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Legal Framework for Administrative Offenses: Defining Responsibilities, Compliance, and Sanctions in Czechia

Abstract

This article examines the legal framework governing environmental protection in the Czech Republic, focusing on the pivotal role of administrative law in defining responsibilities and enforcement mechanisms. It establishes environmental protection as a fundamental constitutional obligation and a public interest, rooted in the state's role as the guarantor of a favourable environment. The study details the division of competences between central bodies, such as the Ministry of the Environment and the Czech Environmental Inspectorate, and territorial self-governing units (municipalities and regions), which are responsible for delegated state administration. The author categorises regulated environmental activities into four groups, ranging from public use to absolute prohibitions, and discusses the administrative tools used for regulation, including individual permits and so-called binding opinions. A significant portion of the text is dedicated to the system of administrative liability, specifically distinguishing between administrative delicts and criminal offences based on the degree of social harmfulness and the principle of ultima ratio. The article analyses the effectiveness of administrative sanctions, particularly fines, which are often perceived as having a stronger deterrent effect than criminal penalties due to their high statutory limits. Furthermore, it explores the potential for waiving penalties if an offender takes voluntary remedial measures, and proposes this approach as a model for future legislation. Finally, the work identifies key challenges, such as the volatility of legislation driven by EU law and institutional capacity limitations, concluding that strengthening the expert-led Czech Environmental Inspectorate is essential for effective law enforcement.

Keywords: Environmental law, administrative delicts, sanctions and penalties, public administration

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Michal SOBOTKA: Legal Framework for Administrative Offenses: Defining Responsibilities, Compliance, and Sanctions in Czechia. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2026 Vol. XXI No. 40 pp. 239–255

https://doi.org/10.21029/JAEL.2026.40.239

1. Introduction

Environmental protection is one of the most urgent tasks today. The environmental crisis requires active engagement in environmental protection at all levels of human society, from the international community down to the individual. The state occupies a privileged position in this regard, as it is a primary entity of international law, and environmental problems cannot be effectively addressed without international cooperation. The state is also the guarantor to its citizens of a certain level of environmental quality. In the Czech Republic, this obligation is reflected in the constitutional order both in the form of the state's commitment to ensure the prudent use of natural resources and the protection of natural wealth,[1] and in its role as the guarantor of the public right to a favourable environment.[2] Environmental protection is one of the key public interests, the promotion of which would be unthinkable without effective legislation. Considering the characteristics of the protected interest, it follows that the principal area of law governing environmental protection falls within public law, with administrative law being of particular importance. Despite the recognition of environmental law as an independent branch within the legal system, its mechanisms and methods of regulation remain closely linked to the principles and structures of administrative law. The framework and processes that guide environmental protection are, to a significant extent, rooted in administrative law, which provides the foundation for the organisation, implementation, and enforcement of environmental regulations.

1.1. Administrative law: definition and division

There is no universally accepted definition of administrative law in Czech legal doctrine, but current legal scholarship most often considers it to be the part of the legal system that regulates public administration. More precisely, it is a set of public law rules that regulate the organisation, activities, and procedures within public administration.[3] As regards the term 'public administration' itself, it refers to the management of public affairs, i.e. a set of matters that are difficult to define clearly but can generally be described as matters whose management (administration) is determined by the public interest as an interest that is beneficial to the society as a whole.[4] Depending on its holder (the entity on whose behalf it is exercised), public administration is divided into state administration (exercised on behalf of the state), territorial (self-)government (exercised on behalf of regions and municipalities), and other public administration (exercised on behalf of

1 | See Art. 7 of the Constitution of the Czech Republic, Constitutional Act No. 1/1993 Sb.
2 | See Art. 35/1 of the Charter of Fundamental Rights and Freedoms, Constitutional Act No. 2/1993 Sb.
3 | Sládeček 2019, 44.
4 | Ibid. 24–25.

other self-governing entities),[5] of which the first two perform tasks in the field of environmental protection. The precise division of competences in environmental matters between state administration and territorial (self-)government will be discussed below.

