

THE INSPECTION OF NATURAL PERSONS WHO ARE NOT ENTREPRENEURS IN THE FIELD OF AIR QUALITY PROTECTION IN POLAND AND THE CZECH REPUBLIC

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Summary: This article is an attempt at a synthetic discussion of selected elements of the legal model of air pollution protection in Poland and the Czech Republic. The aim is to bring this issue closer to a wider audience, which may be a contribution to an international academic discussion in this field. Within the scope of this article, it is impossible to cover all the threads related to the control of natural persons who are not entrepreneurs in the field of air quality protection in Poland and the Czech Republic, hence the focus will be on selected elements. I justify the reference to Czech legislation on the grounds of geographical proximity (neighbourhood with Poland), similar problems (a post-communist country), and membership in the EU. Despite these apparent similarities, the two countries deal with air protection in quite different ways. According to reports by the European Environment Agency, the Czech Republic has better air quality than Poland. The article uses formal-dogmatic, statistical and comparative methods.

Keywords: environmental protection, air protection, pollution

1 Introduction

The article will focus on issues concerning the practical aspects of controlling conduct in contravention of selected air protection instruments in Poland and the Czech Republic. This issue is extremely important, as the lack of enforcement in this area may render these regulations dead, thus causing the goal of improving air quality not to be achieved. The analysis will make it possible to determine how Poland and the Czech Republic have regulated the subject matter, which will provide a starting point for a comparative study.

2 Selected aspects of the enforcement of provisions contained in the so-called anti-smog resolutions in Poland

As already mentioned in the previous article,¹ the enforcement of provisions contained in the so-called anti-smog resolutions (Article 96 of the Act of 27 April 2001 – Environmental Protection Law) seems to be an interesting issue.² This article will be limited to natural persons who are not pursuing individual business activity.³ Outside the scope of the study are issues relating to the punishment of entrepreneurs in this respect – these will be raised in a subsequent article.

Pursuant to Article 334 of the EPL, anyone who fails to comply with the restrictions, orders or prohibitions set out in a resolution of the voivodship assembly adopted pursuant to Article 96 of the EPL (the so-called anti-smog resolutions – ER) is subject to a fine.⁴ This includes not only the burning of fuels prohibited by the resolution, but also the burning of fuels in a furnace/boiler which does not meet certain standards/classes. As a side note, it is worth noting that in Poland, inspections for non-compliant fuel combustion are also carried out using drones,⁵ although the results from these drones cannot constitute an independent basis for a penalty – verification of the furnace inside is necessary. Obstructing or preventing an inspection is punishable by up to three years'

1 RADECKA, Ewa. Wybrane instrumenty planistyczne ochrony jakości powietrza w Polsce i Czechach, *Gubernaculum et Administratio*, 2025, no. 1, in print.

2 Journal of Laws of 2024, item 54, as amended, hereinafter referred to as EPL.

3 It is worth noting that, for example, the anti-smog resolution for Silesia does not delimit the entities that are obliged to comply with it depending on their legal status (e.g. a natural person or a legal person), but makes this dependent on the power of the installation (see § 2 and 3 of Resolution No. V/36/1/2017 of the Silesian Voivodship Assembly of 7 April 2017 on the introduction in the area of the Silesian Voivodeship of restrictions on the operation of installations in which fuel is burned). This should be linked to Article 96(8) of the EPL according to which the resolution does not apply to installations for which it is required to obtain an integrated permit or a permit for the introduction of gases or dust into the air, or to make a notification. This means that the resolution does not apply to installations with a capacity >1 MW.

4 The penalty is a fine adjudicated within the limits specified in Article 24 § 1 of the Act of 20 May 1971, the Code of Petty Offences (Journal of Laws of 2023, item 2119 as amended, hereinafter: CPO), i.e. from PLN 20 to PLN 5,000. In fine proceedings, a fine may be adjudicated up to the amount of PLN 500, and in the case of concurrence of regulations – up to PLN 1000 (Article 96 § 1 in connection with Article 9 § 1 of the CPO). Article 38 § 1 of the CPO refers to cases of multiple punishment for similar intentional offences committed by the perpetrator (multiple recidivism), and thus “A person punished at least twice for similar intentional offences, who, within two years from the last punishment, commits a similar intentional offence again, may be punished with an arrest, even if it was punished with a lighter penalty”.

