Introduction to the Czech Civil Law I.

Parties, Ownership, Sale, Lease, Liability for damages

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PREFACE

This book pursue an aim to serve as a textbook for the students of the course Czech civil law that has teached at the Faculty of Law of Masaryk University in Brno, Czech Republic in the frame of the program Socrates-Erasmus since the academic year 2009/2010. It outlining the concept, the system and the development of civil law in the Czech Republic and reflecting the situation in the legislation by July 31, 2009. The work corresponds with the contents of the course of Czech civil Law, teaching in the program Socrates-Erasmus; however, the really lessons take inevitably into evidence the development of the Czech „civil" legislation and the development of the court practice.

The current state of civil law in the Czech Republic has several specific features that should be pointed at.

The private law has in Czech Republic the complicated **system**. The sources of civil law in narrower sense in the Czech Republic are composed of two most important acts of law: The Civil Code (Act No. 40, 1994 Coll.) and Commercial Code (Act No. 513, 1991 Coll.). Both the Codes contain specific rules for both commercial and non-commercial juridical relations and deeds but a strict dividing line between the two of them is often missing and thus application of a particular rule of law to a given case is governed by rather complex rules.

Czech civil law in broader sense (private law) is composed of:

- Civil law (based on Civil Code and others acts of law) and Commercial law (based on Commercial Code and others acts of law),
- Labour law (based on Labour Code (Act No. 262/2006 Coll. and others acts of law) and
- Family law (based on Family Code (Act No. 94/1963 Coll. and others acts of law).
- The Intelectual property law is partially considered as a part of civil law in narrower sense (especially law of authors, Act No. 121/2000 Coll.), partially as a part of commercial law (particularly industrial property law).

Another feature influencing the character of the Czech civil law is its dynamic **development**: following the changes of the political situation after 1989 the law of contracts has, through a number of legislative changes including Commercial Code recodification, gradually returned back to democratic standards of contract relationships, leaving aside the socialist experiment in law, as applied between 1950 and 1989. However, a consistent change of the system of law necessarily means to carry out an entire recodification of private law as a whole, including the law of contract. Since 1992 legislative activities involving that entire recodification of the Czech private law have been in progress. The aim of the recodification should be a large civil code, including family law. As for basic types of contracts, the new civil code should contain all standard contract types including employment contracts and contracts used both in commercial relationships and beyond (which implies a commercionalized concept of the civil code).

Regarding the above mentioned specific features of the transitional period of the Czech civil law the authors had to make some inevitable compromises with regard to standards of comparative civil law. These were brought about by the following circumstances in particular:

- A concise regulation of general provisions of civil law is in contrast to the detailed regulation of specific contract relationships in both the Civil and the Commercial Codes.
- The Czech regulation of civil law is still different, to a large extent, from the standard, traditional forms of civil law of other european countries and the modern projects of civil law, like the DCFR, Gandolphi principles, UNIDROIT principles and other.
- Conception, content and terminology differences are quite apparent in individual juridical relationships.

Due to the above mentioned reasons it was not possible to pattern fully the conception, system and content of the Czech civil law upon the standardized model structures of the textbooks Civil Law in majority of european countrie and the authors inevitably had to respect – in the interests of authenticity of the description of the Czech civil law (which is not in the existing version legislatively harmonized and suffers from systemic imperfections) – these oddities which may give an impression of incoherency and unsystemic nature. These oddities concern the terminology of the described institutes, too; the authors respect the special terminology of the Czech civil law striving at the same time to adapt it to the language standards of the “European” English.

I. INTRODUCTION TO THE CZECH CIVIL LAW

I.1 GENERAL DESCRIPTION OF THE CZECH REPUBLIC

The Czech Republic forms geographically the centre of Europe and is situated among Polonia, Germany, Austria and Slovakia. Longtime it was the frontier between West and East. Historically, its position between West and East was a reason of many war and political conflicts concerning this country.

The Czech Republic was born as one of the heirs of former Czech and Slovak Federative Republic. Now it is a unitary state created after the splitting of Czech and Slovak Federative Republic on 1st January 1993. The Constitution of the Czech Republic was adopted at the end of 1992, entering into force on 1st January 1993. The country is divided into fourteen regions. The capital of the country is Prague. Since the 1st May 2004 the Czech Republic has been a Member State of the European Union. The European law is in force in the Czech territory having supremacy over the Czech law.

The legislative power is exercised by the Parliament of the Czech Republic which consists of the Chamber of Deputies and the Senate. 200 members of the Chamber of Deputies are elected in general and direct elections every four years. 81 members of Senate are elected in general and direct elections for six years. The election takes place every two years in order to renew one third of the Senate. Besides its legislative power*s*, the Parliament has also other important functions. The Chamber of Deputies must pass the annual state budget and the final account. The Senate gives its consent to the appointment of judges of the Constitutional Court. Both Chambers sitting jointly elect the President of the Czech Republic every five years. The President of the Czech Republic can only be elected for two consecutive terms.

The **executive power** is partially vested in the Government of the Czech Republic and partially in the President of the Czech Republic. He is part of the executive power, too. He appoints the Prime Minister according to the result of the election to the Chamber of Deputies and appoints and dismisses each Minister of the Government on the proposal of the Prime Minister. The primary task of the Government consists in issuing regulations and making decisions needed for implementation of laws.

The **judiciary power** is independent of the executive and legislative powers. The Constitutional Court has the authority to pass judgments on constitutionality of laws enacted by the legislature and on regulations enacted by the executive authorities. The ordinary law courts are organised in four *degrees* – district courts, regional or municipal courts, high courts and Supreme Court. Administrative courts have jurisdiction over public law controversies outside constitutional issues, in particular over challenges to administrative acts. The system of administrative courts is partially organised as a part of general courts, on the head of administrative justice is the Supreme Administrative Court.

I.2 SHORT HISTORY OF CZECH LAW AND OF CZECH LEGAL CULTURE

A legal culture has been in the territory of what is now the Czech Republic from time immemorial. As early as the thirteenth century, land records, the legal registers of noble estates existed in Bohemia. At the beginning of the fourteenth century, under reign of the Czech King Wenceslas II, Roman law was adopted (*ius regale montanorum*). From 1620 until 1918, the Czech legal system developed within the framework of the Austrian empire. At the beginning of twentieth century, the German Civil Code (BGB) influenced the development of the Austrian legal system, including the Czech one. Some elements of the French legal system penetrated to the Czech law after the establishment of the Czechoslovak Republic in 1918. Particularly the constitutional system of the new Czechoslovak Republic adopted some elements of the French Constitution of the Third Republic. The general system of private law remained untouched until 1950 when the Czechoslovak law was subject to the influence of the Soviet legal system. Under the communist regime (1950-1989), the democratic principles of civil law were distorted. After 1989, the Czech legal system finds again its original roots but some of its new codifications are more and more inspired by modern European codifications, particularly of the German origin.

I.3 CZECH LEGISLATION AND THE CZECH LEGAL SYSTEM AS A PART OF CONTINENTAL LEGAL SYSTEM

In the Czech Republic, law making must proceed by means of legislation. There is therefore no customary law as such. Customs can be considered only in those cases in which a statue refers to them. Nevertheless, under the influence of European law and its development, the general principles of law came to be the source of Czech civil law.

Other important sources of law are international treaties and international covenants of human rights. Those international treaties and covenants have a direct binding effect and supremacy over statutes.

The Constitution takes precedence over statutes. The priority of the Constitution is especially important in respect to provisions protecting fundamental individual rights. All ordinary statutes are void or may be declared void insofar as they violate any fundamental constitutional rights. The priority of statutory law over administrative regulations results from the subordinate position of the administrative agencies in respect to the legislature. Furthermore, an administrative agency may promulgate legal norms only on the basis of a formal statutory delegation of power which specifies the content, purpose, and scope of the authority so granted. Duties and obligations can be imposed only by statutes, not by administrative provisions.

Two rules govern the conflict between legal norms otherwise having the same priority: a recent law prevails over a prior law; specific norms prevail over more general ones.

I.4 THE POSITION OF THE JUDICIARY

Court decisions and writings are not considered to be sources of law; nevertheless, they often have a decisive influence upon courts and administrative authorities. In this context, rules of interpretation are of the great importance, such as interpretation of words, grammatical-logical interpretation, interpretation of intention analogy of statute, analogy of legal principle or principles of natural law.

In order to guarantee a uniform case law, only the Supreme Court and the Supreme Administrative Court can give their opinions to unification of the case law. Such opinions do not have nature of a generally binding source of law. As a rule, however, they are followed by all courts.

A special position is granted to the Constitutional Court. The Constitutional Court may declare void any statute or its provisions insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The Constitutional Court may declare void any administrative regulation or its provisions insofar as they violate the Constitution or an international treaty having supremacy over the Czech law. The decisions of the Constitutional Court are the so-called "negative source of law". The Constitutional Court is not a law making authority but it can declare void the existing sources of law or their parts.

I.5 PUBLIC LAW AND PRIVATE LAW IN CZECH LEGAL SYSTEM

Until 1950, civil (in narrower sense) or private law (in broader sense) were understood as all that was not public law; thus it included even commercial law. Legal writers for some time used the term "private law" in a narrower sense excluding commercial law. However, between 1950 and 1989 the distinction between "private" and "public" law was considered inappropriate. After 1989, a new discussion on this topic was opened. An important step towards solving the problem of distinction between private and public law was establishing necessary criteria of such a distinction. The first of them may be riteria of involvement and the second one criteria of power.

According to the criteria of involvement private law respects freedoms of an individual while public law protects public interests and the public order. Such classification is dating back to Roman law as expressed by Ulpianus: *"Publicum ius est, quod ad statum rei romanae spectat; privatum, quod ad singulorum utilitatem"*. According to the criteria of power, public law expresses the dominant position of the state authority in protecting public interests and the public order. The Czech legislators accepted the dualism of public and private law again after 1991 in several modifications of the Civil Code. A renewal of dualism of private and public law in the Czech legal system was regarded as an instrument of reinforcing legal guarantees of the natural or artificial legal persons and preventing the state from unauthorized interventions in private business activities.

I.6 DEFINITION OF CZECH PRIVATE LAW

The present Civil Code reflects the principle of the Civil Law regulation declaring that the parties of Civil Law relationships are equal in their rights and obligations. This equal position is reflected in the following way:

- none of the parties of a civil law relationship is authorised to impose unilaterally any duties or to transfer unilaterally any rights on the other one;
- none of parties of a civil law relationship is authorised to decide disputes concerning rights and duties of another participant as created from the civil law relationship. Such disputes can be decided solely by competent authorities, in particular by Courts or in special cases by arbitrators if statutes provide so. The participants of any litigation are equal in their rights (§ 2, Art. 2, Civil Code).

The principle of equality is now undoubtedly one of the basic principles of legal regulation of private law. The public authority can influence private law relationships or create their inequality under limited and special conditions:

A particular interest to protect special categories of civil law relationships, e.g. protection of children or protection of persons who are not capable to defend effectively their own interests.

Protection of some participants of a civil law relationship against economic supremacy of other participants which could lead, respecting formal equality of the participants, to a devaluation of the social purpose of the legal relationship, eg consumer protection, abuse of the dominant position, etc.

I.7 CIVIL LAW AND COMMERCIAL LAW

The Czechoslovak legal system in 1950-1989 did not make any distinction between private law and public law. Thus no discussion was possible on the broader sense of private law or on its narrower sense excluding commercial law. Starting from 1948, an extensive state control and central planning of the economy were introduced and in 1964 the Economic Code more or less established an administrative regulation of economic contracts. Those were more similar to the above described administrative contracts than to commercial contracts in the sense of Continental legal systems.

After 1989, the concept of "private law" was renewed in Czechoslovakia but in a very broad sense including commercial law as well, as a reaction to its previous absence in our legal system. Amendments to the Civil Code in 1991 and the introduction of a new Commercial Code in 1991 created a dual codification of private law. The Civil Code represents a general codification of private law including contract law while the Commercial Code is a special codification for commercial contracts and for persons of commercial relationships such as commercial companies and cooperative companies.

The most complicated situation between civil law and commercial law relationships relate to civil and commercial contracts. While the application of the Commercial Code to specific persons, such as commercial companies, is relatively clear, the application of the Commercial Code to specific contracts such as commercial contracts is not without difficulties. The category of commercial obligations is defined in § 261 of the Commercial Code as follows:

Obligations between entrepreneurs (businesses), i.e. between persons involved in continual business for profit.

- Obligations created between the state or its entities and between an entrepreneur (business) in the framework of business activities of the latter for the purpose of public interest.
- Obligations where the character of parties is not decisive but the Commercial Code provides for special types of contracts which should be governed by commercial law, for example, contracts on letter of credit, banking guarantee, traveller's cheques, lease of a share of a company, etc.

When a contract is concluded between other parties than those who should conclude it according to the Commercial Code or when there is a contract not directly specified by the Commercial Code as a commercial contract, the parties may agree to conclude such a contract according to the Civil Code or according to the Commercial Code. A choice between the Civil Code and the Commercial Code, if possible, must be expressed in a written form. Both types of contracts provide for a protection of the consumer in terms of general provisions of Civil or Commercial Code.

I.8 CIVIL LAW AND FAMILY LAW

Czech family law is relevant to the relationships between married couples (inclusive registered partnership), between (among) the parents and children and others relativem, include maintenance (alimony). Only the property relations between married couples (inclusive registered partnership) have been regulated in Czech civil code. The relationsship between Family code and Civil code has been based on the rule of speciality and subsidiarity.

I.9 CIVIL LAW AND LABOUR LAW

In Czech legal system, the labour law has the autonomy position towards the civil law. It regulates the relationships arising between employer and employee on the base of the employment contract and the incidental relationships.

1.10 COMPLETING SOURCES AND LITERATURE:

Civil Code „Občanský zákoník“, Prague: Trade Links, s.r.o., June 2007

I.11 QUESTIONS:

1. Describe the background of Czech Republic
2. Characterize the political system of Czech Republic
3. Describe the historical development of Czech law
4. Describe the historical development of Czech civil law
5. Describe the system of Czech law
6. Characterize the Czech private law and civil law
7. Distinguish the Czech civil law in narrower sense and in broader sense
8. Distinguish the Czech civil law on one hand and the Czech commercial law in other hand
9. Distinguish the Czech civil law on one hand and the Czech family in other hand
10. Distinguish the Czech civil law on one hand and the Czech labour law in other hand

II. PERSONS IN THE LEGAL SENSE – PARTICIPANTS IN PRIVATE LAW RELATIONS

II.1 INTRODUCTION

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

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

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

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

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

II.2 LEGAL CAPACITY

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

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

In the case of legal persons, the formation and extinction of the legal capacity to have rights and duties is essentially identical with the formation and extinction of their capacity to make legal

acts. In the case of natural persons, however, there is a significant difference between the two kinds of capacities.

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

II.3 NATURAL PERSONS

II.3.1 Legal capacity to have rights and duties

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

This legal capacity arises upon a person's birth. Also a child conceived(*nasciturus*) has this capacity if it is born alive. This capacity expires at the moment of one's death. Unless death can be proved – on the basis of a medical inspection and an official declaration of death, the court can declare an individual to be dead, if the death can be found out otherwise. This rule can be applied also to an individual whose death can be presumed with respect to all circumstances.

Proceedings on declaring somebody dead may be started where there is certainty that an individual died but the person's death cannot be attested in a way provided for by the law. In this case, a court shall issue a decision declaring the individual dead (§ 200 **Act No. 99/1963 Coll.,** Civil Procedure Code).

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

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

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

may be, the day that missing person did not survive. Upon a petition of a participant or also without petition (*ex offo*), the court can correct the day specified in the decision as the day of death if it is subsequently revealed that the person who has been declared dead died on another day or that he could not have lived until this day or that he survived this day.

II.3.2 Legal capacity to acquire rights and assume duties

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

Legal capacity to acquire rights and assume duties may be limited and a natural person may even be deprived of it in certain situations defined by the law. Minors can be capable only to such legal acts that are adequate to the maturity of their reason and will with regard to their age (*ex lege* § 9 CCC).

If an individual is completely unable to do legal acts due to a permanent mental illness, the court can deprive him or her of the capacity to legal acts. If an individual is able to do only certain legal acts due to a permanent mental illness or to an immoderate consumption of alcoholic beverages, the court can restrict his or her capacity to legal acts and also specify the extent of such restriction in the decision. The court can change or cancel the deprivation or restriction of the capacity to legal acts if reasons leading thereto.

II.3.3 Delictual capacity

Delictual capacity is a capacity in respect of unlawful acts caused, i.e., the capacity to establish one's liability as a result of ones' own acts in law. Its full extent is acquired upon majority, just as the legal capacity to acquire rights and assume duties. With minors, what is always individually assessed is their ability to recognize and understand the consequences of their unlawful acts (both elements – reason and will). The same holds for people who suffer a mental illness (either temporary or permanent). A certain exception consists in allowing delictual capacity also to those unable to control their behaviour and assess its consequences as long as they bring this state upon themselves (§ 423 CCC).