A characteristic feature of administrative law is that it protects public interests and, as a rule (except for public law contracts), regulates relations between actors in unequal positions, in which one of these actors (the administrative authority) can decide regarding the rights and obligations of the other actor. Actors whose rights and obligations are subject to such decisions, or – more generally – in relation to whom public administration is exercised, are referred to as addressees of public administration. They include natural persons and legal entities, of which the most common in the field of the environment are, on the one hand, legal entities and natural persons engaged in business activities that might have a (negative) impact on the environment and, on the other hand, individuals whose rights may be affected by such activities, and environmental non-governmental organisations.

Administrative law can be internally divided according to several criteria. The first criterion is the type of relationships (activities) that a given part of administrative law concerns. According to this criterion, we distinguish between substantive administrative law and procedural administrative law. Substantive administrative law governs rules regulating the activities of administrative authorities in individual areas and sectors of public administration (social security, construction, environmental protection, etc.) and define the conditions and prerequisites for the exercise of rights and obligations of public administration addressees. Procedural administrative law in the narrower sense includes rules governing procedures within the exercise of public administration, in particular administrative proceedings, i.e. the formal procedure conducted by an administrative authority in which that authority decides regarding the rights, legally protected interests, and obligations of the addressees of public administration. This division is based, among other things, on one of the basic principles of the exercise of state power – the principle of legality. This principle is enshrined in Art. 2 (3) of the Constitution of the Czech Republic, according to which "[state power] may be exercised only in the cases, within the limits and in the manner provided by law."[6]

As regards the definition of the competences (subject–matter/territorial jurisdiction and powers) of administrative authorities, there is no strict consensus on whether it should be considered part of substantive or procedural law. It is typically considered a component of administrative procedural law.[7]

5 | These entities include, for example, public universities or professional chambers, but they do not perform public administration in environmental matters and will therefore not be considered further.
6 | Underline added by author.
7 | Hendrych et al. 2012, 20.

The second criterion is the degree of specificity, according to which administrative law is divided into a general and a special part. The general part (general administrative law) includes those parts of administrative law that are generally applicable and common to this field of law and. These include the definitions of basic terms and legal concepts, principles, constitutional foundations, forms of administrative activity, and other issues that form the necessary basis for the creation, application, and control of administrative law rules.[8] The general part of administrative law includes not only substantive law norms and concepts, but also procedural ones (administrative proceedings, administrative justice).

The special part of administrative law consists primarily of substantive provisions within individual branches of administration (areas of public administration activities), which are found in numerous legal regulations of varying legal force.[9] In this respect, environmental law can be, to a limited extent, considered a special part of administrative law.

2. Legal framework governing administrative competences

As noted above, the primary responsibility for environmental protection lies with the state. This obligation is derived from Art. 7[10] of the Constitution and Art. 35 of the Charter of Fundamental Rights and Freedoms. The state fulfils this obligation primarily by adopting laws that are necessary to discharge the obligations under the aforementioned provisions.[11] At the same time, it must have the appropriate administrative staff to implement the adopted legislation.[12]

From the perspective of the division of public administration into the area of state administration and self-government, environmental protection is primarily implemented within state administration. Territorial self-governing units

8 | Ibid., 21–22.
9 | Ibid., 20.
10 | Art. 7 of the Constitution: "The State shall take care to conserve natural resources and protect natural wealth." Art. 35 (1) of the Charter: "Everyone has the right to a favourable environment." With regard to Art. 41 (1) of the Charter, the rights enshrined in Art. 35 cannot be claimed directly, but only within the limits of the laws implementing that article. Art. 35(3) of the Charter: "No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law" (emphasis added by author).
11 | As the Czech Constitutional Court held in the case IV. ÚS 254/02: "The way in which the state takes care of the fulfilment of all requirements for environmental protection is determined by law. The constitutional regulation of the right to a favourable environment explicitly envisages a realistic definition of the legal definition of the content and scope of the manner of ensuring this right (Art. 41(1) of the Charter). By imposing obligations, restrictions and prohibitions, punishing unlawful conduct and minimizing adverse consequences, or compensating them in another appropriate way, the state fulfils its obligations in relation to the environment and contributes to the fulfilment of the rights of individuals."
12 | Damohorský et al. 2010, 47–49.

