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Legal regulation of natural resources in the Czech Republic: an overview

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JUDr. Hana Müllerová, Ph.D., Researcher at Academy of Sciences of the Czech Republic - Institute of State and Law, www.ilaw.cas.cz, mullerova@ilaw.cas.cz. This working paper is based on the report given within the "Workshop on natural resources & role of states and the capital" held by the University of Maribor, Faculty of Law, on September 1 – 2, 2014, which made a part of the project co-funded by the European Social Fund and the Ministry of Education, Science and Sport, implemented within the framework of the Operational Programme for Human Resources Development 2007-2013, 3rd priority axis: Development of human resources and lifelong learning, activity 3.3.: Quality, competitiveness and responsiveness of higher education. This paper aims to present a brief overview of the natural resources regulation in the Czech Republic.

Plan of the paper:

1 Constitutional background of natural resources preservation

In the Czech Republic, the environmental protection is based on a constitutional background, set in the Constitution of the Czech Republic[1] and in the Charter of the Fundamental Rights and Freedoms of the Czech Republic.[2]

1.1 Art. 7 of the Czech Constitution

Article 7 of the Czech Constitution reads as follows:

> *The state shall take care of the careful treatment of its natural resources and the protection of its natural wealth.*

This provision establishes the state´s responsibility for preservation of natural resources and the environment. It means that the state bears the main and general responsibility for the environmental policy, legislation, environmental-friendly decision-making and practical enforcement. The provision binds the state to treat its natural values not arbitrarily but in a responsible way. This obligation may be seen, in its interpretation, as closely related to the sustainability principle; i.e. covering the obligation of the state not to advance economic interests primarily but to balance the competing interests with a maximum regard to the environmental protection.

Article 7 does not establish any subjective right of citizens for the state´s fulfilment of these environmental commitments. It means that there is no litigation possible to claim this constitutional Article. In practice, this article is always mentioned when describing the constitutional basis of the Czech environmental protection, as an important interpretational instrument or principle but it cannot be litigated separately.

There is a state obligation to preserve natural resources formulated but no duty of individuals to preserve the environment. In the Czech law, there is no explicit obligation of everyone to protect the environment. However, such an obligation may be recognized as a derivative of the everyone´s right to a favourable environment.

1.2 Art. 35 of the Czech Charter of Fundamental Rights and Freedoms

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[1] Constitutional Act No. 1/1993 Coll., Constitution of the Czech Republic. (“Coll.” is used for the Czech Collection of Laws [“Sb.” for “Sbírka zákonů” in Czech].

[2] Constitutional Act No. 2/1993 Coll., on the Charter of Fundamental Rights and Freedoms.

Article 35 of the Czech Charter of Fundamental Rights and Freedoms reads as follows:

> *(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, while exercising his/her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by law.*

Article 35 (1) of the Charter recognizing the right to a favourable environment is very nice to read in our Constitution but the reality is less amazing. The constitutional right suffers from several insufficiencies, for which it has been very rarely applied in litigation: since 1993 when the right was recognized in Constitution, the Justices of the Czech Constitutional Court have heard no more than 16 constitutional complaints claiming directly the right to a favourable environment up to now.

There are three main legislative and interpretative factors that made the right to environment practically unenforceable.

Firstly, under the Czech Charter, the right to environment is not self-executing but an implementing law stating how to claim the right is missing. In these circumstances, litigating the right is still possible but very exacting for the claimants who have only the constitutional provision itself and the general mass of the entire environmental legislation to rely on.

Secondly, in the Czech legislation, the status of a participant in administrative or judicial proceedings is enshrined unequally as regards individuals and legal entities, especially the environmental NGOs. Environmental NGOs are granted wide access in various types of proceedings concerning the environment in the Czech Republic, especially thanks to the Nature and Landscape Protection Act enabling them to participate in any administrative procedure relating to the nature protection. All other persons including individuals may only enter proceedings as participants if their rights can be directly affected by the outcome of these proceedings. This interpretation limits their participation in fact to cases, when their rights to real estate property within the area concerned in the proceedings are affected. In the Czech courts it is not possible to claim exclusively an infringement of environmental norms without challenging an infringement of one's own rights because the Czech Republic has no public interest litigation (*actio popularis*).

Thirdly, the existing judicial interpretation of who may claim the right to a favourable environment excludes the environmental NGOs. The Constitutional Court argued in 1998 that legal persons as artificial entities cannot be affected by a poor environmental quality and that is why they cannot claim the substantive right to a favourable environment. In environmental proceedings they may only have procedural rights. This way of interpretation has been followed by other courts and consequently, all complaints filed by environmental NGOs claiming the substantive right to environment have been rejected.

To conclude, there is a deep discordance between the position of the environmental NGOs that have wide participatory rights in environmental proceedings but no substantive right to environment, and the position of individuals who have the substantive right but can apply it constitutionally only to a limited extend. There are many active NGOs in the Czech Republic,

whose members would not hesitate to spend their time and energy combating the environmental injustice, but there are not many individuals who are ready to defend their pieces of land in demanding and long-lasting proceedings with administrative authorities or in courts "only" for the sake of the environment.

As a result, the constitutional right to a favourable environment can be seen as a rather toothless instrument so far that has not much power to help the environment in the Czech Republic. A lot should be improved in this area in the future.

Article 35(2) of the Charter guarantees the right of everyone to timely and complete information about the state of the environment and natural resources. This constitutional right, being closely connected with the Aarhus Convention´s[3] first pillar requirements (the Czech Republic is a signatory of this convention) is much more successful in the Czech practice than the right to a favourable environment. There is a special law concerning environmental information that provides the applicants with all necessary details of the procedure and obliges the public authorities to actively inform and publish environmental information on the web.[4]

Article 35(3) of the Charter expresses the relation between the environmental protection interests and any subjective rights also protected by law. Article 11(3) of the Charter fulfils the same role for proprietary rights only. Article 11(3) reads as follows:

> *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 so as to harm human health, nature, or the environment beyond the limits laid down by law.*

These two provisions present the constitutional background of the relation between the environment and subjective rights, explicitly the ownership rights.

Both provisions clearly prefer the environmental protection to the protection of any subjective rights when they are exercised. It means that during performance of any subjective rights (the proprietary rights being on the first place) the holder of these subjective rights may not damage or even endanger the environment and the values enumerated here. Or in other words, if there is a conflict between the performance of an individual right and the interest of the environment, the environment should take the precedence. And also, this provision means that the Czech Constitution regards the environment to be a higher value than the ownership.

The provision on the proprietary rights applies also to the owner himself.

The formulation "beyond the law" means that the precedence of the environment is not absolute: such interventions into the environmental integrity that do not exceed the limits set by law (e.g. the emission limits) are allowed.

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[3] The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was published in the Official Journal of International Treaties of the Czech Republic as No. 124/2004 Collection of International Conventions ["Sb. m. s." in Czech].

[4] Act No. 123/1998 Coll., on the Access to Information on the Environment.

2 Natural resources and proprietary rights

2.1 Natural resources as property

2.1.1 Natural resources owned vs. excluded from ownership

The environment as a whole cannot be an object of ownership, only certain parts of the environment can. Under the Czech law, the following parts of the environment **may be owned**:

- the soil including the vegetation thereon (this means that all pieces of flora are owned by persons who own plots where they grow), and certain minerals underneath (only those that are "unreserved", i.e. not reserved to be owned exclusively by the Czech state; for details see chapter 3.6);
- animals kept by humans.

The other parts of the environment are **excluded from ownership** in the Czech Republic. These are:

- surface water in watercourses and lakes, and groundwater (until they are taken from these natural forms of their occurrence);
- air;
- wild animals.

2.1.2 Common goods and the ownership

In the Czech law, the legal term of "common goods" does not regard "common (shared) property" but "common usage" of such a part of the environment. It means that the common goods may be owned by state, by a public corporation or a private person but they may be used by the public or to a public purpose and that way, the proprietary rights are limited. In the most general sense, all the environment is a common good (as the Czech Constitutional Court held).

Examples of common goods:

a) Local roads.

B) Open landscape. State and municipal plots in an open landscape shall be walk-through due to the Nature and Landscape Protection Act.

C) Forests. The owners are not allowed to surround their forests with a fence in order to prevent the public to enter the forest: forests shall be publicly accessible due to the Forest Act. On the other hand, the forests´ visitors are limited with several bans (for more details see chapter 3.2.3).

D) Surface waters. Surface waters are common goods as well and anybody may take water without any permission of a Water Protection Authority (e.g. for watering) or use it for swimming, canoeing, etc. Taking surface water is not unlimited. Firstly, free and anybody accessible taking of water applies only on publicly accessible plots (riversides). It means that it is not allowed to enter e.g. somebody´s private garden to get to the river. Secondly, only

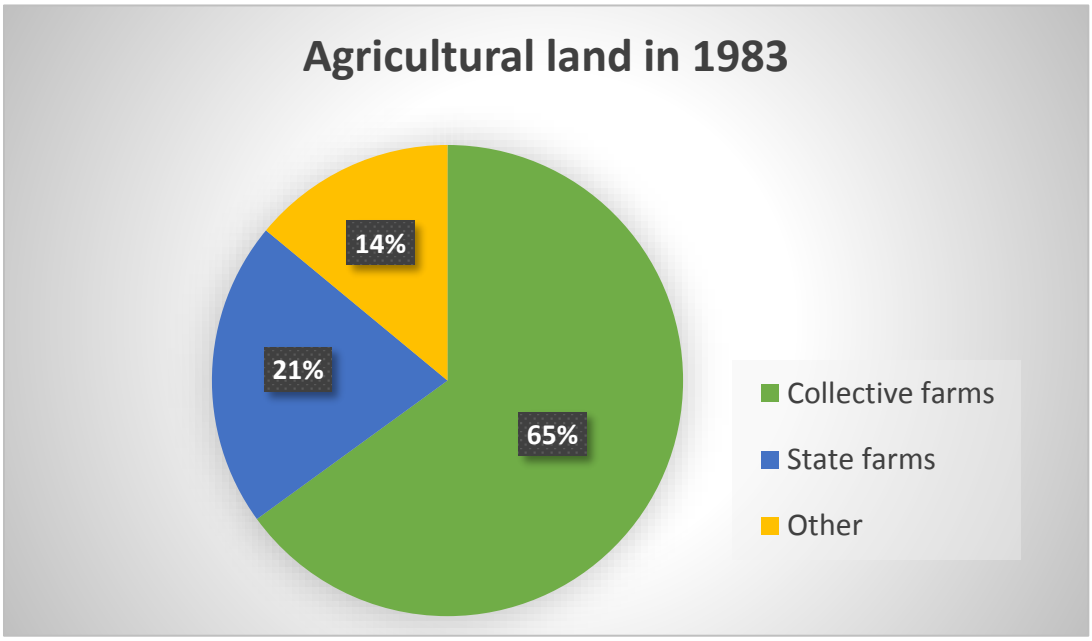
manual taking of water is free. If you want to use any technical equipment, e.g. a pump, you are required to have a licence.

