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Quiet Areas in Open Country in the Czech Republic?

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ABSTRACT

This paper focuses on an issue that has yet to be resolved satisfactorily and with legal relevance in the Czech Republic. European law determines framework requirements, as well as obligations of Member States to designate quiet areas in nature and in open country. The Directive of the European Parliament and Council Directive 2002/49/EC relating to the assessment and management of environmental noise was indeed incorporated into Czech legislation, but legal instruments are still lacking for fulfilling the obligation under this directive to create and protect quiet areas in nature. Therefore, the purpose behind this paper is to open certain relating problem areas and to search for an answer to the question of why this obligation has yet to be fulfilled.

Key words: Acoustic smog, noise pollution, noise protection, quality of life.

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1.0 Introduction

The quality of the environment in open nature and country relates *et alias* to the guarantee of a quiet environment without noise pollution, and, thereby, to the quality of life. This idea is also projected in the Directive of European Parliament and the European Council No. 2002/49/EC on assessment and management of environmental noise². The main content of the directive is introduction of the

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² The strategic aim of Directive 2002/49/EC was to decrease the number of citizens in the European Union affected by noise in 2010 L_{Aeq} (noise indicator for day-long noise disturbance) above 65 dB by 10 %, and in 2020 by 20 %. This directive relates to environmental noise, to which people are exposed mainly in built-out areas, in public parks or in quiet areas of agglomerations, in quiet areas in open

obligation to perform strategic noise mapping, which should provide data from individual Member States concerning the noise level in individual areas from large sources of noise, and determine the measure of exposure of the population to noise in the outdoor environment. Specific values of all limit values however are not established at the EU level, but rather the Member States are to determine them, which should meanwhile take into consideration *et alia*s the need to use the principle of prevention and the principle of **preserving quiet areas**. Based on the results of the strategic noise mapping, Member States should then adopt action plans with the aim of preventing and decreasing or at least sustaining the existing noise level in the outdoor environment, especially in quiet areas.³

This European regulation was transposed into our legislation by means of Act No. 222/2006 Coll., amending Act No.76/2002 Coll., on integrated pollution prevention and control, on the integrated pollution register and on amendment to certain acts, as amended. The remaining part of the directive, i.e. mainly appendices to this directive, were transposed into Decree No. 523/2006 Coll., as amended, laying down limit values of noise indicators and the calculation thereof, basic requirements for the content of strategic noise maps and action plans and conditions of public participation in the preparation thereof. In relation to the aforementioned European legislation, Act No. 258/2000 Coll., on protection of public health, as amended (hereafter "Public Health Protection Act") regulates in its provision Sec 81(b) the competencies of the Ministry of the Environment in determining and establishing quiet areas in open country.⁴

It is possible to expect that this regulation was led by the effort to achieve a new and higher quality dimension of protecting nature and the countryside. Besides protection of species and territorial natural values, it could also lead to protection of acoustic comfort in open country.⁵ Meanwhile, the term "quiet area" has two forms. Regional authorities define a quiet area "in an agglomeration" in so-called "action plans". A quiet area "in open country" should be determined by decree of the Ministry of the Environment. Since in our country, such a decree has yet to be adopted (and we therefore lack any specific legal instrument for regulating quiet areas in open country), it is necessary to examine why this area has yet to be resolved.

2.0 Meaningfulness behind determining quiet areas in nature?

One may reflect upon whether quiet areas, as a new way to protect territory, can adequately support and augment already established especially protected territories, and also replace the mode of so-called peaceful areas.⁶ One may also ponder whether in cases where special territorial protection already exists under Act No. 114/1992 Coll., on protection of nature and country, as amended, it would make sense to declare it simultaneously as a quiet area. When considering the meaningfulness of determining these further instruments of broad regulation of territory in terms of noise pollution, it is necessary to account for certain existing factual and legal barriers. Such barriers mainly include the existing undesirable sources of noise (e.g. from exceedingly burdened roads). This further concerns the need to abide by already approved territorial planning documentation, in which some noise pollution is accounted for. The relief of the landscape would certainly have an unmistakable influence on the given

country, nearby schools, hospitals and other sensitive buildings or residential areas. The directive *inter alia*s is intended to provide a basis for development and completion of measures concerning limitation of noise emissions from large resources, mainly road and railroad vehicles, infrastructure, airplanes, equipment designed for outdoor use, industrial facilities and mobile mechanical equipment, and for design of additional short-term, medium-term and long-term measures. The aim of the directive is to define, based on the determined priorities, a common approach to preventing or limiting damaging or disturbing effects of environmental noise. The following measures are gradually being performed for this purpose: determination of the measure of environmental noise exposure by means of noise mapping applying assessment methods common for all Member States; provision of information access regarding environmental noise and its effects on the public; based on results of noise mapping, adoption of action plans by Member States with the aim of preventing and decreasing environment noise.