(municipalities, regions) are allocated only a smaller, although in some cases very significant, part of the performance of public administration as part of their autonomous competences. A very important role in environmental protection, implemented in the area of autonomous competences of territorial self-government, is planning (municipal zoning plans, Principles of Regional Spatial Development) – one of the key cross-cutting tools for environmental protection. Through such plans, territorial self-governing units set the conditions for the use of their territory,[13] which also includes the conditions for the protection of natural and cultural values. It is the responsibility of both municipalities and regions to ensure the comprehensive development of their territories. In this regard, land-use planning serves as a fundamental tool available to these local government entities. Municipalities and regions are responsible for developing the relevant technical infrastructure (such as water supply and sewer systems), protecting green infrastructure – including regional ecological stability systems – and undertaking a range of other activities that have a direct impact on the environment. At the municipal level, mention should also be made of waste management, where municipalities regulate the management of municipal waste and certain related commodities through generally binding decrees.[14]

However, the bodies of territorial self-governing units (i.e. municipalities and regions) play a very important role in the performance of state administration, because in the Czech Republic, at the local (municipalities) and regional (regions) level, the performance of state administration is mainly carried out within the delegated competences by the bodies of municipalities and regions (municipal authorities, regional authorities) rather than through the state's own agencies. In this context, municipal and regional authorities are referred to as 'indirect executors' of state administration. The state's own agencies are then referred to as 'direct executors' of state administration.[15]

The highest state authority in the field of the environment is the Ministry of the Environment, which serves as the primary central administrative body in charge of environmental protection. The Ministry of Agriculture (forest protection, hunting, fishing, water management), the Ministry of Regional Development (planning and zoning), and the Ministry of Industry and Trade (use of mineral resources)

13 | According to Section 38 para. 1 of Act No. 283/2021 Sb., the Building Act, the aim of spatial planning is "to systematically and comprehensively address the functional use of the territory, to determine the principles of its functional and spatial arrangement and to create the prerequisites for the sustainable development of the territory consisting of a balanced relationship of conditions to a favourable environment, to economic development and the cohesion of the community of inhabitants of the territory, which satisfies the needs of the current generation without endangering the living conditions for future generations."

14 | See Section 59 et seq. of Act No. 541/2020 Sb., on Waste.

15 | Kopecký 2019, 77–90.

also have significant competences.[16] At the national level, the structure of central government bodies (ministries) is complemented by inspection authorities, foremost among which is the Czech Environmental Inspectorate[17], which reports to the Ministry of the Environment.

At the regional level, regional authorities are a key link in the chain of state administration. They play a decisive role in the licensing of activities (integrated permits, waste management facilities, specified stationary sources of air pollution), where they act as first-instance authorities. At the same time, they act as the appellate body against decisions made by municipal authorities of all three types (see below). It can therefore be said that, in terms of their scope of competences, regional authorities are the most important link within the state administration system regarding environmental protection.

The performance of state administration at the municipal (local) level is divided among three types of municipal authorities. Each municipality (there are 6,258 municipalities in the Czech Republic) has a municipal authority (first level municipalities), which has defined basic competences in the field of environmental protection. In principle, these are very simple agendas, such as permitting the felling of trees growing outside forests. A total of 392 municipal offices are defined as authorised municipal authorities (second-level municipalities) and in 205 cases they serve as authorities of municipalities with extended powers (third-level municipalities). Second and third-level municipalities are entrusted with agendas that require a higher level of expertise and can be provided only at the level of a certain number of municipalities (e.g. permitting wastewater discharges, issuing building permits, authorisation of interventions in specially protected parts of nature, etc.).

This structure of municipal authorities is the result of a significant reform of the state administration that took place in 2000, within which the district offices, which had been state bodies, were abolished. Their competence was then transferred to a certain extent to municipal authorities (mainly third level) and regional authorities.

The large number of municipalities in the Czech Republic is widely seen as an obstacle to effective public administration, as the administrative division of the state is highly fragmented at the basic (municipal) level. A further issue is the systemic risk of conflicts of interest. This is because state administration at the level of municipalities and regions is carried out by employees of those municipalities and regions. Society-wide interests (state interests) and the interests of a particular

16 | Act No. 2/1969 Sb., on the establishment of ministries and other central government bodies of the Czech Republic.

