

## ENFORCEMENT OF ENVIRONMENTAL ASPECTS OF SUSTAINABLE DEVELOPMENT IN LAND-USE PLANNING

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**Abstract:** Currently, the concept of sustainable development is often used. However, its sense is not seen properly in many cases. The term is used, *inter alia*, by the Building Code especially in connection with legislation on land-use planning. In order that the problems related to enforcement of environmental aspects of sustainable development in land-use planning in addition to their solutions may be outlined, it is essential to deal with basic terms, sources and lack of their application.

**Keywords:** sustainable development, protection of the environment, land-use planning.

### 1 Introduction

The issue of promoting sustainable development is very wide. Therefore this paper is focused only on certain aspects and areas. However, it is necessary to deal with the interpretation of the concept of sustainable development which is not always clear although it is a frequently used phrase. The focusing on the environmental pillar of sustainable development and land-use planning relates to current problems (in particular changes in the use of certain land). The current situation is not ideal, which often leads to negative phenomena in this area. It could be improved; a discussion of the issue and general public's concerns are needed.

### 2 Sustainable development

#### 2.1 The concept and its history

Calls for the need to change the development of civilization began to appear at the end of 60s of the 20th century especially in the context of the United Nations. The emphasis on a harmony of economic development and environmental protection was put in the **Stockholm Declaration of the UN Conference on Environment** in 1972. Article 13 of the Declaration contains a recommendation for an integrated and coordinated approach to development plans.

Gradually, the opinion that economic growth should be stopped has been overcome. Hence, the concept of sustainable development has been evolved in the **Report of the World Commission on Environment and Development** published in 1987 (Our Common Future). It attempted to reconcile requirements of an effective protection of the environment, nature, and natural resources with the economic development.

The **United Nations Conference on Environment and Development** in Rio de Janeiro (1992) adopted Agenda 21 which is considered a 'broad definition' of sustainable development. Moreover, the Declaration containing a concise statement of what the term 'sustainable development' provides was adopted at this conference.

The meaning of sustainable development is understood subjectively. It varies in different areas as belonging to the category of post-material values. Land-use policy is a crucial factor in this respect.<sup>1</sup>

The concept of sustainable development was redefined at the **World Summit on Sustainable Development (WSSD)** in Johannesburg in 2002. The content of the concept was reformulated so as to lead to a reassessment of the practical

economic policy in addition to be politically and legally enforceable.<sup>2</sup>

The objective of sustainable development is stipulated even in the **Treaty establishing the European Community** (Article 2) as one of the roles of the Community. A support of 'harmonious, balanced and sustainable development of economic activities' and 'a high level of protection and improvement of the environment' is stated in the Treaty. A requirement to integrate environmental protection into a definition and implementation of Community policies, particularly with regard to promoting sustainable development, is set in Article 6 of the Treaty.<sup>3</sup>

Subsequently, the meaning 'permanently' was abandoned with regard to a limited period during which a development may be affected. Czech legislation differs in this respect. **Environment Act No. 17/1992 Coll.** as amended defines sustainable development as 'the development that keeps a possibility of meeting basic needs of current and future generations without loss of biodiversity and natural ecosystem functions' (§ 6). The term 'sustainable development' is used mostly within the meaning of the purpose of Czech legislation, e. g. Environmental Impact Assessment Act No. 100/2001 Coll., as amended, or Act No. 183/2006 Coll. (Planning and Building Code), as amended. The provisions are mostly declarative without specific sanctions.

#### 2.2 Pillars of sustainable development

Essentially, the definition of sustainable development is divided into three pillars which should be balanced: **environmental, economic and social**. The concept of sustainable development is often related to the environmental pillar as it relates to the need to regulate the consumption of natural resources. Objectives of economic and social pillars are rather unclear because short-term perspectives, dependent on the length of electoral term or on a term of economic investment return, are dominated in business or public administration. Social needs often change.

**Economic development** is often equated with economic growth which can be achieved not only by further exploitation of natural resources but also by technological and organizational innovation as well as by higher quality and productivity of human labour. The use of environmentally friendly technology in addition to less energy and raw material-intensive production are in accordance with requirements of sustainable development. Such economic growth (expressed as GDP growth) which does not increase the burden on the environment is considered sustainable under the concept of the Organisation for Economic Cooperation and Development (OECD).

