

INTERNATIONAL DOCUMENTS ON LANDSCAPE RESTORATION

Olga Pouperová¹, Filip Dienstbier¹, Ondřej Vícha¹

¹Department of Administrative Law and Financial Law, Faculty of Law, Palacký University Olomouc, Tř. 17. listopadu 8, 771 11 Olomouc, Czech Republic

Abstract

POUPEROVÁ OLGA, DIENSTBIER FILIP, VÍCHA ONDŘEJ. 2015. International Documents on Landscape Restoration. *Acta Universitatis Agriculturae et Silviculturae Mendelianae Brunensis*, 63(4): 1331–1344.

In the theory and practice of cultural monuments protection, including garden art monuments and landscape protection, it has been often referred to international conventions and other international documents relating to this protection. Necessary condition for these documents to be adequately used in the practice is the precise understanding of their legal nature and a question arising therefrom, if and to what extent and to whom are those documents binding.

The aim of this paper is to provide an analysis of the international documents relating to the landscape restoration. Following the analysis, the authors explore the scope and way of transposition of these documents and obligation arising therefrom into the Czech legal order.

In the general part the authors analyse knowledge of the current jurisprudence on treaties and other international documents. They focus on the issue of the legal force of such documents, both on the international and national level. In the following part the authors deal with international documents on landscape restoration, explain legal nature of those documents and explicate whether the documents are formally legally binding or whether they may have other practical effects. The legally binding international treaties on the landscape protection include in particular the Convention on the Protection of the World Cultural and Natural Heritage (Paris, 1972) and the European Landscape Convention (Florence, 2000). As regard legally non-binding acts of international non-governmental organizations, the paper discusses the charters of the International Council on Monuments and Sites (ICOMOS), the Venice Charter of 1964 and the Florence Charter of 1981. Mentioned is also the Athens Charter (1933), respectively the New Athens Charter of 1998 dealing with the landscape in terms of the principles of urban planning.

Keywords: landscaping, landscape restoration, international treaty, international organisation, UNESCO, ICOMOS

INTRODUCTION

In theory and practice of the protection of cultural heritage, including monuments of garden art and landscape protection it is very often referred to international conventions and other international instruments relating to the protection provided. A necessary condition for their applicability is, however, a correct understanding of the legal nature of these documents and their consequent position in the legal order of the Czech Republic.

Awareness of the need to protect the cultural heritage accompanied the development of human society from time immemorial. Preservation of cultural heritage, including the care of landscape and historic gardens, however, is no longer the exclusive activity of individuals, communities or even individual states. The legal framework for the protection of heritage sites and landscape began to develop at national level in the 19th century. At the same time, initiatives were taken to establish international treaties and conventions as well as societies such as the Society for Preservation

of the Wild Fauna and Flora of the Empire, set up in 1903.¹ In connection with the devastating effects of the First and Second World Wars that a significant part of the cultural heritage damaged, it is now increasingly developing international cooperation in this field that seeks as far as possible to coordinate and initiate protection of cultural heritage.

The aim of this paper is to provide an overview of the sources of international law relating to the landscape restoration. The paper focuses mainly on the landscape protection in the international documents and the possibility of its protection in the legal order of the Czech Republic.

This paper is a partial output of the project “Methods and tools of landscape architecture for spatial development” and is intended to serve the needs of other members of the project team – professionals in the field of landscape architecture – as an analysis of the legal context of their professional practice. The research question is: What legal force, with respect to the national level, do the specified international documents have?

MATERIALS AND METHODS

The main materials used are texts of international documents relating to landscape protection and cultural heritage, which are to be analysed. In the paper theoretical legal approaches are used. In the first part the authors use analytical and explanatory methods, in particular, to explicate constitutional foundations of international documents and their legal force. Afterwards the authors use the method of analogy and comparison to explain similarities and dissimilarities of each category of the previously described international documents. In the following part the authors use the method of deduction, when applying the results of the analysis on the particular international documents.

RESULTS AND DISCUSSION

International Documents in General

International Treaties in General, Classification of Treaties

The International Treaty is defined in Article 2 Paragraph 1 (a) of Vienna Convention on the Law of Treaties² as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation.

From the point of view of the Czech constitutional law the concept of a treaty requires a broader interpretation regarding the fact that the given definition does not include e.g. treaties concluded with international organizations or treaties concluded before the Vienna Convention came into force, although according to the Czech constitutional law these are considered treaties as well.³

Generally, the Czech Constitution divides treaties into *parliamentary treaties* (approval of both Chambers of Parliament is required to ratify them; as stipulated in Art. 49 and 10 (a) of the Constitution), *presidential, governmental* and *departmental treaties*. Provisions in Article 63, Paragraph 1 (b) of the Constitution confers power to negotiate and ratify treaties on the President of the Republic with countersignature of a competent member of the Government (*presidential treaties*) and, at the same time, it entitles the President of the Republic to confer concluding treaties on the Government (*governmental treaties*) or, with its consent, on individual members of the Government (*departmental treaties*).⁴

Governmental and departmental treaties do not become a part of the legal order on the basis of general incorporation enforced through the Constitution, nevertheless, they can become a part of the legal order by the means of partial incorporation enforced through a law. Their application is then possible only on the basis of explicit implementation and in such case they do not yield application priority over a law.

The category of parliamentary treaties can be further divided into agreements on basic human

1 Later to become Fauna & Flora International (see <http://www.fauna-flora.org>). See BANDARIN, F. 2007. *World Heritage – Challenges for the Millenium*. 1st edition. Paris: UNESCO World Heritage Centre. [Online]. Available at: http://whc.unesco.org/documents/publi_millennium_en.pdf. [Accessed: 2014, December 10]. p. 26.

2 The Vienna Convention on the Law of Treaties entered into force on 27 January 1980. For the then Czechoslovak Republic it entered into force on 28 August 1987, and was published in the Collection of Laws under the No. 15/1988. Hereinafter referred to as “Vienna Convention”.

3 ZBÍRAL, R. 2009. Article 10 of the Constitution [in Czech: Čl. 10 Ústavy]. In: KLÍMA, K. et al., *Commentary on the Constitution and Charter* [in Czech: *Komentář k Ústavě a Listině*]. 2nd ed. Plzeň: Aleš Čeněk Publishing house, p. 121.

4 The above stated competences were enforced by President Václav Havel through his decision No. 144/1993 Coll. and followed by his successor Václav Klaus as well. The negotiation process and approval of treaties not requiring the consent of the Parliament, access to them and their adoption were conferred on the Government and, in agreements the significance of which is not exceeding competence of any central administrative authority, the powers were conferred on a designated member of the Government.

rights and freedoms that have, according to the case law of the Constitutional Court, a privileged status⁵, treaties under Article 10 (a) of the Constitution (Treaties establishing the EC/EU and treaties amending these treaties) and other parliamentary treaties.

