI: <https://doi.org/10.1016/j.enpol.2020.111372>.

24. Energy Charter Treaty signed 17 December 1994, <https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/> [28.10.2025].
25. Energy Institute – Statistical Review of World Energy (2025) – with major processing by Our World in Data. *Gas consumption*, January 19, <https://archive.ourworldindata.org/20260119-065148/grapher/gas-consumption-by-country.html> [20.02.2026].
26. Euromaidanpress (2021) *Two keys to defeating Nord Stream 2 lie in Poland*, <https://euromaidanpress.com/2021/07/24/poland-emerges-as-ukraines-partner-in-opposing-nord-stream-2/> [02.09.2024].
27. Euronews (2021) *Nord Stream 2: Ukraine and Poland slam deal to complete controversial gas pipeline*, 21 July, <https://www.euronews.com/2021/07/21/ukraine-poland-slam-insufficient-deal-struck-by-germany-and-u-s-on-nord-stream-2> [29.07.2024].
28. European Commission (2022) *EU taxonomy: Complementary Climate Delegated Act to accelerate decarbonisation*, https://finance.ec.europa.eu/publications/eu-taxonomy-complementary-climate-delegated-act-accelerate-decarbonisation_en [19.11.2025].
29. Eurostat (2025) *Drop in petroleum imports in 2025*, 19 December, <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/w/ddn-20251219-2> [20.02.2026].
30. Farmer M (2021) *Nord Stream 2: What is the controversy, why the politics, what next? Offshore Technology*, July 29, <https://www.offshore-technology.com/features/nord-stream-2-pipeline-construction-deal-summary/?cf-view> [13.09.2024].
31. Fazekas O (ed.) (2022) *A magyar földgázszektor működése és szabályozása*, 2nd edn., Orac Kiadó, Budapest.
32. Fetisov V, Tcvetkov P & Müller J (2021) Tariff approach to regulation of the European gas transportation system: Case of Nord Stream, *Energy Reports* 7(6), pp. 413–425, DOI: <https://doi.org/10.1016/j.egy.2021.08.023>.
33. GECF (2023) *Annual Gas Market Report*, <https://www.gecf.org/Publications-Data/Annual-Gas-Market-Report> [16 September 2024].
34. GECF (2025) *Annual Gas Market Report*, <https://www.gecf.org/Publications-Data/Annual-Gas-Market-Report> [20.02.2026].
35. Baird Maritime (2025) *German gas usage rises in 2025 as it moves away from Russian supply: US supplied bulk of LNG landed in Germany*, 17 December, <https://www.bairdmaritime.com/shipping/tankers/gas/german-gas-usage-rises-in-2025-as-it-moves-away-from-russian-supply> [20.02.2026].

