

# THE IMPACT OF EUROPEANISATION OF CRIMINAL ENVIRONMENTAL PROTECTION ON CRIMINAL LAW IN THE CZECH REPUBLIC

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## ABSTRACT

This article focuses on the influence of EU legal instruments on the criminal law of the Czech Republic in the field of environmental protection. The aim of the article is to analyse this influence and examine individual legal definitions of environmental crimes in the Czech legal system. For this purpose, descriptive, comparative, analytical, and logical methods are employed. The author first assesses the state of environmental protection in the Czech Republic, not only through criminal law. This is followed by a list of legal definitions of individual criminal offences, with an explanation of their basic features and specific differences. Each is referenced with the specific EU or public international law regulation on which the offence was based when introduced into the Czech legal system. The article also presents recent case law from the Supreme Court and the Constitutional Court of the Czech Republic concerning this issue. In conclusion, the author evaluates the level of environmental protection provided by criminal law and concludes that the Czech Republic is active in this area, fulfilling its obligations arising from European regulations governing environmental protection.

Keywords: environmental protection, criminal law, European Union, Czech Republic, facts

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## INTRODUCTION

This article is a follow-up to the article ‘Europeanisation of Criminal Environmental Protection’, published in *Ius Novum*, 2024, No. 3. It aims to analyse environmental protection through criminal law from the perspective of the Czech Republic as a Member State of the European Union.

Criminal law protection of the environment in the Czech Republic is significantly influenced by international environmental policy and in particular that of the European Union, which, through its legal instruments, obliges Member States to implement certain legislative amendments. Another aim of this article is to provide an overview of individual offences defined in Czech legislation to protect the environment and to outline their legal definitions and specific characteristics.

In order to achieve these objectives, the logical method, abstraction, and concretisation will be employed, along with analytical, synthetic, comparative, and descriptive methods.

## LEGAL STATUS OF ENVIRONMENTAL PROTECTION IN THE CZECH REPUBLIC

The Czech Republic has largely incorporated the provisions of the Environmental Protection Directive<sup>1</sup> (hereinafter referred to as the ‘2008 Directive’) into its legal order. In 2008, the Environmental Damage Act No. 167/2008 Coll. was adopted.

This Act defines environmental damage as any measurable adverse change that has serious effects on selected natural resources (protected species of wildlife and wild plants, natural habitats, groundwater and surface water, including natural medicinal and mineral water sources, and soil). The obligation to prevent or remedy environmental damage is based on the principle of strict liability (i.e., liability for the outcome), with possible exoneration through reference to events or activities not expressly covered by the Act (Article 1(3) of Act No. 167/2008 Coll.). A significant change introduced by this Act, compared to previous legislation, is that the condition for implementing preventive or corrective measures by the operator of selected activities listed in Annex 1 to the Act is not dependent on unlawful conduct. Establishing liability or the obligation to take preventive or corrective measures only requires proof of a causal link between an operational activity listed in Annex 1 and the occurrence of environmental damage (Article 4 of Act No. 167/2008 Coll.); therefore, proof of illegality or fault in the form of intent or negligence is not required.

Criminal Act No. 140/1961 Coll. protected the environment primarily under the chapter on generally dangerous crimes, which included crimes against the

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<sup>1</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28), available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099> [accessed on 18 January 2024].

environment. Its amendment by Act No. 134/2002 Coll., adopted during the accession negotiations of the Czech Republic, anticipated positive changes in the forthcoming EU legislation in this area, namely 2008 Directive.

The amendment clarified and specified certain statutory elements of criminal offences against the environment, both in the general provisions for damaging and endangering the environment (Section 181a) and for damaging and endangering the environment through negligence (Section 181b). It introduced the possibility of criminal punishment for damaging or endangering not only the environment as a whole but also its individual components (Section 181f). Furthermore, it enabled the punishment of particularly harmful specific interventions into the environment, especially in the form of illegal logging in forests (Section 181c).

The new Criminal Code of 2009 (No. 40/2009 Coll.) adopted most of the environmental crime provisions from the previous Code and emphasised the importance of criminal protection of the environment by introducing a separate chapter (eighth) 'Criminal Offences against the Environment'.

The Czech Republic has fulfilled not only the requirements of EU law but also certain international obligations, particularly those arising from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (see Communication No. 100/1994 Coll.) and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (see Communication No. 572/1992 Coll.).

Due to the necessity to implement the current version of the 2008 Directive into Czech law, the 'Green Amendment' to the Criminal Code was adopted after 18 months, implemented by Act No. 330/2011 Coll.<sup>2</sup> This Act came into force on 1 December 2011 and brought Chapter VIII of the Czech Criminal Code (Criminal Offences against the Environment) into line with the current version of the 2008 Directive, after a delay of almost one year compared to the transposition deadline.<sup>3</sup>

As stated in recital 12 of the preamble to the 2008 Directive, the Directive sets out minimum rules, and Member States are free to adopt or maintain more stringent protection measures than those provided for in the 2008 Directive in the field of criminal law. The current Czech legislation as a whole goes beyond the requirements of the 2008 Directive. In addition to Chapter VIII, which contains special regulations in line with the Directive, provisions applicable to environmental protection can be found in other chapters of the Criminal Code. These include misappropriation of property (Section 229), illegal production and possession of radioactive and highly dangerous substances (Section 281), and illegal production and possession of nuclear material and special fissile material (Section 282). Conversely, in the case of criminal offences related to animal protection, criminal liability was only deepened by Act No. 114/2020 Coll., which introduced a new type of criminal sanction – the prohibition of keeping and breeding animals, in the following terms:

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<sup>2</sup> Amendments Nos. 28 to 34 of Act No. 330/2011 Coll. concern criminal offences against the environment.