17 | Act. No. 282/1991 Sb., on the Czech Environmental Inspectorate and Its Powers in Forest Protection.

municipality or region may conflict, and the legislation must therefore contain tools to ensure impartial decision-making.[18]

The above-outlined structure of state administration is supplemented by specialised bodies that perform state administration in selected (specialised) sections or in specially defined areas. Typical examples are the National Park Administrations, which exercise the powers of authorities for nature conservation, forest protection, hunting, fishing, etc., in (the territories of) national parks.[19]

3. Regulatory powers of administrative authorities

The basis for the imposition of any obligations is Art. 4(1) of the Charter of Fundamental Rights and Freedoms, according to which obligations may be imposed only on the basis of law and within its limits, and subject to the preservation of fundamental rights and freedoms.

Activities regulated for environmental protection reasons can be divided into four basic groups according to the degree of regulation that is characteristic of each group.

The first group includes activities that can be carried out directly on the basis of a law and do not require an individual permit. These activities constitute the so-called public use of certain components of the environment. Specifically, these are the general use of surface waters under Section 6[20] of the Water Act, the general use of forests under Section 19[21] of the Forest Act and the general right of access to the countryside under Section 63 of the Nature and Landscape Protection Act.[22] In all these cases, the limits of this public use (scope of rights) are directly determined *ex lege* and activities that are prohibited in connection with it are defined (e.g. damaging the banks of watercourses, disturbing peace and quiet in the forest, etc.). General use may be restricted or prohibited, with the exception of access to countryside, by the competent administrative authority, as a rule, by means of a so-called administrative measure of a general nature which is binding on an

18 | The basic rules for the assessment of a potential conflict of interest on the part of an authorised official, and therefore the grounds for exclusion from the proceedings, are set out in Section 14 of Act No. 500/2004 Sb., the Code of Administrative Procedure.
19 | Act No. 114/1992 Sb., on the protection of nature and the landscape (see section 78).
20 | According to Section 6(1) of Act No. 254/2001 Sb., the Water Act, "any person may, at his own risk, withdraw surface water or otherwise dispose of it for his own use without the permission or consent of the water authority, unless a special technical facility is required" (emphasis added by author).
21 | According to Section 19 of Act No. 289/1995 Sb., the Forest Act, "everyone has the right to enter the forest at their own risk, to collect forest fruits and dry brushwood lying on the ground for their own use."
22 | Section 63(2) reads as follows: "Everyone shall have the right to free passage over land owned or leased by the State, a municipality or another legal entity, provided that by doing so he does not cause damage to the property or health of another person and does not interfere with the rights of personality or neighbourhood rights."

indeterminate group of addressees, or, exceptionally, by an individual administrative decision.[23]

The second, most important group of activities are activities that can generally be carried out on the basis of an individual permit. The permit allows for the determination of individual conditions for the implementation of a specific activity and represents a basic administrative tool in the field of environmental protection. The most important types of permits are integrated permits, permits for the operation of listed stationary sources of air pollution, for the operation of waste management facilities, for water management, and for construction projects, etc. Very often, a conditional administrative act is necessary for the issuance of a permit, usually in the form of a binding opinion issued by the competent administrative authority and the content of which is binding on the authority issuing the permit. A typical prerequisite is a binding opinion issued as a result of the EIA process and a unified environmental statement.[24]

The third group of activities consists of activities that are not generally permissible but can be authorised in certain exceptional circumstances. It is therefore a matter of allowing exceptions, usually on the basis of the existence of another, overriding public interest. An example is the permitting of public infrastructure construction in specially protected areas such as national parks, natural reserves, etc. When granting exceptions, administrative measures of a general nature are again applied in some cases, if the exception is addressed to an indeterminate group of addressees. Typically, administrative measures of a general nature are used to permit derogations from the general protection of birds (e.g. cormorant shooting) or exceptions to the basic protective conditions of specially protected animal species (e.g. destruction of beaver dams and settlements).

The last, and very limited, group consists of activities that are absolutely prohibited and cannot be allowed under any circumstances. An example is the direct discharge of wastewater into groundwater.[25]

To a limited extent, public law contracts, which may be concluded particularly in the field of nature conservation, may also serve as a means of determining obligations. Such contracts are used to secure the protection of certain Natura 2000 sites, memorial trees and similar elements. In these cases, they serve as an