II.4 PROTECTION OF PERSONAL RIGHTS (§ 11 CCC)

II.4.1 Introduction

The basis for the legal protection of human personality consists of *subjective natural rights* of each human being (human rights), as guaranteed by international agreements and constitutional

acts of the Czech Republic. These are fundamental human rights that are inalienable, imprescriptible, uncancellable and not subject to the statute of limitations. However, they do not exist mainly as subjective rights, but also as the duty to exercise one's right (or freedom) in such a way that the rights of others are not threatened.

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

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

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

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

In the subjective sense, the right to the protection of one's personality is one of the subjective rights with an absolute nature which forms the individual legal status of the natural person.

II.4.2 Sources of law on protection of personal rights

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

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

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

As regards regulation on the level of statutes, there are some other regulations, all as subsequently amended:

1. Act no. 40 /1964 Coll., Section 11 and subsequent sections of the Civil Code,
2. The Act No. 20/1966 Coll., on the Protection of People's Health
3. The Act No. 66/1988 Coll., on the Termination of Pregnancy
4. The Act No. 101/2000 Coll., on the Protection of Personal Data
5. The Act No. 46/2000 Coll., on Rights and Duties when Publishing Periodical Publications (the Press Act)
6. The Act No. 121/2000 Coll., on Copyright and Related Rights (the Copyright Act)
7. The Act No. 301/2000 Coll., on Registries, Names and Surnames
8. The Act No. 285/2002 Coll., on Donation, Removal and Transplantation of Tissues and Organs
9. The Act No. 227/2006 Coll., on Research Carried out on Human Embryo Stem Cells
10. The Act No. 262/2006 Coll., The Labour Code.

Legal relationships arising from the results of intellectual creative activity are regulated by special acts (this issue is not included in this text).

II.4.3 Subjects of law on protection of personal rights

II.4.3.1 Natural persons

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

II.4.3.2 Legal persons

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

II.4.4 Object (subject matter) of law on protection of personal rights

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

"*An individual shall have the right to protection of his or her personal rights (personhood), in particular of his or her life and health, civic honour and human dignity as well as of its privacy, name and expressions of personal nature*." The law states also that documents of personal nature, portraits,

pictures and image and sound records concerning an individual or expressions of his personal nature may be taken or used only with his or *her consent.* As the wording of Section 11 clearly shows, the enumeration of the rights that are protected is not exhaustive. Therefore, in addition to these specifically listed subjects, some other components and manifestations related to personhood are also protected, e.g., personal secrets, secrecy of the mail, likeness, voice, biographical and other personal data, clean environment, good name, professional, commercial and academic honour, freedom of faith and religion, etc.

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

II. 4.5 Limitation of the right to protection of personal rights

Any limitation of the right to the protection of one's personality rights is possible only with the consent of the relevant person (this is referred to as '*contractual licence*'). In addition, personality rights may be limited also on the basis of three 'statutory licences': the *official* licence, when documents of personal nature, portraits, pictures and image and sound records are to be used for official purposes on the basis of an act; then the *academic and artistic licences;* and finally the *newsreporting licence*: portraits, pictures and image and sound records may be taken or used without the consent of the individual adequately also for purposes of science or art and for the purposes of press, motion picture, radio and television news service. Such protected values may not be used (or made) in conflict with the justifiable interests of a natural person even in cases where the natural person approved the use (or the making) of protected values.

According to the judicial decisions of the Czech Constitutional Court, the basic protection of the dignified existence of the relevant natural person must always be assured.

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

II.4.6 Means of protection of personal rights

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

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

on the protection of personal rights differs from subjective liability for damage, which is essentially based on the anticipated fault of a wrongdoer.

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

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

1. unlawful violation of his or her personal rights be abandoned (actio negatoria),
2. that consequences of this violation be removed,
3. and that an adequate satisfaction be given to him or her.

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

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

1. the seriousness of the unpecuniary harm (of a nature related to one's personal rights): the more serious the harm, the higher its monetary compensation;
2. the circumstances under which the potential or actual infringement of the right to the protection of personality rights occurs (even subjective elements, such as fault, manner of infringement, etc. may play a role in this context).

The provision of a suitable satisfaction, both in the form of moral satisfaction and monetary compensation, is meant to compensate for the unpecuniary harm caused and to approximate to the idea of justice. A similar two-level conception of reasonable satisfaction is also provided for in the Act. No. 121/2000 Coll., Copyright Act.

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

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

A special way of protecting these rights is the possibility to turn to the European Court of Human Rights. This eventuality, however, is allowed only after exhausting all remedies within one's own country. In this case, the authorized subject may seek protection from the state (not the actual infringer) on account of the state failing to provide sufficient protection of those rights which are guaranteed in the European *Convention for the Protection of Human Rights and Fundamentals Freedoms.*

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

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

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

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

II.6 LEGAL PERSONS

II.6.1 Introduction

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

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

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

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

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

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

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

II.6.2 Categorisation – schematic outline

A. Legal persons (based on private law):

1. private foundations — foundations — foundations, endowment funds
   — institutions — public benefit institutions
2. private corporations — *based on civil law* – associations, trade unions, interest associations of legal persons, political parties and political movements, churches and religious societies, organisations with the international element, interest groups of legal persons.
   — *based on commercial law* – joint stock companies, limited companies, co-operatives, unlimited companies

B. Legal persons (based on public law)

1. public foundations — public funds
   —public institutions – e.g. contributory organisations, Czech Television, Czech broadcast, Czech press agency
2. public corporations — territorial – county, municipality
   — professional chambers
   — others, e.g. public universities

II.6.3 Private law legal persons – related legal regulations (a selection)

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

The Czech law contains a significant number of legal regulations which determine the legal position of the particular kinds of legal persons. The following list contains some of these regulations, mainly those which – with respect to the scheme above – concern private law legal persons, all as subsequently amended:

- the Act No. 40/1964 Coll., the Civil Code
- the Act No. 83/1990 Coll., on Associations of Citizens
- the Act No. 116/1985 Coll., on Conditions for Activities of Organisations with an International Element in the Czechoslovak Socialist Republic
- the Act No. 513/1991 Coll., Commercial Code
- the Act No. 424/1991 Coll., on Association in Political Parties and Political Movements
- the Act No. 72/1994 Coll., on the Ownership of Flats, Section 9 and subsequent sections
- the Act No. 248/1995 Coll., on Public Benefit Institutions
- the Act No. 227/1997 Coll., on Foundations and Endowment Funds
- the Act No. 3/2002 Coll., on Churches and Religious Societies

II.6.4 A General characterisation of legal persons

II.6.4.1 Legal capacity

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

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

The capacity of a legal person to acquire rights and duties may be restricted only on the basis of a law. Legal entities registered with the Commercial Registry or with another registry specified by an act may acquire rights and duties from the day the registration comes into effect unless a special act stipulates otherwise.

II.6.4.2 Establishment

The provisions of Section 19 summarize the main facts concerning the establishment of legal persons. The formation (foundation) of a legal person requires a written agreement or a foundation

deed unless a special act stipulates otherwise. Legal entities come into existence (establishment) on the day they are registered with the Commercial Registry or with another registry specified by an act unless a special act regulates their formation otherwise.

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

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

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

II.6.4.3 Name

The name of a legal person is an important identification and conceptual elements. It serves to identify the bearer and differentiate the bearer from others, as in the case of the first names and surnames of natural persons. This implies that a legal person always has only one name. The founder is essentially free to choose the name, while respecting general civil law provisions concerning the absolute protection of the name of legal persons (cf. Section 19b(2): "*Legal persons shall have their name; the name must be specified at the moment of their formation. Should the name of a legal person be used unlawfully, the legal entity may demand with a court that the unlawful user omits the use and remove irregular state; the legal entity may also demand an adequate satisfaction that may be required even in money. The same shall be adequately applied to an unlawful infringement of goodwill of a legal person*."

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

II.6.4.4 Seat

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

The seat of a legal person must be specified at the moment of the formation (foundation) of such a legal person. The seat must be specified as the address where the legal entity actually resides, i.e., as the place where the management of the legal entity is situated and where the legal entity can be contacted by the public. Where a legal entity refers to a seat that is different from its actual seat, the actual seat will be taken as the decisive one.

The seat of a legal person may be located in a flat only provided that it is compatible with the purpose of the legal person and that it corresponds to the nature and extent of its activities. In case of a legal entity registered with the Commercial Register or with another public register, it is sufficient if the constitutive document specifies – instead of the address of the seat – only the municipality where the seat is located. However, in asking for registration with this register, the legal entity must specify the full address of its seat.

II.6.4.5 Minimum organisation structure

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

The Civil Code provides in Section 20 sub. 2 that "*the legal person shall act in all matters through persons entitled thereto on the basis of the agreement on establishment of the legal person, of a deed of formation (foundation) or on the basis of an act (statutory bodies)*".

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

II.6.4.6 Winding up and dissolution

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

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

However, the occurrence of these facts does not automatically result in the loss of legal subjectivity of a legal person. Instead, the phase of liquidation begins (as long as the matter does not concern the winding up of a legal person with a legal successor). The actual dissolution of a legal person (the loss of legal subjectivity) is then – in the case of most private law persons – tied to a public law act, i.e., the deletion from the relevant official registry.

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

a) with a legal successor (without liquidation)

b) without a legal successor (with liquidation).

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

II.6.5 The state as a party in private law relations

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

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

The current law is based on the conception that the state's subjectivity is uniform. Undoubtedly, the decisive legal regulation is, in this connection, the Act No. 219/2000 Coll. on the Property of the

Czech Republic and the Manner of Its Acting in Legal Relations, which regulates the kinds and conditions of managing the property of the Czech Republic, its acting in legal relations, as well as the position, establishment and dissolution of its organizational units.

II.6.6 European legal persons

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

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

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

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

Other "European" kinds of legal persons, such as the European Association, the European Foundation and the European Mutual Society are currently under preparation. Their incorporation within EC law has been, for the time being, postponed.

II.6.6 Non profit organisations – general information

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

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

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

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

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

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

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

RELATED ARTICLES OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS, ROME 1950

ART. 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ART. 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

II.7 CASES FOR STUDY:

Case „I." V. Finland, 2009, (No. 20511/03), Protection of medical data

The applicant "I", now 48, stated that her private medical records were accessed by other people (as a result of which she possibly lost her job as a nurse). The access was not recorded, as there was no record of this at the time (around 1992). The Court decided that as the hospital was controlled by the State. inland was responsible for the actions there. The court also stated that **personal information relating to a patient undoubtedly belongs to his or her private life**. The Court found that a person's right to respect for their private life (under the ECHR) may be breached where the State **fails to take appropriate steps to secure data, so that it cannot be accessed improperly**. While Article 8 means the government may not interfere, but may also have to undertake positive actions to prevent such interference, e.g the adoption of systems/controls to protect data. In this case there was no statement that there was deliberate and unauthorized access of data, only that there was

failure to secure the data appropriately, i.e a breach of Finland's positive obligations under Article 8. The court found in favour of the Applicant.

The ECHR found that if personal data is not secured adequately, and the State does not take positive steps to do so (not just legislation but technical and procedural steps as well), then the state is in breach of Article 8.

Von Hannover v. Germany, 2004,(59320/00), ECHR 294, Protection of private life

The applicant was Princess Caroline of Monaco (von Hannover) who had taken her case for protection of her privacy to the ECHR after several mainly unsuccessful applications in the German courts over a period of ten years. The level of protection of a person's privacy under German law lies somewhere between the modest degree afforded in the UK and the much greater degree awarded in France. She took action over a series of photographs taken without her consent in France and published in Germany of her everyday life (picking her children up from school, playing sport, shopping at a market etc). Under German law, Princess Caroline is deemed to be a "public figure par excellence", and as such the public is deemed to have a legitimate interest in knowing how she generally behaves in public, even when not performing any kind of official function.

The Court reiterates the fundamental importance of protecting private life from the point of view of the development of every human being's personality. That protection " extends beyond the private family circle and also includes a social dimension. The Court considers that anyone, even if they are known to the general public, must be able to enjoy a "legitimate expectation" of protection of and respect for their private life."

Case Lingens v. Austria (1986) 8 EHRR 407, Facts v. value judgements

The decision of the European Court of Human Rights placed restrictions on libel laws because of the freedom of expression provisions of Article 10 of the ECHR. Lingens was fined for publishing in a Vienna magazine comments about the behavior of the Austrian Chancellor, such as 'basest opportunism', 'immoral' and 'undignified'. Under the Austrian criminal code the only defense was proof of the truth of these statements. Lingens could not prove the truth of these value judgments.

The European Court of Human Rights stated that a careful distinction needed to be made between facts and value judgments/opinions. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The facts on which Lingens founded his value judgment were not disputed; nor was his good faith. Since it was impossible to prove the truth of value judgments, the requirement of the relevant provisions of the Austrian criminal code was impossible of fulfilment and infringed article 10 of the Convention.

Case Castells v. Spain (1992),14 EHRR 445, personal criterium

The applicant was an elected representative of an opposition party in Spain. He published in a weekly magazine an article criticizing the government. He was convicted of insulting the government, and was disqualified from public office. During his trial, the Spanish courts ruled that

evidence on the truth of the applicants' statements was inadmissible. The applicant complained that his prosecution and conviction violated his freedom of expression within the meaning of Article 10 of the Convention and discriminated against him within the meaning of Article 14 of the Convention, because similar material by other authors had been published with impunity.

The European Court of Human Rights considered that the penalties of which the applicant complained constituted an „interference with his freedom of expression". The Court noted that the freedom of political debate was not absolute in nature. However, the limits of permissible criticism were wider with regard to the Government than in relation to a private citizen, or even a politician.

II.8 QUESTIONS:

1. What is the distinction between the legal capacity to have rights and duties and the legal capacity to acquire rights and assume rights and duties?
2. What are the sources of the legal regulation of personal rights?
3. What are the legal means of protecting personal rights?
4. Try to categorize legal persons in the Czech Republic.
5. What is the distinction between a foundation and a corporation as two types of legal persons?
6. Characterize the position of the state as a participant in private relationships.

III. OWNERSHIP OF REAL ESTATE

III.1 REAL ESTATE

A plot of land is considered to be an individualized part of the surface of the Earth regardless of what substance it is covered with (agricultural land, built-up area, watercourses, etc.) Section 27 of the Act No. 344/1992 Coll. defines a plot of land as a part of the surface of the Earth separated from its neighbouring parts by a boundary of a regional administrative unit or a cadastral area, a boundary of ownership, a boundary of possession, a boundary of types of plots of land, or a boundary constituted by the manner in which the plots of land are used.

The expression **"lot"** ("parcela") is often used, especially in common usage. A lot is a plot of land which is determined by its position and geometry, depicted in a cadastral map and identified with a lot number (cf. Section 27 of the Act No. 344/1992 Coll.). A 'building lot' ("stavební parcela") is a plot of land identified within the category of 'built-up area and courtyards', while a 'plot-of-land lot' ("pozemková parcela") is a plot of land that is not identified as a building lot. The 'lot area' ("výměra parcely"), rounded to whole square meters, is the expression of the overlap of a plot of land into the plane of depiction in surface measure. The size of the lot area is based on the geometric delimitation of a plot of land. Such a numerical statement of the lot area, however, does not constitute binding data for the purpose of the real estate registry.

Legal regulations use the concept of a "**construction"** on the basis of two distinct conceptions originating in civil law on the one hand and building law on the other. The two conceptions are frequently confused, which gives rise to numerous misunderstandings and conflicts, ultimately based on the crucial problem of defining what 'a construction' actually is.

The provisions of the building law can be divided into two groups:

1. First, there are regulations governing the construction and the steps involved in the process of construction. These, however, do not define the notion of a 'construction' itself. These regulations provide the procedures for the establishment, use, change or removal of a construction, regulate the situation when a construction is in a different place than it should be or is different from what it should be, when it is not authorised, when it threatens something, etc. The Construction Act No. 183/2006 Coll. (effective from 1 January 2007) characterises a 'construction' as all building objects created by means of construction or assembly technologies, regardless of the following: their structural and technical design; the structural products, materials and constructions used; the manner of their use and the length of their use (a 'temporary construction' ("dočasná stavba") is any structure whose period of use is pre-limited by the building office, while an 'advertising construction' ("stavba pro reklamu") is any structure that serves the purpose of advertising). In this connection, it needs to be pointed out that when the Construction Act uses the notion of a 'construction',

this may variously be also meant to refer to a part or a modification of a finished construction.

2. Second, there are regulations stipulating categories of constructions, e.g. main and auxiliary constructions, surface and underground constructions, simple constructions, line constructions, as well as permanent and temporary constructions. This group of regulations also includes provisions on certain types of constructions requiring special duties in their design, placement and realisation (cf. the abolished Regulation No. 132/1998 Coll., on the General Technical Requirements for Building). However, these provisions do not offer any definition of a 'construction' either. As regards this group, it is worth noting that until 31 March 1964, the division of constructions into permanent and temporary ones was linked to civil law provisions in the following manner: permanent constructions were classified as immovable things while temporary constructions were classified as movable things (from the point of view of the present situation).