³ Compare BASSETT, 2002.

⁴ In the wording of this provision "*In assessing and decreasing noise in terms of the long-term average environmental noise pollution, the Ministry of the Environment regulates quiet areas in open country by decree*".

⁵ Compare LIBERKO, 2004.

⁶ Compare to this now-repealed legislation - the Decree of the Ministry of Health No. 13/1977 Coll., on protection of health from the adverse effects of noise and vibrations, which *inter alia*s contained legal anchoring of a "quiet area".

issue. In certain localities, noise spreads out over great distances. For practical reasons, the size of the territory appropriate for establishing as a quiet area must be adequately considered. For smaller localities, the threat exists of permeating noise pollution from a territory lying outside such a territory, etc. Meanwhile, for larger territorial units, it is very problematic to secure the guarantee of a quiet area (relating urbanization, already existing adverse noise sources, etc.)⁷. Regarding the timeliness and complexity of the given issue, the European Environmental Agency (EEA) is preparing a complex assessment report on the noise situation in Europe, due to be published in 2014.⁸ Meanwhile, it is derived from the expectation that "quiet areas" need not be (and cannot even be) necessarily without any influence of noise emissions. Also considered authoritative is the circumstance for the territory to be protected from unpleasant and disturbing noises emanating from human activity. On the contrary, common noises of nature (e.g. breezes blowing through trees or flowing water) can have beneficial influence. From this perspective, protection from noise pollution in terms of individual noises sources should be accented and preferred when defining quiet areas, as opposed to an absolute level of noise pollution.⁹ The European Environmental Agency stated that quiet areas are beneficial for public health, mainly for the health of those persons living in noisy urban areas. However, definition of these areas does not come from the directive on outdoor noise, and is left in significant measure to the discretion of Member States. Discretion was clearly also the cause of the fact that individual countries in the EU have taken significantly differing approaches. Though most Member States have established quiet areas in agglomerations, many of them have established no quiet areas at all in open country (and CR is no exception).¹⁰

If we consider the possible cause of this "dilatatory" approach on the part of Member States, it is possible to conclude that this may be caused by the very fact that in many regards, there is no extractive definition of the requirement to protect a person from noise pollution in nature (as opposed to the lacking adequate protection of wildlife). It is then all the more surprising that European Law has yet to regulate protection of wildlife from noise. I consider this a crucial problem in the given context. Noise is examined and assessed only in terms of health risks or peace, and the living comfort or quality of life of humankind. This is also the case in the CR. The given issue is organizationally regulated *de lege lata* in the CR by the Public Health Protection Act, whereas the definition of quiet areas in open country falls under the competency of the Ministry of the Environment. However, the ministry has no available legally relevant tools at its disposal to regulate noise pollution with regard to environmental protection (especially protection of fauna) in open country. In the wording of valid legislation, there also is no logical reason given why this ministry should secure protection from noise other than in the very relation towards wildlife (the Ministry of Health holds determining residual power in relation to protection of human health). However, for necessary legal instruments to be determined for protecting fauna from noise, there are no clearly defined aims or scientifically documented influence of noise on wildlife.¹¹

3.0 Problematic organizational security

As previously stated, legislation of the Ministry of Health governs protection of persons and human health in the CR (*inter alia* even quiet areas). For protection from risk factors of noise however, a series of other entities take part organizationally when exercising state powers, both at the central and local

⁷ Buš, 2006.

⁸ Finding Europe's quiet areas, eea.europa.eu.

⁹ MEGAINY, 2004.

¹⁰ Compare mainly requirements according to Art. 8 and 9 of the cited directive, according to which Member States were to secure elaboration of action plans designed to resolve noise pollution and its effects, including essential decrease in noise.

¹¹ Examples include high or low population numbers of individual species of wildlife, and consequently their diversity in various ecosystems has a series of causes. Certain species are low in numbers in consequence of natural processes or are influenced by factors resulting in the fact that the presence or number of a population can often change dramatically. The root cause of stark changes in recent decades can be attributed mainly to processes relating directly or indirectly to human activities. Sometimes it is very difficult to distinguish very complex natural and anthropogenic factors, and thus also noise smog, from one another.