2.2 Proprietary structure in owned natural resources before and after 1989

After the World War II, a socialist regime was established in the then Czechoslovakia, which lasted till 1989. In November 1989, so called Velvet Revolution led to the communist power breakdown. In 1993, the federal state divided into the Czech Republic and the Slovak Republic.

2.2.1 Proprietary situation in agricultural and forestry land before 1989

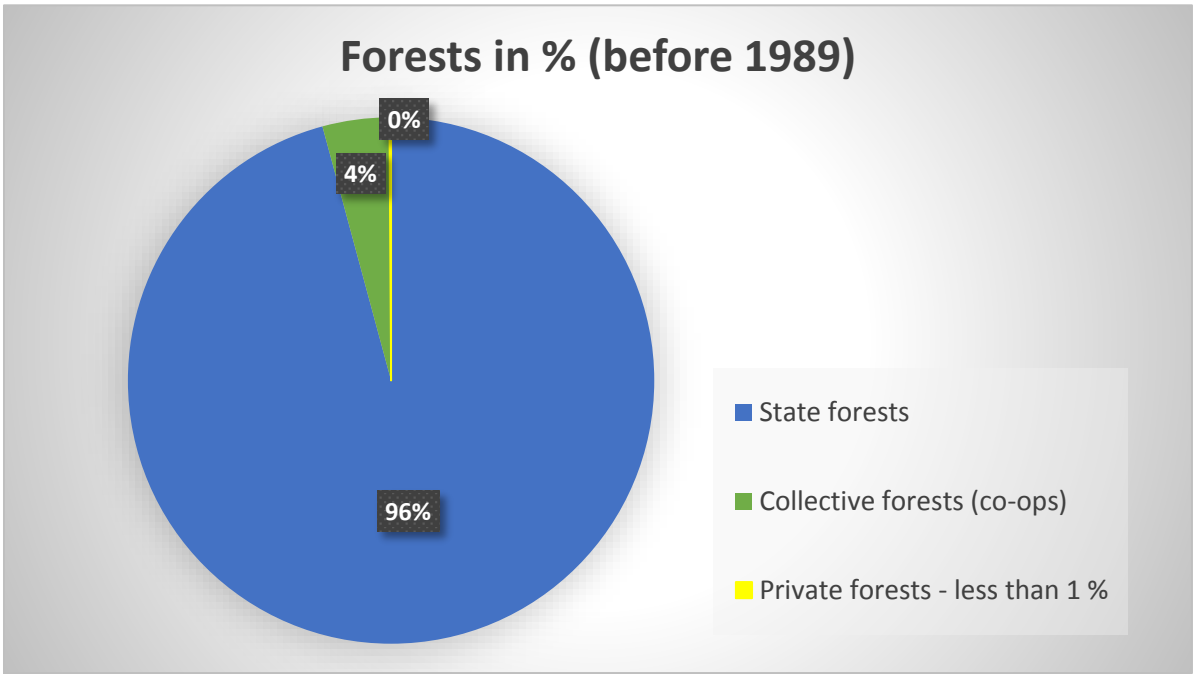
Before 1989, the ownership to agricultural land divided into three groups. Here is an example of the situation in 1983:



Source of the data: Reports of the Czech Ministry of Agriculture (www.eagri.cz) and ZEMAN, K. Vývoj vlastnictví k půdě a souvisejících procesů na území ČR od roku 1918 do současné doby. Vysoká škola ekonomická v Praze, Nakladatelství Oeconomica – Praha 2013. ISBN 978-80-245-1915-9.

The biggest part of the agricultural land was managed by collective farms (i.e. socialist cooperatives or co-ops). This land was neither in state property nor in private property but in the property of cooperatives that were established after 1948 in villages by pressure. Then, the people who owned agricultural plots and farm animals were prompted to give this property to the cooperative established in their village; they also often became members and employees of the cooperative. The process was accompanied by communist propaganda against owners of bigger land property or big farmers who were pejoratively spoken about as "*kulaks*". All the small plots were integrated together (their natural boundaries were ploughed) as well as farm animals that were put together in large houses (cow houses, pig farms etc.). This process was called "**collectivization of agriculture**".

Forests were mostly in the state ownership before 1989: all forests in natural reservations and most of the other forests (forests used for intensive wood production – some of them were also in co-ops). See the diagram of the situation before 1989:



Source of the data: Reports of the Czech Ministry of Agriculture (www.eagri.cz)

2.2.1.1 Proprietary changes after 1989

There have been huge changes in land property after 1989, motivated by both

1. the will to correct the unlawful confiscation and nationalization of the land property during the socialist regime, and

2. the effort to transform the socialist centrally planned economy into a market economy, based on private property.

There were several processes based on early 1990s legislation that were aimed at these property changes:

1. restitution,

2. privatization,

3. transfer of property from state to municipalities.

All the above mentioned processes were very complicated, the legislation was large and kept many lawyers busy for many years. Some of the processes have not yet been fully accomplished till today.

1. Restitution:

The main target of restitution process was to correct the unlawful confiscation and nationalization of the land property during the socialist regime. There were several phases of confiscation and nationalization after the World War II in the Czech Republic. The date of confiscation or nationalization, decisive from the restitution legislation point of view, was the date of 25 February 1948. That day the communists took the political power in the then Czechoslovakia. It means that who lost his property after the date of 25 February 1948 could request its giving back in the 1990s. (Also his heirs could do so if the original proprietor died).

During the restitution process, the following types of ownership were object for restoration: agricultural and forestry land, ponds, and buildings for agricultural purposes if they were in state property. If the restitution was not possible (e.g. change in property, change in purpose of use – e.g. sport facilities, cemeteries, cultural monuments and others were excluded from restitution), offering substitute (other) land or a financial compensation took place.

Till today, some 97 % of restitution requests have been processed and accomplished. This took some 450 thousand of restitution applications according to which more than 1 330 000 ha of land were transferred.

2. Privatization:

The privatization legislation from the early 1990s was aimed at the transformation of the centrally planned state economy towards a market economy. The state property of means of production should have been transferred to private property. The privatization covered facilities, banks, land and other property and there were several ways how the privatization was made, e.g. direct selling of land or facilities; renting of land at advantageous prices; voucher privatization (coupon privatization).

3. Transfer of property from state to municipalities

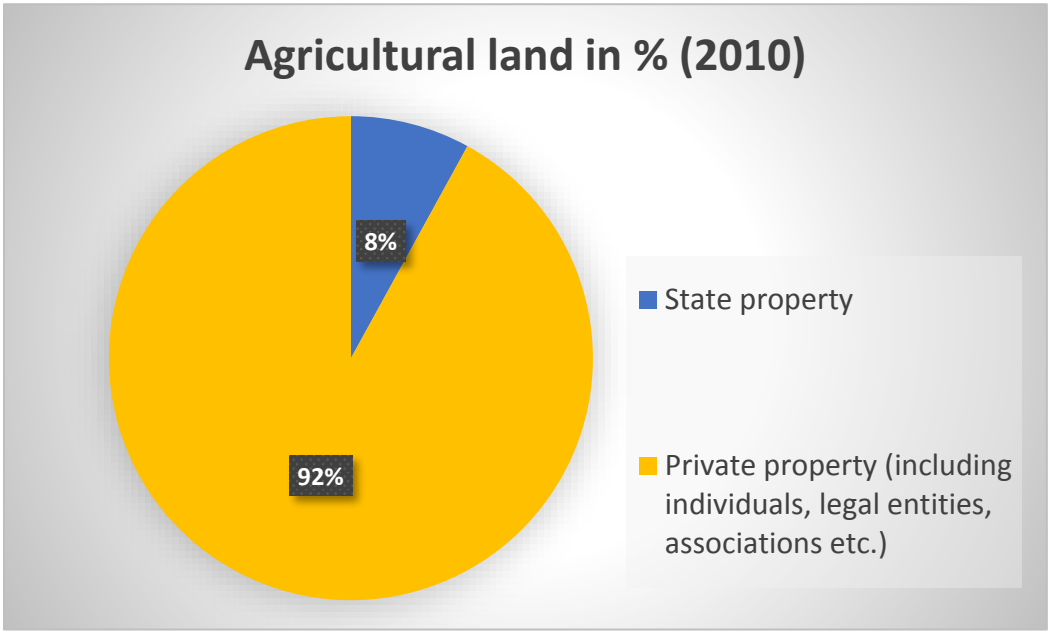
This was the least complicated way of de-nationalization of land. All the property in land and facilities that the municipalities owned on 31 December 1949 and was not object to restitution, and also certain state property, was *ex lege* transferred to their property (without any administrative or judicial procedure).