Nevertheless, civil law regulations do not contain any specific delimitation of the notion of a 'construction' either, although they do operate with this term on several occasions. This concerns, above all, the afore-mentioned division into movable and immovable constructions ("movité a nemovité stavby"; Section 119(2) of CCC), and, importantly, the issue of 'component (integral) parts of a thing' ("součásti věci"; Section 120) and 'accessories to a thing' ("příslušenství věci"; Section 121). The conceptions of a 'construction' are not identical in civil law and in building law, although it appears from the character of the civil legal relationships that such relationships can apply only to constructions that form a thing in the legal sense (Section 118). Any construction not constituting a thing in the legal sense cannot be an independent thing and, consequently, it cannot have its own legal life.

As regards the notion of 'construction' in civil legal relationships, it is not decisive whether the creation of the construction was subject to a building permission or whether is has been officially approved after its completion by means of issuing an occupancy permit. Any construction object needs to be considered as a construction if it is at such a building stage when the layout of at least the first ground floor is apparent in a clear and unmistakable manner. From such a moment on, any subsequent building work is aimed at the completion of a thing that has already come into existence, i.e. a thing that is owned by someone and may constitute an object of legal relationships.

Building regulations understand the notion of a 'construction' in a dynamic sense as an activity or a set of activities aimed at the realisation of a product (and sometimes even the product itself). By contrast, a 'construction' needs to be understood in a static sense for the purposes of civil law – as a thing in the legal sense, i.e. as the result of a certain building activity which may constitute an object of legal relationships.

An independent thing in the civil law conception is not constituted by annexes (or loft extensions) ("přístavby" and "nástavby") and building modifications (such as make-overs and

built-in constructions) ("přestavby" and "vestavby"). Similarly, it is not decisive who the building permission is issued to, since all these are parts of an existing construction. However, the simple act of identifying a construction as an 'annex' (from the point of view of the building law) does not mean that the construction built forms a part of some other constructions because what needs to be judged is the completion of the characteristic features of a 'component part of a thing' (see below).

A 'licensed construction' ("povolená stavba") is any construction built on the basis of a building permission in which the building office had specified certain binding conditions for the realisation and use of a construction. Any construction that was built without a building permission or in conflict with a building permission is an 'unlicensed construction' ("nepovolená stavba"). The consequences linked to unlicensed constructions are specified in Section 178 and subsequent sections of the Building Act (in case of a wrong or an administrative infraction) and Section 129 and subsequent sections of the Building Act (with the possibility of ordering a removal of such a construction). An 'unlicensed construction' ("nepovolená stavba") needs to be distinguished from an 'unauthorized construction' ("neoprávněná stavba") – the latter occurs when a builder builds a construction without having, from the point of view of civil law regulations, the relevant authority to do so (i.e. lacking the relevant right to the plot of land which would enable the builder to erect a structure on the plot of land). The consequences of unauthorized constructions are provided in Section 135(c) of the CCC and their regime is decided upon by the court.

Under Section 120(1) of the CCC, **a component (integral) part of a thing** is anything that pertains to a thing by its nature and cannot be separated from it without reducing the value of the thing (i.e. the principal thing). Judicial practice unequivocally stresses that a component part of a thing cannot constitute an object of independent agreements or civil legal relationships. A component part is always in the ownership of the owner of the principal thing and therefore it shares the legal life of such a thing. Since a component part of a thing (albeit initially independent) becomes a part of some other thing (the principal thing) as a result of their physical connection, the ownership of a part of a thing is acquired by the owner of the principal thing even in those cases where the expenses connected with the incorporation or the purchase of the component part of the thing are borne by a person different from the owner. The legal prerequisite for a component part of a thing is its inseparability without the simultaneous devaluation of the principal thing, without any regard to whether the component part itself becomes devalued as a result of the separation. The devaluation of a thing cannot be understood in the narrow sense of the word, i.e. as a destruction of or a substantial damage to the principal thing as a result of removal of the component part; by separating a part of a plot of land, the plot of land as the principal thing does not typically suffer any physical damage (devaluation), but its price decreases. The devaluation can thus be understood as the reduction of the value and, typically, the price of a thing. The devaluation may also mean that a thing will perform its function on a lower level ('functional devaluation') and even that its appearance will be debased ('aesthetic devaluation').

Under the current Czech law (as opposed to some legal regulations in the past), a construction is not a part of the plot of land (i.e. the principle of '*superficies solo non cedit'* is applied). A construction is always an independent thing, but only from the moment when it becomes a thing in the legal sense. Component parts of a construction are constituted by its annexes, extensions and building modifications – built-in constructions. Component parts of a plot of land are, in the sense of Section 120 of the CCC, also exterior modifications – support walls, pavements, curbs, water and sewage pipes, flower ponds, exterior stairs, etc. In individual cases (depending on the manner in which the construction is made), judicial practice considers the following as component parts of some other real estate: melioration devices, terraces, exchange stations, some roads and, e.g. deposits of unclaimed minerals.

Component parts of plots of land, however, also include their vegetation cover, unless special regulations provide that the ownership of such vegetation cover is different from the ownership of plots of land.

The term **'accessories to a thing'** is generally delimited in Section 121(1) of the CCC. This provides that accessories constitute independent things that are not component parts of a thing. Accessories are characterised as things that belong to the owner of the principal thing and are designated by the owner to be used permanently together with the principal thing.

The principal thing and accessories to the thing are owned by the same entity.

For a thing to be considered as an accessory to a thing, it is not decisive whether it is connected to the principal thing in a technical way or not. This criterion is important mainly when considering constructions of various types (e.g. barns, fences, greenhouses, sheds), and various devices (water and sewage pipe lines, etc.)

Some constructions can be classified in both ways (e.g. an independent garage): they can constitute both an accessory to a principal construction and an independent thing.

If a thing is classified as an accessory, it shares the legal life of the principal thing and is transferred together with the principal thing to a person acquiring its ownership. In case of any doubt, especially when transferring real estate, accessories to a thing need to be individually stated and sufficiently identified in an agreement.

Under Section 121(2), appurtenances to a flat are auxiliary rooms and premises designated to be used together with the flat. Auxiliary rooms include, above all, chambers, bathrooms, toilets, larders, dressing rooms, as well as kitchen nooks and entrance halls that are separated in their structural design. Auxiliary premises are considered to be, among other, cellar boxes.

III.2 OWNERSHIP TITLE

Ownership title is one of the most significant kinds of property rights. It has an absolute nature and is characterised by its elasticity (when ownership title is limited, e.g. by an easement, it comes

to assume its original extent upon the removal of the limitation). Ownership titles of all owners have the same legal content and protection (cf. Article 11 of the Charter of Fundamental Rights and Freedoms) and are uniform (modern legal regulations do not any longer distinguish kinds and forms of ownership; in the past, ownership was structured into various kinds and forms and classified into, e.g. personal, private and social ownership; this distinction was applied in the process of evaluating things). The basic regulation of ownership is included in the CCC.

The content of the subjective ownership title is constituted by a set of specific entitlements belonging to the owner of a thing. This set is traditionally known as the 'ownership triad':

a) the right to use a thing and enjoy its fruits and proceeds;
b) the right to dispose of a thing;
c) the right to hold a thing.

The content of the ownership title includes certain obligations on the part of the owner. The construction of the legal regulation is based on the notion that ownership entails obligations (cf. Article 11, section 3 of the Charter of Fundamental Rights and Freedoms). All owners are obliged to respect the prohibition of exercising their ownership titles to the detriment of the rights of others, as well as the prohibition of any conflict of such rights with general interests protected by law. The exercise of one's ownership title must not harm human health, the nature and the environment beyond limits set by law.

Ownership title may be limited only with the approval of an owner, otherwise only on the basis of a law and mainly in the public interest (under Section 128 of the CCC, an owner is obliged to allow use of a thing to the extent necessary and for the necessary period of time, and for compensation, in the case of emergency or urgent public interest, where the purpose cannot be attained otherwise. A thing may be expropriated or ownership title may be restricted in a public interest where the purpose cannot be attained otherwise, but only on the basis of law, solely for the said purpose, and for compensation).

Restrictions of ownership that are applicable under certain conditions to all owners and arise directly from legal regulations constitute certain internal limitations and tend to be identified as 'conceptual restrictions'. Restrictions of ownership that are connected with certain specific legal relationships of ownership originate outside of the ownership relation and arise mainly from the conflict of a specific ownership title and other legal relationships (mainly other ownership titles) may be identified as real limitations of ownership title. The latter group includes also those limitations that arise from the regulation of the so-called 'neighbourhood law' (cf. Section 127 of the CCC).

There is the rule, above all, that every owner of any movable or immovable thing must abstain from anything that might cause annoyance to an unreasonable extent to another person or seriously jeopardise the latter's exercise of his rights. This general principle is specified by CCC by enumerating the kinds of interference (the owner may not, above all, put at risk his neighbour's building or plot of land by making alterations to his own plot of land or to any building erected on

such land without having taken adequate measures in respect of proper reinforcement of his building or other appropriate measures in respect of his plot of land; the owner may not vex his neighbours to an unreasonable extent by noise, dust, ashes, smoke, gases, fumes, odours, solid or liquid waste, light, shadows and vibrations (so-called 'imissions'); the owner may not let any breeding animals enter adjacent land; and he may not, inconsiderately or in an inappropriate season, remove tree roots from his soil or cut tree branches that overhang his plot of land (so-called 'undergrowth' and 'overhang')). The CCC also regulates the possibility of imposing the duty to fence off one's plot of land (where necessary and where it does not obstruct effective use of plots of land and constructions, the court may decide, after first establishing the opinion of the competent building authority, that the owner of a certain plot of land is required to fence it off); as well as the duty to provide access (owners of adjacent plots of lands are obliged to provide, for the necessary time and to the extent necessary, access to their plots of land or, as the case may be, the constructions located in such plots of land, if such access is necessary for the maintenance and management of adjacent plots of land and constructions; where any damage to the plot of land or the construction occurs, the person who caused the damage is required to compensate it, such person cannot relieve himself of this liability; the civil law regulation of entry to a plot of land does not concern the regulation of similar authorisations included in special regulations).

III.3 ACQUISITION OF OWNERSHIP

Ownership title may be acquired in various ways (called legal reasons) that are subject to various classifications. First of all, the original acquisition needs to be distinguished from derivative acquisition. The ground for this distinction is whether the person acquiring the right derives his or her ownership title from a previous owner or not – either because the right is acquired independently of such an owner / the ownership title is created for the first time (original acquisition), or because the new owner enters into the rights and obligations of his precursor, i.e. derives his legal position from the previous owner (derived acquisition). Original acquisition includes confiscation, separation of fruits, creation of a new thing (including the creation of a new construction), etc. Derived acquisition includes, among other, inheritance, purchase and sale, donation, exchange, etc. Another criterion distinguishes between the transfer ("převod") and the passage ("přechod") of ownership (in common speech, these terms are frequently misused). A transfer refers to the acquisition of ownership title on the basis of a manifestation of one's will (e.g. by means of a purchase agreement), while a passage refers to the acquisition of ownership title on the basis of some other legal facts (on the basis of a law, by decision of an official body). A transfer of ownership title is regulated by the principle that no one can transfer more rights to any other person that he or she actually has. This means that ownership may be acquired only from an owner of a thing and, together with the transfer; any faults on the thing itself, such as easements, rights of lien, etc. are transferred as well. Ownership title may be acquired only in the extent to which the original owner held it (the CCC breaks this principle in Section 486 with respect to the acquisition from a so-called 'sham heir'). Forms of acquisition of ownership

are specified in Section 132 of CCC, which provides that ownership may be acquired on the basis of a purchase agreement, contract of donation or some other contract, by inheritance, by decision of a state authority or on the basis of other facts laid down by law.

III.4 ACQUISITION ON THE BASIS OF CONTRACT

As regards the acquisition of ownership on the basis of contract, it is important to distinguish whether the legal system accords the effect of translation or the effect of obligation to the contract. In the former case, the transfer of ownership is realised by the contract itself (its effect). In the latter case, the contract is merely a legal title giving rise to the obligation to transfer the ownership title, while the actual transfer occurs only on the basis of some other legal fact (this fact is then called 'the manner of acquisition'). This is, above all, the hand-over and the take-over of a thing, and 'intabulation' (i.e. entry into public records) in the case of immovable things. Under the Czech legal system, contracts typically have only the effect of obligation.

Where an immovable thing (real estate) is transferred, ownership title is acquired upon the entry into the real estate registry, unless provided otherwise by a separate act (the exception applies in the case of a transfer within the so-called 'large privatisation'). The entry is made on the basis of a decision issued by the land registry office after inspecting the relevant agreement as regards certain specified criteria. The legal effects of the entry come into existence on the basis of a final and conclusive decision on the entry of the right as of the day the motion for the entry is delivered to the land registry office. An entry is constituted by a record in the real estate registry. However, in the event of a transfer of real estate which is not subject to registration in the real estate registry, ownership is acquired at the moment when the relevant agreement takes effect.

III.4.1 Purchase contract

The most frequent manner of acquiring ownership to real estate is by purchase contract. If the purchase contract concerns real estate, then the regulation in Sections 588 to 600 of the CCC is applied even in cases where the contract is signed by entrepreneurs.

A purchase contract for real estate must be in writing and the declarations of the wills of the contracting parties must be on the same document. Any deficiencies in the legal form of a purchase contract result in the nullity of such a contract.

The contract must identify the parties by means of designations required by cadastral regulations, specify the subject matter of the purchase (also by means of identification features used for registering the real estate in the real estate registry), and agree on the purchase price. The subject matter and price represent the essential elements of a purchase contract and are obligatory in such a contract. Other data are optional: a purchase contract for real estate may include some auxiliary understandings corresponding to its nature, such as the pre-emptive right of purchase (of material as well as obligation nature) or the right of a back purchase.

The contents of a purchase contract consist, above all, of the duty of the seller to hand over, properly and in time, the subject matter of the purchase to the buyer, and the corresponding duty on the part of the buyer to take over the subject matter of the purchase. The buyer is obliged to pay the purchase price properly and in time. The seller is obliged to inform the buyer, when signing the contract, of any faults on the thing that the seller is aware of. If any fault that the buyer did not inform the seller of becomes subsequently apparent, then the buyer is entitled to a discount from the price of the real estate. If this concerns a fault that makes the thing unusable, the buyer has the right to withdraw from the contract. However, if the seller assures the buyer that a thing has certain properties or that a thing is without any faults, and such a statement subsequently turns out to be false, then the buyer may always withdraw from such a contract.

Apart from a purchase contract, **a contract of exchange** may be concluded concerning a mutual exchange of real estate. Such a contract is reasonably regulated by similar legal regulations as the purchase contract.

Real estate is often subject to **pre-emptive right of purchase**. It is generally described in the CCC (Section 602 and subsequent sections).

The pre-emptive right of purchase may be characterised as a legal relation of obligation, whose subjects are constituted by the obligor and the obligee. The content of this relation is mostly the right of the obligee to be offered by the obligor a certain object for purchase should he wish to alienate it, and the obligor's obligation corresponding to this right. The purpose of the pre-emptive right of purchase is to secure the superior position of the obligee for the acquisition of the subject matter of the pre-emptive right of purchase. Such acquisition, however, does not occur automatically – it is dependent on the volitional behaviour of both subjects. The first requirement is the obligor's will to alienate the subject matter of the pre-emptive right of purchase, while the second requirement is the obligee's will to acquire the thing.

According to its effect, it is suitable to distinguish the following kinds of pre-emptive right: personal pre-emptive right of purchase ("osobní předkupní právo") and material pre-emptive right of purchase ("věcné předkupní právo"). They may be briefly characterised as follows: Personal pre-emptive right obliges and binds only the parties to the contract, while material pre-emptive right does not place the obligation to offer the subject matter for purchase only on the person signing an agreement on the pre-emptive right of purchase but also its legal successor.

The pre-emptive right of purchase may arise mainly on account of the following legal reasons:

a) on the basis of a contract,
b) by operation of law.

The content of the legal relation is mainly the obligation to offer the subject matter for purchase and the right to buy such a subject matter. Both the first and the second rights are correlative: what corresponds to them is the right to be offered the subject matter and the obligation to suffer the

purchase of a thing or, as the case may be, the obligation to sell the thing. The duty to offer the thing for purchase is both on the part of the person who promised to make such an offer (cf. Section 603(1) of CCC) and on the part of a person who is a subject of the ownership title with which this obligation is connected (if the obligation has material legal character, i.e. it is attached to a thing). The obligation arises at the moment when such a subject decides to sell the subject matter of the pre-emptive right of purchase, and its content is the obligation to make an offer. The offer must have certain elements; it may, basically, be stated that it must contain all conditions under which the purchase agreement should be concluded, including the written form if it concerns the pre-emptive sale of real estate (cf. the 3rd sentence in Section 605 of CCC). The extent of such conditions will also depend upon the original agreement which may have previously specified some of these conditions (e.g. the price). The offer is a unilateral, addressed act by the obligor and becomes perfect upon its delivery to the obligee. It is from such a moment that time limits for the implementation of the sale commence to run. If the offer fails to meet the requirements specified, it cannot cause its legal effects; this concerns, above all, the failure of the commencement of the time limit for realisation of the pre-emptive right of purchase.