Within the hierarchy of legal order parliamentary treaties on human rights and fundamental freedoms *de facto* stand on the level of constitutional order⁶, i.e. they have higher legal force than a statute adopted by Parliament; and, a statute that conflicts with a treaty on human rights and fundamental freedoms not only cannot be applied, moreover, it must be repealed. Other parliamentary treaties stand on the same level as “regular” statutes (i.e. they do not have a higher legal force than a statute). Nevertheless, they have priority in terms of application, i.e. in case of a mutual conflict a treaty is accorded priority in application over an act.

The basic provision regarding constitutional regulation of the relationship between international and Czech national law is represented by Article 10 of the Constitution. According to Article 10 of the Constitution of the Czech Republic, *promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order*. This provision involves treaties that meet the above stated conditions of incorporation into national legal order without the need of further transposition. In this regard we speak about the theory of *legal*

monism which is based on the idea that there exists only one legal order which comprises both national and international law, priority being given to either the former or the latter. Monism thus performs general incorporation in which treaties (or better a set of treaties determined by the constitution-giver) keep the character of international law, nevertheless, by virtue of national provisions they are considered a part of national legal order.⁷

On the contrary, *dualism* is based on the idea of two separate legal orders (international and national law) existing next to each other. Should the international source enter into national law, it must be implemented.⁸

General principles of international law bind the Czech Republic to adhere to commitments related to international law, eventual non-observance of which would result in liability under international law. International law excludes the possibility to advert to national law as the reason for non-observance of international commitments.⁹ In relation to national law this duty is laid down in Article 1 Paragraph 2 of the Czech Constitution (“*The Czech Republic shall observe its obligations under international law.*”).

The subject of treaties is strictly confined to sovereign states, not to their citizens. Therefore, obligations arising from a treaty apply only to states that joined it through the process approved under national law.

5 The “Euro-Amendment” to the Constitution of the Czech Republic (Constitutional Act No. 395/2001 Coll., effective from 1st June 2002) meant an essential change in the relation between national and international law which is referred to as the transition from dualism towards monism. Before the amendment became effective, Article 10 of the Constitution had applied only to treaties on human rights and fundamental freedoms. In relation to judicial review of constitutionality, these treaties had a more privileged position than treaties under the current provisions of Article 10 of the Constitution. Compared to the current state, in which treaties under Article 10 of the Constitution are accorded *application priority*, under Article 10 of the Constitution before the Euro-Amendment became operative all statutes conflicting with the Treaty on Human Rights and Fundamental Freedoms had to be repealed (i.e. *derogation priority*). Nevertheless, Constitutional Court in its ruling (dated 25 June 2002, file ref. Pl. ÚS 36/01 Coll. of Law Reports of the Constitutional Court, file 26, No. 80, page 317, published also under No. 403/2002 Coll.) concluded that procedural protection of basic rights and freedoms cannot be limited (“once achieved standard of protection of basic rights and freedoms cannot be impaired”), and therefore, if a statute gets in conflict with the Treaty on Human Rights and Fundamental Freedoms, instead of being simply left without application, such statute must be repealed by the Constitutional Court, notwithstanding the fact that Article 10 of the Constitution does not specify this requirement expressly. According to the Constitutional Court protection of human rights and fundamental freedoms is a part of “superconstitutional law” and belongs to essential requisites of a democratic legal state within the meaning of Article 9 Paragraph 2 of the Constitution.

Compare ZBÍRAL, R. 2009. Article 10 of the Constitution [in Czech: Čl. 10 Ústavy]. *Commentary on the Constitution and Charter* [in Czech: *Komentář k Ústavě a Listině*]. By KLÍMA, K. et al. 2nd ed. Aleš Čeněk Publishing house, p. 123. Compare also KÜHN, Z., KYSELA, J. 2002. Should everything the Constitutional Court Declares Constitutional. Be Regarded as a Part of the Constitution?/Euro-amendment in the Light of a Surprising Judgement of the Constitutional Court/ [in Czech: Je ústavou vždy to, co Ústavní soud řekne, že ústava je? /Euronovela ústavy ve světle překvapivého nálezu Ústavního soudu/]. *Magazine for Legal Science and Practice* [in Czech: *Časopis pro právní vědu a praxi*], 10(3): 199–214.

6 Compare with reservations by V. Pavlíček. PAVLÍČEK, V. et al. 2008. Constitutional Law and Political Science [in Czech: Ústavní právo a státověda]. Vol. 2. *Constitutional Law of the Czech Republic* [in Czech: *Ústavní právo České republiky*]. 2nd ed. Praha: Linde, p. 258.

7 ZBÍRAL, R. 2009. Article 10 of the Constitution [in Czech: Čl. 10 Ústavy]. *Commentary on the Constitution and Charter* [in Czech: *Komentář k Ústavě a Listině*]. By KLÍMA, K. et al. 2nd ed. Aleš Čeněk Publishing house, p. 121–122.

8 ZBÍRAL, R. 2009. Article 10 of the Constitution [in Czech: Čl. 10 Ústavy]. *Commentary on the Constitution and Charter* [in Czech: *Komentář k Ústavě a Listině*]. By KLÍMA, K. et al. 2nd ed. Aleš Čeněk Publishing house, p. 121.

9 Maxim “*pacta sunt servanda*” under Article 27 of the Vienna Convention on the Law of Treaties.

Treaties Under Article 10 of the Czech Constitution

Article 10 of the Constitution of the Czech Republic provides for the application priority of treaties. *Should an international agreement make provision contrary to a law, the international agreement shall be applied.* Nevertheless, under Art. 10 of the Constitution precedence of treaties applies solely to “ordinary statute”, not to constitutional laws. Priority relates only to the application of a statute. It is not a derogation priority. A national law that conflicts with a treaty under Art. 10 of the Constitution shall not be applied, however, the Constitution does not call for its repeal. Therefore, a situation may arise in which provisions of a statute (or other generally binding provisions) and provisions of treaties may enter into mutual conflict. Statutes or their provisions that would eventually conflict with a treaty under Art. 10 of the Constitution would not be a priori invalid, nevertheless, they would not be applicable in cases falling within the scope of a treaty.

According to Art. 10 of the Constitution, as amended by the so-called Euro-Amendment of the Constitution of the Czech Republic,¹⁰ incorporation in a general opinion relates to all treaties that meet conditions laid down in Art. 10, irrespective of the date of their ratification and publication. The Czech Republic is thus bound to perform all international commitments arising from treaties that meet conditions laid down in Art. 10 of the Constitution, were they ratified by any Parliament, not only the Parliament as stipulated by the Constitution of the Czech Republic but also a former legislative assembly (e.g. the Federal Assembly or the National Assembly).¹¹

In case of a conflict between a statute and a treaty, Art. 10 of the Constitution imposes an obligation on public authorities to accord priority application to a treaty in order to achieve its full effect (*effect utile*).

On the practical level, the previous is a basis for provisions laid down in Art. 95 of the Constitution, in which a court is entitled to assess the conformity of a statute with a treaty. In case the court concludes that the law to be applied conflicts with a treaty, it is obliged to apply the treaty. However, as compared with the former constitutional regulation, in

such case a court does not submit the law to the Constitutional Court because treaties (excluding treaties on human rights and fundamental freedoms, see footnote No. 5 above) do not make part of the constitutional order of the Czech Republic (Art. 95 Par. 2, Art. 112 of the Constitution).

