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Agricultural Issues and the Czech Constitution***

Abstract

The article deals with the regulation of agricultural activities in the constitutional order of the Czech Republic, which consists mainly of the Constitution and the Charter of Fundamental Rights and Freedoms. The authors focus on two basic areas of regulation that often complement each other in practice: the protection of property rights and entrepreneurship and the protection of the environment. The protection of land as part of the environment is analysed from the perspective of the constitutionally enshrined obligations of the state and also as part of the right to self-government, which is manifested in particular in the process of land-use planning. The article mainly reflects the case law of the Constitutional Court and, marginally, of the Supreme Administrative Court. The authors conclude that the individual requirements of constitutional law are interconnected and form a general but very fundamental framework for the performance of agricultural activities.
Keywords: Agriculture, Constitution, Agriculture Land Protection, Protection of Property and Entrepreneurship, Right to Favourable Environment.

1. Introduction

The concept of agriculture is not defined in the Czech legal system. For the purpose of this article, agriculture is primarily perceived as an activity tied to agricultural land, which is not only an object of property rights but also an essential component of the environment.[1] Then agriculture is also a business activity aimed at the production of agricultural products, especially foodstuffs, in line with the definition of the agricultural production provided by Act No. 252/1997 Coll., on Agriculture (hereinafter Agriculture Act): *"an activity encompassing crop and livestock production, including the production of breeding animals and plant propagating material, as well as the processing and sale of own agricultural production, and further forest and water management."*[2]

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[1] Such a concept is well established in Czech legal science. See Tkáčiková, Vomáčka, Židek et al 2020.

[2] Section 2e(4) of the Agriculture Act.

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Agricultural issues are not directly addressed by the Czech Constitution (hereinafter the Constitution), the Charter of Human Rights and Freedoms (hereinafter the Charter), constitutional laws, and other sources of constitutional law, which together form the Constitutional Order of the Czech Republic. However, this does not mean that the Czech legislation of the highest legal force is irrelevant to agriculture.

Two areas related to the key constitutional provisions correspond to the abovementioned understanding of agriculture: protection of property and entrepreneurship and protection of the environment, particularly soil. This article mainly focuses on these two areas, less attention will be paid to the general framework of land management which is constituted by the basic state-forming regulations and rules of public administration, including, for example, the demarcation of state borders, the creation of territorial self-government units, or the judicial system crucial for the resolution of disputes concerning land use. The constitutional dimension of taxes and subsidies will be intentionally left aside, because although it is important for agriculture, it does not carry any significant specifics in this area. At least briefly in this context, it is possible to draw attention to a recent case in which the Constitutional Court has considered different tax burdens applicable to different land. It concluded that the tax burden on land owned by natural persons and legal entities is justified in comparison with the tax exemption on land owned by the State, as it does not violate the principle of equality or is not extremely disproportionate.[3]

The Constitutional Court interprets the constitutional requirements related to agricultural activities in the context of the obligations arising from the Czech Republic's membership in the European Union.[4] In particular, the principles arising from EU law, including the principle of protection of fundamental rights, are reflected.[5]

2. Agriculture and Constitutional Protection of Property and Entrepreneurship

The constitutional protection of property in Art. 11 of the Charter is based on a general guarantee and equal protection. Therefore, any interference with land ownership, possession, or management can be brought before the Constitutional Court after exhausting the ordinary remedies available in the ordinary courts, provided it reaches a certain degree of seriousness. Similarly, the landowners affected by agricultural activities may seek remedies before the civil or administrative courts and after that file the constitutional complaint invoking their property rights protected under the same provision of the Charter.

[3] Ruling of the Constitutional Court of 18 May 2021, No. Pl. ÚS 97/20.

[4] The Czech Republic has been a member of the European Union since 2004. Therefore, the regulation of agriculture must comply with the obligation arising from Art. 10a of the Constitution, on the basis of which an international treaty may delegate certain powers of the Czech Republic's authorities to an international organisation or institution.

[5] In the *Sugar Quota* case, for example, the Constitutional Court assessed the compatibility of the national legislation with the principle of legitimate expectation, the principle of legal certainty and the prohibition of retroactivity, the prohibition of discrimination and the principle of equality, and finally also the principle of protection of the right to entrepreneurship and to operate other economic activities. For detail, see ruling of the Constitutional Court of 8 March 2006, No. Pl. ÚS 50/04.