**Social sustainability** refers to an effort of an adequate level of each individual including the length of life, the access to education, the purchasing power, etc.

From the perspective of economic and social development, environmental protection often sounds like an obstacle of economic or social development.<sup>4</sup>

Therefore it is necessary to bear in mind that one of the fundamental principles of sustainable development, which can be derived from international conventions, is the principle of **integration**. It means a need to take into account the environment in economic and other development plans, programs, and projects, and *vice versa* needs of economical and

<sup>1</sup> Moldan, B.: *Indikátory trvalé udržitelného rozvoje*. Ostrava: Vysoká škola báňská – Technická univerzita Ostrava, 1996, p. 9 - 11

<sup>2</sup> Petržilek, P.: *Legislativa udržitelného rozvoje a nové podnikatelské příležitosti*. Praha: LexisNexis, 2007, p. 13

<sup>3</sup> Košičiarová, S.: *Právo životního prostředí*. 2nd ed. Bratislava: Bratislavská vysoká škola práva, 2009, p. 21

<sup>4</sup> Maier, K. et al.: *Územní plánování a udržitelný rozvoj*. Praha: ABF – nakladatelství ARCH, 2008, p. 7 - 11

social development should be taken into account when protecting the environment.<sup>5</sup>

### 2.3 The Czech Republic Sustainable Development Strategy

The Czech Republic Sustainable Development Strategy has been approved by Government Decree No. 1242 of 12 August 2004. The Strategy defines the main objectives and sub-objectives and instruments which should contribute to the balance among economic, environmental and social pillars of sustainability, the maximum attainable quality of life of the present generation in addition to creation of prerequisites for the quality of life of future generations. The particular issues of development are:

- the economic pillar
- the environmental pillar
- the social pillar
- research, development, education
- European and international contexts
- governance.

The three pillars of sustainable development are coupled with other areas of cross-sectional nature. Their mutual relations and interactions are important. It is often difficult to evaluate a specific area without taking into account the influence of other areas.

Selected **indicators** reporting on the approaching or receding targets, comparing the situation in other states, or evaluating and analyzing trends are the basis of the Progress report on the Czech Republic Sustainable Development Strategy.<sup>6</sup>

In relation to the enforcement of environmental aspects in land-use planning it is necessary to consider not only the environmental pillar but also one of the indicators in the abovementioned issue of 'governance'. It is the '**corruption perception index**'.

Corruption conduct is a negative global phenomenon which undermines the principles of basic values, affects confidence in the legitimacy of state institutions, etc. Czech democracy is not yet mature enough to overlook a fight against corruption. As far as the perception of corruption, the Czech Republic is among the worst countries in Europe; it is not improving significantly.<sup>7</sup> When combining this fact with e.g. a possibility of the change of land category in the land-use procedure (resulted from land planning instruments) with related savings when building the lucrative construction 'on green field', it is obvious that it is the issue of two economically contradictory interests.

### 2.4 Environmental pillar

Within this pillar, the protection of the environment, nature, natural resources, and landscape in addition to environmental limits are subsumed. The strategic objectives are to ensure the quality of components of the environment in the territory of the Czech Republic, to increase the quality gradually, to create prerequisites for regeneration of the landscape and for minimizing risks to human health as well as regeneration of wildlife. Furthermore, preservation of natural resources, minimization of conflicts of interest between economic activities and environmental protection, and contribution to a solution to European and global environmental problems are among the objectives. When evaluating indicators, a failure in trying to halt a **biodiversity loss** is alarming.<sup>8</sup>

The overbuilding falls within the activities that adversely affect biodiversity. Economic or social interests are often favoured in this activity because the consequences of biodiversity loss are not fully understood. Moreover, the precautionary principle is

often incorrectly interpreted<sup>9</sup>. The implementation of this principle is essential in an effort to halt biodiversity loss.<sup>10</sup> The principle is characterized by § 13 of Environment Act No. 17/1992 Coll. as amended: '*if a risk of serious or irreversible environmental damage is assumed in consideration of all circumstances, doubt on such damage may not be the reason for postponing preventive measures.*'

## 3 Land-use planning

### 3.1 Legal regulations in the Czech Republic

Legal regulations on land-use planning were substantially amended in the last few years in relation to the development of the society and views on land use.

