LEGAL REGULATION OF INTERNATIONAL GROUPS OF COMPANIES

JANA GLOGAROVÁ
Faculty of Law, Masaryk University

JARMILA POKORNÁ

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With economic integration and growing globalization law has to face new challenges, one of them being company groupings. Where a holding company from one country is linked with a subsidiary from another country and they form larger and more complex economic units, one can speak about international groups of companies. In an international group of companies both, the holding company and its subsidiaries, keep their separate legal personalities, therefore it is important to find a law regulating the relationship between them. However, explicit legal regulation of international groups of companies cannot be found in any source of either national or international law. Keeping in mind the importance of these groups in nowadays business environment, it is surprising to see that their legal regulation does not attract much attention either of lawmakers or of scholars.

Within international groups of companies three basic types can be distinguished: Groups of companies consisting of those from EC countries, groups of companies consisting of those outside the EC and groups of companies consisting of both. This division is crucial for the decision on what law will regulate international groups of companies. It is evident that for the groups of companies consisting of those from EC countries community law will play an important role. On the other hand, for the groups of companies consisting of those outside the EC countries community law will be irrelevant and one will have to look for a different

solution. For the groups of companies consisting of both types of companies one will have to combine both legal regulations.

As far as groups of companies consisting of those from EC countries are concerned there is no unified comprehensive legal regulation on the community level. Even though there have been attempts to unify company law, such as the proposal of the Ninth Directive of 1974, they have not been successful so far. The Ninth Directive on company law has never been adopted due to the disputes among member states and it does not seem it ever will. Community law acknowledges the existence of groups of companies; however their legal regulation on community level remains fragmentary and inconsistent. It is dispersed among various sources of EC law many of which do not even deal with company law itself e.g. the Seventh Council Directive on consolidated accounts defines a parent undertaking and a subsidiary undertaking – two terms that clearly are from the sphere of company law. The Thirteenth Directive on takeover bids regulating squeeze-out and sell-out is also very important for the regulation of company groupings. However, the legal regulation of groups of companies on the community level does not cover all relevant issues and to "fill the gaps" one has to look into the sphere of the international private law.

International private law will play an essential role not only for the legal regulation of those aspects of groups of companies that are not regulated on the community level but also for the legal regulation of international groups of companies in general. Within the sphere of international private law the issue can be defined by two main questions: Firstly, which legal order will regulate the relations between the holding company and its subsidiaries in a group of companies if the companies themselves are regulated by different national legal orders? Secondly, if a group of companies has a contractual basis, will the group be regulated by the legal order decisive for the contract or by a legal order decisive for one of the companies?

The Czech legal practice has so far neglected the issue of legal regulation of international groups of companies. There are no provisions explicitly solving the two questions mentioned in the previous paragraph in the Czech international private law statutes. So far the Czech scholars have not dealt with the issue either. Therefore, for finding the solution it is helpful to look for inspiration into foreign legal orders. Since the Czech company law was highly influenced by the German one, it is particularly useful to look into the German legal regulation of international groups of companies.

Most German scholars agree with the opinion that if the holding company and its subsidiary are from different countries, the legal relationship between them is regulated by the legal order decisive for the subsidiary. It is considered to be the best solution as the subsidiary is the one most negatively affected by the existence of control relationship within the group of companies. The subsidiary can be forced to take steps that disadvantage it economically or legally for the sake of group's prosperity. This should be balanced by the means of protection of the legal order regulating the subsidiary. From this point of view, the subsidiary's legal order is supposed to have the closest link to the issue and therefore it should regulate the legal relationship between the holding company and the subsidiary. This is true also if the group of companies has a contractual basis.

In my opinion, when assessing the situation from the point of view of the Czech legal order one should come to the same conclusion as the German scholars did. However, the situation will be more complex by the groups of companies consisting of those from EC countries since here one has to combine the EC law regulation of groups of companies as well as the subsidiary's legal order. This can clearly lead to very complex and controversial situations in the practice. Therefore it would be highly advisable to take steps for simplification of legal regulation of international groups of companies or at least for unification of the approach to this legal issue. Nevertheless, the story of the Ninth Directive on company law shows us what a big challenge this is going to be in the future.

Contact – email:
jana.glogarova@gmail.com