The right to property is not absolute. Article 11(3) of the Charter provides that the exercise of the property right *"shall not harm human health, nature or the environment beyond the extent prescribed by law."*

The concept of *harm* is to be interpreted extensively, which is of practical relevance because a number of environmental offenses and crimes are of a threatening, not a disruptive (harmful in a strict sense) nature.[6] Besides various emission limits, the legal instruments implementing Art. 11(3) also include different preventive legal tools, supervision and control mechanisms, and permitting regimes.[7]

2.1. Expropriation and Restitution Disputes

Article 11(4) of the Charter provides conditions for expropriation and states it is only permitted in the public interest, based on law, and for compensation. According to the Constitutional Court, State may determine which property may be owned only by it to secure the needs of society, the development of the economy or the public interest.[8]

However, the State may take care of the careful use of its natural resources and protect its natural wealth, even if it does not confiscate private property in favour of the interests of other private entities.[9] This corresponds, for example, to the statutory concept of land adjustments,[10] which are carried out in the public interest as defined in Section 2 of Act No. 139/2002 Coll., on land adjustments and land offices.[11] As a consequence, the assessment of whether the objectives and purpose of land adjustments have actually been achieved is not just a matter for the individual parties, but for society as a whole.[12] The public interest in the land adjustments proceedings is determined by the qualitative level defined by the purpose of the land development in the quoted provision, i.e. the interest of a quantitatively expressed group of owners in a

[6] See judgements of the Supreme Administrative Court of 9 August 2018, No. 9 As 277/2017-28; of 10 August 2018, No. 10 As 99/2016-31; of 27 January 2015, No. 6 As 229/2014-82.

[7] For detail, see Vomáčka & Tomoszek 2020, 383.

[8] See the ruling of the Constitutional Court of 25 September 2018, No. Pl. ÚS 18/17, para. 128.

[9] See dissenting opinion of Judge Šimáčková in the resolution of the Constitutional Court of 5 August 2014, No. Pl. ÚS 26/13.

[10] Land adjustments should ideally also lead to an improvement in the functions of the landscape in terms of the water regime, soil erosion and biodiversity, but the result may not always be only soil protection; it may also lead to a negative change in terms of maintaining the overall ecological functions of the land concerned.

[11] See the ruling of the Constitutional Court of 27 May 1998, No. Pl. ÚS 34/97, and the resolution of the Constitutional Court of 31 March 2011, No. III ÚS 2187/10.

[12] See the judgment of the Supreme Administrative Court of 15 December 2009, no. 6 As 185/2002-86. See also the judgment of the Supreme Administrative Court of 14 March 2019, no. 339/2018-25: *"It cannot be assumed that all the owners affected by the modifications will agree with their implementation and with the specific changes brought about by the land modifications. This follows from the above-mentioned principle that the fulfilment of the purpose (and thus the public interest) of complex land adjustments must be assessed from the perspective of the whole, not from the perspective of the particular interests of individual parties to the proceedings."*

qualitatively new spatial and functional arrangement of land ownership relations, using the method laid down by law.[13]

The restitution disputes (return of confiscated property under the former regime) have been of high importance for agriculture. They have been, at their core, somewhat technical, relating to proving that the conditions for restitution have been met, in particular, citizenship and permanent residence.[14] The Constitutional Court also reviewed and accepted the conditions for returning property to the churches, including extensive agricultural land.[15] Later on, it rejected an attempt to retroactively tax church restitution.[16]

2.2. Protection of Property

The jurisprudence of the Constitutional Court concerning the protection of property encompasses a wide range of cases relating in particular to the legal status of agricultural land, usually following the administrative decision of the Ministry of Agriculture or other official authority and consequent unsuccessful action in the administrative justice.

In practice, complainants most often challenge the decision whether their land falls within the regime of Act No. 229/1991 Coll., on the regulation of ownership relations to land and other agricultural property.[17] This Act regulates the rights and obligations of owners, original owners, users and lessees of land, as well as the State's competence in regulating ownership and use rights to land. The decisions on the nature of land are therefore relevant in terms of obligations of the owners and restitution claims and the release of confiscated properties. Similarly, decisions regarding the nature of land under the forest protection and management regulation[18] are disputed.[19] Constitutional complaints also challenge decisions on evidence of the agricultural land based on Act No. 252/1997 Coll., on Agriculture.[20]

The Constitutional Court, however, only rarely upholds the complaint. It may only interfere in the decision-making of the administrative authorities and general courts in the event of excesses, which it rarely finds in the abovementioned cases.