The Planning and Building Code (**Building Act**) No. 183/2006 Coll. and Act No. 186/2006 Coll. (on some amendments to laws relating to adoption of the Building Act and the Expropriation Act) entered into force on 1 January 2007.

Act No. 183/2006 Coll. has replaced Act No. 50/1976 Coll. (Planning and Building Code) as amended.

To implement the Building Act, Decree No. 500/2006 Coll. on land-use planning analytical supporting documents, land-use planning documentation, and registration of land-use planning activities, or Decree No. 501/2006 Coll. on general requirements for land use (and other decrees) were issued.

Act No. 184/2006 Coll. on withdrawal or restriction of ownership rights to the land or building (Expropriation Act) should not be omitted.

### 3.2 Objectives, tasks, and instruments of land-use planning

Land-use planning means the activity organized by the State. Its objectives are set in § 18 of the Building Act (for example: creating conditions for construction and sustainable development in a territory, protection and development of natural, cultural and civilization values of a territory, determining conditions for efficient use of land, protection of unbuilt areas). To achieve these goals, Building Act provides special tasks for land-use planning in § 19, item 1 (such as identifying and assessing the state of a territory, establishing the concept of territorial development, reviewing and assessing needs for changes in the area).

Under the Building Act, sustainable development of a territory consists in a balanced relationship between prerequisites for the positive environment, economic development, and cohesion of population in a territory satisfying the needs of the present generations without jeopardizing the living conditions of the future generations.

The land-use planning applies both **conceptual** and **implementing instruments**. The first group consists of land-use planning supporting documents, the land-use development policy, and land-use planning documentation. The second one consists of land-use planning permit or approval and land-use measures. These instruments are mutually related, coherent, and implicated.<sup>11</sup>

According to the Building Act, land-use supporting planning documents consists of land-use analytical supporting documents and land-use studies. They serve as the basis for provision or change of the land-use development policy, land-use planning documents, and decisions in the area. Land-use planning documentation consists of land-use development principles, land-use plans and regulatory plans.

<sup>5</sup> Sands, P.: *Principles of International Environmental Law*. 2nd ed. Cambridge: Cambridge University Press, 2003. p. 253

<sup>6</sup> *Situační zpráva ke Strategii udržitelného rozvoje ČR*. Praha: Ministerstvo životního prostředí, 2007. p. 9 - 10

<sup>7</sup> *Ibidem*, p. 135 - 139

<sup>8</sup> *Ibidem*, p. 9 - 11

<sup>9</sup> e.g. Klaus, V.: *Modrá, nikoli zelená planeta: co je ohroženo: klima nebo svoboda?* 2nd ed. Praha: Dokořán, 2009. p. 87 - 95

<sup>10</sup> *Situační zpráva ke Strategii udržitelného rozvoje ČR*. Praha: Ministerstvo životního prostředí, 2007. p. 77

<sup>11</sup> Damohorský, M. et al.: *Právo životního prostředí*. 2nd ed. Praha: C. H. Beck, 2007. p. 198

The Building Code regulates planning permits on location of buildings or facilities, changes of the use of lands, changes of buildings, changes in the effect of buildings on land use, divisions or consolidations of land, and protection zones. The special realization instrument is a territorial measure (either a building ban or territory sanitation).

Natural, cultural, and civilization values of an area and landscape as an essential element of the environment are protected and developed in the process of land-use planning in the public interest. The process should be focused on the **efficient use of built-up areas, protection of un-built areas in addition to rational demarcation of areas which may be built-up**.<sup>12</sup> Currently, it is a problem. The abovementioned construction of industrial and business complexes 'on green field' can serve as the example. It is a rather common phenomenon. However, it could have been avoided in many cases despite the increased costs and certain complications.