5 SUMARA, Mariusz. Propozycje rozwiązań związanych z ograniczeniem niskiej emisji wynikających z uchwały antysmogowej w kontekście podejmowanych działań kontrolnych przez funkcjonariuszy Straży Miejskiej w Katowicach In RADECKA, Ewa, NAWROT, Filip (eds.) *Prawne instrumenty ochrony powietrza*, Katowice: Grupa Infomax, 2018, pp. 108–123; STASIAK, Jarosław, STAŃCZAK, Weronika. Aktualna regulacja użytkowania dronów w prawie polskim – ocena i postulaty de lege ferenda, *Annales Univeristatis Mariae Curie-Skłodowska*, 2023, vol. LXX, no. 2, pp. 171–182.

imprisonment⁶. The most important issues that are the subject of an inspection are not only compliance with the anti-smog resolutions, but also compliance with the ban on burning waste, the violation of which is an offence regulated by Article 191 of the Act on Waste of 14 December 2012.⁷

Pursuant to Article 379 of the EPL, the minister responsible for climate matters, a voivodship marshal, and a *wójt* or a town/city mayor control the observance and application of environmental protection regulations within the scope of their jurisdiction. For this purpose, the aforementioned authorities may authorise the employees of the office serving them to carry out inspection activities. This, however, has its drawbacks, as the offices and their employees work at specific hours, often not those in which the highest combustion occurs during the heating season.⁸ These inspections may be routine, intervention or follow-up inspections (re-inspections).⁹

In the light of Article 379 of the EPL, the authority carrying out an inspection is entitled to:

1. enter, together with experts and necessary equipment, 24 hours a day, the property, premises or parts thereof on which business activity is carried out, and between 6 a.m. and 10 p.m., the rest of the premises;
2. carry out tests or other necessary inspection activities;
3. demand written or oral information and to summon and question persons to the extent necessary to establish the facts;
4. demand the presentation of documents and access to any data relevant to the subject matter of the inspection.

6 See Article 225 of the Act of 6 June 1997 – Criminal Code (Journal of Laws of 2024, item 177, hereinafter: CC). For more, see LACH, Arkadiusz, KONARSKA-WRZOSEK, Violetta (eds.) *Kodeks karny. Komentarz*, Warszawa: Wolters Kluwer, 2023, pp. 1193–1194 oraz ZAKRZEWSKI, Piotr In MAJEWSKI, Jarosław (eds.) *Kodeks karny. Komentarz*, Warszawa: Wolters Kluwer, 2024, p. 1120.

7 Journal of Laws 2023, item 1587, as amended, hereinafter: AW. This provision stipulates that whoever violates the order to thermally transform waste in a waste incineration plant or waste co-incineration plant shall be punished with an arrest or a fine. In certain circumstances, waste incineration may also be qualified as another offence, e.g. improper handling of municipal waste by a property owner (Article 10(2) in connection with Article 5(1)(3b) of the Act on Maintaining Cleanliness and Order in *Gmina* Districts, Journal of Laws 2024, item 399, as amended). It should be borne in mind that in the case of a significant negative impact on the environment, which entails a threat to human life or health or a threat to cause significant damage to the environment, the perpetrator's action may be qualified as a criminal offence (Article 182 of the CC).

8 Cf. Skawina, where inspections take place also after 4 p.m. Samorządy dla czystego powietrza, Działania, które warto podjąć, Polski Alarm Smogowy [online]. Available at: <https://polskialarmsmogowy.pl/wp-content/uploads/2024/03/Samorzady-dla-czystego-powietrza_dobre-praktyki.pdf> Accessed: 07.03.2024.