[13] In its judgment of 21 April 2016, No. 1 As 169/2015-42, the Supreme Administrative Court added: *"The requirement of the consent of the owners of a qualified majority of the area of the land in question is only one of the means of ensuring the fulfilment of the defined public interests in the land improvements being carried out. Other such means are: discussion of the proposal with all the owners of the land in question, participation of the state administration authorities concerned, cooperation with the planning authorities and, last but not least, participation of the municipal council of the municipality in the process and decision-making on the land improvements."*

[14] Ruling of the Constitutional Court of 12 July 1994, No. Pl. ÚS 3/94.

[15] Ruling of the Constitutional Court of 29 May 2013, No. Pl. ÚS 10/13.

[16] Ruling of the Constitutional Court of 1 October 2019, No. Pl. ÚS 5/19.

[17] Resolutions of the Constitutional Court of 26 January 1998, No. I. ÚS 308/96; of 13 January 1998, No. IV. ÚS 479/97; of 28 September 1999, No. IV. ÚS 350/99; of 18. 11. 2003, No. I. ÚS 549/03; of 26 March 2019, No. IV. ÚS 4281/18; of 4 December 2019, No. II. ÚS 1571/19.

[18] Act No. 289/1995 Coll., on Forests and on Amendments to Certain Acts.

[19] Resolution of the Constitutional Court of 17 October 2017, No. I. ÚS 2673/17.

[20] Resolution of the Constitutional Court of 5 May 2021, No. II. ÚS 3413/20.

Usually, it concludes that the administrative authorities and the general courts made sufficient factual findings, adequately dealt with the parties' arguments, and reached logical legal conclusions, which they justified in a constitutionally compliant manner.

2.3. Protection of Entrepreneurship

The protection of entrepreneurship is based on Article 26 of the Charter, according to which everybody has the right to the free choice of the profession and the training for that profession, as well as the right to engage in enterprise and pursue other economic activity. Although freedom of entrepreneurship is considered a different, second category of right compared to the right to property, it is also seen both conditional for the formation of property and linked to property.[21]

Various conditions and limitations may be set by law upon the right to engage in certain professions or activities. However, any restrictive measures must take into account the principles of predictability of the protection of legitimate expectations stemming from the general principle of the substantive rule of law. For this reason, in 2006, the Constitutional Court declared unconstitutional the change in the legal regulation of so-called secondary agricultural entrepreneurs who could fulfil the requirements of their activities personally and not through another person.[22]

It is not only qualification requirements that can restrict business. The legislator may, at its discretion, introduce price or quantity regulation of production in a particular sector of the economy, define or influence the type and number of entities operating in it, or limit the contractual freedom to apply production on the market or to purchase raw materials and production equipment. However, *"the limits set by the constitutionally guaranteed fundamental principles, human rights and freedoms must be respected."*[23]

In Europe, so-called production quotas[24] became synonymous with a tool to stabilise the market for certain agricultural products (e.g. sugar, milk)[25] in the last two decades of the 20th century. Their introduction was considered to be in the public interest, both in terms of securing and maintaining the production of the agricultural commodity in question and in terms of securing a market for each producer at an appropriate minimum price, and hence income for farmers. The Czech legal regulation of production quotas was reviewed by the Constitutional Court not only from the perspective of the constitutional order, but also with regard to the basic sub-principles and fundamental rights arising from EU (Community) law.

[21] Ruling of the Constitutional Court of 30 October 2002, No. Pl. ÚS 39/01.
[22] Ruling of the Constitutional Court of 20 June 2006, No. Pl. ÚS 38/04, para. 45.
[23] Ruling of the Constitutional Court of 16 October 2001, No. Pl. ÚS 5/01.
[24] Production quota systems, or other similar instruments such as prohibition of new vineyards planting, are designed to regulate an underperforming market for certain products, to limit the quantity of their production, as well as to limit new investment in the sector thus regulated. In the European Union and in the Czech Republic, this instrument is no longer used in agriculture in this form.
[25] For detail, see Křepelka 2003, 121–131.

