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Introduction to The Czech Law

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1 THE BASICS OF EUROPEAN UNION LAW

Basic principles of Czech Law are described in the following chapters. In addition to its legal system, the EU legal system plays a significant role in the Czech environment. The first chapter thus provides a basic overview of EU law.

The equivalent to the "EU Law" term is the "European Union Law" as opposed to the "European Law" term, which (although it is used for the EU) can be understood within the context of the whole continent called Europe and not only for members of the EU.

1.1 The relationship between the European Union Law and the National Law

There are two legal systems existing side by side in each Member State of the EU. Both the EU institutions and Member States' authorities thus participate in implementing and enforcing the EU law, which generates conflicts of interests between the norms of the EU and national norms.

The priority of legal norms of the EU comes into consideration only with respect to the legal provisions of the EU law that have direct impact in Member States and only in the cases of a conflict between a particular EU law norm and a specific norm of the national law of a Member State. This hence does not imply any superiority of the system of law of the EU over the whole system of law of a Member State.

1.2 The Supranational Organisation of the European Union and its Competences

To understand the system, sources and functioning of the EU law and the role of the Czech Republic within it, it is necessary to see the differences between an international and supranational organisation.

International organisation is a relatively fixed association of states established for a specific purpose by an international treaty, i.e. an agreement among its member states. An international organisation does not have any powers vested in it towards its member states. Hence, the "only" outcome of its activities are further international treaties and agreements, which are legally binding for those member states that give their consent to them. An example of such an international organisation is the North Atlantic Treaty Organisation (NATO), the decisions of which are adopted by unanimous agreement (the rule of consensus) of all of its members, which requires previous extensive consultations.

Whereas supranational organisations have their own sovereignty of a higher order. As in the case of international organisations, member states remain the original bearers of sovereignty. These states also conclude an international agreement among themselves, but they voluntarily decided to permanently delegate a specific and exactly defined part of their sovereignty to this supranational organisation so that they could achieve their common goals. This supranational organisation will then exercise the exactly defined part of sovereignty, which however means that decisions in the areas where sovereignty was delegated to the supranational organisation will no longer be taken by its individual member states (because they relinquished their sovereignty) but by the supranational organisation through its authorities and institutions. This concept results in a situation that, in such areas, the supranational organisation can take decisions against the will of any of its member states in individual cases. From this point of view, bodies of a supranational organisation are similar to the bodies of a federation. However, compared with a supranational organisation, a federal structure of a certain area shows two significant differences. From the point of view of the international law, federation is seen as one state and has a uniform foreign and security policy.

The European Union as a supranational organisation is some kind of an intermediate level between an international organisation and a federative state. The reason and purpose of the supranationality of the Union is the achieving of common goals, which were predominantly of a security nature after the World War II, and subsequently of the economic, civic and human-rights nature. Institutions of the EU have the competences that were given to them by Member States on the basis of ratification of the international treaties establishing the European Communities and the European Union, termed as the founding treaties. The areas that were delegated to the EU competence are called the EU's supranational agenda and are divided into the exclusive, shared, and supporting (coordinating) competences. This distribution is important from the point of legislative activities of the EU institutions.

Within the exclusive competences (for example the customs union or monetary policy for the Member States using the euro), only Union is allowed to create and adopt legally binding acts. Member States are allowed to do so only in case they were given competence to that or when they implement the Union's acts.

In case of shared competences, Member States create and adopt legally binding acts insofar as the EU has not done it

yet. This type of the shared competences is also called competitive, and consumer protection can be taken as an example, where the EU has issued legal acts only in some cases (e.g. trading on the internet). This concept is governed by the theory of occupied fields, in this case, the fields occupied by the European Union. This means that the legislation governing the other areas of the consumer security falls under the competence of Member States until the European Union passes its own regulations. Another type of shared competences is shared parallel competences. The target of the EU in this case is to undertake activities, mainly to define and implement programmes, but the exercising of this competence must not prevent Member States from exercising their own competences. Typical examples are space exploration and humanitarian aid.

The last group of the EU's competences consists of supporting, coordinating and supplementary competences, where Member States have not delegated any powers to the European Union in fact. In this case, the activity of the European Union lies in adopting regulations of low intensity that may not harmonize the national legislation of Member States. Examples are culture, education, or protection of health.

The defining of the EU competences is implicit. It means, that they cover not only areas defined in the founding treaties (explicitly defined competences), but also activities that are necessary for achieving the targets contained in these treaties.

Member States however retain their competences in many other areas. As for the Common Foreign and Security Policy (CFSP) that is a special case within the competences of Member States. It stands to reason and is beneficial that this policy is coordinated at the transnational level, but this policy defines the state as such, and therefore it is a very sensitive area for Member States and they do not want to delegate this competence to the supranational level of the EU. To delegate this competence would mean another step towards the federation. Nevertheless, Member States do cooperate in this area within the framework of the EU's international agenda, for the reasons specified above. This is a guarantee for Member States that the EU authorities will not make decisions against their will, which in practice means unanimity in decision-making.

1.3 Division of EU Law

EU law can be broken down from the point of view of the hierarchy of standards where it is possible to define a kind of "EU Constitution", consisting of founding and revision treaties. Other legislation that must be in line with the "constitution".

In terms of content, EU law is divided into institutional law, which deals with the organizational structure, composition and powers of individual institutions, the relations between them and the member countries. Substantive law regulates EU activities within policies agreed in the Treaties. Procedural law includes the organization of courts in the EU, the enforcement of European law, the protection against the activities of the institutions and the various types of proceedings before the courts. This subdivision can then be interpreted with other essential facts of EU law.

1.3.1 Institutional Law

EU Member States remain independent sovereign states, but they unite their sovereignty, i.e. delegate some of their decision-making powers to EU institutions. Decisions on specific issues of common interest are then held at EU level.

The EU has seven major institutions and other subsidiary bodies with consultative functions.

The top political institution is the European Council. It defines the EU's policy guidelines and sets its priorities. The European Council has no legislative function. It is something like a board of directors that sets goals and leaves other institutions work on details.

The EU's decision-making process is shared by the following three main institutions. The European Parliament, representing and directly elected by EU citizens. The Council, representing each Member State, and the European Commission, which seeks to defend the interests of the European Union as a whole.

This "institutional triangle" creates policies and laws that apply throughout the EU. It therefore has a legislative function. In principle, it is the Commission, who is proposing new legislative acts, Parliament and the Council then approve them. The Commission and the Member States then apply the adopted legislative acts and the Commission enforces them.

The role of this triangle can be explained by analogy with the division of power in the Member States. Here are some other important pieces of information to understand the functioning of the EU and the approval of its legal acts

	It represents	Analogy in the Czech republic	Members	Voting procedures (in most cases)
European council	Member states		Heads of states of government	Consensus
European commission	EU	Government	Commissioners (28)	Simple majority
European parliament	EU citizens	Lower chamber (of Deputies)	Members of the EP (MEP)	Simple or absolute majority
Council (of the EU, ministers, consilium)	Governments of member states	Upper chamber (Senate)	Ministers of member states	Qualified majority voting/unanimously in sensitive areas

A very important role is played by the Court of Justice of the European Union, which ensures respect for the law in the interpretation and application of the Treaties. With its help, EU law should be used uniformly across the EU.

The European Central Bank is responsible for European monetary policy. The Court of Auditors controls the funding of the European Union's activities.

1.3.2 Substantive Law

Substantive law is defined by the policies that the EU is dealing with. With the exception of the Common Foreign and Security Policy, these are policies that have been transferred to some kind of EU competence. In addition to this division into the international and transnational agenda, substantive law can still be divided into internal and external policies. Part Three of the Treaty on the Functioning of the European Union governs the Union's internal policies and activities.

Internal policies and actions	
Internal market	Public health
Free movement of goods	Consumer protection
Agriculture and fisheries	Trans-European networks
Free movement of persons, services and capital	Industry
Area of freedom, security and justice	Economic, social and territorial cohesion
Transport	Research and technological development and space
Common rules on competition, taxation and approximation of laws	Environment
Economic and monetary policy	Energy
Employment	Tourism
Social policy	Civil protection

The European social fund	Administrative co-operation
Education, vocational training, youth and sport	

The so-called the Union's external action is unified primarily by defining common objectives.

External policies and actions	
Common Foreign and Security Policy	Common Foreign and Security Policy
Common commercial policy	Common commercial policy
Development cooperation	Development cooperation
Economic, financial and technical cooperation	Economic, financial and technical cooperation

1.3.3 Procedural Law

The Court of Justice has two courts. The Court of Justice, which decides on the most important cases and The General Court, where all other cases are dealt with at first instance. An appeal may be brought before the Court of Justice only in so far as it concerns questions of law.

The decision-making process of the courts, in the form of judgments, is called case law. In the continental law system (i.e. in the Czech Republic), the court decision is an individual act, is applied to a specific example. On the other hand, in the Anglo-American system of law, a judgment is a normative act (precedent) that is binding on lower courts. The system of European Union law stands out as a whole outside both systems. The jurisprudence of the Court of Justice of the EU is a binding and authoritative interpretation for all, which, of course, does not follow from its precedent nature (which it does not have), but from the fact that the Member States have a duty to apply EU law correctly.

The Court of Justice of the European Union ensures respect for the law in interpreting and implementing treaties. It uses interpretations with regard to the meaning and purpose of the founding contracts, so-called teleological interpretation. EU treaties give the EU institutions powers to create secondary law, so the interpretation and implementation of treaties includes the interpretation and implementation of secondary law.

1.3.3.1 Enforcement of EU Law

EU law should therefore be interpreted and applied uniformly, irrespective of the implementing authority and whether it is a Union body or a Member State authority. If this is not the case, EU law is enforced, in some cases by the Commission and the Court of Justice of the European Union, and in some cases by the authorities and courts of the Member States. In the first case, this is the case if:

- The Member State has breached the obligation laid down by EU law, most often has not implemented the Directive or failed to notify the European Commission of the implementation of the Directive.
- The EU institution or body has infringed EU law.
- An individual (legal person) has infringed the competition rules provided by EU law

On the contrary, the authorities and courts of the Member States enforce Union law in the following cases:

- The Member State has breached the obligation laid down by EU law in relation to a particular individual. Most often, this is a measure of a state authority against an individual that is not in line with EU law. Therefore, a Member State is responsible for a breach not only against the EU that has established it (see previous paragraph) but also against the person whose rights it violated.
- An individual has infringed EU law in a non-competition area, including violation of another individual.

1.3.3.2 Individual Types of Proceedings before the EU Court of Justice

12 different types of actions may be brought before the Court. The four most used ones can be divided into two main groups. The first of these are the so-called preliminary questions which are used when the national court has doubts

about EU law. This procedure will enable the Court to request a ruling on the interpretation or validity of the EU secondary legislation. The second group is so-called direct actions where an individual, a company, a Member State or an EU institution / body brings an action against an EU institution or a Member State. The most common direct actions are:

- Actions for failure to fulfil obligations are submitted by the Commission to the Court of Justice where a Member State has failed to fulfil its obligations under EU law.
- Actions for annulment of a regulation, directive or decision against the EP and / or the Council
- Actions for failure to act by the EU institution

As has been stated above, the Court of Justice is dealing with the most serious cases, namely the Commission's action against the Member States and the preliminary ruling procedure. The remainder of the cases shall be decided by the Tribunal as the first instance court.

1.4 The Sources of the EU Law and their Creation

The sources of the EU law include primary, secondary, or tertiary legal acts, international treaties and the general principles defined by the EU Court of Justice.

1.4.1 Primary Law

The Primary law contains the founding (i.e. international) treaties, including protocols and annexes, the Accession Treaty of the Member States entering the EU, and the Charter of Fundamental Rights of the EU.

In the 1950s, the founding treaties of the European Communities were concluded among six Member States. The other Member States gradually joined the Community (or the EU) on the basis of the accession treaties. The original founding treaties are The European Coal and Steel Community (ECSC, 1952 - 2002), The European Economic Community (EEC, 1958, renamed to the Treaty on the Functioning of the European Union), and The European Atomic Energy Community (EAEC, 1958). These contracts have been revised significantly for several times. The Maastricht Treaty (1993) and the Lisbon Treaty (2009) can be generally considered as the most important among them. The Maastricht Treaty includes the Treaty on European Union, which belongs to the founding treaties. This treaty, inter alia, gave rise to the term of the European Union and introduced a pillar structure of the law, i.e. division into the international and supranational agenda. However, the European Union had not obtained its legal personality until the Lisbon Treaty was ratified. The applicable primary law is therefore currently enshrined in the three founding treaties in the consolidated (revised) version in the Treaty on European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), and The European Atomic Energy Community (EAEC). These contracts contain the total of 7 annexes and 73 protocols.

The accession treaties themselves, concluded among the EU Member States (formerly the Community) and newly entering states, are very concise. For example, in the event of a major EU enlargement in 2004, the Accession Treaty contains, for ten new Member States, only three articles. Full details are set out in the Act of Accession, which is its integral part, and together with its annexes represents, on the contrary, a very large document.

The Charter of Fundamental Rights became a part of the primary law after the Lisbon Treaty revision.

1.4.2 Secondary Law

While the primary law includes the legal acts of Member States (international treaties), the term of secondary law refers to the legal acts issued by the institutions of the European Union. Regulations, directives and decisions are the legally binding acts of the secondary law.

Regulations are generally binding at both the EU and the national level. They are used primarily if there is necessity to establish a direct EU legislation common to all Member States, such as the EU Competition Law, Social Security for Migrant Workers, etc.

Member States are primarily bound by legal acts called directives. They help primarily to the convergence of the content of national legislation so as to ensure a certain standard, for example the consumer protection, taxation, and labour law. Directives determine the result to be achieved by the integration into national legislations of Member States.

A directive contains the deadline for transposition, which means transferring its content into national legislation and the deadline for implementation, which is, de facto, ensuring respect for it. If a directive has not been implemented properly

and on time, the Member State in default may be sanctioned – by fines imposed on it in the final stage.

Decisions in areas such as competition, oblige Member States but also other entities (e.g. EU institutions). If there are specified those to whom the decision is addressed, it is binding only on them.

Recommendations and opinions belong to legal acts as well. Recommendations can be binding on their addressees, but not enforceable. Opinions are not legally binding. Neither recommendations nor opinions are the secondary law and therefore they are not the source of the law.

Legal acts, unlike the acts contained in the legal system of the Czech Republic, must contain a statement of reasons and must refer to any proposals, initiatives, recommendations, requests or opinions required by the establishing treaties. For the legal act to be valid, it must be appropriately approved and published in the Official Journal of the European Union. The European Union law, unlike the Czech law, does not distinguish the validity and applicability of the act.

1.4.3 Tertiary Law

Regulations, directives and decisions are legally binding acts of the tertiary law as well. Unlike the secondary legislation, they are referred to as non-legislative acts. Whether it is a legislative or non-legislative act, it can be seen in the heading of the given legal act published in the Official Journal of the European Union or whether the European Parliament participated in some form in the approving process. If not, it is a non-legislative act that is accepted by either the Commission or the Council.

That includes, in particular, the Commission acts. The power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act may be delegated to the Commission. The objective, content, scope and duration of the delegation of powers are defined by the legislative act. The act must contain the words of “delegated acts” in its title.

The Commission acts that help to carry out acts of the secondary law where the act is implemented at the EU level are the other case in point. These legal acts have the description of "implementing" attached to their title and are analogous to the Czech regulations.

The EU law also recognizes non- legislative acts of the Council. These are not issued by the Commission but by the Council without Parliament's involvement, for example the Council Decision concerning agricultural quotas.

1.4.4 External (international) EU Treaties

The binding nature of these treaties must be respected even in the creation of the secondary legislation and therefore they override the secondary law.

A third state/ third states or international institutions on one hand and the European Union on the other hand are the parties to such a treaty. Currently, there are hundreds of such agreements regulating specific questions of the Union´s external action. The most important among them is the common commercial policy.

The EU may conclude international treaties not only if the given authority is defined in the primary law (explicitly defined competences of the EU), but also if the given authority is necessary to achieve the objectives set by the Treaties (implicit definition of the EU’s competence). In some cases, the Union has exclusive competence to conclude such a treaty (Article 3 of TFEU), in other cases, the European Union has shared competences.

1.4.5 General Principles of the EU Law

General principles are at the same hierarchical level as the primary legislation and prevail over the secondary legislation.

General principles work as unwritten legal sources which are formulated by the Court of Justice of the European Union in its case-law. However, a judge of the Court of Justice does not constitute them, he/she only finds and applies them. Consequently, the principles might be codified and specified in a written legal source.

The general principles might be found in:

a) General (axiomatic) principles inherent to every legal order

These are the principles that do not result from a specific legal order but from the fact the European Union enforces compliance with the EU legal standards, for example “Lex specialis derogat legi generali – A special law exempts from the general. “

b) General principles relating to the status of individuals

These principles can be found in some (not necessarily all) systems of law of Member States. The most important of these are fundamental human rights. Since 2009, however, there has been one more, “stronger” source, the Charter of Fundamental Rights of the European Union. On that account, the Court of Justice usually interprets human rights pursuant to this Charter.

Other examples include the principle of equal treatment, the principle of legal certainty, including for example the principle of clarity of the rules and the principle of retro-activity, and the right to due process.

c) System-based (structural) principles of the European Union law

These principles relate to the relationship between Member States and the European Union and its functioning and thus are based on the Treaties, where they may or may not be explicitly stated. They are the principles concerning the powers of the European Union in relation to Member States, it means the principle of conferral of powers, which includes the principle of subsidiarity and proportionality.

The principle of subsidiarity introduced into the EU law by the Maastricht Treaty means that every public task should be solved at the level where their fulfilment can be sufficiently achieved, i.e. at local, regional, Member State and finally EU levels.

The principle of proportionality means that the European Union´s action does not go beyond what is necessary to achieve the objectives. An example of its violation may be the issuance of a regulation rather than a directive (as a less strict legislation) where a directive is sufficient to achieve the objectives.

Other subtypes of the principles for the application of European Union law are the principle of primacy of the European Union law over national law, the principle of direct effect of the European Union law and the principle of a Member State’s liability for breaching the European Union law towards an individual. The last group then comprises the principles related to the content of the EU law, for example a ban on discrimination against people based on nationality.

d) Sectoral principles

In addition to the above mentioned system-wide general principles, there are sectoral principles. These principles only refer to certain sectors, for example the “polluter pays” principle in the environmental field.

