

EU Forum for Judges for the Environment 2017
Climate Change and Adjudication Questionnaire
Merton College, Oxford, 22 and 23 September 2017

Report on the Czech Republic

Climate Change in Legislation

1. How (if at all) has climate change and issues related to it been incorporated into legislation in your jurisdiction?

- Do they feature in the constitution; legislation; delegated acts?

In Czechia, there is a framework policy for climate change adaptation and there are some particular acts dealing with specific issues. Czech constitution does not mention climate change issues and merely states in Article 7 that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.

FRAMEWORK POLICY FOR CLIMATE CHANGE ADAPTATION

The Climate Protection Policy of the Czech Republic along with the Strategy on Adaptation to Climate Change in the Czech Republic represent specific policies regarding climate change.

In October 2015 the Czech government adopted the Strategy on Adaptation to Climate Change in the Czech Republic. This document represents a national adaptation strategy and includes assessment of the climate change impacts and proposals for specific adaptation measures, legislative and partial economic analysis, etc.

The Adaptation Strategy is being implemented by the National Action Plan on Adaptation to Climate Change which was adopted in 2017. Action plan was structured according to specific climate change impacts in the Czech Republic: Long-term droughts; Floods and flash floods; Extreme meteorological events (Heavy rainfall, Extremely high temperatures; Extreme wind); and Wild fires. Action plan contains 33 specific targets and one crosscutting target focused on education and awareness rising. These targets will be implemented through 52 priority measures, which have 160 priority tasks.

The Climate Protection Policy of the Czech Republic (CPP, see in Czech: [https://www.mzp.cz/C1257458002F0DC7/cz/news_170322_POK/\\$FILE/P OK_v_CR.pdf](https://www.mzp.cz/C1257458002F0DC7/cz/news_170322_POK/$FILE/P OK_v_CR.pdf)) was adopted by the Czech government in March 2017 and replaced former National Programme to Abate the Climate Change Impacts in the Czech Republic.

The CPP identifies objectives, priorities and specific measures to reduce greenhouse gas emissions in order for the Czech Republic to meet its obligations under international agreements and EU law. The Ministry argues that the CPP will - even without the adoption of antifossil law (see below) - contribute to a long-term, gradual transition to a competitive low-emission economy in the Czech Republic. Implementation of the individual measures proposed by the CPP in combination with the measures formulated in the Medium-term Strategy for the Improvement of Air Quality in the Czech Republic (by 2020) and the National Program for Reducing Emissions in the Czech Republic is supposed positively influence the overall reduction of greenhouse gas emissions and the immission burden on public health

threatening the public. However, the emission reducing programmes are currently challenged before the courts for being vague and ineffective.

The CPP defines main objectives in the climate protection at the national level to ensure the fulfilment of the greenhouse gas emission reduction objectives in order to reach international commitments of the Czech Republic. Furthermore it contributes towards gradual long-term transition to sustainable low emission economy.

The CPP further sets primary and indicative emission reduction targets, which should be reached in a cost efficient manner. Measures are proposed in the following key areas: energy, final energy consumption, industry, transport, agriculture and forestry, waste, science, research development and voluntary tools.

Primary emission reduction targets

- Greenhouse gas reduction of 32 Mt CO₂eq. compared to 2005 until 2020
- Greenhouse gas reduction of 44 Mt CO₂eq. compared to 2005 until 2030

Indicative emission reduction targets

- Indicative level towards 70 Mt CO₂eq.of emitted greenhouse gases in 2040
- Indicative level towards 39 Mt CO₂eq.of emitted greenhouse gases in 2050

The Policy covers a period from 2017 to 2030 and provides outlook until 2050. The first evaluation is planned in 2021 and on the basis of such evaluation the Policy will be updated by 2023.

GENERAL NATIONAL LEGISLATION

Currently, climate protection is partially embodied in the general air pollution legislation and emission trading regulation.

The legislation on protection against climate change was introduced by Act No. 86/2002 Coll., On air protection. This law set forth the rights and obligations of the authorities and defined the powers of the administrative authorities not only to protect the Earth's ozone layer from the adverse effects of controlled substances but also to protect the Earth's climate system from the adverse effects of fluorinated greenhouse gases and other tools to reduce the amount of substances affecting the Earth's climate system. The Air Protection Act was replaced in 2012 (by Act No. 201/2012 Coll., On air protection), but still does not regulate the issue of climate change in a comprehensive way. Only part of the law on biofuels is geared to reducing greenhouse gas emissions and promoting renewable energy sources.

