

## **Abstract**

### ***Protection of Large-area Protected Areas of Nature from Legal Perspective***

The topic of this thesis is Protection of large-area protected areas of nature from legal perspective. The thesis is composed of four Parts. Parts Two and Three are further divided into chapters and subchapters.

Part One is introductory and identifies the reasons why I have chosen this topic, as well as sets out the structure of the thesis.

The goals of Part Two are to set the legal instrument of large-area protected areas of nature into wider context within the system of environmental law, to analyse this term and to try to define it from legal point of view, as well as to enumerate and briefly characterise the particular categories of these areas. In order to achieve these goals, this part is divided into three chapters. Chapter one deals with the term of Protected areas of nature in the context of theory of environmental law as well as in the context of Czech positive law. Chapter two is focused on general analysis of the legal instrument of protected areas of nature. This analysis has been carried out mainly by identifying the modifications of (changes in) the rights and duties of individuals and legal entities arising from the existence of protected areas of nature, as well as by identifying four groups of such individuals or entities, which are (i.) individuals physically staying in or moving through a protected area of nature, (ii.) owners and lessees of properties situated in a protected area of nature, (iii.) individuals and legal entities carrying out entrepreneurial activity in a protected area of nature, and (iv.) individuals and legal entities having intentions that could have negative impact on the protected area of nature. Chapter three attempts – with regard to the results of the analysis in chapter two – to define the terms Protected Area of Nature and Large-area Protected Area of Nature from legal point of view.

Part Three deals with particular categories of large-area protected areas of nature provided for by Czech law, i.e. national parks (in Czech: “*národní park*”) and protected landscape areas (in Czech: “*chráněná krajinná oblast*”) (chapters one and two), as well as with granting of exemptions from bans in these areas (chapter three). The chapter on national parks focuses mainly (i.) on the relationship between the general protection clause set out in Section 15 (2) of the Act No. 114/1992 Coll., on Nature and Landscape Protection

(hereinafter also referred to as the “Act”) and the particular bans provided for by Section 16 of the Act, (ii.) on conditions of protection of national parks, and (iii.) on national parks’ visitors rules (In Czech: “*návštěvní řád*”). The chapter on protected landscape areas focuses – among a relatively brief general treatise on these areas - primarily on legal issues related with establishing their administrations. These issues arise mainly from the fact that whereas the Act sets out that a protected landscape area itself shall be established by a government decree, an administration of such area (whose existence is a condition for successful functioning of a protected landscape area) must be established by an act. There seem to be no material disputes between environmental lawyers that this status is unsatisfactory, therefore this thesis tries to identify and describe possible legal solutions of this matter.

In addition, the Part Three includes in its chapter four a treatise on nature parks (in Czech: “*přírodní park*”), a legal instrument that is in many aspects similar to protected areas of nature, however under Czech law is not regarded as a category of protected areas of nature, but as a legal instrument of its own kind. Notwithstanding the fact that nature parks are not regarded as protected areas of nature under Czech positive law, I am of the opinion that it is reasonable to include them in this thesis due to their similarity to protected areas of nature. Due to the fact that the topic of this thesis is however Protection of large-area protected areas of nature from legal perspective (i.e. not of nature parks), I focused mainly on analysis of the relation between protected areas of nature and nature parks rather than on legal analysis of nature parks themselves.

The main conclusions are drawn up in Part Four. This Part starts with a statement that the regulation of large-area protected areas of nature in Czech law enables effective protection of these areas, however it immediately critically points out that that this regulation carries – despite its ingenuity - certain persistent problems and imperfections with it that has not been removed even after almost twenty years after passing the Act.

Among other imperfections it is necessary to mention that vast majority of existing large-area protected areas of nature (26 of 29) was constituted before entering into force of the Act and the current Constitution pursuant to as of today already outdated legal regulations, and many provisions of the constitutional documents of these protected areas are not in compliance with today’s laws. As a result, the application of such provisions is problematic, or they are even contrary to law and as such unconstitutional. Although these discrepancies have been in practice more or less successfully eliminated by interpretation, indirect

novelisation of the relevant provisions of the protected areas' constitutional documents (Section 90 paragraph 14 of the Act) or by application of other common provisions of the Act, it is obvious that such approach is not a solution, but only "patching" and in fact prolongation of the current from legal point of view unsatisfactory situation. In this respect, the only real solution will be re-establishment of all large-area protected areas of nature pursuant to contemporary legislation (save for those areas which have already been re-established).

A specific problem of protected landscape areas is – as already mentioned above – that whereas the Act sets out that a protected landscape area itself shall be established by a government decree, an administration of such area (whose existence is a condition for successful functioning of a protected landscape area) must be established by an act. In chapter on protected landscape areas of this thesis I mentioned and described four possible solutions of this unsatisfactory situation, from which the best solution seems to be the transformation of the Agency for Nature Conservation and Landscape Protection of the Czech Republic (hereinafter the "**Agency**") into an administrative authority, whereas today's administrations of particular protected landscape areas would no more have a position of a separate administrative authority, but they would be territorial branches of the Agency, exercising the administration of protected landscape areas in its name.

As the last most significant imperfection the Part Four points out that – maybe due to the aforementioned difficulties when establishing a protected landscape area - nature parks are in practice sometimes established instead of protected landscape areas, although there have been plans for establishment of a protected landscape area in the particular location. With regard to this phenomenon and to the fact that nature parks are actually provided for only by one single paragraph of the Act, enacting of more detailed legal regulation of nature parks (possibly including enacting them as a specific category of protected area of nature) shall be considered.