9 See Kontrola palenisk w praktyce. Poradnik dla strażników miejskich i gminnych, which proposes the development, at the gmina level, of specific inspection procedures, including a plan for routine inspections that takes into account, for example, the number of emission sources that need to be inspected in each area. [online]. Available at: <https://polskialarmsmogowy.pl/wp-content/uploads/2022/12/Kontrola-palenisk-w-praktyce.-Poradnik-dla-straznikow-gminnych_wersja-1.1.pdf> Accessed: 17.06.2024.

Significantly, in accordance with the wording of Article 379(4) of the EPL, a *wójt*, the mayor of a town/city, a *starost*, the marshal of a voivodship, the minister in charge of climate matters or the persons authorised by them are entitled to act as a public prosecutor in cases of offences against environmental regulations. It follows that the entities authorised by the aforementioned authorities may act as a public prosecutor. Therefore, they can carry out investigations in the case of a petty offence,¹⁰ appear before a court as a public prosecutor¹¹ and do not have the competence to apply the fining procedure. Therefore, in a case where an inspection is carried out only by an office employee¹² and irregularities were detected that require the imposition of a fine by means of a ticket, it is necessary to call the Police or the Municipal/Communal Guard. These inspections may also be carried out independently by the Police¹³ or the Municipal/Communal Guard.¹⁴ However, it is important to be aware that the latter body is present in only 21% of Poland's communes [*gmina* districts].¹⁵

It should be noted that it is contested, and rightly so, that the model of liability for petty offences was used to enforce this breach.¹⁶ The fact that it is ineffective is

10 See Article 54 of the Act of 24 August 2001 – Petty Offences Procedure Code (Journal of Laws of 2022, item 1124 as amended, hereinafter: POPC).

11 See Article 17 §3 of the POPC in conjunction with Article 379(4) of the EPL.

12 In recommendations for the voivodship of Silesia it is suggested that inspections should be undertaken with the participation of at least two employees of *gmina* council/municipal guards in order to avoid conflict situations and ensure the transparency of the actions carried out. Rekomendacje 2.0 – analiza uwarunkowań dotyczących obowiązków jednostek samorządu terytorialnego związanych z wdrażaniem tzw. uchwały antysmogowej [online]. Available at: <<https://silesia.org.pl/rekomendacje-2-0-dotyczace-tzw-uchwaly-antysmogowej-przyjete/>> Accessed 17.06.2024.

13 The basis for conducting an inspection is Article 1(2)(4) of the Police Act of 6 April 1990 (Journal of Laws of 2024, item 145, as amended). In accordance with its wording, the basic tasks of the Police include, inter alia, the detection of offences and petty offences as well as the prosecution of the perpetrators.

14 Since 1 November 2018, § 2(1)(7) of the Regulation of the Minister of Internal Affairs and Administration of 17 November 2003 on the offences for which *gmina* guards are authorised to impose fines by way of a penalty ticket (Journal of Laws of 2022, item 1350) has been in force, under which powers have been conferred on *gmina* guards to punish violations of the contents of Article 334 of the EPL. Municipal/*gmina* guards are also competent to act as a public prosecutor in the cases in question (Article 17 §3 of the POPC in conjunction with Article 12(1)(5) of the Act of 29 August 1997 on *gmina* guards, Journal of Laws of 2021, item 1763, as amended).

15 The Department of Public Order of the Ministry of Internal Affairs and Administration, Informacja o działalności straży gminnych (miejskich) w 2016 r. oraz współpracy straży z Policją, Warszawa 2017.