Only recently, the **restitution of the church ownership** has started, together with the process of separation of church and state. The ownership of churches (mostly of the Roman-catholic church) was confiscated and nationalized in several historical periods on the Czech area, starting with Kaiser Joseph in the time of the Austro-Hungarian Empire in the 18th century. Then the second wave was after the First World War, in the time of the First Czechoslovakian Republic (President T. G. Masaryk), and for the last time and most severely after 1948. The churches and the clerics were put under state control, church property was confiscated and the state, in return, made a commitment to pay the salaries of clerics and reimburse the necessary expenses for buildings of churches.

After 1989, it might have been the right time to make a separation of church and state, which also most of the Czech people were wishing. However, in the Czech Republic it was a topic of a high political fragility and it lasted an enormous period of time to prepare a property and financial settlement of the state and churches. Finally in 2012 a special Act on property settlement of state with churches and religious societies was passed and came in force in 2013. The Act is, however, a result of very long and complicated political negotiations and in the end, the Act has a huge number of critics on both sides, the churches and layperson. The Act supposes to give back to churches the property confiscated to them from 1948 to 1990: agricultural land, forestry land and certain other property including movables if the church proves that it was in its property. Exempted are things now in individual property, the Prague St. Vitus Cathedral, plots in national parks and some others. Moreover, the state made a commitment to pay a financial settlement to churches for the time of 30 years.

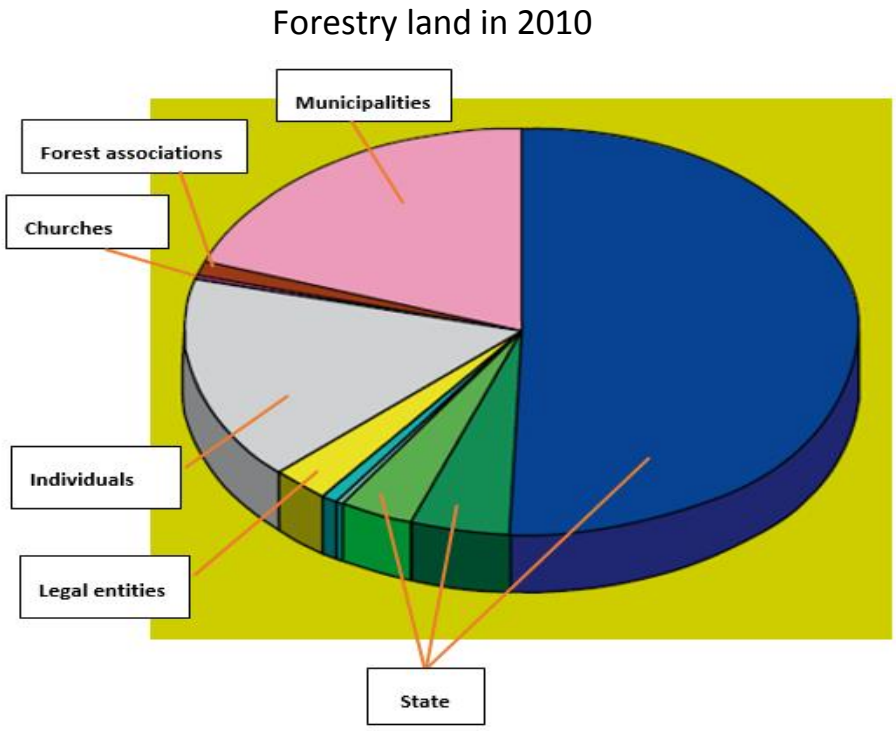
2.2.2 Today´s proprietary structure

Today, the private property of agricultural land is entirely predominant over the state property. Individuals and legal persons own more than 3.700.000 ha, the state owns some 320.000 ha of agricultural land.



Source of the data: Reports of the Czech Ministry of Agriculture (www.eagri.cz)

As for forestry land, the situation is a bit different: the state purposely kept a large part of the forestry ownership after 1989, the forests were covered in the process of restitution but were not sold in privatization. Today, the biggest enterprise in the forestry ownership and management in the Czech Republic is “Forests Czech Republic, state enterprise”. However, the proprietary structure here is much diversified as well.



Source of the data: Reports of the Czech Ministry of Agriculture (www.eagri.cz)

2.3 Limitations in proprietary rights due to the environmental protection

The Constitution protects the environment but at the same time it protects also the proprietary rights.

Article 11 of the Charter guarantees the right to property, gives all the proprietors the same level of protection (principle of equality before law) and guarantees inheritance. Any expropriation or compulsory restriction of property rights is admissible only if there is:

- public interest;
- special legislation; and
- compensation.

The interest in environmental protection may play the role of the public interest here.

Besides these most serious interventions in proprietary rights, there are numerous less severe restrictions of proprietary rights admissible under the Czech law in favour of natural resources protection. Some of them arise directly from environmental laws, some may be established in administrative acts. There is usually no compensation.

Examples:

A) Nature protection: In national parks, the owners are limited in ways of cultivation of their agricultural land (e.g. restrictions on using intensive farm technologies or certain fertilizers) thus their crop is lower than it would be if they used intensive ways of farming. The law guarantees a financial compensation to them.

B) Water protection: The owners of riverbank plots are obliged to enable entrance of persons administering the watercourse (no compensation).

3 Protection of Individual natural resources and regulation of their exploitation

The Czech legal regulation of natural resources protection and exploitation is not homogenous but diversified in several subsections of legislation.

The Czech environmental legislation had its roots in 1970s (the first Nature protection Act and the Water Act). However, a real and complex protective environmental legislation came only after 1989 when the cornerstone laws of individual natural resources protection were prepared, as well as other parts of the environmental legislation (wastes, chemicals, GMOs, etc.). The environmental legislation was established as a set of several laws with their implementing decrees. Each of these laws sets up separate legal instruments for protection – thus we have several types of permissions, licences, authorizations, consents, approvals, taken in different procedures, and several types of environmental decisions of an administrative character, which all makes the Czech environmental law a bit a maze. Unfortunately, the Czech Republic has never had a Code of environmental law that would unify all the procedures or at least certain elements of them.

What has had a huge influence on the Czech environmental law is of course the EU environmental legislation that is to be transposed into national laws. The Czech Republic entered the EU in 2004. There was a huge legislative activity before the entrance in order to harmonize the Czech legal order with the *acquis* and since then, all the new EU legislation is also being implemented.

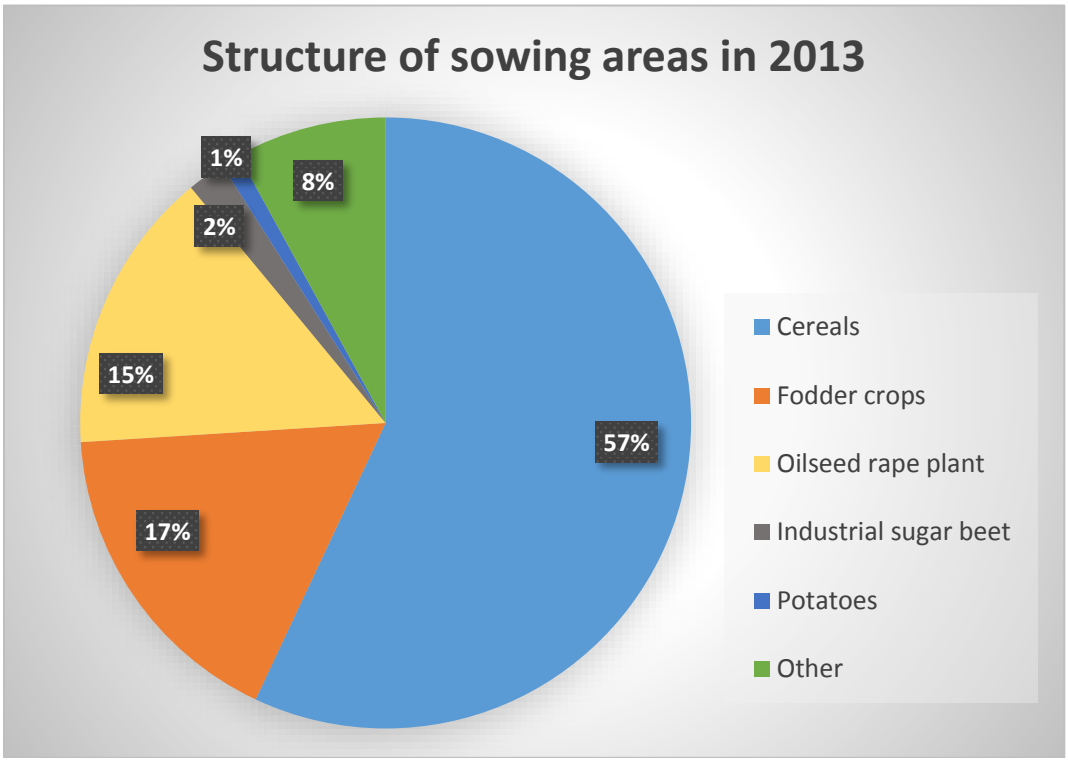
3.1 Agricultural land

3.1.1 Agricultural land situation in the Czech Republic

The agricultural land covers 54 % of the Czech Republic area. Here are some other figures, trends, predominant use and structure of sowing areas:

Agricultural land area in total	**42 244 km²** **54 % of the whole country area**

