PERSONS IN THE LEGAL SENSE

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1. INTRODUCTION

Czech law is, technically, a part of the German legal family. It has developed from Austrian law (The Czech state was a part of the Austrian – and Austro-Hungarian – Empire for almost four centuries from 1526 until 1918), having been strongly influenced by Roman law and displaying many similarities to the traditional German legal conception.

This traditional conception was, however, significantly disrupted during the process of the so-called "socialist re-codification of private law", carried out primarily in the 1960s. Under this process, civil law came closer to the Soviet doctrine and was fragmented into various branches of law regulated by an immense number of laws. The political and social changes since the early 1990s have manifested the attempt to rectify this undesirable situation and return to European standards.

Private law is, likewise, facing a significant reform: at present, there is a vibrant discussion going on about the draft of the new Civil Code, which is meant to become the fundamental norm in the area of private law. The currently introduced draft proposal of a new Civil Code includes, among other, a reform of the legal regulation of the legal position of natural and legal persons.

The draft pays much more attention to the status of natural and legal person, makes the legal regulation connected with the protection of personality more precise, extends the general part that is common for all types of legal persons and also makes the regulation of the legal position of associations and foundations an inseparable part of this code.

The following chapter deals mainly with the currently applicable legal regulation which is included in the present Civil Code (No. 40/1964 Sb.).

2. LEGAL CAPACITY

The Czech legal order, similar to legal orders of other European countries, distinguishes between natural persons and legal persons. The legal capacity of persons is understood both as the legal capacity to have rights and duties and also the capacity to acquire rights and assume duties.

Legal capacity to have rights and duties is a capacity to have rights and duties within the limits of the legal order, i.e., to be a subject of rights and duties (to have legal subjectivity). The legal capacity to acquire rights and assume duties is the capacity to suffer consequences, mainly to acquire rights and assume duties.

In the case of legal persons, the formation and extinction of the legal capacity to have rights and duties is essentially identical with the formation and extinction of their capacity to make legal acts. In the case of natural persons, however, there is a significant difference between the two kinds of capacities.

Law also recognizes delictual capacity, i.e., the capacity to establish liability as a result of one's own unlawful acts and bear its unfavourable consequences.

3. NATURAL PERSONS

3.1. LEGAL CAPACITY TO HAVE RIGHTS AND DUTIES

Within the sense of Article 5 of the Charter of Fundamental Rights and Freedoms, the legal capacity of an individual to have rights and duties is one of the fundamental human rights. Nobody can be deprived of it and it cannot be limited during a person's life.

This legal capacity arises upon a person's birth. Also a conceived child shall have this capacity if it is born alive. This capacity expires at the moment of one's death. Unless the death can be proved in the stipulated way, the court shall declare the individual dead if the death can be found out otherwise. This rule shall apply also to an individual whose death can be presumed with respect to all circumstances.

Proceedings on declaring somebody dead may be started where there is certainty that an individual died but the person's death cannot be attested in a way provided for by the law.

In this case, a court shall issue a decision declaring the individual dead (§ Civil Procedure Code § 200)

Another case can be found in § 195 of the Civil procedure Code, if the court recognizes that the particulars of the petition testify to the conditions for declaring the missing person dead, the court shall appoint a curator for the missing person. The petition may be filed by anyone who has a legal interest in the case.

The court shall call missing person in the form or a notice or in another suitable way. This person should report himself within one year or anyone who has knowledge of him to send within the same period a report on the missing person to the court or the curator or, as the case may be, to the representative of the missing person. At the same time, the court shall carry out all necessary investigation of the missing person.

The notice of the court shall contain the circumstances of the case and shall announce that after the lapse of the period specified in the notice, the court shall decide on declaring the missing person dead unless the missing person reports himself or if no report that he is alive is delivered. The court shall specify a period of one year from the publication of the notice. The notice must identify the day when the period ends. If the court finds out during the proceedings that the conditions for declaring somebody dead are not met, the court shall stay terminate the proceedings. After the lapse of the period specified in the notice, the court shall issue a judgment on declaring the missing person dead. In the judgment, the court shall specify the day that is to be presumed the day of the death of the missing person or, as the case may be, the day that missing person did not survive.