2 FOUNDATIONS OF LEGAL THEORY

2.1 The Concept of Law and Its Structure

Every country has its rule of law, which forms a comprehensive collection of all its legal standards. The word law in itself can have multiple meanings. We distinguish between law in an **objective sense**, which is understood to mean a set of legal standards representing generally binding rules of conduct established in a recognized country (or an international community), and law in a **subjective sense**, i.e., subjective law, which is understood to mean an entitlement to conduct oneself in a certain manner, which objective law guarantees to legal subjects.

From a different point of view, law can be divided into **positive** law and **natural** law. Positive law is taken to mean valid law stipulated or rather created by a country, while natural law is seen as a set of principles and rights which are created and exist independently of the will of countries, but which a country guarantees and protects.

Another way to classify law, is by dividing it into **private** law and **public** law, where such a division is particularly characteristic of countries with a continental type of legal culture (see below). The following features are especially characteristic of **private** law:

- extensive application of **default rules** (that is, rules which can be overridden by agreement between parties to a contract)
- **contractual autonomy** of entities
- it mainly concerns civil law and labour law

Public law is particularly characterised by the following features:

- the exclusive application of **mandatory rules**, that is, laws which parties to a contract cannot override
- as a rule, the **status** of legal entities is **uneven**
- it especially concerns constitutional, administrative, criminal and financial law, social security law and procedural law

Another way of classifying law is classification according to **individual fields** of law. Using this means of classification, law can be divided down into:

- constitutional law
- administrative (including financial law, social security law etc.)
- criminal law
- civil law (including family law, labour law, and so on

Law can be further divided into **substantive** law and **procedural** law. Substantive law is a set of legal standards containing subjective **rights and responsibilities**, which are aimed at achieving the purpose expected by law. Substantive law covers, for example, the modification of a lease agreement, i.e., its parties and subject matter, the rights and obligations of the parties, termination of the agreement etc. Procedural law is understood as a set of legal standards governing the **procedure of public authorities** in proceedings before courts and administrative bodies. It concerns, for example, adjustments to the commencement of civil proceedings, the requisites of a lawsuit, court proceedings, appeals etc.

We can also divide law into **national** law and **international** law. International law governs relationships between sovereign states and organizations created by such states. In exceptional cases, an individual person can be subject to international law. The primary sources of international law are normative treaties and partially international customs. National law forms a set of legal standards applicable within the territory of a sovereign state.

2.2 Legal Standards

Legal standards make up the **rules of law** of any country. Legal standards are generally binding rules of human conduct established or recognized by a state. A breach of such standards is sanctioned by the state.

One of the criteria for classifying standards is their division into **default** and **mandatory** rules. A default rule is a rule which can be **overridden** by an agreement between parties. The law therefore only establishes such rules as subsidiary (i.e. auxiliary) rules in case the parties do not agree otherwise. Default rules are typically found in **private** law (e.g. in civil law rules). A mandatory rule is a rule of conduct which parties **cannot** agree to **override**. They do not, therefore, leave any room for the addressee's will. These rules typically appear in **public** law (e.g. in constitutional, administrative, criminal

and procedural law).

2.3 Sources of Law

Sources of law in the Czech Republic are a set of sources of applicable law in the Czech Republic, where it must be noted that the rule of law of the Czech Republic belongs to the continental type of legal culture (see below). The sources of law in the Czech Republic are as follows:

- constitutional acts (their adoption is relatively rigid, the Constitution requires a supermajority for an act to be passed – see below)
- acts
- statutory measures of the Senate
- EU law
- international treaties, if Parliament has given its consent to their ratification
- findings of the Constitutional Court which repeal an act, subordinate legislation, or parts thereof
- decisions of the President of the Republic (amnesty)
- government regulations (for implementing a law)
- decrees of ministries and other central bodies of state administration, and municipal and regional regulations in delegated powers
- municipal and regional generally binding decrees in separate powers
- the decrees of the President of the Czechoslovak Republic, 1940-1945

2.4 Types of Legal Cultures

Legal doctrine distinguishes major **legal systems** containing several rules of law, which are characterised by identical features in the ways in which laws are created, interpreted and applied:

Continental type of legal culture – this type of legal culture was created under the influence of the traditions of Roman law and natural law. It is typical for the rule of law of countries in continental Europe and in the majority of countries colonized by continental European states in the past. The basic source of this type of legal culture is written law (statutes and codices). It is also characteristically divided into private and public law.

The Anglo-American type of legal culture – common law, which is typical for Great Britain, the USA, Canada, Australia, New Zealand and others. A characteristic feature of this type of legal culture is the diversity of sources of law. Sources of law include both written law and judicial precedents, while in Great Britain there is also legal custom and legal literature. The specified type of legal culture does not divide law into private and public law.

Islamic Type of legal culture – characterised by a close connection with the Islamic religion and a blending of rules of law with religious and ethical rules. Formal sources of Islamic law are the Quran, the Sunnah (traditions on the sayings and deeds of the prophet Muhammad), ijma (legal principles) and quiyas (analogies).

3 CONSTITUTIONAL LAW

Constitutional law in the Czech Republic consists of **constitutional acts**. Constitutional acts have the highest legal force and **special rules** exist for their adoption (a three-fifths majority of all deputies and a three-fifths majority of all senators present is required in order for a constitutional act to be passed). Constitutional acts make up the **constitutional order**, which, in accordance with Article 112 of the constitution, consists of:

- The **Constitution**
- The Charter of Fundamental Rights and Freedoms
- Constitutional acts adopted under the Constitution
- Constitutional acts defining the Czech Republic's borders
- Constitutional acts of the Czech National Council accepted after 6 June 1992

3.1 The Constitution of the Czech Republic

The Constitution of the Czech Republic constitutes Constitutional Act No. 1/1993 Coll.,[1] which was adopted by the Czech National Council on 16 December 1992. The constitution, like the Charter, entered into effect on the date on which the Czech Republic was founded, that is, **1 January 1993**. The constitution can only be supplemented or **changed by way of constitutional acts**.

The Constitution is divided into:

- a preamble
- 8 sections, which are further divided into 113 articles

The titles of the Constitution's individual sections are:

- Fundamental Provisions
- Legislative Power
- Executive Power
- Judicial Power
- The Supreme Auditing Office
- The Czech National Bank
- Territorial Self-Government
- Transitional and Final Provisions

3.1.1 Fundamental Provisions

The Constitution of the Czech Republic firstly establishes **the name** of our state, which is the Czech Republic. This is the country's official name. It further stipulates the system of government, which is a republic. The Czech Republic is further characterised as **a sovereign, unitary and democratic state governed by rule of law, founded on respect for the rights and freedoms of humans and citizens**. According to the constitution, all state authority emanates from the people, who exercise it through **legislative, executive, and judicial bodies** (by way of elections into the Legislature or electing the President of the Republic). In cases where a constitutional act so stipulates, the people may exercise state authority directly. Here, the constitution is referring to referendums.

The constitution also declares **the Charter of Fundamental Rights and Freedoms** a part of the constitutional order of the Czech Republic and stipulates that fundamental human rights and freedoms shall enjoy the protection of judicial bodies.

The constitution also states that **any changes in the essential requirements for a democratic state governed by the rule of law are impermissible**. The Czech Republic's commitment to international undertakings is also established by the constitution. In this regard, it states that promulgated international treaties, to the ratification of which Parliament has

[1] *Act No. 1/1993 Coll., the Constitution of the Czech Republic, as amended.*

given its consent and by which the Czech Republic is bound, form a part of the legal order. If an international treaty stipulates something other than that which a statute provides, the international treaty shall apply. An international treaty does not, therefore, have greater legal force than the law, but in cases where it conflicts with the law, it shall have primacy, i.e., the treaty shall be applied.

The constitution further stipulates that **the territory of the Czech Republic** forms an indivisible whole, the borders of which may only be altered by a constitutional act. It goes on to stipulate that the capital city of the Czech Republic is Prague, and establishes the small and large state emblem, the state colours, the state flag, the flag of the President of the Republic, the state seal, and the national anthem as the state symbols of the Czech Republic.

3.1.2 Legislative Power

The legislative power of the Czech Republic is vested in **Parliament**, which consists of two chambers, **the Chamber of Deputies and the Senate**. The right to vote, that is, the right to elect representatives to both chambers of Parliament is granted to every citizen of the Czech Republic who has reached 18 years of age.

The Chamber of Deputies is made up of **200 Deputies**, who are elected to **a four-year** term of office. Elections to the Chamber of Deputies shall be held by secret ballot on the basis of **a universal, equal, and direct right to vote**, according to the principle of proportional representation. Any citizen of the Czech Republic who has the right to vote and has reached **the age of 21** is eligible for election to the Chamber of Deputies (has the right to stand for election).

The Senate is made up of **81 Senators**, who are elected to **a six-year** term of office. Elections for **one-third** of the Senators are held every two years. Elections to the Senate shall be held by secret ballot on the basis of **a universal, equal, and direct right to vote**, according to the principle of majority rule. Any citizen of the Czech Republic who has the right to vote and has reached **40 years** of age is eligible for election to the Senate.

Deputies and Senators earn their mandate by their **election**. No-one may be a member of both chambers of Parliament at the same time. The office of a Deputy or Senator is incompatible with holding the office of the President of the Republic, the office of a judge, or any other offices which are designated by law. Deputies and Senators perform their duties personally in accordance with their oath of office and are not bound by anyone's instructions (i.e. the imperative mandate does not exist in the Czech Republic).

Deputies and Senators possess so-called parliamentary or senatorial **immunity**. This means that no legal recourse shall be taken against Deputies or Senators for their votes in the Chamber of Deputies or the Senate respectively, or in the bodies thereof. Deputies and Senators may not be criminally prosecuted for speeches in the Chamber of Deputies or the Senate respectively, or in the bodies thereof. However, Deputies and Senators are subject to the disciplinary authority of the chamber of which they are a member. Deputies and Senators may not be criminally prosecuted without the consent of the chamber of which they are a member. If that chamber withholds its consent, criminal prosecution shall be foreclosed for the duration of their mandate. Deputies and Senators may only be arrested if they are apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately announce such an arrest to the chairperson of the chamber of which the detainee is a member.

Sessions of the Chamber of Deputies shall be convened by the President of the Republic within 30 days of parliamentary elections; sessions are **continuous**, may not be suspended and shall last for the entire electoral term of the Chamber. Individual plenary sessions of the Chamber of Deputies are usually convened by the Speaker. Sessions of the Chamber of Deputies conclude upon the expiration of the electoral term or by its dissolution. The Chamber of Deputies may not be dissolved less than three months before the expiration of its electoral term.

The President of the Republic may dissolve the Chamber of Deputies if:

- the Chamber of Deputies does not adopt a resolution of confidence in a newly appointed government, the Prime Minister of which has been appointed by the President of the Republic based on a proposal of the Speaker of the Chamber of Deputies (see below)
- the Chamber of Deputies fails, within three months, to reach a decision on a draft governmental bill, the consideration of which has seen the government connected to an issue of confidence
- a session of the Chamber of Deputies has been adjourned for a longer period than is permissible
- for a period of more than three months, the Chamber of Deputies has not formed a quorum, even though its session has not been adjourned and it has, during that period, been repeatedly summoned to a meeting

In the specified cases, the President can, though is not obliged to, dissolve the Chamber of Deputies. The President may

also make a different decision or remain inactive. In all cases, however, they should proceed in accordance with constitutional law.

The President of the Republic is **obliged to dissolve** the Chamber of Deputies if the Chamber of Deputies so proposes it by a resolution which has been approved by a three-fifths majority of all Deputies.

Sessions of the Chamber are open to the public. The public may only be excluded under conditions stipulated by law. Both chambers convene separately. A joint session of the Chamber of Deputies and the Senate is only held when the President is sworn in.

The presence of one third of the members of each chamber constitutes a quorum. Unless the constitution states otherwise, the concurrence of a **simple majority** of the Deputies or Senators **present** is required for a resolution in either chamber to be adopted. However, a three-fifths majority of all Deputies and a three-fifths majority of all Senators present is required, for example, for the adoption of a constitutional act or for granting consent to the ratification of an international treaty that transfers proportionate powers to an international organisation or institution.

3.1.2.1 Legislative Process

The legislative process is understood as the process of **adopting laws**. Bills are introduced to the Chamber of Deputies. Bills may be introduced by a Deputy, a group of Deputies, the Senate, the government (the most frequent proposer of bills), or representative bodies of higher self-governing regions. This is known as the right of legislative initiative. Bills on the state budget and the state final account can only be introduced by the government.

The government is entitled to express its views on all bills. If the government does not express its views on a bill within thirty days of its delivery, it shall be deemed to be positively viewed.

After approving a bill, the Chamber of Deputies shall submit it to the Senate without undue delay. The Senate can deal with a bill submitted in this manner in **a number of ways**:

- The Senate shall debate bills and take action on them within thirty days of their submission. The Senate shall resolve to **adopt** the bill.
- If the Senate **rejects** a bill, the Chamber of Deputies shall vote on it again. The bill is adopted if it is approved by an absolute majority of all Deputies.
- The Senate may resolve to **return** the bill to the Chamber of Deputies with amendments. If the Senate returns a bill to the Chamber of Deputies with proposed amendments, the Chamber of Deputies shall vote on the version approved by the Senate. The bill is adopted by its resolution. If the Chamber of Deputies does not approve the version of the bill approved by the Senate, it shall vote again on the version it submitted to the Senate. The bill is adopted if it is approved by an absolute majority of all Deputies. The Chamber of Deputies may not propose amendments while discussing a bill that has been rejected or returned to it.
- The Senate may decide to express its intent **not to deal** with a bill. If the Senate declares its intent not to deal with a bill, it shall be adopted by that declaration.
- If the Senate **does not declare** its intention within a period of thirty days of the submission of a bill by the Chamber of Deputies, it shall be deemed to have adopted the bill.

With the exception of constitutional acts, the Chairperson of the Republic has the right to **return** adopted acts, stating their reasons, within fifteen days of the date of their submission (this is known as a presidential suspensive veto). The Chamber of Deputies shall vote on returned acts **again**. Proposed amendments are not permitted. If the Chamber of Deputies reaffirms its approval of the act by **an absolute majority of all Deputies**, the act shall be promulgated. Otherwise the act shall be deemed not to have been adopted.

Adopted laws shall be **signed** by the Speaker of the Chamber of Deputies, the President of the Republic, and the Prime Minister. In order for a law to be valid, it must be **promulgated** in the Collection of Laws. The moment of promulgation must be distinguished from the **effective** date of a law, i.e., the date from which the law begins to govern relationships within society. The period between the promulgation of a law and its entry into effect is called **vacatio legis**.

If the Chamber of Deputies is dissolved, the Senate shall adopt legislative measures concerning matters which cannot be delayed, and which otherwise would require the adoption of a law.

3.1.3 Executive Power

Executive power in the Czech Republic is exercised by **the President** and **the government**, being considered the highest

authorities of executive power. Executive power in the Czech Republic, however, is hierarchical, with other bodies of executive power including **ministries** and other central government authorities, territorial self-government bodies exercising delegated powers, the police, the public prosecutor's office, cadastral offices, labour offices, the Social Security Administration etc.

3.1.3.1 President of the Republic

The President of the Republic is **the head of state** and is elected in **direct** elections. The President of the Republic is not responsible for the performance of their duties. The President of the Republic assumes their functions upon taking the oath of office. The President of the Republic's term of office lasts for **five years** and begins on the day the oath of office is taken. The election of the President shall be held by secret ballot on the basis of a universal, equal, and direct right to vote. Every Czech citizen who has reached the age of 18 is eligible to vote. The election of the President is announced by the President of the Senate. However, should the office of the President of the Senate be vacant, the election of the President shall be announced by the Speaker of the Chamber of Deputies.

Any citizen eligible for election to the Senate, i.e., a citizen who has reached **the age of 40**, may be elected President. No-one may be elected more than twice in succession. The President of the Republic shall take the oath of office administered by the President of the Senate at a joint session of both chambers.

The President of the Republic possesses **the authority**:

- to appoint and recall the Prime Minister and other members of the government and to accept their resignations, as well as to recall the government and accept its resignation
- to convene sessions of the Chamber of Deputies
- to dissolve the Chamber of Deputies
- to entrust a government whose resignation they have accepted, or which they have recalled, with the temporary performance of its duties until a new government is appointed
- to appoint Justices of the Constitutional Court, its President and Vice-Presidents
- to appoint from among judges the President and Vice-Presidents of the Supreme Court
- to grant pardons or commute sentences imposed by courts and order that a criminal record be expunged
- to return acts which they have adopted to Parliament, with the exception of constitutional acts
- to sign statutes
- to appoint the President and Vice-President of the Supreme Auditing Office
- to appoint members of the Banking Council of the Czech National Bank

The President shall exercise the above-mentioned powers **without the countersignature of the Prime Minister** or a member of the government authorised by the Prime Minister.

In addition, the President of the Republic:

- represents the state externally
- negotiates and ratifies international treaties; they may delegate the negotiation of international treaties to the government or, with its consent, to individual members thereof
- is the supreme commander of the armed forces
- receives heads of diplomatic missions
- accredits and recalls heads of diplomatic missions
- calls elections to the Chamber of Deputies and the Senate
- commissions and promotes generals
- may grant and award state honours, unless they have empowered another body to do so
- appoints judges
- orders that criminal proceedings not be instituted or, if they have been instituted, that they be discontinued
- has the right to grant amnesty
- also possesses powers which are not explicitly stated in constitutional acts, if a statute so provides

In order to be valid, decisions of the President of the Republic issued in such cases **require the countersignature of the Prime Minister** or a member of the government designated by the Prime Minister. The government is responsible for decisions of the President of the Republic that require the countersignature of the Prime Minister or a member of the government designated by the Prime Minister.

The President of the Republic has the right to take part in meetings of both chambers of Parliament, as well as those of

their boards and commissions. He shall be given the opportunity to speak at any time upon request. In the same way, they have the right to attend meetings of the government.

The President of the Republic has presidential **immunity**. They may not be taken into detention, criminally prosecuted, or prosecuted for a misdemeanor or other administrative offence while in office. With the consent of the Chamber of Deputies, the Senate may lodge a constitutional charge against the President of the Republic with the Constitutional Court in the following cases:

- for **high treason** which is understood to mean actions of the President of the Republic aimed against the sovereignty and integrity of the Republic, as well as against its democratic order. High treason is not a criminal act, but a constitutional delict.
- for **a gross violation of the Constitution** or other segment of the constitutional order

Based on a constitutional charge brought by the Senate, the Constitutional Court may hold that the President shall lose the Presidency and eligibility to regain the office.