III.5 ACQUISITION BY INHERITANCE

The CCC specifies inheritance in its Part VII (Section 460 and subsequent sections). What is essential, as regards the acquisition of ownership title, is that the passage of ownership to heirs occurs upon the death of the deceased. This is the so-called 'principle of descent' (as opposed to the decedent's estate *hereditas iacens* where inheritance is acquired by its transmission).

III.6 ACQUISITION BY MEANS OF A DECISION OF A STATE AUTHORITY

This concerns a decision issued by a court, a land registry office, a building office, etc. According to Section 132(2) of CCC, in such cases, i.e. where ownership is acquired by a state authority's decision, it is acquired on the day stated in that decision. If the day is not stated, then ownership is acquired on the day when the decision comes into legal effect. The CCC regulates some special cases of acquisition of ownership title by a state authority's decision, e.g. as regards the judicial decision to cancel and settle common property (Section 142), the order to transfer ownership title to an unauthorised construction (Section 135c(2) – only if the ownership of construction transferred to the owner of the plot of land), and the sale of real estate and movables ordered by a court in the execution of judgment, etc.

III.7 ACQUISITION ON THE BASIS OF OTHER FACTS SPECIFIED BY LAW

The facts, on the basis of which ownership title is acquired, are provided in both the CCC and other legal regulations.

a) The CCC regulates the acquisition of ownership title to **accretions of a thing** ("přírůstky věci"; Section 135a). This is an entitlement arising from the content of ownership title. In this connection, accretions form an independent subject of ownership title only after they become separated from the original thing. If they are not separated, they form a part of the principal thing. The ownership title itself is acquired only upon separation. A similar nature is shared by acquisition through accession, i.e. to everything that was subsequently connected with the principal thing (at present, this manner of ownership acquisition is not regulated in the Czech legal system, but it could occur in the case of real estate in connection with, e.g. objects washed up by water).

b) A special form of acquisition of ownership title is constituted by **prescription** (usucapio, acquisitive prescription, "vydržení"). The requirements for prescription are, according to Section 134 of CCC, as follows:

- a competent subject (prescription can result in the acquisition of ownership title in the case of both natural and legal persons),
- a competent subject matter (any object may be acquired by prescription that is subject to the right of ownership except for things that may be only in the ownership of the state or legal persons specified by law),
- lawful possession (disposition of a thing in the same way as of one's own, with view to all the circumstances that the thing belongs to its holder),
- the passage of the period of prescription period, which is:
- 3 years in the case of possession of movable things,
- 10 years in the case of possession of immovable things,
- the possession must be uninterrupted for the entire length of the prescription period; any relevant loss of possession means the termination of the prescription period; the prescription period may include the time for which the legal predecessor had the thing in his or her lawful possession.

Where all the above-mentioned criteria are met, original acquisition of ownership title by law occurs. Because the ownership is acquired by law, no assertion or decision is necessary and any potential judicial statement has only a declaratory nature. In the case of immovable things, the person acquiring his right by prescription will be entered in the real estate registry as the owner.

c) One of the forms of acquisition consists of **processing** ("zpracování"; Section 135b of CCC).

d) In connection with the changes in the area of regulation of the civil law, the role of acts (statutes) as a direct form of acquisition has increased. Under the Act No. 509/1991 Coll. (effective from 1 January 1992), the right of personal use of plots of land existing as of that date was transformed into the right of ownership. What was decisive for the precise determination of ownership to a plot of land was the state of the relationship of use and the nature of the plot of land (built-up area or land without any construction). Where a plot of land was in the personal use of an individual, the ownership title arose only for that particular

individual. Where a plot of land was commonly used by several persons, what mattered was whether the plot of land was built-up or not: plots without constructions gave rise to apportioned common property of a plot of land (with identical shares), while built-up plots of land gave rise to apportioned common property of a plot of land with shares corresponding to the individuals' shares to the construction (in case of doubt, the size of shares is determined by mutual agreement; in the absence of any agreement, the size of shares is determined by courts). Where a plot of land was in the common use of spouses, this gave rise to unapportioned (joint) common property of spouses (joint property ownership, "bezpodílové spoluvlastnictví") if their relation continued. If their joint property ownership terminated, then spouses became common co-owners of a plot of land with identical shares.

The law as a form of ownership acquisition was likewise applied in the case of some transformation and restitution regulations, such as the acquisition of property by municipalities (the Act No. 172/1991 Coll., as subsequently amended).

e) Acquisition titles play a role when dealing with the regime of unauthorised constructions. The CCC considers the owner of a construction to be its builder, but certain sanctions may be applied which modify such a principle. Such sanctions are decided by the court and may be as follows:
   - the order to remove the construction at the expense of the owner (the ownership title will terminate),
   - the order to assign the ownership to the owner of the plot of land in return for a compensation, as long as the owner of the plot of land agrees with such a solution – this procedure is possible only if the removal of the construction is not practical.

It needs to be stated, for the sake of completeness, that if a court fails to apply any of the two sanctions mentioned above, the ownership title to a construction stays with the builder. The court has the opportunity to regulate the relations between the owner of the plot of land and the owner of the construction, above all establishing, in return for a compensation, an easement necessary for the exercise of one's ownership title to a construction, or, as the case may be, create the right of entry and access.

III.8 TERMINATION OF OWNERSHIP TITLE

Ownership title may be extinguished as a result of various legal facts that may be sorted out according to specific criteria. One of the basic distinctions concerning the termination of ownership title is the difference between:

- absolute termination; and
- relative termination.

Absolute termination occurs when ownership title to a thing terminates without anybody else acquiring it. This group of ownership title termination includes, above all, the cessation of existence of a thing either as a result of its destruction (a demolition of a construction) or its consumption.

Relative termination includes situations when ownership title terminates for the former owner with someone else acquiring the right at the same time. In such situations, the legal reasons for the termination of ownership title correspond to the legal reasons for the acquisition of ownership title. Thus, for example, the ownership title of the original owner (donor) is terminated on the basis of a contract of donation (a purchase contract, a contract of exchange). At the same time, the ownership title to the same thing is acquired by the donee (the buyer, or the other party to the exchange, as the case may be).

The CCC does not contain any express regulation of individual kinds of termination of ownership title. In spite of that, the following specific kinds can be listed:

1. **Termination on the basis of a manifestation of the will of the existing owner**
   - By contract – the individual forms of termination of ownership title correspond to the forms of acquisition of ownership title on the basis of contract (see above). The contracts can have various forms – purchase agreements, contracts of donation, agreements on the transfer of a co-owned share, agreements on the termination and settlement of common property, agreements on the surrender of a thing (in restitution matters), etc.
   - By dereliction of a thing – this is a unilateral manifestation of the existing owner's will, whereby he expresses his will not to continue as the owner of a thing. Dereliction needs to be distinguished from a loss, which constitutes an event. The consequences of dereliction are regulated by Section 135 of CCC, under which dereliction brings about the termination of the owner's ownership title to the derelict thing (regardless of whether the owner of the derelict thing is known or not), and, the same time, ownership title is created for a municipality. The application of dereliction in the case of real estate is highly problematic and contestable.
   - By destruction of a thing – this is a legal act by the owner, whereby ownership title is terminated because the owner causes the material substrate of a thing to be unusable as a result of his action (in the case of real estate, the destruction of a thing is constituted by its demolition).
   - By consumption – i.e. by exhausting the use value, regardless of whether the owner benefits from it or not. This is practically impossible in the case of real estate.
2. **Termination independent of the will of the existing owner**

Within this category, two subtypes can be distinguishes – termination of ownership independent of the will of the owner in the narrow sense, and termination of ownership against the owner's will.

- By cessation of existence of a thing – Although the result is the same as in the case of the destruction of a thing by its owner (i.e. the cessation of existence of the material substrate of a thing), this concerns the cessation of existence of a thing as a result of an event (fire, earthquake).
- By loss of a thing – Unlike real estate, which cannot be lost, the loss of movable things results in the termination of ownership title if the thing is not returned to its owner or if the owner

fails to claim it within the set period of one year. Upon the expiration of this time limit, the ownership of the thing passes to the state.

- By death of the owner – this terminates the owner's ownership title, which passes to his successors or passes to the state as escheat (if no heir succeeds to the inheritance).
- By prescription – this terminates ownership title when certain conditions for its acquisition by a lawful holder are met (there may not two different subjects holding ownership title to a thing, unless this concerns common property).
- By decision of a state body (by a judicial decision on the termination and settlement of common property; by a decision of an administrative body on expropriation – cf. the relevant chapters; by a judicial decision in a criminal matter where the court imposes the final and conclusive punishment of forfeiture of property or forfeiture of a thing or a protective measure (injunction) of a confiscation of a thing; during the sale of things in the process of enforcement of a decision – execution; by a judicial decision on an unauthorised construction with the court assigning the construction to the owner; by a judicial decision on ownership to a processed thing).

III.9 PROTECTION OF OWNERSHIP TITLE

Ownership title is protected by a whole range of legal instruments. The fundamental legal protection always consists of the legal instrument of the highest legal power – the Charter of Fundamental Rights and Freedoms. In addition, protection is provided by almost all branches of law (both public and private). General instruments can be used for the protection of ownership title, i.e. such that the legal order affords for the protection of all subjective rights (e.g. the possibility to seek compensation for damage to a thing, the possibility of seeking protection with the relevant municipal office if an obvious breach of peaceful state occurs – cf. Section 5 of CCC). Special instruments are those that are meant exclusively for the protection of ownership title, including so-called possessive actions ("vlastnické žaloby") provided for in Section 126 of CCC. These actions can have two forms:

1. **Action for the recovery of a thing (real action) ["Žaloba na vydání věci (žaloba reivindikační)"]**

This action is meant for the protection of ownership title in case of an unauthorised retention of a thing. An action for recovery seeks the release of both movable and immovable things. In the event of immovables, the expression 'action to evict a thing' is used ("žaloba na vyklizení věci"), which arises from the nature of the thing and is also emphasised in other legal regulations, e.g. in Section 340 of the Civil Court Procedure as well as in judicial practice.

2. **Action to repel a claim (actio negatoria) ["Žaloba zápůrčí (negatorní)"]**

This action may be used for the protection of ownership title in all other cases where ownership title is infringed in some other way than an unlawful retention of a thing.

III.10 COMMON PROPERTY ("SPOLUVLASTNICTVÍ")

A thing which is subject to the right of ownership may be owned by a single entity or belong to several entities at the same time, without being separated among them. The latter case describes a situation of common property (co-ownership) where all co-owners are considered as a single owner of a common thing; the same rights that belong to an owner in the case of individual ownership are held by several individuals in the case of common property.

As regards the delimitation of shares, common property is divided into two kinds:

- "apportioned" common property ("podílové"),
- "unapportioned" (joint) common property ("bezpodílové").

These categories were distinguished on the basis of CCC, but from 1 August 1998, the CCC provides only for the former since the latter was replaced by the institute of matrimonial property of spouses ("společné jmění manželů", cf. Section 136 and subsequent sections).

As regards their nature, the individual types of 'apportioned' common property are distinguished into:

- ideal common property,
- real common property.

In the case of ideal common property, there are no actual parts of the common thing specified for the individual co-owners; the co-owners merely have certain rights and obligations (cf. 'apportioned' common property). By contrast, in the case of real common property, co-owners have rights to precisely delimited parts of an inseparable thing (similar to real common property is the ownership of apartments and non-residential premises, which is a combination of real common ownership to a certain part of a construction, i.e. an apartment, non-residential premises and 'apportioned' common ownership of shared parts of the construction).

The defining feature of **'apportioned' common property** is a share (an ownership interest) representing the degree to which co-owners participate in the rights and obligations ensuing from their co-ownership of a common thing (Section 137(1) of CCC). The share does not delimit a certain part of a thing with respect of which a co-owner is authorised to exercise his ownership title; it expresses the legal position of a co-owner towards the other co-owners, determining how the individual co-owners participate in the proceeds of a thing, what expenses they bear, etc. The co-ownership share plays an important role in the final stage of the co-ownership relation: during its termination and settlement.

The size of one's share may be expressed as a fraction or percentage. Its specific amount depends, above all, on the agreement of co-owners, legal regulations (cf. Section 150(4) of CCC) or a decision by a relevant body (e.g. a court ruling on the settlement of matrimonial property of spouses). If the size of one's share is not specified, then it holds that the shares are equal (Section

137(2) of CCC). The share in common property may be subject to inheritance, execution of a decision, right of lien in the case of a share in both movables and immovables, etc.

'Apportioned' common property comes into existence in the same manner as ownership title (see above).

The content of 'apportioned' common property covers those rights and duties that are subject of individual ownership on the one hand, and, on the other, those rights and duties that are specific for the relation of co-ownership. These specific rights and duties have been traditionally classified into three groups according to what subjects they pertain to:

- the mutual relationship between co-owners,
- the relationship of all co-owners towards third persons concerning the common thing,
- the relationship between one co-owner towards other co-owners concerning his co-ownership share.

What is decisive in the mutual relationship between co-owners are the sizes of shares of individual co-owners, which determine the degree to which the co-owners participate in the rights and obligations ensuing from their common property. It is logical that when using and disposing of the thing, the co-owners will depend in their mutual relationship mostly on their mutual agreement. The Civil Code, however, does not require unanimous consensus, favouring the majority principle (Section 139(2) of CCC). This means that not all co-owners need to arrive at an agreement in matters concerning the management of the common thing; what matters is the decisive majority calculated according to their shares. It follows from this that the actual number of co-owners and their numerical majority are not relevant; what matters is the majority of shares. At the same time, CCC deals with the situation of those who are defeated in the vote as follows: if the decision concerns a major change of a common thing (e.g. reconstruction, change in the purpose of a plot of land), the outvoted co-owners may file a petition with a court seeking a ruling on such a change (Section 139(3) of CCC). CCC further deals with those situations where it is impossible to reach a majority, e.g. because some of the co-owners refuse to participate in decision-making or a balance of votes is reached. In such cases, matters of management with the common thing will be decided on by the court upon the motion of any of the co-owners. It must be stressed that management of the common thing does not include such dispositions that might lead to the termination of the co-ownership relation. Consequently, a transfer of a common thing cannot be decided on by a majority calculated according to the size of the shares but requires the agreement of all co-owners.

In their mutual relations towards third parties, all co-owners are considered together as a single entity. Therefore all co-owners have rights and obligations jointly and severally from legal acts concerning the common thing. Their mutual relation is one of active or passive solidarity provided for by the law (Section 139(1) of CCC).

The relationship between a single co-owner and others concerning their shares in common property is most clearly manifested during a transfer of a share in common property. Since the change

of a co-owner is undoubtedly a significant change, the legal order provides a guarantee for the legal certainty of other co-owners. At present, the institute of a pre-emptive right of purchase is applied (for details, see a special chapter). During the transfer of a share in common property, two situations may arise depending on who is to acquire the share in common property:

- if the co-owner is transferring the share to his next of kin, i.e. persons related to him in the direct line, siblings, spouse or other persons in a familial or some similar relationship and if the harm that one of them would suffer might be reasonably felt as his own harm, then the co-owner may transfer his share to such persons without any further limiting conditions;
- if the co-owner is transferring a share in common property to some other persons (natural and all legal persons), then the pre-emptive right of purchase to such a share arises to the other co-owners. This pre-emptive right of purchase arises as a consequence of the co-owner's intention to transfer his share. The content of the pre-emptive right needs to be judged according to the provisions in Section 602 and subsequent sections of CCC. The exercise of the pre-emptive right of purchase will be unequivocal if the authorised co-owner is a single person. In other cases, an agreement is assumed to exist among the other co-owners, especially concerning which of them will exercise the pre-emptive right of purchase. If no agreement is arrived at, then co-owners have the right to buy the share according to the sizes of their own shares. A violation of the pre-emptive right during the transfer of a share in common property gives rise, in addition to the usual consequences of the violation of the pre-emptive right (cf. Section 603 of CCC), to other consequences as well: any agreement under which a co-owner transfers his share to another person without respecting the legal pre-emptive right of the other co-owners is voidable (Section 40a of CCC– the party affected by such an act must raise a defence based on the invalidity of the act, otherwise the legal act is considered as valid).

Common property may cease to exist similarly to the cessation of existence of individual ownership (e.g. all co-owners transfer the common thing to the ownership of a single owner). However, the nature of the co-ownership relation also gives rise to the possibility of its cancellation. Common property may be terminated:

- by agreement (Section 141 of CCC),
- by a judicial decision upon the motion filed by any of the co-owners (Section 142 of CCC).
- The termination of common property is the first step. This needs to be followed by its settlement as the second step.

Out of the above-mentioned ways of terminating common property, the CCC prefers termination by agreement which makes it possible to deal with the situation on the basis of a common will of the co-owners. Where common property concerns real estate, the agreement must be in writing and must be followed by an entry of the ownership title into the real estate registry.