<sup>3</sup> Under Article 8 of Directive 2008/99/EC, it became necessary to transpose the content and objectives of the Directive by 26 December 2010. However, the Commission did not take the Czech Republic to the EU Court of Justice despite the delay.

**Section 74a – Prohibition of Keeping and Breeding Animals**

- (1) *The court may impose the punishment of prohibition of keeping and breeding animals for up to ten years if an offender has committed an offence in connection with the keeping, breeding or care of an animal.*
- (2) *The court may impose the punishment of a prohibition on keeping and breeding animals as a separate punishment only if the nature and gravity of the offence committed and the person and circumstances of the offender make it unnecessary to impose another punishment.*
- (3) *The punishment of prohibition of keeping and breeding animals consists in prohibiting the convicted person from keeping, breeding and caring for an animal for the duration of the sentence.*

As noted in the explanatory memorandum to the amendment, the introduction of this punishment addresses legal gaps in the imposition of penalties, such as the prohibition of activity under Section 73 and the forfeiture of property under Section 70, which were not sufficiently specific for the particular facts of the case and raised concerns regarding the constitutional principle of *nulla poena sine lege*.

The following section examines specific crimes aimed at protecting the environment, including the impact of Europeanisation on criminal law.

**CRIMES AGAINST THE ENVIRONMENT**

The current Criminal Code of the Czech Republic (No. 40/2009 Coll.) contains the following offences aimed at protecting the environment in a broader sense.

**Section 293 – Environmental Damage and Environmental Hazard**

- (1) *Whoever, in contravention of any other legal regulation, intentionally damages or endangers land, water, air or any other component of the environment on a large scale or over a larger area, or in such a way that it may cause serious injury to health or death, or where the cost of remedying the consequences of such conduct is substantial, or who intentionally increases such damage or threat to a component of the environment or makes it more difficult to avert or mitigate, will be punished with up to three years of imprisonment or a ban on activity.*
- (2) *An offender shall be sentenced to imprisonment for one to five years,*
  - (a) *if he or she commits an act referred to in Subsection (1) repeatedly,*
  - (b) *if he commits such an act because he has breached an important duty arising out of his employment, profession, position or office or imposed on him by law,*
  - (c) *if such act causes permanent or long-term damage to a component of the environment,*
  - (d) *where the cost of remedying the consequences of such an act is on a large scale; or*
  - (e) *if he/she commits such an act with the intention to obtain a substantial benefit for himself/herself or for another.*
- (3) *An offender shall be sentenced to imprisonment for two to eight years if he/she commits such an act with the intention to obtain a large-scale benefit for himself/herself or for another.*

The object of the offence in question is the interest in protecting the environment as the basic habitat of humans, animals, and other organisms. The purpose of the protection is to safeguard the environment as a whole, and it is therefore not decisive which component of the environment the offender's actions are directed against. A perpetrator of this offence may be any criminally liable natural or legal

person.<sup>4</sup> The conduct must be intentional, and indirect intention is sufficient in this regard. For such an offence, the offender is liable to imprisonment or a prohibition on activity.

**Section 294 – Negligent Environmental Damage and Environmental Hazard**

- (1) *Whoever contrary to another legal act, intentionally damages or endangers soil, water, air, forest or another component of the environment to a larger extent or within a larger area, or in such a way that it may cause serious detriment to health or death, or if it is necessary to expend considerable costs in removing the effects of such conduct, or whosoever intentionally increases such damage or threat to a component of the environment or aggravates its aversion or mitigation, will be sentenced to a term of imprisonment of up to three years or to the prohibition of a specific activity.*
- (2) *An offender will be sentenced to a term of imprisonment of up to two years or to the prohibition of a specific activity if*
  - (a) *he commits the act referred to in Subsection (1) because he breached an important duty arising from his occupation, profession, position or function, or a duty imposed on him by law,*
  - (b) *he causes permanent or long-term damage to a component of the environment, or*
  - (c) *removal of the effects of such an act requires considerable expenditure.*

This offence differs from the previous one in that it can only be committed through gross negligence.<sup>5</sup> Other differences can be seen in the level of punishment and in some of the circumstances that condition its application. In contrast to the intentional variant, only half of the qualified offences are set out in an exhaustive list, which includes the commission of an offence by breaching an important duty arising from the offender's employment, profession, position, or function, or imposed on him by law. Additionally, if the act causes permanent or long-term damage to a component of the environment or if it is necessary to incur significant costs to eliminate the consequences of such an act, these circumstances will also affect the punishment.

Due to the accession of the Czech Republic to the European Union, it was necessary to reflect in the provisions of Section 293 and Section 294 a high level of protection not only for specially protected areas, but also, to an equal extent, for European sites of European importance and bird areas, which together form part of the pan-European system of protected areas designated as 'Natura 2000'. The necessary terms are not contained in the Criminal Code but are defined under

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<sup>4</sup> The Czech legal system allows for the a criminal liability of legal persons under Act No. 418/2011 Coll. on Criminal Liability of Legal Persons and Proceedings against Them.