16 DOROSZ-KRUCZYŃSKI, Jakub, GERWATOWSKA, Marta. Sprawne karanie za zanieczyszczenie powietrza jako instrument poprawy jakości życia – uwagi na tle karania za naruszenie przepisów „uchwały antysmogowej”. *Samorząd Terytorialny*, 2023, no. 4, pp. 77–91. The Polish model of this liability for petty offences is structured completely differently from that of the Czech Republic. First of all, it is the domain of criminal law and not administrative law. For more, see RADECKI, Wojciech. Rola inspekcji środowiska w ściganiu przestępstw, wykroczeń i deliktów administracyjnych w Polsce, Czechach i Słowacji In BUKOWSKI, Zbigniew, BOJAR-FIJAŁKOWSKI, Tomasz (eds.) *Kontrola przestrzegania przepisów o ochronie środowiska w Czechach, Polsce i Słowacji*, Bydgoszcz: Wydawnictwo UKW w Bydgoszczy, 2021, pp. 70–72.

also evidenced by the results of analyses carried out for some of the most polluted voivodships in Poland, i.e. the voivodships of Silesia,¹⁷ Lesser Poland, Lower Silesia, Kielce and Opole. When considering the results of these studies, it is necessary to take into account at least several very important circumstances which affect the conclusions. First, changes in the improvement of air quality in Poland do not take place evenly, since, in the framework of anti-smog resolutions, each voivodship determines on its own the dates¹⁸ on which certain orders and bans take effect, and these are almost always postponed. Second, there are already exemptions in the use of fuel quality, of which there have been several in recent years.¹⁹ This means that the anti-smog resolutions did not apply to the extent that they banned the use of, for example, lignite, as this ban was temporarily lifted either directly by regulations or indirectly by an act of statutory law authorising the introduction of this solid fuel onto the market.²⁰ Third, as shown by some of the data sent by municipal/communal, inspections are carried out, sometimes even on a large scale, but penalties in this respect should be considered negligible. Fourth, one of the most important challenges emerging in the context of air protection should not be lost sight of, namely fuel poverty,²¹ which still remains an unresolved problem.²²

17 See the data collected by JĘDRZEJEK, Karolina. Praktyczne aspekty stosowania uchwały antysmogowej dla województwa śląskiego, *Prawne Problemy Górnictwa i Ochrony Środowiska*, 2025, no. 1, in print.

18 Incidentally, it is worth adding that bans on the use of so-called "off-grade" furnaces have only entered into force in 10 voivodeships (the Voivodeships of Silesia, Mazovia, Kielce, Greater Poland, West Pomerania, Kujawy and Pomerania, Pomerania, Lublin, Lesser Poland and Lower Silesia). The use of these furnaces will be banned in the Voivodeships of Łódź (1 January 2025), Subcarpathia (1 January 2026), Lubusz (1 January 2027) and Opole (1 January 2030) [online]. Available at: <<https://polskialarmsmogowy.pl/jak-wygrac-ze-smogiem/uchwaly-antysmogowe/>> Accessed: 06.02.2024.

19 These are the Regulations of the Minister of Climate and Environment on the waiver of the requirements set out in the provisions of the Regulation on quality requirements for solid fuels:

(a) of 1 August 2023 (Journal of Laws of 2023, item 1494) until 31 December 2023.

(b) of 28 April 2023 (Journal of Laws of 2023, item 835) until 31 July 2023.

(c) of 24 October 2022 (Journal of Laws 2022, item 2186) until 30 April 2023.

(d) of 25 August 2022 (Journal of Laws 2022, item 1786), for a period of 60 days from 28 August 2022.

(e) of 27 June 2022 (Journal of Laws 2022, item 1351), for a period of 60 days from 28 June 2022.

20 For example, in the light of Article 13 of the Act of 29 September 2022 on the Principles of Implementation of Support Programmes for Entrepreneurs in Connection with the Situation on the Energy Market in 2022–2024 (Journal of Laws of 2022, item 2088 as amended), the prohibition expressed in Article 7(7a)(2) of the Act of 25 August 2006 on the System of Monitoring and Controlling Fuel Quality (Journal of Laws of 2023, item 846 as amended), i.e. the ban on the marketing of solid fuels, in this the ban combustion of lignite was lifted.