23 | For example, Section 6(4) of the Water Act allows the water authority to "by decision or measure of a general nature, modify, restrict or prohibit the general management of surface water without compensation if the public interest so requires."
24 | According to Section 2(1) of Act No. 148/2023 Sb., on Unified Environmental Statement: "an unified environmental statement is a binding opinion on the environmental impact of a project that is subject to a permit under the Building Act or an environmental impact assessment under the Environmental Impact Assessment Act, which is issued in lieu of administrative acts stipulated by other legal regulations in the field of environmental protection."
25 | According to Section 38(8) of the Water Act "direct discharge of wastewater into groundwater is prohibited."

alternative to a generally binding legal regulation, which would otherwise establish the protective regime for these elements.[26]

The range of administrative authorities that have the power to inspect compliance with the established obligations is relatively wide. The principal inspection body is the Czech Environmental Inspectorate established by Act No. 282/1991 Sb., on the Czech Environmental Inspectorate and Its Powers in Forest Protection. The competence of the Inspectorate in other areas of environmental protection is governed by the relevant 'sectoral' regulations. In addition to the Inspectorate, inspection powers are also vested in regional authorities and in municipal authorities – particularly in those of municipalities with extended powers. Inspection powers are typically regulated in parallel at the municipal and regional levels, so that an inspection may be carried out by any of the above-mentioned bodies. Inspection activities concern all obligations, whether they arise directly from the law or have been imposed on the basis of it (e.g. by a permit for the operation of a certain facility). Obligations arising *ex actu* are usually inspected by the administrative authority that issued the relevant permit, or by the Czech Environmental Inspectorate.

The powers of inspection authorities necessary to ensure the conduct of inspections are governed by Act No. 255/2012 Sb., on Inspection (Inspection Rules), and encompass a wide range of powers. These include, among other things, the right to enter land, buildings, and other premises; to request the provision of data and documents; and to require the cooperation of the entity subject to inspection (Sections 7 and 8 of the Inspection Rules).

If an inspection reveals that an operator has violated their obligations, the inspection may lead to one of two outcomes. The first is the initiation of administrative proceedings and the subsequent imposition of a penalty for the violation of rules. The second is the initiation of proceedings to impose corrective measures, which are intended to remedy the identified deficiencies or, where applicable, to avert the risk of environmental damage (ecological harm). Such a remedial measure may consist either in remedying the harmful situation (environmental damage) or in prohibiting the activity the unlawful performance of which caused the harm. In both cases, the provisions governing the competent authority's powers to take such action are set forth in individual laws establishing the protection of specific components of the environment. A typical example is Section 22(1) of the Air Protection Act, which states that: "If the operator fails to fulfil the obligations set forth in this Act or in the operating permit, the inspection authority or the municipal authority with extended powers is authorized to order the operator to take remedial measures within a reasonable period of time. If the operator fails to take corrective measures within the specified period, the inspection authority or the municipal authority with extended powers is authorized to issue

26 | See Section 39(1) of Act No. 114/1992 Sb., on Nature and Landscape Protection.

a decision to suspend the operation of the stationary source." Similar provisions can also be found in other relevant laws.[27] While the aforementioned provisions limit the imposition of corrective measures to situations involving a breach of duty, the Nature and Landscape Protection Act allows for the imposition of measures to prevent harm even in relation to otherwise permitted activities. According to Section 66(1) of this Act: "the nature protection authority is entitled to impose conditions on natural persons and legal entities for the performance of an activity that could cause an unauthorised change to generally or specially protected parts of nature, or to prohibit such an activity." In this case, the law does not link the possibility of imposing measures to an actual breach of an existing obligation, but rather to the risk of such a breach. The law anticipates situations in which a permit from the nature conservation authority is required for a specific intervention in the protected areas of nature and the landscape, but such a permit has not yet been issued because there were no grounds for doing so. Continuation of a potentially harmful activity is then possible only if the relevant entity obtains a permit from the nature and landscape conservation authority. The authority may then issue the permit contingent upon the fulfilment of certain restrictive conditions, or it may deny the permit, thereby definitively preventing the activity from taking place.

For the sake of completeness, it should be noted that the Czech legal system also includes Act No. 167/2008 Sb., on the Prevention and Remediation of Environmental Damage, which transposes Directive 2004/35/EC. Although this Act establishes rules for imposing preventive and remedial measures and although it takes precedence over legislation protecting specific components of the environment, it is rarely applied in practice. The reason for this is that the concept of environmental damage is defined in a highly complex manner, and proving its occurrence – or even the risk thereof – is challenging. Legal practice therefore generally gives priority to the application of procedures under the sector-specific laws described above.

