

CRIMINAL ASPECTS OF DAMAGE TO AGRICULTURAL LAND – THE CASE OF THE CZECH REPUBLIC

TRESTNOPRÁVNE ASPEKTY ŠKODY NA POĽNOHOSPODÁRSKEJ PÔDE – PRÍPAD ČESKEJ REPUBLIKY

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I Introduction

Criminal law protection against soil erosion in the Czech Republic consists primarily of the application of administrative penalties (fines) for violations of the anti-erosion decree, which sets out mandatory measures and limits for management. Criminal liability (as an “ultima ratio”) is applied only in cases of serious interference, when administrative sanctions are not enough, for example, within the framework of the Criminal Code for environmental damage, to which erosion belongs. It is important to meet the difficult conditions set by the Criminal Code⁽¹⁾.

II Material and Methods

The article used the method of analysis of the legal regulation of the Czech Criminal Law⁽²⁾. The analysis focuses on Sections 293 and 294 of the Criminal Code. According to Section 293 of the Criminal

Code (containing the criminal offence of damaging and endangering the environment), whoever, in violation of another legal regulation, intentionally damages or endangers the soil, water, air or another component of the environment, to a greater extent or over a larger area, or in such a way that it may cause serious injury to health or death, or if the elimination of the consequences of such action requires significant costs, or who intentionally increases such damage or endangerment of an environmental component or makes it more difficult to prevent or mitigate it, shall be punished by imprisonment for up to three years or a ban on activity. The analysis further focuses on Section 294 of the Criminal Code. According to Section 294 of the Criminal Code (containing the criminal offence of damage to and endangerment of the environment through negligence), whoever, in violation of another legal regulation, through gross negligence damages or endangers the soil, water, air or another component of the environment, to a greater extent or over a larger area, or in such a way that it may cause serious injury to health or death, or if it is necessary to incur significant costs to eliminate the consequences of such conduct,

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1 Collection of Laws of the Czech Republic (2025).
2 Code no. 40/2009 Coll.

Abstract (EN)

The article analyzes the criminal law level of soil protection. Criminal law is intended to serve as a marginal means of environmental protection. In the case of soil erosion, this is intended to apply to cases of significant erosion impact. Interpretation problems associated with this concept are the subject of this article.

Abstrakt (SK)

Článok analyzuje trestnoprávnu úroveň ochrany pôdy. Trestné právo má slúžiť ako okrajový prostriedok ochrany životného prostredia. V prípade erózie pôdy sa má vzťahovať na prípady významného vplyvu erózie. Predmetom tohto článku sú interpretačné problémy spojené s týmto pojmom.

Keywords (EN)

soil protection, erosion, the Czech Republic, criminal law, environmental protection

Kľúčové slová (SK)

ochrana pôdy, erózia, Česká republika, trestné právo, ochrana životného prostredia

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or whoever, through gross negligence, increases such damage or endangerment of an environmental component or makes it more difficult to avert or mitigate it, shall be punished by imprisonment for up to six months or a ban on activity.

III Results and Discussion

The analysis and screening of court case law has ensured that there is no criminal decision that would find someone criminally liable for the crime of environmental damage caused by soil erosion, although some attempts have appeared in this direction³. One of them will be the subject of this article as part of qualitative research.

The following follows from the decision of the Regional Police Directorate of the South Moravian Region, Territorial Department of Hodonín, Economic Crime Department, file no. KRPB-189320-51/TČ-2022-060681 dated May 11, 2023, regarding Damage to the Environment of Želetice.

On August 31, 2022, a criminal complaint was forwarded to the local part of the SKPV OHK ÚO Hodonín from the OSZ Hodonín, the content of which implied suspicion of committing an offense of damage and endangerment of the environment under Section 293, paragraph 1 of the Criminal Code, which the natural person mentioned therein may have committed by inappropriately managing and cultivating the land on the land of land block No. 2307/4 in the cadastral area Želetice u Kyjova and the land of land blocks No. 2501/10 and No. 2501/9 in the cadastral area Nenkovice, which are managed by the given entity, caused erosion sediments from the said lands to flow onto land No. 4165 in the cadastral area Želetice u Kyjova and onto land block No. 2501/1 in the cadastral area Nenkovice, which is managed by the injured entity, when significant costs will need to be incurred to eliminate the consequences of the aforementioned actions, which would have caused damage to the injured legal entity⁴.

Based on the above notification and the facts established, on September 9, 2022, the police initiated criminal proceedings pursuant to the provisions of Section 158, paragraph 3 of the Criminal Code.

As part of the investigation, the police conducted a crime scene inspection on land plots No. 4165 cadastral area Želetice and No. 5495 cadastral area Nenkovice, and also arranged for the submission of an explanation by the informant. By evaluating the content of their statements and then the content of the criminal complaint itself, the documented expert statement

by the informant – Assessment of erosion conditions on source collection areas from the perspective of the transport of erosion-alluvial products and the occurrence of damage due to accumulation on damaged land plots No. 4165 in cadastral area Želetice u Kyjova and Nos. 5495 and 5493 in cadastral area Nenkovice, requested reports and communications from the State Land Office in Hodonín, the State Agricultural Intervention Fund and the Czech Hydrometeorological Institute in Brno.

Based on these documents, the police authority considered it proven that the farmer did not fulfill all the elements of the offense of damage and endangerment of the environment under Section 293, paragraph 1 of the Criminal Code, or another offense. Specifically, in this case, the fulfillment of its subjective aspect and its obligatory element – intentional fault or gross negligence – is absent.