21 The problem of fuel poverty affects approximately 11 % of the Polish population [online]. Available at: <https://naradaoenergii.pl/o-ubostwie-energetycznym/> Accessed: 17 June 2024. Fuel poverty arises at the interface between low income, high energy expenditure and poor building maintenance. The problem mainly affects people living in old buildings outside the reach of the heating network, mainly in individually heated detached houses as well as in villages and small towns in small towns. It is also more acute among old-age pensioners and people with low income.

22 See the announcement of the Minister of Climate and Environment of 2 March 2021 on the national energy policy until 2040 (Official Journal of the Republic of Poland (Monitor Polski) of 2021, item 264).

Of the 109 municipal guard units that operate in the voivodships of Lesser Poland, Opole, Kielce and Lower Silesia, information was obtained from 58 guards. The period taken into account is from 2019 to 2023. In addition, a comparison was made between penalties for violations of Article 334 of the EPL and Article 191 of the AW (thermal treatment of waste outside a waste incineration plant). Similar research was carried out within the framework of the article by K. Jędrzejek for the Voivodeship of Lubusz (for the same period).²³

Tab. 1: Penalties for violations of Article 334 of the EPL and Article 191 of the AW.

	Penalty notice, Article 334 of the EPL	Cautions, Article 334 of the EPL	Application to the court for a penalty Article 334 of the EPL	Penalty notice, Article 191 of the AW	Cautions, Article 191 of the AW	Application to the court for a penalty, Article 191 of the AW	Total
Voivodeship of Lower Silesia	41	45	1	1330	1367	104	2888
Voivodeship of Lesser Poland	39	763	3	1242	2275	124	4446
Voivodeship of Opole	27	85	0	1275	719	31	2137
Voivodeship of Kielce	0	0	0	147	386	6	539
Total	107	893	4	3994	4747	265	10010

Source: data obtained from municipal/communal guards, author's own compilation

The presented results unambiguously show that wardens of municipal/communal guards impose more fines, give cautions and submit applications to court for imposing a penalty on the basis of Article 191 of the WA than on the basis of Article 334 of the EPL. The detailed data, in turn, shows that there are guards in which there are no applications for penalties, penalty notices or cautions on under Article 334 of the EPL in the entire period under examination. Of course, one has to take into account the circumstances mentioned at the beginning (e.g. the exclusion of the ban on burning lignite or the non-uniform entry into force of anti-smog resolutions throughout the country prohibiting the burning of fuels of a specific quality in furnaces of a specific class). However, it is puzzling that there is such a large number of situations where Article 334 of EPL is not applied. Perhaps the problem lies in the circumstances related to the inspection, namely the necessity to pay fees to laboratories for testing the samples taken during an inspection. If, therefore, a warden is unable to ascertain the burning of prohibited fuels through an eyewitness examination or finds that they are being burned, but the subject of the inspection contradicts what emerges from the organoleptic inspection, it is then necessary to refer the samples taken from the

23 JĘDRZEJEK, Karolina. Praktyczne ...

furnace for testing. Here, however, there is a possible problem of financing the comprehensive inspection activities. The testing of samples taken from furnaces would provide important evidence, only that the costs of these tests have to be covered by communes from their own resources. It remains an open question whether communes have the resources for this type of activity, especially if these tests were to be carried out on a large scale.

This may lead one to reflect on the failure to realise the hopes placed in this legal tool as one that could make a real difference to air quality in Poland, by performing a deterrent function. There can be no significant improvement in air quality as long as there is no effective enforcement.

3 The inspection of natural persons who are not entrepreneurs in the context of air protection in the Czech Republic

Similarly to the Polish legal order, in the context of the Czech regulations, selected topics concerning the liability of natural persons who are not entrepreneurs will be highlighted. In the light of § 23 (1) of the Czech Air Protection Act,²⁴ such liability is incurred for e.g.