36. Goodell J W, Gurdgiev C, Paltrinieri A & Piserà S (2023) Global energy supply risk: Evidence from the reactions of European natural gas futures to Nord Stream announcements, *Energy Economics* 125(2), DOI: <https://doi.org/10.1016/j.eneco.2023.106838>.
37. Government of Hungary (2024) *Részesedésünk lesz a világ egyik legnagyobb földgázmezőjében*, 6 June, <https://kormany.hu/hirek/reszesedesunk-lesz-a-vilag-egyik-legnagyobb-foldgazmezojeben> [19.11.2025].
38. Hancock A & Tani S (2023) EU imports record volumes of liquefied natural gas from Russia, *Financial Times*, <https://www.ft.com/content/1e70ff72-52d8-46b6-a8f4-fcc86fb88a6d> [13.09.2024].
39. Howarth R W (2024) The greenhouse gas footprint of liquefied natural gas (LNG) exported from the United States, *Energy Science & Engineering* 12(11), pp. 1–17, DOI: <https://doi.org/10.1002/ese3.1934>.
40. Hungarian Energy and Public Utility Regulatory Authority (2025) *Decision No. FFAFO/79-2/2025 on the approval of the 10-year development proposal*, <https://mekh.hu/download/8/23/91000/10vesfejlesztsijavaslatjvhagysa.pdf> [19.11.2025].
41. Hungarian Natural Gas Transmission Ltd., *Statistical data*, <https://fgsz.hu/#> [15.12.2025].
42. Jarocińska P N (2024) Russian Disinformation and its Influence on the Energy Sector in V4 Countries, *Warsaw Institute*, <https://warsawinstitute.org/russian-disinformation-and-its-influence-on-the-energy-sector-in-v4-countries/> [20.02.2026].
43. Jia M, Li F, Zhang Y, Wu M, Li Y, Feng S et al. (2022) The Nord Stream pipeline gas leaks released approximately 220,000 tonnes of methane into the atmosphere, *Environmental Science and Ecotechnology*, 12/2022, pp. 1–5, DOI: <https://doi.org/10.1016/j.ese.2022.100210>.
44. Jirušek M (2020) The attitude of the Visegrad Group Countries towards Russian Infrastructural Projects in the gas sector, *Energy Policy* 139/2020, DOI: <https://doi.org/10.1016/j.enpol.2020.111340>.
45. Karimli I (2018) Caspian Natural Gas to Be Sent to Central Europe Via SGC, *Caspian news*, <https://caspiannews.com/news-detail/caspian-natural-gas-to-be-sent-to-central-europe-via-sgc-2018-2-27-11/> [20.02.2026].
46. Larsson R L (2007) Nord Stream, Sweden and Baltic Sea Security, *Swedish Defence Research Agency*, <https://www.foi.se/en/foi/reports/report-summary.html?reportNo=FOI-R--2251--SE> [15.12.2025].
47. Litkei M (2023) Felértékelődő útvonal: a Török Áramlat, *Eurasia* 2023/1, <https://eurasziamagazin.hu/felertekelodo-utvonala-torok-aramlat>.

48. Liu Y, Zhao S, Li Y, Huang J, Yang X, Wang J & Tao C (2024) Mechanically Enhanced Detoxification of Chemical Warfare Agent Simulants by a Two-Dimensional Piezoresponsive Metal–Organic Framework, *Nanomaterials* 14(7), pp. 1–15, DOI: <https://doi.org/10.3390/nano14070559>.
49. Łoskot-Strachota A et al. (2023) V4 in Times of Unprecedented Challenges and Changes on the Gas Market: V4ETTP Working paper, OSW, https://rekk.hu/downloads/academic_publications/V4_Gas%20challenges_final.pdf?utm_source=copilot.com [20.02.2026].
50. Łoskot-Strachota A et al. (2024) *Energy Security in V4*, https://rekk.hu/downloads/academic_publications/energy_securityin_V4_web.pdf [20.02.2026].
51. Mádl M V (2025) The EU's Energy Policy From the Perspective of a Central-Eastern European Country: Hungary, in: Szilágyi J E & Marinkás Gy (eds.) *Maastricht 30: A Central European Perspective*, Central European Academic Publishing, Miskolc–Budapest, pp. 653–677, DOI: https://doi.org/10.54237/profnet.2025.jeszgyymmcep_26.
52. Magyar Földgázszállító Zrt. (2020) *Statistical data*, <https://fgsz.hu/a-foldgazrol/a-foldgaz-szerepe/statisztikai-adatok> [23.09.2024].
53. Marine C (2021) The battle over Nord Stream 2, Gas pipelines and LNG carriers, *Le Monde Diplomatique*, <https://mondediplo.com/maps/gas-pipelines#&gid=1&pid=1> [20.02.2026].
54. Miskolczi Bodnár P & Szuchy R (2017) Joint and Several Liability of Competition Law Infringers in the Legislation of Central and Eastern European Member States, *Yearbook of Antitrust and Regulatory Studies* 10(15), pp. 85–110, DOI: <https://doi.org/10.7172/1689-9024.YARS.2017.10.15.5>.
55. Németh V (2022) Visegrádi országok energiabiztonsága, *Oeconomus Gazdaságkutató Alapítvány*, https://www.oeconomus.hu/wp-content/uploads/2022/01/A-visegradi-orszagok-energiabiztonsaga-Nemeth-Viktoria_2022-januar.pdf [04.04.2024].
56. NESACentre for Strategic Studies (2021) *Nord Stream 2 interim white paper: Implications and Outcomes for US-German Relations and the NATO Alliance*, <https://nps.edu/documents/114698888/125818449/NESA-NS2-Interim-White-Paper-29-January-2021.pdf/b0bbee24-fd64-abd1-9d8d-b4828993974a?t=1613173073391> [13.09.2024].
57. Nord Stream AG (n.d.), <https://www.nord-stream.com/> [23.09.2024].
58. Offshore Technology (2011) *Trans-Mediterranean Natural Gas Pipeline*, 12 April, <https://www.hydrocarbons-technology.com/projects/trans-med-pipeline/> [23.09.2024].