<sup>5</sup> Section 16 of the Czech Criminal Code:

- (1) *A criminal offence is committed out of negligence if an offender*
  - (a) *was aware that he/she may violate or endanger an interest protected by the Criminal Code in the manner stipulated in this Code, but without adequate reasons he/she believed that he/she would not cause such violation or endangering, or*
  - (b) *was unaware that his/her conduct may cause such violation or endangering although he/she could and should have been aware of it considering the circumstances and the personal relations.*
- (2) *A criminal offence is committed out of gross negligence if an offender's approach to the requirements for due diligence shows evident irresponsibility of the offender for the interests protected by the Criminal Code.*

blanket provisions<sup>6</sup> in Section 3(1)(q), (r) and Section 45e of Act No. 114/1992 Coll. on the Protection of Nature and Landscape, as amended. The obligation to designate and protect these sites derives from Council Directive 92/43/EEC on the conservation of natural habitats, wild fauna and flora<sup>7</sup> and Council Directive 2009/147/EC on the conservation of wild birds.<sup>8</sup>

The Czech Republic faces sanctions from the European Union for damaging Natura 2000 sites. The conditions contained in Sections 293 and 294 of the Criminal Code were rephrased by Amendment No. 330/2011 Coll. to ensure that these provisions apply not only to the environment as a whole but also to all its components, not just flora and fauna, as had previously been the case. This ensured compliance with EU requirements. The new regulation has also been consistently applied to several subsequent provisions of the Criminal Code:

**Section 294a – Damage to a Water Source**

*Whoever, even through gross negligence, causes damage to a water source for which a protection zone has been established in such a way that the reason for the special protection of the water source ceases to exist or is considerably weakened shall be sentenced by imprisonment for up to two years.*

The offence in question is a specific offence in relation to the general offence of damaging and endangering the environment. Its object is the interest in protecting water resources as a specific part of the environment from any damaging action that would result in the loss of their importance and the reason for special protection. The objective is fulfilled in the case of any damaging act by the perpetrator directed against a water source for which a protection zone has been established. In such a case, it does not matter how the water source is damaged (e.g., by pollution, limiting its yield, etc.). A perpetrator may be any natural or legal person, and the offence may be committed either intentionally or through gross negligence. The perpetrator is liable to imprisonment for committing the offence.

**Section 295 – Damage of Forest**

(1) *Whoever, even negligently, causes by harvesting forest crop or other activity contrary to another legal regulation creation of a cleared cutting, even by joining to an existing cleared area, or causes serious damage to forest on larger forest area or thins the forest crop below the crop density limit stipulated by another legal regulation on larger forest area, shall be sentenced to imprisonment for up to two years or to prohibition of activity.*

(2) *An offender shall be sentenced to imprisonment for six months to four years or to prohibition of activity, if he/she*

*(a) commits the act referred to in Subsection (1) repeatedly, or*

*(b) creates by harvesting or another activity referred to in Subsection (1) a clear cutting or thinning of forest crop on considerable forest area.*

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<sup>6</sup> For environmental crimes, a number of blanket provisions are used, as well as national administrative regulations or the content of relevant European directives. The provisions in Section 296 of the Criminal Code therefore include only a few quantitative elements, namely those relating to the area of the territory or the length of a watercourse, with individual areas affected and lengths of the watercourses being aggregated.

<sup>7</sup> OJ L 206, 22.7.1992, p. 7. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01992L0043-20130701> [accessed on 22 October 2024].

<sup>8</sup> OJ L 20, 26.1.2010, p. 7–25. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147> [accessed on 22 October 2024].

The offence in question is also a specific offence in relation to the general offence of damaging and endangering the environment, the object of which is the protection of forests as a specific part of the environment against arbitrary harmful logging on a larger scale or other negative interference with forest stands. A perpetrator may be any natural or legal person, and both intentional and negligent culpability are considered. A perpetrator of this offence is liable to imprisonment. Two circumstances justify the application of a higher penalty: when an offender commits the offence repeatedly or when, as a result of his/her conduct, he/she causes 'a clear-cutting or thinning'<sup>9</sup> of a significant area of forest, which is defined as an area of more than three hectares.

The provisions of the previous Penal Code did not cover all cases of serious damage to forests, and there were frequent cases of legal circumvention. Therefore, in accordance with the principle of *nullum crimen sine lege*, the facts have been supplemented in a somewhat casuistic manner, such that serious damage to a forest can be caused by unauthorised logging just below the established limit of 1.5 hectares, whereby several such areas may be located close to each other (e.g., in the forest of the same owner, in the same forest management district, etc.).

#### **Section 297 – Wrongful Discharge of Polluting Substances**

- (1) *Whoever, even out of gross negligence, discharges or fails to prevent discharge of petroleum, poisonous liquid or similar polluting substance from a boat or other navy marine vessel contrary to an international treaty, shall be sentenced to imprisonment for six months to three years, to prohibition of activity or forfeiture of a thing or other asset value.*
- (2) *An offender shall be sentenced to imprisonment for one year to five years, if he/she commits the act referred to in Subsection (1)*
  - (a) *as a member of an organised group,*
  - (b) *repeatedly.*
- (3) *An offender shall be sentenced to imprisonment for two to eight years, if by the act referred to in Subsection (1) he/she causes*
  - (a) *grievous bodily harm,*
  - (b) *serious and extensive harm to quality of water, animal or herbal species or parts thereof, or*
  - (c) *damage to the environment for removing of which is necessary to expend costs in large extent.*
- (4) *An offender shall be sentenced to imprisonment for three to ten years if he/she causes death by the act referred to in Subsection (1).*

The objective is to protect the sea as a large body of water and specific parts of the Earth's surface, not only from the deterioration of sea water quality but also from ecological damage to marine fauna and flora caused by the release of pollutants into the sea. A perpetrator may be any natural or legal person, and the offence allows for both intentional and negligent fault. For such an offence, an offender is liable to imprisonment or a prohibition on activity.

This offence was introduced into the Criminal Code based on Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source

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<sup>9</sup> Cf. footnote 6.



pollution and on the introduction of penalties for infringements,<sup>10</sup> and EU Council Framework Decision 2005/667/JHA of 12 July 2005 on the strengthening of the criminal law framework to combat ship-source pollution.<sup>11</sup>

Both documents stem from the implementation of the 1973 International Convention for the Prevention of Pollution from Ships<sup>12</sup> and the 1978 Protocol to that Convention, as amended (hereinafter referred to as 'MARPOL 73/78'),<sup>13</sup> which needed to be harmonised at the Community level. The purpose of the modification was to ensure that persons responsible for discharges become subject to appropriate criminal penalties, as set out in the Directive and the Framework Decision, thereby improving maritime safety and enhancing the protection of the marine environment against pollution from ships.