- a) acting in contravention of § 16 (4), i.e. burning, for example, wet leaves, wet grass, wet wood, wood treated with chemicals (varnished boards, plywood, etc.), but also waste, including used oil, on in open fire (§ 23 (1) (a)),
- b) the use of a stationary source of combustion in such a way that it does not comply with the permitted darkness of the smoke in accordance with § 17.1(b) (§ 23.1(c)),
- c) the burning by a natural person in a stationary source of a fuel other than that specified by the manufacturer for the type of stationary source in question (§ 23(1)(d)),
- d) conduct in contravention of the prohibition in § 17(5), i.e. for violating the statutory prohibition on the burning of lignite, coal slurry or cinders in a stationary combustion source with a nominal thermal power of 300 kW (§ 23(1)(f)),
- e) preventing an inspector from accessing a stationary combustion source (§ 23(1)(j)),
- f) acting contrary to § 17(1)(g), i.e. operating a stationary combustion source that does not comply with the requirements of Annex 11 (§ 23(1)(g)).

The commission of these petty offences [*přestupky*] is punishable by a fine [*pokuta*] of up to CZK 50,000 (§ 23(2)(a)). The purpose of this penalty is to prevent further breaches of obligations under the Act. The authorities competent for supervision/inspection in this case are communes with extended competences [*úřad obce s rozšířenou působností*] (§ 24 of the Czech Air Protection Act). It is necessary to note that in the Czech Republic there is a division of prohibited

²⁴ Act No. 201/2012 on the Protection of the Air [*Zákon č.201/2012 Sb., o ochraně ovzduší*], hereinafter: Czech Air Protection Act.

acts into criminal offences [*trestné činy*] and petty offences [*přestupky*], with liability for criminal offences belonging to criminal law and liability for petty offences belonging to administrative law.²⁵ Environmental petty offences are classified in numerous special acts. The Czech legislator has retained the concept distinguishing between petty offences of “ordinary” natural persons and offences of legal persons and natural persons who are entrepreneurs. The first category of entities is liable only for culpable acts, while liability for offences of legal persons and natural persons who are entrepreneurs is objective in nature.²⁶

It is worth noting that § 17(2) provides for a two-stage mechanism for dealing with reasonable suspicion of a breach of the obligations under § 17(1) of the Czech Air Protection Act, namely, first, a communal authority with extended powers notifies the operator in writing and instructs him/her on the obligations of the operator of a stationary combustion source and on the consequences of repeated reasonable suspicion of their breach in the form of carrying out an inspection. However, if there is a reasonable suspicion that this entity continues or repeatedly breaches the statutory obligations and it is not possible to demonstrate this without inspecting the stationary combustion source, an inspector is entitled to enter his or her home in order to check compliance with the obligations under this Act. The details of the course of action taken by the inspectors are laid down in the Act on Inspection.²⁷ It is on this basis that, for example, the collection of ash samples can be carried out.

The theme of inspections carried out by inspectors in the context of, for example, a violation of domestic peace, is quite often emphasised in the Czech literature on the subject.²⁸ According to M. Franková, “in the case of inspections

25 RADECKI, Wojciech. Rola inspekcji..., p. 71. See also DAMOHORSKÝ, Milan. Trestní a správní odpovědnost v ochraně životního prostředí In: NOVOTNÁ, Viktoria, DUREC-KAHOUNOVÁ, Michaela (eds.) *Bratislavské právnické fórum 2022: Zefektivňovanie boja proti nelegálnej činnosti v oblasti starostlivosti o životné prostredie*, Bratislava: Právnická fakulta UK, 2022, pp. 7–11.

26 RADECKI, Wojciech. Rola inspekcji..., pp. 71–72.

27 *Zákon č. 255/2012 Sb. o kontrole (kontrolní řád)*.

