



EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

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**SOIL POLLUTION
QUESTIONNAIRE
the Czech Republic**

The aim of this questionnaire is to find out, through case studies, the way in which each member (or future member state) is dealing with the problem of soil pollution in order to identify a possible common pattern of difficulties and to specify what could be the contribution and limits of EU legislation, namely the relevancy of the Directive Proposal of 22 September 2006 setting out a framework for soil protection and amending Directive 2004/35/EC.

I- Information on polluted soils :

1. Do you have a national inventory (or inventories) of polluted or contaminated soils?

There are two registers of polluted soils in the Czech Republic. First one is the Land Parcel Identification System administered by the Ministerstvo zemědělství (Ministry of Agriculture) in conjunction with the Ústřední kontrolní a zkušební ústav zemědělský (Central Agricultural Institution for Control and Testing). It contains information on polluted agricultural plots. This register is accessible only for central authorities of the state.

Second register is the List of the Inventory of the Polluted Plots administered by the Ministerstvo životního prostředí (Ministry of Environment). The register serves needs of the Ministry of Environment but it is accessible for public on the website <http://sez.cenia.cz/mapmaker/sez/> too. It is an interactive database containing some information on soil composition, prior and present use, depollution activities etc.

2. Are there any particular administrative or legal requirements to provide information?

There is a general obligation to provide information on existing or imminent damage on environment, including the pollution of soil [§ 19 of the Act on Environment (c. 17/1992 Sb.)] in the Czech Republic. Breach of this obligation shall be punished by imposing a fine up to 500 000 CZK.

A new Act on Prevention of Environmental Damage (c. 167/2008 Sb.) entered into force on 1st of August 2008, stipulating the obligation of the owner

(operator) to inform the competent body on the existing or imminent damage on soil [§ 6(2) of the Act]. Pursuant to § 19 of the Act, violation of the obligation to inform the competent body shall be punished by imposing a fine up to 1 000 000 CZK.

Individuals are entitled to request information from any public authority (in environmental matters too) under the Act on the Right on Information in Environmental Matters (c. 123/1998 Sb.). However the private or business entities are not generally obliged to provide any information to individuals.

Example of a litigation following from a lack of information: The Supreme Administrative Court by its judgment no. 7 A 109/2001 of 13 April 2004 (the full text of the judgment is published in Czech on the website of the court www.nssoud.cz) dismissed an action of an individual against a public enterprise. The public enterprise was established by the State due to administration of several rivers including the disposition with the real property in the possession of the State. The claimant requested the information on the environment, the defendant refused to provide it. The Court held that the public enterprise is not a “public body” in the meaning of the Act and it is therefore not obliged to provide information on environment. However, case law of the Supreme administrative court relating to right of individuals to information from public bodies is constantly developing. It is possible that the ruling might be different nowadays.

II- National legislation on soil pollution and enforcement

A- Does specific legislation exist on the subject of polluted soils?

1- What kind of legislation: civil, public or criminal law?

The area is governed mainly by administrative (public) law in the Czech Republic - the Act on Protection of the Agricultural Land (c. 334/1992 Sb.). However, the Act is applicable only to agricultural plots (particularly fields, grasslands and orchards). Furthermore, there are two administrative regulations implementing the Act, regulation c. 13/1994 Sb. (stipulating the limits of pollution of the soil by certain substances) and regulation c. 275/1998 Sb. (on testing of the soil contamination).

The area is not governed by any specific civil or criminal legislation (however, its application is not generally excluded – see part III.B).

2- Have the provisions of *directive 2004/35/CE on compensation for damage to soil* (contamination) been implemented in your national law and how?

The Act on Prevention of Environmental Damage (c. 167/2008 Sb.) was adopted on 22 April 2008 and entered into the force on 1st of August 2008. It implements the Directive appropriately including the provisions on contamination of the soil.

B- Is there any specialized personnel to check the degree of respect of the regulations on polluted soil?

There is a specialised unit at the Ministry of Environment dealing with matters of the protection of soil: Odbor ochrany horninového a půdního prostředí - oddělení ochrany půdy (Department of Protection of the Rocks and Soils – Section of the Protection of Soils).

C- Does the soil pollution fall under any other legal disposition, or other specific sector of environment regulation? (for example: water regulations, waste, industrial facilities, town planning, etc.)

As mentioned above, there is a special legislation on protection of the agricultural land and its soil in the Czech Republic. Other soil is subject to different sectors of environment regulation: the Act on Waste (c. 185/2001 Sb.), the Act on Water (c. 254/2001 Sb.), the Act on Environmental Impact Assessment (c. 100/2001 Sb.)

III- Soil pollution and liability

A- What is the proportion of soil pollution claims on environmental law suits pertaining to environmental issues?