The fact that, as a result of the inappropriate management and cultivation of the land by the subject on the land block No. 2307/4 in the cadastral area of Želetice u Kyjova and the land blocks No. 2501/10 and No. 2501/9 in the cadastral area of Nenkovice, a larger area (20.8 ha – Želetice and 24.1 ha Nenkovice) was threatened by soil erosion was proven, however, in this case, intentional action by the subject under investigation was not proven, not even in the case of gross negligence⁵.

In this case, it is also necessary to state that the legal regulation of the current Criminal Code in Title VII – Criminal offences against the environment, was enshrined by the implementation of Directive No. 2008/99/EC on the protection of the environment through criminal law, where Annex A of the directive does not include an EC regulation regarding the causing of erosion, the violation of which constitutes an unlawful act that must be punished by criminal law.

According to Act No. 167/2008 Coll. on the prevention and remedy of ecological damage, according to Section 2, letter a), ecological damage is an adverse measurable change in a natural resource or a measurable deterioration of its function, which may occur directly or indirectly, when it is a change in soil pollution that poses a serious risk of adverse effects on human health as a result of the direct or indirect introduction of substances, preparations, organisms or microorganisms onto or beneath the earth's surface. Thus, in connection with the above, there are doubts in the given case regarding the fulfillment of the objective aspect of the factual basis – damage or threat to the soil⁶.

3 The Supreme Court (2025)

4 Janeček (2012)

5 Kotovicová (2009)

6 Widowaty (2028)

Given the above-mentioned facts, the case does not involve suspicion of the offence of damage and endangerment of the environment pursuant to Section 293, paragraph 1 of the Criminal Code, nor any other criminal offence, therefore the Police proceeded in accordance with the provisions of Section 159a, paragraph 1, letter a) of the Criminal Procedure Code and submitted the case for consideration as a misdemeanor.

The act fulfills the elements of an offence under Section 20a paragraph 1 letter b), letter d) of Act No. 334/1992, when the farmer violated Section 3 paragraph 1 letter b), letter d) of Act No. 334/1992 Coll. by the fact that, through his inappropriate method of farming and cultivating the land on the land block, which the named entity farms, the agricultural land was threatened with erosion, by exceeding the permissible level of erosion risk set out in the implementing legal regulation and by this disruption of erosion, the physical properties of the agricultural land were further damaged⁷⁾.

The stated opinion of the Czech police was confirmed by the resolution of the District Prosecutor's Office in Hodonín dated May 26, 2023 (file number ZN 2194/2023).

The State Prosecutor's Office stated the following. While examining this matter, the investigator also addressed the question of whether the conduct fulfilled the elements of the offence of damage and endangerment of the environment through negligence pursuant to Section 294, paragraph 1 of the Criminal Code.

After the investigation, the subjective aspects of the investigated offenses were not proven to have been fulfilled, neither in the form of intent (Section 293) nor in the form of gross negligence (Section 294). This is the main reason why the state prosecutor's office considered the measure issued by the police authority to hand over the case for consideration of the offense to be correct.

When reviewing the police authority's action in this matter, I also took into account the fact that, to date, administrative authorities operating in the field of agricultural land protection have not been active in this matter.

The agricultural land protection authority has the option not only to hear the matter as an offence and impose a sanction, (Section 20a Offences of legal entities and natural persons engaged in business.

A legal entity or natural person engaged in business commits an offence by:

- a) in violation of Section 3(1)(b) causing a threat to agricultural land from erosion,
- b) in violation of Section 3(1)(d) damaging the physical

properties of agricultural land) (Section 3c Procedures in the event of pollution of agricultural land or threat to agricultural land from erosion and remedial measures).

According to the Misdemeanor Act, the authorities responsible for the protection of agricultural land shall impose on the person responsible for the defective condition measures to eliminate the defects arising from the breach of the obligations specified in § 3, with the exception of paragraph 1 letter b) and measures to remedy the defective condition arising from the non-fulfilment of the conditions of the consents issued by them. The costs of the measures to remedy shall be borne by the person responsible for the defective condition. The obligations arising from the measures to remedy imposed on the person responsible for the defective condition shall be transferred to his legal successor⁸⁾.

As a remedial measure, depending on the identified pollution of agricultural land, special cropping practices, agrotechnical and melioration measures aimed at improving soil properties, reducing accessibility or draining of risk elements and risk substances, or changing the type of land can be imposed. Even if I theoretically admit that the actions of the suspect fulfilled the characteristics of one of the examined criminal offenses, then according to the provisions of Section 12, paragraph 2 of the Criminal Code, the criminal liability of the perpetrator and the criminal consequences associated with it can only be applied in socially harmful cases in which the application of liability under another legal regulation is not sufficient.

The Public Prosecutor's Office concluded that this was a case where the principle of subsidiarity of criminal proceedings would be appropriate. Measures under another legal regulation would not only be sufficient in this case, but also more appropriate, as they could lead directly to the correction of the harmful situation.

IV Conclusions

Proving the crime of violating the protection of the living environment in relation to the soil erosion caused is difficult, as follows from qualitative research. Although the police are trying, it is difficult to fulfil all aspects of the crime. It is a question of the extent of the damage, identification of the pest, and its direct culpability, i.e., causality. A negative aspect is the difficulty of punishing soil erosion.

7 EU Commission (2022)

8 Ministry of Agriculture (2025)

V Summary

Soil erosion must be addressed. Without quality agricultural land, it will not be possible to ensure food security for society. In the long term, this will be a bigger problem. Protection through criminal law is not proving to be an effective tool. In this regard, it would be appropriate to amend the Criminal Code so that it can also be used to enforce the protection of agricultural land from erosion.

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