For the Senate to admit a proposal for a constitutional charge, the consent of **a three-fifths majority of the senators present** is required. For the Chamber of Deputies to grant its consent to the lodging of a constitutional charge**, a three-fifths majority of all Deputies** is required.

3.1.3.2 Government

The government is the highest body of executive power and consists of **the Prime Minister, deputy prime ministers, and ministers**. It is clear from the above that the President is not a member of the government. The government is responsible to the Chamber of Deputies. The President of the Republic shall appoint the Prime Minister and, based on the Prime Minister's proposal, shall appoint the other members of the government and entrust them with the management of the ministries or other offices.

Within thirty days of its appointment, the government must appear before the Chamber of Deputies and **ask for a vote of confidence**. If the newly appointed government does not receive a vote of confidence from the Chamber of Deputies, the President shall appoint a new Prime Minister (who may even be the previous Prime Minister) and appoint the other members of the government at the proposal of the new Prime Minister. This government shall also appear before the Chamber of Deputies within thirty days of its appointment to ask for a vote of confidence. If this government does not receive a vote of confidence from the Chamber of Deputies either, the President of the Republic shall appoint the Prime Minister based on a proposal by the Chairperson of the Chamber of Deputies.

The government may submit a request for a vote of confidence to the Chamber of Deputies at any time during its term. On the other hand, the Chamber of Deputies may adopt a resolution of **no confidence** in the government. The Chamber of Deputies shall only discuss a proposed resolution of no confidence in the government if it is submitted in writing by at least fifty Deputies. The consent of an absolute majority of all Deputies is required in order to adopt the resolution.

The Prime Minister shall submit their resignation to the President of the Republic. Other members of the government shall submit their resignations to the President of the Republic through the Prime Minister. The government is **obliged to submit its resignation** if:

- the Chamber of Deputies rejects its request for a vote of confidence
- the Chamber of Deputies adopts a resolution of no confidence
- a constituent meeting of a newly elected Chamber of Deputies is held

The government shall make decisions as a body. The consent of **an absolute majority of all** its members is required for the government to adopt a resolution. The Prime Minister shall organise the government's activities, preside over its meetings, act in its name, and perform other duties entrusted to them by this constitution or by other laws. A Deputy Prime Minister or another member of the government so commissioned may act in place of the Prime Minister.

In order to implement a law, and while remaining within its limits, the government is authorised to issue **orders**. Such orders shall be signed by the Prime Minister and the competent cabinet minister. If so empowered by the law, Ministries, other administrative offices and bodies of territorial self-government may, on the basis of and within the limits of the law, issue legislation (known as decrees).

3.1.4 Judicial Power

Judicial power shall be exercised in the name of the Republic by **independent courts**. Judges shall be independent in the performance of their duties. Nobody may threaten their impartiality. Judges may not be removed or transferred to another court against their will (however, judges may be removed for reasons resulting from their disciplinary responsibility). The office of a judge is incompatible with that of the President of the Republic, a Member of Parliament, or any other office in public administration.

The Czech Republic has both **a system** of ordinary courts, which consists of **the Supreme Court, the Supreme Administrative Court, superior, regional and district courts**, as well as **the Constitutional Court**, which **does not belong to the ordinary courts**, but is the judicial body responsible for the protection of constitutionality. The Constitutional Court is composed of 15 Justices appointed for a period of ten years. The judges of the Constitutional Court shall be appointed by the President of the Republic with the consent of the Senate. Any citizen who has an irreproachable character, is eligible for election to the Senate, has a university legal education, and has been active in the legal profession for a minimum of ten years, may be appointed a Judge of the Constitutional Court. A judge of the Constitutional Court assumes their duties upon taking the oath of office administered by the President of the Republic. A judge of the Constitutional Court may only be criminally prosecuted with the consent of the Senate. If the Senate withholds its consent, criminal prosecution shall be foreclosed for the duration of the judge's term of office at the Constitutional Court. Judges of the Constitutional Court may only be arrested if they are apprehended while committing a criminal act or immediately thereafter. The arresting authority must immediately announce such an arrest to the President of the Senate.

The Constitutional Court has **jurisdiction**:

- to annul statutes or individual provisions thereof if they are in conflict with the constitutional order
- to annul other legal enactments or individual provisions thereof if they are in conflict with the constitutional order or a statute
- over constitutional complaints by bodies of a self-governing region against an unlawful encroachment by the state
- over constitutional complaints against final decisions or other encroachments by public authorities upon constitutionally guaranteed fundamental rights and freedoms
- over remedial actions from decisions concerning the certification of the election of a Deputy or a Senator
- to resolve doubts concerning a Deputy or Senator's loss of eligibility to hold office or the incompatibility with holding that office
- over a constitutional charge brought by the Senate against the President of the Republic
- to decide on a petition by the President of the Republic seeking the revocation of a joint resolution of the Chamber of Deputies and the Senate that the President of the Republic is, for serious reasons, incapable of performing their duties
- to decide on measures necessary to implement a decision of an international tribunal which is binding for the Czech Republic, if it cannot be otherwise implemented
- to determine whether a decision to dissolve a political party or other decisions relating to the activities of a political party is or are in conformity with constitutional acts or other laws
- to decide jurisdictional disputes between state bodies and bodies of self-governing regions, unless that power is given by statute to another body
- to decide, before their ratification, whether international treaties which transfer powers of authorities of the Czech Republic to an international organisation or institution, or international treaties which require the consent of both chambers of Parliament in order to be approved conform with the constitutional order. A treaty may not be ratified prior to the Constitutional Court giving judgement.

In making their decisions, judges of the Constitutional Court are only **bound by the constitutional order and the Act on the Constitutional Court.**[2]

Courts are called upon above all to provide protection of rights in a legally prescribed manner. Only a court may decide upon guilt and determine the punishment for a criminal offence. As has already been mentioned above, the court system consists of the Supreme Court, the Supreme Administrative Court, superior courts (in Prague and in Olomouc), regional

[2] *Act No. 182/1993 Coll., on the Constitutional Court, as amended.*

courts (there are 8 in total, which does not correspond to the number of regions as self-governing units), and district courts (in Prague, the term "obvodní soud" is used for a court with the substantive jurisdiction of a district court (okresní soud), while the Municipal Court in Prague has the substantive jurisdiction of a regional court). The Supreme Court, seated in Brno, is the highest judicial body in matters that fall within the jurisdiction of courts, with the exception of matters that fall under the jurisdiction of the Constitutional Court or the Supreme Administrative Court.

Judges are **appointed** to their office for an unlimited term by the President of the Republic. They assume their duties upon taking the oath of office. Any citizen who has an irreproachable character and a university legal education may be appointed a judge. Other qualifications and procedures shall be established by law. The law shall also specify cases which shall be heard by a panel of judges, as well as the composition thereof. All other cases shall be heard by individual judges. When making their decisions, judges are bound by the law and international treaties which form a part of the legal order. They are authorised to judge whether other enactments are in conformity with the law or with such international treaties. Should a court conclude that a statute which should be applied to the resolution of a matter is in conflict with the constitutional order, it shall submit the matter to the Constitutional Court.

The constitution stipulates that all parties to legal proceedings have equal rights before a court, and that proceedings before a court shall be oral and public; exceptions to this principle shall be provided for by law. Verdicts shall always be declared publicly. Similar rights are also stipulated by the Charter.

3.1.5 Supreme Auditing Office

The Supreme Auditing Office is an independent body which:

- performs audits on the management of state property, and
- implements the state budget.

The President of the Republic appoints the President and Vice-President of the Supreme Auditing Office based on a proposal of the Chamber of Deputies. The status, powers, and organisational structure of the Office, as well as other details, are set down in a statute[3].

3.1.6 Czech National Bank

The Czech National Bank is the state's central bank. Its primary purpose is to maintain price stability. Its status and powers, as well as other details, are set down in a statute[4]. Members of the Banking Council of the Czech National Bank are appointed by the President of the Republic.

3.1.7 Territorial Self-Government

The constitution stipulates that the administration of self-governing territorial units is guaranteed in the Czech Republic. The **basic** territorial self-governing units of the Czech Republic are **municipalities**. The higher territorial self-governing units are **regions**. There are 14 regions in the Czech Republic.

Territorial self-governing units are territorial communities of citizens with the right to self-government. Municipalities always form part of a higher self-governing region. Higher self-governing regions may only be created or dissolved by a constitutional act.

Municipalities and higher territorial self-governing regions **exercise both independent and delegated powers**. A particular expression of their independent competence is their own self-rule, where:

- they are independently administered by their representative body. Members of representative bodies are elected by secret ballot on the basis of a universal, equal, and direct right to vote. A representative body's electoral term

[3] *Act No. 166/1993 Coll., on the Supreme Auditing Office, as amended.*

[4] *Act No. 6/1993 Coll., on the Czech National Bank, as amended.*

shall last for four years.
- they are public law corporations which may own property and manage their affairs on the basis of their own budget
- representative bodies may issue generally binding decrees within the limits of their jurisdiction

Representative bodies of municipalities shall have jurisdiction in matters of **self-government**, as long as such matters are not entrusted by law to the representative bodies of higher self-governing regions.

The exercise of state administration may only be delegated to self-governing bodies if permitted by law. In such cases, self-governing territorial units exercise so-called delegated powers. This involves, for example, managing registry offices, population registers, issuing national identity cards and driving licences, activities of Trade Licensing Offices and Building Offices etc.

4 FUNDAMENTAL RIGHTS AND FREEDOMS

The regulation of basic rights and freedoms in the Czech Republic is stipulated in **the Charter of Fundamental Rights and Freedoms** (hereinafter referred to as the "Charter"), which was enacted by a resolution of the praesidium of the Czech National Council of 16 December 1992[5], and which has only been amended once, specifically by the constitutional act of 12 June 1998[6]. The Charter entered into effect on **1 January 1993**, i.e., the date on which the Czech Republic was founded.

Fundamental rights and freedoms are termed **natural rights**, and the state therefore recognises them, guarantees them and provides them with legal protection. Basic rights and freedoms are characterised in Article 1 of the Charter as follows:

- **inherent**
- **inalienable**
- **non-prescriptible**
- **irrepealable**

Basic rights and freedoms, however, are not stipulated in the Charter alone, but also in other documents, particularly in **international treaties**. If an international treaty stipulates something different than the law, then the international treaty shall apply. This does not mean that such an international treaty has greater legal force than the law, but merely that it has **priority of application** in the event that it is inconsistent with the law. Even such a treaty cannot be in conflict with constitutional law. Other documents containing basic rights and freedoms particularly include:

- The Universal Declaration of Human Rights of 1948 (adopted by the UN). This declaration, however, is not legally binding, but has become a basis for all further international treaties and is recognised by the international community as a natural right;
- The International Covenant on Civil and Political Rights of 1966 and the International Covenant on Economic, Social and Cultural Rights, also of 1966 (adopted by the UN).
- The Convention for the Protection of Human Rights and Fundamental Freedoms, including additional protocols, of 1950 (drafted by the Council of Europe – for the sake of completeness, it must be noted that the Council of Europe is an international organisation made up of 47 states and must not be confused with the European Council which is a body of the EU).
- EU primary law, or more precisely, the Charter of Fundamental Rights of the European Union. The Charter of Fundamental Rights of the European Union has been part of EU primary law since 1 December 2009, i.e., since the Treaty of Lisbon entered into force.

4.1 Charter of Fundamental Rights and Freedoms

The Charter of Fundamental Rights and Freedoms has the legal force of a **constitutional act** and is a part of the constitutional order. Although, with some exceptions, rights and freedoms prevail within the Charter, given the fact that every right also implies a responsibility, it is clear that it actually not only stipulates rights, but also corresponding responsibilities, for example, the responsibility not to violate and interfere in the legitimate exercise of the rights of others. Some of the rights stipulated in the Charter are guaranteed to all persons, regardless of whether they are Czech citizens, foreigners or stateless persons, while conversely, some are granted to specific subjects (e.g. only to Czech citizens, foreigners, national minorities, employees, and so on).

4.1.1 Structure of the Charter

[5] *Regulation No. 2/1993 Coll., on promulgation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as amended by Act No. 162/1998 Coll.*

[6] *Act No. 162/1992 Coll. on the competences of the authorities of the Czech Republic in the implementation of Act No. 403/1990 Coll., on the mitigation of the consequences of certain property-related injustices, as amended by Act No. 458/1990 Coll., No. 528/1990 Coll., and No. 137/1991 Coll., as amended.*

4.1.1.1 Preamble

The preamble is a solemn introduction expressing the principles on which the Charter is founded. It is not a normative part, i.e., it does not constitute binding rules of conduct which would apply to an unspecified number of cases of the same kind but refers to ideas and values.

4.1.1.2 Normative Text

This is divided into 6 chapters, sub-divided into 44 articles.

a) **Chapter I. – General Provisions**. The general provisions stipulate the following rights, freedoms and principles:

- **The principal of equality**. The Charter stipulates that all people are free and equal in their dignity and rights
- Their fundamental rights and freedoms are a natural right. Nobody may be deprived of them, nor may they surrender them.
- The principle that the state is founded on **democratic values** and the stipulation that it may not be bound to an exclusive ideology or religious faith.
- **The principle of restricting authority**, where state authority may only be enforced within the bounds of the law.
- The principle of freedom, where everybody may do that which is not prohibited under the law and where nobody can be compelled to do anything that the law does not impose.
- The principle that **duties** may only be imposed on the basis of the law.
- **The principle prohibiting discrimination**. This article guarantees fundamental rights and freedoms are guaranteed to all, regardless of gender, race, colour of skin, language, faith and religion, political or other convictions, national or social origin, membership in a national or ethnic minority, property, birth or other status.

b) **Chapter II. – Human Rights and Fundamental Freedoms**. This chapter is separated into two divisions, one on Fundamental Human Rights and Freedoms and one on Political Rights.

ba) **Fundamental human rights and freedoms**. The specified rights and freedoms include:

- The capacity of every person to have rights, i.e., **legal personality**, which is based on the idea that everyone has the status of a personality recognised by law.
- **Right to life**, where the right to live is guaranteed to everyone. The Charter further stipulates that life is protected even before birth (an ethical standard), and that the death penalty is prohibited.
- Human freedom consisting in the **inviolability** of persons and their privacy, the prohibition of causing psychological and physical suffering, and the protection of personal integrity.
- Prohibition of torture and cruel, inhuman or degrading treatment or punishment.
- **Personal liberty**. This article stipulates no persons may be prosecuted or deprived of their liberty except on grounds and in the manner specified by law. The article further stipulates under which conditions, on what grounds and for how long a person accused of a crime may be arrested and detained.
- **Prohibition of forced labour**, where the Charter further establishes exceptions where labour is not considered to be forced.
- Protection of human dignity, which protects a person's reputation, honour, good name and dignity.
- Protection of **privacy**, under which all persons are entitled to the protection of their privacy and have the right to protection against unauthorised gathering, public disclosure or other misuse of their personal data.
- **Right to own property**. Under this article, each owner's property shall have the same legal content and protection. Inheritance is also guaranteed.
- The principle stating that **expropriation** or other mandatory limitations to property rights are permitted in the public interest, on the basis of law and for compensation. This measure is used very rarely and only when all strict criteria have been met.
- The principle under which taxes and fees can only be levied on the basis of law.
- Protection of dwellings. The term dwelling covers not only a flat or a house, but also, for instance, a room in university halls of residence. The Charter stipulates the conditions under which the specified right may be restricted (for example, a dwelling may be searched in cases permitted by law and carried out in a manner specified by law).
- Business secrets, confidentiality of letters and confidentiality of delivered messages (Article 13). Protection in this case applies not only to letters kept privately or sent by post, but also to messages passed on by telephone, telegraph or another similar device, as well as communications sent via SMS, in private recordings, by e-mail, or

by Facebook chat.

- **Freedom of movement and residence**. Everyone who legitimately resides within the Czech Republic has the right to leave it freely. The Charter further stipulates that every citizen has the right to enter the Czech Republic freely, and that no citizens can be forced to leave their homeland. Aliens can only be expelled in cases specified by law.
- Freedom of thought, conscience and religious conviction, scholarly research and artistic creation. This concerns freedom of expression in intellectual and spiritual spheres. Freedom of scholarly research has been associated with universities since the middle ages.
- Rights to the results of creative intellectual activity.

bb) **Political rights**

- **Freedom of expression and the right to information**. All persons have the right to express their opinion in speech, in writing, in the press, in pictures, or in any other form, as well as to freely seek, receive, and disseminate ideas and information irrespective of the frontiers of the state. Censorship is not permitted. Freedom of expression and the right to seek and disseminate information may be limited by law in the case of measures necessary in a democratic society for protecting the rights and freedoms of others, the security of the state, public security, public health, and morals.
- **Right of petition**. Petitions must be dealt with by public authorities, and the petitioner must receive a reply from the addressed authority within a specified time period.
- Right of peaceful assembly is guaranteed by the Charter. This right may be limited by law in the case of assemblies held in public places, if such limitations concern measures which are necessary in a democratic society in order to protect the rights and freedoms of others, public order, health, morals, property, or the security of the state.
- **Right of association**. Under this article, the right to freely associate with others is guaranteed. Everybody has the right to freely associate together with others in clubs, societies, and other associations. Citizens also have the right to form political parties and movements and to associate within these. Political parties and movements, as well as other associations, are separate from the state.
- **Right to vote**. Under this article, citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives. The right to vote is universal and equal and shall be exercised by secret ballot.
- **Right to resist**. According to this article, citizens have the right to resist anybody who would do away with the democratic order of human rights and fundamental freedoms, established by this Charter, if the actions of constitutional bodies or the effective use of legal means have been frustrated.

c) Chapter III. – Rights of National and Ethnic Minorities

- This principle states that membership of a national or ethnic minority may **not be to** anyone's **detriment**
- Rights of national and ethnic minorities. According to this article, citizens who constitute national or ethnic minorities are guaranteed all-round development, in particular the right, together with other members of their minority, to develop their own culture, the right to disseminate and receive information in their native language, and the right to associate in national associations.

d) Chapter IV. – Economic, Social and Cultural Rights

- The right to free **choice of profession** and training for that profession. The obligation to work however, is not stipulated here.
- Right to engage in enterprise and to pursue other economic activity
- Right to acquire a means of livelihood by work. The State shall provide an adequate level of material security to citizens who are unable, through no fault of their own, to exercise this right.
- Right to associate freely with others for the protection of economic and social interests, which means the right to organise trade unions or employers' associations. This is known as freedom of coalition. Trade unions shall be established independently of the state.
- **Right to strike**. This right does not appertain to certain professions (e.g. judges, public prosecutors, or members of the armed forces and security corps).
- Right of employees to **fair remuneration for their work** and to acceptable work conditions
- Right of women, adolescents, and persons with health problems to **special work conditions**. The specified protection serves to alleviate objectively existing disadvantages among such persons due to physiological, social or medical reasons (such as the prohibition of adolescents to work at night, the prohibition of women to perform certain work etc.).