If the court finds out that the person who has been declared dead is alive or lived on the day from that a period adequate to declaring him dead has not yet elapsed., the court shall quash its decision on declaring the missing person dead. Upon a petition of a participant, the court shall correct the day specified in the decision as the day of death if it is subsequently revealed that the person who has been declared dead died on another day or that he could not have lived until this day or that he survived this day. The court may do so even without a petition.

3.2. LEGAL CAPACITY TO ACQUIRE RIGHTS AND ASSUME DUTIES

Legal capacity to acquire rights and assume duties arises gradually on the basis of the state of the mental and volitional maturity of a natural person. A full capacity of an individual to acquire rights and assume duties on the basis of the own legal acts (capacity to legal acts) shall arise at the moment of his or her majority. A person acquires majority by achieving the age of eighteen years. Before achieving this age, majority can be acquired only by entering into a marriage, which is possible only in the case of persons over the age of 16 and subject to a court's permission. Majority acquired in this way cannot be lost even if the marriage becomes extinct or if it is declared null and void by a court.

Legal capacity to acquire rights and assume duties may be limited and a natural person may even be deprived of it in certain situations defined by the law. Minors shall be capable only to such legal acts that are adequate to the maturity of their reason and will with regard to their age (ex lege § 9). If an individual is completely unable to do legal acts due to a permanent mental illness, the court shall deprive him or her of the capacity to legal acts. If an individual is able to do only certain legal acts due to a permanent mental illness or to an immoderate consumption of alcoholic beverages, the court shall restrict his or her capacity to legal acts and shall specify the extent of such restriction in the decision. The court shall change or cancel the deprivation or restriction of the capacity to legal acts if reasons leading thereto changed or fell out.

Regarding the health condition of the examined person, the court shall always hear an expert. If there are conditions for restricting the capacity to legal acts due to an immoderate consumption of alcoholic beverages or narcotics (addictive matters) or poisons and if the condition of the examined person can be expected to improve, the court may interrupt the proceedings for a specified period; at the same time, the court may decide that the examined person must submit to a necessary medical care. Before the lapse of the specified period, the court shall go on proceeding only if no improvement appeared. The court shall quash the judgment issued if it is subsequently revealed that there were no conditions for deprivation or restriction of the capacity to legal acts.

3.3. DELICTUAL CAPACITY

Delictual capacity is a capacity in respect of unlawful acts caused, i.e., the capacity to establish one's liability as a result of ones' own acts in law. Its full extent is acquired upon majority, just as the legal capacity to acquire rights and assume duties. With minors, what is

always individually assessed is their ability to recognize and understand the consequences of their unlawful acts (both elements – reason and will). The same holds for people who suffer a mental illness (either temporary or permanent). A certain exception consists in allowing delictual capacity also to those unable to control their behaviour and assess its consequences as long as they bring this state upon themselves (§ 423).

4. PROTECTION OF PERSONAL RIGHTS (§ 11 CC)

4.1. INTRODUCTION

The basis for the legal protection of human personality consists of *subjective natural rights* of each human being (human rights), as guaranteed by international agreements and constitutional acts of the Czech Republic. These are fundamental human rights that are inalienable, imprescriptible, uncancellable and not subject to the statute of limitations. However, they do not exist mainly as subjective rights, but also as *the duty to exercise* one's right (or freedom) in such a way that the rights of others are not threatened.

The role of the legal regulation of personality protection is to ensure that the personality of a natural person is respected, thereby allowing it a free, multifaceted development.

The basic features characteristic of the right to the protection of one's personality are:

- it has a non-personal, non-proprietary nature
- it belongs to each natural person individually
- it operates *erga omnes*, and it is a right of an absolute legal nature
- it is not subject to the statute of limitations or lapse

The right to the protection of one's personality (the general right of personality) is understood in the objective sense as "a set of legal norms regulating law or partial laws, whose subject is the personality of natural persons as a whole, as well as the individual values forming parts of the overall physical and moral integrity of natural persons. In the subjective sense, the right to the protection of one's personality is one of the subjective rights with an absolute nature which forms the individual legal status of the natural person.

4.2. SOURCES OF PERSONALITY PROTECTION LAW

One of the most important international agreements regulating the legal framework for the protection of personality includes the International Covenant on Civil and Political Rights (the Regulation No. 120/1976 Sb. of the Ministry of Foreign Affairs), Convention on the Rights of the Child (Statement No. 104/1991 Sb.), the European Convention on the Protection of Human Rights and Fundamental Freedoms (Statement No. 209/1992 Sb.) and the European Convention on the Protection of Human Rights and Dignity of Human Beings with Regard to the Application of Biology and Medicine (the Covenant on Human Rights and Biomedicine) (Statement No. 96/2001 Coll.), including the Additional Protocol on the Prohibition of Cloning Human Beings (Statement 97/2001 Coll.) etc.