In case a treaty conflicts with national law and further interpretation does not remove such conflict, application priority is given to the treaty.¹² Making use of the principle of application priority is a general obligation of any subject administering law.

An essential prerequisite regarding priority application of a provision laid down in a treaty over a national legal provision is its *self-executing* nature. A directly applicable treaty requires wording rights and obligations as clearly so as not to allow its application to be conditioned by adoption of a more specifying implementing legal act, and to facilitate its recipients to modify in a corresponding way their practice according to the norms laid down in a treaty.

Article 10 sets out three conditions that have to be met in order to let a treaty be incorporated into legal order and gain application priority: 1) the Czech Republic has been bound by the treaty, 2) its ratification has been approved by the Parliament and 3) the treaty has been promulgated.^{13, 14} These three conditions thus exclude governmental and departmental treaties (see above).

Parliamentary treaties, or presidential treaties, require consent of the Parliament, or more precisely of both Chambers of Parliament (Art. 49 of the Constitution). Consent of the Parliament constitutes a condition for ratification of a treaty by the President of the Republic (Art. 63 Par. 1(b) of the Constitution). Through ratification, the treaty becomes binding on the Czech Republic. The binding force of a treaty upon the Czech Republic after ratification depends on when the treaty became effective from the perspective of international law. The Czech Republic can join a treaty that has already been operative or it can become a participant in a treaty where conditions of operation laid down in the treaty have not yet been met (e.g. the given number of participants has not been reached or time condition has not been met).

10 Constitutional Act No. 395/2001 Coll., effective from 1 June 2002

11 Although rather sporadically, there may occur a contrary opinion. Compare with PAVLÍČEK, V. et al. 2008. Constitutional Law and Political Science [in Czech: Ústavní právo a státověda]. Vol. 2. *Constitutional Law of the Czech Republic* [in Czech: Ústavní právo České republiky]. 2nd ed. Praha: Linde, p. 261.

12 ZBÍRAL, R. 2009. Article 10 of the Constitution [in Czech: Čl. 10 Ústavy]. *Commentary on the Constitution and Charter* [in Czech: Komentář k Ústavě a Listině]. By KLÍMA, K. et al. 2nd ed. Aleš Čeněk Publishing house, p. 126.

13 From the 1st January 2000 treaties are promulgated under Act No. 309/1999 Coll. on the Collection of Laws and on the Collection of Treaties in the *Collection of Treaties* as a notice of the Ministry of Foreign Affairs and only in full version. Treaties are published always in version decisive under international law for their interpretation (so-called authentic wording). In case there are more versions, they are published fundamentally in English and provided with Czech translation. Treaties are incorporated into the Czech legal order in authentic wording. If the authentic wording conflicts with Czech translation, authentic wording is given priority. Prior to 1 January 2009 treaties were promulgated in the *Collection of Laws*.

14 PAVLÍČEK, V. et al. 2008. Constitutional Law and Political Science [in Czech: Ústavní právo a státověda]. Vol. 2. *Constitutional Law of the Czech Republic* [in Czech: Ústavní právo České republiky]. 2nd ed. Praha: Linde, p. 257.

If the subject of regulation laid down in treaties interferes in legal relations regulated by national law, they are determined for national application. If treaties are not to be incorporated into the Czech legal order at large (as laid down in Art. 10 of the Constitution), the State shall incorporate them partially by the means of another legal norm. Such incorporation may be carried out as follows: 1) the content of a treaty will be incorporated in a statute or other generally binding regulation, 2) a statute refers to a specific treaty or treaties (also called reception clause), 3) eventually, a statute can refer to treaties that regulate the determined subject of regulation in general terms.¹⁵

In addition to that, two other aspects are to be considered in such cases: First, it is essential to know, whether the state when signing, ratifying, accepting, approving or acceding to a treaty, formulated a reservation to those rules. A signatory state may actually exclude, defer or condition the legal effect of that specific provision in the treaty to which it objects, unless the treaty prohibits reservations.¹⁶ Second, it is determining whether the rule is formulated as *ius cogens* (which is to be followed without exceptions), or as *ius dispositivum* (which is to be followed, unless the national law provides otherwise).¹⁷

International Organizations Acts

Behaviour of subjects of international law, the states in particular, has been to a growing extent influenced by international organizations acts. These acts are referred to as *resolutions*, *declarations*, *recommendations* or *charters*, etc. Relevant consequences are to be drawn from the content of such act, circumstances under which the act had been elaborated and conditions under which it had been approved, from the consequent practice of the members of the relevant international organization, existence and nature of eventual control mechanisms.

Acts of international organizations are also referred to as *soft law*. They are formally not legally binding, however it behoves developed states

to obey such rules. Resolutions often provide definitions of concepts or are formulated so as to address recipients through directives or restrictions. Nevertheless, it holds that from the legal point of view the nature of such acts is only recommending, not binding. However, such fact does not exclude relevant legal consequences arising from these acts (see below).¹⁸

On the other hand, we speak about *hard law* when norms prove to have nature of a legal norm, regarding both the content and form. From the point of view of the content, a norm must be formulated as comprehensibly and unambiguously as to allow its recipients to correct their behaviour in a corresponding way (regulative function of a norm), and it must provide the recipients with the same legal situation, or more precisely establish the same measure of behaviour for all (normative function of a norm). As to form, the essential factor is the binding character of a norm. Breach of a norm gives rise to legal responsibility. In case any of the signs of a norm is absent, e.g. if rights and duties are not formulated completely unambiguously or are formulated in an evasive or a suspensory manner to the extent that they influence social relations in a less active manner or they do not influence them at all, we speak about “program law” which allows certain subjects to defer performance of obligations, up to a vaguely determined period of time in the future.¹⁹

Such norms essentially lack continuity in relation to the institute of legal responsibility under international law. States thus sometimes deliberately express their international obligations using *soft law* formulations.²⁰

Although *soft law* norms are not legally binding, they give rise to specific legal consequences. Recommending documents of leading international organizations elaborated within the framework of their competence have permissive effect, or more precisely they empower members of an international organization to behave in a certain way, although the recommended behaviour does not comply with valid directory (but not mandatory)

15 Compare with PAVLÍČEK, V. et al. 2008. Constitutional Law and Political Science [in Czech: Ústavní právo a státověda]. Vol. 2. *Constitutional Law of the Czech Republic* [in Czech: Ústavní právo České republiky]. 2nd ed. Praha: Linde, p. 258.

16 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 185.

17 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 227.

18 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 216.

19 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 236.

20 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 237.

norms of international law. Conduct complying with such recommending documents may not be considered to be in conflict with international law, and therefore no legal responsibility under international law arises.²¹

- a) Some organizations are entitled to issue binding norms of conduct with the purpose of regulating relations inside these organizations. Sometimes this concerns member states²² (but not states that are not members of the organization). The normative activity of an international organization is based on the fact that members of the organization have expressed their consent with the normative power of the organization beforehand, e.g. in an establishing charter. Norms are then issued by the organization on the basis of the already mentioned empowering, and their effect and binding nature derives from the treaty under which the organization was established.
- b) Besides that, acts of international organizations can significantly influence contractual normative process. Such act can be effectuated especially with the purpose of interpretation of key terms and principles of treaties. The interpretation of terms and principles of a treaty through an act of an international organization cannot be considered authentic, as only parties to a particular treaty are entitled to authentic interpretation.