If common property is not terminated and settled by agreement, then termination and settlement will be performed by the court upon a motion filed by one of the co-owners (Section 142(1) of CCC)

III.11 CASES FOR STUDY:

- Judgment of the Czech Supreme Court from February 24th 2003, file number **22 Cdo 721/2002.**
- Judgment of the Czech Supreme Court from May 19th 2004, file number **22 Cdo 509/2003.**
- Judgment of the Czech Supreme Court from November 26th 2006, file number **35 Odo 124/2003.**

III.12 QUESTIONS:

1. How is the concept of "construction" defined in Czech Civil Law?
2. What is "an integral part of a thing"?
3. What does "an accessories of a thing" mean?
4. What does "ownership triad" mean?
5. What is necessary for conveying a real estate?
6. What does a "purchase contract" mean?
7. How to originate a pre-emptive right of purchase?
8. What does an "accretions of a thing" mean?
9. What are the requirements for prescription?
10. How can an ownership be terminated?

IV. SALE AND PURCHASE

IV.1 GENERAL DEFINITIONS

Sale and purchase is a legal relationship established on the grounds of a purchase contract where one contractor (Seller) is legally bound to deliver the other contracting party (Buyer) the subject matter of the sale and as a result the purchasing party agrees to take delivery and pay for it an agreed purchase price (Civil Code, art. 588). Each contracting party may be represented by a number of legal entities (e.g. the purchased goods are sold by co-owners, or the purchasing parties acquire title under joint ownership). The conceptual characteristics of a purchase agreement are the **subject matter of the sale** and **purchase price**.

The decision of the Supreme Court of the Czech Republic file No. 30 Cdo 1162/2002: *'The conceptual characteristics of a purchase contract are the subject matter of the sale and purchase price. The purchase price is then a charge agreed to be paid in cash for the purchased goods. Should another equivalent be provided for the purchased goods, we speak of a Contract of Exchange. By contrast, if no price is agreed upon, it mostly concerns a Deed of Gift*'.

I) **The subject matter of sale and purchase** may all be possessions, which in the legal sense, are in the ownership of the buyer and which may be put up for disposal. For example, it is not allowed to dispose of certain goods and chattels in the sole ownership of the state or organs and tissues removed for the purpose of transplantation (the sale of which is expressly forbidden by the so called Transplantation Act [Act No. 285/2002 Coll., as amended]).

The purchased property may be defined individually, specifically, or collectively. The subject matter of a purchase contract may be **movables** as well as **immovables**. If it is an immovable property, there are certain specific provisions regarding the form of the contract and transfer of title to property.

The subject matter of sale cannot just be a part of property, since it cannot be subject to legal regulations in principle. An exclusion from this rule may, however, be stipulated by law (e.g. as regards the **ownership title to apartment** under the Act on the Ownership of Apartments [Act No. 72/1994 Coll., as amended]).

The decision of the Supreme Court of the Czech Republic file No. 22 Cdo 1432/2002: *'The component parts of the purchased property are transferred to the acquirer, irrespective of whether the contract on transfer of ownership specifies component parts expressly or not; it is not substantially important whether the acquirer realizes that the property is transferred along with its component parts'.*

Since under the Czech body of law any building is not a component part of the land (art. 120, clause 2), it may be subject to sale without the land (and similarly so, the land without the building).

II) The **purchase price** is a cash payment in consideration of the purchased property. It must be specified in cash, or else it does not constitute a purchase contract. The purchase price must be set forth sufficiently explicitly, otherwise the purchase contract might be void.

The decision of the Supreme Court of the Czech Republic file No. 22 Cdo 1625/2002: '*If the purchase price in a purchase contract is stipulated other than by specifying a cash amount, it must then be specified in a way that the purchase price can be determined unequivocally at the time of contract conclusion. Setting forth a purchase price by merely referring to an expert's report that is yet to be produced in the future, makes this provision, and thus the whole purchase contract, void due to lack of definition'*.

The due date of the purchase price may be agreed at the discretion of the contracting parties. Usually, one of the following **approaches** is applied:

a) payment takes place along with the delivery and receipt of the purchased property (typically, a sale in a shop),
b) payment is due after the receipt of the subject property (e.g. based on invoicing information), or after the title has been assigned (after a confirmed entry of title with the appropriate Land Register Office),
c) payment is due prior to the delivery and receipt of the purchased goods (i.e. advance payment).

The decision of the Supreme Court of the Czech Republic file No. 2 Cdon 1806/96: '*An agreement under which the selling party transfers a purchased product to the purchasing party only after the purchase price has been paid in full by installments, is not contrary to good morals*'.

IV 1.1. LEGAL REGULATIONS

Purchase contracts are governed by the article 588 and subsequent provisions of the **Civil Code**. Apart from general provisions of this Code, there is also another specific provision of 612 and subsequent ones which apply (regarding the sale of consumer goods in shops). Simultaneously, the introductory part of the Civil Code, for these cases, contains provisions stipulating consumer agreements (arts. 52-65). For determining obligations of a business person selling goods in a store, there are other important provisions of the Act on Consumer Protection (No. 634/1992 Coll., as amended).

A non-commercial contract governed by the Civil Code is essentially to be distinguished from a purchase contract governed by the **Commercial Code** (art. 409 and subsequent provisions), which is applicable when goods are sold between businesses, when corporations are sold or only their parts, and for securities and stock exchanges. These contractual types are governed by the Commercial Code or the Act on Securities (No. 591/1992 Coll., as amended), even if the contracting party is not a business person.

IV.1.2 Contract Origination and Forms

A purchase contract is established when parties to the contract agree upon its scope, i.e. as soon as they agree upon the subject matter of the sale and purchase price. In order to be valid, it need only be in written form if the subject matter is real estate (art. 46 of the Civil Code), otherwise the form is discretionary.

IV.2 RIGHTS AND OBLIGATIONS OF THE PARTIES

Rights and obligations of the contracting parties to sale and purchase are mutually conditional. In the case of a purchase contract, the following rights and obligations above all apply:

IV.2.1. Obligations of the Seller

The principal duty of the seller is to dully provide performance of the subject matter of the sale, i.e. ensure the obligation to **deliver purchased property** in a period agreed by the parties. The moment of transfer is important to define the question of title to movables (Civil Code, art. 133, clause 1). Along with the acquiring of title, the risk of accidental destruction or deterioration is passed on to the buyer.

The seller is obliged to provide performance without undue delays, however, it may plausibly be appropriate to agree upon a different period, or this different period may even be the usual standard. The seller is entitled to refrain from the delivery of goods, if the purchaser fails to pay the purchase price in time (Civil Code, art. 591). If the object of sale is sent to a place of performance or destination, the buyer is not obliged to pay the purchase price until he is able to inspect the object of sale (this entitlement is mainly important with cash-on-deliveries). The seller also bears the costs related to the delivery of the purchased property (unless agreed otherwise), especially costs related to measuring, weighing and packaging (Civil Code, art. 593).

IV.2.2 Obligations of the Buyer

The principal duty of the buyer is to **pay the purchase price**. The payment due period may be stipulated in the contract as part of the **Payment Terms and Conditions**. The purchase price may be due in full or successive installments according to an agreed payment schedule (installment sale). Unless stipulated otherwise, the purchase price is due upon delivery of the property to the buyer.

The buyer is bound to pay the purchase price in the place agreed in the contract. The place as such may result from the concluded form of payment. Unless the point of payment is specified otherwise, it is the home address or payer's establishment address (Civil Code, art. 567, clause 1). The purchase price may also be paid through the Post Office or a bank. In this case, the period decisive for the assessment of timely performance is the time when the amount is credited to the payee's bank account (Civil Code, art. 567, clause 2).

The purchaser is obliged, apart from paying the purchase price, to **take delivery** of the product. If he fails to do so, the seller is entitled to store goods in such manner as it deems fit at the cost of the buyer or may, giving notice, sell it at the expense of the buyer (Civil Code, art. 592).

IV.2.3 Purchase Contract and Acquisition of Title

The Czech Civil Code governs that transfer of ownership from the seller to purchaser is not effective by concluding a purchase contract, only the obligation of the seller to transfer title to the purchaser is thus originated. Therefore the purchase contract merely constitutes a legal purpose for acquisition of title.

The opinion of the Civil Advisory Board and Commercial Advisory Board of the Supreme Court of the Czech Republic file No. Cpjn 201/2005: '*With transfer of title to a real estate property, the contract provides legal grounds for acquisition of ownership (iustus titulus) and the legal form is ensured (modus acquirendi) by registering title with the Cadastre Register Office under this contract'*.

The seller performs his obligation to transfer title to the property of sale, if he allows for the purchaser to acquire this title under applicable regulations. In this respect, the Civil Code differentiates between three situations:

1. acquisition of title regarding the sale of movables (Civil Code, art. 133, clause 1),
2. acquisition of title regarding the sale of immovables unregistered with the Cadastre Office (Civil Code, art. 133, clause 3),
3. acquisition of title regarding the sale of immovables registered with the Cadastre Office (Civil Code, art. 133, clause 2).

   i) If the purchased property is a movable object, the purchaser acquires title at the time when he **receives** (**takes delivery**) it. Receiving not only means a physical receipt of the property, but also a symbolic one which constitutes the will of the parties to make the purchaser a physical holder of the object (e.g. passing on the keys, documents relevant for the use of the property, etc.).

   The decision of the Supreme Court of the Czech Republic file No. 33 Odo 974/2002: '*Since the delivery of a movable property relates to the moment when the title is acquired, it must pertain to the conditions under which the acquirer obtained control over the property and therefore is vested all proprietary rights (in particular, to use the property at his discretion)'*.

   ii) Should the transfer concern an immovable, which is not registered in the Cadastre Office (e.g. a well, garden shed, silo pit) the title is acquired at the moment the contract becomes effective, which is usually the moment when contracting parties sign the contract.

   iii) The title to real estate registered at the Cadastre Office is acquired upon **registry of title with the Cadastre Office**. Prior to the registration, the Cadastre Office examines whether the selling party is entitled to dispose of the property, whether the contract has

been concluded in the prescribed form, whether the contents of the contract is definite and intelligible, and whether the seller is not restricted from disposing of the property. The legal burden relating to the acquisition of title becomes effective on the basis of the final decision to register title to the date, when the proposal for the transfer of title was submitted to the appropriate Land Office.

The decision of the Supreme Court of the Czech Republic file No. 22 Cdo 1404/2001: '*According to the Civil Code, art. 133, clause 2, if an immovable property is transferred on the basis of a contract, the title becomes effective by the act of registry with the Land Office in compliance with specific regulations, unless governed otherwise by law. Legal effects become effective on the grounds of the final decision to register title to the date when the proposal was submitted to the Cadastre Office'*.

The moment when the buyer acquires title to a movable property (excluding immovables) may be determined different from applicable law by the parties. The contract may stipulate that the buyer can acquire title to such property immediately at the moment of contract conclusion or in an ensuing period.

IV.2.4. Other Applicable Provisions in Purchase Contracts

A purchase contract may also be comprised of other specific provisions. The Civil Code provides regulations for three of these.

Retention of Title

A **title retention clause** is a provision expressly specifying in a contract that title is not transferred to the buyer until the purchase price is satisfied (Civil Code, art. 601). Without retention of title clause, the underlying fact on its own – that the purchase price has not been satisfied yet – is legally immaterial for the transfer of title. Retention of title thus modifies the general principle regarding transfer of title (Civil Code, art. 133, clause 1). The retention of title clause may only be incorporated for sale of a movable possession and agreement must be in writing.

Preemption Rights

Preemption right governs that the owner of property is obliged, if he decides to dispose of the property (under applicable law, only by sale, nonetheless contractual donation is available as well), to offer it in preference to the former owner (Civil Code, art. 602). Pre-emption right represents an **in personam obligation** (between parties), however, in rem effects may also be agreed upon pertaining to the right with further sale of the property as well (Civil Code, art. 603, clause 2). In rem rights must be concluded in writing, registration with the Cadastre Office is essential for pre-emption rights to have such effect and therefore it only relates to real estate registered with the Cadastre Office.

If the pre-emption right has been breached, the contract is null and void, but the obligee may claim that the purchaser offer the property to him, or that the pre-emption right remains intact, i.e. this legal successor is bound (should he decide to dispose of it in the future) to offer the property to him (Civil Code, art. 603, clause 3).

Repurchase Rights

Repurchase right entitles the buyer to demand return of sold property after a period of time (Civil Code, art. 607). The period of time must be agreed upon, otherwise the repurchase right is only applicable for a period of one year commencing on the date of delivery to the buyer (Civil Code, art. 608).

The distinction, as opposed to the pre-emption right, lies in the possibility to regain the sold property within a given period, whereas with the pre-emption right the property is made available only if the new owner decides to dispose of it. A contract stipulating transfer of title, which has breached the repurchase right provision, is void (in contrast to the pre-emption rights).

Apart from expressly governing specific provisions, **other additional provisions** may be agreed, e.g. retention of repurchase which entitles the buyer to undertake a reverse sale of the purchased property within a certain period, furthermore, other specific kinds of exclusions and terms allowing for purchase contract termination may apply.

The decision of the Supreme Court of the Czech Republic (R 8/1997): '*Parties to a purchase contract may agree under provision 610 of the Civil Code that in case of default on any of the due installments, the contractual relationship entered into on the basis of the purchase contract, shall terminate'*.

IV.2.5 Default of the Seller

The seller defaults, if he fails to perform his obligation to duly deliver the property of sale on time and transfer the title. If the commitment is not performed **on time**, the resulting consequences concerning the defaulting party are governed by general rule (Civil Code, art. 517).

The seller fails to **duly** perform contractual obligation, if, for instance, the delivered product of the sale has so called factual or legal defects. If it concerns factual defects, a specific regulation regarding liability for defects applies (see below).

The seller fails to duly perform contractual obligation **on time**, if the sold property is not available in the place of performance in the period specified by the contract or law. The default commences on the day following the due date and persists until the time of late delivery or termination of other commitment (e.g. contract withdrawal or impossibility to perform).

The default of the seller does not alter his obligation to perform. Along with the buyer's entitlement to claim performance, further rights are given for the buyer – among others, it is the **entitlement to compensation** as well as **withdrawal from contract** if other evidence is provided.

The buyer is entitled to withdraw from the contract, if the seller neither delivers the property on time nor in a reasonable additional period (Civil Code, art. 517, clause 1). The evidence supporting the buyer's right to withdraw form the contract is thus the provision of additional period for performance at the time the purchaser is in default.

The decision of the Supreme Court of the Czech Republic file No. 22 Cdo 989/99: *'If the creditor has not provided another reasonable period to the defaulting party, he cannot withdraw from the contract for default*'.

IV.2.6 Default of the Buyer

If the buyer defaults in payment of the purchase price, it is the right of the seller to claim **default interest** besides the purchase price (Civil Code, art. 517, clause 2). The default interest rates amount to the repo rate set forth by the Czech National Bank and increased by 7 percentage points. Each calendar half-year, in which default of the party is reported, provides for default interest rates subject to the Repo Rate as set forth by the Czech National Bank and valid as of the first day of the relevant calendar half-year (art. 1 of the Government Regulation No. 142/1994 Coll., as amended).

IV.3 LIABILITY FOR DEFECTS

IV.3.1 Factual Defects

The object of sale shows factual defects, if it does not commit to the **quality**, i.e. properties determined in the contract or laid down by law, or it has not been delivered in the **quantity** stipulated in the contract (quantity defects).

The decision of the Supreme Court of Czechoslovakia (R 24/1990): '*A defect is regarded as a lack of assumed properties for an object of a certain type and age due to which the usage of the object is substantially reduced. As a rule, rust on a used car cannot be considered a defect as it relates to the age and customary maintenance of the car'*.

The quality of an object may be contractually defined by the properties, which are deemed decisive for the buyer. If the quality of an object is not defined by the contract, the law requires the object to have common properties in order to use it in compliance with the nature and purpose of the contract (Civil Code, art. 499). If the object of sale is commonly provided in a quality range, the seller is obliged to deliver the object at an average of medium quality range (Civil Code, art. 496).

The important factor for liability for defects of property, is the **time of receipt by the buyer**, i.e. the period given for the performance of the delivery obligation. Under applicable law and upon a unilateral or bilateral agreement of the parties, warranty for quality may be enforceable (Civil

Code, art. 502, clause 1). The seller becomes liable for defects occurring **within a specified period after delivery**, i.e. **warranty period**.

Law excludes the seller from liability for defects, if the property is sold **per aversionem**, i.e. as is. In this case, the seller is only liable for defects constituting a lack of properties, which he has expressly advertised that the property has, or properties which have been contractually stipulated and the seller agreed upon (art. 501).

If the property for sale is individually defined and the buyer could have examined it before the contract was entered into, the seller is not liable for the defects which have been **apparent**, unless the seller has ensured the buyer expressly that the sold property is free from any defects. In addition to this, apparent defects are the kinds of defects which can be identified by an inspection made with ordinary care (Civil Code, art. 500). Nor is the seller liable for defects which have been brought to the buyer's attention when concluding the purchase contract (Civil Code, art. 596).

Law governs that the buyer is obliged to notify the seller of defects within six months at the latest, defects of animal feed within three weeks and defects of animals within six weeks from the receipt (Civil Code, art. 599, clause 1).

To notify defects which are warranted, the warranty period is a key factor (e.g. for sale of goods in shops, it is 24 months). If the buyer does not notify defects to the seller in time, his entitlement arising from these defects shall pass (Civil Code, arts. 504 and 505).