The whole conception and regulation of personality protection law is constitutionally grounded in the Constitution of the Czech Republic and, mainly, in the Charter of Fundamental Rights and Freedoms (the Constitutional Act No. 2/1993 Sb.) which forms a part of the constitutional order of the Czech Republic.

The basic principles regulated in the Charter include, above all, the untouchability of a person and its privacy (Article 7), personal freedom (Article 8), the right to the preservation of human dignity, personal honour, good reputation and protection of one's name, protection from unauthorized interventions in one's private and family life (Article 10), and the of the secrecy of the mail (Article 13).

As regards regulation on the level of statutes, there are some other regulations in addition to Section 11 and subsequent sections of the Civil Code. These are mainly:

- The Act No. 20/1966 Sb. on the Protection of People's Health
- The Act No. 66/1988 Sb. on the Termination of Pregnancy
- The Act No. 101/2000 Sb. on the Protection of Personal Data
- The Act No. 46/2000 Sb. on Rights and Duties when Publishing Periodical Publications (the Press Act)
- The Act No. 121/2000 Sb. on Copyright and Related Rights (the Copyright Act)

- The Act No. 301/2000 Sb. on Registries, Names and Surnames
- The Act No. 285/2002 Sb. on Donation, Removal and Transplantation of Tissues and Organs
- The Act No. 227/2006 Sb. on Research Carried out on Human Embryo Stem Cells
- The Act No. 262/2006 Sb., The Labour Code.

4.3. SUBJECTS OF LAW ON PROTECTION OF PERSONALITY RIGHTS

4.3.1. NATURAL PERSONS

The right to the protection of personality rights arises to all humans (natural persons) upon their birth. Legal protection of personality rights is enjoyed by all natural persons regardless of their legal capacity (or incapacity) to perform acts in law. Where the right to the protection of one's personality rights was violated in case of several subjects, each of them may seek protection independently. The personality rights of persons are protected even after their death (post mortal protection of personal rights). After the death of the individual, the right to protection of his or her personal rights may be asserted by his or her spouse, registered partner or children or, if there are no spouse, registered partner or children, to his or her parents (§ 15 CC).

4.3.1. LEGAL PERSONS

The right to the protection of one's personality rights is applicable only for natural persons. Legal persons, because of their actual and legal nature, may be subject only to protection that is similar to that guaranteed to natural persons. Sometimes this is referred to as 'quasi-personality' rights of legal persons. Protection is offered to legal persons only in specifically delimited cases – it is narrowed only to the right to the protection of the name and the good reputation of legal persons.

4.4. SUBJECT MATTER OF LAW ON PROTECTION OF PERSONALITY RIGHTS

The delimitation of the subject matter of general personal rights is provided for in Section 11 of the Civil Code, which lists the most typical components and manifestations of personality rights. Some of them are elaborated in the provisions of Section 12(1).

An individual shall have the right to protection of his or her personal rights (personhood), in particular of his or her life and health, civic honour and human dignity as well as of its privacy, name and expressions of personal nature. The law states also that documents of personal nature, portraits, pictures and image and sound records concerning an individual or expressions of his personal nature may be taken or used only with his or *her consent.* As the wording of Section 11 clearly shows, the enumeration of the rights that are protected is not exhaustive. Therefore, in addition to these specifically listed subjects, some other components and manifestations related to personhood are also protected, e.g., personal secrets, secrecy of the mail, likeness, voice, biographical and other personal data, clean environment, good name, professional, commercial and academic honour, freedom of faith and religion, etc.

In the case of any unlawful infringement into any of the above mentioned rights, the infringement usually concerns several rights simultaneously, e.g., the right to the protection of civilian honour, personal privacy, name, etc.

4.5. LIMITATION OF THE RIGHT TO PROTECTION OF PERSONALITY RIGHTS

Any limitation of the right to the protection of one's personality rights is possible only with the consent of the relevant person (this is referred to as 'contractual licence'). In addition, personality rights may be limited also on the basis of three 'statutory licences': the *official* licence, when documents of personal nature, portraits, pictures and image and sound records are to be used for official purposes on the basis of an act; then the *academic and artistic licences;* and finally the *newsreporting licence*: portraits, pictures and image and sound records may be taken or used without the consent of the individual adequately also for purposes of science or art and for the purposes of press, motion picture, radio and television news service.