4. Types of administrative delicts[28]

According to Czech law, a basic administrative delict is an administrative transgression misdemeanour. An administrative transgression can be committed by a natural person, a legal entity, or a natural person engaged in business. A transgression as an administrative delict of a legal entity and a natural person engaged in business has been only recently introduced into the Czech legal system, with the

27 | See e.g. Section 116 of the Waste Act or Section 42 of the Water Act.
28 | Czech law distinguishes a special group of unlawful acts violating administrative regulations in their widest sense and deals with them within the system of administrative law (including penalties) and not criminal law. This is why this category of unlawful acts is usually termed 'Administrative Delicts'.

adoption of Act No. 250/2016 Sb.[29] While a natural person is liable on the basis of fault, the liability of a legal entity or a natural person engaged in business for an administrative transgression is constructed as strict liability. In the field of environmental protection, as in all other areas of public administration, legal entities and natural persons engaged in business are subject to strict liability, regardless of whether the obligation breached is administrative in nature or one with direct environmental impact. However, this is not absolute liability, as a person may be exempt from liability if they prove that they "made every effort that could be required to prevent the offence" (Section 21(1) of the Offences Act).

While the Administrative Delicts Act regulates the general conditions for liability for a delict, the elements of delicts are defined by legal regulations in individual sectors of environmental protection legislation. It is understandable that legislators strive to formulate perfect legal norms and therefore to establish the relevant elements of a delict for each of the specified obligations. The range of elements constituting delicts is therefore very extensive in individual areas of environmental protection, totalling several hundred types of administrative delicts. For example, Section 117 of the Waste Act defines 30 elements of delicts that may be committed by a natural person. Sections 118 to 121 then define more than one hundred elements of delicts that may be committed by a legal entity or a natural person engaged in business. This difference in scope is understandable, as the regulation concerns, to a significant extent, activities of an essentially commercial nature, where the holders of obligations are legal entities or natural persons engaged in business.

A delict is defined in Section 5 of Act No. 250/2016 Sb., on liability for delicts and proceedings concerning them (hereinafter referred to as the 'Administrative Delicts Act'), as: "a socially harmful unlawful act that is expressly designated as an delict in the law and that exhibits the characteristics specified by law, unless it is a criminal offence." The definition of a delict therefore contains the typical element, which is social harmfulness.

On the other hand, a criminal offence is defined in Section 13(1) of Act No. 40/2009 Sb., the Criminal Code, as: "an unlawful act which the Criminal Code designates as a criminal offence and which exhibits the characteristics specified in that Act." Unlike the definition of an administrative delicts, the definition of a criminal offence is constructed as formal and does not contain the element of dangerousness for the society. The Criminal Code applies social harmfulness as a corrective element on the basis of Section 12(2), according to which: "the criminal liability of the perpetrator and the criminal law consequences associated with it may only be applied in cases of social harmfulness where the application of liability under another legal regulation is insufficient. Criminal liability is therefore a

29 | Prášková 2017, 17–22.

means of *ultima ratio*"[30] and can be applied when the application of liability for an administrative delict is insufficient.

The degree of social harmfulness of an unlawful act is therefore a key criterion for distinguishing between an administrative delict and a crime,[31] particularly when the definition of their formal characteristics, typically the elements of the offence, is not sufficient to distinguish between them. The formulation of the elements of delicts and crimes respectively in the field of environmental protection is very often similar, and the two frequently overlap.

Criminal offences against the environment are defined in Chapter Eight of the Special Part of the Criminal Code (Sections 293–307). These offences can be divided into three groups. The first group consists of criminal offences of endangering and damaging the environment (Sections 293 and 294). The second, and most important, group consists of offences where the protected interest is one of the components of the environment (forests, nature and landscape, water resources), or whose elements involve the unlawful handling of sources of environmental threats (waste, ozone-depleting substances). The last group consists of offences where the object of protection is primarily livestock or animals kept in captivity, or cultivated plants – for example, spreading a contagious animal disease (Section 306 of the Criminal Code) or spreading a contagious disease and pests of cultivated plants (Section 307 of the Criminal Code). For the last two groups, related elements of an administrative delict also exist, so it is necessary, on the basis of the rules outlined above, to distinguish which type of liability – administrative or criminal – should be applied in a specific case. It should be noted that criminal liability is applied only in a minority of cases, and that most violations of environmental rules are dealt with under the administrative liability framework.