The primary entitlement arising on the basis of defects, which can be claimed with any factual defect, is the right to a **reasonable discount from the purchase price** (Civil Code, arts. 507 and 597, clause 1).

If the defect is **remediable**, the buyer may demand remedy, i.e. repair of qualitative defects, or may demand missing quantity be supplied in the case of quantity defects (Civil Code, art. 507).

If the property has **irremediable defect**, such that it does not hinder from using the object in an agreed or proper manner, the buyer is only entitled to a **discount from the purchase price**. If the property cannot be used in such a way and the defect is irremovable, the buyer may claim a reasonable **discount from the purchase price** or **withdraw from the contract**. The buyer's right to withdraw from the contract is also applicable in the cases when the seller assures at the time of contract conclusion that the property has certain properties or is free of any defects, and consequently, this assurance proves wrong (Civil Code, art. 597, clause 2).

The buyer is also **entitled to compensation of incurred costs** related to the exercise of rights regarding the liability for defects (Civil Code, art. 598). This right is also to be enforced against the seller without undue delay. If the buyer neither provides notice of these incurred costs within the applicable period, nor within the month after this period, the entitlement to compensation of these costs ceases to have effect (Civil Code, art. 509, clause 1).

IV.3.2 Legal Defects

For **legal defects**, which may be identified from relevant evidence (Cadastre Office, Pledge Register maintained by the Notary Chamber of the Czech Republic), it holds that the seller is not liable for these (Civil Code, art. 500).

If, however, the seller fails to carry out his obligation, in compliance with law, to flawlessly transfer title to a property (as regards movables, it may also be rights to intellectual property for sold goods which are fake and their sale is forbidden due to patent/trademark/copyright ownership) and a third party exerts its rights, the buyer must **notify** the **seller** without undue delay. Unless exercised so, the seller may raise all objections against him, which he could have raised against the third party and which have not been raised against it by the buyer (Civil Code, art. 503).

With legal defects, the buyer may require proper performance of seller's obligations, i.e. flawless transfer of title, or **remedy of legal defects**. If the seller fails to meet this obligation even within a reasonable additional period, the buyer may **withdraw from the contract** (Civil Code, art. 517, clause 1) and simultaneously **claim damages**.

IV.3.3 Sale of Goods in Shops

The Czech Civil Code includes a specific regulation for the sale of goods in shops. This particular one along with the regulation of consumer agreements (Civil Code, arts. 52-62) focuses on the protection of the buyer (consumer).

IV.3.4 Transfer of Title

With the sale in shops, as opposed to conventional forms of sale, the question regarding transfer of title is governed differently. There are two exceptions to the usual rule which govern that the buyer acquires title by the receipt of property:

a) with **mail-order sale**, the buyer's title is also acquired by the receipt, however, in the place specified by him (Civil Code, art. 614, clause 3),
b) with **self-service sale**, the transfer of title to the purchased property is only accomplished at the moment of payment for the selected goods (Civil Code, art. 614, clause 3).

IV.3.5 Liability for Defects

Certain variations from the common regulations of liability for defects apply for the sale in shops (Civil Code, arts. 612–627). If this specific regulation does not rule otherwise, the general regulation of liability for defects is applicable with this type of sale, as well (Civil Code, arts. 596–600). In contrast to this regulation, however, the provisions for sale of goods in shops governing the liability for defects may not be contractually altered to the detriment of the consumer. In this respect, the Directive of the European Parliament and Council No. 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees is manifested in the Czech legal framework by the regulation of liability for defects.

The p1rovision 616 of the Civil Code lays down the liability of the seller for a sold movable property while specifying it must be **compliant with the purchase contract at the moment of receipt** and, in particular, free of defects. By "compliance with the purchase contract" it is understood that the sold object is at the quality range and has product properties stipulated in the contract, described by the manufacturer or its representative, or described in advertisements, and that these qualities are expected or common for such an object corresponding to the legal standards, i.e. it agrees in the amount, size or weight and corresponds to the purpose, which the seller indicates, or for which it is commonly used.

The purchase contract is conflicting, if the property is not in conformity with the purchase contract. In such a case, law acknowledges rights of the buyer, the extent of which depend upon the timing of when this conflict with the purchase contract occurs.

a) If the property is not in conformity with the purchase contract **at the time of its receipt** by the buyer, the buyer is entitled to demand this property to be remedied without undue delay pursuant to the purchase contract and, in agreement with the buyer, it must either be replaced or repaired. If such procedure is not possible, the buyer may require a reasonable discount or he can withdraw from the contract.

The buyer is entitled to equal rights, if a conflict with the purchase contract arises within **six months of the receipt of the property**. The law here provides for a rebuttable presumption that a conflict with the purchase contract, which occurs within a six months period, was already present at the time of receipt, if this is not contradictory to the nature of the property, or unless demonstrated otherwise (Civil Code, art. 616, clause 4).

b) The seller is also liable for defects conflicting with the purchase contract **after receipt of the property within the warranty period**, or after expiry of the six month period respectively. This warranty, however, does not apply to common wear and tear. Warranty period for consumer goods is 24 months (Civil Code, art. 620, clause 1). The sale of groceries provides for an eight days warranty, animal feed three weeks, and the sale of animals is guaranteed for six weeks.

The scope of warranty may be extended by the seller in the warranty certificate where he specifies the terms and scope of the extended warranty (Civil Code, art. 620, clause 5). The case law, however, rules that the seller cannot apply extended warranty to other people who might acquire the purchased property in the future. The extension of warranty may then only concern the warranty period or the scope of rights.

The decision of the Supreme Court of the Czech Republic file No. 33 Odo 329/2004: *'The seller cannot extend liability for defects, not even by declaring it in the warranty certificate, over entities other than the buyer himself'.*

The warranty period commences **as of the day of receipt by the buyer**. If it results from the content of contract or warranty certificate that the property will be put to operation by another

contractor (e.g. installation of an appliance), the warranty period commences when it is put into service.

If it is **a remediable defect**, the buyer is entitled to have it properly remedied in time and at no expense (Civil Code, art. 622, clause 1). The buyer's right corresponds to the seller's obligation to remedy such defect without undue delay. If it is relevant due to the nature of the defect, the buyer may require replacement of the product or, if the defect only relates to a component part, replacement of this component part. If such procedure cannot be accomplished, the buyer may require a reasonable discount or he is entitled to withdraw from the contract.

The decision of the Supreme Court of Czechoslovakia file No. 1 Cz 27/87: *'Water leaking into a vehicle is a defect concerning the bonnet. Merely for this reason, it may be said that it is a defect which can be remedied, in the extreme case by replacement of the bonnet'.*

In case of **irremediable defect**, which does not hinder from properly using it, the buyer is entitled to replacement or to withdraw form the contract. Equal rights pertain regarding the buyer, if it concerns recurring remediable defects after repair or a larger number of defects which hinder proper use (art. 622, clause 2). Legal practice regards recurring defect after repair as an identical defect, which having already been repaired at least twice, nonetheless, reappears again. A larger number of defects is viewed as a minimum of three simultaneous defects. In both cases the defects must hinder proper use.

The decision of the Supreme Court of Czechoslovakia (R 22/1983): "As regards the interpretation of the term 'recurring defect after repair', it generally means the recurrence of an identical defect after at least two previous repairs."

In the case of irremediable defect, which does not hinder from proper use, the buyer is entitled, if he does not require replacement, to a reasonable discount from the price or he may withdraw form the contract (art. 622, clause 3).

IV.3.6 Lapse of rights

If the claims of liability for defects are not enforced in the applicable period, they are deemed to have lapsed. A claim for a defect requires formal notice of the defect in conjunction with a description of its nature. As regards judicial practice, the claim must also contain detailed specification as to which remedy the buyer is seeking.

The decision of the Supreme Court of Czechoslovakia (R 17/1976): *'To avoid lapse of liability for defects of goods sold in shops, it is not sufficient that the buyer has claimed for a defect within the warranty period, but it is also essential to specify in detail within the given period what liability he claims with the seller'.*

Should this defect be remedied by repair, the **warranty period is suspended**, i.e. the period beginning with the claim for defect up until the day the buyer is obliged to take delivery after repair, is

not included in the warranty period. The seller is obliged to issue a certificate to the buyer specifying the date of the claim, repair and anticipated period of repair. As regards the replacement of goods, the warranty period is suspended, nonetheless, it commences anew in its entire extent at the moment of receipt by the buyer.

IV.4. TERMINATION OF PURCHASE AND SALE AGREEMENT

The legal relationship of sale and purchase agreements terminates by common forms of termination, most commonly by the fulfillment of obligation. Besides this, a frequent reason for termination is withdrawal from contract (for defaults of the seller, or if the goods are irremediable).

IV.5 CASES FOR STUDY:

- Decision of the Supreme Court of the Czech Republic file No. 30 Cdo 1162/2002
- Decision of the Supreme Court of the Czech Republic file No. 22 Cdo 1432/2002
- Decision of the Supreme Court of the Czech Republic file No. 22 Cdo 1625/2002
- Decision of the Supreme Court of the Czech Republic file No. 2 Cdon 1806/96
- Opinion of the Civil Advisory Board and Commercial Advisory Board of the Supreme Court of the Czech Republic file No. Cpjn 201/2005
- Decision of the Supreme Court of the Czech Republic file No. 33 Odo 974/2002
- Decision of the Supreme Court of the Czech Republic file No. 22 Cdo 1404/2001
- Decision of the Supreme Court of the Czech Republic (R 8/1997)
- Decision of the Supreme Court of the Czech Republic file No. 22 Cdo 989/99
- Decision of the Supreme Court of the Czech Republic file No. 33 Odo 329/2004
- Decision of the Supreme Court of Czechoslovakia file No. 1 Cz 27/87
- Decision of the Supreme Court of Czechoslovakia (R 22/1983)
- Decision of the Supreme Court of Czechoslovakia (R 17/1976)

IV.6 QUESTIONS:

1. What are the conceptual characteristics of a purchase agreement?
2. What can be the subject matter of a purchase contract?
3 . In which case does the Civil Code require written form of purchase contract?
4. How does one acquire title to sold movables?
5. What is the retention of title?
6. What are the rights of the seller when the buyer is in default?
7. Which factual defects is the seller not liable for?
8. How long is the warranty period for the sale of goods in shops?
9. What is considered as conformity with the purchase contract?
10. What are the rights of the buyer if the property is not in conformity with the purchase contract?

V. LEASE CONTRACTS

V.1 GENERAL PROVISIONS

Under lease contract a party (the lessor) lets a thing for temporary use to another party (the lessee) for a rent over a fixed period when the lessee may use the thing or the fruits (profits) of such thing. The lessor is oblige to pass the leader thing to the lessee in a condition fit for the agreed use, unless for the customary use.

The lessee is obliged to pay the rent fixed in the contract, or else the amount of rent as usual at the time of conclusion of the contract, taking into account the value of the leader thing and the manner of its use. However, a lease contract is valid even if the contract does not fixe the amount of the rent. If a rent is stated in statutory provisions, such regulation applies.

The lease contract terminates upon expiry of the period fixed in the contract, unless the parties agrese otherwise. The lease contract concluded for an indefinite period may be terminated only by giving notice of termination, unless the parties come to agreement. In the case of lease of plot sof abricultural or forest land, it is required to give a one-year notice of termination, namely on the first day of October; in the case of other real estate a three-month notice is to be given; and in the case of movable things, a one-month notice shall apply.

V.2 LEASE OF FLATS

Leasehold[1] is one of the fundamental kinds of satisfaction of housing needs. The Czech system of law, on one hand, rigorously respects all aspects of proprietary right of the owner (as a lessor), and on the other is based on the **idea of strong protection of the lessee.** Fundamentals of the special protection of a lessee are based on two basic aspects: (1) detailed number of reasons why a lease can be terminated; and (2) legal concept of providing (a) new apartment, (b) new "place to stay", or (c) shelter (difference is described below).

Lease of a flat (apartment) **arises on the basis of relevant lease contract** under which the lessor lets the lessee use the flat in return for payment of rent, ether for a definite period or without fixing the period of use.

The Czech Civil Code (Act number: 40/1964 Coll. Up-to-date April 2009. Hereinafter referred to as "CCC".) includes a specific regulation for cooperative flats. In the case of a cooperative flat, the relevant lease contract between the housing cooperative and its member may only be concluded under the terms laid down in the statutes of such cooperative.

[1] See Švestka, J., Spáčil, J., Škárová, M., Hulmák, M. et al. Civil Code II. § 460-880. Commentary. 1st edition, Praha: C.H.Beck, 2009, p. 1784-2018. More in: Selucká, M. Lease and sublease of an Apartment, 1st edition, Brno: CP Books, as., 2005.

The object of the lease of a flat may be **only a flat**. CCC does not offer any precise definition of 'a flat' and the definition for the purposes of ownership title is not applicable. Reference thus may be made only to judicial decisions (the Supreme Court, file No. 2 Cdon 1010/97). 'A flat' is neither a non-residential space nor any real estate, or its part, intended for recreation. The basic prerequisite for considering some real estate or its part as a flat is the existence of a final and conclusive occupancy permit defining such a part of real estate as a flat.

A lease contract must be in writing; otherwise it is null and void (Section 40).

The lease of a flat may be agreed for an indefinite period of time, a definite period of time or for the time during which the lessee performs work for the lessor.

The lease contract must specify

- a description of the contracting parties
- a description of the flat
- the extent of its use
- the amount of rent or the manner of its calculation, as well as other payments for services related to the use of the flat or the manner in which they are to be calculated.

The description of the flat must specify the identity of the flat without any doubt. The amount of rent is agreed by the lessor and the lessee. The amount of regulated rent may be increased unilaterally in keeping with the Act No. 107/2006 Coll.

The lessor may increase the amount of rent once a year starting from 1 January 2007 on 1 January of each subsequent calendar year until 31 December 2010. The lessor may also increase the amount of rent later, e.g. from 1 March 2007, but he cannot do so retrospectively (e.g. increasing rent in March 2007, stating that the increase is applicable from 1 January 2007).

The lessor must deliver a written notification to the lessee on the increase of rent. This notification must include an explanation (proving that the increase occurs in harmony with the law). The duty to pay rent arises as of the day stated in the notification but no later than the first day of the calendar month following three months after the delivery of the notification to the lessee.

The lessee may seek protection against the increase of rent by filing a petition for the declaration of nullity of such rent increase.

When agreeing on the contents of the lease agreement, **the lessor may require from the lessee to deposit pecuniary means as securement for rent** and expenses for supplies and services related to using the flat and for payment of other expenses connected to lease of the flat ("security deposit"). The amount of pecuniary means required as a deposit may not exceed three times the monthly rent and advances for supplies and services provided in connection with using the flat. The lessor must keep such pecuniary means in a special bank account. The account is common for all lessees.

The lessor is entitled to use the pecuniary means for the settlement of the lessee's liabilities and the lessee is obliged to top up the pecuniary means of the deposit in the bank account to the original amount provided that the lessor has lawfully withdrawn the pecuniary means from the said account.

The lessor is obliged to hand over the flat to the lessee in a condition suitable for its proper use and to ensure that the lessee is able to exercise the rights related to using the flat in full and without disturbance.

The lessor may not perform construction work without the lessee's approval.

The lessor has the right:

- to require the lessee to remove, without any delay, any adaptations and alterations made without the lessor's consent,
- to demand a late charge if the lessee is default with the payment of rent more than five days after its due date,
- to remedy, after having first notified the lessee, any defects and repair any damage caused by the lessee (or those living with him), and demand compensation from the lessee.

The lessee and persons living with him have the right to use the flat and common spaces of the building and its facilities, as well as the right to make use of the services rendered in connection with using the flat.

The lessee is entitled to:

- demand a reduction of the rent if the lessor, despite the lessee's notification of defects in the flat or building, fails to remedy such defects which, substantially, or completely, impair its use
- demand a reduction of rent if supplies and services related to using the flat have been rendered defectively, which deteriorated the conditions for using the flat (e.g. the water supply is turned off)
- a reduction from the payment of supplies and services connected to using the flat, if such supplies and services are not properly and timely rendered
- where the lessor fails to fulfil his obligation to remedy defects which inhibit proper use of the flat, the lessee has the right to remedy such defects to the extent necessary, and to demand from the lessor compensation for the expenses expediently incurred provided that he has informed the lessor thereof in advance
- withhold his consent to building adaptations that the lessor wishes to make (only on serious grounds – e.g. a serious illness, old age, etc.)

The lessee is obliged:

- to properly use the flat, common spaces and facilities of the building;
- to make proper use of services and supplies relating to use of the flat;
- to notify the lessor of a change in the number of persons living with the lessee in a flat within 15 days of such a change;
- to see to it that, in exercising his rights, a milieu is created in the building which enables the other lessees to exercise their rights;
- to inform the lessor, without undue delay, of the need for repairs the costs of which are to be borne by the lessor;
- to enable the lessor to make such repairs;
- to carry out minor repairs and routine maintenance of the flat at his own expense
- to enable access to the flat, after prior written notification thereof, for the purpose of installing and maintaining meters measuring and regulating heating and hot and cold water;
- to enable the reading (recording) of the data shown on the meters of heating and hot and cold water, etc.