However, authority of such interpretation is high, especially if the interpretation act was approved by a substantial majority or even unanimously. Member states can then hardly cast doubt on such interpretation.²³

- c) International organizations acts often make an important part of the process of creating a new international custom.

International custom is considered one of the sources of international law. International custom requires *usus longaevus* and *opinio iuris* (sometimes also called *opinio necessitatis*). It is a rule that has been observed on a long-term basis and there exists a general notion of the necessity to observe it. Acts of international organizations often formulate the idea concerning solution of a particular question and thus they encourage the states to act as recommended by the organization. Resolutions of international organizations can thus introduce a particular international practice or significantly contribute to the unification of practice that has not been unified so far, creating an international custom as an outcome.

At other times international organizations acts directly express *opinio iuris*, which is the belief in the binding nature of an international practice.²⁴

Analysed International Documents on Landscape Protection

Convention Concerning the Protection of the World Natural and Cultural Heritage

The idea of creating an international organization, which should provide and coordinate broader cooperation on the protection of world heritage, appeared already at the end of the First World War, and this task eventually fell to the United Nations Educational, Scientific and Cultural Organization (UNESCO), which already in its Constitution in November 1946 introduced the obligation to oversee the preservation of the world cultural and natural heritage.²⁵ During its existence, UNESCO has created a comprehensive system of instruments for the protection of the world's tangible and intangible heritage, it adopted a total of five legally binding conventions²⁶ and a variety of non-binding recommendations.

21 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 238.

22 Resolution of the Security Council under Article 25 of the United Nations Charter, sanitary rules of the World Health Organization, technical rules of air traffic of International Civil Aviation Organisation. MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 214.

23 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 214–215.

24 MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: *Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému*]. 5th ed. Brno: Masaryk University and Doplněk, p. 215.

25 BANDARIN, F. 2007. *World Heritage – Challenges for the Millenium*. 1st edition. Paris: UNESCO World Heritage Centre, p. 28.

26 Among the conventions adopted by UNESCO in the field of cultural heritage are the Convention on the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970), the Convention on protection of the World cultural and Natural heritage (Paris, 1972), the Convention on the Protection of underwater cultural heritage (Paris, 2001) and the Convention on the Conservation of Intangible Cultural heritage (Paris, 2003). [Online]. Available at: http://portal.unesco.org/en/ev.php-URL_ID=12025&URL_DO=DO_TOPIC&URL_SECTION=-471.html [Accessed: 2014, December 10].

The most important UNESCO treaty that relates to the landscape protection is the Convention Concerning the Protection of the World Natural and Cultural Heritage (further referred to as Convention on World Heritage) that was adopted by the UNESCO General Conference in 1972. It came into effect on 17 December 1975. The Czechoslovak Federal Republic adopted the Convention on 15 November 1990. It was promulgated under No. 159/1991 Coll. and became binding on the Czechoslovak Federal Republic on 15 February 1991.

The Convention on World Heritage combines the principle of protection of cultural heritage with protection of nature. The Convention establishes the World Heritage List, a list of monuments that have outstanding universal value.

UNESCO (United Nations Educational, Scientific and Cultural Organization) is a specialized agency of the UN. In accordance with No. 57 and 63 of the Charter of the United Nations, UNESCO and similar specialized professional agencies can be characterized as autonomous international organizations of governmental nature, established with the purpose of serving international objectives in the economic, social, cultural or scientific domain and institutionally affiliated to the United Nations.

Only a United Nations Organization member state can (not necessarily must) become a member of the UNESCO agency. Article 2 (1) of the UNESCO Constitution states as follows: *“Membership of the United Nations Organization shall carry with it the right to membership of the United Nations Educational, Scientific and Cultural Organization.”* At the same time, a state that is not a member of the UN can become a member of the UNESCO agency provided that, in accordance with Article 2 Paragraph 2 of the UNESCO Constitution, the state meets the conditions for accepting new members „... *states not members of the United Nations Organization may be admitted to membership of the Organization* (UNESCO, author's note), *upon recommendation of the Executive Board, by a two-thirds majority vote of the General Conference.*“

From the perspective of international public law UNESCO is thus an intergovernmental organization whose members are states but not individuals. Therefore, UNESCO acts relate to conclusions regarding international organizations acts described in general Part 1.

The World Heritage Convention is a treaty concluded between states. It is thus an internationally legally binding document (we deal with *hard law*).

In terms of Czech national law it is classified as an intergovernmental treaty. Taking into account that it is not considered a parliamentary or presidential treaty, within the Czech legal order it lacks the status of a treaty under Art. 10 of the Constitution with application priority over a statute. The World Heritage Convention is binding only on the level of international public law for the Czech Republic as a state.

In order to specify some of the methods of operation, the *Operational Guidelines for the Implementation of the World Heritage Convention*²⁷ have been adopted. These rules are neither binding nor can be considered a part of the Convention. States have not negotiated the rules in the form of a treaty. In the Czech Republic these rules have not been officially promulgated and approved through national law.

Nevertheless, the World Heritage Convention in many aspects demonstrates presumptions related to adoption of implementing documents (e.g. *“the Committee shall regulate through the Rule of Procedure”*, *“the Committee shall determine exact procedure”*, etc.). In this way it empowers bodies of the UNESCO agency to create and adopt such implementing rules.

Implementing rules define e.g. criteria for inclusion of a property in the list, formalities regarding the application to be included in the list, deadline for submitting an application etc. If a Party to the Convention (i.e. a state) addresses the UNESCO agency within the framework of the World Heritage Convention with the purpose e.g. to apply for a loan as a part of international aid, the state is supposed to meet conditions set by the agency, regardless the fact that they are not regulated directly by the World Heritage Convention but through implementing rules the adoption of which the Convention presumes, be it explicitly or implicitly.

European Landscape Convention

Another international intergovernmental organization active in the field of protection of cultural heritage, is the Council of Europe (CoE).²⁸ The Council of Europe has adopted several international treaties concerning the protection of cultural heritage,²⁹ where the European Cultural Convention (Paris, 1954) is of significant importance.

27 Operational Guidelines for the Implementation of the World Heritage Convention. United Nations Educational, Scientific and Cultural Organisation, WHC 13/01, July 2013. Available at: <http://whc.unesco.org/en/guidelines/>. [Accessed: 2014, December 10].

28 See <http://www.coe.int>. [Accessed: 2014, December 10].

29 Convention for the Protection of the Architectural Heritage of Europe (Grenada, 1985), European Convention for the Protection of the Archaeological Heritage (revised) (Valetta, 1992), European Landscape Convention (Florence, 2000) a Framework Convention on the Value of the Cultural Heritage for the Society (Faro, 2005). [Online]. Available at: <http://www.coe.int/en/web/portal/files>. [Accessed: 2014, December 10].