Such protected values may not be used (or made) in conflict with the justifiable interests of a natural person even in cases where the natural person approved the use (or the making) of protected values. According to the judicial decisions of the Czech Constitutional Court, the basic protection of the dignified existence of the relevant natural person must always be assured.

Some other limitations are to be found, e.g., in the Rules of Civil Court Procedure, the Criminal Code, as well as in some other public law regulations.

4.6. MEANS OF PROTECTION OF PERSONAL RIGHTS

The personality of the natural person enjoys statutory protection on the basis of the Civil Code, whose nature is absolute: it operates against all (*erga omnes*). The protection concerns not only the actual violation of law but also the mere threat of violation. Protection may be sought with an authorized body, i.e., a court. In the first instance, all matters related to the protection of personal rights are heard with by relevant regional courts.

The system of private law liability for possible or actual violations of the right to protection of personality rights is based on the objective principle. This means that no fault is needed (i.e., a subjective element) on the part of the violator (infringer). Whoever makes an unlawful infringement into the rights to the protection of another person's personal rights is held liable for such unlawful infringement even if the violator is unaware of the fact. In this respect, this liability system of the law on the protection of personal rights differs from subjective liability for damage, which is essentially based on the anticipated fault of a wrongdoer (which is, save for a few exceptions, also based on the objective principle).

The basic prerequisite for liability under Section 13 of the Civil Code is the existence of an unlawful infringement which may objectively infringe or violate the personality rights protected by the provisions of Section 11.

Apart from the general means of protecting subjective rights, which include permitted self-help (section 6 of the Civil Code) or the protection of a peaceful state (section 5 of the Civil Code), the right to the protection of one's personality rights may also be sought in court. The Civil Code distinguishes three possible actions. One is therefore entitled in particular to demand that:

- unlawful violation of his or her personal rights be abandoned (actio negatoria),

- that consequences of this violation be removed (action for removal) ,

- and that an adequate satisfaction be given to him or her (action for satisfaction).

The adequate satisfaction of immaterial detriment could be unpecuniary or pecuniary, if the unpecuniary satisfaction seems to be insufficient due to the fact that the individual's dignity or honour has been considerably reduced. The amount of such a satisfaction shall be specified by the court with regard to intensity and circumstances of the arisen infringment.

It may also be possible to combine both satisfactions. The court, when determining the financial amount of unpecuniary damage, is bound by the claimant's action only in that it cannot assign a higher amount than is requested. Otherwise, the amount of the damages is decided by the court at its own discretion within the limits of the law. However, it must base its decision on the following specific criteria that are specified by law:

- the seriousness of the unpecuniary harm (of a nature related to one's personal rights): the more serious the harm, the higher its monetary compensation;

- the circumstances under which the potential or actual infringement of the right to the protection of personality rights occurs (even subjective elements, such as fault, manner of infringement, etc. may play a role in this context).

The provision of a suitable satisfaction, both in the form of moral satisfaction and monetary compensation, is meant to compensate for the unpecuniary harm caused and to approximate to the idea of justice. A similar two-level conception of reasonable satisfaction is also provided for in the Copyright Act.

In the first instance, disputes on the protection of personality rights are adjudicated by regional courts. A person who causes damage by unlawfully violating the right to protection of personal rights shall be also liable for these damages according to the provisions of the Civil Code concerning liability for damage (§ 420). As long as the statutory requirements are met, the right to the return of unjust enrichment may also be considered.

Other means of protection of personal rights can be found in mass media law, mainly as far as the right to reply and a sufficient statement are concerns, as well as in the Act No. 200/1990 Sb. on Transgressions, and in the Criminal Code.

A special way of protecting these rights is the possibility to turn to the European Court of Human Rights. This eventuality, however, is allowed only after exhausting all remedies within one's own country. In this case, the authorized subject may seek protection from the

state (not the actual infringer) on account of the state failing to provide sufficient protection of those rights which are guaranteed in the European *Convention for Protection of Human Rights na Fundamentals Freedoms.*

5. DEFINITION OF "HOUSEHOLD" AND "A CLOSE PERSON"

The Civil Code frequently operates with the concepts of 'household' and 'a close person'. The Code provides the following definitions:

A household (§ 115) is created by individuals permanently living with each other and jointly covering expenses for their needs.