28 The issue of inspectors entering a dwelling in the context of a violation of home turf was adjudicated by the Czech Constitutional Court. In light of the Constitutional Court's judgment of 18 July 2017 – Pl.US 2/17, the legal regulations contained in the Czech Air Protection Act are compatible with the Charter of Fundamental Rights and Freedoms. For more, see DAMOHORSKÝ, Milan. Ochrana ovzduší v rozhodovací činnosti soudů, *Právne aspekty boja proti klimatickej zmene* In HAMUEÁK, Juraj, ANDRAŠKO, Jozef, KAHOUNOVÁ, Michaela (ed.) *Zborník príspevkov z medzinárodnej vedeckej konferencie Bratislavské právnické fórum 2018*, Bratislava: Právnická fakulta UK, 2018, pp. 12–15; ONDŘEJ, Věra. Vybrané ústavněprávní aspekty kontrol lokálních topenišť a plateb poplatků za svoz komunálního odpadu, *České právo životního prostředí*, 2017, no. 2(44), pp. 122–133; HANÁK, Jakub, PRŮCHOVÁ, Ivana a kol. *Kontrolní mechanismy při prosazování ochrany životního prostředí*. Brno: Masarykova univerzita, Právnická fakulta, 2017, p. 26; HÁLKOVÁ, Alena. Ochrana ovzduší versus nedotknutelnost obydlí provozovatelů spalovacích stacionárních zdrojů (kotlů na tuhá paliva) [online]. Available at: <<https://www.mvcr.cz/soubor/sp-6-18-priloha-halkova-pdf.aspx>> Accessed: 14.02.2024; BEJČKOVÁ, Pavla. In MÜLLEROVÁ, Hana. a col. *Právo na příznivé životní prostředí: Nové interpretační přístupy*, Praha: Ústav státu a práva AV ČR, 2016, pp. 217–236; ŠEDINA, P. Ochrana ovzduší na komunální úrovni – Problematika kontroly lokálních topenišť. In DAMOHORSKÝ, Milan, SNOPOKOVÁ, Teresa. a kol.

of natural persons who are not entrepreneurs, there is often a conflict of the public interest lying in the protection of a particular environmental component and the public interest consisting in the enforceability of the law with the fundamental rights and freedoms guaranteed by the Charter of Fundamental Rights and Freedoms. The most frequent conflict may be with the right to protection of personal freedom and with the right to inviolability of the dwelling.”²⁹.

Detailed statistics on penalties for *prestupky* under § 23(1)(a) and (d) of the Czech Air Protection Act were analysed in depth by Zdeněk Fiala.³⁰ The first regulation referred to concerns conduct contrary to § 16(4), i.e. the burning of e.g. wet leaves, wet grass, wet wood, wood impregnated with chemicals (varnished boards, plywood, etc.), but also waste, including used oil, in an open fire. The second concerns the burning by a natural person in a stationary source of a fuel other than that specified by the manufacturer for the type of stationary source in question (§ 23(1)(d)).

His research covered the period 2018–2020, and as the author stated, he limited himself to those petty offences that occurred most frequently. In Table 3,³¹ he indicated, *inter alia*, the number of initiated proceedings that ended with an order [*příkaz*] or an on-site order/fine [*příkaz na místě*]. This data shows that:

- under § 23(1)(a), their number ranged between 84 and 139 orders and between 5 and 9 on-site orders,
- while under § 23(1)(d) it was between 2 and 5 orders and 1 on-site order in 2018.

In the second part of Table 3,³² the author presents the number of final decisions [*počet pravomocných rozhodnutí*] distinguishing between decisions [*rozhodnutí*], order [*příkaz*], fine proceedings [*příkaz na místě*], the number of reprimands [*počet napomenutí*], number of fines [*počet pokut*], average fine

Role obcí v ochraně životního prostředí z pohledu práva. Praha: Eva Rozkotová, 2015, pp. 129–141; FIALA, Zdeněk. Vyvažování veřejných a soukromých zájmů při zemědělském hospodaření a ochraně životního prostředí ve vybraných oblastech České republiky In: MICHALOVIČ, Matúš, GARŽÍK, Tomáš, ŤAŽKÁ, Veronika (eds.) *Bratislavské právnické fórum 2023: vyvažovanie environmentálneho a klimatického práva*, Bratislava: Právnická fakulta UK, 2023, pp. 42–54.