'Pollutants' mean substances included in Annexes I (oil) and II (toxic liquid bulk substances) of MARPOL 73/78.

'Discharge' means any discharge from a ship or other seagoing vessel, irrespective of its flag, in accordance with Article 2 of MARPOL 73/78.

'Marine craft' includes, in addition to ships of any type operating in the marine environment, hydrofoils, hovercraft, submarines, and floating equipment.

With the above-mentioned 'Green Amendment' to the Criminal Code, the offence of gross negligence has been expanded to include simple negligence, whether in the form of conscious or unconscious negligence.

#### **Section 298 – Unauthorised Waste Disposal**

- (1) *Whoever, even negligently, breaches another legal regulation on disposal with waste by transporting waste across state border without a notification or request for consent or states false or grossly distorted information or conceals substantial information, shall be sentenced to imprisonment for up to one year or to prohibition of activity.*
- (2) *Anyone who, even negligently, contrary to another legal regulation stores waste or deposits, transits or otherwise disposes therewith and thus causes environmental damage or hazard, for removing of which is necessary to expend costs in considerable extent, shall be sentenced to imprisonment for up to two years or to prohibition of activity.*
- (3) *An offender shall be sentenced to imprisonment for six months to three years or to prohibition of activity, if he/she*
  - (a) *commits the act referred to in Subsection (1) or (2) as a member of an organised group,*
  - (b) *gains substantial profit for him-/herself or for another by such an act, or*
  - (c) *commits such an act repeatedly.*
- (4) *An offender shall be sentenced to imprisonment for one year to five years, if*
  - (a) *he/she gains for him-/herself or for another extensive profit by the act referred to in Subsection (1) or (2), or*
  - (b) *such an offence concerns dangerous waste.*

<sup>10</sup> OJ L 255, 30.9.2005, p. 11. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02005L0035-20091116> [accessed on 22 October 2024].

<sup>11</sup> OJ L 255, 30.9.2005, p. 164. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005F0667> [accessed on 22 October 2024]. The Framework Decision was still in force at the time the amendment was adopted (later annulled by a judgment of the Court of Justice).

<sup>12</sup> No. 52/2015 Coll.

<sup>13</sup> Communication of the Ministry of Foreign Affairs No. 71/1995 Coll. concerning the negotiation of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships (MARPOL).



The objective is to protect the environment from unlawful waste management that could lead to environmental damage or endangerment. The perpetrator may be any natural or legal person, and the offence allows for both intentional and negligent fault. The offender is liable to imprisonment or prohibition of activity for this offence.

The Criminal Code now punishes the handling of all types of waste, as opposed to previous legislation, which only referred to 'dangerous' waste. The specifically dangerous nature of certain waste, which obviously poses a more significant threat to the environment, has been expressed as a factor justifying the application of a higher penalty under subsection 4. Given that such crimes are often committed within organised groups, the circumstance of committing the offence as a member of an organised group has been added to subsection 3 as a condition for the application of a higher penalty.

**Section 298a – Production and Other Disposal of Ozone-Depleting Substances**

- (1) *Whoever, in violation of another legal regulation, even if through gross negligence, produces, imports, exports, places on the market or otherwise handles an ozone-depleting substance shall be sentenced to imprisonment for up to one year, prohibition of activity or forfeiture of property.*
- (2) *An offender shall be sentenced to imprisonment for six months to three years,*
  - (a) *if he/she commits the act referred to in Subsection (1) repeatedly,*
  - (b) *if he/she commits such an act with intent to obtain for himself/herself or for another a substantial benefit, or*
  - (c) *commits such an act on a substantial scale.*

Due to the transposition of the 2008 Directive, the 'Green Amendment' introduced a completely new criminal offence into the Czech Criminal Code, which criminalises the illegal production, import, export, marketing, or use of ozone-depleting substances.

**Section 299 – Unauthorised Disposing with Protected Wild Animals and Herbs**

- (1) *Whoever contrary to another legal regulation kills, destroys, processes, imports, exports, transits, handles, offers, mediates, obtains for him-/herself or for another a subject of an especially protected animal or herbal species or an exemplar of a protected species and commits such an act on more than twenty five subjects of animals, herbs or exemplars, shall be sentenced to imprisonment for up to three years, to prohibition of activity or to confiscation of a thing or other asset value.*
- (2) *The same sentence shall be imposed to anyone who to another legal regulation kills, destroys, processes, imports, exports, transits, handles, offers, mediates, obtains for him-/herself or for another a subject of a critically endangered animal or herbal species or an exemplar of a species directly endangered by extinction or extermination.*
- (3) *An offender shall be sentenced to imprisonment for six months to five years or to a pecuniary penalty, if he/she commits the act referred to in Subsection (1) or (2)*
  - (a) *as a member of an organised group, or*
  - (b) *with the intention to gain for himself/herself or for another substantial profit, or*
  - (c) *if such an act causes long-term or irreversible damage to a population of wild animals or herbs or to a local population or habitat of a specially protected species of animals or herbs.*
- (4) *An offender shall be sentenced to imprisonment for two to eight years, if he/she commits the act referred to in Subsection (1) or (2)*
  - (a) *in connection to an organised group operating in several states, or*
  - (b) *with the intention to gain for himself/herself or for another extensive profit, or*
  - (c) *if the act causes long-term or irreversible damage to the local population or habitat of a critically endangered species of animals or herbs.*

The offence can be committed not only by an offender who has procured live specimens, but also by one who has procured dead (prepared) specimens of an animal belonging to a highly endangered species, which he/she subsequently kept and offered to other persons without authorisation.<sup>14</sup> The law explicitly places the burden of proof on the possessor or owner of specimens to prove their origin.<sup>15</sup>

The provisions of Section 299 originally provided protection for two types of objects: firstly, Czech specially protected species under Act No. 114/1992 Coll. on the Protection of Nature and Landscape, as amended, and secondly, CITES specimens<sup>16</sup> used in international trade, which are mostly protected species of plants and animals from other countries (parrots, large felines, orchids, etc.).