level.¹² With regard to the powers of individual ministries and to their obligation to work together and submit to one another the necessary information materials, arising from the Competency Act¹³ and from special legislation, the question stands out of whether valid legislation truly does regulate noise protection at the general level efficiently and in a complex manner. One may indeed conclude however that noise protection in quiet areas still remains unresolved. Especially lacking are elementary instruments for enforceability of this right. In terms of adverse noise pollution, European Law also gives priority to protection of the comfort of the individual.¹⁴ If however quiet areas in open country are to be protected, this concerns a certain disproportion between the intended and the legal condition, which is extremely difficult to resolve in our legal environment.¹⁵ There lacks a law covering protection of health from noise, which would (even negatively) limit its effects, and mainly determine instruments towards enforceability of the right to noise pollution protection.¹⁶ For example, in Slovakia, as opposed to our legislation, a law has already been passed on assessing and controlling outdoor noise.¹⁷ The existing legislation in the CR in the mode of the Public Health Protection Act is very fragmentary and inefficient (especially in regards to exemptions from noise limits).¹⁸ The performance regulation to the Public Health Protection Act is Government Decree No. 272/2011 Coll., on protection of health from adverse effects of noise and vibration. This legislation does not especially resolve quiet areas (even in agglomerations). It would meanwhile be logical if in quiet areas, if they are to be established, stricter noise values would apply than those determined by generally binding public health limits in the aforementioned decree. It would also be very desirable to define and limit such activities in quiet areas that could emit unwanted noise. And it would be appropriate to harmonize the issue of quiet areas with legislation in the wording of Government Decree No. 9/2002 Coll., laying down product technical requirements related to noise emission, as amended.¹⁹ If quiet areas are to be appropriate not only for regeneration of mental strength, but for natural values as well, it would also be beneficial to limit such methods of recreation that would disturb the acoustic comfort in a given location. Therefore, certain mode measures should apply for limiting the origin of unwanted noise or acoustic smog. One can image that such measures could be incorporated into basic protective conditions of individual, especially protected territories. In addition, they could also be linked to general territorial protection under the Nature and Landscape Protection Act - e.g. in relation to protecting the areas of Natura 2000, protecting the landscape character and a natural park, or possibly temporarily protected spaces. It is certainly not necessary to point out especially that legislation could more markedly secure more effective protection (not only within the framework of the given issue), leading to strengthening the authority of the competent control authorities.

¹² At the central level and within the framework of their respective competency, mainly the Ministry of the Environment of the CR, the Ministry of Transportation of the CR and marginally also the Ministry of Defense of the CR and the Ministry of the Interior of the CR, all play a role in protecting public health besides the Ministry of Health, according to CNR Act No. 2/1969 Coll., on establishment of ministries and other central bodies of state administration of the Czech Republic, as amended (hereinafter the "Competencies Act"). Competency of ministries is thus determined not only generally by the Competencies Act, but also in a series of other acts in substantive law. The Competencies Act also contains principles that relate to all central state authorities, including principles of mutual cooperation of administrative authorities even along a vertical line. The aforementioned ministries decide within the circle of their competencies on social interests relating *inter alia* to the problem of noise protection, they analyze obtained results and take measures towards resolving current questions. They elaborate the concept of developing entrusted branches and solutions to key questions that they submit to the government of the Czech Republic. Ministries also submit for their entrusted branches materials for preparing measures of a wider reach and secure tasks within their competency relating to negotiating international agreements, to development of international relations and cooperation, as well as membership in international organizations. Other ministries also take up a position on draft proposals that they submit to the Czech government, in terms of the scope of their competency. The Czech government manages, controls and unifies the activity of ministries. The Office of the Government of the Czech Republic performs tasks relating to professional, organizational and technical securing of activity of the Czech government and its bodies. In terms of the prescriptive activity of ministries, they are subject to the provisions of Article 79, Paragraph 3 of the Czech Constitution, according to which "*ministries, other administrative agencies and territorial self-government bodies may issue on the basis and within the scope of a law legal regulations, if they are authorized to do so by law*".

¹³ Compare Act No. 2/1969 Coll., on establishment of ministries and other central bodies of state administration, as amended.

¹⁴ For more see FORD, RENNIE, FALCONER, RAY, 2004.

¹⁵ DUDOVÁ, 2005.

¹⁶ DUDOVÁ, 2007.

¹⁷ Compare Act No. 2/2005 Coll. on assessment and control of environmental noise and on amendment to the Act of the National Council of the Slovak Republic No. 272/1994 Coll. on the protection of human health, as amended.

¹⁸ For more see DUDOVÁ, 2013.

¹⁹ This decree, in accordance with EU Law, determines technical requirements in terms of noise emissions on equipment used outdoors listed in appendices no. 1 and no. 2 of this decree.

4.0 Conclusion

It may be summarized that European legislation does not sufficiently protect the quality of life against noise pollution - especially regarding protection of wildlife. The Czech Republic unfortunately lacks effective and complex legislation that would ensure adequate protection of people from noise.²⁰ If the corresponding legal basis is not thus formed, in the form of a law to protect against noise from the outside environment, it then becomes difficult indeed to imagine that on a basis that is missing, it is possible to further "build" in the sense of linking legal instruments towards noise protection. If no uniform view regarding noise protection emerges within the framework of individual ministries, or harmonization of scattered and imperfect legislation, which rather "softens" noise limits rather than transparently resolving the given problem across the protection of individual public interests (human health and maintaining the existing natural environment), it will not be possible to establish the institution of quiet areas in the CR.

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²⁰ Compare: DUDOVÁ, č. 21/2012.