It was adopted on 20 October 2000 in Florence and came into force on 1 March 2004. The Czech Republic signed the Convention in Strasbourg on 28 November 2002 and became bound by it on 1 October 2004.³⁰

The main objective of the European Landscape Convention is the coordination of the protection of the landscape, management and planning of activities and organisation of international cooperation of issues relating to the landscape. Contractual protection of individual types of the European landscape, the character of which is the result of action and interactions of natural and human factors as perceived by people, is considered an important means to meet this objective. Further concerned is the ensuring of active landscape management in accordance with the principles of sustainable utilisation and development, based on strategies, conceptions and programmes designed to reach the desirable final character of the landscape.

Importance of the European Landscape Convention lies in fact that it imposes the duty upon the states to create and implement considerate and sustainable policies as concerns the character of the landscape, upon participation of the public and the local and regional authorities, and taking into account the character of the landscape while forming the policies of regional development, urban planning and other sectoral or intersectoral policies. The Convention should serve as an efficient instrument of international cooperation and should guarantee the protection of particular types of the European landscape, active management of the landscape in accordance with the principles of sustainable utilisation thereof and coordination of planning activities in the landscape. The basic principles of the European Landscape Convention are as follows:

- The variety of the European landscapes represents a common and key resource of the quality of life of the individual and the society and at the same time it creates the elementary feature of the environment.
- Protection, management and planning of the European landscapes are the rights and duties of each individual as well as all European countries.
- Sustainable development must be based on well-balanced, harmonic relationships between social needs, economic activities and the protection and creation of the environment.
- The Convention concerns the landscape in its entirety, either natural, rural, urban or industrial, i.e. the Convention deals with both outstanding, everyday and degraded landscapes.

The key term defined by the Convention is the term *“landscape”*, which is defined as *„an area,*

as perceived by people, whose character is the result of the action and interaction of natural and/or human factors“ (Art. 1 Para. A of the Convention). Under Art. 2, the Convention applies to natural, rural, urban and peri-urban areas. It includes land, inland water and marine areas. It concerns landscapes that might be considered outstanding as well as everyday or degraded landscapes. The aims of this Convention are to promote landscape protection, management and planning, and to organise European co-operation on landscape issues (Article 3). In order to reach the aim, the Contracting Parties, in accordance with Art. 4, undertake to harmonise the implementation thereof with their own policies.

Within the General Measures (Art. 5) each Party undertakes:

- to recognise landscapes in law as an essential component of people's surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity;
- to establish and implement landscape policies aimed at landscape protection, management and planning through the adoption of the specific measures set out in Article 6;
- to establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of the landscape policies mentioned in paragraph b above;
- to integrate landscape into its regional and town planning policies and into its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape.

Within the Specific measures (Art. 6), obligations of the parties to the introduction and implementation of landscape policies are specified as follows:

- to increase awareness among the civil society, private organisations, and public authorities of the value of landscapes, their role and changes to them;
- to promote a training for specialists in landscape appraisal and operations; multidisciplinary training programmes in landscape policy, protection, management and planning, for professionals in the private and public sectors and for associations concerned; and school and university courses which, in the relevant subject areas, address the values attaching to landscapes and the issues raised by their protection, management and planning to identify its own landscapes throughout its territory; to analyse their characteristics and the forces and pressures transforming them; to take note of changes; and to assess the landscapes thus identified, taking

30 Its full wording in both English and Czech version was published on 24 January 2005 in the Collection of International Treaties under No. 13/2005 Coll. of international treaties.

into account the particular values assigned to them by the interested parties and the population concerned;

- to define landscape quality objectives for the landscapes identified and assessed, after public consultation in accordance with Article 5.c.;
- to put landscape policies into effect, each Party undertakes to introduce instruments aimed at protecting, managing and/or planning the landscape.

From the perspective of national law the European Landscape Convention is a treaty under Article 10 of the Czech Constitution, ratified with the consent of the Parliament. We deal with a treaty with application priority over a statute. All state authorities are therefore obliged to apply this treaty and, in case of a conflict between national law and the European Landscape Convention, the Convention takes precedence over the national law.

International Charters

The Athens Charter (1933)

Of particular importance for the formulation of policies for the conservation and restoration concept was the International Conference of historical theorists and restorers, convened by the International Committee on Intellectual Cooperation (ICIC) in Athens in 1931. The Conference adopted a resolution (known as the first Athens Charter), which contains a number of ideas and principles, the most important of which are mainly the following:

- for preservation of the artistic and archaeological wealth of mankind it is necessary to organize mutual assistance and cooperation;
- upon restoration, it is recommended to respect the historic and artistic work of the past, without hampering the style of some epoch;
- national legislation must not take precedence over public interest, public authorities should be authorized to take measures for the conservation and preservation of monuments;
- the use of monuments must ensure continuity of their life;
- collaboration of conservators, architects and engineers is essential;
- removal of artworks from their environment is not recommended;

- construction of new buildings must respect the character of the city, especially in the vicinity of monuments and sites;
- advertising and technical equipment should not be placed in the vicinity of monuments and sites;
- professional institutions in individual states should publish lists of historical and artistic monuments including photographic documentation;
- education leading to the protection of monuments is considered necessary;
- the concept of “international heritage” started to be used;
- the need to protect not only monuments and sites themselves, but also the settings in which they occur appeared to be necessary.

Shortly after that the issue of the historical heritage was taken into consideration by modern architects, who adopted the second Athens Charter. The second Athens Charter was adopted in 1933 at one of the Congresses of Modern Architecture (*Congrès International d'Architecture Moderne, CIAM*). CIAM worked as a professional association, associating significant modern European architects of that time. Established in 1928, it ceased to exist in 1959.

The Athens Charter defines the basic principles and philosophy of urban preservation and development of the city. This is essentially a set of principles of “modern urbanism”, which became the basis of functionalist urbanism. The Athens Charter arose from circumstances of the time of its origin. In contrary with the interests of conservation principles there were rules about the demolition of blocks of houses that unfit for the purposes of restoring, without evaluation of their cultural and historical importance. The original Athens Charter did not regulate some issues, which in the interwar years were not as important as they are today, such as pollution, overpopulation, waste storage, information technology and so on. In 1998 was therefore adopted So-called New Athens Charter drawn up by the European Council of Town Planners (ECTP),³¹ containing the principles of town planning adapted to new developments within the field of urban and regional planning.³²

The Athens Charter is not an international treaty. It is a document issued by a subject that did not have international legal personality, and thus it cannot be legally binding on an international level. It lacks binding force in relation to the Czech national

³¹ <http://www.ectp-ceu.eu/>. [Accessed: 2014, December 10].

³² The part concerning culture and education (Article 1.11) provides “*Cultural heritage is a key element that defines and delimits towards other world's regions the European culture and character. For most citizens and visitors, the character of a town is given by the quality of buildings and areas in between. In many cities the structure, historical monuments and free areas have been destroyed by inappropriate reorganisation of the space, road development and by uncontrolled activities of private companies. In the future, all possible measures should be taken to preserve cultural heritage and best programmes should be used to maintain and promote the heritage. Such promotion together with appropriate strategies of spatial development influence in substantial manner future welfare of cities, their special character and identity...*” Full wording of the New Athens Charter in Czech was published in *Urbanism and spatial planning* [in Czech: *Urbanismus a územní rozvoj*], volume III, No. 1/2000, p. 35–42.

law as well, as the Czech law has never approved the Charter, or better to say it has never adopted it in the form of a national legal provision.