A close person (§ 116) shall be defined as a relative in direct line, brother or sister and the spouse; other persons in a family or other relation shall be considered close to each other if a detriment suffered by one of them is reasonably felt as own by the other.

6. LEGAL PERSONS

6.1. INTRODUCTION

In addition to natural persons, the participants in legal relations may also be constituted by legal persons. The main difference between natural and legal persons consists in the very essence of their existence. While the natural person is characterized by a bio-social basis and its subjectivity arises from its nature, the legal person is an artificially created entity, whose existence originates in law, with the law stating that the capacity to have rights and duties also extends to legal persons.

The regulation of legal relations of legal persons, as provided for in the Civil Code, is very brief and general. The provisions of Section 18 afford to legal persons the capacity to have rights and duties (i.e., the legal subjectivity), while the provisions of Section 20a specify its capacity to acquire rights and form obligations as a result of its own acts (i.e., the capacity to act independently in law). Then the categorization of legal persons (not a particularly suitable one) is carried out in Section 18(2) and the two-phase principle (formation – establishment and winding up – dissolution) for private law legal persons is provided for in Sections 19. Section 20a deals with a very general regulation of the names of legal persons

and their protection. Section 19c focuses on the regulation of the registered office and Section 20 on the acts of legal persons.

The current legal regulation is based on the principle of general legal subjectivity. Legal persons are essentially capable to have all rights and duties except those that are related to human nature (sex, age, kinship, etc.), unless provided otherwise by the legal regulation relevant for the particular types of legal persons.

The general placement of legal persons in the Civil Code has its significance not only for the area of civil law but may be used in a subsidiary way also for the position of corporations in business law and other legal persons in private and public law that are regulated on the basis of special laws. Other related regulations do not deal with the question of "*what are legal persons?*" but merely assume their existence alongside natural persons.

Currently, the general regulation of legal persons is contained in the Czech Civil Code, but each legal form is regulated by a *separate law*.

Legal theory and practice have made many attempts at defining criteria for a clear and systematic categorisation of legal persons. However, the diverse character of the various types of legal persons makes this task rather difficult.

Legal persons may, in general, be divided into corporations and foundations according to the characterisation of the factual basis of such legal persons. Another classification distinguishes private law legal persons and public law legal persons. The purpose of existence of a given legal person may serve as another criterion for categorisation – namely the purpose of profit-making or a purpose other than generating profits.

6.2. CATEGORISATION – SCHEMATIC OUTLINE

A. Legal persons (based on private law):

1) private foundations

--- foundations (nadace) ---- foundations, endowment funds
--- institutions (ustavy) ---- public benefit institutions

2) private corporations

--- *based on civil law* – associations, trade unions, interest associations of legal persons, political parties and political movements, churches and religious societies, organisations with the international element, interest groups of legal persons.

--- *based on commercial law* – joint stock companies, limited companies, co-operatives, unlimited companies

B. Legal persons (based on public law)

1) public foundations --- public funds

--- public institutions – e.g. contributory organisations, Czech Television, Czech broadcast, Czech press agency

2) public corporations --- territorial – county, municipality

--- professional chambers

--- others, e.g. public universities

6.3. PRIVATE LAW LEGAL PERSONS – RELATED LEGAL REGULATIONS (A SELECTION)

Legal persons in the Czech Republic are regulated as *numerus clausus* – they constitute a closed set. This enumeration of types of legal forms mainly serves for the protection of rights of third parties and other participating persons. The existence of a legal person as a subject of law depends on its recognition by a legal norm.

The Czech law contains a significant number of legal regulations which determine the legal position of the particular kinds of legal persons. The following list contains some of

these regulations, mainly those which – with respect to the scheme above – concern private law legal persons.