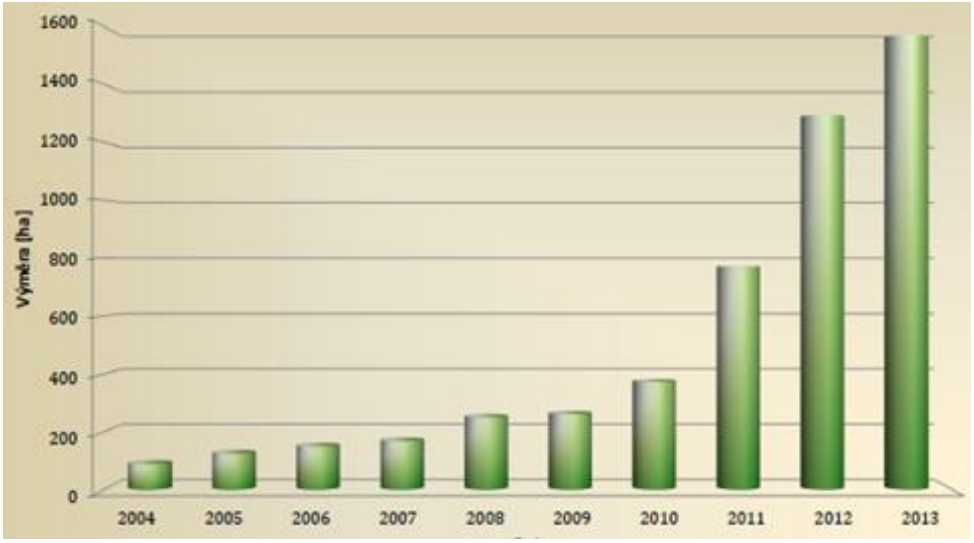
Area development	Constant slow decrease, esp. of arable land (in 2012, smaller by 2 900 km² in comparison with 1966)
Share of rented land	90 %
Share of persons employed in agriculture	3 %
Predominant use of agricultural land	70 % arable land 27 % grass cover (grasslands, meadows, pastureland)



Source of the data: Ministry of Agriculture, www.eagri.cz, and the Czech Statistical Office (http://www.czso.cz/eng/).

Structure of planting crops is influenced on one hand by the needs of food production (e.g. wheat share within cereals is constantly on the rate about 30 - 33 %); on the other hand, by the development of state support provided to growing certain types of plant products. Here I mean especially the government support to the biomass plants (energy plants) that has been strongly influencing the structure of using our land, and also, of course, our landscape. Example: Thanks to blooming canola (oilseed rape plant) fields, a large part of our landscape turns yellow each May. Growing energy plants is becoming very popular in the Czech Republic because it is very profitable thanks to its support, as a type of renewable energy source. Therefore, several types of energy plants have been growing increasingly in the

Czech Republic. Also so called “short rotation coppice” (we call it “fast growing trees”) plantations are getting very popular among farmers in the Czech Republic, as it is to be illustrated in the following chart:



Source of the data: Ministry of Agriculture

3.1.2 Agricultural land preservation in legislation:

Act No. 334/1992 Coll., on Agricultural Land Protection, protects both quantity and quality of the agricultural land.

Quantity protection:

The core principle explicitly formulated in the Act is: the agricultural land shall be used preferably for agricultural purposes. It means that the agricultural land should be protected from using for non-agricultural purposes (building, infrastructure, solar power plants etc.).

There is a special legal instrument necessary in order to use any piece of agricultural land to non-agricultural purposes: the approval of the Agricultural Land Protection Authority, which is:

- necessary to any larger change of use of agricultural land (not for small projects – e.g. for building a garage on a plot in an individual ownership),
- necessary before the main administrative permission (e.g. the building permit),
- charged with a fee,
- prescribing the afterwards re-cultivation of the plot if the removal is planned to be only temporary.

The reality in the Czech Republic as regards the protection of the agricultural land quantity is not satisfactory. The Act originated in 1992 and the then fees for agricultural land removals were not changed until 2010, i.e. they became very low and advantageous for investors.

Large plots of agricultural land were frequently removed from agricultural use, esp. surrounding large cities, and huge storages or commercial zones were built there. Recently, the same has applied also for large solar power plants. Even though the fees were raised substantially in 2011, now a new amendment is under preparation that is trying to get several exemptions into the Act so as to be more advantageous for investors again.

Quality protection:

The Act sets several principles and rules, obligatory for farming practice, in order to

- prevent soil erosion (e.g. ban on ploughing down the slope),
- ban contamination of soil by other than allowed substances (e.g. approved fertilizers),
- give special rules for other related activities (esp. industrial, building, mining activities; e.g. an obligation to remove the upper fertile layer of the soil and ensure it is used somewhere else).

3.2 Forests

There is the Act No. 289/1995 Coll., on Forests. Similarly to the protection of agricultural land, it protects both quantity and quality of forests, i.e. forestry land and the forests as such.

3.2.1 Protection of quantity of forestry land

The rules on the forestry land are very similar to those on the agricultural land. The forestry land shall be preferably used for the purpose of forests (keeping, growing, developing their ecological and environmental functions, serving as natural habitats of many species etc.). To use the forestry land to other purposes, a permit of the Forestry Authority is necessary and also a charge is paid. In contrast to the agricultural land, using the forestry land to non-forestry purposes does not make a big problem in the Czech Republic, and the total area of forestry land within the state is rather increasing.

3.2.2 Protection of quality of forestry land and trees

There are strict rules for persons making logging activities or transport of wood in the forests, e.g. ban on any contamination and deterioration of the forest, using only biodegradable technical liquids in machines, etc.

The young trees: only certified seeds are allowed, the varieties of trees only those that correspond to the Czech climatic and other conditions (no exotic etc.)

3.2.3 Public access to forests and rules of visiting the forests

Under the Czech law, the public shall have access to forests. That is why the owners are forbidden to fence their forests in order to display the private ownership only. Of course, parts of forests may be fenced in, e.g. tree nurseries for young trees, game enclosures (deer parks). On the other hand, there are strict rules for the public how to behave in the forests; e.g. it is forbidden to: make any noise, enter the forest with any motor vehicles, extract any trees including very young trees, make fires, camp (to make tents outside the places designated for that purpose), smoke, disturb wild animals, discard any wastes etc. On the other hand, anybody may pick up dry wood or sticks as firewood for himself to carry away, and anybody may also pick forest fruits – berries, mushrooms etc. By the way, the Czechs like picking berries and mushrooms very much.

For checking the observance of this part of law, the Czech legislation has a special kind of authority - individuals called the **forest guard**. The forest guard may control the individuals in forests and if some violation of bans on activities in a forest is uncovered, the guard may impose a fine (an "on the spot fine" only); in more severe cases or if the perpetrators is not willing to cooperate, the guard shall hand them over to the police.

3.2.4 Categories of forests

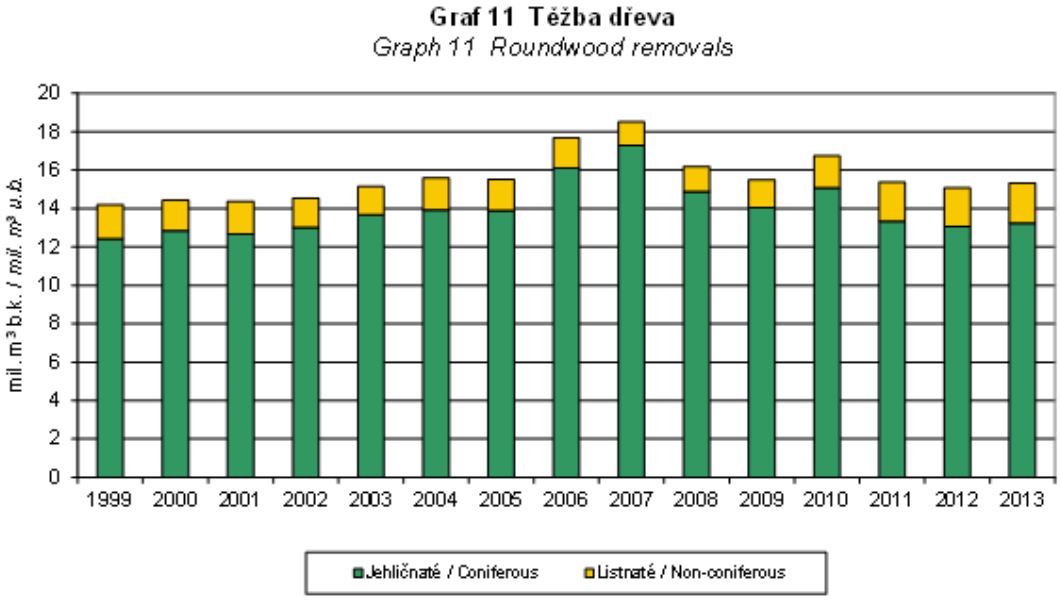
Under the Forest Act, the Czech forests are divided into several categories, due to their prevailing function within the landscape and ecosystem. The most valuable forests, the richest with natural species, are in the natural reserves, e.g. in national parks. The logging there is limited to only health or natural disasters reasons (e.g. a serious occurrence of insect pests, situations of fallen trees after windstorms or floods etc.). The prevalent forests are the so called economic forests that are allowed to be logged under the conditions and rules given by the Forest Act and the forestry plans.

3.2.5 Rules of felling & logging

These rules are established in order to prevent unlimited forestry logging only for profit. The Forest Act establishes the following rules for forest owners:

- any logging activities must comply with the Act and with the approved forestry plan (these plans are obligatorily made for every forest and approved by the Forestry Authority),
- the trees under 80 years of age must not be cut,
- the area of any piece of continuously felled forest may not exceed 1 ha; at the same time, the wideness of the logged stretch of the forest may not exceed the height of the logged forest,
- the free area after logging must be re-forested within 2 years,
- no contamination or other deterioration must be done to the forest.