According to the Constitutional Court, there is no individual right corresponding to a market free from all legal regulation which is in line with the regulation of the agricultural commodities market at EU level.[26]

Nevertheless, the regulatory measures must respect the principle of proportionality, even if there is a public interest. The legislator's interference with the freedom of enterprise must be proportionate and not exclude its main purpose to render the business unreasonable.[27] The purposelessness and disproportionality of the measure would be contrary to Article 4(4) of the Charter, because the essence and purpose of the right to conduct business would not be respected.[28] On the other hand, while respecting the abovementioned principles, the choice of restrictive instruments and the extent to which they are applied is primarily a task for the legislator, and the Constitutional Court is not called upon to assess the economic aspects of the necessity and necessity of restricting entrepreneurship or to determine the conditions under which it is possible to do business, given the need to safeguard individual, often juxtaposed or even conflicting public interests.[29]

Although a restriction on the production of agricultural products may be regarded as a restriction on the right to use the property which has exceeded the production quota, according to the Constitutional Court, the prevention of the sale of that surplus (milk) does not affect the property itself and cannot be regarded as an expropriation, since the achievement of a certain price by selling the product on the market is not part of the fundamental right to property.[30] Neither is there a devaluation of property, as the Constitutional Court found in the case of price regulation in favour of purchasers in cases where they were linked to contractual directness or forced maintenance of existing contractual relations.[31] In this context, the Constitutional Court recalled that, *inter alia*, the tightening of the quality requirements for the production of goods in the course of business or other economic activity often means for the entrepreneur or farmer a price disadvantage for the products he produces or the raw materials and equipment he uses for production. However, such regulation is often necessary in order to better safeguard a wide range of important general interests that are often still inadequately protected. In such cases, however, the objection of a restriction on the right of ownership would undoubtedly be considered unacceptable.

In the context of a restriction on the right to property or freedom of enterprise, the question of compliance of the restrictive measure with the principle of equality and non-discrimination always arises. In the case of production quotas, the Constitutional Court held that their purpose is *"not to disadvantage or, on the contrary, to favour a certain group*

[26] See Regulation No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.
[27] Ruling of the Constitutional Court of 8 December 2015, No. Pl. ÚS 5/15.
[28] See Hejč 2020, 194–198.
[29] Ruling of the Constitutional Court of 20 November 2001, No. Pl. ÚS 5/01.
[30] Ibid.
[31] Ruling of the Constitutional Court of 21 June 2000, No. Pl. ÚS 3/2000.

of producers, but to ensure equal conditions on the market".[32] Any disadvantage or favouring of certain entities does not automatically mean unconstitutional discrimination, since equality cannot be understood as an absolute category and must always be considered as relative equality, requiring the elimination of unjustified differences.[33] Thus, unconstitutional discrimination was not found in the case of farmers operating exclusively in a system of permanent confinement, who were subject to production quotas compared to organic dairy farmers, since the welfare of the animals constituted a relevant public interest justifying the inequality in question.[34]

The Constitutional Court also assessed the reasonableness and proportionality of Act No. 395/2009 Coll., on significant market power in the sale of agricultural and food products and its abuse. This Act applies to the entire food chain, which includes entities and their activities from primary agricultural production, through processing to the retail sale of food. The aim of the Act is to prevent unequal market positions of individual operators, the application of unfair commercial practices by food buyers and the deterioration of the market position of food suppliers including the impairment of their ability to supply food to the market. According to the Constitutional Court, the objective of the law is legitimate, and the individual measures are proportionate, and use means that do not interfere with the essence and meaning of the right to conduct business.[35] The Constitutional Court did not assess which regulation is optimal for achieving the declared objective, but whether the chosen means are not manifestly unreasonable.

Similarly, the Constitutional Court assessed the obligation of some food business operators to donate safe, but unsold or unsaleable food to humanitarian or charitable organizations free of charge. It concluded that such obligation does not affect the essence of business as an activity carried out for profit and also at the risk of loss. The interference by the legislator with the right of ownership of the foodstuffs in question was then considered appropriate, necessary and proportionate, as it pursues the general interest, *inter alia*, the reduction of food waste and the protection of the environment.[36] However, as Judge Šimíček aptly pointed out in his dissenting opinion, the Constitutional Court failed to elborate on the interference with the rights of food producers (suppliers), for whom *"the procedure under the contested provisions should constitute an ultima ratio public law solution, which is only considered after it is not possible to resolve the matter within the framework of commercial relations for various reasons."*[37]

[32] Ruling of the Constitutional Court of 20 November 2001, No. Pl. ÚS 5/01.
[33] Ruling of the Constitutional Court of 8 October 1992, No. Pl. ÚS 22/92.
[34] Ruling of the Constitutional Court of 20 November 2001, No. Pl. ÚS 5/01.
[35] Ruling of the Constitutional Court of 7 April 2020, No. Pl. ÚS 30/16.
[36] Ruling of the Constitutional Court of 18 December 2018, No P. ÚS 27/16.
[37] Dissenting opinion of Judge Šimíček on the reasoning of the ruling of the Constitutional Court of 18 December 2018, No Pl. ÚS 27/16.