The lessee may not carry out any building adaptations without the lessor's consent.

Generally, the lease can be terminated (1) by the agreement between contracting parties, (2) by the expiration of stated time, (3) by destruction of an apartment, (4) by merging of lessor and lessee, (5) by a notice of lessor, (6) by a notice by lessee, or (7) by withdrawal of a contract.

The main focus shall be placed on the notices of lessor and lessee. The latter can terminate a lease, by giving **written notice**, which does not have to contain reasons that have led to this legal act. Notice of termination can apply to both a lease contract, which was made for either a specific period of time or an indefinite period of time. **Period of notice cannot be shorter than three months** and its end must correspond with the end of a calendar month. Moving out itself is not considered as notice.

Lessor can terminate a lease only with written notice that **must contain detailed causes of this act**. Notice of termination can be based only on causes that are explicitly stated in CCC. Notice must be delivered to the lessee.

Lessor's notice must contain:

1. **Specific date of termination** that cannot be shorter than three months, and agree with the end of a calendar month.
2. **Reason** for termination.
3. **Instruction to a lessee** about the right to bring an action for voidance of lessor's legal act (only if lessor gave the notice without prior court approval).
4. **Obligation of lessor** to provide a new apartment (only if lessee is entitled for one by law).

It is important to pinpoint the essential differences between termination of a lease by lessor with prior court approval and without approval. A notice of termination without a prior court approval can be understood as penalty for a breach of duty of a lessee, or to be more precise, sanction for lessee's breach of contract. On the other hand, notice of termination with previous court approval usually takes into account the needs of a lessor, or objective causes relating to the property.

If a lessee does not agree with notice that has been given without a prior court approval (if he thinks that facts of the issue are not based on objective truth), he may file a claim in a court that has merit and has competent jurisdiction to examine the notice, within sixty days since the notice has been delivered. The lessee does not have to move out of his apartment until there is a new apartment ready for him (only if he is eligible by law to get one), and until the proceedings for voidance of lessor's notice of termination have been effectively accomplished.

Generally, if the law does not require a prior court approval to give a notice, the lessee has only the right for compensation for loss of his apartment, in the **form of shelter**.

Notice of termination can be given by lessor without a prior approval of a court when:

1) Lessee or other persons, who share an apartment in question, act grossly "contra bonos mores" and this undesirable behavior must be in the building where the rented apartment is located, even though a written warning note has been given already to them (CCC, § 711, par. 2, letter A).

The concept of "bonos mores" or "good manners" is used in Czech Civil Law very often. The Czech Supreme Court defines this concept in its judicial acts as: *"...complex of social, culture and moral norms that have shown in a historical progress, which are constant and comprehend fundamental historical tendencies and are accepted by a clearly recognized majority of society and are of the quality of basic norms.*[2]*"* (File number 3 Cdon 69/96)

If the cause of notice of termination is based on an act which is considered to be against good manners, the indecency must be related to the building where the apartment is situated and must be of high intensity: *"As a gross violation of good manners which constitutes a right of lessor to give a notice of termination to the lessee, can be understood only an act of lessee (or persons who share his or her apartment), which relates to the coexistence in the building, where the rented apartment is located, e.g. disturbing others with an inappropriate infringements to the rights of others, such as: excessive noise, smell, insect, dirtiness, inadequate breeding of animals, or verbal or even physical attacks towards other lessees or lessor. Crudity of an act against good manners can be interpreted from the seriousness of consequences of an act of lessee and its duration and reiteration.*[3]*"* (File number 26 Cdo 1865/2004)

2. The second statutory cause which allows a lessor to give a notice of termination to lessee without a prior court approval is when lessee grossly disobeys his duties that are imposed on

[2] Judgment of the Czech Supreme Court from June 26th 1997, file number 3 Cdon 69/96.
[3] Judgment of Czech Supreme Court from November 24th 2005, file number 26 Cdo 1865/2004.

him from the force of a lease contract. **Primarily** when: (1) a lessee is late on payments and; (2) there is an unpaid due amount for rent or other payments related to the usage of apartment in question, which exceeds three times the amount of regular monthly payment, or (3) when a lessee has not recharged a deposit, that was used to cover his arrears of payment according to § 686a, par. 3 of CCC; (CCC, § 711, par. 2, letter B).

In terms of this provision, the Czech Supreme Court ruled: *"Generally, when trying to interpret this provision, it is important to take into consideration, that the statutory law which states, that gross violation of lessee's duties allows lessor to give lessee a notice of termination, explicitly requires the amount of the unpaid dues of at least triple size of the regular monthly payment. This is only a demonstrative (exemplary) specification. We can figure that out from the word "primarily". This means the causes that allow a lessor to give a notice to lessee could differ from the exemplary breaches of duties by lessee. However, these different breaches of duties shall be of the same quality as the mentioned ones. When measuring the intensity of the breach of lessee's duties, from the point of view of the justifiable interest of a lessor and even other lessees, the emphasis shall be placed on whether or not they are, at least, of the same quality as not paying rent for more than three months.[4]"* (File number 26 Cdo 85/2004)

2. Other cases where lessor is allowed to give a notice without court approval is when a lessee is using two or more apartments, except cases where there can be no fair request on lessee to use only one apartment; (CCC, § 711, par. 2, letter C).
3. Or that lessee does not use an apartment at all, without significant reasons, or uses it just rarely, again with no serious reasons; (CCC, § 711, par. 2, letter D).

Both of these issues, referred to as subsection 3 and 4, are pretty much just the response to today's situation on the Czech market with leases of apartments, that is still influenced with persistent legal relations from past non-market background.[5] "Pro futuro" it can be expected that those two provisions will have been removed from the Czech legal regulations due to today's tendency to limit strict regulation of lease contracts and replace them with more free-market regulations.

4. Last cause that allows lessor to give a notice without a previous court approval when the apartment in question is considered to be an "apartment designed for persons with special needs" or an apartment in the "building designed for persons with special needs," in the case when a lessee is not a disabled person; (CCC, § 711, par. 2, letter E).

By the wording of a particular provision of CCC the abovementioned apartments are referred to as "apartments designed for persons with special needs."

If the given notice is connected to the apartment which is a subject of governmental rent control, the new provided apartment does not have to be a subject of price regulation if statutory stated requirements on quality are fulfilled. Czech Constitutional Court took very clear course to this issue: *"Czech statutory rent law is based on explicit protection of lessees. This strong protection is*

[4] Judgment of Czech Supreme Court from April 22nd 2004, file number 26 Cdo 85/2004.
[5] See judgments of Czech Constitutional Court: File numbers Pl. US 3/2000; Pl. US 8/02; Pl. US 2/03.

motivated especially with social reasons because housing needs are one of a fundamental human need, and this protection has had a long tradition. Nevertheless, the Constitutional Court has already many times ruled, that it is not acceptable to transfer social difficulties of one group of people (lessees) to the other (lessors). According to today's situation on the market with apartments and condominiums, a lessor has no chance to acquire an apartment which is subject to governmental rent control. It is important, when considering the adequacy of a newly provided apartment, to concentrate on the price, but the price shall be considered only in relation to the regular market price in a particular place and time and can not be based on past unconstitutional regulations and rent controls. Even though there has never been a statute enacted that deals with persisting rent controls this should not be a disadvantage to a lessor. The current deformation on the market with apartments, which has its bedrocks in long-continuing avoidance of the problems that are arising from rent controls, cannot be henceforth conserved in judicial acts. It is against constitutional principles if there is artificially created inequality of subjects in private law relations. The lessees whose leases are subjected and not subjected to rent control, lessors who own buildings that are subjects to rent controls, and the lessors who can set the regular market prices, shall not be placed in unequal positions. Therefore, if a lessor is entitled, according to the power of execution, to evacuate the apartment that is a subject to rent control, he has a right to reach an executory evacuation under the same contingencies as the lessor whose apartment is not a subject of rent control.[6]" (File number IV. US. 524/03)

Court will approve lessor's notice of termination, before it will be delivered to lessee when:

1. **Lessor needs an apartment** for himself, his spouse, his children or grandchildren, son-in-law or daughter-in-law, or for his parents or siblings; (CCC, § 711a, par. 1, letter A).
2. **If lessee has stopped working for lessor** and lessor needs the apartment in question for a new employee; (CCC, § 711a, par. 1, letter B).
3 .Or in cases where the **termination of a lease is based on public interest**, or if necessary repairs must be done and it would not that allow further usage of the apartment; (CCC, § 711a, par. 1, letter C).
4. In the case, that the **apartment is directly connected with a place that shall be used together with a business** or with other entrepreneur activities and the owner wants to used it for this primary purpose; (CCC, § 711a, par. 1, letter D).

In these cases where notice has been given **with prior court approval**, lessee is entitled to get a new lease to:

1. **An adequate apartment** – when notice has been given according to CCC, § 711a, par. 1, letter A (lessor needs apartment in question for himself or members of his family); or CCC, § 711a, par. 1, letter B (lessee stopped working for lessor and lessor needs the apartment for a new lessee who is going to become a new employee of lessor); or CCC, § 711a, par. 1, letter C (if it is needed due to a public interest which requires disposition of an apartment or a whole building or if the apartment or the whole building requires spacious repairs), or CCC,

[6] Judgment of Czech Constitutional Court from September 23rd 2004, file number IV. US 524/03.

§ 711a, par. 1, letter D (if the apartment in question is connected with a place that is supposed to be used together with a business or with other entrepreneur activities and the owner wants to used it for this primary purpose). An adequate apartment shall be of the same quality as the original one.

2. **A new "place to stay"** – when notice has been delivered according to CCC, § 711a, par. 1, letter B and court decided that lessee is entitled to get only a new "place to stay". The concept of a new "place to stay" is defined in CCC, § 712, par. 4 and it is understood as a studio or even a single room in a hostel or in an apartment which is to be shared with others.
3. **Shelter** – when notice has been delivered according to CCC, § 711a, par. 1, letter B and lessee's job was terminated for **other than serious reasons**.[7] Concept of shelter is expressly stated in CCC, § 712, par. 5 and it is defined as a temporary arrangement until lessee find new apartment for himself, or a place to store lessee's domestic furniture.

According to the foregoing analysis, there can be these conclusions that can be ascertained. By looking at a lease through European lens, it can be said, that the concept of a lease generally means conflict of two fundamental rights. One is lessor's property right and the other is lessee's right to quality life standard, which is stated in several laws.[8] This can most easily be seen when looking at the provisions in CCC dealing with what types of housing needs should be made available to the lessee upon termination of a lease contract.

The collision of these two fundamental rights can clearly be seen in CCC sections addressing the issue of substitute housing. The protection of the lessee is of utmost importance and this idea is mainly expressed in section 712 of CCC, which dictates that in certain cases a lessor must find suitable, substitute accommodation for a lessee. This idea was a part of the law during socialism and has persisted in the post-socialist era. Generally, the notion of the strong protection of the lessee can be seen throughout law of European countries. However, this idea that the lessor must provide some kind of substitute housing to the lessee is a unique aspect found in Czech Law. This unique aspect remains in the current Czech Law because there still remains many lease contracts that have been executed during the Socialist era[9].

In the same vein, the provisions in CCC relating to the breaking of a lease contract with and without court approval also accentuates the differences between the European-based legal system and the common law system in America. In CCC, certain terminations of leases must be done only by court approval.

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[7] See, CCC, § 712, par. 2.

[8] Specifically, in the Czech Charter of Fundamental Rights and Freedoms, in Art. 16 of the European Social Charter and in Art. 11, par. 1 of the International Covenant on Economic, Social and Cultural Rights.

[9] When referring to lease contracts that still persist from the Socialist era, it should be mentioned that prior to 1991 a traditional lessor and lessee relationship did not exist. During this time, there was only one lessor and this was the government. The relation between lessor and lessee was called, "usage right." This special concept was changed in 1991 by the major amendment of the CCC.

V.3 LEASE OF NON-RESIDENTIAL (BUSINESS) PREMISE (SPACE)

Under a specific Act (No 116, 1990 Coll.), the lease of non-residential premise (space) is regulated. Under this Act, non-residential spaces are mainly rooms or a suite of rooms designated by the competent building authority for purposes other than housing. A contract of lease of such rooms must be in writing and must contain the object and purpose of the lease, rental amount, method and terms of payment and the period for which the contract is concluded, unless it concluded for an indefinite period. The lessee may sublease such space only with the lessor's consent.

The Supreme Court ruled: *"A verbal approval by lessor given to lessee to use non-residential premises to other purpose than the one stated in the lease contract, does not change such a contract if the contract shall be concluded, in compliance with law, in writing." (NS, File Nr. 20 Cdo 1656/99).* Thus, it is important to request that all changes and amendments to such contract shall be done in writing.

Lessor is responsible for:

- handing over the non-residential premises to lessee in the condition that allows the lessee to use it for the purpose stated in the contract (different terms may be agreed on)
- keeping the non-residential premises in the condition that allows the lessee to use it for the purpose stated in the contract
- ensuring fulfillment of the services that are connected with usage of the non-residential premises
- allowing the lessee to enjoy complete and undisturbed exercise of their contractual rights

Lessee is entitled to:

- using the non-residential premises in compliance with the lease contract
- get a reasonable discount on lease if they are limited to use the non-residential premises in a full extent, for the lessor does not comply with their obligations according to a lease contract or law

Lessee in obliged to:

- let the lessor know (without delay) about a need of repairs that are to be done by the lessor
- allow the lessor to make repairs
- ask the lessor for a written approval to change a line of business if such change should affect the use of premises in a significant way unless it was otherwise concluded
- ask for a prior written approval by lessor if the lessee wants to sublease the non-residential premises in a whole or just its part to third person unless otherwise concluded
- after the lease is over, the lessee is obliged to return the non-residential premises in the same

conditions (with regard to usual wear and tear) as he or she was handed the premises over in a first place unless otherwise concluded

In principle, there may be stated other obligations of lessor and lessee in the terms of non-residential lease contract too. Of course, it is possible, within the scope of the contractual freedom, to set own particular obligations and rights in respect to a particular property. Nevertheless, it is important to remark that these obligations shall be specified with respect to the essentials of legal acts, i.e. determinateness, lucidity, and the fulfillment must be possible, etc.)

If the lease is concluded for **a definite period of time**, it usually expires when the period is over. Nonetheless, the lessor is entitled to terminate the contract before the concluded period is over (unless otherwise agreed on in the contract) if:

a) the manner in which the lessor uses the non-residential premises does not comply with the contract;
b) the lessee defaults on their dues regarding rent or services that go with it for a longer period than one month;
c) the lessee who is supposed to provide services to lessor as an exchange for the lease does not provide such services in time;
d) the lessee or other persons who use the non-residential premises with the lessee disturb others or a peace despite having been warned in writing;
e) the usage of the non-residential premises is connected to usage of an apartment that the lessee is obliged to vacate;
f) it has been decided that the building shall be torn down or rebuilt, which will not allow further usage of that non-residential premises;
g) the lessee subleases the non-residential premises or its part to third party without a consent of the lessor;
h) it involves a lease of non-residential premises in a real estate property that has been given to a person entitled under the Act No. 403/1990 Coll., on moderating the consequences of some of the proprietary injustices;
i) it involves a lease of non-residential premises in a real estate property that has been handed over to the original owner under the Act No. 229/1991 Coll., on readjusting the proprietary rights to land and other agriculture properties;
j) the lessee has changed the line of business being carried out on the premises without having it approved by the lessor.

Next to that, **the lessee** can terminate the lease contract that has been concluded for a definite period of time (unless otherwise concluded) if:

a) the lessee looses ability to be engaged in such activities which the non-residential premises have been leased for;
b) the non-residential premises become insufficient for the usage stated in the contract (supposing

it has not happened by the fault of the lessee);

c) the lessor grossly violates their obligations under the Section 5, par. 1 of the Act No. 116/1990 Coll. in a wording of actual version.

The notice must be given in writing, otherwise it would be null and void (Sec. 40 Czech Civil Code). The contractual parties are entitled to negotiate stricter reasons for notice, or to be more precise, they can eliminate the possibility of terminating contract by given a notice.

If the non-residential lease contract is concluded for an indefinite period of time, each of the parties is entitled to give a termination notice without being obliged to provide reasons unless otherwise concluded.

For cases dealing with termination of contracts that have been concluded for a definite and indefinite period of time, the notice period is three months and it starts on the first day of the month that follows the day in which the notice was delivered to the other party. However, even this provision is non-mandatory. Thus, the parties can agree on shorter or longer notice period.

If the proprietary rights to a property that is a subject of the lease contract are conveyed, neither the lessee nor the lessor is entitled to give a notice. However, they can agree on different terms in their contract.

The non-residential premises lease contract may be terminated upon the following legal events:

a) lessee's death if the heirs do not inform the lessor within thirty days that they want to continue in renting the premises,

b) a dissolution of a legal entity that do not have any legal successor if such entity was the lessee However, it is possible to agree on different terms of terminating the lease contracts.