5. Administrative sanctions and penalties

The Administrative Delicts Act sets out, in Section 35, the following types of administrative penalties: reprimand, fine, prohibition of activity, forfeiture of the item or substitute value, and publication of the decision in the case. The last type of penalty may be imposed only on a legal entity or natural person engaged in business.

In the field of environmental protection, the fine is the primary administrative penalty and is provided for in respect of all delicts. The upper limits of fines differ for natural persons on the one hand, and for legal entities and natural persons engaged in business on the other. For natural persons, the statutory maximum is usually set at 1,000,000 CZK for the most serious delicts. For legal entities and natural persons engaged in business, the upper limit may reach up to 25,000,000 CZK.

30 | Borčevský 2025, 16–18.
31 | Uhri & Nemes 2024, 100.

Under the general provisions of the Administrative Delicts Act, the penalty of forfeiture of the item or its substitute value may be imposed without specific authorisation in a special act.

Conversely, imposing the penalty of prohibition of activity requires explicit statutory authorisation in a special act. Surprisingly, legal regulations in the field of environmental protection do not enshrine this possibility. Instead, they typically empower the relevant authority to restrict or even prohibit the operation of a facility as a corrective measure when it is being run contrary to its operating conditions (e.g. Section 19b of the Integrated Prevention Act, Section 22 of the Air Protection Act).[32]

One tool for distinguishing the seriousness of administrative delicts, and consequently for determining appropriate sanctions, is a legislative technique that groups elements of similarly serious delicts into subdivisions within individual sections of the Act. The sections defining elements of administrative delicts are generally divided into subsections, in which the specific elements are set out under individual section. The law then specifies the maximum fine that may be imposed for committing an administrative delict described in a particular subsection. For individual administrative delicts, maximum fines are set on a case-by-case basis only in a very limited number of instances. In extremely rare cases, the amount of the fine is determined in some other way than by setting a specific range within which the competent authority operates, applying the criteria for the severity of the delict described above. One of the few such cases is the offence of unauthorised extraction of surface or groundwater, for which the Water Act imposes a fine of 40 CZK per m^3 of extracted surface water and 70 CZK per m^3 of extracted groundwater. [33]

In Section 37, the Administrative Delicts Act defines the criteria that are taken into account when imposing an administrative penalty. These criteria include, under paragraph c), mitigating circumstances, which are further non-exhaustively listed in Section 39 of the Act. The mitigating circumstances include, in particular, the fact that the offender "assisted in the removal of the harmful consequence of the delict or voluntarily compensated for the damage caused" (paragraph c), and also that they "reported the delict to the administrative authority and effectively assisted in its clarification" (paragraph d). These mitigating circumstances are taken into account by the administrative authority *ex officio* and, given the general nature of the administrative delicts legislation, they are applicable in the case of all delicts.

The Administrative Delicts Act also regulates the waiver of the imposition of an administrative penalty (Section 43), which can be used if "given the seriousness of the delict, the circumstances of its commission and the person of the offender,

32 | Fiala 2022, 100–105.
33 | See Section 116(3–4) of the Water Act.

it can be reasonably expected that the mere hearing of the case before an administrative authority will be sufficient to remedy it." Given that the mildest type of sanction is reprimand, it can be assumed that this provision will be used only exceptionally.

In addition to this general regulation, however, in the field of environmental protection, it is also possible to find a special legal regulation that is intended to motivate the offender to voluntarily remove the consequences of their unlawful conduct. In the first place, it is Section 125l(1) of Act No. 254/2001 Sb., on Waters (the Water Act), which allows the competent authorities to refrain from imposing an administrative penalty "if the offender takes actual measures to eliminate the consequences of the breach of obligation, as well as measures to prevent further endangerment or pollution of groundwater or surface water, and the imposition of an administrative penalty would lead to disproportionate harshness in view of the costs of the measures taken." A similar provision, allowing the amount of costs incurred for the voluntary removal of harmful consequences to be taken into account, is also contained in Section 38(1) of Act No. 76/2002 Sb., on Integrated Prevention, and in Section 125 of Act No. 541/2020 Sb., on Waste. In the latter case, Section 125 of the Waste Act allows the administrative authority to suspend the proceedings for the administrative delict due to the implementation of "measures to prevent the occurrence of further adverse consequences." Without this possibility, the administrative authority would not be able to take into account the actual amount of the costs of the measures taken, because the proceedings would have been terminated earlier, due to statutory time limits, and the extent of the costs incurred could not have been known at the time of the decision.