3. Agriculture and Constitutional Protection of the Environment

The purpose and effects of the constitutional protection of the environment on agriculture are threefold: First, it serves as a guidance tool for policymaking and a general requirement for balancing various public and private interests in detailed regulation and in each individual case. Second, environmental protection is conceived a reason to restrict the property rights by the State based on Art. 11(3) and 11(4) of the Charter (see above) and an inherent limitation on the exercise of any right for the sake of environmental protection based on Art. 35(3) of the Charter. All these provisions share *"the same spirit."*[38]

Article 35(3) of the Charter provides that *"In the exercise of his or her rights, no one may endanger or damage the environment, natural resources, the species richness of nature or cultural monuments beyond the extent prescribed by law."* The purpose and intent of this provision are not to prohibit across the board all potentially hazardous activities to the environment but rather to legitimise legal measures that restrict or impose conditions on the exercise of various rights on the grounds of environmental protection. Specific restrictions can be identified in many Acts. They may take the form of an express prohibition or an obligation, the fulfilment of which results in a restriction of one of the rights of the obliged person.[39]

Third, the soil is protected as a natural resource under Art. 7 of the Constitution (protection of natural wealth) and Art. 35(1) of the Charter (right to a favourable environment).

3.1. Soil as a Part of Natural Wealth According to Article 7 of the Constitution

According to Art. 7 of the Constitution, *"The state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth."* The Constitutional Court interprets the concept of natural wealth quite broadly, which means that various natural resources, including soil, can be natural wealth and that both categories merge into the concept of natural values[40] or even into the general concept of the environment.

[38] Ruling of the Constitutional Court of 18 July 2017, No. Pl. ÚS 2/17, para. 37.

[39] The consequence of a breach of the prohibition or failure to comply with the obligation is usually creating a liability relationship and the possibility of being sanctioned for the infringement. However, it should be noted that the legislation does not always associate the possibility of a sanction with a breach of a specified obligation in the field of environmental protection. The restrictive measure may take the form of a duty to act or an obligation to refrain from a particular action. It may arise directly from the law, but it may also stem from various protective or corrective measures adopted by public authorities, from partial conditions for the enforcement of decisions, and from control and sanction measures to fulfil the right to a favourable environment. See, *inter alia*, resolution of the Constitutional Court of 22 September 2003, No. IV. ÚS 707/02.

[40] See e.g. the ruling of the Constitutional Court of 13 December 2006, No. Pl. ÚS 34/03: *"The object of the hunting law is therefore game, which in the abstract represents primarily a natural wealth that the state has set itself the objective of protecting. The seriousness and fundamental nature of this protection is primarily due to the fact that the protection of natural values has become the subject of regulation directly in the*

Thus, the protection of land and soil can be conceived *"legitimate, constitutionally consistent objective (public interest)"*[41] and, at the same time as a duty, the fulfilment of a positive obligation of the State. It is thus one of the typical state objectives that *"should be kept in mind, for example, in the exercise of decision-making activities (use of competences) of any public authority and also, for example, in the preparation and approval of the draft law on the state budget - as a certain budgetary priority."* [42]

So far, Art. 7 of the Constitution has not been invoked in a particular case concerning agriculture. However, the Constitutional Court constitutes a direct link between Art. 7 of the Constitution, and both guarantees and limitations of basic rights and freedoms.

