

# Thirty Years of the Act on Nature Conservation and Landscape Protection in the Czech Republic

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Act No. 114/1992 Gazette on Nature Conservation and Landscape Protection came into force on 1 June 1992, so in 2022 30 years have passed since this most important legal regulation in nature conservation was adopted. Let us, from the position of co-legislator of

the Act's original version and current legislative lawyer at the Ministry of the Environment of the Czech Republic, recall some of the context regarding the creation of this legislation and evaluate its current state.



The Hungarian iris (*Iris variegata*) in the Podyjí/Thaya River Basin National Park (South Moravia). © Zdeněk Patzelt.





Křivoklátsko Protected Landscape Area (Central Bohemia). © Zdeněk Patzelt.

## Circumstances of passing the new law

Not long after the Ministry of the Environment of the Czech Republic had been established (early 1990), it was charged with the preparation of a draft law on nature conservation and landscape protection as one of the main tasks in the emerging Czech environmental legislation. Ministers Bedřich Moldan and Ivan Dejmal decided to establish a working group led by Svatomír Mlčoch, with core members František Urban, Milan Rivola, Igor Michal, Milan Damohorský and several external collaborators, in particular Jan Květ.

## Legal environment at the time of the law's development

At the time when the preparation of the law was decided on, Act No. 40/1956 Gazette on State Nature Conservancy applied to the Czech territory (this was the time of the unitary Czechoslovak state). In just a few articles, it basically declaratively defined not more than the tasks of the State Nature Conservancy and entrusted its performance to the Ministry of Education and Culture (Ministry of Culture of the Czech Republic after federalisation in 1968 and 1969). It included a number of terms currently

used in special nature conservation like National Park, Nature Reserve and Protected Landscape Area, but without a definition or effective forms of conservation.

The need of a new, significantly better law was thus evident in the early 1990s. On the other hand, society and the state were in a turbulent period of development. Economy and legislation had not been settled yet, and a period of economic and administrative transformation was on the way. Some voices warned against preparation on the law and advised to wait for greater legal stability. We regard it a small miracle that in this atmosphere an essentially codex-type law was created and subsequently passed. The Act had 92 articles, which was considerable for that time and expressed the effort to develop comprehensive legal regulation of nature and landscape conservation issues. The year 1991 was decisive in the preparations. The law was submitted to the Czech National Council on 20 December 1991 and in the first quarter of 1992 it was discussed in relevant committees, particularly the Committee for Environmental Affairs and the Constitutional and Legal Committee. The Act itself was then passed by an incredible majority of 105 out of 111 Czech National Council Members present on 19 February 1992 there.

## Main benefits of Act No. 114 in brief:

- Introduction of general territorial as well as species conservation;
- Regulation of legal protection of landscape scenery/character and Significant Landscape Elements (SLEs);
- New status of State Nature Conservancy authorities equipped with decision-making powers;
- Introduction of new categories of small-size Specially Protected Areas;
- Legal guarantee of public access to the landscape;
- Establishment of Special State Nature Conservancy authorities, *i.e.* National Park Administrations, Protected Landscape Area Administrations (the latter today united under the Nature Conservation Agency of the Czech Republic) and the Czech Environmental Inspectorate;
- Setting possibilities of citizen participation in legal proceedings regarding nature conservation matters,
- Introduction of basic legal protection conditions for Specially Protected Areas and Specially Protected Species.

## The Act – a burden?

Not long after its adoption, Act. No. 114 was subjected to attacks or criticism from several sides, most of all attempting to delete – under various pretexts – provisions which certain interest groups or politician regarded as too ‘green’ or ‘environmental’. The first attempt at an overall revision of the Act was made at the Ministry of Economy and Regional Development led by Minister Karel Dyba in the second half of the 1990s. At the height of economic neoliberalism, the Act appeared too interventionist and allegedly hindered economic growth in some regions. In the first twenty years, the Act survived these attacks more or less unharmed. It lost nevertheless some relatively valuable provisions, especially the collision norm. This was the original Article 90, paragraph 4, which explicitly defined a special feature of Act. No. 114 Sb. relating to the legislation on forests and waters, the Building Code and other ‘competing’ regulations.

## European amendments to the Act

The Act on Nature Conservation and Landscape Protection (ANCLP) has undergone a large number of amendments during its existence. This is understandable with regard to the dynamic and sometimes turbulent development of society and law in the Czech Republic. The so-called Euro-amendment, *i.e.* the amendment made by Act No. 218/2004 gazette, primarily prepared by Ladislav

Miko, Alena Vopálková, Petr Roth, František Pelc, Pavel Pešout, Jana Prchalová and others, can be considered the most significant change. The essence of the amendment was to introduce into Czech Republic's legislation the European Union's nature conservation legislation, particularly the Habitats Directive and Birds Directive. Amendment No. 218/2004 also led to a completely different wording of Article 58, so as to include the obligation to compensate for economic damage caused by implementing nature conservation interests complicating agriculture and forestry. Before this amendment, hardly any compensation was paid (except for those based on Act No. 115/2000 Gazette on Providing Compensation for Damages Caused by Selected Specially Protected Animals. Not much later also the institutional basis of the State Nature Conservancy was solved by the Nature Conservation Agency of the Czech Republic becoming a legal authority.