Its provisions are not formulated as clearly and unambiguously as to be competent to have effect on legal relations and influence them actively in a concrete manner. However, this attribute – the absence of the “*self-executing*” character – is unnecessary to be considered for it is a necessity only in connection with *hard law*³³ (from the perspective of the Czech national law it covers only treaties under Article 10 of the Constitution).

The Venice Charter (1964)

The International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter) was adopted at the IInd International Congress of Architects and Technicians of Historic Monuments in Venice on 25–31 May 1964. The Venice Charter became an impulse for the establishment of the International Council for Monuments and Sites (further referred to as “ICOMOS”). Following the establishment, the ICOMOS organization adopted the Venice Charter in 1965.

The International Council for Monuments and Sites (ICOMOS) is “a non-governmental global organization” dedicated to supporting the application of theoretical and scientific knowledge in the maintenance of architectonic and archaeological heritage. It functions as an advisory body of the UNESCO. ICOMOS is not an international organization as described in the general Part I. We speak about an international organization only in case we deal with “an inter-governmental organization – IGO” established by states, eventually international organizations, members of which are only states (international organizations).³⁴

ICOMOS, being a non-governmental organization, does not possess international legal personality (in the domain of international public law) because of the lack of founding states which would transfer a part of their international legal personality upon the organization. Non-governmental organizations are corporations founded by private persons (be it natural or legal). The United Nations Economic and Social Council defines a non-governmental organization as “any

international, or intergovernmental, organization which is not established by intergovernmental agreement”.³⁵ In the field of the protection of human rights and fundamental freedoms some treaties accord non-governmental organizations procedural capacity to file a motion to initiate proceedings before an authority concerned with protection of human rights and fundamental freedoms.³⁶

In general, non-governmental organizations are acknowledged an informal influence on the development of international relations and consequently on international law. They often take part in the public control over implementation of legal obligations.³⁷

ICOMOS is a thus a legal person under private law (it has legal personality exclusively in the domain of private law), established on the basis of French national law. Both legal persons (excluding states) and natural persons can become members of ICOMOS.³⁸ It is a non-governmental organization with international membership. It is considered a sort of “international civic association”. The UNESCO Constitution generally awards non-governmental organizations³⁹ a consultative status, through which they are to a certain extent recognized as expert authorities. In the Czech Republic ICOMOS operates through the Czech National Committee, consisting of Czech members of the ICOMOS organization. National committees as legal persons are then referred to as institutional members of the ICOMOS.

With regard to its advisory status ICOMOS can participate in certain activities of UNESCO to which the Committee will be invited. Eventually, ICOMOS could hypothetically participate in the drafting process of some future treaty (thus allowing the projection of objectives stated in the Charter). Or, the committee could hypothetically be invited on an expert basis to negotiate a proposal of some national statute.

Examples of international documents adopted within the organization ICOMOS are – besides the Venice Charter and the Florence Charter, which are to be analysed in this paper – eg. Washington Charter for the Conservation of Historic Towns and Urban Areas (Washington, 1987), the Lausanne Charter on Archaeological Heritage Management (Lausanne, 1990), Guidelines for Education and Training in the Conservation

33 Compare KLABBERS, J. 2009. *An Introduction to International Institutional Law*. 2nd ed. New York: Cambridge University Press, p. 189, footnote 46.

34 Compare VALUCH, J., RIŠOVÁ, M., SEMAN, R. 2011. *Law of International Organizations* [in Czech: *Právo mezinárodních organizací*]. Praha: C. H. Beck, p. 8 and 19.

35 Resolution of the Economic and Social Council of the UN No. 288 (X) from 27 February 1950.

36 E.g. Article 34 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.

37 Compare VALUCH, J., RIŠOVÁ, M., SEMAN, R. 2011. *Law of International Organizations* [in Czech: *Právo mezinárodních organizací*]. Praha: C. H. Beck, p. 41–42. KLUČKA, J. 2008. *International Public Law* [in Czech: *Mezinárodní právo veřejné*]. Bratislava: Iura Edition, p. 79.

38 Article 6 of the ICOMOS statute.

39 Article 9, Par. 4 and Article 4, Par. 14 of the UNESCO Constitution.

of Monuments, Ensembles and Sites (Colombo, 1993), the Nara Document on Authenticity (Nara, 1994), the Charter on the Protection and Responsibility of Underwater Cultural Heritage (Sofia, 1996), the Charter on the Built Vernacular Heritage (Mexico, 1999), the International Cultural Tourism Charter (Mexico, 1999), the Principles for Analyzing, Building Restoration and Protection of Architectural Monuments (Zimbabwe, 2003), the Charter on cultural routes (Quebec, 2008), the Charter on Interpretation and Presentation of Cultural Heritage Sites (Quebec, 2008), the Dublin Principles on Conservation Sites, Structures, Areas and Landscapes of Industrial Heritage (Dublin, 2011), or the Valletta Principles on Safeguarding and Management of Historic Cities, Towns and urban areas (Valletta, 2011).

The Venice Charter codified proven ethical principles and professional care of monuments and historic residences.⁴⁰ Venice Charter, deepening and extending the principles of the Athens Charter, brought basic principles of protection and restoration, conservation and restoration of monuments that have been agreed and be laid at the international level. The role of each country and nation was the application of these principles within its own culture and tradition.

The Venice Charter emphasizes that it is essential to the conservation of monuments that they be maintained on a permanent basis.⁴¹ A monument is inseparable from the history to which it bears witness and from the setting in which it occurs. The moving of all or part of a monument cannot be allowed except where the safeguarding of that monument demands it or where it is justified by national or international interest of paramount importance.⁴² The process of restoration is a highly specialized operation. Its aim is to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents. It must stop at the point where conjecture begins, and in this case moreover any extra work which is indispensable must be distinct from the architectural composition and must bear a contemporary stamp. The restoration in any case must be preceded and followed by an archaeological and historical study of the monument.⁴³ The valid contributions

of all periods to the building of a monument must be respected, since unity of style is not the aim of a restoration. When a building includes the superimposed work of different periods, the revealing of the underlying state can only be justified in exceptional circumstances and when what is removed is of little interest and the material which is brought to light is of great historical, archaeological or aesthetic value, and its state of preservation good enough to justify the action. Evaluation of the importance of the elements involved and the decision as to what may be destroyed cannot rest solely on the individual in charge of the work.⁴⁴ In all works of preservation, restoration or excavation, there should always be precise documentation in the form of analytical and critical reports, illustrated with drawings and photographs. Every stage of the work of clearing, consolidation, rearrangement and integration, as well as technical and formal features identified during the course of the work, should be included. This record should be placed in the archives of a public institution and made available to research workers. It is recommended that the report should be published.⁴⁵ As regard historic sites, these must be the object of special care in order to safeguard their integrity and ensure that they are cleared and presented in a seemingly manner. The work of conservation and restoration carried out in such places should be inspired by the principles set forth in the foregoing articles.⁴⁶

Since 1965, when the ICOMOS adopted the Venice Charter, it is possible to consider it a document of the ICOMOS. The Venice Charter is not an international treaty and similarly as the Athens Charter, it has no features of *hard law*. It is an international document which is not binding neither on the level of national law nor international law. There are no obligations arising neither for the state, state authorities nor for natural or legal persons. It is neither possible to place the Venice Charter in the category of *soft law* within the above defined meaning because *soft law* can only be mentioned in connection with (governmental) acts of international organizations.⁴⁷ The ICOMOS, as stated above, is not an international organization but a non-governmental association, association of private persons, although with international

40 LÍBAL, D. 1995. Basic Principles of the Venice Charter [in Czech: Základní principy Benátské charty]. *Zprávy památkové péče*, 55(1): 3.

