SUMMARY

The **environmental damage** harms or threatens the two groups of interests - public and private. Both types of interests are often damaged by one event. The tort law and public liability including their financial security are therefore functionally interconnected systems, which sometimes overlap. They do not contradict but usefully complement each other.

At the **international level**, there are several treaties governing the liability for transboundary pollution. Only one convention is legally binding and used in practice - CLC liability for oil transportation by sea, conventions on liability for nuclear damage are binding but were never used in practice. All these conventions use the classical scheme of tort law. They apply only to accidents. The liability is always objective with defences (natural phenomenon, force majeure, conduct of a third party). The liable party is always channelled to easily identifiable subject. In the case of multiple liable parties, they are liable jointly and severally. Damage must be quantifiable in money and the amount must be proved by the victim. In the case of harm to the environment, the damage is derived from the costs for reasonable preventive and corrective measures. The compensation for losses is necessary to apply in a certain period of time. These periods are usually 10 years (objective) and 3-5 years (subjective). The liability is never retroactive. The financial security is always mandatory.

The international conventions do not use the **alternative or complementary measures**. Another important **limitation** is the maximum amount of possible compensation for losses, which ranges from 30 to 750 million SDR. This restriction is contrary to the stated objective of full and adequate compensation of loss. In practice, however, clean-up costs were fully awarded except for two major accidents. The liability is divided into at least two **tiers**. The polluter is responsible in the first tier, the liability is stricter and only to smaller amount. The main purpose of this liability is to motivate operators to prevention. The second follow-up system is a fund set up by the entire industrial sector. The fund compensate for higher damage and under milder conditions. The main function is full compensation to victims. This system is extended by the third and fourth tiers of liability - participating countries and international organizations. The whole system is moving away from civil liability for breach of contractual obligations to the right for compensation of loss.

The analysis of international liability also tries to answer the question why some liability regime work and the others do not. The factors supporting the **efficiency** and functioning of liability regime include:

- a strong public interest on liability,
- clear, transparent and predictable regulation,
- well-known, large, well-regulated operators,
- precisely defined scope of liability (including types of damage)
- maximum limit of damage,
- tiers of liability (the operator, a group of operators, state)
- frequent usage in the practice.

An example might be the **Lugano Convention**, which should have been the most comprehensive international convention and it has never been legally binding. The reason is the use of demonstrative and vague definitions, unlimited liability, lack of public interest, etc.

The above-defined criteria can be used also for evaluation of the new **Directive on Liability for Environmental Damage at European Union level**. Due to the nature of the Directive, some of the

criteria for the efficient functioning of the liability could not be fulfilled. The liability regime is comprehensive, covering not only the loss of one source or from one type of hazardous activity. The definition of scope of liability is still unnecessarily complicated. There was no strong public interest on the adoption of the directive and the transposition into Czech law, because the liability had been sufficiently covered. The Directive does not harmonise the liability, the most of fundamental issues are left to the decision of Member States. The scope of the Directive is limited to the qualified damage to biodiversity, water and soil. The liable party is the operator, which has the duty to notify and take the preventive and corrective measures. The Directive can be considered innovative in four areas - liability, regardless of breach of legal duty; the additional measures, ie measures in a different location; strengthening the rights of the public and mandatory financial security. In all areas the benefits are substantially reduced by related problems. Therefore, the Directive remains very weak tool. In the Czech Republic, the Directive was transposed by the special act, which was still not used in the practice.

The **Czech tort law** is governed exclusively by the Civil Code. The liability regime is similar to European standards and currently being prepared recodification removes most of fundamental problems - in case of subcontracting the liable party is not clearly determine; strict liability is duplicated; money reward has priority over restitution in integrum. The performed research shows that Czech courts do not use the environmental damages, because no one requires them in civil litigation. The only exception is disputes relating to compensation for damage to forests. This type of litigation has led to a unique jurisprudence of the Supreme Court, which favours the position of the victim. The compensation for a smaller increase of wood caused by long-term carbon dioxide emissions was repeatedly awarded, even though the operators of these sources do not breach the limits imposed by law or decision, pay the fees for air pollution and use the best available techniques. The analyzed case law is very benevolent in quantification of damages, causation and time limits.

Public liability for harm to the environment as such is in the Czech Republic regulated by a large number of different laws that can be divided into a cross-sectional and specialized. The most general, very brief regime contains the act on environment, which was long considered as a non-usable in practice due to a lack of procedural regulation, but the remedial measure was imposed under this act. This decision was confirmed by the court in the first instance. The second regime is a complex transposition of the Directive to the law on environmental damage. The definition of scope of the law is unnecessarily complicated, extended liability is weakened by permit defence, the rights of public concerned is rather limited, mandatory financial security applies only to certain entities and is postponed.

The public interest is in the practice protected by wide scope of specialized laws. The liability regime is always very brief, refers to cases of accidents and breach of law. The liability is always objective, usually without defence. The liable parties must carry three basic obligations: inform and perform preventive (general and special) and corrective measures. Corrective measures are not regulated in more detail, which is one of major deficiencies.

De lege ferenda, there is no need to adopt new legal regulations. For the civil liability, it is necessary to better define the liable party for outsourcing. The public liability should further adjusted corrective measures and entitlements of the public concerned. For both systems, it is necessary to develop a better system of ensuring financial accountability and its division into the tiers.