For example, the levy for permanent withdrawal of agricultural land from the agricultural land fund pursuant to Act No. 334/1992 Coll., on the Protection of the Agricultural Land Fund,[43] is considered a legitimate restriction of property rights according to the aforementioned Art. 11(3) of the Charter. In addition, based on the State's obligation under Article 7 of the Constitution, the levy presents an essential part of the protection of natural wealth. If removed, it could jeopardise the system of soil protection because it contributes significantly to the State's obligation to protect natural resources. In this respect, the Constitutional Court noted that there is room for the legislator to deepen legal protection, while contrary changes weakening the positive obligation of the state in Article 7 of the Constitution are not permissible.[44]

The public interest expressed in Article 7 of the Constitution is therefore fulfilled by various activities aimed at maintaining or improving the state of natural wealth, which may consist in direct activities of the state to protect agricultural land, such as the above-mentioned land adjustments, or in active obligations of landowners. These are for example required by Section 68 of Act No. 114/1992 Coll., on Nature and Landscape Protection. According to this provision, the owners shall improve the state of the preserved natural and landscape environment to the best of their ability in order to preserve the species richness of nature and maintain the system of ecological stability. The purpose of the provision is to ensure that (in the future) a condition that is so favourable from the point of view of environmental protection is not affected. This is a matter of prevention (e. g. regular mowing of the land), but not exclusively. According to the Constitutional Court, the requirement even *"reflects the need of remedial measures and aims at a situation where the ecological stability and the biodiversity of the land have*

Constitution of the Czech Republic, according to Article 7 of which the State shall ensure the careful use of natural resources and the protection of natural wealth."

[41] The ruling of the Constitutional Court of 8 July 2010, No. Pl. ÚS 8/08. See also the ruling of 13 December 2006, No. Pl. ÚS 34/03, in which the Constitutional Court stressed that the seriousness the protection of natural wealth is underlined by the fact that the protection of natural values has become the subject of regulation directly in the Constitution.

[42] Šimíček 2010, 131.

[43] According to Art 1(1) of the Act on the Agricultural Land Fund Protection, the agricultural land fund is considered a basic natural resource of the Czech Republic, an invaluable source of production enabling agricultural production and one of the main components of the environment. Its protection is not limited to basic protection in the sense of preservation (survival), since it also includes improvement and rational use of the land.

[44] Ruling of the Constitutional Court of 15 March 2016, No. Pl. ÚS 30/15, para 32.

already been affected (a minori ad maius). This is a legitimate, constitutionally compliant objective (public interest) of environmental protection."[45]

3.2. Soil Protection as Part of the Right to Self-Government

Agricultural land in the form of territory is a fundamental attribute of a municipality as a local government unit. The right to self-government is guaranteed by Article 8 in conjunction with Article 100(1) of the Constitution. The municipality is entitled to defend its rights against unlawful interference by the State and other entities.

Municipalities adopt generally binding ordinances which may direct or restrict the performance of agricultural activities, for example by setting conditions for the burning of dry plant materials in open fires.[46] The Constitutional Court also confirmed the competence of municipalities to restrict the breeding of livestock in certain parts of the municipality by means of a generally binding ordinance, based on the general authority to regulate activities related to the protection of the environment and public order.[47]

The basic manifestation of self-government for the development of the territory is the competence to adopt spatial planning documentation. This competence includes the designation of new development areas, which is directly related to the need to protect agricultural land.[48] It is crucial for the protection of soil that the positive commitments of the State are already reflected at the level of planning following the general requirements of the Building Act (Act No. 183/2006 Coll.) and the hierarchy of instruments for the protection of agricultural land fund provided by Act No. 334/1992 Sb., on Protection of Agricultural Land Fund.

In spatial planning processes, individual public and private interests, as well as individual public interests, are weighed against each other. The protection of agricultural land may thus come into conflict with other interests of society, and since it does not have automatic priority over other interests, it is logically necessary to seek a balance of interests. As the Supreme Administrative Court held, *"the protection of agricultural land, like the protection of other components of the environment, cannot be absolutized. The different components of protection must be in balance with each other, just as a balance must be sought between environmental protection and other social interests."*[49]

[45] For the performance of such measures, should they exceed the general obligations arising from both civil and public legal regulation, the owners or tenants are entitled to compensation for the restriction of the right of ownership. See ruling of the Constitutional Court of 8 July 2010, No. Pl. ÚS 8/08.

[46] Pursuant to Section 16(5) of Act No. 201/2012 Coll., on Air Protection.

[47] Pursuant to Section 10 of Act No. 128/2000 Coll., on Municipalities, which implements the constitutional mandate. See ruling of the Constitutional Court of 21 October 2008, No. Pl. ÚS 46/06.

[48] Judgement of the Supreme Administrative Court of 22 December 2011, No. 8 Ao 6/2011-87.

[49] Judgement of the Supreme Administrative Court of 18 July 2006, No. 1 Ao 1/2006-74.