41 Art. 4 of The Venice Charter for the Conservation and Restoration of Monuments and Sites. The Second International Congress of Architects and Specialists of Historic Buildings. Italy, 1964. [Online]. Available at: <http://www.icomos.org/en/charters-and-texts>. [Accessed: 2014, December 10].

42 Art. 7 of the Venice Charter.

43 Art. 9 of the Venice Charter.

44 Art. 11 of the Venice Charter.

45 Art. 16 of the Venice Charter.

46 Art. 14 of the Venice Charter.

47 KLABBERS, J. 2009. *An Introduction to International Institutional Law*. 2nd ed. New York: Cambridge University Press, p. 188–192.

membership. The Venice Charter was not adopted with the purpose of implementation or interpretation of a treaty. Therefore, we are not supposed to consider its permissive or custom-making effect.

For the sake of completeness, we can add that the Venice Charter does not meet the requirement regarding the "self-executing" character for which it only serves to express ideas of value using general formulations. The Venice Charter only outlines objectives that are considered desirable. So besides the normative form (binding force) the Charter does not even meet the conditions related to the content (regulatory and normative nature).

The significance of the Venice Charter lies in that it provides an expert opinion on a specific domain through formulations that something shall or shall not be done. Legal instruments that should be used in order to reach the desired state are not (and cannot be) defined.

The Florence Charter (1981)

The International Charter on Historic Gardens (the Florence Charter) was adopted by the International Committee for Historic Sites working under the International Council for Monuments and Sites – International Federation of Landscape Architects (ICOMOS – IFLA) on 21 May 1981. The Florence Charter was registered by ICOMOS on 15 December 1982. The Florence Charter is an addendum to the older Venice Charter, covering the specific field concerned.

The Florence Charter includes historical gardens and parks as monuments and considers them an architectural and horticultural composition of interest to the public from the historical or artistic point of view. The preservation of historic gardens depends on their identification and listing. They require several kinds of action, namely maintenance, conservation and restoration. In certain cases, reconstruction may be recommended. The authenticity of a historic garden depends as much on the design and scale of its various parts as on its decorative features and on the choice of plant or inorganic materials adopted for each of its parts.⁴⁸ In any work of maintenance, conservation, restoration or reconstruction of a historic garden, or of any part of it, all its constituent features must be dealt with simultaneously. To isolate the various operations would damage the unity of the whole.⁴⁹ The historic garden must be preserved in appropriate surroundings. Any alteration to the physical environment which will endanger the ecological equilibrium must be prohibited.

These applications are applicable to all aspects of the infrastructure, whether internal or external (drainage works, irrigation systems, roads, car parks, fences, caretaking facilities, visitors' amenities, etc.).⁵⁰ No restoration work and, above all, no reconstruction work on a historic garden shall be undertaken without thorough prior research to ensure that such work is scientifically executed and which will involve everything from excavation to the assembling of records relating to the garden in question and to similar gardens. Before any practical work starts, a project must be prepared on the basis of said research and must be submitted to a group of experts for joint examination and approval.⁵¹

As it is a document of the ICOMOS, the above described and justified conclusions regarding the Venice Charter can be related to it as well.

Landscape Protection in the Czech Law

As concerns implementation of the European Landscape Convention in the Czech Republic, the Government by its Resolution No. 1049 of 30 October 2002 ordered the Ministries of Agriculture, Environment, Culture, Regional Development and the Ministry of Education, Youth and Sports to ensure fulfilment of the European Landscape Convention. Therefore, an inter-resort coordination committee was established, composed of representatives of the said resorts. The principal tasks arising from the European Landscape Convention are projected in the State Programme for the Protection of the Nature and Landscape (SPOPK ČR), adopted by the Resolution of the Government No. 1497 of 30 November 2009. SPOPK ČR is an action plan to fulfil the European Landscape Convention at the national level that sets forth the terms for implementation thereof by 2020. Attention to the protection of the landscape is paid also by the Czech Republic State policy for the environment in 2012–2020, adopted by Czech Government resolution No. 6 of 9 January 2013.

In the Czech legal order, there are at least two complex legal regulations that enable to fulfil all objectives and majority of measures, as set by the European Landscape Convention. They are Act No. 114/1992 Coll., on the protection of the nature and environment, as amended, and Act No. 183/2006 Coll., on town and country planning and building rules (Building act), as amended. Partial legal instruments in the sense of Article 6 (e) of the European Landscape Convention are contained in other legal regulations.

Protection of the aggregate of the biotics and abiotics nature and the landscape as a whole is

48 Art. 9 of The Florence Charter. The ICOMOS-IFLA International Committee for Historic Gardens. Italy, 1981. Adopted by ICOMOS in December 1982. [Online]. Available at: <http://www.icomos.org/en/charters-and-texts>. [Accessed: 2014, December 10].

49 Art. 10 of the Florence Charter.

50 Art. 14 of the Florence Charter.

51 Art. 15 of the Florence Charter.

provided by Act No. 114/1992 Coll., on the protection of the nature and landscape. By Article 2 subsection 1 of the Act, the protection is understood as “*care of the State, physical persons and legal entities for free living creatures, wild plants and their communities, paleontological findings and geologic units, care for ecologic systems and landscape units, as well as for appearance and accessibility of the landscape*”. The Act defines the landscape as “*a part of the Earth’s surface with the characteristic relief, composed of a set of functionally interlinked ecosystems and elements of the civilisation*” (Art. 3 Para. 1 Subsec. a). Protection of the nature and landscape is, by Article 2 (2) of the Act on the protection of the nature and landscape, ensured in particular by the protection and establishment of the territorial system of ecological stability of the landscape, protection of selected mineral deposits, paleontological findings and geomorphological and geological phenomena, protection of woody plants outside forests, establishment of the networks of especially protected areas and care for them, participation in establishment and approval of forest management plans, participation in the process of development, planning and construction permit proceedings with the aim to promote establishment of ecologically balanced and aesthetically valuable landscape. Further, the protection of the nature and landscape is ensured by the participation in the protection of the land resources, land improvement works, influencing of water management in the landscape aimed to maintain natural conditions for water and wetland ecosystems while preserving natural character a close-to-nature appearance of watercourses and wetlands, or renewal and creation of new, nature valuable ecosystems, for example upon rehabilitation and other large changes in the structure and utilisation of the landscape. Legal instruments contained in Act No. 114/1992 Coll., on the protection of the nature and landscape, include in particular the establishment of the territorial system ecological stability (ÚSES), protection

of important landscape elements, protection of the landscape character, and the protection of especially protected areas or nature parks.