- Right to **social security** in old age, during periods of incapacity to work, upon the loss of a provider, and in material need.
- Right to health protection and the right of citizens, on the basis of public health insurance, to free health care and medical aids under conditions established by law. Although the Charter only refers to citizens, under ratified international treaties, this right applies to anyone who, although not a Czech national, has a permanent residence in the country.
- **Right to a family and its protection**. This article stipulates a range of rights relating to family, firstly that parenthood and family are under the protection of the law, and that special protection is guaranteed to children and adolescents. Pregnant women are guaranteed special care, protection in employment relationships and adequate health conditions. Children born in or out of wedlock enjoy equal rights.
- **Right to education**. This article also establishes one of the few explicit responsibilities, specifically mandatory school attendance. The article further stipulates the right to a free education.
- Right to **a favourable environment**. Everyone has the right to timely and complete information about the state of the environment and natural resources. No-one, in exercising their rights, may endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent set by a law.
- Right to the fruits of one's creative intellectual activity, which are stipulated, for example, in the Copyright Act.
- Right of access to cultural wealth.

e) Chapter V. – Right to Judicial and Other Legal Protection

- The right of all persons, through the prescribed procedure, **to assert** their rights before an independent and impartial court and, in specified cases, before another body.
- The right of any person who claims that their rights have been curtailed by a decision of a public administrative authority, **to turn to a court** to have the legality of such a decision reviewed. This particularly concerns a review within the scope of the administrative justice system.
- The entitlement of every person to compensation for damage caused by an unlawful decision or incorrect official procedure.
- The right of all persons **to refuse to give testimony** if, in so doing, they would incriminate themselves or persons close to them
- The right of every person to **legal aid** in proceedings before courts, other state bodies, or public administrative authorities, from the very beginning of such proceedings
- **Equality of all parties** to such proceedings
- Right to the service of an **interpreter**. This right is granted to all persons who declare that they do not speak the language in which proceedings are being conducted.
- The principle which states that no persons may be removed from the jurisdiction of their lawful judge. The jurisdiction of courts and the competence of judges shall be provided for by law (for example, the work schedule and the local and substantive jurisdiction of courts).
- The right of all persons to have their case considered in public, without unnecessary delay, and in their presence, as well as to express their opinion on all admitted evidence, i.e., the right to a fair trial. The public may only be excluded in cases specified by law (e.g. from hearings of juvenile cases or for causing a disturbance in the courtroom). Verdicts shall always be declared publicly.
- The principle of **"nulla crimen, nulla poena sine lege"**. In other words, only a law may designate which acts constitute a crime and what penalties, or other detriments to rights or property, may be imposed for committing them.
- The principle under which only a court may decide on guilt and on the punishment for criminal offences.
- **Presumption of innocence**. Under this principle, any person against whom criminal proceedings are brought shall be considered innocent until declared guilty in a court's final judgement of conviction.
- Right of the accused to criminal proceedings. Under this article, accused persons have the right to be given the time and opportunity to prepare a defence and to be able to defend themselves, either pro se or with the assistance of counsel. If an accused person fails to choose counsel, even though required to have one by law, counsel shall be appointed by the court. The law shall set down cases in which the accused is entitled to counsel free of charge (for instance, due to a lack of funds).
- Right of the accused to refuse to give testimony. This right shall not be denied in any manner whatsoever.
- The principle "non bis in idem". No-one may be criminally prosecuted for an act in which they have already been finally convicted or acquitted. This principle shall not preclude the application, in conformity with the law, of

extraordinary procedures of legal redress.

- Prohibition of **retroactivity to the detriment of an offender**. The punishability of an act shall be assessed and penalties imposed in accordance with the law in effect at the time the act is committed. A subsequent law shall be applied if it is more favourable for the offender. This right prohibits the application of ex post facto laws.

f) Chapter VI. – General Provisions

This chapter of the Charter particularly stipulates that the economic, social and cultural rights listed in Article 41(1) of the Charter can only be claimed within the confines of the laws that implement them (e.g. the Civil Code implements Article 32 of the Charter, and so on). Other provisions of the Charter can be invoked directly, without the mediation of the law. Under certain conditions, some fundamental rights can be restricted to a certain extent.

In relation to the Charter, it must be pointed out that Article 4 of the Constitution stipulates that fundamental rights and freedoms are protected by the judiciary. As a rule, protection is provided in civil, criminal or administrative court proceedings (such as a review of an administrative decision). If all means of appeal have been exhausted and protection has not been provided by the courts or public authorities, it is possible to turn to the Constitutional Court, which is the authority for the protection of constitutionality, with a so-called constitutional complaint.

In order to protect fundamental rights and freedoms, the Council of Europe set up **the European Court of Human Rights in Strasbourg**, which was established by the European Convention on Human Rights, more precisely by Protocol No. 11 thereof. For the sake of completeness, it must be added that the European Court of Human Rights cannot be mistaken for the Court of Justice of the European Union, which is seated in Luxembourg and is an institution of the European Union that ensures compliance with the law as interpreted and applied by the EU.

5 PUBLIC ADMINISTRATION

5.1 Forms of Public Administration Activities

Forms of public administration activities include issuing generally binding administrative acts: **regulations and decrees**, issuing internal normative acts (instructions, directives – not generally binding), issuing individual administrative acts and entering into public law contracts, issuing certificates, and other forms, such as registration, documentary, authentication and advisory activities.

Public administration **includes**:

- **state administration** exercised through administrative offices
- **self-administration** exercised through public law corporations, i.e., municipalities, regions and professional chambers
- **other public administration** (territorial, occupational, etc.)

The functions of public administration are:

- **sub-statutory**: under statutes, subjects have the possibility to adopt sub-statutory standards: decrees and regulations
- **executive**: own implementation of statutes and other legislation
- **decretive**: a body issues administrative decisions and generally binding decrees and regulations
- **organisational**: ordinary activities of public authorities

5.2 The State

The state is made up of **public offices and institutions** that consider the public interest. It is empowered with legislative and executive powers and is represented by state administration. In a wider interpretation, it is a collection of central institutions. In a narrower interpretation, it consists of public administration, which is divided into state administration and territorial self-government. State authority may only be asserted in cases and within the bounds provided for by law, and only in a manner prescribed by law.

In public administration, the state is represented by:

- **the government** – the highest body of executive power
- **ministries** – headed by a member of the government: the ministries of finance; foreign affairs; education, youth and sports; labour and social affairs; health; justice; the interior; industry and trade; regional development; agriculture; defence; traffic; the environment; and culture
- **other central administrative offices** – headed by a person appointed by the government (the Czech Statistical Office, State Administration of Land Surveying and Cadastre, Czech Mining Office, Industrial Property Office, State Office for Nuclear Safety, the Securities Commission, National Security Authority, Energy Regulatory Office, and the Office of the Government of the Czech Republic)
- **administrative offices with nationwide authority**
- **specialised** territorial administrative offices – labour offices, tax offices, and police administration

5.3 State Administration

The state administration is involved in the implementation of **executive power**.

The powers of the state administration are carried out by government bodies which are divided:

1) according to the manner of **decision-making and responsibility** for decisions made:

- **collegial** (government) – they make decisions as a body and bear responsibility as a whole
- **monocratic** (ministry)

2) according to the scope of **substantive jurisdiction**

- with **general** jurisdiction
- with **special** jurisdiction (the Ministry of Finance, tax offices)

3) according to the scope of **territorial jurisdiction**

- **central** (ministries, Czech Statistical Office)
- **local** (labour offices)

5.4 Self-Government

The purpose of self-government is for an entity to be able to **autonomously** decide on its own issues and to manage its own affairs according to its needs and in accordance with statutes. Authorities act on behalf of a particular self-governing community.

5.4.1 Territorial Self-Government

The constitution distinguishes two degrees of territorial self-government. Basic territorial self-governing units, which are **municipalities**, and higher territorial administration units, which are **regions**. Both municipalities and regions share the following characteristics:

- a territorial basis (their own demarcated cadastral territory)
- a human basis (the population of a municipality)
- a legal basis (the legal personality of a municipality)
- an economic basis (they own property and manage their affairs based on their own budget)

Municipalities are communities of citizens with the status of a legal person and their own property and territory. They are regulated by Act No. 128/2000 Coll., on municipalities (the establishment of municipalities).

5.4.2 Occupational Self-Government

Occupational Self-Government covers professional chambers such as the Czech Medical Chamber and the Czech Chamber of Commerce.

6 ADMINISTRATIVE LAW

Administrative law is a legal sector regulating a wide range of social relationships that arise in the area of public **administration**. It covers such fields as **education systems, health services, culture, security, internal affairs, environment and social security**. Administrative law is public law, since it protects the public interest and regulates relationships between unequal subjects. Official authority determines the specific content of its implementation and allows for administrative coercion.

Unlike civil law, there are **no fundamental sources** of administrative law to be found. Administrative law is made up of sources of various legal force, where **subordinate legislation**, i.e., government regulations or decrees of ministries or other central bodies of state administration, prevails.

Administrative law can be divided into organisational, substantive and procedural, criminal, general and special law.

Administrative law relationships are those relationships where one of the subjects acts as a holder of public authority of a state or non-state nature. These relationships are **uneven** in nature, where the subject which is not a holder of public authority must submit to the authority of the public body.

6.1 Sources of Administrative Law

The Constitution of the Czech Republic contains the foundations of public administration. Other sources of administrative law include:

- the Act on the establishment of ministries and other central state administration bodies of the Czech Republic **(the Competence Act)**[7]
- **the Act on Municipalities**[8]
- **the Act on the Capital City of Prague**[9]
- **the Act on Elections to Representative Bodies of Municipalities**[10]
- **the Act on Regions**[11]
- **the Code of Administrative Procedure**[12]
- and other documents

Further sources of administrative law are **generally binding decrees and regulations of municipalities**, which are announced by being put on the official notice board and, at the same time, on the electronic official notice board for a period of 15 days. These must be put on the official notice board in order to be valid. As a general rule, they come into effect on the 15th day after being announced. General decrees and regulations of regions take effect on the day they are announced in the District Journal of Statutes.

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[7] *Act No. 2/1996 Coll., on the establishment of ministries and other central state administration bodies of the Czech Republic, as amended.*

[8] *Act No. 128/2000 Coll., on municipalities (the establishment of municipalities), as amended.*

[9] *Act No. 131/2000 Coll., on the capital city of Prague, as amended.*

[10] *Act No. 491/2001 Coll., on elections to representative bodies of municipalities, as amended.*

[11] *Act No. 129/2000 Coll., on regions (the establishment of regions), as amended.*

[12] *Act No. 500/2004 Coll., the Code of Administrative Procedure, as amended.*

7 CIVIL LAW

Civil law is a set of statutes in the field of **property-law relationships, legal relationships, and protection of personality**. It therefore guides us for our entire lives.

Civil law is a part of **private law**, which regulates the mutual rights and obligations of persons.

Private law is particularly characterised by the following **principles**:

- The principle of equality of the parties and the ensuing principle of the autonomy[13] of their will, freedom when entering into contracts, the possibility of entering into a contract other than those specified by law, the choice of form etc.
- The principle that all people are entitled to the protection of their life and health, as well as of their freedom, honour, dignity and privacy
- The principle of protection of the weaker party
- The principle that contracts must be fulfilled (pacta sunt servanda) and that a promise made is binding
- The principle that people cannot be denied anything to which they are legally entitled
- The principle that people may not benefit from unfair or unlawful acts, or benefit from unlawful situations which they have caused or over which they have control
- The principle that everyone is obliged to act fairly

The Civil Code[14] (hereinafter the "CC") has been in effect since 1 January 2014. The scope of the CC is quite extensive– it contains 3,081 provisions, and a wide range of accompanying legislation, which effectively enables its existence and had to be adopted along with it.

An essential provision for the entire CC is Section 1(2), which specifies that rights and obligations established within the CC may be modified by agreement between the parties, unless a statute explicitly states that they cannot be overridden. However, the CC also stipulates that arrangements which are contrary to good morals[15], the public order, or a statute regarding the status of persons, including the right to the protection of their personality, are prohibited. The above-mentioned provision must be borne in mind throughout the regulations of the CC. The opposite rule, however, applies in the case of absolute property rights.

7.1 Persons

The law differentiates between **natural** and **legal** persons. Both natural and legal persons have legal personality, while natural persons are also endowed with legal capacity.

Legal personality is the capacity to have rights and obligations within the bounds of the legal order. Legal capacity is the capacity to acquire rights through one's own legal acts and to assume obligations, i.e., to perform juridical acts. No-one may surrender their legal personality and legal capacity, even in part; doing so will be disregarded.

Every individual (i.e. natural person) has innate natural rights, which may not be alienated or waived. A legal person is an organised body whose legal personality is established or recognised by the law. Within the context of private law, the state is considered to be a legal person. A special statute provides for the manner in which the State makes juridical acts.

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[13] Autonomy is deemed to mean the right of the parties to agree on their rights and obligations and on the content of their mutual commitments.

[14] Act No. 89/2012 Coll., the Civil Code.

[15] Good morals are a set of ethical, generally observed and respected principles, the adherence to which is often also ensured by legal standards so that every act complies with the general moral principles of a democratic society (compare Decision of the Constitutional Court of the Czech Republic, Case No. II.ÚS 249/97).

7.1.1 Natural Persons

Natural persons have legal personality from **birth**. A conceived child is considered to have already been born if it suits the child's interests. Therefore, conceived children who have yet to be born (assuming they are born live) have the right, for example, to be heirs. The legal personality of a natural person expires upon **death**.

7.1.1.1 Legal Capacity

All persons are **liable** for their actions if they are able to judge and control them. Persons who induce a self-inflicted condition which would otherwise preclude responsibility for their actions shall be liable for any actions taken under this condition.

Legal capacity is acquired **gradually** together with the intellectual and volitional maturity of a person's age. Even children can enter into a simple purchase contract (if a ten-year-old, buys sweets in a shop, this undoubtedly constitutes a valid purchase contract) as long as their intellectual and volitional maturity permit it.

Individuals acquire **full legal capacity**

- upon reaching the age of majority. Majority is reached at the age of eighteen.
- Before they have reached the age of majority, individuals can be granted full legal capacity. A court will accommodate a minor's proposal, provided that the minor is over 16 years of age, their ability to make a living and to manage their own affairs has been proven, and the minor's legal guardian consents to the proposal. A proposal for granting legal capacity can also be submitted by a minor's legal guardian, provided that the minor agrees.
- Before they have reached the age of majority, individuals can acquire full legal capacity by entering into marriage. Legal capacity acquired by entering into marriage is not lost upon termination or invalidation of the marriage.

The legal capacity of a natural person expires upon **death**.

The law permits individuals who anticipate the future loss of their capacity to act (for example, if they have been diagnosed with a mental illness from the outset which will render them incapable of performing juridical acts) to express the will to have their affairs managed by a specific person once they have become incapable of performing juridical acts for themselves, or that such a person become their guardian. Such a declaration shall either be made in the form of a public instrument, or as a written private-law instrument which must be dated and acknowledged by two witnesses.

The law also allows individuals who are not restricted in their legal capacity, but who have a mental illness which hinders their decision-making, to arrange so-called assistance in decision-making. With the consent of the assisted person, the assisting person shall be present at all legal proceedings of the assisted person and undertakes to provide them with necessary information and communications and to give them advice. This kind of contract is subject to the approval of a court.

The individual's legal capacity can only be **limited** (by no means annulled). The only authority which can limit a person's legal capacity is a court. A court may limit the legal capacity of an individual to the extent to which they are unable to perform juridical acts due to a mental disorder which is not just temporary and shall define the extent to which the individual's capacity to perform independent juridical acts has been limited. The court is therefore obliged to draw up a so-called positive list of juridical acts that a person whose legal capacity has been limited cannot perform. A court may limit legal capacity in connection with a certain matter for the period necessary to arrange that matter, or for an otherwise specified definite period not exceeding three years. If it is apparent that the condition of such an individual has not improved during this period, the court may limit the individual's legal capacity for a longer period not exceeding five years. The legal effects of such a limitation shall expire when this period elapses. However, if proceedings to extend the period of limitation are initiated during this period, the legal effects of the original decision shall last until a new decision has been made, but no longer than one year. When making a decision to limit the legal capacity of an individual, the court shall appoint a guardian for the individual. This shall generally be a person close to the individual.

7.1.1.2 Missing Persons

A real-life situation can occur, where an individual leaves their residence and does not provide any information about themselves. The whereabouts of such a person therefore remain **unknown**. If all of these criteria are met, a court can declare the individual to be missing. A person may be declared missing at the proposal of a person with a legal interest in such a declaration, in particular a spouse or other close person, a co-owner, employer, or corporation in which the individual has an interest. If an individual declared missing returns, the declaration of the person's absence shall cease to

be effective. An essential fact, however, is that a person who has been declared missing cannot invoke the invalidity or ineffectiveness of a juridical act made in their absence, for as long as such a decision by the court is in effect.

A person's **name** enjoys **protection** an individual's name is composed of their given name and surname, as well as any other names and surnames at birth which pertain to them by law. All persons have the right to protection against unauthorised use of their names and have the right to claim that any such infringements be refrained from or that their consequences be remedied. The same protection applies to a pseudonym which a specific person uses and which has become well-known. Protection also regards an individual's **personality**, particularly **their life, dignity, health, right to live in a favourable environment, respect, honour, privacy, and expressions of personal nature**. After a person's death, the protection of their personality rights may be claimed by any person close to them.

The law also protects a person's **image and privacy**. The law stipulates that capturing the image of an individual in a way that would allow their identity to be determined is only possible with their consent. Likewise, distributing a person's image is not permitted without their consent.

