

The Right to a Favourable Environment in Case-law of the Czech Courts

Abstract

This diploma thesis deals with the right to a favourable environment as it is contained in the decisions of the Czech courts. The main objective was to provide a complete overview of the development of case-law in this area, with an emphasis on some related problems.

Presented diploma thesis points out especially on the unclear conception of the holders of the substantive right to a favourable environment in contrast to the substantive rights belonging to participants in environmental protection proceedings and strives for illustrating the interpretative difficulties associated with this double-track which occurs actually in the Czech legal order.

Apart from other things, this thesis aims to point out to the current question, which was submitted to the Constitutional Court of the Czech Republic, i.e. whether the amendment to the Act of the Czech National Council no. 114/1992 Coll. on Nature and Landscape Protection is consistent with constitutional principles on the protection of public interests and assumptions of international law, especially whether it complies with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter also referred to as the 'Aarhus Convention'). It enshrines the principle of broad public participation in environmental issues and for this purpose determines a basic set of environmental procedural rights, whereas the mentioned amendment has considerably restricted the possibility of entities to interfere with environmental issues.

In the diploma thesis, which consists of four parts, I use a descriptive method in combination with the analysis of court decisions. The conclusion is made using the synthesis method. For the correct understanding of the issue the basic concepts and bases as well as the principles of the protection of environment, character and content of the right to a favourable environment are defined in the first part of the diploma thesis. The advantages and disadvantages of anthropocentric and ecocentric approach to environmental protection are mentioned as well.

In the second part I deal with the right to the environment in an international context. I marginally refer to the historical evolution that influenced the formation of the right to a favourable environment in its beginnings, I bring closer the case-law of the European Court of Human Rights and I point out to the importance of the Aarhus Convention.

In the third part I focus on the very core of the problem and I try to explain who is the holder of the right to a favourable environment from the perspective of the courts

and whether anyone can claim it. Step by step I present the conclusions of the courts, which often varied over time in connection with the development of the attitude to the legal issue of the holder of the right to a favourable environment according to the case-law related to the Nature and Landscape Protection Act, in connection with the right of action according to the Act No. 150/2002 Coll., Code of Administrative Justice, and in connection with the institute of so-called 'measure of a general scope'. Two recent cases are also analyzed. The first one concerns the simplification of the environmental impact assessment process in the case of priority transport projects; in the second case the possibility of participation of environmental associations in criminal offense proceedings related to nature and landscape protection is being considered.

The last part of my thesis responds to the matter discussed by the Constitutional Court in the case under file no. Pl. ÚS 22/17, in which it is aspired for the revocation of the amendment to the Nature and Landscape Protection Act described above. At the end of the thesis, I refer to the consequences of the amendment, I consider its compliance with the constitutional order of the Czech Republic and I also present selected attitudes and arguments of the professional public, which have a strong opinion on the amendment.

Keywords:

favourable environment; Czech case-law; holders of the right to a favourable environment