Development of forest felling in the Czech Republic from 1999



Source of the data: Czech Statistical Office (www.czso.cz)

3.3 Nature

Act No. 114/1992 Col., on the Protection of Nature and Landscape was approved as one of the first environmental laws in the Czech Republic. The law is very complex and sets a high standard of nature and landscape protection.

3.3.1 Protection of the landscape

Any changes in the territory that may cause a significant change of the local landscape appearance (e.g. high buildings) are allowed only if permitted by the Nature Protection Authority.

3.3.2 General protection of nature

General protection of nature covers all species (i.e. not individual plants or animals). All plant and animal species are generally protected from any activities that would cause their (the species) destroying or extinction.

Under the general protection of nature, the following types of protection also take place:

- Protection of the species naturally living on our territory. It means that it is forbidden to release free or to grow or breed animals or plants of invasive non-original species, unless there is a permission of the Authority.

- General protection of all birds, according to the EU "Birds directive" implemented in the Czech law.
- Trees growing out of forests (separate trees in the landscape, lines of trees alongside roads, old or big trees anywhere etc.) – cutting down allowed only with a permission of the Authority.
- Caves and paleontological findings etc.

3.3.3 Special protection of nature

There are two types of a special protection of nature:

- territorial protection,
- protection of (endangered) species.

Territorial protection of nature:

As for the territorial protection, we have had a traditional system of forms of protected areas since 1970s; these are: **national parks, regional protected areas, national reserves, reserves, national sights and sights**. They differ from each other by their area (large x small) and also by their value (national being more valuable). As you can see on the map and charts bellow, we do have 4 national parks and 25 regional protection areas. The other forms are not indicated in the map as they are small.

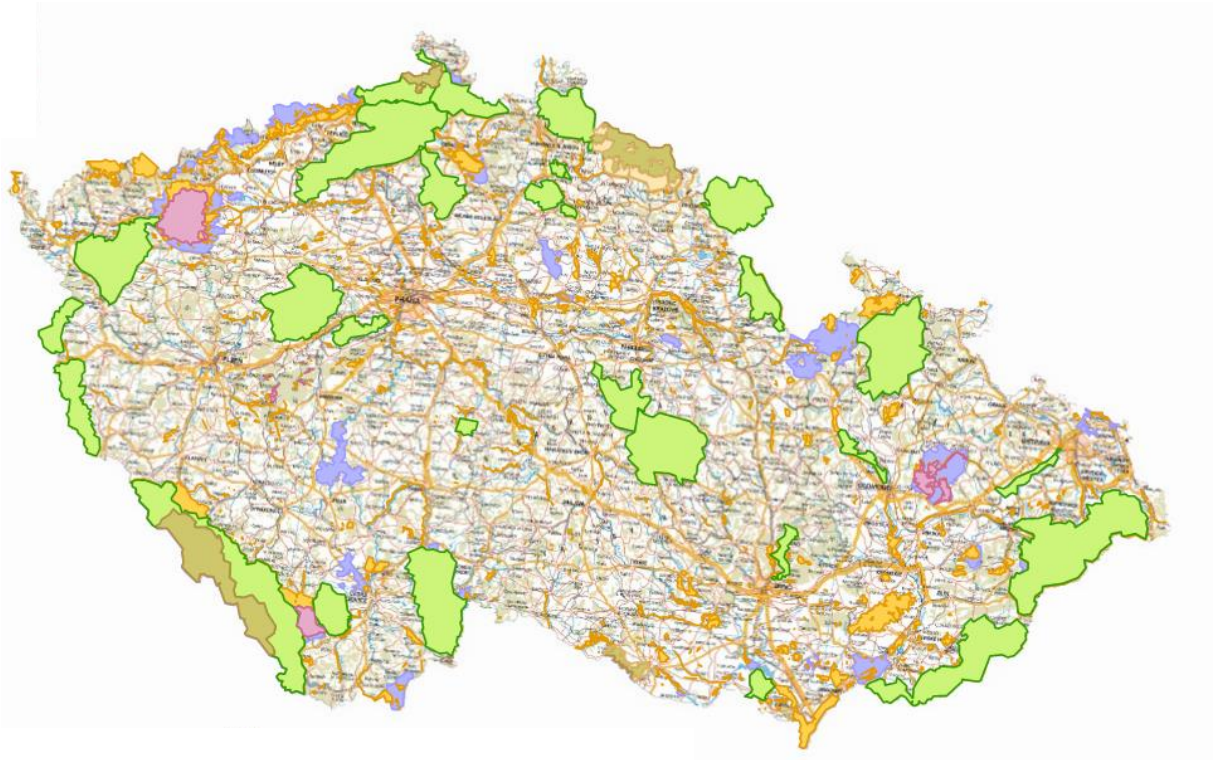
The main rules for the protection of each category of the protected areas are set in the Nature and Landscape Protection Act, and the more detailed rules are contained in special documents with which individual protected areas have been established. E.g. national parks are established by laws and each of them has its individual Code of protection. In total, the traditional forms of the territorial protection of nature cover some 16 % of our country.

When the Czech Republic was required to implement the EU directives establishing the European network of nature protection NATURA 2000, the Czech government decided not to remake the whole system of the territorial protection into a completely new shape but to add the necessary elements of the European protection to our system as new types of protection. That is the reason why we now have 9 forms of territorial protection in total: the new types emerge from the European legislation and these are **Sites of Community Importance**, **Birds protection areas** and also the **Contractual nature protection areas**. The last mentioned type means that the protection of nature on a piece of land is established based on an initiative of the owner, and not by law but by a contract between the owner and the Nature Protection Authority. Each contract also gives the details of the site protection. This form is developing quite well, some 3 years ago there were only 3 contractually protected areas and now we have 18 of them.

What is important for our territorial protection is, that the individual forms of protection may **overlap** in the same piece of land and they really do. For example, within the territory of a regional nature protection area, the most valuable small locations may be declared as national sights for example. The same is with the European forms, e.g. Sites of Community Importance are often located within the Czech protected areas that had been already

established. This fact can be seen on this and other map bellow. Many Sites are in the locations where national parks and regional protected areas are.

Synoptic map of the protected areas in the Czech Republic:



A) Traditional Czech forms of territorial protection

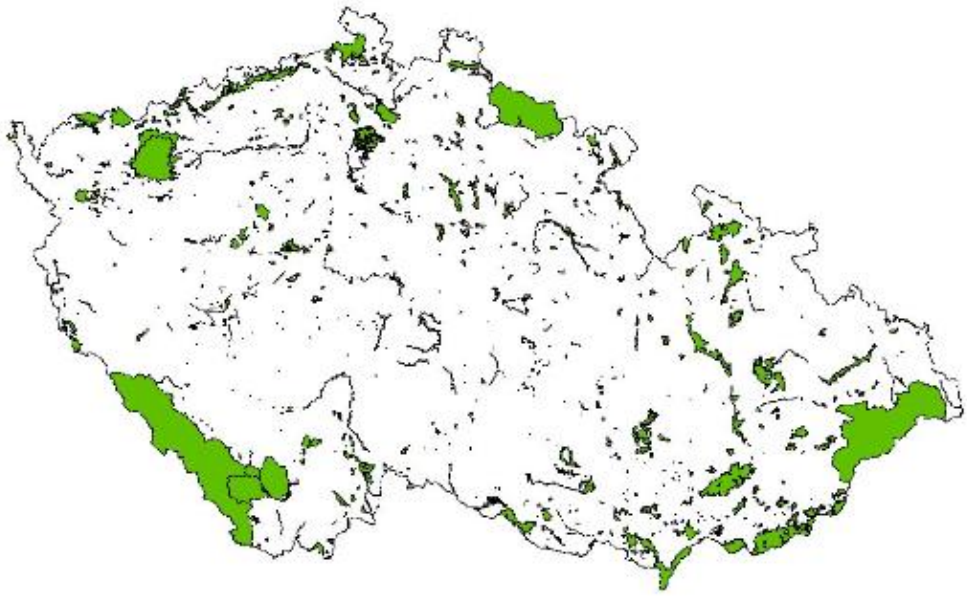
Map	Type of protection	Number	Area	% of the country
	National parks	4	119.500 ha	1,51 %
	Regional nature protection areas	25	1.086.738 ha	13,77 %
Not indicated in the map	**Small area protection forms (4 types)**	2.508	57.740 ha	0,73 %
	IN TOTAL	**2.537**	**1.263.965**	**16 %**

B) EU forms of territorial protection

Map	Type of protection	Number	Area	% of the country
	Natura 2000 protection areas (=Sites of Community Importance – SCI)	1.075	785.576 ha	9,96 %
	Birds protection areas (= Special Protection Areas – SPO)	41	703.430 ha	8,91 %
	Contractual nature protection areas	18	53.132 ha	0,67 %

Source of the data: Czech Agency of nature and landscape protection (AOPK; http://drusop.nature.cz/ost/chrobjekty/sumarizace/index.php?frame)

Sites of Community Importance in the Czech Republic:



(Source: the web site of the Czech Natura 2000)

The overlapping have been discussed – if they are advantageous or not. Both conclusions are possible. The overlapping on one hand elevate the intensity of the protection, make it more significant or higher but on the other hand it may be confusing to decide in each case what exact content the protection has in the locality.

All the protected areas are also marked in the terrain by signs with the Czech national emblem.

As for the agricultural land in national parks – due to the law, the land may not be cultivated normally with intense technologies, fertilisers etc. – for these limitations and thus for lower harvest, the owners of these agricultural plots in national parks may get a special financial compensation.

3.3.4 Special protection of species

Plant and animal species that count to those especially protected are divided into categories according to their degree how they are endangered (critically endangered, strongly endangered and endangered). All of them are subject to the same strict rules due to the Natural Protection Act: all parts, all stages of their development, and their biotope (habitat), animals living and dead are protected.