59. OMV Petrom (n.d.) *Neptun Deep – A stronger Romania. With the energy from the Black Sea*, <https://www.omvpetrom.com/en/our-business/exploration-and-production/neptun-deep> [23.09.2024].
60. Pinto R (2024) Russian gas flows via Ukraine in 2025 and beyond: What CEE countries can expect, *Kpler*, 12 September, <https://www.kpler.com/blog/no-russian-gas-flows-via-ukraine-in-2025-what-are-the-options-on-the-table-for-cee-countries> [13.09.2024].
61. Poursanidis K, Sharanik J & Hadjistassou C (2024) World's largest natural gas leak from Nord Stream pipeline estimated at 478,000 tonnes, *iScience* 27(1), pp. 1–9, DOI: <https://doi.org/10.1016/j.isci.2023.108772>.
62. Rácz G (2020) Történelmi bírságot kapnak az Északi Áramlat-2 kivitelezői, *Economx Club*, <https://www.economx.hu/nemzetkozi-vallalatok/eszaki-aramlat-lengyelorszag-birsag.715149.html> [09.11.2025].
63. Rátky M & Tóth M (2022) *A magyar energiaszektor tanulságai*, Budapest, Akadémiai Kiadó, DOI: 10.1556/9789634547648.
64. Regulation (EU) 2017/1938 of the European Parliament and of the Council on measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010.
65. REKK Energiapiaci Tanácsadó Kft. (2015) *REKK report on energymarkets*, 2015/4, https://rekk.hu/downloads/publications/Rekk_jelentes_2015_4.pdf#page=21 [07.10.2024].
66. REMIT natural gas storage data, <https://agsi.gie.eu/#/> [10.11.2025].
67. REMIT storage data, 3 November 2025, <https://agsi.gie.eu/#/> [16.09.2024].
68. Rugli T (2025) Előzetes letartóztatásba helyeztek az Északi Áramlat felrobbantásának ügyében egy ukrán férfit, *24Extra*, <https://24.hu/kulfold/2025/10/01/elozetes-letartoztatasa-helyeztek-az-eszaki-aramlat-felrobbantasanak-ugyeben-egy-ukran-ferfit-volodimir-z-t/> [10.11.2025].
69. Rystad Energy & Kpler data analyses, <https://www.rystadenergy.com/> [08.10.2025].
70. Sanderson H, Fauser P, Thomsen M, Larsen J B (2012) Weight-of-evidence environmental risk assessment of dumped chemical weapons after WWII along the Nord-Stream gas pipeline in the Bornholm Deep, *Journal of Hazardous Materials*; 215–216/2012, pp. 217–226, DOI: <https://doi.org/10.1016/j.jhazmat.2012.02.057>.
71. Staudenmaier R (2017) Germany's nuclear phaseout explained, *Deutsche Welle*, <https://www.dw.com/en/germanys-nuclear-phaseout-explained/a-39171204> [13.09.2024].