Under Section 299 of the Criminal Code, the unlawful disposal of more than twenty-five animals, plants or specimens is punishable. This number was determined to meet the need for increased protection of these exceptional species of animals and plants.

In addition, Section 299(2) of the Criminal Code protects the most strictly protected categories, criminalising tampering with even a single individual or specimen.

The protected object under Section 299(2) is, first and foremost, a plant or animal species classified as a specially protected species, and within that, falling into the category of critically endangered. This follows from Section 48 of Act No. 114/1992 Coll. on the Protection of Nature and Landscape, as amended, and from the lists in Annex III to Decree No. 395/1992 Coll.

In the second case, the specimen is a species directly threatened with extinction or extermination, as defined in Article 2(t) and Article 3(1) of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulating the trade therein<sup>17</sup> (defined in Annex A of this Regulation). The protection of wildlife populations, including their habitats, has been added to Section 299, and the unlawful action involving even a single individual of a critically endangered species of animals or plants is also punishable (whereas, before 1 December 2011, only individuals of critically endangered species were protected).

**Section 300 – Negligent Unauthorised Disposal with Protected Wild Animals and Herbs**  
*Whoever negligently breaches another legal regulation by killing, destroying, repeatedly importing, exporting or transiting, or obtaining for him/herself subject of an especially protected animal or herbal species or an exemplar of a protected species and commits such an act on more than twenty five subjects of animals, herbs or exemplars, shall be sentenced to imprisonment for up to one year, to prohibition of activity or to forfeiture of a thing or other asset value.*

<sup>14</sup> Resolution of the Supreme Court of 18 March 2020, Case No. 7 Tdo 196/2020.

<sup>15</sup> Resolution of the Constitutional Court of 19 July 2019, Case No. II ÚS 4149/18; similarly, resolution of the Constitutional Court of 9 May 2023, Case No. IV ÚS 2352/22-2.

<sup>16</sup> The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was negotiated in 1973 in Washington, Communication No. 572/1992 Coll.

<sup>17</sup> OJ L 61, 3.3.1997, p. 1. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01997R0338-20230520> [accessed on 22 October 2024].

Section 300 refers to a negligent aspect of some provisions in Section 299, where, as with other provisions of the Criminal Code, the law requires a form of gross negligence for the provisions to apply. The interpretation and rationale of this provision correspond with Section 299 of the Criminal Code.

**Section 301 – Damage to Protected Parts of Nature**

*Whoever, even with gross negligence, violates another legal regulation by damaging or destroying a monument tree, a significant landscape element, a cave, a specially protected area, a European site or a bird area in such a way that the reason for the protection of such a part of nature ceases to exist or is considerably weakened, shall be sentenced to imprisonment for up to three years, prohibition of activities or forfeiture of property.*

This offence was introduced into the Criminal Code by Amendment No. 330/2011 Coll.

The objective aspect of this criminal offence consists of the violation of a legal regulation, specifically Act No. 114/1992 Coll. on the Protection of Nature and Landscape, whereby the perpetrator, who may be either a natural or a legal person, damages or destroys a protected tree, a significant landscape element, a cave, a specially protected area, a site of European importance, or a bird area. The consequence required is the disappearance or substantial weakening of the reason for the protection of such parts of nature. The objective is the interest of society in providing specially enhanced protection to the parts of nature listed in the law. The offence occurs in the case of both intentional and grossly negligent conduct. For damaging protected parts of nature, a perpetrator is liable to imprisonment, prohibition of activity, or confiscation of property.

The main reason for adopting this provision was the requirements of the 1992 Convention on Biological Diversity (No. 134/1999 Coll.). In addition to the current legislation, and in line with the needs of the Czech Republic's national legislation, this act includes not only 'removing' but also 'destruction', and the relevant penalty rate has been adjusted in relation to other environmental offences.

**Section 302 – Maltreatment of Animals**

- (1) *Whoever maltreats an animal in an especially cruel or agonising manner shall be sentenced to imprisonment for six months to three years, prohibition of activity or forfeiture of property.*
- (2) *An offender shall be sentenced to imprisonment for one to five years or by prohibition of activity,*
  - (a) *if he/she commits such an act in public or in a place open to the public,*
  - (b) *if he/she commits such an act as a member of an organised group, or*
  - (c) *if he/she or she continues to commit such an act for a longer period of time.*
- (3) *An offender shall be sentenced to imprisonment for two to six years,*
  - (a) *if he/she commits the act referred to in Subsection (1) on a large number of animals,*
  - (b) *if the act causes permanent damage to the health of the abused animal or death thereof,*
  - (c) *if he/she commits the act referred to in Subsection (1) in a particularly brutal or torturous manner; or*
  - (d) *if he/she commits such an act repeatedly.*

The offence of animal maltreatment has been transferred to this chapter from another part of the Criminal Code due to the object it protects. This is the interest in protecting animals, as living creatures capable of experiencing pain and suffering,

from unjustified killing and harm to their health. Both natural and legal persons may commit this offence if they intentionally abuse an animal in a cruel or torturous manner. An offender may be sentenced to imprisonment, prohibition of activity, or confiscation of property.