The obligation to enforce the public interest in the protection of the agricultural land fund lies primarily on the agricultural land fund protection authorities. They issue binding opinions when new buildable areas at the expense of agricultural land are defined and assess the proposed land use solution with regard to the principles of agricultural land fund protection. These principles must also be followed by those who prepare the spatial planning documentation – the municipal offices. They must propose and justify a solution that is the most advantageous in terms of the protection of the agricultural land fund and other general interests protected by law. This requirement further translates to an assessment of the appropriate use of the built-up area and an assessment of the need to designate buildable areas as part of the justification of the land-use plan.

The highest protection classes of the agricultural land can only be used for non-agricultural purposes if other public interest significantly outweighs the public interest of protecting the agricultural land fund.[50] This balancing must take place in the planning process and even though the legal requirements are rather ambiguous,[51] it is one of the conditions for the legality of the approved spatial plan. According to the settled case-law, *"the interest in the development of the municipality may, of course, prevail over the interest in environmental protection in the specific circumstances of the case, but it is a prerequisite that the need for development is demonstrated by a detailed and comprehensive analysis of the existing situation (in particular the possibility of using existing areas) and a forecast of future development based on realistic expectations."*[52]

According to the Constitutional Court, the protection requirements cannot be waived even if the agricultural land of the highest protection classes is affected only to a small extent or if its classification in the highest protection classes is considered by the complainants to be merely an act of the executive power unsupported by facts.[53] The requirement to prove that the public interest significantly outweighs the public interest in the protection of agricultural land cannot be met where there is no other public interest. The Constitutional Court has stated on numerous occasions that not every collective interest can be described as a public interest.[54]

Even if the use of agricultural land for non-agricultural purposes is consistent with the zoning plan, an additional requirement applies - land may be withdrawn only if necessary.[55] However, this requirement cannot be interpreted as absolute, so that a change in the land use plan would be possible and the creation of new buildable areas would only be permissible after the existing possibilities have been fully exhausted. Such rigorous interpretation would result in an excessive blocking of the territory.[56]

[50] Section 4(4) of the Act on the Protection of the Agricultural Land Fund.
[51] See Franková 2019, 35-44.
[52] Judgement of the Supreme Administrative Court of 6 June 2013, No. 1 Aos 1/2013-85.
[53] For example, the construction of a commercial centre in an area where a number of similar buildings is already located. See resolution of the Constitutional Court of 23 June 2020, No. III.ÚS 1030/20.
[54] See resolutions of the Constitutional Court of 23 June 2020, No. III. ÚS 1030/20; of 28 March 1996, No. I. ÚS 198/95.
[55] Section 4(1) of the Act on the Protection of the Agricultural Land Fund.
[56] Judgement of the Supreme Administrative Court of 28 May 2009, No. 6 Ao3/2007-116.

The political discretion of how far a municipality will go in protecting farmland is not for the courts to evaluate. Courts are entitled to assess compliance with the conditions of procedural and substantive law, possible deviation from substantive legal limits and the interference with subjective rights of natural and legal persons.[57] However, if a municipality fails to comply with the legal requirements for the protection of agricultural land, which represent a minimum standard, the zoning plan may be revoked on this ground. Such a step is certainly an interference with the right to exercise self-government, but it cannot be *"unlawful if it is taken in a situation where the municipality's actions are in direct conflict with the interests protected by the Agricultural Land Protection Act."* [58] The repeal of a zoning ordinance may also result from protection which is overly stringent, particularly because it is disproportionate to other interests, or is chicanery,[59] or represents a significant reversal in the municipality's planning activities that are intended to be settled over a longer period of time.[60]

3.3 Links to the Right to a Favourable Environment

Interventions in agricultural land can affect a variety of people, both individuals who can promote the public interest in land protection through their own interests and special entities such as NGOs called upon directly to protect the public interest. According to the Constitutional Court, *"the fact that the environment is a public good (value) within the meaning of the preamble to the Constitution and the Charter and Article 7 of the Constitution does not exclude the existence of a subjective right to a favourable environment (Article 35(1) of the Charter), as well as the right to claim it to the extent provided for by law."*[61] The provisions of Article 7 of the Constitution and Article 35(1) of the Charter are not mutually independent; according to the Constitutional Court, the establishment of the right to a favourable environment is directly linked to the State's obligation to protect natural resources.[62] The same approach is evident in the case law of the general courts, according to which *"the public interest in the protection of the environment overlaps with the right of individuals to the protection of a healthy environment under Article 35(1) of the Charter"*.[63]