72. Svec M (2025) EU Membership: Implications for Czech Energy Security, in: Szilágyi JE & Marinkás Gy (eds.) *Maastricht 30: A Central European Perspective*, Central European Academic Publishing, Miskolc–Budapest, pp. 615–632, DOI: https://doi.org/10.54237/profnet.2025.jeszgymmcep_24.
73. Sziklai B R, Kóczy L Á & Csercsik D (2020) The impact of Nord Stream 2 on the European gas market bargaining positions, *Energy Policy* 144/2020, DOI: <https://doi.org/10.1016/j.enpol.2020.111692>.
74. Szuchy R (2019) Az energiajog és az energetikai szabályozás aktuális kihívásai, in: Ed.: Glavanits J (ed.) *A gazdasági jogalkotás aktuális kérdései*, Dialóg Campus, Budapest, pp. 231–238.
75. Tahchi B (2024) Algerian gas to strengthen energy security of the European Union: Policy, capacity and strategy, *Energy reports*, 11/2024, pp. 3610–3613, DOI: <https://doi.org/10.1016/j.egy.2024.03.022>.
76. U.S. Department of State (2021) *Joint Statement of the United States and Germany on Support for Ukraine, European Energy Security, and our Climate Goals*, 21 July, <https://2021-2025.state.gov/joint-statement-of-the-united-states-and-germany-on-support-for-ukraine-european-energy-security-and-our-climate-goals/> [08.10.2025].
77. UNCITRAL (2010) *Arbitration Rules, Article 3*, <https://uncitral.un.org/en/texts/arbitration/contractualtexts/arbitration> [28.10.2025].
78. Vakulenko S (2024) The Final Countdown: Will Russia and Ukraine Renew Gas Transit Deal?, *Carnegie*, <https://carnegieendowment.org/russia-eurasia/politika/2024/02/the-final-countdown-will-russia-and-ukraine-renew-gas-transit-deal?lang=en> [16.09.2024].
79. Volkonsky V A & Kuzovkin A I (2021) Advantages and Disadvantages of the Nord Stream 2 Gas Pipeline for European Countries: A Review of Estimates by Scientists and the Energy Industry, *Studies on Russian Economic Development* 32(6), pp. 689–694, DOI: 10.1134/S1075700721060162.
80. Wood S & Henke O (2021) Denmark and Nord Stream 2: A small state's role in global energy politics, *Energy Policy* 148/2021, DOI: <https://doi.org/10.1016/j.enpol.2020.111991>.
81. Zaretszkaja V (2024) The United States remained the largest liquefied natural gas supplier to Europe in 2023, *U.S. Energy Information Administration*, <https://www.eia.gov/todayinenergy/detail.php?id=61483> [13.09.2024].
82. Zhang Q, Chen R, Ma S & Liang A (2024) Nord Stream 2, geopolitical conflicts and energy security: Evidence from EU regions, *Energy*, 313/2024, DOI: <https://doi.org/10.1016/j.energy.2024.133836>.

REVIEW

Book review

Agriculture, Sustainability and Competition Law: Policy Paradigms and Their Legal Implications by *Martin Milán Csirszki*

Abstract

Agriculture, Sustainability and Competition Law: Policy Paradigms and Their Legal Implications by Martin Milán Csirszki, published in English by Routledge in 2025, examines competition law and policy as applied to agricultural producers within the competing paradigms of neoliberal agricultural policy and food sovereignty. The book aims to explore the growing pressures faced by agricultural producers arising from market liberalisation and sustainability concerns, and the resulting debates on the relationship between competition, agriculture, and sustainability. By bridging disciplinary gaps between competition law and agricultural policy, the monograph develops an integrated perspective with a particular focus on sustainability. This review outlines the book's main contributions and reflects on the readership to whom it will be most valuable.

Keywords: Book review, agriculture, sustainability, competition law, food sovereignty

Book Review

It is always a notable achievement when a monograph is authored by a practitioner-scholar who combines deep doctrinal expertise with sustained engagement in policy debates. Martin Milán Csirszki's *Agriculture, Sustainability and Competition*

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Law: Policy Paradigms and Their Legal Implications,¹ published in English by Routledge as part of the Routledge Research in Competition Law series,² exemplifies such a contribution. Across 290 pages, the book examines the complex relationship between agricultural policy, competition law, and sustainability, engaging questions that have become increasingly central to both legal scholarship and regulatory practice. Rather than analysing these fields separately, the author of the book brings them into a sustained dialogue, producing a synthesis that bridges multiple disciplinary perspectives. The resulting approach is attentive not only to efficiency but also to the social, environmental, and policy considerations that shape the current regulatory environment.