It is forbidden to intervene in their development, to disturb them, to injure them, to pick them etc. … all of these bans are applied to each and every individual of these species. It is the difference from the general protection of biodiversity. These bans are general and for everybody. The exemptions are possible only as a result of a special decision-making procedure – the decision on exemptions of the Authority of Natural Protection.

3.3.5 Landscape as common goods

As it has been already mentioned above, the open landscape shall be accessible to the public in the Czech law. This right of the public to enter may be restrained only exceptionally by the Nature Protection Authority, even preventively (sometimes e.g. the ban for entering the forest in the time of berries because the people often destroy the plants).

3.3.6 Public participation in nature protection

The opportunity of environmental NGOs to participate in administrative proceedings is granted in several environmental laws, with the Nature and Landscape Protection Act playing the key role. In Section 70, this Act enables the environmental NGOs to participate in any administrative proceedings concerning the protection of nature. Any environmental NGO may register at competent authorities to be informed on all administrative proceedings that these authorities are opening. If an NGO wishes to participate in particular proceedings, it is sufficient to notify the competent authority about it in writing and the NGO thus acquires a position of a participant, which brings an opportunity to make comments during the proceedings and to appeal against the final decision. The Czech NGOs often use this provision, which is relatively wide because it covers proceedings running not only under the Nature and Landscape Protection Act but also under other Acts (e.g. the Building Act, Water Act, Air Quality Protection Act), if such proceedings involve nature protection. Similar, but more restrictive clauses are enshrined in the Environmental Impact Assessment Act, in the Water Act, and in the Integrated Prevention Act[5].

3.3.7 The Guard of Nature

Similar as in the forestry, the Czech law has established a "nature protection guard" performed by individuals. The guard of nature are individuals who may control persons if they do not violate the rules for visiting nature. They work especially in national parks. They may impose fines or hand perpetrators over to the police.

3.4 Water

The surface water coverage takes 2 % of the whole country area in the Czech Republic. The main rivers are Labe (Elbe) and Vltava (Moldau) that flow to the Black Sea.

3.4.1 "Communist heritage"

If I simplify a bit, there were two big outcomes of the communist regime as regards water, visible to everyone: first, many ambitiously huge water reservoirs on rivers, and second, a very poor quality of surface water, esp. in rivers. As for the first one only briefly, the communist regime initiated building up several dozens of water reservoirs, including the largest one on Vltava river, Lipno, with the area of almost 5 000 ha. Of course it had several reasons, including the flood prevention and watercourses regulation. On the other hand, it

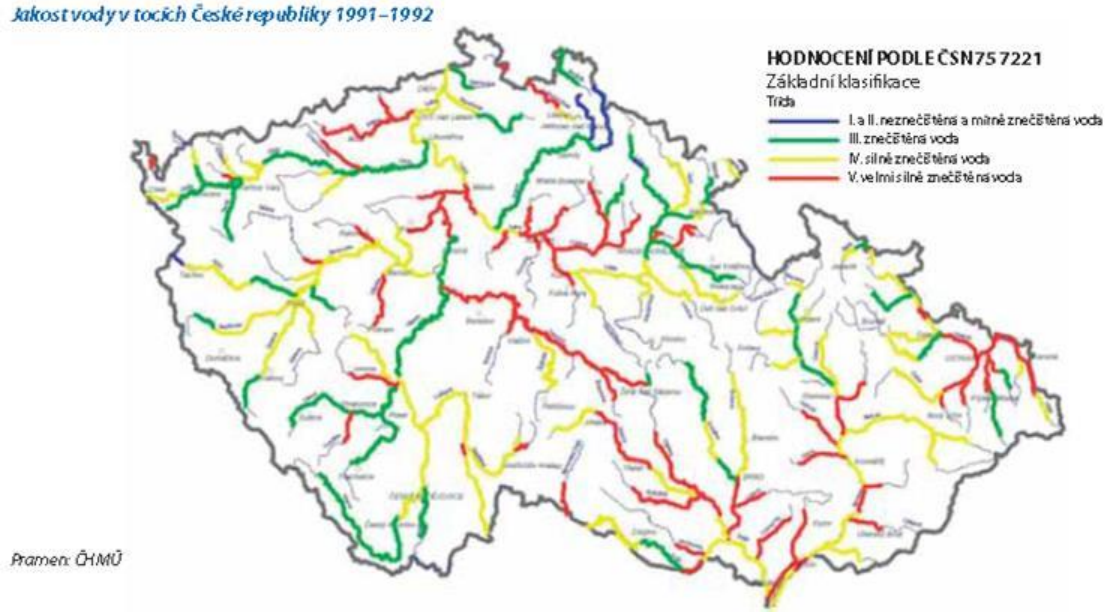
[5] Section 23 of the Act No. 100/2001 Coll., Section 115 of the Act No. 254/2001 Coll., Water Act, and.Section 7 of the Act No. 76/2002 Coll., on integrated prevention (IPPC Act).

brought huge changes to the landscape and also to inhabitants because several villages were covered with water and the people were removed.

As for the second, the communist regime mainly preferred industry over environmental concerns. Therefore, in the beginning of the 1990s, the poor river water quality was considered one of the most severe environmental problems of the then Czechoslovakia and later the Czech Republic. A lot was done in this field, starting with an immediate amendment of the Water Act from 1973 that had originally focused more on water management but less on water protection. In the field of water quality, the Czech Republic can be really proud of the improvements that had been done. Here you can see the comparison of river water quality in 1991 and in 2011, based on the same norms (the red colour indicates the most polluted river sections):

1) Pollution of rivers in 1991:

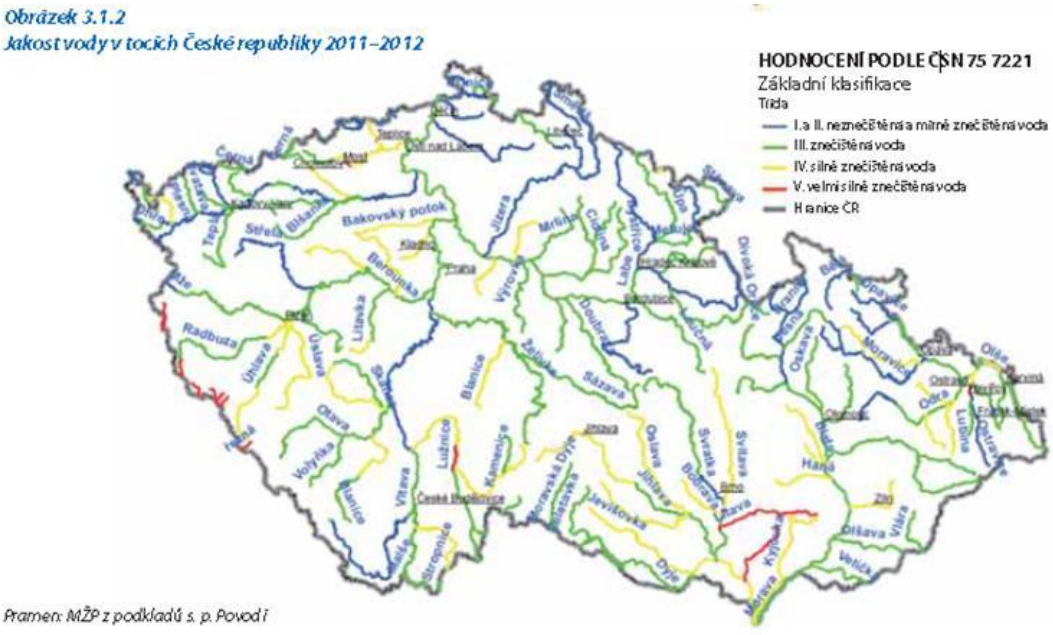
Obrázek 3.1.1
Jakost vody v tocích České republiky 1991–1992



Pramen: ČHMÚ

2) Pollution of rivers in 2011:

Obrázek 3.1.2
Jakost vody v tocích České republiky 2011–2012



Pramen: MŽP z podkladů s. p. Povodí

3.4.2 Constitutional protection of water

In the Czech Constitution, there is neither a special provision on protection of water / drinking water nor a right to water. Water protection is subsumed under the general constitutional provisions on natural resources protection as well as the right to a favourable environment that covers also the water quality. As for the drinking water, it may be also subsumed under the right to health.

3.4.3 Water Act

The basic piece of legislation protecting water is the Water Act No. 254/2001 Coll. Its preparation was a part of the process of implementation of the EU law, which of course has influenced the content of that Act.

Generally speaking, the Water Act **covers three main areas:** water quality protection (including drinking water), water quantity protection and flood prevention.

In its introductory part, there is also an explicit provision on **legal nature of water**: neither surface water nor underground water are subject of ownership and they do not belong to the plot on which or under which they are. This does not apply to water that has been taken from these surface or underground waters. Under this legal construction, the water taken from surface water e.g. to water pipeline or bottled is no more a surface water.

The Water Act established several types of legal instruments in order to protect waters. There instruments types are:

- planning (state and regional plans and programs of managing waters),
- administrative (general obligations and bans for everyone, for operators and other persons, permissions and binding opinions); there is a complex system of several types of permissions, binding opinions and other administrative acts necessary for certain activities),
- qualitative standards (water pollution limits and emission limits),
- economic (water pollution fees and charges for offtakes of surface or underground water),
- information (system of measurements and information on the state of quality and quantity),
- corrective (corrective / remedial measures in case of water pollution),
- special (e.g. rules for flood situation, rules for watercrafts).