Stipulations on the allowance trading system were not embedded in the Air Protection Act, but came in a separate legal document - Act No. 695/2004 Coll., On the conditions of trading in greenhouse gas emission allowances (later on replaced by the new Act No. 383/2012 Coll., On the Conditions of Trading in Greenhouse Gas Emission Allowances). Some issues are further dealt with by Act No. 73/2012 Coll., On Substances that Deplete the Ozone Layer and on Fluorinated Greenhouse Gases, and in the corresponding Decree No. 257/2012 Coll., On the prevention of emissions of substances, Ozone depleting and fluorinated greenhouse gases.

SPECIFIC ACT

There is no specific act which would deal with climate change. In 2014, the Czech government has confirmed plans to draft legislation aimed at reducing the country's dependence on fossil fuels and join the ranks of countries around the world cementing climate change action into a specific legislation which had been listed among the top priorities. The social democrat led government cited reducing the country's fossil fuel dependence as the main reason behind the plan. A spokesperson for the Ministry of Environment – the government department behind the project – said the government would update its national energy and mineral resources policies before proceeding with the so-called “anti-fossil fuel” law.

However, this move turned out to be destined to failure due to the strong industrial lobby behind the current government. A Climate package was prepared together with a specific Act on Reduction of Fossil Fuels Dependence, but in 2016, it became obvious that it was not going to be approved in this parliamentary term. A discussion between representatives of the executive and deputies of the Economic Committee of the Chamber of Deputies of the Parliament of the Czech Republic effectively buried the legislative proposals. The MEPs called on the government not to adopt ambitious EU targets for low-carbon energy and mobility that could affect many people and have a significant impact on domestic industry and thus the economy. Deputy Minister of the Environment stated that the law will be cut into pieces and that the remarks of some ministries will go against each other and it will not be possible to process them according to the principles for the settlement of comments. Finally, Minister of Environment Richard Brabec (ANO Party) announced not to submit the proposals to the government saying it is necessary to negotiate the social impacts. Brabec suggests to consider the impact of the law and to agree to a

possible postponement of its preparation. The precondition for preparing the law was that it would not endanger the competitiveness of the state, and this condition, according to a study commissioned by the ministry, was not fulfilled, he said. His move was accepted with a general political appreciation.

Instead of adopting specific measures, the Ministry of Environment adopted the ambitious Climate Protection Policy in March 2017 (see above).

- Which levels of government have been involved in these legislative processes?

The Ministry of Environment comes with the proposals and other ministries participate in shaping the draft.

- What have been the catalysts for these legislative developments (i.e. EU law, international law, political agitation etc.)?

International law and EU law have been the major catalysts for the legislative development. The government attempts not to lose its face on both international and national level which is increasingly schizophrenic as the national green agenda is put aside in favour of economic interests.

2. How do the structures of government affect legislation related to climate change?

- Is one or several institutions assigned to act on climate change within your legal system? To what extent do these overlap and diverge?

The major actor is the Ministry of Environment. It is responsible for the implementation of the United Nations Framework Convention on

Climate Change (UNFCCC) and relevant EU legislation in the Czech Republic. The climate change can however hardly be considered a comprehensive agenda, even though there is a corresponding sub-department of three employees at the ministry dealing with climate change and energetic matters.

- Is the separation of legislative, executive and judicial powers in initiating and implementing climate policy clear in your jurisdiction?

No.

- Is climate change legislation affected by the legal powers of different levels of government in your jurisdiction?

No.

Climate Change Litigation

3. Can climate change laws in your jurisdiction serve as basis for judicial action?

- Is this basis, or the lack of such basis, seen as legally novel or not?

In general, the national climate laws concerning the emission trading scheme and regulation of ozone layer depleting substances (see above) do not constitute a sound basis for judicial action because they do not deal with substantive climate change questions and focus on very limited and mostly administrative issues. The crucial procedures for any effective legal action are the urban planning and environmental impact assessment (EIA and SEA) which, however, do not deal with climate change in a comprehensive manner. Any judicial case

concerning climate change is therefore seen as legally novel and rather revolutionary.