The mentioned synthesising character may be understood in at least two distinct senses. First, it brings together strands of scholarship (namely competition law, agricultural policy, and sustainability studies) that have traditionally developed separately. By integrating these fields into dialogue, Csirszki demonstrates how their interactions shape both normative frameworks and practical regulation of agri-food markets. Second, the book reflects a broader shift within competition law itself, moving away from a narrowly efficiency-driven, consumer welfare-centric paradigm toward a broader, policy-sensitive framework. This approach, which is increasingly visible across Europe, recognises that competition law cannot be fully understood or effectively applied when divorced from social, economic, and environmental considerations that define specific sectors such as agriculture.

After a detailed introduction and before the concluding summary, the book is structured into four main parts, each building the argument in a clear, logically progressive way. It begins by examining the clash between agriculture and competition policy (Part II), then turns to the role of sustainability within both areas (Part III). This is followed by a detailed analysis of the competition rules applying to agri-food markets and to sustainability agreements of agri-food market players (Part IV). Finally, it considers how competing policy paradigms, particularly neoliberalism and food sovereignty, shape and interact regulatory outcomes (Part V).³

From a disciplinary perspective, the monograph is situated at the intersection of competition law and agricultural law – two fields with distinct traditions and normative orientations. Competition law, especially in its neoliberal and Chicago School variants,⁴ has long emphasised efficiency and consumer welfare. Agricultural law, by contrast, has historically incorporated social, distributive, and environmental objectives. The author of the monograph shows that this structural

1 | Csirszki 2025.

2 | A complete list of books in the Routledge Research in Competition Law series is available on the publisher's website. See: <https://www.routledge.com/Routledge-Research-in-Competition-Law/book-series/COMPETITIONLAW> [19.12.2025].

3 | See the Contents of the book.

4 | Cf. Hovenkamp & Scott Morton 2020, 1852; Witt 2019, 172–213.

tension has consistently influenced the legal treatment of agricultural markets throughout the twentieth and twenty-first centuries, both in the European Union and the United States.

From a methodological perspective, the monograph adopts a consciously interdisciplinary approach, bringing together doctrinal legal analysis, policy evaluation, historical context, and comparative perspectives.⁵ At the heart of the analysis is a distinction between narrow antitrust law (focused on anti-competitive agreements, abuse of dominance, and mergers), and broader competition law (understood as encompassing sector-specific regulatory instruments that govern market fairness, producer cooperation, and trade practices).⁶ This distinction is particularly important in the context of agriculture, where regulation must address structural imbalances, concentrated downstream markets, and the social and environmental dimensions of production. By adopting this framework, Csirszki treats legal rules not as abstract, technical constructs, but as practical tools through which public policy objectives (such as income stability for farmers, rural development, and sustainability) are advanced.

Rather than treating sustainability as a recent or external constraint on competition law, the author shows that agricultural policy has historically held a privileged position in relation to antitrust enforcement. Sector-specific exemptions, rules governing producer organisations, and regimes on unfair trading practices illustrate that agriculture continues to be regulated in light of its particular economic, social, and environmental characteristics. While sustainability considerations are increasingly visible in competition policy discourse, the monograph makes clear that it has long been more deeply embedded within agricultural policy than within antitrust doctrine as such.

One of the major contributions of Martin Milán Csirszki's *Agriculture, Sustainability and Competition Law: Policy Paradigms and Their Legal Implications* lies in its detailed exploration of the relationship between agricultural and competition policy. The author traces the historical privileging of agriculture within competition law, showing how sector-specific exemptions, producer organisation rules, and regulations on unfair trading practices have long shielded agricultural markets from strict antitrust enforcement. He highlights the divergent goals of these policy domains: agricultural policy is fundamentally producer-focused, aiming to secure fair farm incomes and livelihoods, while competition policy is consumer-oriented, prioritising low prices, product quality, and free choice. These tensions are intensified by market structures, as concentrated processing, wholesale, and retail markets exert downward pressure on farm-gate prices, creating outcomes that competition law interprets as efficiency gains but agricultural policy perceives as detrimental to producers. The book demonstrates that, in practice, agricultural

5 | Cf. Csirszki 2025, 16–23.

6 | Csirszki 2025, 30.

policy often prevails, using antitrust exemptions and regulatory tools to protect producers' economic and social interests.