Due to extensive criticism, the construction of this offence has been reworked to distinguish it from a misdemeanour, define the most dangerous forms of conduct, and ensure that perpetrators of this offence are punished appropriately. In response to repeated criticism of low penalty rates, the penalties for both the basic offence and the particularly aggravating circumstances have been increased. Furthermore, subsection 3 now includes a condition that allows for the imposition of a higher penalty where the offence involves a larger number of animals. According to case law, a larger number of animals means at least seven animals.<sup>18</sup>

The notion of permanent consequences to health within the meaning of this provision is not further specified in the Criminal Code. To fulfil this criterion, an insignificant, albeit permanent, injury to an animal's health, such as minor deformation of the earlobe through so-called cupping, loss of a small amount of hair, or the loss of a tooth, is insufficient. The health consequences must be substantial and must constitute a serious interference with the animal's well-being. This particularly aggravating circumstance is considered by the legislator to be more serious than, for example, the prolonged brutal abuse of animals by a member of an organised group. At the same time, permanent damage to health is equated with the death of an animal.<sup>19</sup>

This offence was amended by Act No.114/2020 Coll., which increased the penalty of imprisonment for both the basic offence and the two qualified offences.

***Section 302a – Keeping Animals in Unsuitable Conditions***

- (1) *Whoever keeps a large number of animals in unsuitable conditions and thereby endangers their life or causes them considerable suffering shall be sentenced to imprisonment for up to one year or to prohibition of activity.*
- (2) *Whoever breeds animals in unsuitable conditions for the purpose of trade, or whoever preys on such breeding and thereby endangers their life or causes them considerable distress, shall be sentenced to imprisonment for six months to four years or to prohibition of activity.*
- (3) *An offender shall be sentenced to imprisonment for two to eight years,*
  - (a) *if he/she commits the act referred to in Subsection (2) with the intention of obtaining a substantial benefit for himself/herself or for another,*
  - (b) *where the act referred to in Subsection (1) or (2) causes permanent damage or death to an animal; or*
  - (c) *if he/she commits such an act as a member of an organised group.*
- (4) *An offender shall be sentenced to imprisonment for five to ten years,*
  - (a) *if he/she commits the act referred to in Subsection (2) with the intention of obtaining for himself/herself or for another a benefit of a large amount,*
  - (b) *where the act referred to in Subsection (1) or (2) causes permanent damage or death to a large number of animals; or*
  - (c) *if he/she commits such an act in association with an organised group operating in more than one State.*

<sup>18</sup> Resolution of the Supreme Court of 15 June 2011, Case No. 8 Tdo 657/2011.

<sup>19</sup> Resolution of the Supreme Court of 8 March 2023, Case No. 7 Tdo 55/2023.

The amendment to the Criminal Code by Act No. 114/2020 Coll. introduced an entirely new offence. As with the offence of animal maltreatment, the object of this offence is the interest in protecting animals as living creatures capable of experiencing pain and suffering. The impetus for the introduction of this regulation was the problem of so-called breeding farms, where animals are bred solely for resale, often in completely unsatisfactory conditions. However, the offence applies generally to all forms of animal breeding.<sup>20</sup> In this context, animals are protected from being kept in unsuitable conditions that endanger their lives and health or cause them considerable distress.

Any natural or legal person may commit the offence of keeping animals in unsuitable conditions. As for the subjective aspect, intentional culpability is required. An offender may be sentenced to imprisonment or prohibition of activity for this offence.

The intention of introducing this new criminal offence was to strengthen the protection of animals. The protected entity, the animal, is no longer viewed as a mere object but, in accordance with private law, as a living being (Section 496 of the Civil Code). This recognition merits an even greater degree of protection than the existing offences of animal maltreatment or neglect of care.

#### *Section 303 – Negligent Omission of Animal Care*

- (1) *Whoever, out of gross negligence, omits necessary care of an animal he/she owns or that he/she is obliged to take care of for another reason, and thus causes permanent consequences to health or death, shall be sentenced to imprisonment for up to six months, to prohibition of activity or confiscation of a thing or other asset value.*
- (2) *An offender shall be sentenced to imprisonment for up to two years, if he/she causes death or permanent consequences to health to larger amount of animals by the act referred to in Subsection (1).*

As in the previous offence, the objective of the offence of negligent omission of animal care is to protect animals, as living creatures capable of feeling pain, from being kept in unsuitable conditions that endanger their health or cause them considerable suffering.

The Criminal Code provides for imprisonment, prohibition of activity, or forfeiture of property for the offence of negligent omission of animal care. If the offence causes death or permanent damage to the health of a large number of animals, this constitutes a circumstance that justifies the application of a higher penalty.

The above mentioned offence was included in the current Criminal Code in response to some cases of negligent and harmful treatment of animals that were previously treated as misdemeanours under Act No. 246/1996 Coll. on the Protection of Animals against Cruelty.

The essence of an offender's conduct consists of neglecting necessary care for an animal, usually through omission (Section 112 of the Criminal Code). In practice,

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<sup>20</sup> Kořínek, Š., 'Strengthening animal protection in reflection of the crime of "breeding animals in unsuitable conditions"', *Criminal Law Review*, 2022, No. 2, p. 85.

these cases often involve failure to provide food and water, or leaving the animal in environments with extreme temperatures, such as high heat or severe frost, etc.<sup>21</sup>

### **Section 304 – Poaching**

- (1) *Whoever hunts game or fish of a value not insignificant or conceals, transfers to him/herself or to another or handles hunted game or fish of not insignificant value without an authorisation, shall be sentenced to imprisonment for up to two years, to prohibition of activity or to confiscation of a thing or other asset value.*
- (2) *An offender shall be sentenced to imprisonment for six months to five years, to a pecuniary penalty or to confiscation of a thing or other asset value, if he/she*
- (a) *commits the act referred to in Subsection (1) as a member of an organised group,*
  - (b) *gains for him/herself or for another larger profit by such an act,*
  - (c) *commits such an act as a person who has a special obligation to protect the environment,*
  - (d) *commits such an act in especially condemnable manner, in mass effective way or in the time of closed season, or*
  - (e) *has been sentenced or condemned for such an act in the past three years.*

The object of the crime of poaching is protection of nature, specifically wildlife and fish, as well as protection of hunting rights, exercise of fishing rights, and protection of property. Both natural and legal persons may commit this offence. Intentional culpability is a prerequisite for the fulfilment of the subjective aspect. For the offence of poaching, a perpetrator is liable to imprisonment, prohibition of activity, confiscation of property, or, if necessary, a fine if the qualifying circumstances are met.