- the Act No. 40/1964 Coll., the Civil Code

- the Act No. 83/1990 Coll. on Associations of Citizens

- the Act No. 116/1985 Coll. on Conditions for Activities of Organisations with an International Element in the Czechoslovak Socialist Republic

- the Act No. 513/1991 Sb., Commercial Code

- the Act No. 424/1991 Coll. on Association in Political Parties and Political Movements

- zákon č. 72/1994 Sb., on the Ownership of Flats, Section 9 and subsequent sections

- the Act No. 248/1995 Coll., on Public Benefit Institutions

- the Act No. 227/1997 Coll., on Foundations and Endowment Funds

- the Act No. 3/2002 Coll., on Churches and Religious Societies

6.4. A GENERAL CHARACTERISATION OF LEGAL PERSONS

6.4.1. LEGAL CAPACITY

The current law is based on the principle of general legal subjectivity. Legal persons are essentially capable to have all rights and duties except those that are related to human nature (sex, age, kinship, etc.), unless provided otherwise by the legal regulation relevant for the particular types of legal persons. This arises from the fictional conception of legal persons: they are conceived of as artificial legal fictions.

The capacity to have rights and duties and to be acquire rights and be bound on the basis of the legal persons' own legal acts is not essentially limited by the content of the founding documents or the objects of the legal persons' activities.

The capacity of a legal person to acquire rights and duties may be restricted only on the basis of a law. Legal entities registered with the Commercial Registry or with another

registry specified by an act may acquire rights and duties from the day of effectivity of the registration unless a special act stipulates otherwise.

6.4.2. ESTABLISHMENT

The provisions of Section 19 summarize the main facts concerning the establishment of legal persons. The establishment of a legal person requires a written agreement or a foundation deed unless a special act stipulates otherwise. Legal entities come into existence on the day they are registered with the Commercial Registry or with another registry specified by an act unless a special act regulates their formation otherwise.

This gives a general regulation of the process, which differentiates between the formation (the foundation) and the actual establishment (the beginning of existence) of a legal person, which is tied to an act with a public law nature. This two-phase manner, consisting of the contrast between the formation (foundation) and establishment is crucial mainly for legal persons in private law, although even there special laws may provide otherwise.

In the case of public law legal persons, this two-phase distinction does not usually apply because they are mostly established directly on the basis of law (e.g. the Czech Press Agency, The State Fond for the Support of Czech Film-making, professional chambers, etc.) or as a result of a decision of a body of public administration (e.g., contributory organizations).

What is *always* crucial is the regulation contained in special legal regulations determining the specific legal regime of particular legal persons (of both private and public law). These determine any special requirements concerning the content and the form of the act of establishment, as well as the actual establishment of a legal person.

6.4.3. NAME

The name of a legal person is an important identification and conceptual elements. It serves to identify the bearer and differentiate the bearer from others, as in the case of the first names and surnames of natural persons. This implies that a legal person always has only one name. The founder is essentially free to choose the name, while respecting general civil law provisions concerning the absolute protection of the name of legal persons (cf. Section 19b(2): Legal persons shall have their name; the name must be specified at the moment of

their establishment. Should the name of a legal person be used unlawfully, the legal entity may demand with a court that the unlawful user omits the use and remove irregular state; the legal entity may also demand an adequate satisfaction that may be required even in money. The same shall be adequately applied to an unlawful infringement of goodwill of a legal person.

The name must be different from all other legal persons, i.e., it should not be *interchangeable* with the name of any other legal person. The principle of priority applies. The name should be comprehensible and should not be deceptive. Special legal regulations determining the legal regulation of individual legal persons often provide that certain words (e.g., "foundation") may be used only for the designation of a certain type of legal persons or that the name of a legal person must include an identification or an abbreviation of its legal form (supplement), e.g., *s. r. o., spol. s r. o., a. s., p. o.*, etc. Legal persons under liquidation must include the supplement '*in liquidation*'.

6.4.4. SEAT

The *seat (registered office)* is an important and indispensable part of legal personality because no legal person may exist without it. The seat identifies the place which is used for marking the legal acts of a natural person and also allowing contact with the legal person. The latter function is very important, given the nature of the legal person as a legal fiction. The seat also serves to identify the local jurisdiction of the relevant authorities in disputes against the legal person or in other acts with a public law nature.

The seat of a legal person must be specified at the moment of the rise thereof. The seat must be specified by an address where the legal entity is really settled, i.e. by the place where the management of the legal entity is situated and where the legal entity can be contacted by the public. Where a legal entity refers to a seat being different from the real seat thereof, everyone may rely even on the real seat thereof. The seat of a legal entity may be located in a flat only provided that it is compatible with the purpose of the legal person and that it corresponds to the nature and extent of the activities thereof. In case of a legal entity registered with the Commercial Register or with another public register, it shall be sufficient if the constitutive document specifies instead of the address of the seat only the municipality where the seat is located. However, in asking for registration with this register, the legal entity must specify the full address of the seat thereof.