Sustainability serves as a central analytical lens throughout the book. The author traces its emergence in agricultural policy during the 1990s, decades before competition law incorporated environmental and social objectives, and highlights how sector-specific exemptions have long privileged sustainability. In the EU, Art. 210a of the CMO Regulation⁷ provides the only binding antitrust exemption for sustainability agreements in the agricultural sector, and it operates more flexibly than general soft-law tests. While environmental policy integration has become a core element of sustainable agricultural governance, the author shows that in competition law, social considerations remain largely implicit, surfacing primarily where agricultural policy derogations intersect with enforcement priorities. The author of the book critically examines the presumed desirability and feasibility of integrating sustainability into competition law, demonstrating the limits of efficiency-driven frameworks when confronted with complex environmental and social imperatives.⁸

A notable strength of the monograph is its sustained engagement with the food sovereignty paradigm, which the author treats not as rhetorical or marginal, but as a serious policy framework capable of reshaping competition law analysis. Csirszki traces the evolution of food sovereignty from its initial formulation in 1996 to the 2007 Nyéléni Declaration,⁹ situating it as a normative counterpoint to neo-liberal agricultural policy.¹⁰ Food sovereignty foregrounds producers' economic and ecological interests, challenges market liberalisation, and emphasises social and environmental justice, offering a conceptual lens through which the limits of conventional antitrust law can be assessed. The discussion is further enriched by engagement with ordoliberal competition theory, particularly the Freiburg School's¹¹ focus on maintaining competitive order and protecting economic autonomy. Drawing on thinkers such as Wilhelm Röpke and Constantin von Dietze, the author highlights the paradox of agriculture: a sector characterised by near-complete competition at the production level, yet marked by significant structural disadvantages in downstream markets. These insights underscore the need for regulatory frameworks capable of safeguarding not only efficiency but also social equity.¹² In this respect, the ordoliberal perspective serves as a conceptual bridge

7 | Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 [2013] OJ L347/671.

8 | Csirszki 2025, 73–74.

9 | Declaration of Nyéléni, February 2007, <https://nyeleni.org/IMG/pdf/DeclNyeleni-en.pdf>. [28.01.2026].

10 | Csirszki 2025, 189–190.

11 | In connection with this, see, for example, Behrens 2015. See also Csirszki 2025, 213.

12 | Röpke 1942, 111–112; von Dietze 1942, 129–157.

between conventional competition law and the normative concerns articulated by the food sovereignty paradigm.¹³

Csirszki's comparative analysis of EU and U.S. regulation further illustrates how these theoretical insights operate in practice. EU law explicitly allows pre-production coordination and supply restrictions within producer organisations, incorporates sustainability considerations into sector-specific exemptions, and links antitrust assessment to the objectives of the Common Agricultural Policy. By contrast, U.S. law focuses mainly on post-production activities, imposes stricter limits on production coordination, and generally interprets instruments such as the Capper-Volstead¹⁴ and Packers and Stockyards Acts through a consumer welfare lens. Despite these differences, both systems share the goal of strengthening producers' bargaining power, though the EU framework more fully integrates social, environmental, and sector-specific objectives than its U.S. counterpart.¹⁵

Beyond its focus on sectoral and doctrinal issues, the monograph also develops an implicit theory about the limits of competition law. Sustainability is not treated as an internal mechanism capable of reshaping antitrust's core objectives; rather, it is framed as an external normative demand that can be accommodated only through carefully circumscribed exemptions and sector-specific regimes. In this regard, the author takes a deliberately cautious stance toward the prevailing optimism about surrounding policy integration. His analyses highlights both the conceptual ambiguities and the institutional constraints involved in incorporating sustainability objectives into competition law, particularly when the latter remains grounded in economic efficiency and market openness. The sustainability-competition nexus is thus approached not as a matter of doctrinal interpretation, but as a question of legal design, the allocation of regulatory competences, and broader political economy considerations.

