



Příloha č. 10 směrnice MU Habilitační řízení a řízení ke jmenování profesorem

## POSUDEK OPONENTA HABILITAČNÍ PRÁCE

### EXTERNAL EXAMINER'S REVIEW

**Masaryk's University**

**Applicant**

JUDr. Vojtěch Vomáčka, Ph.D., LL.M.

**Habilitation thesis**

Legal Dissonance of Strengthening Harmonisation in EU  
Public Construction Law

**External examiner**

Doc. JUDr. Vojtěch Stejskal, Ph.D.

**Unit of examiner's, Institution**

Univerzita Karlova, Právnická fakulta, katedra práva  
životního prostředí (Charles University, Faculty of Law,  
Department of Environmental Law)

## **Introduction**

The habilitation thesis “Legal Dissonance of Strengthening Harmonisation in EU Public Construction Law” (further “thesis” or “habilitation thesis”) determines the level of indirect harmonisation of spatial planning and construction permitting in EU law and the scope of the corresponding requirements. It focuses on the gradual development of EU law, the relationships, differences, and synergies between the various conditions to provide a more comprehensive picture, and then concentrates on the most critical issues identified, namely the interpretation of the general concepts used in environmental legislation and the explanation of the content of the public participation requirements. It also examines the interrelationship of the Aarhus Convention and EU law, emphasising the fundamental guarantees of participation in decision-making and access to justice. Furthermore, the thesis analyses the planning and construction requirements that stem from other EU policies than environmental. Mainly, it focuses on developing the Cohesion Policy and Urban Agenda, maritime spatial planning, development of the TEN-T and TEN-E networks, building materials requirements, building energy efficiency, and promoting renewable energy.

Vojtěch Vomáčka published in 2020 a book on EU environmental law requirements in the field of public construction law, which was deliberately conceived as a research book for further work. Instead of following the same structure and approach, he decided to start anew with this thesis to reflect significant changes introduced in EU law following the European Green Deal and to present more coherent and balanced chapters that would address the topics more sensibly. Therefore, the thesis is based on the same premises but wholly rewritten.

I would like to highlight the choice of the topic, as well as the actuality relevance of the chosen topic also in view of the ongoing legislative work and the development of environmental policy at the EU level, as well as the development of the case law of the Court of Justice of the EU.

## **Structure of the thesis**

The assessed habilitation thesis contains 345 pages in electronic form, of which the actual text is 230 pages. The thesis is divided into four main parts:

The first part of the thesis traces together the early harmonisation attempts of public construction law and the first environmental requirements to 1) illustrate the development of the important that have manifested themselves in public construction law and 2) trace the origin of the public participation requirements. This part is analytical and descriptive and serves as an input to the following parts.

The second part of the thesis focuses on implementing the Aarhus Convention in EU law in relation to Member States and on its aspects common to current EU legislation. It forms,

therefore, a framework section (hence the *intermezzo* in the Chapter title) that helps to understand the different regimes of requirements under which EU directives fall. It then looks in detail at the content of public participation requirements, drawing in particular on the recent case law of the CJEU.

The third and the fourth part of the thesis provide an overview and analysis of the current EU requirements on public construction law. In the third part of the thesis, the environmental requirements are analysed with particular attention to how they affect spatial planning and construction permitting. This part, therefore, defines the scope of the most important EU requirements for protecting the environment and public participation by explaining the concepts of a project and a plan/programme. The content of the relevant public participation requirements is discussed in detail, primarily based on the case law of the CJEU. The analysis also looks for synergies in the basic requirements to assess which processes can be combined and carried out simultaneously and which obligations can be fulfilled simultaneously to reduce administrative and time burdens.

Similarly, the fourth part of the thesis analyses the current planning and construction requirements that stem from other EU policies than environmental. Mainly, it focuses on developing the Cohesion Policy and Urban Agenda, maritime spatial planning, development of the TEN-T and TEN-E networks, building materials requirements, building energy efficiency, and promoting renewable energy.