6.4.5. MINIMUM ORANISATON STUCTURE

Because of the conception of legal persons, it needs to be acknowledged that a legal person forms its will and manifests it externally with the help of natural persons – its bodies or other persons entitled to do so. The Civil Code contains a single provision concerning the legal acts by legal persons, which is not quite sufficient.

The legal person shall act in all matters through persons entitled thereto on the basis of the agreement on establishment of the legal person, of a deed of establishment or on the basis of an act (statutory bodies).

Legal acts for the legal entity may be also done by its employees or members if it is stipulated by internal regulations of the legal entity or if it is usual with regard to their work assignment. If these persons exceed their competence, the legal entity shall be entitled or obliged only if the legal act falls within the scope of activity of the legal person and if the other party could not have known of the excess of the competence.

6.4.6. WINDING UP AND DISSOLUTION

The theoretical conception of legal persons is generally based on the two-phase process of the winding up and dissolution of legal persons, which is the case mainly with legal persons in private law. However, laws may provide a different legal regime for public law legal persons.

A legal person may be wound up as a result of a number of legal facts. Unless there is some special regulation for a particular type of a legal person, the general provision of Section 20(a)1 of the Civil Code may be applied, under which a legal person shall be wound-up by an agreement, after the lapse of the time period or at the moment of fulfilment of the purpose for that it was established unless a special act stipulates otherwise. A legal person registered with the Commercial Registry or with another registry specified by an act shall be dissolved on the day of its deletion from this registry unless special acts stipulate otherwise.

However, the occurrence of these facts does not automatically result in the loss of legal subjectivity of a legal person. Instead, the phase of liquidation begins (as long as the matter does not concern the winding up of a legal person with a legal successor). The actual dissolution of a legal person (the loss of legal subjectivity) is then – in the case of most

private law persons – tied to a public law act, i.e., the deletion from the relevant official registry.

In general, the winding up and the subsequent dissolution of a legal person may be divided into two kinds:

a) with a legal successor (without liquidation)
b) without a legal successor (with liquidation).

Prior to the dissolution of the legal entity, it shall be necessary to carry out its liquidation unless all its property passes to the legal successor or unless a special act stipulates otherwise. Provisions of the Commercial Code concerning liquidation of business companies shall adequately apply also to liquidation of other legal entities unless anything else follows from the provisions regulating these legal persons.

6.5. THE STATE AS A PARTY IN PRIVATE LAW RELATIONS

Because of the equality of parties in public law relations, which is explicitly provided for in Section 2(2) of the Civil Code as one of the fundamental principles for all fields of private law, the state (i.e., the Czech Republic) acts in an equal relationship with other subjects of public law relations.

However, it needs to be noted that the state – as a legal person – differs from other legal persons in a number of ways. The difference is not only in the mechanism of forming the internal will of the state which is then manifested externally. Unlike the general principle of the autonomy of the will of private law subjects, the state is always bound, when forming its internal will, also by procedures specified by law. Already the very introductory provision of Section 1(2) of the Civil Code mentions separately some property relations between natural and legal persons on the one hand and the state on the other. The Civil Code also regulates the specific position of the state in some other places.

The current law is based on the conception that the state's subjectivity is uniform. Undoubtedly, the decisive legal regulation is, in this connection, the Act No. 219/2000 Sb. on the Property of the Czech Republic and the Manner of Its Acting in Legal Relations, which regulates the kinds and conditions of managing the property of the Czech Republic, its acting in legal relations, as well as the position, establishment and dissolution of its organizational units.

6.6. EUROPEAN LEGAL PERSONS

A separate category of legal persons is, without doubt, constituted by international organizations (e.g. the United Nations) and the so-called "European legal persons", which are different from both national and international entities.

The European Economic Interest Grouping, EEIG (abbreviated as "EEIG") is the oldest form of a legal person of the corporate type that was formed on the basis of norms of EC law. As a consequence of the EEC Directive No. 2137/85 of 25 July 1985, the Act No. 360/2004 Sb., on the Eurpean Economic Interest Grouping (the EEIG Act) was adopted; the act determined the applicable provisions of the Czech legal order for EEIG with its office in the Czech Republic as well as for the branches of foreign EEIGs located in the Czech Republic.