- What role does European Union law play in this regard?

It arguably serves as a link between national and international law. Perhaps the most important driver is the emphasis on the theme of climate change at the level of EU ecopolitics.

4. Has climate change, and related issues, given rise to court cases in your jurisdictions?

The number of environmental cases that reach Czech administrative courts is rather constant and presents minor, but not negligible part of the case load. The court disputes concerning urban planning, development of infrastructure and permitting procedures of various industrial applications especially raise public awareness. The scope of issues raised by the applicants is quite steady as well, evolving slowly in the course of years, reflecting preventive and protective measures introduced by the EU law and conclusions of the Court of Justice.

Climate change, however, is a new topic with which the applicants have not yet learned to work with. This is not likely to change any time soon. Within the wide framework of various state policies, urban planning or environmental impact assessment, climate change issues rarely play any substantive role and usually take place among the introductory remarks or general conclusions and observations. It is assumed that the climate change issues are somewhat a vague concept which does not affect the individuals in particular cases concerning their rights or duties - and the Czech legal

system does not employ the *actio popularis* or a similar type of action in public interest which would be more suitable for this kind of issues.

As a result, there have been no cases based directly on climate change and related issues before the administrative courts in Czechia. So far, there has not been a single case similar to the Dutch Urgenda case or the Austrian Vienna airport case. In some cases which are primarily concerned with other issues, climate change serves more as a supportive than a stand-alone argument.

As regards civil law, **climate change issues seem to be extremely difficult to base the claim on, especially towards the largest polluters. At the moment, protection of personality in the Civil Code (Act no. 89/2012 Coll.) offers a plausible way to protect the right to favourable environment, but remains unused in practice.** Although explicitly recognized in the Civil Code and the Constitution (Art. 35), the right to a favourable environment has been rarely litigated in courts and never matched with climate change matters.

One of the cases that did shatter the settled approach to complex air pollution issues and which is likely to have significant impact on future climate change cases was the case of Municipality of Ostrava against the State. In 2010, the city of Ostrava filed an action against the Czech government, the Ministry of Environment and the Ministry of Transport for violation of its right to environment. It claimed, in essence, that the inactivity of defendants contravenes the relevant EU law and causes the infringement of the right to a favourable environment, rendering Ostrava helpless in dealing with the bad air quality in the region. The court in the first instance dismissed the case for procedural reasons, concluding the city does not have any rights to be violated in this case. The Supreme Administrative Court did not share this approach and quashed the decision

of the lower level court. However, Ostrava did not succeed in the end as it was unable to prove a direct relation proved between the inactivity of defendants and the exceeded air pollution limits. The courts concluded that the city itself is part of the chain of the authorities responsible for the situation and that there are far more aspects to be addressed, including the transboundary air pollution coming from Poland (see judgment of the Supreme Administrative Court of 14. 11. 2014, No. 6 As 1/2014 - 30, in Czech:

http://www.nssoud.cz/files/SOUDNI_VYKON/2014/0001_6As_1400030_20141118121741_prevedeno.pdf).

- If so, what type of cases (i.e. are they related to specific pieces of legislation or to something else)?

In administrative cases concerning renewable energy, it is often argued that the renewable energy sources should be promoted in the interest of protecting the climate and the environment. The same argument is to be found in several tax cases concerning additional tax imposed on the solar energy producers or obligation to put a minimum amount of biofuels into free circulation for transport purposes. In cases concerning air pollution, obligations arising from the Kyoto Protocol and the Paris Agreement are sometimes put forward, but do not have decisive role in the particular case.

- How frequently do climate change claims come to court by comparison with other environmental law cases in your court?

Rarely (see above).

- What types of legal issues are raised in these cases (i.e. matters of private law, constitutional law, administrative law, international law etc.)?

Administrative law and international law matters.

- Does the type of legal issue affect, if at all, which court hears the case?

No.

- Do rights-based claims feature in these cases?

No.

- How central is the issue of climate change when it is raised in these cases?

Climate change serves more as a supportive than a stand-alone argument.

Climate Change Adjudication

5. How easily resolvable are the legal questions raised in these different cases?

- Do these cases involve the application of conventional legal concepts? If so, how straightforward is the application of these concepts to climate change?