3.4.4 Administrative instruments

Firstly, the Water Act sets general obligations that are addressed towards everyone: to protect waters and to use them sparingly. Water counts the “common goods” in the Czech Republic, which results in the legal provision of “common usage” of surface waters in our Water Act. It means that anybody may, without any permission of an authority, take and use surface water for his/her own purpose, if this is without any special technical equipment (thus only manually; on the opposite, using a water pump is no more a common usage of

water and requires a permission). This common usage covers also swimming or using canoes etc.

Secondly, there is a long list of activities in the Water Act, to which a permission of Water Protection Authority is necessary. These permissions may set detailed rules for the activity in question and usually are for a given period of time, then a new permission is required. Examples of activities that require a permission:

- taking of surface or underground water,
- building water reservoirs,
- breeding water poultry (for business),
- emitting waste water to surface water or underground water,
- extraction of materials from river beds,
- changing the river beds,
- building water dams or other water structures,
- and many other activities…

As regards **waste waters**, there are 3 regimes of their emitting: for emitting waste water into surface water, a permission is necessary; for emitting waste water into the sewage system, no permission is required unless the waste water includes some dangerous chemicals – then the permission is also necessary; emitting waste waters into underground waters is in general forbidden; only in exceptional cases, it may be allowed by the Water Authority (e.g. from small buildings used for housing).

As regards fees, there are 4 types of them in the Water Act:

- fee for taking of underground water,
- fee for taking of surface water,
- fee for emitting waste water into surface water,
- fee for emitting waste water into underground water (if permitted by the Water Authority).

3.4.5 Flood prevention

A separate part of the Water Act sets provision for the prevention of floods (including planning, institutional background, checking and treatment of vegetation on river banks, building rules, e.g. a ban on building in inundation areas) etc. Secondly, there are rules for case of flooding.

3.4.6 Practise

As for practical data: the takings of both surface and underground water have had decreasing tendencies during the last 20 years. The same applies for emitting waste waters. The price of water has risen several times, now it is quite high (e.g. the drinking water for households is for approx. 80 CZK / m^3, which means some 3 EUR).

3.5 Air quality

The Czech Republic has a new Air Quality Protection Act, Act No. 201/2012 Coll. – a very complex and extensive legal regulation of air protection with several layers of legal instruments:

- planning (state and regional plans and programs of managing air quality),
- administrative (general obligations and bans, permissions and binding opinions),
- qualitative standards (air pollution limits and emission limits),
- economic (air pollution fees),
- information (system of information on the state of air quality and pollution),
- corrective (corrective / remedial measures in case of violation of law),
- special (e.g. rules for local smog situation, low-emission zones).

The main persons responsible under the Air Quality Protection Act are the operators of facilities that emit pollutants into the air (i.e. esp. of industrial facilities).

3.5.1 Plans and programs

The EU law requires the member states to prepare and implement the national and regional plans for reducing air pollution. There are national targets for air quality in several individual pollutants. To implement them, special programs are prepared. The regional programs reflect the individual situation in each region including the structure of industrial facilities and other relevant aspects.

3.5.2 Administrative instruments

There is quite a wide range of administrative instruments in the new Air Protection Act. Firstly, there are **general obligations** addressed to all persons operating any source of air pollution:

- to comply with the requirements and conditions for operation set by law and by the respective operating permission,
- to observe the relevant emission limits,
- to measure the pollution emitted from the facility.

Secondly, there are **individual permissions** necessary for operating any air polluting facility: during the process of establishing any facility, there are several stages when the Air Protection Authority gives its opinion in relation to the planned air polluting facility:

- during preparing the territorial plan (opinion),
- in the stage of issuing a territorial decision (binding opinion),
- before issuing a building permit (binding opinion),

- before starting operation (operation permit); in this last permit, the Authority sets the emission limits.

It means that to one planned facility, the Authority gives its opinion as regards air protection repeatedly in several stages.

3.5.3 Qualitative standards

There are several types of the qualitative standards; the most significant are the air quality limits and the emission limits. Air quality limits are set maximum concentration limits for individual pollutants for a certain area; emission limits are set maximum limits of releasing individual pollutants from individual facility. It means that emission limits are individually set for each operator and are binding for him; while setting the levels of these emission limits, the Authority must consider the air pollution limits in such a way that in the complex of all individual operators of the region, the air quality limits are observed (which is of course not easy). It also means that the air quality limits are established by legislation but the emission limits are set individually in each operation permit by the Authority.

3.5.4 Air pollution fees

The fees are related to the amount of emitted pollutants. Their levels shall motivate the operators to invest into cleaner technologies.

3.5.5 Special instruments

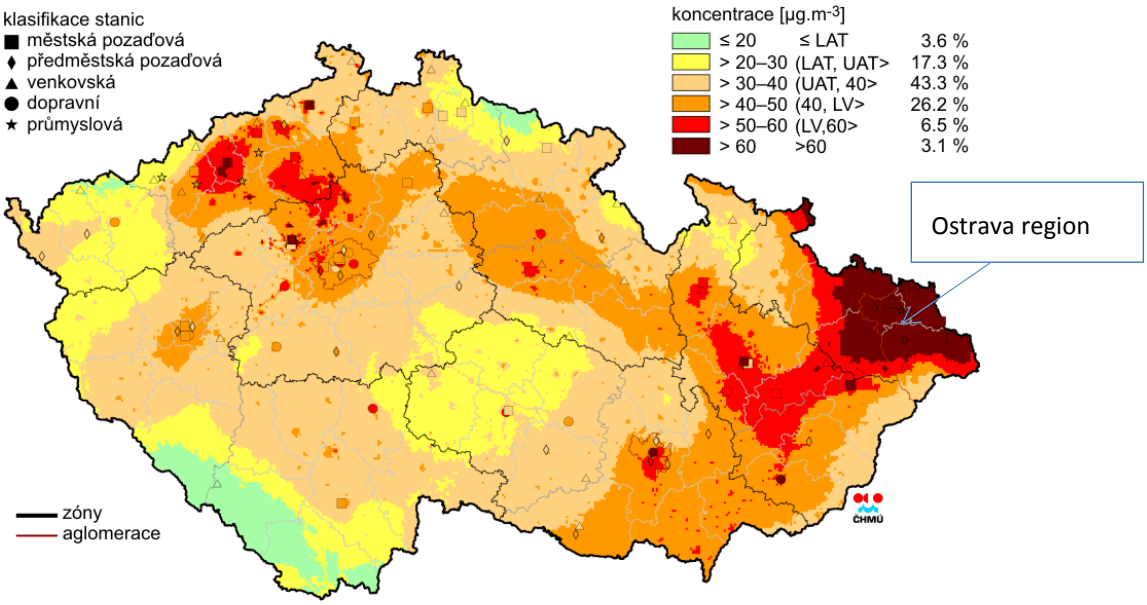
Smog situation arrives when special smog limits of certain pollutants are locally extra-exceeded. Then, the industrial activities and also the transport are regulated by a smog order. E.g. the operation of facilities may be ordered to be suspended or even individual drivers may be restricted in using their vehicles.

Low emission zones – the municipalities may prepare and pass special rules for centres of their cities as regards entering with motor vehicles. They may prohibit the entry of e.g. old (thus high-emission) vehicles. To residents of the municipality in question, the rules of course do not apply.

3.5.6 Practice: Ostrava region

The Ostrava region in the north-east of the Czech Republic counts to the regions with a heavy industry and the most polluted air.

The map of the total PM10 pollution in 2012:



Obr. II.4.2.7 Pole 36. nejvyšší 24hod. koncentrace PM_{10} v roce 2012

Source of the map: The Czech hydro-meteorological institute (www.chmu.cz)

The city of Ostrava filed a **constitutional complaint** in 2010. It asserted that its right to a favourable environment has suffered from lasting infringement in the form of permanent exceeding the air pollution limits, which situation has been caused by the state and the ministries, because they remain being inactive or insufficiently active instead of developing programs, plans, provisions and measures necessary to improve the situation, which is not only in violation of the right to environment but also of the relevant European Union law concerning air quality.

The suit aims to order the defendants to immediately take concrete proper and relevant measures in order to get the air quality in the area within the set air quality limit values.

The lawsuit has awaken a huge public and media attention. However, from the very beginning, the commentators mostly doubted about the success of these legal steps, because the municipality is not an individual, so as to fit into the current judicial interpretation of the right to environment; there are several counterarguments that assert that the municipality has had several legal possibilities to influence the pollution situation, that it has not used (e.g. the right to participate in various types of permitting proceedings, e.g. the proceeding on putting a facility into operation under certain conditions, the right to open a procedure on a review of keeping to emission limits by a facility in practice and others). There were several stages of judicial proceedings but the case has not been decided yet.

3.6 Minerals

Protection of minerals and mining activities are regulated by the law from the communist era, from 1988 (the Act. No. 44/1988 Coll., on protection and use of mineral wealth – Mining Act). It is one of the very few pieces of legislation that has remained in force till today, of course after several amendments. Despite these amendments, the main idea of the mining law remains almost the same from the communist regime – to allow the state to manage most of the mining activities and to make use of it. What I am having in mind in connection with this idea is that environmental protection is not much reflected in these old laws, despite the amendments. Mining is usually aimed at profit and may endanger or deteriorate the environment and landscape.

Under the Mining Act, minerals are divided into two groups: so called reserved minerals and unreserved minerals. **Reserved minerals** are exclusively in the state property. Reserved minerals are those enumerated in the Mining Act, e.g.: coal, oil, gas, phosphorus, sulphur, nuclear minerals etc. They are always in the state property regardless the ownership of the plot under which the deposit is located. All other minerals (that are not enumerated) are **unreserved** and their deposits are owned by the land owner.