29 FRANKOVÁ, Martina. Kontrola osôb fyzických niebýdajúcich podnikateľmi v dziedzine środowiska i jej limity. In BUKOWSKI, Zbigniew, BOJAR-FIJAŁKOWSKI, Tomasz (eds.) *Kontrola przestrzegania przepisów o ochronie środowiska w Czechach, Polsce i Słowacji*, Bydgoszcz: Wydawnictwo UKW w Bydgoszczy, 2021, pp. 248–260.

30 FIALA, Zdeněk, K uplatňování správněprávní odpovědnosti při složkové ochraně životního prostředí se zaměřením na ochranu ovzduší, *Acta Universitatis Carolinae. Iuridica*, 2022, no. 1, pp. 91–106; FIALA, Zdeněk. Úvahy nad efektivností správního trestání z pohledu ochrany životního prostředí, In NOVOTNÁ, Viktoria, DUREC-KAHOUNOVÁ, Michaela (ed.) *Bratislavské právnické fórum 2022: Zefektívňovanie boja proti nelegálnej činnosti v oblasti starostlivosti o životné prostredie*, Bratislava: Právnická fakulta UK, 2022, pp. 25–32.

31 FIALA, Zdeněk. K uplatňování..., p. 98.

32 Ibidem, p. 99.

[*průměrná výměra pokuty*], number of appeals [*počet odvolání*].³³ For details, I refer to the author's extensive tabular studies. However, the following conclusions presented by Z. Fiala emerge from them. First, the dominant procedure with respect to natural persons is the so-called summary form without proceedings and evidence through the use of an order in administrative proceedings. In addition, reprimands [*napomenutí*] are also relatively frequent with respect to natural persons, of which (under Section 23(1)(a)) between 13 and 61 and under Section 23(1)(d) between 2 and 9 were imposed. At the same time, it should be noted that the percentage of appeals in these cases was negligible (between 2 and 5 in the period under review). The author stresses that the fines imposed are not excessive (under § 23(1)(a), the average fine in the period under examination ranged between CZK 1504 and 2127, while for § 23(1)(d) it was between CZK 1 000 and 1916), and that the most serious rates at the upper limit are generally not applied.³⁴ In addition, he noted an increase in petty offences based on the aforementioned legal grounds in the juxtaposition of 2018 and 2020; he attributed the reason for this to the pandemic situation when citizens were more likely to remain in their place of residence.

The author concludes his texts with *de lege ferenda* proposals, such as the strengthening of the human, technical and financial resources of all bodies involved in inspection activities, as shortcomings in this area may lead to a delay or lack of punishment.³⁵

4 Conclusions

The mechanisms of liability for violations of air quality standards in Poland and the Czech Republic differ significantly. The fundamental difference concerns the model of liability: while in the Czech Republic we are dealing with administrative liability, in Poland it is criminal liability *sensu largissimo* (petty offence liability). This in turn generates differences in law enforcement.

Nevertheless, both countries seem to have at least one common theme, namely that in both Poland and the Czech Republic, the effectiveness of law enforcement depends on the proper funding of inspection activities of natural persons who are not entrepreneurs.

33 See also general remarks on petty offence proceedings in the Czech Republic: RADECKI, Wojciech. Nowa czeska koncepcja odpowiedzialności za wykroczenia na kanwie monografii H. Praškovéj, *Prokuratura i Prawo*, 2018, no. 4, pp. 5–32 oraz KOPECKÝ, Martin. *Správní právo*, Praha: C. H. Beck, 2021; KUČEROVÁ, Helena, HORZINKOVÁ, Eva, *Zákon o odpovědnosti za přestupky a řízení o nich a zákon o některých přestupcích s komentářem a judikaturou*, Praha: Leges 2019; PRÁŠKOVÁ, Helena. *Přestupkové právo*, Praha: Leges 2022.

34 FIALA, Zdeněk. Úvahy..., p. 29.

35 Ibidem, p. 31 and FIALA, Zdeněk. K uplatňování..., p. 104.

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