The European Company (Societa Europea) was established on the basis of the Council Regulation (EC) No. 2157/2001 on the Statute for a European Company (SE) in harmony with the general regulations applicable for joint stock companies. Subsequently, the Council Directive No. 2001/86/EC of 8 October 2001 was adopted, whereby the statute of the European company was supplemented with respect to the involvement of employees. The incorporation of this type of European legal person into the national legislation was done on the basis of the Act No. 627/2004 Sb. On the European Company, as subsequently amended.

Council Regulation (EC) No. 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) and the Council Directive 2003/72/EC, supplementing the Statute for a European Cooperative Society with regard to the Involvement of Employees, established the legal form of the cooperative society on the level of EC law (i.e., European Co-operative Society, with the official Czech name of „Evropské družstevní společenství"). ECS is meant to become an important part of the European context. It is an autonomous group of people who voluntarily combine for economic, social or cultural purposes and who try to achieve a common goal. The national regulation of the existence of this European legal person is to be found in the Act No. 307/2006 Sb., on the European Cooperative Society, as subsequently amended.

Other "European" kinds of legal persons, such as the European Association, the European Foundation and the European Mutual Society are currently under preparation. Their

incorporation within EC law has been, for the time being, postponed.

6.6. NON PROFIT ORGANISATIONS – GENERAL INFORMATION

The sections below will focus only on civil legal persons, i.e., on private law legal persons founded for some other purpose than the generation of profits. Although there is a wide variety of forms available to subjects founded for some other purpose than profit, not all are applicable in the non-profit sphere.

Under the currently valid Czech law, the following legal persons may be founded for some other purpose than for the purpose of business: associations and other subjects, including trade unions, subject to the provisions of the Act No. 83/1990 Coll. on Association of Citizens, political parties and movements, churches and religious companies, foundations, endowment funds and public benefit institutions. The Commercial Code further provides that a co-operative, a limited liability company and a joint stock company may be also founded for some other purpose than business; as well as interest groups of legal persons regulated in Section 22(f) and subsequent sections of the Civil Code.

The core of the civil society is, undoubtedly, formed by associations. As regards their character, they are private law corporations representing one of the most fundamental and essential components of the non-profit sector. They are associations of people who, while sharing a common interest, find it suitable, useful and practical to associate and together perform activities aimed at achieving such a common goal (purpose). The legal framework is provided mainly by the *Act No. 83/1990 Coll.. on Association of Citizens*.

Some crucial and fundamental legal regulations concerning subjects of the non-profit sector are also contained in the *Act No. 227/1997 Coll. on Foundations and Endowment Funds*, which provides for the legal regime of foundation subjects for the entire period of their existence. The basis of such subjects is formed by independent property vested with legal personality; the use of such property is possible only in connection with some purpose – it has to serve the fulfilment of publicly beneficial goals. Foundations and endowment funds, more than other subjects of law, are characterised by the private law requirement of freedom of implementation of interests held by private individuals on the one hand and the public interest of retaining the use of the foundation's property for the publicly beneficial purpose. This is

related with the significant mandatory nature of the Act on Foundations and Endowment funds.

A special legal person is the *public benefit institution*, defined under the *Act No. 248/1995 Coll. on Public Benefit Institutions.* This legal entity is established for the purpose of providing services for the benefit of the public. Although it is not immediately clear from its name, this legal person also has the character of a foundation with an initial property contribution.

The Czech expression for a public benefit institution – "obecně prospěšná společnost" – uses the word "corporation", which is misleading: this is not a corporation but really an 'institution' of private law, theoretically classified among legal persons with a property base. The name was modified by an unfortunate amendment during the reading of this Act in the Czech Parliament. The strict translation of the Czech term "obecně prospěšná společnost" into English is "a public benefit corporation" but I prefer to translate this term as "a public benefit institution", because the term "corporation" seems to imply that this legal form is based on association of persons (members). But this legal person is based on association of property and belongs to the category of foundations (alongside foundations and endowment funds).

A special hybrid category consists of contributory organisations, whose legal basis is provided by budgetary rules of the state, regions and municipalities. Because of the area of their activity, they are often subsumed under the non-profit sector, but they differ from other subjects in the non-profit sector by both their connection to public budgets and their overall conception. In the current law, they exist as relics of the past.