In the Czech Republic, especially the extraction of coal is a big political issue with several economic, social and environmental consequences. During the communist regime, the extraction of coal was in fact unlimited (resp. limited only by the state of the reserves in the deposits). There was almost no respect to the environment, no respect to inhabitants. For example, several cities and villages were liquidated (demolished or relocated) when reserves of coals were found underneath. An example is the city of Most, whose part was demolished for the sake of a quarry, only the church was moved on special rail lines to a newly built part of the city, which was a unique action. Another example is the village of Jiřetín, where only a small castle Jezeří remained above the quarry.

The castle of Jezeří and the quarry in the background, in the area of the former village:

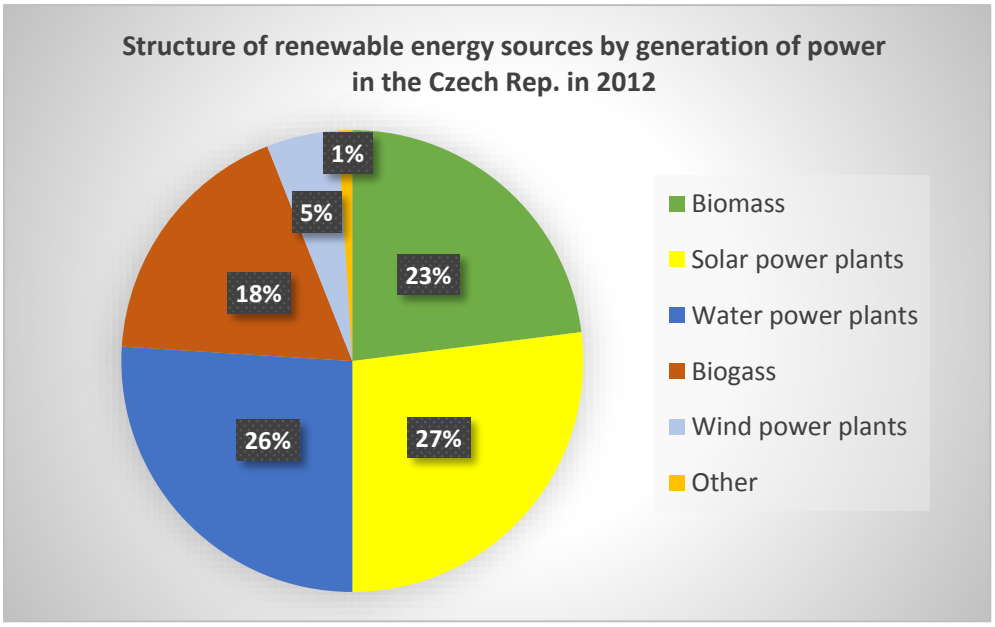
Source of the photo: www.ekolist.cz

Today, the respect for the environment and the inhabitants is of course higher but not high enough, in several aspects. Firstly, as for the landscape, especially the surface mines of brown coal (lignite) are crucial. The question if the extraction of coal should continue or not in areas where settlements are, are of a political kind. In the northern Bohemia there is a village Horní Jiřetín that is repeatedly spoken about as being endangered by demolition due to the deposits of brown coal underneath. Secondly, there is a close relation between hard coal extraction and air quality in one region of the Czech Republic – the Ostrava region. There is a huge concentration of mining activities and ironworks that make the air often unbreathable as it is mentioned above. The third issue connecting extraction and the environment is the issue of the re-cultivation of former quarries, esp. the surface mines. Several of them have already been successfully re-shaped into a new landscape, often with their covering with water (water reservoirs bring new ecosystems).

The issue of slate gas extraction in the Czech Republic: there are several companies that are interested in exploration of the occurrence of the slate gas in the Czech deposits. It is an issue of a political interest as well, there are interests of investors, but the people are mostly against slate gas extraction. Under the Czech law, for the research of deposits, a permission is always required (besides the permission to extraction as such). The Ministry of Environment has recently refused several applications for the slate gas deposit research. It seems that in the Czech Republic there has been a more conservative and restrained approach prevailing towards the slate gas.

3.7 Renewable energy sources

In the Czech Republic, the renewable energy sources are supported as established by the EU law. In 2011, the share of renewable energy production in the total energy production was 10 %. Here is the overview of the percentages of individual renewable energy sources within their total group as regards electricity production:

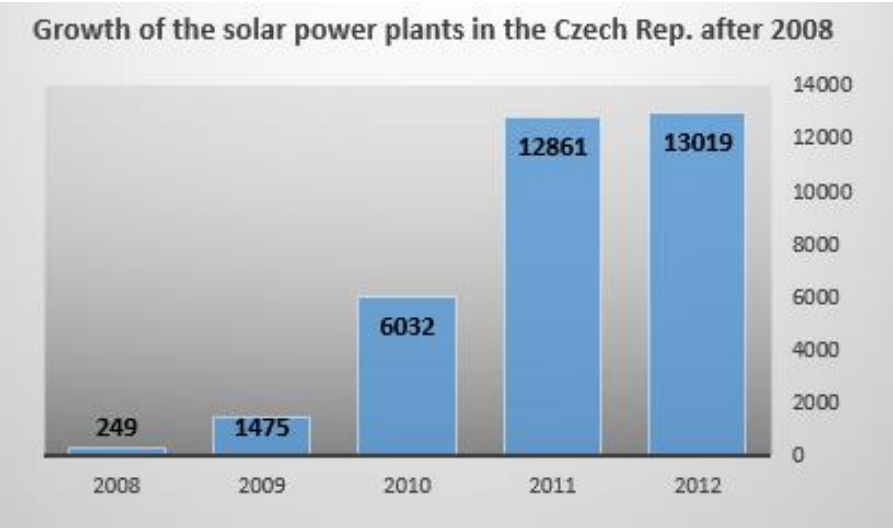


Source of the data: A. Bufka and D. Rosecký: Obnovitelné zdroje energie v roce 2012, Výsledky statistického zjišťování. Ministry of Industry and Trade of the Czech Republic, 2013, http://www.mpo.cz/dokument144453.html and The Czech Energy Regulátory Office, www.eru.cz

The framing of the boom of the renewable energy sources has been given by the EU targets in this field that spoke about 20 % of renewable energy sources within the power use in the EU by 2020. This common commitment of the EU was shared among the member states not equally. The Czech Republic had got the target of 13 % of renewable energy sources within the power use by 2020. The Czech Republic had one more commitment, to increase the share of renewable energy sources to 8 % by 2010. In 2005, the share was too low to achieve the targeted figures by 2010 thus the Czech government decided to substantially support the renewable energy sources. A special law was prepared: Act No. 180/2005 Coll., on the support of power production from renewable energy sources.

This Act established the main rules of that support: esp. the **obligatory purchase prices** for power produced by renewable energy sources, and the so called **green bonus**, which means a financial reward for producers of the "green" energy. The first version of the Act set the prices and bonuses very high and moreover, there was a state guarantee for purchase prices fixed for 20 years, without a possibility of the Energy Authority to regulate the prices. Producing green energy thus became very profitable and this was immediately reflected in practice.

As a result, a heavy "solar expansion" took place in the Czech Republic in 2008-2010: Till 2007, there were only about 200 small photovoltaic installations, mostly on roofs of family houses. Thanks to the said legislatively established financial support for renewable energy sources, the interest in building large solar power plants enormously increased during 2008 and this increase continued in 2009, 2010 and 2011. Then finally, the law was amended so as to enable the Energy Authority to regulate (decrease) the purchase prices. Nevertheless, thanks to this legislative imperfection our countryside got a "new look" that the most of the people really do not like and this also caused a rather negative attitude of the Czech public towards renewable energy sources as such. Not only for deterioration of the landscape (often to the detriment of the agricultural land) but also for increasing the prices of electricity for households that was caused by the need to pay to all the producers of the green power the high purchase prices and green bonuses that due to the law are to be projected in the price electricity of for consumers.



Source of the data: the Czech Energy Regulatory Office (www.eru.cz)

4 Sanctions in natural resources protection

The Czech legal system of sanctioning covers A. administrative offences and B. crimes. The same illegal activity shall be punished as an administrative offence unless it is a crime (i.e. the same illegal activity cannot be sanctioned twice). There are many differences between the two sanctioning systems:

A. Administrative offences

- are set separately in several pieces of legislation (e.g. the Water Act sets them for the illegal activities deteriorating waters); that is why they are not homogenous but differentiated in types and in fine levels as well,
- financial penalties are the main type of punishment,
- are usually differentiated in categories according to who committed the offence and in what position; esp. the positions of individuals vs. business persons are distinct (offences committed in a direct connection with business have higher fines),
- fine levels differ from thousands to millions of CZK.

B. Crimes

- are set exclusively in the Criminal Code (No. 40/2009 Coll.),
- recently, also crimes of legal entities are covered in to the Act No. 48/2011 Coll.,
- there is a separate part on crimes against the environment in the Criminal Code, covering e.g. damage to water source, damage to forest, serious damage to individuals of especially protected species, poaching; also general crime damage to environment,
- there is a wide range of punishment types, including imprisonment, fines, forfeiture etc.

As an example, let's take illegal treating of individuals of especially protected species, compared in both systems of sanctioning:

A. Administrative offences

Activity	**Punishment (fine)**
Injuring / intervening	up to 370 EUR
Injuring / intervening (in connection with business)	up to 37 000 EUR
Killing	up to 3 700 EUR
Killing (in connection with business)	up to 74 000 EUR

B. Crimes

Activity	**Punishment**
Killing / serious illegal treating of more than 25 animals (Individual)	**up to 3 years of prison**
Killing / serious illegal treating of more than 25 animals (As an organized crime)	**from 6 months to 5 years of prison**
Killing / serious illegal treating of more than 25 animals (Legal person)	**Fine / Ban on any activities / Forfeiture of possessions …**

(The fines in EUR are converted from CZK in and rounded off, they are only approximate).