## Which direction has the Act gone in the past decade?

Changes to the ANCLP have also appeared in the past decade: we have counted a total of 16 amendments since 2012. A common denominator of fundamental changes would first of all be extraordinary pressure to facilitate construction works (resulting in a comprehensive recodification of construction law in 2021, including a fundamental change in competences in Act No. 114). Other issues were the widely discussed topic of the scope of protection and use of National Parks (Act No. 123/2017) and, last but not least, requirements of recent European Union's regulations, particularly legislation on the prevention and control of introducing and spreading of invasive alien plant and animal species (Act No. 364/2021).

The new legislation on National Parks has improved their legal status by including their delimitation in appendices to the ANCLP. It has also introduced a better concept of National Park zonation and, *inter alia*, considerably silenced disputes on the basic protection conditions and zonation in the Šumava/Bohemian Forest Mts. National Park.

## Nature conservation vs construction works

Requirements to facilitate construction works, consisting in a weakening of some established nature conservation tools, can be traced to several recent amendments to the Act. Despite the absence of a proof-of-concept study and other evidences, lobby groups regard the (so far separate) administrative decisions issued by the State Nature Conservancy authorities for procedures

under the Building Code as the main difficulty in locating and permitting constructions. The often insufficient quality of the documentation submitted by constructors, which is the real brake on fast and trouble-free procedures, is unfortunately less emphasised.

Partial changes limiting the competences of the State Nature Conservancy authorities concerning the location and permission of constructions have already been made in 2012 (by Act No. 350/2012 Gazette), when the consent of nature conservation authorities for constructions located in protected landscape areas was limited. Following an extensive amendment to the Building Code (Act No. 225/2017), the ways of some previous inputs of the State Nature Conservancy authorities into procedures according to the Building Code were changed. The Act newly included a binding regulation on tree felling instead of a permission and a binding regulation on interventions in the protective conditions of Specially Protected Species instead of granting an exception (for situations when the occurrence of a Specially Protected Species is found before the start of the procedure according to the Building Code). In Act No. 225/2017 also public participation in procedures affecting the interests of nature conservation was very disputably limited. Restrictions on participation for proceedings according to the ANCLP prevented regular participation of ecological associations in permitting procedures of constructions which are not subject to an Environmental Impact Assessment procedure, but may despite have an effect on nature and the landscape at a particular site for their location, design or operation. This restriction was subsequently confirmed (although with a narrow majority) by the Constitutional Court.

An amendment to the Act on Line Constructions (Act No. 403/2020) added a completely new type of administrative act of the State Nature Conservancy authorities to the ANCLP. In order to simplify complex permitting processes for transport constructions and water or energy infrastructure, a unified binding regulation on interventions in nature and the landscape according to the Act on Line Constructions was created, replacing individual permissions and approvals of the State Nature Conservancy authorities, including exceptions for species, which had hitherto been granted by separate decisions of the State Nature Conservancy authorities.

Recodification of public construction law, *i.e.* adoption of the new Building Code, Act No. 283/2021, and accompanying Act No. 284/2021 has led to a fundamental conceptual change in the State/Public Administration in nature conservation. A range of previous competences of the State

Nature Conservancy authorities, particularly concerning general nature conservation, is – based on a direct change to the ANCLP – integrated in the competences of building authorities (thus becoming the State Nature Conservancy authorities). In Specially Protected Areas and at Natura 2000 sites, integration should only be partial, *i.e.* some competences would remain in the hands of the Special State Nature Conservancy authorities.

The construction law recodification has not been a fully effective legal regulation and (not only) postponing its effective date, originally proposed to be 1 July 2023, is being considered. At the same time, the newly appointed Government of the Czech Republic not only has amending the Building Code on its agenda, mainly consisting in a return of building authorities under the Public Administration at municipalities with extended powers, but also in the regulation of the so-called Unified Environmental Permission, *i.e.* a separate administrative measure issued by an environmental authority in which all environmental protection requirements need to approve a construction plan would be integrated. Let us hope that such legislation will not only be prepared properly, but also implemented. Besides correction of basic shortcomings of construction law recodification, the Government's Programme Statement also aims at expanding the large-size Specially Protected Area coverage and designating the Křivoklátsko National Park (Central Bohemia) and the Soutok/ Morava and Dyje/Thaya Rivers Confluence National Park (South Moravia). The Government further intends to amend the ANCLP concerning species protection, aimed at increasing its effectivity primarily based on the conservation of habitats and local populations of Specially Protected Species of wild plants and animals, thus establishing more appropriate legal conditions for the enforceability of the issue.

## Conclusion

We are living in an extraordinarily turbulent world which does not benefit the values of nature and the landscape. Biodiversity has been decreasing. The ecological stability of the cultural landscape has been declining. Only a little space is allocated for wilderness. Nature conservation is in a difficult situation trying to preserve these values at least in part. The ANCLP is not sufficient, but may help significantly. Its further development is in the hands of the new Members of the Parliament and Government of the Czech Republic. We wish them courage and wisdom in making decisions in favour of nature. We also wish the ANCLP to remain in a good shape. It has been conceived like that and that obliges. ■