The law further states that it is prohibited to interfere in the privacy of another without a lawful reason. It goes on to illustrate what, in particular, is prohibited – without an individual's consent, it is prohibited to intrude onto their private premises, to watch or record their private life in audio or video recordings, to use such or other recordings made by a third party about the private life of an individual, or to distribute such recordings about their private life.

Consent is not required, however, if an image, or audio or video recording, is made or used to exercise or protect other rights or legally protected interests of others, on the basis a statute for official purposes, or if a person performs a public act in matters of public interest. An image, or audio or video recording may also be made or used in a reasonable manner, without the consent of an individual, for scientific or artistic purposes, and for print, radio, television or other similar coverage.

As has already been specified above, **mental and bodily integrity** are also protected by law. The law specifies the manner in which the remains of the deceased can be handled, and in what cases and under what conditions it is permitted to interfere with a person's bodily integrity. Except in the manner stipulated by law, no-one may interfere with the integrity of another individual without their consent, which shall be granted with the knowledge of the nature of the interference and its possible consequences. If a person consents to being seriously harmed, this shall be disregarded. This shall naturally not apply if the interference, given all circumstances, is necessary in the interest of the life or health of the individual concerned. An individual who has had a body part removed has the right to know how it has been disposed of. An individual may only leave a part of their body to another under conditions laid down by law. The law also states that an individual has the right to decide how their body shall be disposed of after their death and may also decide on the form of their funeral. Persons who consent to have their body subjected to an autopsy or used for scientific purposes after their death shall write a statement in the register. This consent, however, may be withdrawn at any time.

7.1.2 Legal Entities

A legal entity possesses legal personality from its **incorporation** until its **dissolution**. A legal entity is incorporated upon being **recorded** in a public register and dissolved when this register is **erased**. A public record of a legal entity shall include at least the date of its incorporation, the date of its dissolution, stating the legal reason, and the date of its termination, as well as its name, its registered office, line of business etc.

A legal entity can be **established**:

- by a founding juridical act
- by a statute
- by decision of a public authority
- or in another way stipulated by other legislation

Every legal entity must have a **name**. The name must differentiate it from another person and must indicate its legal form. The name must not be misleading. When a legal entity is founded, its registered office is also determined. As long as it does not disturb the peace and order in the building, the registered office may also be in an apartment.

A legal entity can be founded in the public interest or in a private interest. Its nature is derived from its primary activity. The law explicitly states that it is prohibited to found a legal entity whose purpose is to violate the law or to achieve a goal in an unlawful manner. It is therefore illegal to found a legal entity whose purpose is to incite hatred or intolerance, to promote violence, or to deny or limit personal, political, or other rights of persons on the grounds of their nationality,

gender, race, origin, political or other views, religious conviction, or social status. It is also prohibited to found a legal entity which is armed or has armed forces, with the exception of cases permitted by a statute.

A legal entity also has **bodies**. Such bodies may either be individual (comprised of one member) or collective (comprised of multiple members). A natural person who is an elected, appointed or otherwise selected member of a legal entity's body must have full legal capacity. If a body is collective, decisions on matters of the legal entity shall be made as a group. It forms a quorum if a majority of its members is present or otherwise in attendance, and decisions are made by a majority vote of the attending members.

Since a legal entity is subject to rights and obligations, the law stipulates who represents it externally. All powers which the founding juridical proceedings, the law or a decision of a public authority do not entrust to another body of a legal entity fall under the competences of a **statutory** body. A member of a statutory body may represent the legal entity in all matters. A legal entity is also represented by its employees to the usual extent with respect to their position or title.

A legal entity may be dissolved by a juridical act, by the expiry of a given period, by decision of a public authority, or by achieving the purpose for which it was created, as well as for other reasons stipulated by law. The dissolution of a legal entity requires its liquidation, unless its entire assets are acquired by a legal successor, or unless the law stipulates otherwise.

If a legal entity is dissolved upon transformation, it is dissolved without liquidation on the effective date of the transformation. The **transformation** of a legal entity may mean

- a merger. A merger takes place if at least two participating legal entities merge by acquisition or merge by the formation of a new legal entity.
- a spin-off
- a change of legal form. A change in legal form does not lead to the dissolution or termination of the legal entity whose form changes, but merely to a change in its legal situation.

A legal entity registered in a public register is terminated on the date of its erasure from the public register. A legal entity which is not subject to registration in a public register is terminated upon the completion of its liquidation.

The law divides legal entities into:

- **corporations**
- **endowed institutions**
- **institutes**

7.1.2.1 Corporations

A corporation is a legal entity which is created by **a community of entities**. In cases where the law allows, a corporation may also be created by a single person.

Corporations can be broken down into:

- **commercial companies (partnerships and capital companies)**
- **cooperatives**
- **associations**

Partnerships

- An unlimited partnership
    - is an association of at least two entities who participate in its business operations or asset management and are liable for its debts jointly and severally
    - the mutual legal relationships of the shareholders are governed by a memorandum of association; unless agreed otherwise in the memorandum of association, the shares of the partners shall be equal
- A limited partnership
    - is a company in which at least one shareholder has limited liability for its debts (the limited partner) and at least one unlimited partner (the general partner)

Capital Companies

- A limited-liability company

  - is a company whose shareholders are liable for its debts jointly and severally to the limit of the invested capital
  - its highest authority is the general meeting, its statutory body is the managing director, and an optional body is a supervisory board
  - the minimum sum of the company's registered capital is CZK 1
- A joint stock company
  - is a company whose registered capital is divided into a fixed number of shares
  - the shareholders exercise their right to participate in the company's management at or outside of the general meeting
  - the minimum sum of the company's registered capital is CZK 2,000,000

Cooperatives

- a cooperative can be founded by at least five persons
- it is a form of open association of a non-predetermined number of persons with a common interest
- it is set up in order to meet the various needs of its members

Business corporations and cooperatives are governed by a separate act[16].

Associations

- an association can be founded by at least three persons
- it is set up as an autonomous and voluntary union of its members
- the members of an association are not liable for its debts
- the main activity of an association can only involves satisfying and protecting those interests which it was formed to implement
- conducting business or other profit-making activities cannot be the primary activity of an association

7.1.2.2 Endowed Institutions

An endowed institution is a legal person created using **assets** designated for a specific purpose. Its activities are bound to the purpose for which it has been established. An endowed institution is created by a founding juridical act or a statute, which must also specify its funding and its purpose. Internal relationships of an endowed institution are governed by its statutes.

Endowed institutions are divided into:

- **foundations**
- **endowment funds**

Foundations

- a founder forms a foundation to permanently serve a socially or economically beneficial purpose
- the purpose of a foundation may be:
  - publicly beneficial, if it aims to promote general welfare
  - charitable, if it aims to support a specific group of persons defined individually or otherwise
- the law prohibits establishing a foundation to support political parties and movements or to otherwise participate in their activities, as well as establishing a foundation exclusively serving profitable goals
- the minimum investment value is CZK 500,000
- a foundation's statutory body is the Board of Directors
- if the purpose for which a foundation has been created is achieved, the foundation is dissolved

Endowment Funds

- a founder forms an endowment fund, in the same way as a foundation, to serve a socially or economically useful purpose

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[16] *Act No. 90/2012 Coll., the Business Corporations Act.*

- an endowment fund does not, however, have an established minimum investment value, nor does it have an endowment principal or endowment capital
- it is typical for an endowment fund to be dissolved as soon as its funds have been used up for the given purpose; its long-term existence is not anticipated

7.1.2.3 Institutes

An institute is a legal entity created for the purpose of pursuing **socially or economically useful** activities using its personal and property resources. An institute pursues activities whose results are equally available to everyone under predetermined conditions. An institute pursues activities whose results are equally available to everyone under predetermined conditions. If an institute operates a business enterprise or another secondary activity, its operation must not be to the detriment of the quality, scope and availability of the services provided from its primary activity. An institute can only use its profits to support the activities for which it has been founded, and to cover the costs of its own administration. The name of an institute must include the words "zapsaný ústav" (registered institute). However, the abbreviation "z. ú." will suffice.

- the director is the statutory body of an institute. The institute's bodies also include the Board of Trustees
- the law stipulates that the provisions on foundations apply, by analogy, to the legal relations of an institute, except for the provisions on endowment principals and endowment capital, which do not apply
- for example, the Czech Language Institute

7.1.3 Representation

According to the law, a representative is an entity who is **authorised to perform juridical acts in the name of another**. It is important to distinguish that rights and obligations arising from representation are acquired by the represented entity and not by the representative. If it is not evident that an entity is acting on behalf of another, however, that entity shall be deemed to be acting in their own name. An entity may not represent another if their interests are contrary to the interests of the entity to be represented. A representative act in person. If a representative performs a juridical act which exceeds their authority to represent, the represented entity shall be bound by this juridical act, provided that they approve such an excess of authority without undue delay. Otherwise, the representative shall be considered to be acting on their own behalf.

Representation can be broken down into:

- contractual representation
- legal representation (e.g. representation of a minor by their parents)
- representation by decision of a court (in connection with a person with limited legal capacity; at the same time as this decision is made, a guardian is appointed to represent the person whose legal capacity is limited) = guardianship

7.1.3.1 Contractual Representation

Representation is based on a contract. The parties can decide that one of them represents the other to the stipulated extent. The law identifies the represented entity as the principal and the representative as the agent. The principal shall state the scope of authority to represent in a power of attorney. Unless representation only relates to a particular juridical act, the power of attorney shall be granted in writing.

7.1.3.2 Corporate Representation

Corporate representation is a kind of authorisation where an entrepreneur registered in the commercial register authorises a corporate agent to make juridical acts associated with the operation of a business enterprise or a branch thereof, including those which otherwise require a special power of attorney. However, if the principal wishes the corporate agent to alienate or encumber immovable property, this must be expressly stated. Corporate representation can only be granted to an individual, under no circumstances to a legal entity. Among other reasons for the expiration of contractual representation (see above), corporate representation expires upon the transfer or lease of the business enterprise or branch for which it was granted. Corporate representation does not expire upon the death of the entrepreneur, unless stipulated otherwise.

7.1.3.3 Legal Representation and Guardianship

Both of these must seek to protect the interests of the represented entity and the fulfilment of their rights. Legal representatives and guardians may not request that the represented entity remunerate them for representation. However, if a legal representative or guardian is obliged to administer assets and liabilities, remuneration for such administration may be granted.

7.2 Things

A thing in a legal sense (hereinafter a "thing") is everything that is **different** from an entity and serves the needs of people. The human body and its parts, even if separated from the body, cannot be considered things. Fruit is what a thing regularly bears by its inherent nature, as follows from and is appropriate to its usual intended purpose, whether or not as a result of the endeavour of human beings. Revenues are what a thing regularly provides by its legal nature. The value of a thing, if it can be expressed in monetary terms, is its price.

The law states that a living animal has a special significance and value as a living creature endowed with senses. A living animal is not a thing, and the provisions on things apply, by analogy, only to a living animal to the extent in which they are not contrary to its nature.

The total of all which belongs to an entity constitutes their property. Assets and liabilities of an entity consist of the totality of their property and debts.

Things can be divided into the following:

- **Tangible and intangible things.** A tangible thing is a controllable part of the external world with the character of an independent item. Provisions regarding tangible things apply accordingly to any controllable natural forces which are traded. The nature of the rights that allow it, and other things without a tangible substance are referred to as intangible things.
- **Movable and immovable things.** Immovable things are tracts of land and underground structures with a separate intended purpose, as well as in rem rights contained therein and rights declared by a statute to be immovable things. If another legal regulation provides that a certain thing is not a component part of a land, and such a thing cannot be transferred from place to place without violating its substance, such a thing is also considered to be an immovable thing. All other things, whether of a corporeal or incorporeal nature, are movable.
- **Fungible and non-fungible things.** A movable thing that can be substituted with another thing of the same kind is fungible. Other things are non-fungible.
- **Consumable and non-consumable things.** A movable thing whose common use consists in its consumption, processing or alienation is consumable. Movable things which belong to a stock or another set of things, provided that their common use consists in being sold individually, are also consumable. Other things are non-consumable.

7.2.1 Component Parts of a Thing

A component part of a thing is anything which **pertains** to a thing by its nature, and which cannot be separated from that thing without devaluing it. Component parts of a land include the space above and below the surface, structures erected on the land and any other facilities (hereinafter "structures"), except for temporary structures, including anything that is sunken into the land or attached to walls. Vegetation grown on a land also constitutes a component part thereof. By contrast, utility networks, especially water lines, sewer systems, or power or other lines do not constitute a component part of a land. Structures and technical facilities operationally related to utility networks are also considered to form parts thereof.

7.2.2 Accessories to a Thing

An accessory to a thing is **a secondary item** belonging to the owner of a principal thing, provided that such a secondary item is intended to be permanently used together with the principal thing for its economic purpose. Temporary separation of an accessory from the principal thing does not deprive it of the quality of an accessory. Accessions to a claim include interest, default interest, and costs associated with asserting the claim.

8 LEGAL FACTS

According to legal doctrine, legal facts are facts with which the law connects **the origin, change or expiration** of a person's rights and obligations. Legal facts may come into existence based on **the will** of a person **(a juridical act)** or **independently** of the will of an acting entity **(a legal event)**.

Legal facts may be in **compliance** with the law (such as the already mentioned entry into a purchase contract, as well as, for example, time limits), or in **conflict** with the law (e.g. unlawful conduct which results in the obligation to pay damages, or an unlawful situation ensuing from a flood, where water brings a neighbour's garden furniture onto a person's property and that person becomes obliged to make restitution for unjust enrichment as a result).

8.1 Juridical Acts

The law defines juridical acts as acts which produce **legal consequences**. A juridical act may, for example, be a purchase contract, a will, withdrawal from a contract, a testimony etc. Juridical acts can be made by **action** or by **omission**. This may, therefore, be done expressly or in another manner which raises no doubt about what the acting person wishes to express (by remaining silent or nodding the head). The law specifies cases where **written form** is essential (rights in rem to immovable property), or where a notarial deed is required (e.g. an agreement on the settlement of community property).

If a juridical act is defective, it shall be **invalid**. The law stipulates the following grounds for the invalidity of a juridical act:

- the juridical act is contrary to good morals
- the juridical act is contrary to the sense and purpose of a statute
- the juridical act requires the performance of something impossible
- the juridical act is performed by a person without full legal capacity who is not eligible to do so
- the juridical act is performed by a person acting under a mental disorder, which makes them incapable of performing juridical acts
- the juridical act is not carried out in the form agreed by the parties or laid down by law, unless the parties subsequently remedy the defect. However, it must be pointed out that if the form of a juridical act agreed by the parties is not complied with, an objection on the grounds of invalidity can only be raised if the act has not yet been performed.
- if a person makes an act in error concerning a decisive circumstance and is led into making the error by the other party

The law also differentiates between **"absolute invalidity"**, i.e., invalidity which a court is obliged to take into account even if no motion is put forward, and **"relative invalidity"**, which a court will only take into consideration if an objection on the grounds of its invalidity is raised by the other party.

Absolute invalidity applies to a juridical act which clearly contravenes good morals or is in violation of the law and clearly disrupts the public order. A juridical act shall also be considered absolutely invalid if it obliges a party to perform the impossible from the outset.

A juridical act that a person is coerced into performing at the threat of physical or psychological harm, which arouses that person's justified concern due to the significance and probability of the threat, and due to the personal characteristics of the person who has been threatened, may be judged to be relatively invalid at the objection of the beneficiary. If an acting party is uncertain as to whether a case concerns absolute or relative invalidity, it may be advisable to raise an objection on the grounds of invalidity.

8.2 Legal Events

Another kind of legal fact is known as a legal event, that is, a legal fact through which the law connects the origin, change or expiration of rights and obligations which are **beyond** the control of an acting entity. A typical legal event is **time and its course**.

In this regard, it is essential to thoroughly differentiate between the terms **"period"** and **"time limit"**. A time limit is an interval within which an acting entity must perform a certain act. The entity is therefore expected to take action. A typical time limit is **a limitation period**. On the other hand, a period is a time frame which **defines** the duration of certain rights and obligations (typically the duration of a lease agreement). If a right is acquired or an obligation is established on a

certain day, then it shall be acquired or commence at the beginning of that day. Conversely, if a right or obligation expires on a certain day, it shall expire at the end of that day. The manner in which time is calculated is also stipulated precisely. In this regard, the law stipulates that a time limit or period specified in days commences on the day following the fact which is decisive for its commencement. The end of a time limit or period specified in weeks or months falls on the day whose name or number is identical to the day when the fact which marks the start of the time limit or period occurred. If no such day exists in the last month, the end of the time limit or period shall be the last day of that month. If the last day of a time limit falls on a Saturday, a Sunday, or a public holiday, the last day of the time limit shall be the nearest subsequent work day. Time limits or periods specified in units of time shorter than days are measured from the moment they begin to the moment they end.

The course of time is connected to **the statute of limitations**. Under the statute of limitations, a right in **no case expires**, but is merely **weakened**. Only the claim to the right expires. The right then becomes a so-called **natural right**, meaning that if a debtor performs a time-barred obligation, they do so by right. This cannot, therefore, be considered unjust enrichment on the part of the creditor. If a right is not exercised within a limitation period, it becomes time-barred and the debtor is not obliged to make a performance. A court shall only take into account the statute of limitations if the debtor invokes that the right has become time-barred. If a person waives their right to invoke the statute of limitations in advance, the waiver shall be disregarded. All property rights are subject to limitation with the exception of cases stipulated by law. In the case of the rights to life and dignity, name, health, respect, honour, privacy, and other similar personal rights, only the rights to remedy harm caused to these rights are subject to limitation. Personality rights are not, therefore, subject to limitation. The right to maintenance and support, for example, is also not subject to limitation.

With regard to the commencement and the course of a limitation period, a distinction is also made between **a subjective** and **an objective** time limit. A subjective limitation period is three years in length, except in cases specified by law, and commences the moment the beneficiary learns of the circumstances decisive for the commencement of the limitation period, or when they should or could have learnt of it. By agreement between the contracting parties, such a subjective limitation period can be shortened to one year and extended to up to 15 years. A shorter or longer limitation period which is arranged to the detriment of the weaker party shall be disregarded. Moreover, an arrangement of a shorter limitation period shall be disregarded if it concerns a right to a performance arising from harm to freedom, life or health, or a right created as a result of wilful breach of duty.

An objective limitation period is ten years in length and commences from the moment the right becomes exercisable, i.e., when a debt becomes actionable in court (as soon as its due date is reached). In other words, from the moment when the fact which is decisive for the commencement of the limitation period occurs (e.g. the moment damage or unjust enrichment occurs, or the moment repayment of a debt becomes delayed). The parties cannot agree to change this type of limitation period in any way.