The link between the right to a favourable environment and the protection of soil is also confirmed by the practice in which claimants increasingly argue, usually in addition to the infringement of their right to property, also the infringement of the right to a favourable environment, e.g. as a result of the disproportionate expansion of built-up areas leading to population growth[64] or, such in the construction of a golf course, which *"constitutes a significant burden on the local ecosystem, affecting the availability of*

[57] Ruling of the Constitutional Court of 7 May 2013, No. III. ÚS 1669/11.
[58] Resolution of the Constitutional Court of 23 June 2020, No. III. ÚS 1030/20.
[59] See judgement of the Supreme Administrative Court of 4 October 2011, No. 4 Ao 5/2011-42.
[60] See judgement of the Supreme Administrative Court of 29 January 2020, No. 9 As 171/2018-50.
[61] Ruling of the Constitutional Court of 10 July 1997, No. III. ÚS 70/97.
[62] See ruling of the Constitutional Court of 15 March 2016, No. Pl. ÚS 30/15, para. 21.
[63] Resolution of the extended senate of the Supreme Administrative Court of 29 May 2019, No. 2 As 187/2017-264.
[64] See judgement of the Supreme Administrative Court of 6 December 2019, No. 6 As 125/2019-20.

local water sources, altering soil permeability, disturbing hydrological conditions in the landscape and causing pesticides to penetrate the soil."[65]

Since access to judicial protection is based on the condition of interference with rights,[66] it is essential for the effective protection of soil that it can be invoked by persons other than the owners who are affected on their right to a favourable environment. These may be both natural persons and, according to the Constitutional Court, environmental NGOs.[67] Municipalities do not have the right to a favourable environment, but they represent the interests of their inhabitants and, in particular, defend their own right to self-government (see above). Therefore, they may be affected by an intervention in the soil on their own territory, or even by its consequences if it occurs outside the territory of the municipality. The Supreme Administrative Court concluded that even if the municipality *"does not farm itself and the termination of the agricultural use of the disputed areas does not in itself adversely affect the legal sphere of the municipality, the purpose for which the areas under consideration are defined cannot be disregarded"*[68] and that the change of land designation from agricultural to non-agricultural for the construction of a large-scale commercial zone may have a negative impact on the environment in the area in question – and consequenetly even neighbouring municipalities. Thus, the municipalities' concern is conceived broadly which implies that the municipality can, under specific sircumstances, challenge a spatial plan of another municipality: *"It is sufficient for a municipality to plausibly allege possible prejudice by the spatial plan of a neighboring municipality (prejudice need not be proven), and then the municipality can challenge all aspects of the protected public interests."*[69] In practice, however, the municipalities are more likely to challenge a superior spatial planning documentation adopted at the regional level, which restricts their development. Usually, they lack capacity to bring a dispute to the court or do not want to disrupt good relations with other municipalities.

4. Conclusion

The regulation of agricultural activities is not directly enshrined in the Czech Constitution, but it manifests itself primarily through the State's commitment to the protection of natural resources and the constitutional guarantee of individual rights and freedoms, in particular the right to property, the right to entrepreneurship, the right to a favourable environment and self-government. The various provisions of the Constitution are interrelated, so that not only is agricultural land an object of ownership, but at the same time the protection of soil is a public interest which needs to be balanced against other public and private interests.

The case law of the Constitutional Court indicates a tendency towards an extensive interpretation of the concepts of natural resources and natural wealth, so that the protection of soil can also be subsumed under the duties of the State.

[65] Resolution of the Supreme Administrative Court of 10 October 2019, No. 6 As 108/2019-28.
[66] Section 65(1) of Act No. 150/2002 Coll., Code of Administrative Justice.
[67] See ruling of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14.
[68] Resolution of the extended senate of the Supreme Administrative Court of 29 May 2019, No. 2 As 187/2017-264.
[69] Buryan 2020, 2.

Moreover, it is linked to subjective rights of individuals and the right to self-government of the municipalities which can participate at decision-making and consequently access the courts. In most of the cases, the Constitutional Court has been dealing with various legal measures restricting ownership or entrepreneurship. Only rarely has it upheld the complaint since it does not interfere in the political discretion of the legislator.

In particular, the Court takes into account whether the restrictions serve for the public interest and whether the essence and purpose of the restricted right is respected.

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