The proportion of the soil pollution claims is very low. Among the cases dealt by the Supreme Administrative Court within the last 5 years pertaining to environmental matters, the soil pollution cases made approx. 5 % (8 cases to 165 cases).

B- What are the types of liability: subjective liability - polluter pays, establishment fault, or objective liability - mere ownership or occupancy?

The new Act on Prevention of Environmental Damage (c. 167/2008 Sb.) is drawn on a principle “polluter pays”. However there are also other types of liability. The civil liability for damages caused by pollution of soil is an objective liability falling within a general scheme of civil liability (it follows from § 432 of the Civil Code). The criminal liability is a subjective liability [in cases where fault/intention is established, the pollution of soil is considered to be a criminal offence pursuant to § 181a(1) of the Criminal Code.]

C- Who can be held responsible: the state, user, owner?

Generally, the operator (i.e. a person exercising an economic activity) is to be held liable for pollution of soil. There is a number of “contaminated sites” where contamination dates back to times of socialistic economy and operators (that caused the pollution) ceased their activity and existence during the transformation of the socialistic economy in the beginning of 1990’s. In these cases the state should be (is) liable for removing the pollution.

Civil courts deal with number of claims (typically raised by neighbour landlords of above mentioned “contaminated sites”) against the state. An example might be found the judgment of the Supreme Court of 17 December 2003 no. 25 Cdo 552/2003 (published on the website of the Supreme Court www.nsoud.cz). It also happened that the former operator - originator of soil pollution (i.e. the public enterprise) - was hived off (“privatized”) and the successor (acquirer of the enterprise) was held liable for the polluted soil and for the thereby caused damage (judgment of the Supreme Court of 24 November 2004 no. 25 Cdo 2658/2003, published on the website of the Supreme Court www.nsoud.cz).

D- Please give practical examples (if any) and specify the situation regarding contaminated sites where the owner or the user disappeared.

See above.

E- Do you meet difficulties in reconciling special soil regulation and other regulations such as property laws, private contractual provisions? Please give examples.

We are not aware of such cases that would be dealt with by courts (such awareness is limited since only high courts enable free access to their decisions).

On the other hand, it seems from media that stories on polluted soil contaminating the sources of water accompanied with lack of anyone liable for rehabilitation are not rare [e.g. an article in the magazine “Respekt” of 7 July 2008 titled “Největší očista začíná” (The Great Cleaning Begins) informing on the intention of the state to tender a public contract on rehabilitation of polluted soils (cases of “contaminated sites” caused by extinct enterprises or the cases of unknown originator of pollution) with estimated value of 170 000 000 000 CZK].

F- Are there penalties? Are they inflicted? If not, why? Please give examples.

Pollution of soil is considered to be an infraction pursuant to § 35 (1)(b) of the Act on Infractions (c. 200/1990 Sb.) and a fine may be imposed up to 3 000 CZK.

If the pollution of soil is caused intentionally and if it results into greater menacing of biocoenosis of animals or plants, it amounts to a criminal offence pursuant to § 181a of the Criminal Code (c. 140/1961 Sb.) punished by term of imprisonment up to 8 years. However we are not aware of any case of sentencing anybody for this offence.

IV- Care and rehabilitation of polluted soils

A- Is there mandatory care or obligation to rehabilitate polluted soils (civil or public obligation)?

It can be deduced from the Act on Prevention of Environmental Damage. Moreover (as mentioned above) the successors or acquirers of the former public enterprises are liable also for the soil polluted in the past decades. The state however concluded with almost 500 successors or acquirers of such former public enterprises so called "environmental agreements" and pursuant to these agreements the state undertook the responsibility to remove the environmental damage including the polluted soil. The state has already paid for removing of the environmental damage more than 45 000 000 000 CZK and the Ministry of Finance estimates that it has to spend additional approx. 170 000 000 000 CZK to remove the remaining damage in the next 7 years. The most of the damage pertains to the polluted soil.

B- By whom? (the state, owner, user, etc.)

See above.

C- What are the criteria of rehabilitation: prevention of harm to environment and health, restoration of soil to its previous state, preparation of soil for future use, or taking into account its environmental potential?

The criterion for the rehabilitation of polluted soil is primarily restoration of soil into previous state or, if this is not possible, prevention of harm to environment and health.

D- Who implements it and who controls it?

The rehabilitation of polluted soils is implemented by a private entity (specialized enterprise) chosen in a public tender organised by the Ministry of Finance advised by the Ministry of Environment. The rehabilitation process is controlled by the Ceska inspekce zivotniho prostredi (The Czech Environmental Inspectorate).

Questionnaire is based on draft provided by the Department of Research and Analysis of the Supreme Administrative Court. If it lacks answers to some questions, it is due to lack of the practical experience with the specific problem, that has not occurred so far.