The statute of limitation must be distinguished from the statute of repose. Unlike the statute of limitation, the statute of repose is connected with the termination of a right. If a right has not been exercised within the specified time limit, it is only terminated in cases expressly stipulated by a statute. The termination of a right is taken into account by a court, even if not invoked by the debtor.

9 ABSOLUTE PROPERTY RIGHTS

Absolute property rights are effective erga omnes, that is, **towards everyone**, unless the law stipulates otherwise in a particular case. This distinguishes them from relative property rights, which are only effective among the participants in a binding legal relationship.

Absolute property rights are governed by Section Three of the CC and are divided into:

- **rights in rem** – where the subject matter is a thing in the legal sense
    - **right of ownership**
    - **possession**
    - **rights in rem in things of others**
- **right to a decedent's estate**

Parties may only derogate from the provisions on absolute property rights having effects towards third parties if permitted by law. Where the law expressly permits it (generally with words such as "unless the parties agree otherwise" or "unless agreed otherwise"), the parties may agree to derogate from these provisions.

In connection with the issue of property rights, some terminology must be explained. The CC differentiates between the terms **public register and public list**. While a public register is a register of persons (typically a trade register), a public list is a register of things or rights (a typical example is the cadastral register).

Public lists are characterised by the principle which states that, if a right to a thing is registered in a public list (e.g. the cadastral register), no-one is excused by ignorance of the registered data. It shall therefore be assumed that everyone is familiar with the content of a public list.

This chapter deals with property rights.

9.1 Right of Ownership

The right of ownership is already protected under Article 11 of the Charter of Fundamental Rights and Freedoms. Within the bounds of the legal order, owners may **dispose** of their property and **exclude** others from it as they please. Ownership is understood to mean the right **to possess a thing, to handle it, use it, consume its fruits and revenues, and, in principle, to destroy it**. The right of ownership is characterised by its so-called **elasticity**. In the case of entry into a lease agreement, for example, the rights of an owner to property can temporarily and voluntarily be reduced, as the property is used by another person for the duration of the lease agreement. Upon termination of the lease, however, the ownership rights are returned to their original status.

Owners are obliged to refrain from anything that would cause waste, water, smoke, dust, gas, odours, light, shadow, noise, vibrations and other similar effects **(pollutants)** to infiltrate a land of another owner (neighbour) to an extent which is disproportionate to the local circumstances and which substantially restricts normal use of that land. The same applies to intrusion by animals. In the case of such pollution, the owner of a land shall be entitled to protect themselves by taking so-called negatory legal action, which will require the other person to refrain from certain acts (e.g. draining waste water onto the neighbour's land).

If a movable thing belonging to another appears on a land, the owner of the land shall surrender the thing to its owner or to the person who had the possession of the thing without undue delay. Failure to do so will allow the owner of the thing to enter the land, find the thing and take it away. Likewise, an owner may pursue a bred animal or swarm of bees on the land of another.

9.1.1 Necessary Passage

In practice, a situation may occur where an owner of an immovable thing may not be able to duly manage it or otherwise duly use it because it is not connected to a public road. In such a case, the owner may request that a neighbour allow them necessary passage through the land in return for financial compensation.

9.1.2 Expropriation and Limitation of the Right of Ownership

In some cases, it is necessary to limit a right of ownership or even to expropriate a thing. Since this is an extremely serious infringement of a right of ownership, it may only be done under very clearly **defined conditions**:

- in a state of emergency or in urgent public interest
- for the absolutely necessary period
- to the absolutely necessary extent
- if the required purpose cannot be otherwise achieved
- for compensation

If it is possible to merely limit a right of ownership; this shall always take priority over expropriation.

9.1.3 Acquisition of Rights of Ownership

A right of ownership can be acquired in a number of ways. A right of ownership can be acquired both **originally** (in cases where a thing has had no previous owner because it was being manufactured, or because it has grown – fruits of a tree, etc.), or **derivatively** (i.e. in a case where a thing has had a different owner – a gift, exchange, purchase, etc.)

The law defines the following methods of acquiring a right of ownership:

a) **Appropriation**. In this way, it is possible to acquire a thing that does not belong to anyone. Such a thing is, for example, a movable thing that the owner left because he does not want to hold it.
b) **Finding**. Finding as a way of acquiring ownership is necessary to distinguish from the acquisition of ownership by appropriation. It is believed that everyone wants to hold their property and that the found thing is not abandoned. In view of this, it is true that whoever finds a thing must not consider it to be destitute and to possess it. If a stranger finds a lost thing, he is obliged to return it to the person who lost it, or to the owner against payment of the necessary costs and the damages. Finding is one tenth of the price of the find. Finders do not belong to the finder if the owner knew about the thing.
c) **Natural increase**. A natural increase is understood to mean, in particular, the increase that arises from itself. These are the fruits of the tree, the plant growths, the animals' chicks, etc. The fruit that the land produces itself without being cultivated belongs to the owner of the land. The tree belongs to the one from whose land the stem grows. If the tribe grows on the border of land of different owners, the tree is common.
d) **Artificial increase**. An artificial increase can be considered as an increase that was created by deliberate human activity. These include, for example, processing, mixing, building. The way of acquiring ownership in these cases is then further specified by law.
e) **Mix**. For a mixed increase the law considers foreign seed to sow land or foreign plants by which the land is planted.
f) **Endurance**. If the honest holder holds the right of ownership for a specified period of time, he will endure it and gain ownership of it. To maintain the authenticity of holding and to hold possession on a legal ground that would be sufficient to confer the right of ownership, if the transferor would have belonged to it, or if it had been set up by an authorized person. To maintain the ownership of movable property, uninterrupted possession is required for three years. To maintain the ownership of immovable property, uninterrupted ten-year possession is required. In the endurance time, the period of proper and honest preservation of his predecessor will also be taken into account in favor of the rescuer. The holding period may be suspended or terminated under the conditions laid down by law.
g) **Transfer of ownership**.
h) **Acquisition of property rights from unauthorised persons**. The law sets out the conditions under which ownership is acquired by a person who is not the owner. It distinguishes in this context three groups of cases of ownership.
i) **The decision of the public authority**. Ownership is also acquired by a court or other public authority. In this case, it shall become the date specified in this Decision or, as the case may be, the day of the decision's being final.

Termination of ownership rights may be either **absolute** (upon destruction or consumption of a thing) or **relative** (transfer of a thing to another person).

9.2 Co-ownership

A joint right of ownership shared by **multiple persons** is co-ownership. Special regulations apply to community property

of spouses, however, they too are subject to the provisions on co-ownership to a proportionate extent. With respect to a thing as a whole, co-owners are considered to be a single person and dispose of **the thing as such**. Each co-owner has the right to the entire thing. This right is limited by the same right of each other co-owner. Each co-owner owns a certain **share** of a co-owned thing and is the full owner thereof. A share reflects the degree of participation of each co-owner in forming a common will, and in the rights and duties arising from the co-ownership of a thing. This is sometimes referred to as **an ideal share**. The size of a share is based on an agreement or decision of a public authority legal fact, or may ensue from a decision of inheritance. However, unless otherwise specified, all co-owned shares are equal.

9.3 Possession

Persons who exercise a right **for themselves** are possessors. A right which may be transferred to another by performing a juridical act, and which permits permanent or repeated performance may be possessed. It is therefore possible to possess, for instance, a right of ownership. A right of ownership is possessed by the person who has taken over a thing in order to become its owner. Another kind of right may be possessed by someone who has begun to exercise that right as a person to whom such right pertains by law, and for whom other persons provide a performance in accordance with that right. Possession may be directly acquired if the possessor assumes it by exercising their power.

Rights of possession are primarily encountered in inheritance proceedings and in property sales where the possessor does not agree to a sale and the sale of land could lead to complications. For example, if a house is connected by a single access road which is the property of another person, and the possessor uses this road believing it to be their own. This also concerns cases where a matter has only been agreed verbally for a period exceeding ten years, and now must also be recorded formally. For example, if an agreement for the exchange of land made between neighbours years ago is only verbal. Possession of land owned by a municipality or by the state is also often dealt with. Applications for acquisitive prescription of immovable property mostly occur in the case of a change in rights of ownership to connected tracts of land, where it becomes apparent that the rights of ownership to individual pieces of immovable property (tracts of land) differ from the fact recorded in the cadastral register. Possession must be **genuine, in good faith and lawful**.

Only a possessor in good faith may acquire a right of ownership by acquisitive prescription, which is a means of acquiring a possessed item into one's ownership. Eligibility for acquisitive possession (if possession is legitimate) is conditional upon uninterrupted possession lasting:

- three years in the case of a movable thing
- ten years in the case of an immovable thing

Possession is subject to **protection**. In this regard, the law governs types of legal action – action to protect a possession and action to retain a possession.

9.4 Rights in Rem in Things of Others

The law distinguishes the following rights in rem in things of others:

- **right of superficies**
- **easements**
- **pledges**
- **right of retention**

9.4.1 Right of Superficies

The right of superficies is an institute which was not reintroduced into our legal order until the enactment of the new civil code. The right of superficies is **an exception to the principle which states that a structure is part of a land**. The right of superficies is an immovable thing. This right is corporeal in nature and authorises a builder to possess a structure on another person's land. The right of superficies cannot be established on a land which is already encumbered with a right preventing the establishment of the right of superficies (e.g. if a particular part of land is already encumbered with a right of way).

When the period for which the right of superficies has been agreed elapses, the structure becomes a part of the land. There must be a settlement between the parties.

9.4.2 Easements

Easements can be divided into two groups, namely:

- **servitudes**
- **real burdens**

9.4.2.1 Servitudes

A servitude is a right in rem which, as a general rule, encumbers the property of **another person**. A servitude may consist in, for instance, the right **to collect water from another person's land** and to enter the land for that purpose; the right to drain rainwater from one's roof onto another's land; the right, at one's own expense, and in a suitable and safe manner, to set up water lines, sewage systems, and power or other lines on servient land and to lead them through it, as well as to operate and maintain them; the obligation to support the weight of another person's structure; the right of the owner of a hydraulic structure which allows for controlled flooding to flood servient land; the right to walk or exert human power to travel along a footpath so that others can come to and depart from the entitled person and to exert human power to convey themselves to that person; the right to drive animals across servient land; the right to travel across servient land in any kind of vehicle; the right to graze livestock on servient land or, conversely, the right to use a thing of another for one's own needs or those of one's household; and the right of a usufructuary to use a thing of another and to take its fruits and revenues. In accordance with the above, servitudes can be divided into:

- **predial** servitudes, which encumber land (in rem)
- **personal** servitudes, which are binding for a certain person (in personam)

Where the extent of a servitude is concerned, its content and scope must be directly specified in a juridical act (in a contract). The criterion of local custom and the rule of minimal interference in the encumbered immovable property are also significant.

The content of a servitude is:

- **to tolerate something**
- **to refrain from doing something**
- **to do something.**

Where a servitude is established on a thing which is registered in a public list, the servitude is created upon registration in such a list (e.g. an entry in the cadastral register). Where a servitude is established on a thing which is not registered in a public list, it is created on the effective date of the contract.

9.4.2.2 Real Burdens

Real burdens are a kind of easement which can only encumber a thing which is registered in **a public list**. In essence, the temporary owner of the thing is obliged, as a debtor to the entitled person, **to provide something to or do something** for that person. The obliged person must therefore carry out a certain activity to the benefit of the entitled person. This may involve, for example, provision of a regular supply of food, heating, personal care, or provision of care by a third person, etc. A real burden may be limited or not limited by time.

9.4.3 Pledge

A pledge is a further type of right in rem in things of others. If a pledge is established to secure a debt and the debtor fails to pay the debt in a due and timely manner, the creditor shall become entitled **to satisfy** their claims from the proceeds gained from the sale of the pledged collateral up to the stipulated amount or, if no amount has been stipulated, up to the amount receivable with accessions as of the date on which the pledged collateral is sold. The requirements of a pledge are the existence of a debt which is secured, and the pledged collateral. The pledged collateral can be anything that can be traded.

9.4.4 Right of Retention

A right of retention is a right in rem in things of others, which can be created exclusively in relation to a **movable thing**.

A right of retention is exercised when a person who possesses a movable thing belonging to another person chooses to retain it in order to secure a debt due by the other person, when they would otherwise be obliged to surrender it. As well as payable debts, a right of retention may also be used to secure a debt which is not yet due, but only in cases stipulated by law (e.g. if a debtor declares that they will not pay a debt). Retention is a unilateral juridical act. A thing of another may not be retained by a person who possesses it unlawfully, in particular if that person has seized it by force or trickery.

10 RELATIVE PROPERTY RIGHTS

Unlike absolute property rights, relative property rights always exist **between the subjects of a binding legal relationship**. A relative property right may be, for example, a lease agreement and the ensuing relationships. Under relative property rights the parties can generally **agree to override** individual provisions regarding the rights and obligations governed by this Book, as long as the law does not expressly prohibit it and it is not in conflict with good morals or the legal order. It can therefore be concluded that this Section of the CC, which regulates relative property rights, is essentially a default rule, in other words, a rule which the participants of a binding legal relationship can agree to override.

The following terms are inseparably linked to relative property rights:

- **Obligation**, i.e., a specified duty of a debtor to satisfy a creditor's right to a performance. An obligation may comprise the duty:
    - to do something (to create a work according to a Contract for Work)
    - to provide something (to hand over a purchased item to the buyer)
    - to tolerate something (the obligation of a lessee to tolerate modifications to an apartment if the lessor is obliged to perform them by order of a public authority)
    - to refrain from doing something (to refrain from making changes to a living space if an accommodation agreement has been entered into)
- **Claim**, i.e., the right of a creditor to a performance from a debtor
- **Entitlement**. An entitlement occurs when a right becomes exercisable, typically when a claim becomes payable, i.e., actionable at a court.
- **Creditor**, i.e., a person who is entitled to a performance from a debtor
- **Debtor**, i.e., a person who is obliged to provide a performance under a binding relationship with a creditor

It follows from the above that a debtor is not always a person who has to fulfil a financial obligation, that is, to pay a certain amount, but may also be a person who is obliged to perform a certain duty, e.g., to hand over a thing. For example, in the case of entry into a purchase agreement, if we consider the obligation to hand over an item and transfer the right of ownership to that item to the buyer, then the seller is the debtor and the buyer is the creditor, whereas, if we consider the obligation to take over the item and pay the purchase price for it, then the buyer is in the position of the debtor and the seller in that of the creditor.

10.1 Creation of Obligations

Legal obligations can arise from:

- **a contract** (the most common reason for the creation of an obligation)
- **an illegal act** (if damage is caused, the tortfeasor has the duty (obligation) to provide compensation)
- **another legal fact** which can lead to the creation of an obligation according to the legal order (e.g. a discovery, where the discoverer becomes obliged to surrender the discovered thing to its owner, or, as the case may be, to the municipality or operator of the public building or public environment where the thing was found, and, on the other hand, becomes entitled to a finder's fee and the reimbursement of essential costs)

10.1.1 Contracts and the Contracting Process

As mentioned above, a contract is **the most frequent** cause of an obligation. A contract is a juridical act which is either **bilateral** (e.g. a lease agreement) or **multilateral** (e.g. a contract for the establishment of a private company limited by shares), and is created when two unilateral juridical acts, offer and acceptance, are combined. Through a contract, the parties express their will to create a mutual obligation between them and to adhere to the content of the contract. A contract is entered into once the parties have stipulated its contents.

10.1.2 Proposal (Offer) to Enter into a Contract

As mentioned above, **an offer** to enter into a contract is **a unilateral** juridical act. An offer must clearly indicate that the person making the offer intends to enter into a particular contract with the person to whom the offer is made. A juridical

act leading towards entry into a contract constitutes an offer if it contains the essential requirements of a contract so that the contract can be entered into by simple and unconditional acceptance, and if it indicates the will of the offeror to be bound by the contract if the offer is accepted. If these requirements are not met, the act shall not constitute an offer.

10.1.3 Acceptance of an Offer

Acceptance of an offer is also **a unilateral** juridical act which leads towards entry into a contract. An offeree accepts an offer if they express consent to the offeror in a timely manner. Under civil law, silence or inaction in themselves do not constitute acceptance. Therefore, an offer can certainly not be deemed to be accepted if it contains the words: "if you do not respond to this offer within 14 days of its delivery, the contract shall be deemed to have been concluded".

The provision which states that it is possible to enter into a contract or to accept an offer in a de facto manner, i.e., by commencing a performance in accordance with the contract, can be considered very important. A contract is entered into as soon as acceptance of an offer takes effect. The parties have freedom of contract when entering into a contract. They can also enter into a contract that is not explicitly stated in the law as a contractual type.

Parties can enter into a verbal, written, or implied-in-fact[17] contract. The law stipulates the cases in which a contract must always be drawn up in writing (e.g. when transferring immovable property) or where a contract must be drawn up in the form of a notarial deed (e.g. if the subject of a pledge is a collective thing).

10.1.4 Contingent Contracts

Parties may agree to enter into a definite contract in **the future**. The content of such a contingent contract must be agreed at least in a general manner. At the same time as a contingent contract, at least one party must undertake to enter into the agreed future contract upon request and within the stipulated time limit. The bound party becomes obliged to enter into the contract without undue delay after being requested to do so by the entitled party in accordance with the contingent contract.

10.1.5 Contracts of Adhesion

Contracts of adhesion are a special kind of contract where the acceptor does not generally have the opportunity to influence their content, since one of the parties tends to be **a large entity** (often a bank or insurance company etc.) and the other party is generally a small entity (a natural person) who is not able to make changes to the contract (this often concerns a standard form contract).

10.2 Changes in Obligation

Changes in obligations can be divided according to whether a change occurs in the person of **the creditor or the debtor**, or in **the content** of an obligation.

The law provides for assignment of a claim as legal grounds for a change in the person of **a creditor**. If a claim is assigned, it is the person of the creditor that changes, that is, **a new creditor** takes the place of the original creditor, while the debtor remains the same. As an assignor, a creditor may assign an entire claim or a part thereof to another person (an assignee) even without the consent of the debtor. Assignment of a claim must be notified to the debtor by the assignor or proven to the debtor by the assignee.

A change in the person of **a debtor** may be:

- **Assumption of a debt**
- **Accession to a debt**. In comparison with the previous possibility, this is more advantageous as regards the creditor.