The criminal offence of poaching has been amended in the current Criminal Code compared to previous legislation by introducing the condition of causing not insignificant damage to distinguish it from the offence of lesser poaching.

The basic concept of this offence is the unauthorised<sup>22</sup> taking of game or fish, which includes any activity aimed at killing, catching, or otherwise acquiring game or fish.

The ‘Green Amendment’ to the Criminal Code also partially returned to the stricter wording of the regulation contained in the previous Criminal Act No. 140/1961 Coll., by reintroducing the imperfect form of the verb ‘hunts’ instead of the previous perfect form ‘hunts (and kills)’.

### **Section 305 – Wrongful Manufacture, Possession and other Disposal with Pharmaceuticals and other Substances Affecting Efficiency of Livestock**

- (1) *Whoever manufactures, imports, exports, transits, offers, mediates, sells or otherwise obtains or handles a substance of thyreostatic, gestagenous, androgenic, estrogenic or other hormonal effects, beta-agonists or another substance designed for stimulation of efficiency of livestock or a preparatory containing such a substance without an authorisation, shall be sentenced to imprisonment for up to one year, to prohibition of activity or forfeiture of a thing or other asset value.*

<sup>21</sup> Púry, F., ‘§ 303 [Zanedbání péče o zvíře z nedbalosti]’, in: Šámal, P., et al., *Trestní zákoník*, 3<sup>rd</sup> ed., Prague, 2023, p. 3889.

<sup>22</sup> Actions that fall outside the legal hunting conditions under Act No. 449/2001 Coll. on Hunting, as amended, are considered unauthorised.

- (2) *The same sentence shall be imposed to anyone who contrary to other legal regulation uses pharmaceuticals for the purpose of increasing efficiency of livestock or manufactures, imports, exports, transits, offers, mediates, sells or otherwise obtains or handles such a substance for this purpose.*
- (3) *An offender shall be sentenced to imprisonment for six months to three years, if he/she commits the act referred to in Subsection (1) or (2)*
- (a) as a member of an organised group,*
  - (b) repeatedly,*
  - (c) with the intention to gain for him-/herself or for another substantial profit, or*
  - (d) to a significant extent.*
- (4) *An offender shall be sentenced to imprisonment for one to five years if he/she commits an act referred to in Subsection (1) or (2)*
- (a) as a member of an organised group operating in more than one country,*
  - (b) with the intention of gaining for him-/herself or for another larger profit by such an act,*
  - (c) on a large scale.*

This offence, which can be committed by either a natural or legal person, is divided into two distinct acts, addressing the interest in protecting livestock from being enhanced by drugs and artificial substances, and the protection of human health from the adverse effects of these substances.

The first act involves the unlawful manufacture, import, export, transport, offer, mediation, sale, or procurement of any of the substances or preparations referred to in the first paragraph.

The second act involves the use of pharmaceuticals for the purpose of increasing livestock performance, or the unlawful manufacture, import, export, transport, offer, mediation, sale, or possession of such substances for that purpose. As for the subjective aspect, intent is required. An offender is liable to imprisonment, prohibition of activity, or confiscation of property.

In the European Union, the misuse or abuse of medical or other substances in farm animals has long been under close scrutiny.<sup>23</sup> These substances are often antimicrobial, anti-inflammatory, hormonal, anti-hormonal, or beta-adrenergic, misused to enhance animal performance, ultimately ensuring a higher financial profit for the breeder.

Residues of these substances in food of animal origin can significantly impact consumer health. For this reason, the European Union has adopted a number of regulations governing the administration of such substances to animals and the subsequent monitoring of their presence in animal bodies and food products. These regulations have been incorporated into national law through the adoption of measures concerning administration of certain substances to animals whose products are intended for human consumption, as well as the monitoring of unauthorised

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<sup>23</sup> Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition (OJ L 61, 3.3.1997, p. 1); most recently for example Commission Delegated Regulation (EU) 2019/2090 of 19 June 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council regarding cases of suspected or established non-compliance with Union rules applicable to the use or residues of pharmacologically active substances authorised in veterinary medicinal products or as feed additives or with Union rules applicable to the use or residues of prohibited or unauthorised pharmacologically active substances (OJ L 317, 9.12.2019, p. 28).



substances, residues, and contaminants that could render animal products harmful to human health.

These European regulations are followed by Act No. 378/2007 Coll. on Pharmaceuticals and on the Amendment and Supplementation of Some Related Acts, as amended, and Act No. 166/1999 Coll. on Veterinary Care and on the Amendment of Related Acts (the Veterinary Act).

The aim of both these regulations is to protect animal health and the environment and, in particular, to protect humans (consumers) from the adverse effects of pharmaceuticals and, in the case of the Veterinary Act, from adverse effects originating from animals or food of animal origin. This philosophy has also been adopted in the Criminal Code.