This is yet to be seen. Without doubt, climate change cases will open questions as regards reviewability of administrative discretion and state policies, proportionality and effectiveness of measures adopted at various levels of state administrative. Traditional legal concepts may serve their purpose but will hardly be applied straightforward.

- Do these cases involve the application of new legal doctrines? If so, from where have these doctrines been derived?
- How do concepts of causation affect climate change actions in your jurisdiction?

This is yet to be seen. In general, concepts of causation are applied rather strictly in Czech civil law. In administrative law, there are evident tendencies towards more relaxed approach because the effects of decision in questions are not evident or cannot be estimated to the full extent.

Has your court issued any preliminary ruling concerning climate change laws, or to relates issues to the EU court? If not, why not?

The question of interpretation or compliance with the EU law has neither been raised by the applicants, nor found essential by the courts.

6. How straightforward is the resolution of factual issues in cases on climate change?

- Is there disagreement among the parties over the factual issues? If so, what types of disagreements are there?
- Do the factual issues require reference to specialist evidence? If so, how is that evidence submitted to the court?
- How do the rules evidence affect climate change actions in your jurisdictions?
- How do the factual issues affect the resolution of legal questions in these cases?

This is yet to be seen. There have been no cases based directly on climate change and related issues before the administrative courts in Czechia.

Climate Change and Access to Justice

7. Who are the parties bringing climate change actions?

- What role do individuals play in bringing actions relating to climate change?
- What role do NGOs play in bringing climate actions?

- What role does industry play in bringing actions relating to climate change laws?
- Does industry make claims under different or the same set of laws as NGOs?

Once again, this is yet to be seen. The role of the NGOs in Czechia is particularly strong and in many cases proved to be effective in environmental protection. Nevertheless, climate change disputes are supposed to require significant financial and personal resources which may discourage many potential claimants. Currently, there is a trend of hostility towards environmental NGOs and public participation in general fuelled by industrial lobby and politics. Any forthcoming climate change disputes will probably attain a strong political dimension.

8. How do legal rules in relation to the bringing of an action affect the ability to bring these cases?

- How do domestic rules on standing affect climate change litigation?
- How do costs rules affect climate change actions?
- Are there any other impediments to parties bringing climate change claims?

Both individuals and the NGOs may bring actions to relating to climate change provided they are personally affected, which means their subjective rights are impaired. This might be result of illegal administrative decision, inaction or illegal interference. In civil law, there are principally no limitations to the standing of natural or legal persons in proceedings concerning damages claims, including those from other jurisdictions.

Climate Change and Remedies

9. What is the range of remedies available to national courts in climate change cases?

- What is the breadth of the court's discretion in choosing a suitable remedy?
- What is the availability and level of financial penalties?
- What types of injunctive relief are available?

In administrative law, an appeal to a superior administrative body has a suspensive effect. Only in rare cases, and generally not in the environmental matters, the appeal does not have a suspensive effect and may be preliminarily executed. The submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. The court may, however, grant it at the request of the claimant. Once the superior administrative body approves the decision, it may be executed regardless the lawsuit filed against it. Only in case the court grants a suspensive effect to the lawsuit or issues a preliminary injunction, a person empowered by the decision must refer from its execution. Apart from granting a suspensive effect to the lawsuit, the administrative courts may further issue a preliminary injunction provided there is a need of an interim arrangement of the relation between the parties. Nevertheless, it is very rare for administrative courts to issue preliminary injunctions.

In civil law, the person affected may claim damages or ask the court to order the owner to refrain from anything that would cause imissions which are disproportionate to the local circumstances and substantially restrict normal use of the tract of land. However, if the imission is the result of the operation of an enterprise or a similar facility which has been officially approved, a neighbour only has the right to compensation for harm in money, even where the harm was caused by circumstances which

had not been taken into account during the official proceedings. This does not apply if the operation exceeds the extent to which it has been officially approved.

The claimant may also ask the civil court to issue preliminary injunction in order to provisionally amend the conditions of the parties, or if there is a risk that the enforcement of the (subsequent) court decision could be threatened.

There is no class action or *actio popularis* available in Czech law which renders any defence against complex pollution and climate change issues very difficult, even though the system of judicial protection is deemed accessible.

10. What types of issues are raised about remedies in climate change cases?

- How straightforward is the application of remedies in these cases?
- Does the relationship between private law and public law affect remedies in climate change-related claims?

Once again, this is yet to be seen.