[17] *I.e. by tacit understanding*

This is because, in addition to the existing debtor, the creditor gains a further co-debtor.

- **Takeover of property**

If a person takes over all property or a proportionately determined part thereof from a transferor, they shall, jointly and severally with the transferor, become a debtor in respect of any debts which are associated with the property taken over and which the acquirer was or must have been aware of upon entering into a contract.

A change in **the content** of obligations may be:

- **Novation** (an agreement to change the content of an obligation), whereby an existing obligation is cancelled and replaced with a new one. An example of a change in the content of an obligation is an extension of the duration of a lease agreement entered into for a definite period.
- **Settlement**. An existing obligation may also be replaced with a new one in such a way that the parties agree to change rights and duties which have so far been contentious or doubtful between them.

Both novation and a settlement require written form if the original obligation was established in writing, or if it concerns a right which has already become time-barred.

10.3 Termination of Obligations

Obligations can be extinguished both upon **satisfaction** of the creditor (typically fulfilment) or **without** the creditor's **satisfaction** (waiver of a debt). An obligation may be extinguished both by **a unilateral** juridical act (termination or withdrawal from a contract) or by **a bilateral** juridical act (an agreement to terminate a debt without creating a new obligation or waiving a debt).

Grounds for the termination of obligation may be:

- fulfilment
- agreement
- offsetting
- payment of a withdrawal fee
- merger
- waiver of a debt
- termination
- withdrawal from a contract
- subsequent impossibility of performance
- death of the debtor or creditor

10.3.1 Fulfilment

Fulfilment is **the most frequent** means of extinguishing an obligation. If a debtor has an obligation, whether pecuniary or not, they must fulfil that obligation in a due manner, i.e., **without defects and on time**, at their own expense and risk. A debt should also be paid in a certain manner. This manner is generally agreed between the parties (e.g. payment in instalments). Due fulfilment also requires that a debt be paid in a designated place. A debt must not only be paid in a due manner, but also in a timely manner. The parties usually agree on the deadline by which a duty (obligation/debt) must be fulfilled. In such a case, the debtor is obliged to pay the debt even without being requested to do so by the creditor. If, however, the parties do not stipulate the time by which the debtor is to pay a debt, the creditor may demand payment immediately and the debtor shall then be obliged to pay the debt without undue delay.

A debtor who fails to pay a debt in a due and timely manner is in **default**. A debtor shall not liable for being in default if they are unable to pay due to the creditor's default. A creditor who has properly fulfilled their contractual and statutory duties may require that a debtor who is in default of payments of a pecuniary debt pay default interest. The parties may negotiate the rate of default interest. If the parties do not agree on a rate, the rate established in Government Decree No. 351/2013 Coll., for setting the rate of default interest shall apply.

A creditor is in default if they fail to accept a properly offered performance or fail to provide the debtor with the assistance necessary to pay a debt.

If, by being in default, a creditor or debtor commits a substantial breach of their contractual obligations, the other party may withdraw from the contract if they notify the party in default accordingly without undue delay after learning of the

default. If a default of one of the parties constitutes a non-substantial breach of their contractual obligations, the other party may withdraw from the contract if the party in default fails to fulfil their obligations, even within a reasonable grace period expressly or implicitly provided by the other party. If a creditor informs a debtor that they have granted the debtor a grace period to fulfil an obligation and that this period will not be further extended, the creditor shall be conclusively presumed to have withdrawn from the contract if this grace period expires fruitlessly.

10.3.2 Agreement

Another statutory means of extinguishing an obligation is by agreement. The parties may agree to extinguish an obligation between them without establishing a new one.

10.3.3 Offsetting

Offsetting is another way to extinguish an agreement. In order to terminate an obligation by way of offsetting, the parties must have **a mutual debt** of the same kind towards one another. Unilateral offsetting is not possible:

- against a claim for maintenance and support for a minor lacking full legal capacity (this is not even possible by agreement between the parties)
- against a claim for compensation for bodily harm, unless it is a mutual claim for compensation of the same kind (in this case, however, offsetting by agreement is possible)
- against claims for wages, salaries, remuneration from a contract to perform dependent work creating a similar obligation between an employee and an employer, and against reimbursement for wages or salaries in an amount exceeding half thereof (as in the previous case, offsetting by agreement is also possible in this case)

10.3.4 Payment of a Withdrawal Fee

The parties may agree that one of them can extinguish an obligation by paying a withdrawal fee. In such case, an obligation is extinguished by payment of a withdrawal fee in a similar manner to withdrawal from a contract. However, a party which, if only in part, has accepted a performance from or provided a performance to the other party shall not have the right to terminate an obligation by paying a withdrawal fee.

10.3.5 Merger

Another way of extinguishing an obligation is by merger. If **a right and obligation** in one person merge in any way, the right and obligation shall be extinguished. If a person becomes the owner of a housing unit of which they are already the lessee, a merger results and the rights and obligations ensuing from the lease are extinguished. If, however, a right of a creditor merges with an obligation of a person who has secured a debt (e.g. a guarantor), the principal debt will not expire.

10.3.6 Waiver of a Debt

If a creditor waives a debt owed by a debtor, the debtor shall be presumed to consent to the waiver unless they express their disagreement explicitly or by paying the debt.

10.3.7 Termination

An obligation may be terminated if so stipulated by the parties or provided by law. If a party terminates an obligation, it is extinguished upon the expiry of the notice period. In some cases, however, an obligation may be terminated without **a notice period** (e.g. due to a substantial breach of duties), where the obligation is extinguished on the effective date of notice of termination.

10.3.8 Withdrawal from Agreement

Another way an obligation may be extinguished is by withdrawal from a contract. If an obligation is extinguished by way of withdrawal from a contract, the obligation shall be cancelled from **the outset** (ex tunc). Withdrawal from a contract is possible if so stipulated by the parties or provided by law. The law stipulates which party is entitled to withdraw from a contract in provisions on individual types of contract. Generally speaking, the law considers the possibility of extinguishing an obligation by withdrawing from a contract for a substantial breach of contract. If a party commits **a substantial breach of contract**, the other party may withdraw from the contract without undue delay. A substantial breach of an obligation is one which the breaching party was or should have been aware of at the time of entering into the contract, and for which the other contracting party would not have entered into the contract had it foreseen such breach. In other cases, a breach shall not be considered substantial.

10.3.9 Subsequent Impossibility of Performance

Subsequent impossibility of performance is also grounds for extinguishing an obligation. Should a performance be impossible from the outset, any such juridical act will be absolutely invalid and courts will disregard it ex officio. Subsequent impossibility of performance occurs when a debt becomes **impossible** after the creation of an obligation. A performance is not impossible if the debt can be paid under more difficult conditions, at higher costs, with the help of another person, or only after a determined period.

10.3.10 Death of the Debtor or Creditor

A debtor's duty is only extinguished upon their death, if it is consisted in a performance which was to be provided by the debtor **personally** (e.g. painting a picture). In other cases, an obligation does **not expire** upon the debtor's death. **A creditor's** right is extinguished upon their death if the performance was only to be provided to **them personally** (typically in the case of bodily harm, the victim's rights to damages for pain and suffering and deterioration of social position are extinguished).

10.4 Security of a Debt

Securing a debt primarily serves **a hedging** and **redeeming** function. It effectively serves to **strengthen** the creditor's rights and seeks to ensure that their claim can be satisfied in a different way if the debtor is unable or unwilling to pay.

A debt can be secured by:

- suretyship
- an agreement on deductions from wages or other income
- establishing a pledge
- a financial guarantee
- transfer of a right as security
- a promissory note

10.4.1 Suretyships

A suretyship is **a bilateral** juridical act between **a creditor and a surety** (i.e. a third party distinct from the debtor). A person who declares that they will satisfy the rights of a creditor in the event that a debtor fails to pay a debt becomes that creditor's surety. A creditor who does not accept a surety may not request anything from that surety. A suretyship declaration must be made in writing. A creditor has the right to request the surety to pay a debt if the debtor fails to pay it within a reasonable time limit, despite being requested to do so by the creditor in writing. The same debt may also be guaranteed by multiple sureties. In such a case, each of them is liable to the creditor for the entire debt. A surety has the same rights with respect to the other sureties as a co-debtor.

10.4.2 Agreements on Deductions from Wages or Other Income

Another legal means of securing a debt is an agreement on deductions from wages or other income. In this regard, the law stipulates that a debt may be secured by agreement between a creditor and a debtor on deductions from wages or

a salary, from remuneration under a contract to perform dependent work creating a similar obligation between an employee and an employer, or from reimbursement of wages or a salary, but not exceeding **half the amount** of any of the above. The law stipulates in which cases the prior consent of the employer is required to enter into an agreement.

10.4.3 Establishment of a Pledge

If a pledge is established to secure a debt and the debtor fails to pay the debt in a due and timely manner, the creditor shall become entitled to satisfy their claims from the proceeds gained from the sale of the **pledged** collateral up to the stipulated amount or, if no amount has been stipulated, up to the amount receivable with accessions as of the date on which the pledged collateral is sold. The requirements of a pledge are the existence of a debt which is secured, and the pledged collateral. Pledged collateral can be anything that can be traded.

10.5 Corroboration of a Debt

Corroboration of a debt is a legal situation which is always created between the parties to a main binding legal relationship, that is, between a creditor and a debtor. There is **no third party** involved. The law differentiates between two means of corroborating a debt, namely:

- contractual penalties
- acknowledgement of a debt

10.5.1 Contractual Penalties

In the event that a contractual obligation is breached, the parties can agree that the party responsible for breaching the agreed obligation shall be obliged to pay a contractual penalty. Unlike the previous legal arrangement, this arrangement does not require written form. When negotiating a contractual penalty, a (fixed) sum of the penalty or the manner in which the sum of the penalty is determined must be established. Payment of a contractual penalty does not relieve the debtor of the duty to pay the debt corroborated by the contractual penalty. If a contractual penalty is agreed upon, the creditor shall not be entitled to compensation for damages resulting from the breach of obligations to which the contractual penalty relates. For this reason, a contractual penalty is referred to as flat-rate compensation for damages. A court may reduce an excessively high sum of a contractual penalty based on an application by the debtor (known as the discretionary power of a court), with regard to the value and significance of the secured obligation, up to the sum of damages incurred as a result of the breach of the duty which is subject to the contractual penalty before the court decision is made.

10.5.2 Acknowledgement of a Debt

Acknowledgement of a debt is a unilateral juridical act, by which an entity acknowledges a debt in terms of the amount and grounds by making a written declaration. If a person acknowledges a debt by way of such a written declaration, there shall be a rebuttable legal presumption that the debt existed to the acknowledged extent at the time it was acknowledged. Acknowledgement of a debt has substantive legal consequences, for instance, interruption of a period of limitation. From the day that an acknowledgement takes effect, i.e., when it is received by the addressee, a new 10-year period of limitation shall begin to run.

11 LABOUR LAW

Labour law regulations are stipulated both in **the Charter** and in other primary and secondary legislation.

- **the Labour Code**[18]
- **the Collective Bargaining Act**[19]
- **the Employment Act**[20]
- **the Civil Code**[21]

Labour-law relationships can be divided into **individual** and **collective**. Individual labour-law relationships are legal relationships which are governed by labour-law legislation and are created between **an employee and an employer** in connection with the performance of dependent work. Collective labour-law relationships are labour-law relationships which are created between **employers and labour unions**.

The parties to individual labour-law relationships are employees on the one hand and employers on the other hand. An employee can only be **a natural person**; the law further stipulates that the performance of dependent work by minors under the age of fifteen who have not completed compulsory education is **prohibited**. Agreements on Liability for a Shortfall in Entrusted Things of Value (Agreements on Material Liability) can only be entered into with an employee who is over eighteen years of age.

An employee may be either **a legal** or **natural person** who employs a natural person in a labour-law relationship. If an employer is the state, it will be represented by the appropriate government agency, e.g. a ministry.

11.1 Dependent Work

Dependent work means work that is carried out within the relationship of the employer's superiority and an employee's subordination. The law refers to the performance of work by an employee for an employer as dependent work. In order for work to be considered dependent, the following criteria must be met. An employee shall carry out work for an employer:

- **personally**
- **in a position of subordination in relation to the employer, who is in the position of superiority**
- **according to the employer's instructions**
- **on the employer's behalf**
- **for a wage, salary, or remuneration for work**
- **during business hours**
- **at the employer's workplace or another agreed place**
- **at the employer's expense and liability**
- **in a basic labour-law relationship only** (i.e. in employment or on the basis of an agreement to perform work outside of an employment relationship)

11.2 Employment Relationships

An employment relationship is a basic labour-law relationship negotiated between an employer and an employee for the performance of agreed dependent work. **The content** of an employment relationship consists in both the rights and responsibilities of the employee and **the rights and responsibilities of the employer**. The rights and responsibilities of the employee particularly include:

- the responsibility to perform work in accordance with the employment contract personally, within established or

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[18] *Act No. 262/2006 Coll., the Labour Code, as amended.*

[19] *Act No. 2/1991 Coll., on collective bargaining, as amended.*

[20] *Act No. 435/2004 Coll., on employment, as amended.*

[21] *Act No. 89/2012 Coll., the Civil Code, as amended.*

agreed working hours and in compliance with the employer's instructions
- the right to remuneration for work performed (a wage or salary)
- the right to safe working conditions
- the right to participate in the employer's decision-making processes through trade unions, etc.

The rights and responsibilities of the employer particularly include:

- the responsibility to assign work to the employee
- the responsibility to create suitable working conditions for the employee
- the responsibility to comply with other working conditions laid down in statutory provisions, a contract (an employment or collective contract) or internal regulations
- the responsibility to pay the employee remuneration (a wage or salary) for work performed

Before the creation of an employment relationship, employers may only request information from an individual seeking employment which **is directly related to entry into an employment contract** (they are not entitled to ask about family relationships, e.g., whether a woman intends to have children in the future, and so on). Before entering into an employment contract, employers shall acquaint employees with their rights and responsibilities, working conditions, wage and salary conditions, and responsibilities arising from special legislation.

11.2.1 Commencement of an Employment Relationship

An employment relationship is based on:

- **an employment contract** between the employee and the employer
- **appointment**

11.2.1.1 Employment Contract

An employment contract constitutes legal grounds for the creation of an employment relationship. It is **a bilateral** juridical act resulting in an identical expression of will from a natural person (employee) and an employer to enter into an employment relationship with specified content. An employment contract must be drawn up in writing. However, if an employment contract is not drawn up **in writing**, but the performance of work under that contract has already begun, its invalidity cannot be invoked.

Every employment contract must contain the following **essential requirements**:

- identification of the employee and the employer
- **the type of work** – the activities which the employee is to perform
- **the place of work** – this may be identified by the name of a municipality and the registered seat of the employer or its specific business premises, or, on the other hand, only the name of a municipality where the employer has multiple establishments, a name such as the "South Bohemian Region", or even the name "Czech Republic"
- **the date of commencement of employment** – an employment relationship is created on this date, regardless of whether the employee actually starts work
- the signature of the contract by both parties

Besides the above specified essential requirements, an employment contract may also contain **other particulars**. Other such particulars may include:

- **The duration** of the employment relationship. The employment relationship may be entered into for a definite or indefinite period.
- A trial period. If a trial period is agreed upon, it must be no longer than 3 consecutive months from the date of commencement of the employment relationship or, in the case of managerial employees, no longer than 6 consecutive months from the date of commencement of the employment relationship.
- **Wage and Salary**. A wage (mzda) is remuneration for work which is provided in the private sector, while a salary (plat) is remuneration provided for the performance of work in the public sector. If a wage or salary is not established in an employment contract, they can be established in a collective bargaining agreement, in internal regulations, or in a wage or salary assessment. A wage must be at least equal to the minimum wage. The minimum wage is stipulated every calendar year in a government regulation.
- **Arrangement of Work Hours**. This concerns the period during which the employee must carry out work for the employer, and the period during which the employee is prepared to carry out work according to the employer's

instructions in the workplace. The established working week is 40 hours (for some professions, work hours are established at a lower rate. For example, employees who work underground on extraction of coal, ores or non-metallic raw materials, on the construction of mine works, or who are engaged in geological prospecting on mining sites, shall work 37.5 hours a week). As regards an employee who has not yet reached the age of 18 years, the length of a shift on individual days may not exceed 8 hours.

- **Information on Notice Periods**. A notice period lasts 2 months. This notice period, however, may be extended by agreement between the employer and the employee; such an agreement must be drawn up in writing. This arrangement may form a part of the content of the employment contract itself and may also be incorporated into a separate agreement between the employer and the employee.
- Possibility of Being Sent on a **Business Trip.**
- **Holidays**. The holiday allowance is at least 4 weeks per calendar year. Employees in the government sector are entitled to 5 weeks per calendar year. Pedagogical employees and academic employees of universities receive annual leave in the length of 8 weeks. However, it is possible to negotiate holiday time which is longer than the periods specified by law.
- **Non-Competition Clause**. Under a non-competition clause, after termination of an employment relationship, employees undertake, for a certain period not exceeding 1 year, to refrain from the performance of gainful activity that would be identical to the employer's business activity or that would be of a competitive nature with regard to the employer. When applying a non-competition clause, the employer must undertake to provide the employee with an adequate monetary consideration. A non-competition clause must be entered into in writing (either separately or within the employment contract itself).

Other particulars (e.g. arrangements on travel expenses, rights and responsibilities of the employee and the employer, other entitlements, and work conditions).

11.2.1.2 Appointment

Another legal means for the creation of an employment relationship is appointment. An employment relationship arises upon appointment to a managerial position in instances laid down in special legislation. In particular, an employment relationship is created by appointment with regard to heads of government agencies (ministers), heads of branches of government authorities, heads of establishments of state enterprises, heads of establishments belonging to state funds, heads of organisations receiving contributions from state (public) funds, heads of branches of contributory organisations (e.g. headteachers of secondary and primary schools), and heads of formations within the Police of the Czech Republic.

11.2.2 Termination of an Employment Relationship

Termination of an employment relationship results in the complete extinction of a labour-law relationship. An employment relationship can only be terminated in the manners provided for in **the Labour Code**. The law stipulates the following means of terminating an employment relationship:

- an agreement to terminate an employment relationship
- by notice of termination
- by immediate termination
- by termination within a trial period
- upon expiry of the agreed period if employment is agreed for a definite period
- upon the employee’s death
- upon the employer’s death, unless the trade continues
- upon the dissolution of a legal person without a legal successor
- in the case of foreign nationals, under the conditions stipulated by law

11.2.2.1 Agreement to Terminate an Employment Relationship

If an employer and an employee agree on the termination of an employment relationship, it will be terminated on the agreed date. An agreement to terminate an employment relationship must be drawn up **in writing**. Each contracting party must receive one copy of the agreement to terminate an employment relationship.