Practical experience from supervision in this area shows that administrative sanctions alone are insufficient, as there have been cases of organised groups of offenders operating in this field. For these reasons, new provisions have been introduced into the Criminal Code to ensure that such conduct is properly punished, including relevant circumstances that may lead to the application of a higher penalty.<sup>24</sup>

***Section 306 – Spread Contagious Animal Disease***

- (1) *Whoever, even negligently, causes or increases a risk of bringing or spreading of contagious animal disease in interest stock-breeding or wild animals, shall be sentenced to imprisonment for up to one year, to prohibition of activity or to confiscation of a thing or other asset value.*
- (2) *An offender shall be sentenced to imprisonment for six months to three years, if he/she causes spreading of such a disease by the act referred to in Subsection (1).*

The objective is to protect against the spread of contagious diseases in animals, whether in pet farms, economically important livestock, or wild animals. Both intentional and negligent culpability are possible in this context. The Criminal Code provides for imprisonment, prohibition of activity, or confiscation of property for this offence.

***Section 307 – Spreading of Contagious Disease and Parasites of Utility Herbs***

- (1) *Whoever, even negligently, causes or increases a risk of bringing or spreading of contagious disease or parasite of utility herbs, shall be sentenced to imprisonment for up to one year, to prohibition of activity or to confiscation of a thing or other asset value.*
- (2) *An offender shall be sentenced to imprisonment for six months to three years, if he/she causes spreading of such a disease or parasite by the act referred to in Subsection (1).*

The objective here is to protect commercial plants against the spread of contagious diseases and pests. This offence may be committed either intentionally or negligently by a natural or legal person. In the event of committing this offence, the offender may be sentenced to imprisonment, prohibition of activity, or confiscation of property.

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<sup>24</sup> Explanatory report to the Criminal Code.

**Section 308 – Common Provisions**

*The government shall determine by a regulation which diseases of animals and herbs are considered as contagious within the meaning of Section 306 and 307 and to which parasites applies Section 307.*

The Government of the Czech Republic has complied with this common provision by adopting Regulation No. 453/2009 Coll., which, for the purposes of the Criminal Code, establishes what is considered to be contagious human diseases, contagious animal diseases, contagious plant diseases, and pests of utility plants. The law has chosen the form of a regulation because it better meets the need for a timely legislative response to changes in the catalogue of diseases and newly identified pests.

**CONCLUSION**

This paper discusses the impact of the Europeanisation of criminal law on the criminal protection of the environment in the Czech Republic. Based on the gradually adopted legislation presented above, it is clear that the European Union plays an important role in the area of environmental protection, determining the direction and scope of protection through its policies and individual legal instruments. The environment is undoubtedly a crucial component for the quality of life of every human being, and its protection must therefore be a foremost priority not only for the European Union but for every Member State as well. In recent years, this trend has become increasingly evident, with greater efforts at the EU level to address environmental protection, including through criminal law.

In the past, efforts to address environmental protection through civil and administrative law were found to be inadequate. It was therefore necessary to approach environmental protection through criminal law. An important milestone in this area is the 2008 Directive. The 2008 Directive requires Member States to impose proportionate, effective, and dissuasive criminal penalties for serious infringements of Community environmental law. The criminal penalties contained in Chapter VIII of the Criminal Code correspond to the requirements of the 2008 Directive, both in terms of the types of offences and the levels of imprisonment or other punishments relevant to environmental protection, such as the prohibition of activities in sections 299, 300, 302, 303, and 304.

The 2008 Directive also calls for the introduction of criminal liability for legal persons. According to Act No. 418/2011 Coll. on Criminal Liability of Legal Persons and Proceedings against Them, a legal person is criminally liable for all environmental crimes listed in Chapter VIII of the Criminal Code, meaning the Czech Republic also meets this requirement.

The 2008 Directive is rather brief, listing only the most basic concepts. According to evaluation results, the 2008 Directive did not sufficiently fulfil its purpose, making it necessary to revise this directive and render the criminal regulation of environmental protection more comprehensive. For this reason, an entirely new

Directive 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law has been introduced, replacing Directives 2008/99/EC and 2009/123/EC. The new directive aims to address the shortcomings of the previous directive and, in particular, tightens criminal offences related to environmental protection. Additionally, new criminal offences are introduced concerning actions involving the illegal extraction of water from natural sources, ship recycling, violations of European Union regulations in the field of chemicals (especially mercury and fluorinated greenhouse gases), and, last but not least, actions resulting in the spread of invasive non-native species of animals, plants, fungi, and microorganisms that have a significant impact on the territories of individual Member States. From the wording of the new directive, there is a clear effort to maximise environmental protection.

The new directive establishes an obligation for Member States to adopt or amend legislation to ensure the objectives of the directive and its individual provisions are fulfilled by 21 May 2026. Regarding the date of adoption of the new directive, the Czech Republic is only at the beginning of discussions on how to ensure compliance. It remains to be seen how drastic these changes will be; however, elements that align with the new directive are already present within the current framework of criminal law.

Czech legislation is based on and builds upon the international obligations that the Czech Republic is required to fulfil. The Czech Republic is subject to international treaties (Article 1(2) of the Constitution) and thus also to European Union legislation (Article 10 of the Constitution). EU legislation is central to the Czech Republic's creation of laws on environmental protection through criminal law.

The Czech Republic regards crimes against the environment with utmost seriousness, addressing them in a dedicated chapter of the Criminal Code. This paper lists and analyses the individual offences concerning environmental protection and the safeguarding of fauna, flora, soil, air, and water. Czech legislation thus encompasses protection for practically all components of the environment. Certain areas have long been sufficiently effective, proportionate, and dissuasive, while others, such as animal protection, have been subject to more frequent amendments.

In conclusion, it can be observed that the Czech Republic performs well in the field of criminal environmental protection; it is proactive in this area and strives to fulfil its obligations, if not immediately, then in due course. It is hoped that, especially following the new directive on criminal environmental protection, the Czech Republic's efforts in this area will remain active and sufficient.

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