I would like to commend the system and logical structure of the individual chapters, as well as their interconnectedness.

## **Methodology**

The methodology described above has obvious drawbacks: First, the scope of the thesis is extensive, which does not allow for a proper in-depth analysis of all relevant issues relating to the different EU requirements. The thesis focuses instead on the gradual development of EU law, the relationships, differences, and synergies between the various requirements to provide a more comprehensive picture, and then concentrates on the most critical issues identified, namely the interpretation of the general concepts used in environmental legislation and the explanation of the content of the public participation requirements. Second, while there is little debate about which EU requirements have the most significant impact on national public construction law, it seems complicated to establish criteria for determining which other EU requirements should be analysed. This is because many of them have an environmental, economic, or social dimension, which indirectly influences the approach to spatial policy and construction with varying degrees of intensity. Third, the overview of the substantive requirements of EU law is of necessity primarily related to the processes and procedural aspects that are intended to meet the substantive objectives. However, the excessive attention to process at the expense of substance seems to characterise the bureaucratisation of EU law and some of the more consistently harmonised areas. The thesis cannot analyse all the substantive

requirements in a limited space. Instead, it seeks to highlight two factors crucial to the procedural and substantive enforcement of EU law – the substantive scope of EU requirements and the aims to be achieved.

The chosen methodology is very suitable for the description, analysis and synthesis of the chosen topic and is common in scientific work in the field of legal science.

### **Conclusions of the thesis**

The thesis contains the conclusions in the part six (pages 219 – 230). I can personally identify with most of the conclusions of the author of the habilitation thesis. The conclusions are of high quality. The author fulfilled the objectives of his habilitation thesis. The text is supplemented by tables with comparative data that illustrate the conclusions very well. In my opinion, the content of the author's work under review, including his conclusions, is capable of pushing the boundaries of knowledge even within the Czech environmental law science.

### **Comments on the thesis**

As the author states, among other things, in the conclusions of his thesis, the need for new energy planning regulations and permitting procedures goes far beyond the requirements of environmental legislation, which sets out mainly substantive requirements. Encroachments on the procedural autonomy of the Member States, which would have been difficult to imagine at the turn of the millennium, are now a fairly common feature of the legislation adopted.

The planning and permitting of specific energy projects therefore makes use of the full legal toolbox of public construction law: New procedural requirements for simplified planning and permitting are constantly emerging, together with substantive legislation relating to both energy and the environment.

Some of them sound a bit sceptical when it comes to promoting environmental protection. The question arises, what trend can be expected in the development of environmental protection relations under the influence of the development of public construction law? Is there a future for EU environmental policy and what is it? It is also questionable whether the author would have reached the same conclusions if he had dealt with the topic from the perspective of the Czech literature?

### **Formal elements**

The thesis contains substantive requirements, namely abstract, keywords, declaration, list of abbreviations, list of table, list of cases and list of sources. The thesis contains high number of footnotes (Total 1018 footnotes). The text of the assessed habilitation thesis also meets all formal requirements for this type of qualification thesis.

## Questions

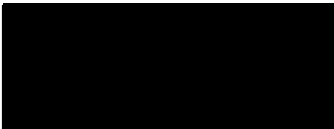
- 1) The habilitation thesis is based on the legal situation as of 1 August 2023. If you look at the development of CJEU case law and the adoption of new secondary EU law, would it change anything about your conclusions made in your habilitation thesis?
- 2) Has Article 192(2)(b) of the TFEU, relating to spatial planning, ever been used in the practice of the EU institutions?
- 3) Has the Czech literature also paid attention to public construction law from the perspective of environmental law?

## Closing part of review

The habilitation thesis „**Legal Dissonance of Strengthening Harmonisation in EU Public Construction Law**“ by **Vojtěch Vomáčka** meets the prescribed standard requirements of **habilitation thesis** in branch of habilitation [Administrative Law and Environmental Law].

Praha,

31. May 2024

  
doc. JUDr. Vojtěch Stejškal, Ph.D.  
(*external examiner*)