11.2.2.2 Notice of Termination

Notice of termination is a unilateral juridical act which terminates an employment relationship **at the end of the notice period**. Notice of termination may be submitted both by **the employee** and by **the employer**. Notice of termination of an employment relationship must be submitted **in writing**, otherwise it will be disregarded. The employer can only give the employee notice of termination **in cases expressly stipulated by law**. The employee, on the other hand, may submit notice of withdrawal to the employer **for any reason or without stating a reason**. Where the employer gives notice of termination to an employee, the reason in the notice of termination must be factually specified so that it cannot be confused with another reason. The reason for the notice cannot be subsequently changed. Notice of termination may only be withdrawn with the other contracting party's consent; both the withdrawal of the notice and the consent thereto must be made in writing. Where notice of termination has been given, the employment relationship will come to an end upon the expiry of the notice period. The notice period must be the same for both the employer and the employee and shall be at least 2 months. If an employer terminates an employment relationship by giving notice for one of the reasons laid down by law, the employee will be entitled to severance pay.

Although a reason is laid down by law, it is not permitted to give notice of termination to an employee who is in a so-called **protection period**. A protection period is in effect in the following cases: when an employee is recognised to be temporarily unfit for work; when an employee is called-up for military service; while an employee is fully released for a long period to perform a public office; during a period when an employee is pregnant or on maternity leave or while a female or male employee is on parental leave; during a period while a night worker is recognised to be temporarily unfit for night work by a medical certificate issued by an occupational medical services provider. However, the law also specifies cases in which the prohibition of giving notice does not apply.

11.2.2.3 Immediate Termination of an Employment Relationship

Immediate termination of an employment relationship is **a unilateral** juridical act by which employment is terminated the moment the other party is informed of this intention. Immediate termination of an employment relationship must be made **in writing** must factually state **the reason** for immediate termination. This reason cannot be subsequently changed. **Both the employer and the employee** can terminate employment immediately, but only on valid legal grounds.

11.2.2.4 Termination Within a Trial Period

If an employer and an employee agree upon a trial period, both parties may terminate the employment relationship during this trial period for any reason or without stating a reason. During a trial period, the employer may not terminate such employment relationship within the first 14 calendar days of an employee's temporary incapacity for work (quarantine). Termination of an employment relationship during a trial period must be made in writing, otherwise it will be disregarded. The employment relationship shall come to an end on the day when the notice is delivered, unless a later date is stated therein.

11.2.2.5 Expiry of an Agreed Period

If Employment is Agreed for a Definite Period Employment arranged for a definite period ends when the agreed period elapses. Where the duration of such employment relationship is restricted by a period in which specified working tasks are to be performed, the employer shall notify the employee in good time that the work will soon be completed, as a rule, at least 3 days in advance. If, after the agreed period expires, the employee continues to perform work and the employer is aware of this fact, the employment relationship shall be deemed to have changed into an employment relationship agreed for an indefinite period.

11.2.2.6 Employee’s Death

If an employee dies, the employment relationship is also terminated.

11.2.2.7 Employer’s Death

If a natural person in the position of employer dies, the basic employment relationship is terminated. If, however, **heirs of such a natural person continue the trade** in compliance with the Trade Licensing Act, the employee’s employment shall **not be terminated**.

11.2.2.8 Dissolution of a Legal Entity

However, if a legal entity is dissolved without liquidation, i.e., if it has a legal successor, then the rights and obligations from labour-law relationships pass to the legal successor.

11.2.2.9 Termination of the Employment Relationships of Foreign Nationals

Unless already terminated otherwise, the employment of a foreign national or a stateless natural person shall be terminated:

- on the last day of such a person's **residence** in the Czech Republic as given by an enforceable decision to cancel a residence permit
- on the date on which a ruling to **deport** such a person from the Czech Republic enters into force
- upon expiry of the period for which **the employment permit**, or long-term residence permit for the purpose of performing a job requiring a high-level qualification were issued

11.3 Agreements on Work Performed outside of an Employment Relationship

As has been specified above, dependent work can be performed on the basis of an employment relationship or an agreement on work performed outside of an employment relationship. The law recognises two types of contract for work to be performed outside of an employment relationship:

- **an agreement to perform work**
- **an agreement to complete a job**

11.3.1 Agreement to Complete a Job

The scope of work for which an agreement to complete a job is entered into must not exceed **300 hours per calendar year**. The scope of work shall also include the period over which work is carried out by an employee for an employer in the same calendar year based on a different agreement to complete a job.

An agreement to complete a job must specify the period for which it is entered into. If an employee receives remuneration under such an agreement **in excess of CZK 10,000 per month**, they will be obliged to **make payments for health insurance, social security, and a state employment policy contribution from the received remuneration**. The agreement must be drawn up in writing. Notice of termination of an agreement to complete a job requires written form, otherwise it will be disregarded. The same applies to immediate termination of such an agreement.

11.3.2 Agreement to Perform Work

An agreement to perform work may be entered into by an employer and a natural person, even if the scope of such work does not exceed 300 hours in one calendar year. If the average scope of work exceeds one-half of standard weekly working hours, it may not be carried out on the basis of an agreement to perform work. Observance of the agreed and **maximum permissible scope of one-half standard weekly working hours** shall be assessed for the entire period for which an agreement to perform work is entered into, however for no more than 52 weeks.

An agreement to perform work must specify:

- the agreed work
- the agreed scope of working hours
- the period for which the agreement is entered into

12 CRIMINAL LAW

12.1 Sources of Criminal Law

The constitutional basis of substantive and procedural criminal law is stipulated first and foremost **in the Constitution and the Charter of Fundamental Rights and Freedoms**. These particularly stipulate:

- **the principle of legality**, according to which only the law determines what is a criminal offence and what sanctions can be imposed for its commission (the principle of nullum crimen sine lege, nulla poena sine lege)
- **the principle of the presumption of innocence**
- **the principle of prosecution solely on legal grounds**
- **the principle of the right to a defence**
- **the principle of non bis in idem**, i.e., the prohibition of newly prosecuting an accused person for the same deed
- **the principle of the prohibition of retroactivity** etc.

A fundamental source of **substantive criminal law** is **the Criminal Code**[22]. The Criminal Code is divided into three parts: the general part, the special part, which contains individual criminal acts, and a third part containing transitional and final provisions.

A fundamental source of **procedural criminal law** is the **Code of Criminal Procedure**[23].

Other sources of criminal law include:

- the act on serving imprisonment and on amendments to certain related acts[24]
- the act on serving custody[25]
- the act on public prosecution[26]
- the act on special protection of a witness and other persons in connection with criminal proceedings[27]

Other sources of criminal law are international treaties to which the Czech Republic is bound (e.g. Convention for the Protection of Human Rights and Fundamental Freedoms).

12.2 Criminal Offence

A criminal offence is an illegal act identified as criminal by the Criminal Code, which exhibits characteristics stated in this Code:

- **illegality** – i.e., a conflict with the law (illegality is expressly stipulated in certain provisions – e.g. "Without justification", "in conflict with other legislation", etc.)
- characteristics of **the merits of a criminal offence** (i.e. characteristics defined in the Criminal Code)

Characteristics of **the merits of a criminal offence** include:

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[22] *Act No. 40/2009 Coll., the Criminal Code, as amended.*

[23] *Act No. 141/1961 Coll., on judicial criminal procedure, as amended.*

[24] *Act No. 169/1999 Coll., on serving imprisonment and on amendments to certain related acts, as amended.*

[25] *Act No. 293/1993 Coll., on serving custody, as amended.*

[26] *Act No. 283/1993 Coll., on the public prosecutor's office, as amended.*

[27] *Act No. 137/2001 Coll., on special protection of a witness and other persons in connection with criminal proceedings, as amended.*

12.2.1 An object (i.e. an interest protected by the state).

The object is not always explicitly mentioned in the individual criminal offences defined in the Criminal Code. However, it can be deduced. For example, in the case of a criminal offence committed to the detriment of life and health, the object, or the interest protected by the state, is the life and health of an individual. In the case of property crimes, the object is particularly the interest in the protection of property and ownership etc. The term object must be differentiated from the subject of an attack, i.e., a specific person or thing which is the target of a criminal offence.

12.2.2 Objective Element

As another of the mandatory characteristic of the merits of a criminal offence consists of three features, specifically, he actions of an offender and the consequence and causal link between the action and the consequence.

12.2.3 Subject

The term "subject of a criminal offence" is particularly associated with the term perpetrator of a criminal offence. This term refers to a person whose acts constitute the characteristics of the merits of a criminal offence, or an attempt or preparation of a criminal offence. The age and sanity of the perpetrator are essential conditions for the commission of a criminal offence. A person who has not reached fifteen years of age at the time of committing a criminal offence is not criminally liable. Anyone who, due to a mental disorder at the time of committing an offence is unable to recognise the illegal nature of an act or to control their conduct, shall not be criminally liable for such an act.

12.2.4 Subjective Element

The subjective element is characterised by a particular feature, specifically fault, as an internal psychological relationship of the perpetrator to the circumstances that constitute a criminal offence, whether caused by the perpetrator or existing independently of their will[28]. The law recognises two kinds of fault, intention and negligence.

12.3 Categorisation of Criminal Offences

The Criminal Code divides criminal offences into **misdemeanours** and **felonies**. Misdemeanours are **all negligent criminal offences** and such intentional criminal offences for which the Criminal Code stipulates **a sentence of imprisonment** with an upper limit of **five years.** Felonies are all criminal offences that are not classified as misdemeanours under the Criminal Code. A special subcategory of felonies are **especially serious felonies**, meaning all negligent criminal offences and such intentional criminal offences for which the Criminal Code stipulates a sentence of imprisonment with an upper limit of at least ten years.

12.4 Circumstances Precluding Illegality of an Act

The law stipulates certain circumstances which preclude the illegality of an act. Under circumstances precluding illegality, an act that would otherwise be punishable is **not punishable** at all, because one of the basic characteristics of a criminal offence is lacking, specifically its **illegality**. Circumstances precluding illegality of an act include:

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[28] JELÍNEK, J. et al. Trestní právo hmotné (Substantive Criminal Law). General part. Special part. 3rd edition. Leges. 2013. 968 p. ISBN 978-80-8757-664-9.

12.4.1 Extreme Necessity

For an act to be considered extreme necessity, the following criteria must be met:

- the act would otherwise be criminal
- someone averts the danger of the act
- there is an impending danger to an interest protected by the Criminal Code
- the resulting consequences must not be evidently equally serious or even more serious than the imminent consequence
- the person threatened by the consequence is not obliged to tolerate it

12.4.2 Necessary Defence

An act shall be considered to be necessary defence if:

- the act would otherwise be criminal
- a person averts an impending or progressing attack
- the attack is aimed at an interest protected by the Criminal Code
- defence must not be obviously grossly disproportionate to the manner of the attack

12.4.3 Consent of the Aggrieved Party

A criminal offence is not committed by a person who acts with the consent of the aggrieved party, who is fully competent to decide about their interests that are affected by such an act. The consent of the aggrieved person, prior to the act or simultaneously with an offence which would otherwise be criminal, must be given voluntarily, certainly, seriously and comprehensibly. With the exception of permission to perform medical procedures that are in accordance with the law, and knowledge of medical science and practice at the time of the act, consent cannot be given to bodily harm or death.

12.4.4 Tolerable Risk

A criminal offence is not committed by those who, in accordance with the current state of knowledge and information available to them at the time of their decision-making on taking further action, perform a socially beneficial activity as part of their occupation, position or function, by which they imperil or violate an interest protected by the Criminal Code, unless a socially beneficial result could have been otherwise achieved.

12.4.5 Authorised Use of Weapons

Legislation (e.g. the act on police) defines limits for the use of weapons.

12.5 Criminal Penalties

Criminal penalties are imposed for the commitment of a criminal offence. Criminal **penalties** are **punishments** and protective measures. The law states that an offender may not be sentenced to cruel or unusual criminal penalties. Human dignity may not be impaired by the enforcement of a criminal penalty.

For committed criminal offences, the law may impose the following penalties:

- **imprisonment**
- **house arrest**
- **community service**
- **confiscation of property**
- **a monetary fine**
- **confiscation of an item or other valuable property**
- **prohibition of activity**

- **prohibition of residence**
- **prohibition of attending sports, cultural, or other social events**
- **loss of honorary titles and decorations**
- **loss of military rank**
- **banishment**

Protective measures may be imposed under the legal conditions individually or in parallel to a punishment. Its function is primarily protective. Protective measures may be:

- **protective therapy**
- **protective detention**
- **confiscation of an item or other valuable property**
- **protective education**

12.6 Selected Criminal Offences

The special part of the Criminal Code contains a list of individual criminal offences. For the purpose of conducting business, property crimes and economic crimes are particularly important. Selected criminal offences concerning these fields are listed below.

12.6.1 Selected Property Crimes

- **theft** (committed, for example, by someone who misappropriates a thing of another by taking possession of it and thus causes damage not insignificant to the property of another; commits the act of breaking and entering; immediately after an act attempts to retain a thing by violence or by threat of immediate violence; commits an act on a thing which another person has on them, or has in their possession; or commits an act in an area in which the evacuation of persons has or is being performed. Damages which are not insignificant are damages exceeding CZK 5,000).
- **embezzlement** (committed by a person who misappropriates a thing or another asset of value belonging to another that has been entrusted to them, and thus causes damage not insignificant to the property of another)
- **unauthorised use of a thing of another** (committed by a person who takes possession of a thing of another of no small value, or a motor vehicle, with the intention to temporarily use it, or someone who causes damage not insignificant to the property of another by temporarily using an item which has been entrusted to them without authorisation)
- **fraud** (committed by a person who enriches themselves, or another, by leading someone into error, by using someone's error, or by concealing material facts and thus cause damage not insignificant to the property of another)
- **subvention fraud** (committed by a person who states false or grossly distorted information, or conceals material information in an application for administration of a grant, subvention, returnable financial help or a contribution; or someone who uses funds in no small amount obtained by a fixed purpose grant, subvention, returnable financial help or a contribution for something other than the stated purpose)
- **practice of unfair games and wagers** (committed by someone who practises a monetary or similar game or wager, the rules of which do not guarantee equal possibilities of winning to all participants)

12.6.2 Selected Economic Crimes

- **counterfeiting and alteration of money** (committed by someone who gains for another or keeps counterfeit or altered money or components of money designed for protection from counterfeiting; someone who counterfeits or alters money with the intention to pass it off as genuine or valid or as money of greater value; or someone who passes counterfeit or altered money as genuine or valid or as money of greater value)
- **evasion of taxes, fees and other compulsory payments** (committed by someone who, in a large amount, evades a tax, customs duty, social security insurance payment, state employment policy fee, or health insurance payment, or elicits a fee or other similar payment or elicits a privilege on payment on any of these compulsory payments)

- **breach of regulations on labels and other items for labelling goods** (committed by someone who handles labels, control tapes or other items for labelling goods for tax purposes in a way contrary to other legal regulations, with the intention of causing damage to another or to gain unjustified profit for themselves or for others; or by someone who, contrary to other legal regulations, imports, stores, transits or sends goods without labels, control tapes or other items with its labelling for tax purposes)
- **breach of regulations on rules of economic competition** (committed by someone who violates legislation on unfair competition by false advertising; false labelling of goods and services; causing the danger of confusion; exploiting the reputation of an enterprise, product or service of another competitor; bribery; demeaning; comparative advertising; breaching a business secret; or endangering the health of consumers and the environment, thus causing a great deal of detriment to other competitors and consumers; or by gaining a wide range of unearned benefits for themselves or others)
- **unauthorised business activities** (committed by someone who provides a wide range of services, or conducts production, trade, or other business activities on a large scale in an unauthorised manner)
- **unauthorised operation of lottery and other similar games** (committed by someone who operates, organises, promotes, or arranges a lottery or other similar games without authorisation)
- **arranging an advantage in the assignment of a public contract, public contest, or public auction** (committed by someone who, in relation to the assignment of a public contract, public contest or public auction, creates an advantage of priority or preferential conditions for a supplier, contestant or auction participant to the detriment of other suppliers or contestants with the intention of causing damage to another, or to gain profit for themselves or others)
- **harming the financial interests of the European Union** (committed by someone who produces, uses or presents false, incorrect or incomplete documentation, or states in such documentation false or grossly distorted data related to income or expenses of a summary budget of the European Union or to budgets administered by the European Union or on their behalf, or who conceals such documentation or data and thus facilitates incorrect use or withholding of funds from any such budget, or diminishes funds of any such budget; or someone who diminishes or uses funds that form income or expenses of a summary budget of the European Union, or budgets administered by the European Union or on their behalf without authorisation)
- **breach of regulations on circulation of goods in relation with foreign states** (committed by someone who seriously endangers a public interest by breaching prohibition, restriction, or other important obligations stipulated for the import, export or transit of goods
- **criminal offences committed against industrial rights and copyright** etc.

12.7 Criminal Liability of Legal Entities

A criminal offence committed by a legal entity is an illegal act committed **on its own behalf**, **in its own interest, or in connection with its activities**, if committed by one of the following:

a) a statutory body or a member of a statutory body, or another entity who is authorised to act for or on behalf of the legal entity
b) an entity who carries out management or inspection activities for the legal entity, even if not an entity listed under sub-paragraph a)
c) an entity who exercises a decisive influence over the management of the legal entity, if such an entities' actions meet at least one of the conditions giving rise to criminal liability on the part of the legal entity
d) an employee or a person in a similar position while carrying out work tasks, even if not a person listed under sub-paragraphs a) to c) if it can be attributed to such a person.

However, legal entities only bear criminal liability **in the cases of criminal offences exhaustively listed by this code** (particularly property and economic crimes).

Only the following punishments can be imposed for a criminal offence committed by a legal entity:

- **termination of the legal entity**
- **confiscation of property**
- **a monetary fine**
- **confiscation of an item or other valuable property**
- **prohibition of activity**
- **prohibition of performing public contracts and participating in concession procedures or public contests**

- **prohibition of accepting subsidies and subventions**
- **Publishing a judgement**

A protective measure can be imposed for a criminal offence committed by a legal entity to forfeit a thing or asset value.

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