The monograph is also prescriptive. The author advocates a cascading threshold system to address buyer power *ex ante*, combining downstream market shares with suppliers' economic dependence, and recommends implementing reforms through soft-law instruments and interdepartmental coordination within the EU context. Analogies, such as the 'murderer with a weapon', convey the strategic logic of preventative regulation, reflecting a nuanced understanding of policy design and operational feasibility.¹⁶ Throughout, the book links legal doctrine with historical, economic, and social considerations, showing that conventional antitrust metrics of price and output fail to capture the multidimensional harms faced by agricultural producers in concentrated markets.

The book is supported by a well-structured scholarly background, reflecting the author's deep and sustained engagement with the subject matter. The references

13 | Csirszki 2025, 213–215.

14 | Frederick 2002, 68.

15 | For more information, see, for example, Rosales 2004, 1497–1498.

16 | Csirszki 2025, 244.

are carefully categorised, allowing readers to navigate sources with ease. The work draws on an extensive body of scholarship, including 483 items, alongside 20 newspaper sources that situate the analysis within broader public and societal debates. In addition, 57 institutional documents are cited, demonstrating close attention to the work of relevant organisations and policy-making bodies. The legal dimension is thoroughly documented through 45 references to laws,¹⁷ as well as 44 cases. This comprehensive referencing is further complemented by a detailed index, improving the book's ease of use and facilitating targeted research.

It is clear that the monograph goes far beyond the straightforward presentation of basic information typical of lecture notes or schematic teaching aids. Rather than offering a simplified or purely descriptive overview, the author undertakes a more ambitious scholarly enterprise. The work is characterised by analytical depth, conceptual rigor, and a deliberate engagement with the subject matter. Rather than limiting itself to the presentation of primary knowledge, the book – by integrating theoretical reflection, contextual interpretation, and systematic evaluation – encourages readers to develop a deeper and more nuanced understanding of the field. In this sense, it functions not only as an educational tool but also as a substantial academic contribution, inviting reflection, debate, and further research.

Overall, *Agriculture, Sustainability and Competition Law: Policy Paradigms and Their Legal Implications* represents a significant and timely contribution to legal scholarship. The monograph addresses a problem that has become increasingly difficult to ignore in both academic debate and policy practice: how competition law functions in agricultural markets that are expected to deliver efficiency, sustainability, and socially acceptable outcomes for producers. By examining this issue through the lens of competing policy paradigms – particularly neoliberal agricultural policy and food sovereignty – Csirszki makes a thoughtful and well-substantiated contribution to debates on the regulation of agri-food markets. The book will therefore appeal not only to scholars of competition and agricultural law, but also to policymakers and practitioners concerned with how agricultural regulation can adapt to growing sustainability challenges.

17 | Including both binding legislation and soft-law instruments.

Reference list

1. Behrens P (2015) *The Ordoliberal Concept of “Abuse” of a Dominant Position and Its Impact on Article 102 TFEU*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2658045 [29.01.2026].
2. Csirszki MM (2025) *Agriculture, Sustainability and Competition Law: Policy Paradigms and Their Legal Implications*, Routledge, London.
3. Frederick DA (2002) *Antitrust Status of Farmer Cooperatives: The Story of the Capper-Volstead Act*, U.S. Department of Agriculture.
4. Glick M (2019) *American Gothic: How Chicago Economics Distorts ‘Consumer Welfare’ in Antitrust*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3423081 [29.01.2026].
5. Hovenkamp HJ & Scott Morton F (2020) Framing the Chicago School of Antitrust Analysis, *University of Pennsylvania Law Review* 168(7), pp. 1843–1878, <http://dx.doi.org/10.2139/ssrn.3481388>.
6. Rosales WE (2004) Dethroning Economic Kings: The Packers and Stockyards Act of 1921 and Its Modern Awakening, *Wisconsin Law Review* 2004/5, pp. 1497–1533.
7. Röpke W (1942) *International Economic Disintegration*, William Hodge and Company Limited, London.
8. von Dietze C (1942) Landwirtschaft und Wettbewerbsordnung, *Schmollers Jahrbuch*, pp. 129–157.
9. Witt AC (2019) The European Court of Justice and the More Economic Approach to EU Competition Law – Is the Tide Turning?, *The Antitrust Bulletin* 64(2), pp. 172–213, DOI: 10.1177/0003603X19844637.

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