6. Challenges in administrative governance

If we are to consider the limitations of the current public administration system in the area of environmental protection and their implications for the application and enforcement of the law, two potential problems can be identified. The first of these is the considerable instability – or rather, the volatility – of the legal framework. The second issue concerns the limitations of the institutional framework for the administration of public affairs, through which the legal regime is enforced.

The instability or volatility of legislation essentially has two causes. The first can be described as external and stems from the need to adapt domestic legislation to constantly evolving European law. Take, for example, the field of waste management legislation, which is vast and complex and poses a challenge not only for those it affects but also for the authorities responsible for enforcing it. In 2020, the Czech Republic enacted its fourth Waste Act since 1989. The second, internal, problem is the relatively low quality of the legislative process. This issue results in practical difficulties caused by ambiguous legal provisions. In the area of administrative

penalties, clear legal provisions are an essential prerequisite without which compliance with obligations cannot be effectively enforced.

With regard to institutional arrangements, it is worth noting that the exercise of state administration in the field of environmental protection is carried out primarily through municipal and regional authorities through their exercising delegated state administration. The relevant officials are therefore employees of municipalities or regions. Although the state provides funding to municipalities and regions for the performance of public administration, these funds are insufficient to cover all potential costs. The result is a relatively small number of officials and a consequent lack of capacity to carry out inspection activities and enforce imposed measures (e.g. corrective measures).

The system of administrative penalties – specifically fines, which are by far the most common type of administrative penalty – can be considered relatively effective. The maximum amount of a fine that can generally be imposed is so high that, in practice, fines are rarely imposed at the upper limit of the penalty range. The potential amount of the fine imposed for an administrative delict is often seen as a greater deterrent than the potential punishment if the act were prosecuted as a criminal offence. In the case of environmental crimes set forth in Title VIII of the Criminal Code (Sections 293–308), imprisonment for a maximum of five years may be imposed, with certain exceptions.[34] This is also the threshold for imprisonment, at which point the upper limit of imprisonment below which the Criminal Code requires[35] that a suspended sentence be given primary consideration. In most cases, courts opt for a suspended sentence, which is perceived as relatively lenient compared to the potentially high financial penalties for administrative offences.

7. Future perspectives and conclusions

To ensure fairness, it is essential that the system not only punish the violation itself but also encourage the rectification of its consequences. Special legal provisions (e.g. in the Water Act or the Waste Act) allow administrative authorities to waive the imposition of a penalty if the offender takes concrete remedial measures. This prevents 'disproportionate harshness' in cases where the costs of remediation, combined with a fine, would be ruinous for the entity. This approach should be adopted as a general model and enshrined across the entire field of environmental protection. It is certainly desirable that, in the event of environmental damage, the primary focus be on its remediation rather than on punishing the perpetrator.

34 | See the elements of the criminal offences as set forth in the following provisions of the Criminal Code: Section 293(3) Damage and endangerment to the environment, Section 297(3) and (4) Unauthorised discharge of pollutants, Section 299(4) Unauthorised Disposal of Protected Wildlife, Section 302(4) Animal Cruelty.

35 | See Section 55(2) of the Criminal Code.

In 2016, following the adoption of a new law on administrative delicts, a comprehensive review of the elements of administrative delicts was conducted across all areas of administrative law, including environmental law. In this regard, therefore, no major changes can or should be expected. Similarly, no changes can be expected by way of a potential codification of the elements of administrative delicts in the area of environmental protection. The scope of the relevant legislation is so extensive and subject to change that any codification would likely cause more problems than it would solve. To enhance the effectiveness of the enforcement system, strengthening the role of the relevant administrative authorities therefore appears to be the most promising approach. In particular, strengthening the position and powers of the Czech Environmental Inspectorate, which is a state authority, could yield the most significant results. It exercises its authority on a nationwide scale and possesses the necessary expertise. Increasing the number of staff and the financial resources necessary to carry out inspection activities would likely be the most effective measure to strengthen the existing inspection system.

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