Essential for the protection of the landscape are the processes of land-use planning and decision-making in areas regulated by the Building Act.⁵² The aim of spatial planning under Article 18 (1) of the Building Act is to create preconditions for constructions and for sustainable development of the area, lying in well balanced relations of conditions for favourable environment, economic development and for social cohesion in the area, which satisfies the needs of the today’s generation without jeopardising living conditions for future generations. Spatial planning ensures preconditions for sustainable development of the area by systematic and comprehensive solutions for effective use and spatial arrangement of the area with the aim to reach generally beneficial harmony of public and private interests in the development of that area. For this purpose, the spatial planning follows the social and economic potential of the development. The land-planning authorities by procedures in accordance with the Building Act coordinate public and private intentions for changes in the area, development and other activities influencing the development of the area and specify the protection of public interests, arising from special regulations. In public interest, the land-use planning protects and develops the natural, cultural a civilisation values of the area, including urban, architectural and archaeological heritage. The Article 18 (4), the Building Act directly refers to the landscape as a substantial component of human lives and a basic element of their identity, which should be protected within spatial planning. Considering those facts, the spatial planning should determine conditions for economic utilisation of build-up areas and guarantee protection of undeveloped and undevelopable land.

CONCLUSION

In the theory and practice of cultural monuments protection, including garden art monuments and landscape protection, it has been often referred to international conventions and other international documents relating to this protection. Necessary condition for these documents to be adequately used in the practice is the precise understanding of their legal nature and a question arising therefrom, whether, to what extent and to whom are those documents binding.

From the analysed documents the European Landscape Convention has the strongest legal force on the Czech national level, as it takes application priority over national law. Although it was not necessary as concerns international public law and legal theory, the requirements formulated by the European Landscape Convention have been transposed directly into the law. The requirements, as generally defined by the Convention, are then in detail and more specifically projected in national laws, in particular in Act on the Protection of the Nature and Landscape, Building Act and Act on State Monument Care.

52 For details cf. PRŮCHOVÁ, I. et al. 2011. *Building Act and the protection of the environment* [in Czech: *Stavební zákon a ochrana životního prostředí*]. Brno: Masarykova Univerzita. Or DIENSTBIER, F. *Spatial Planning* [in Czech: *Územní plánování*]. In: SLÁDEČEK, V., POUPEROVÁ, O. et al. 2011. *Administrative Law. Special Part (Selected Chapters)* [in Czech: *Správní právo. Zvláštní část (vybrané kapitoly)*]. Praha: Leges, p. 201–243.

The next document, the Convention Concerning the Protection of the World Natural and Cultural Heritage, is legally binding solely for the Czech Republic on the international level and *ipso iure* cannot be binding for individuals on the national level.

The following documents – the Athens Charter, the Venice Charter and the Florence Charter (as well as other ICOMOS documents) – have the weakest legal effects, as they formally do not have any legal force. There are no legal obligations arising from the Charters neither for the state and state authorities nor for natural or legal persons.

Acknowledgement

The paper has been prepared with support of the project No. DF11P01OVV019 – Methods and tools of landscape architecture for spatial development, which meets thematic priority TP 1.4. of the Programme of applied research and development of the national and cultural identity, financed by the Ministry of Culture of the Czech Republic.

REFERENCES

- ANONYMOUS. 2000. New Athens Charter 1998 [in Czech: Nová Athénská charta 1998]. *Urbanismus a územní rozvoj*, 3(1): 35–42.
- BANDARIN, F. 2007. *World Heritage – Challenges for the Millenium*. [Online]. 1st edition. Paris: UNESCO World Heritage Centre. Available at: http://whc.unesco.org/documents/publi_millennium_en.pdf. [Accessed: 2014, December 10].
- DAVID, V., SLADKÝ, P., ZBOŘIL, F. 2008. *International public law – case law* [in Czech: Mezinárodní právo veřejné s kazuistikou]. 1st ed. Praha: Leges.
- DIENSTBIER, F. 2011. *Spatial Planning* [in Czech: Územní plánování]. In: SLÁDEČEK, V., POUPEROVÁ, O. et al. 2011. *Administrative Law. Special Part (Selected Chapters)* [in Czech: Správní právo. Zvláštní část (vybrané kapitoly)]. Praha: Leges, 201–243.
- HRŮZA, J. 1993. 60 years of the Charter of Athens [in Czech: 60 let Athénské charty]. In: *Spatial Planning and Urbanism* [in Czech: Územní plánování a urbanismus], 1993(4).
- KLABBERS, J. 2009. *An Introduction to International Institutional Law*, 2nd ed. New York: Cambridge University Press.
- KÜHN, Z., KYSELA, J. 2002. Should everything the Constitutional Court Declares Constitutional. Be Regarded as a Part of the Constitution? Euro-amendment in the Light of a Surprising Judgement of the Constitutional Court/ [in Czech: Je ústavou vždy to, co Ústavní soud řekne, že ústava je?/ Euronovela ústavy ve světle překvapivého nálezu Ústavního soudu/. *Časopis pro právní vědu a praxi*: 10(3).
- LÍBAL, D. 1995. Basic principles of the Venice Charter [in Czech: Základní principy Benátské charty]. *Zprávy památkové péče*, 55(1): 3–6.
- MALENOVSKÝ, J. 2008. *International Public Law, its General Part and Relation to other Legal Systems, Czech Law in particular* [in Czech: Mezinárodní právo veřejné, jeho obecná část a poměr k jiným právním systémům, zvláště právu českému]. 5th ed. Brno: Masarykova univerzita and Doplněk.
- PAVLÍČEK, V. et al. 2008. *Constitutional Law and Political Science* [in Czech: Ústavní právo a státověda]. Vol. 2. *Constitutional Law of the Czech Republic* [in Czech: Ústavní právo České republiky]. 2nd Edition. Praha: Linde
- PRŮCHOVÁ, I. et al. 2011. *Building Act and Protection of Environment* [in Czech: Stavební zákon a ochrana životního prostředí]. Brno: Masarykova Univerzita.
- VALUCH, J., RIŠOVÁ, M., SEMAN, R. 2011. *Law of International Organizations* [in Slovak: Právo medzinárodných organizácií]. Praha: C. H. Beck.
- ZBÍRAL, R. 2009. Article 10 of the Constitution [in Czech: Čl. 10 Ústavy]. In: KLÍMA, K. et al., *Commentary on the Constitution and Charter* [in Czech: Komentář k Ústavě a Listině]. 2nd ed. Plzeň: Aleš Čeněk Publishing house.

Contact information

Olga Pouperová: olga.pouperova@upol.cz
 Filip Dienstbier: filip.dienstbier@upol.cz
 Ondřej Vícha: ondrej.vicha@upol.cz