### 3.3 Environmental protection in land-use planning

Both public and private interests should be balanced within planning activities. The interests relating to environmental protection result primarily from special legislation. In land-use planning, these interests are not in the first place but they should be consistent with economic and social interests (in accordance with the concept of sustainable development). However, if makers of land-use planning documentation failed to protect the environment, not only that they have not met legal requirements but also they could be exposed to a risk of complications during subsequent negotiations on the draft documents. It is essential to realise that law provides several **means to assert interests related to environmental protection**. This is possible either by environmental authorities, or in assessing impacts of the land-use development policy and territorial planning documentation within the Environmental Impact Assessment of these conceptions pursuant to Environmental Impact Assessment Act No. 100/2001 Coll. (taking into account the possible impact of these documents on the NATURA 2000 area). Last but not least, the public can participate in the process of discussing proposals related to the formation of the land-use development policy and planning documentation. Everyone has the right to become acquainted with the proposals of the abovementioned documents and make written comments on them. The public may be represented by its authorized representative who has the right to raise objections to the consistent public comment.<sup>13</sup> On the other hand, the Ministry of Environment is not a planning authority. The Ministry for Regional Development is the central administrative authority in matters of land-use planning. The Ministry of Defence exercises a competence in areas for military purposes. It may also play a role in promoting the environmental aspects of sustainable development in land-use planning.

The term '**public interest**' was interpreted rather widely before 1989. Even in theory, the indisputable public interest in the operation of certain activity was not differentiated from the public interest in the location of a certain installation or building whose existence must be assessed individually. In some cases, those above mentioned interests may coincide. An administrative authority decides whether a certain installation or building is in accordance with the anticipated public interest. The authority is entitled to assess the urgency of public interest. However, the issue of decision-making limits can be seen in this case.<sup>14</sup>

### 3.4 Importance of information for sustainable development and land-use planning

Education, training, and edification play a vital role to change patterns of behaviour, production, and consumption in an effort to minimize conflicts of interests between economic activities

and environmental protection. This is impossible without an access to relevant information and support to voluntary business activities in the environmental field.<sup>15</sup>

Acquisition, transformation, transmission and the use of all sorts of information (in various fields and forms, at any level of decision-making) are the elements of sustainable development.<sup>16</sup>

The question is how information is used in the process of land-use planning or whether there is sufficient awareness and willingness to use them where the law permits. Almost everyone surely knows from his/her neighbourhood this case: all the available options against a controversial planned change in the area were not sufficiently used; after the change is irreversible, the wave of indignation lifts and the cause is sought. Reserves can be seen even in basic education and general enlightenment. Such a situation would not occur if every person considered the exercise of their rights naturally (also through other entities) even in the process to which they are not directly related (but which may affect the environment in which they live). Administrative bodies themselves cannot manage to promote the environmental aspects of sustainable development in land-use planning. However, they are not sometimes helpful to the public participation in this process.

### 4 Conclusions

The concept of sustainable development has a nearly forty-year history in international documents, treaties, and national legislation. During this time, its definition has been changed and developed depending on the development of the society and views on development opportunities in various fields. Generally, an opinion is accepted that sustainable development has three pillars (environmental, economic and social). The pillars should be mutually balanced. Although the awareness of the need to protect the environment in various human activities was the original impetus for the use of the term 'sustainable development', the promotion of the environmental dimension of sustainable development is still more difficult than in the case of other development aspects. There are many causes in this matter. However, information and values play a significant role because they influence the choices of ways to practise human activities and a solution to the conflict of public and private interests. Land-use planning (governed especially by the Building Act) belongs to the most important activities in which the promotion of the idea of sustainable development is necessary. Land-use planning can have crucial and irreversible consequences. Hence, it is very important to apply the principle of integration consistently to involve all potential participants into this activity. It should not be hindered in practice. In this regard, reserves can be seen in attitudes of administrative bodies.

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<sup>13</sup> Damohorský, M. et al.: *Právo životního prostředí*. 2nd ed. Praha: C. H. Beck, 2007. p. 203-205

<sup>14</sup> Truneček, J.: *Věcná břemena s veřejnoprávním prvkem*. Praha: Leges, 2010. p. 50-52

<sup>15</sup> *Situční zpráva ke Strategii udržitelného rozvoje ČR*. Praha: Ministerstvo životního prostředí, 2007. p. 11

<sup>16</sup> Moldan, B.: *Indikátory trvale udržitelného rozvoje*. Ostrava: Vysoká škola báňská – Technická univerzita Ostrava, 1996. p. 15

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