SUMMARY

The purpose of my dissertation *Delictual Liability of Legal Persons within Environmental Protection* is to obtain a correct idea of how the legislation on the corresponding materia de lege ferenda should be examined. This requires to summarize, analyse and evaluate national regulations in force of delictual liability of legal persons within environmental protection as well as to compare some aspects of national regulations in force of delictual liability of legal persons with corresponding foreign regulation.

A significant part of threats and damage to the environment comes from the activities of legal persons. A percentage of legal persons responsible for unlawful impairment and endangering of the environment increases significantly. Establishing legal persons is often associated with the effort of individuals to avoid liability for criminal activity by committing illegal activities through a legal person. Crime in the area of environmental protection is often perpetrated by criminal organizations with a strong financial background. For these organizations particularly the illegal trade in waste is very attractive because it is less risky than, for example drug or arms trafficking.

Activities that prevent environmental pollution or environmental damage, or that limit or eliminate environmental pollution or environmental damage, are collectively referred to as environmental protection. Environmental protection act sets out certain basic obligations relating to the protection of the environment. In particular, the duty of everyone to prevent in his activities pollution or environmental damage, as well as to minimize the impact of its activities on the environment. Environmental protection act also establishes the duty of everyone who find out that threatens damage to the environment to avoid it, and the duty of everyone who finds out that damage to the environment was caused, to mitigate the consequences, including the duty to report these facts to state administration authority.

Key role within solving the current environmental pollution and prevent its further deterioration play legal instruments for environmental protection. Existing non-legal instruments are not alone capable to solve serious environmental issues. Generally, distinction can be made between deterrent and compliant legal instruments for environmental protection. A combination of deterrent and compliant tools that will be as effective as possible to protect
the environment must be chosen. Among the compliant tools of environmental protection include, in particular consultancy, various recommendations or agreements. The most important deterrent tool of environmental protection is the legal liability. In environmental law we are talking about ecological liability.

Ecological liability has two basic parts, namely the liability for environmental loss and delictual liability. Liability for environmental loss is further divided into liability for environmental damage and liability for harm to the environment.

Liability for environmental damage is regulated in Civil Code. Possibilities of using this instrument for environmental protection are limited by the principle that the right to claim damages has only the owner of the damaged thing. Other limitations are the fact that the damage is paid in cash, while in civil law, there is no detailed method applicable to calculate the total environmental damage in monetary terms.

Liability for harm to the environment regulates Act no. 167/2008 Coll., on ecological harm prevention and correction. Possibilities of using this tool for environmental protection are limited by the absence of more specific provisions regarding the quantification of harm to the environment. Another limitation is the fact that the relevant act applies essentially only to the harm to the environment caused by operating activities in the Annex of the Act.

Delictual liability in the field of environmental protection plays the crucial role among legal instruments in protecting the environment by ensuring compliance with the obligations laid down by other legislation in the environmental field. Delictual liability in environmental law is very important mainly because it is usually not possible to accurately or fully quantify the damage in money, which is immanent to liability for environmental damage. Delictual liability in the field of environmental protection is divided according to the branch of law to administrative liability in the field of environmental protection and criminal liability in the field of environmental protection. A persistent problem in the field of delictual liability within environmental protection as a whole is failure to solve quantification of harm to the environment.

Within the administrative liability of legal persons in the Czech Republic is applied the concept of strict liability. For administrative offence committed by a legal person may be
imposed a fine. In many cases, however, the income from fines is not used to improvement of the state of the environment. Important role within the administrative liability in the field of environmental protection play remedial measures. The purpose of the remedial measures is to give the environment to its original condition. The problem connected with prosecution of legal persons for administrative offences in the field of environmental protection is a relatively large number of public bodies which are deciding about these offences. The most important of them is the Czech Environmental Inspectorate. An important role is also played by local authorities. Important negative feature is lack of general rules of administrative punishment. Administrative liability in the field of environmental protection is characterized by its fragmentation and the inconsistency. In the laws there are no rules about imposing sanctions for concurrence of offences, rules about prosecution of organization of a crime etc. The result is a practice developed by public bodies and the courts, which is not always conducive to environmental protection. Gaps in legislation in the field of administrative liability within environmental protection must be filled legislatively because application of analogy in the field of administrative liability is limited.

Criminal Law performs essential role in the field of environmental protection especially for its deterrent function. In the area of criminal liability within environmental protection have an important inspirational role for national legislation particularly, documents of international law and European Union law. On the international stage was in 1998 adopted Convention on the Protection of the Environment through Criminal Law. This convention was seen as a very strict and finally did not come into force. Within the EU was adopted in 2008 Directive of the European Parliament and of the Council 2008/99/EC, on the protection of the environment through criminal law. This directive contains some principles that were contained in the Convention on the Protection of the Environment through Criminal Law from 1998.

More recently, criminal liability of legal persons has become part of the national legal system. One reason for the adoption of this legislation was an effort to comply European directives, including Directive of the European Parliament and of the Council on the protection of the environment through criminal law from 2008. The adoption of criminal liability of legal persons allows prosecution of legal persons for the most serious acts damaging the environment. Lack of experience with this type of regulation will initially probably have a
negative impact on its application. A legal person may be held liable for any offence against the environment. Within the criminal liability of legal persons is in the Czech Republic applied the attribution doctrine. The criminal liability of legal persons is punishable by a fine in addition to the abolition of the legal person, forfeiture of property, forfeiture of a thing or other property value, prohibition of activity, prohibition to public contracts, prohibition of participation in the concession procedure or in a public tender, prohibition to receive subsidies and subventions, and the penalty of the publication of the sentence. There are serious doubts about imposing of some penalties in practice. Conditions for imposing as a sanction the abolition of legal person are in practice almost unrealizable. As a benefit for environmental protection can be considered the adoption of the penalty of the publication of the sentence in the public media. In the future, this punishment could result in eg. the resistance of the public against products of the company. An important benefit of corporate criminal liability is the ability to use offensive freezing orders and coercive measures against legal persons. At the same time, however, the criminal proceedings against administrative proceedings must provide a legal person more procedural rights. In that are hidden other weaknesses of criminal liability of legal persons. An important advantage of corporate criminal liability is the possibility of international judicial cooperation in the prosecution of legal persons. The question is whether the prosecution against legal persons in the field of environmental crime will succeed in a situation where it is not successfull even against individuals. In the absence of judicial decisions on the criminal liability of legal persons we will probably be witnesses of interesting judicial decisions. But the question is whether even any decisions in the field of environmental protection will be issued.

The text is based on the law effective in the Czech republic on 17th November 2012.

**Keywords**

Criminal liability within environmental protection, Administrative liability within environmental protection, environmental crime, corporate crime.