V.4 LEASE OF AN ENTERPRISE

This very specific type of lease contract is regulated by the Commercial Code. By a contract of lease of enterprise the lessor obliges himself to pass his enterprise on to the lessee in order for the lessee independently to operate and manage it on his own cost and risk and to obtain the respective benefit. The lessee obliges himself to pay rent to the lessor. The amount of rent or the manner of its assessing must be given in the contract which must be concluded in writing. It is an absolute business (see above, in Part I).

Subject matter of an enterprise lease contract is an enterprise as a set of material, personal and non-material elements of entrepreneurship, with the reservation that these are things, rights and other property values that belong to the lessor and serve to the lease enterprise operation, or they should, due to their nature. The enterprise must be sufficiently individualized in the enterprise lease contract and the law does not require to enumerate all things, rights and obligations related to the enterprise in the contract.

An important prerequisite for the contract to be valid is a fact that an enterprise lessee may only be a businessperson (natural person or a company) entered in the Trade Registry, having the respective business licence. Both prerequisites as stated must be satisfied simultaneously upon conclusion of the contract. On the other hand, the lessor need not be businessperson entered in the Trade Registry. An enterprise lease contract may not become effective prior to its publication. Under this provision, the court will publish without unnecessary delay and enter the respective record in the Trade Registry and deposit the respective documents into the collection of documents. The contract is binding for either party immediately after it has been concluded, but the lessee is entitled to operate and manage the enterprise leased under the contract only after the date it was published in the manner set by law.

Contrary to CCC, the Commercial Code stipulates an explicit ban for the enterprise lessee to sub-let the enterprise leased. Another relationship to CCC stipulations involving lease contracts is resolved by the provision of Commercial Code in such a manner that for an enterprise lease the provisions of CCC apply unless stipulated otherwise by the Commercial Code. Other CCC provisions may apply optionally for an enterprise lease contract (e.g. on rent validity, consequences of changed ownership of a leased thing).

Other lessee's duties are as follows:

- to operate the leased enterprise with reasonable care,
- not to change subject matter of business operated in the leased enterprise without the lessor´s consent.

A special provision of the Commercial Code concerns the transfer of rights and obligations (including rights and duties arising from labour relations) that are attached to the enterprise leased, from the lessor to the lessee. This transfer occurs simultaneously with the contract becoming effective, i.e. upon publication of the contract in the Commercial Bulletin.

Cogent provisions of Commercial Code that are applicable directly to the transfer of rights and obligations from the seller to the purchaser apply also to the transfer of the aforementioned rights and obligations from the lessor to the lessee and thus:

- transfer of the lessor's current debts is governed by the provisions on passing a debt on ;
- creditors' consent is not required for debts transfer;
- the enterprise lessee is obliged without unnecessary delay to inform the current creditors on the obligations takeover and the enterprise lessor is obliged to inform the debtors on debts transfer on the enterprise lessee.

The enterprise lessor provides surety for the obligations appurtenant to the leased enterprise if they had arisen before the enterprise lease contract became effective. The mandatory provision of Commercial Code protects the enterprise lessor's creditors by authorizing the current creditors of the lessor to ask the court to declare lessor's obligations mature upon the given enterprise lease contract coming into effect. However, creditors bear the burden of proof that the enterprise lease puts

performance of these obligations under risk. Performance of this creditor's right is restricted by law to the so-called preclusive term which is a three-month period following the enterprise lease contract becoming effective.

The enterprise lessee operates the enterprise under his own company and thus the enterprise lessor´s company does not pass on to the lessee.

Based on the enterprise lease contract a right to employ the trade marks, know-how and industrial property items belonging to the lessor, arises to the lessee in the extent necessary for proper operation of the enterprise during the lease. The reimbursement for this usage is part of the rent bargained.

Provisions of special regulations involving licence contract and entering licence in respective registries are not affected by the Commercial Code. The special regulation is binding due to its nature and if a licence agreement and entry of the licence in the respective registry are necessary, it applies also to the exercise of the respective rights of the enterprise lessee. In case of subject matters of industrial property, the licence contract will be concluded either separately or within the enterprise lease contract. The exercise of a claim for reimbursement – regarding the non-mandatory provision – may be agreed on separately, too, not only within the rent payment.

Very important for the relations of the enterprise lessor and lessee are those provisions of the Commercial Code, under which, upon the enterprise (or a part of enterprise) lease contract coming into effect a transfer of title to the enterprise lessee to the goods stored, raw materials, spare parts and other items determined in kind that are used or processed in relation to the enterprise operation or serving for sale in the market occurs.

An enterprise lease contract may be concluded for a term specified or not specified. If concluded for a specified term, under non-mandatory stipulation of Commercial Code, the lease contract is renewed for the term it was concluded, repeatedly, if after lapse of the term for which it was concluded, both parties continue to perform it. The term of extension under Commercial Code is non-mandatory and the parties may agree on it as they wish.

If an enterprise lease contract was concluded for a term not specified, it may be repudiated by either party pursuant to the non-mandatory provision of the Commercial Code no later than six months before the lapse of accounting term, to the last day of the accounting term, unless another term for notice of repudiation is stated by the contract.

In addition to the lapse of time of the contract concluded for a specified term and effective notice of the contract made for a non-specified term the lease may be terminated in other general manners (e.g. by a written agreement of the parties, a merger of the parties).

The termination of enterprise lease has, as given by law, the following effects for the parties relationship:

- upon the day of the lease termination the rights and obligations arising from employment relationships and the rights and obligations from the existing lease contracts for non-dwelling buildings existing by the day of the lease termination are passed on the lessor under Commercial Code; the remaining obligations related to the enterprise leased become mature,
- the rights to use trade marks, know-how and industrial property items, which belong to the lessor and related to the enterprise leased in the extent as it was necessary for proper operation of the enterprise terminates by law; if a licence contract and the respective entering in the registry was necessary involving the industrial property rights, the respective right becomes extinct based on the evidenced termination of enterprise lease termination;
- under Commercial Code the ownership title to the items determined thereby in kind, if they belong to the lessee, is passed on to the lessor. This transfer does not relate to the things used by the lessee under a different legal ground. In respect to this, the parties are bound to make a record of the transfer of these things from the lessee to the lessor and the lessor is bound to compensate the lessee the value of these items based on a special agreement.

The stipulation on competition clause applies for enterprise lease as directly related to the terms of a business agency contract. Therefore, the parties may agree on such a clause under the enterprise lease contract, too, while for the lease term the competition clause may restrict the enterprise lessor's activities. If the clause agreed restricts the lessor´s activities, the lessor may not, during the fixed term, carry out, at his own or someone else's cost the activities of a competitive character towards the lessee business activities in the enterprise leased.

V.5 LEASE OF A MEANS OF TRANSPORT

The essential provision of this contract type stipulates that the lessor obliges himself to leave a means of transport for a temporal use of the lessee and the lessee obliges himself to pay the rental fee. It is a relationship of lease, contrary to the means of transport operation whereby the carrier obliges himself to transport load and to carry out one or more trips for this purpose, and the carrier provides the staff and fuel to the means of transport.

This provision determines fundamental terms of the contract as follows:

- the parties to the contract denoted: the lessor of means of transport and the lessee of means of transport,
- the obligation of the lessor to pass on the means of transport,
- the means of transport denoted which is a matter of interest,
- temporality of the means of transport using,
- the obligation of the lessee to pay the charge for using the means of transport.

For the contract to be valid written form is prescribed by the Commercial Code. Any type of a means of transport may be subject matter to lease, the contract may be concluded for a term specified or not specified.

The damages arising to the means of transport are borne by the lessor, the exceptions are the instances when the damage was caused by the lessee or by the persons whom the lessee allowed to use the means of transport involved. A right of the lessor to compensation of damages on the means of transport terminates if the lessor has not demanded this compensation from the lesse within six months after returning the means of transport back. The stipulation on the termination of right is an exception in the Commercial Code (it is a preclusion). The lessee is bound to insure the means of transport only if so stipulated under the contract.

In addition to a possible insuring, it is suitable to consider a possible agreement on maintenance and repairs. If not stated otherwise, the lessee is bound under Commercial Code to maintain the means of transport at the cost of the lessor in the condition he has taken it over, taken into consideration an ordinary wear and tear. A right to costs incurred to the lessee for maintenance of the means of transport must be claimed by the lessee within three months after their incurring, otherwise the claim cannot be submitted to the court, if the lessor objects rightfully that the right was not exercised on time. This term is rather short, as the legislator held that problems in bringing evidence would be frequent if the term were longer.

The right to use the means of transport terminates upon the lapse of term for which the contract has been concluded, or by destroying of the means of transport. It further follows from the law that the contract for a specified time can be terminated by notice. The notice becomes effective after 30 days, unless the means of transport lease contract stipulates a different term of notice, or a later time is stipulated in the notice. The contract may stipulate its possible termination as early as upon submitting the notice.

V.6 CASES FOR STUDY:

- Judgment of Czech Constitutional Court from September 23rd 2004, file number IV. US 524/03.
- Judgments of Czech Constitutional Court: File numbers Pl. US 3/2000; Pl. US 8/02; Pl. US 2/03.
- Judgment of Czech Supreme Court from April 22nd 2004, file number 26 Cdo 85/2004.
- Judgment of the Czech Supreme Court from June 26th 1997, file number 3 Cdon 69/96.
- Judgment of Czech Supreme Court from November 24th 2005, file number 26 Cdo 1865/2004.
- Judgment of Czech Supreme Court from February 22nd 2001, file number 20 Cdo 1656/99.

V.7 QUESTIONS:

1. Is it obligatory to make all lease contracts in writing? Which ones?
2. Describe, in principle, the concept of leasing a flat?
3. How can lessor terminate a lease contract of a flat?
4. How can lessee terminate a lease contract of a flat?

5. What are the requirements of a notice by lessor?
6. What does it mean if the court gives prior approval of a notice?
7. What does it mean if the lessor is obligated to provide an adequate flat?
8. Explain the concept of "bonos mores" or "good manners" in the Czech Civil Law in respect to a lease of a flat?
9. How can lessor terminate a lease contract of a non-residential premises?
10. How can lessee terminate a lease contract of a non-residential premises?

VI. Liability for Damages

VI.1 LEGAL REGULATIONS

The civil law, in particular, Title 6 of the Czech Civil Code (CCC) regulates liability for damages. It is the general legislation that governs liability for damages and covers the entire private law and is applicable unless any special regulation concerning liability for damages stipulates otherwise.

The Civil Code in the Title Damages includes provisions of general liability for damages (sec. 420, sec. 420a CCC) as well as provisions of special cases of liability for damages (secs. 421 to 423 of the Civil Code). Special provisions of liability for damages are also included at other parts of the text of the Civil Code, in particular, in connection with the legislation on individual obligations arising from contract (e.g. s. 683 CCC governs liability of the tenant for damage caused by persons to whom he provided access to the property rented, in sec. 764 of CCC liability of the carrying-agent under contract of carriage for damage caused to the delivery carried by him etc.).

Special regulations on liability for damages are also included in some other separate acts (e.g. Act No. 82/1998 Coll., providing for liability for damages caused during the execution of public authority due to a decision or maladministration, Act No. 59/1998 Coll., providing for liability for damages caused by a defective product).

VI.2 FUNCTIONS OF LIABILITY FOR DAMAGES

Liability for damages performs the functions of prevention, reparation and satisfaction in the civil law.

a) Preventive Function

The aim of the preventive function of legal liability for damages is to achieve the state where legal duties would not be breached. Breaching legal duties is generally unwanted because it usually leads to the occurrence of harm to a certain entity, where subsequent reinstatement is not always possible (e.g. in case of an unsubstitutable thing, impairment of health, etc.).

Liability for damages can have a preventive impact by means of the threat of sanctions, where the very possibility of the creation of any sanction (duty to compensate damage) leads the entity to perform duly legal duties. However, liability for damages performs its preventive function also in the event a duty is breached. In such an event a duty to compensate damage arises on the part of the person who caused such damage and urges him not to breach any legal duties any more in the future or to fulfil the duty he breached subsequently.

b) Reparatory and Satisfaction Function

Whereas the preventive function of liability for damages leads to due fulfilment of legal duties, the reparation, or possibly satisfaction function is applied only after a legal duty was breached. If a legal duty is breached and harm occurs as a consequence thereof, the necessity to remedy after-effects of the unlawful conduct comes to rise along with necessity to compensate the harm that has occurred.

The harm occurred as a result of breaching a legal duty may concern the sphere of both property and personal rights of a legal person. Thus we may differentiate proprietary harm (harm to property) and non-proprietary harm (harm other than to property).

Liability for damages performs the reparatory function in that it provides compensation for material harm inflicted upon the injured. Material harm is compensated in a form of money (financial compensation), in a form of reinstatement (restitution in kind) or by the combination of both of these forms.

The Czech civil law applies the principle of full compensation (reparation) of harm occurred. However, this principle is subject to some exceptions (in particular, powers of the court to moderate damages under sec. 450 of CCC).

Liability for damages also performs the function of satisfaction. This function comes into play if the injured is inflicted with non-proprietary harm as a result of breach of a legal duty.

On principle, as for damages only material harm is compensated under the effective civil law; non-material harm is compensated only if the law expressively stipulates so.

VI.3 BASIC PREREQUISITES OF LIABILITY FOR DAMAGES

Basic prerequisites of liability for damages are:

a) Unlawful Act or an Event Qualified by the Law
b) Damage
c) Causality between a) and b)
d) Fault

The first three prerequisites are of an objective nature and are obligatory, whereas, the fourth prerequisite is of an subjective nature and it is not a necessary prerequisite required for giving rise to liability for damage.

Ad a) **An unlawful act** is an expression of the will of an individual or an entity contradicting with the objective law. It may result from either acting (unlawful act of commission), or omitting to act where the legal entity had a duty to act (unlawful act of omission). It is not decisive whether the unlawful act is based on fault or not. Nor it is important whether the unlawful act lead to a breach of a contractual or statutory duty.

The illegality of an act does not arise and one's conduct is not considered to be illegal if there are any circumstances excluding illegality. Circumstances excluding illegality include the discharging of a statutory duty, self-help, necessity, self-defence or consent of the injured.

1. Discharging a statutory duty – if any entity discharges a duty imposed on it by the law, it is not acting illegally, because the same act cannot be compulsory and prohibited at the same time.
2. Self-help – if there is immediate threat of unlawful interference with a right then the person, who is under such threat, may himself prevent such an interference (sec. 6 of CCC).
3. Necessity – a person is acting out of necessity in those cases where he is overcoming an immediate threat which he himself did not give rise to provided it was impossible to prevent such a danger under circumstances given in any other manner and the consequence caused by its prevention is neither as serious nor even more serious than that of the threatening danger [sec. 418 (1) CCC].
4. Self-defence – any person acting in self-defence is the person preventing imminent or continuing attack. Self-defence must not be apparently in excess of the nature and danger of such an attack itself [sec. 418 (2) CCC].
5. Consent of the Injured- illegality is also excluded when an act by which damage is incurred took place with the consent of the injured (volenti non fit iniuria). The consent of the injured applies only to rights the injured may dispose of (in particular, property rights) and the consent must be given before the act resulting in the occurrence of damage takes place. The consent of the injured is a legal act which must comply with all essential elements required for legal acts to be valid.

In some cases the Civil Code stipulates a duty to compensate damage incurred as a result of an event qualified by the law (e.g. damage caused by the operation of a business, damage caused by the operation of means of transport). In these cases the prerequisite of liability for damages is not an illegal act but rather this event defined by the law.

Ad b) By **damage** it is meant harm to property which can be objectively expressed in money. It is material damage that is compensated under the effective civil law. Non-material damage is compensated only if the law expressly stipulates so, i.e. the right to the reparation payment and the right to compensate the weakening of the social capacity of a person if bodily injury was inflicted on the injured [sec. 444 (1) CCC] and the right of the compensation provided to survivors if the person injured was killed [sec. 444 (3) CCC].

Ad 3) **Causal relation** (causal nexus) between an unlawful act and (or an event qualified by the law) and damage shows that the damage was really caused by such an unlawful act, i.e. there is a relation of cause and consequence between them. The civil law is based on the "theory of adequate causality" according to which the causal relation is formed if an illegal act is not only a precondition of the occurrence of damage but at the same if it usually leads, based on its general nature, general course of events, to causing precisely this kind of damage. The principle stated above

can be expressed also in a way that the causing of damage must objectively be foreseeable by the person liable under given circumstances in which he found himself at the time of acting unlawfully.

Ad d) **Fault** is a subjective prerequisite of liability for damages. The law differentiates two basic forms of fault: intent and negligence.

The intent may be direct or indirect. The direct intent is concerned when the person acting knew he may have caused the occurrence of damage and wanted to cause such a consequence. The indirect intent is concerned when the person acting knew he may have caused the occurrence of damage by his acting and in case it happens he was aware of the consequence of his act.

The negligence may be intentional or unintentional. It is the intentional negligence when the person acting knew he may have caused damage by acting so, however, without any reasonable cause he relied on that he would not cause it. It is the unintentional negligence when the person acting did not know that he may have caused damage by acting so, however, with respect to circumstances and his personal position he could have known about it.

Fault is an optional prerequisite of liability for damage. It applies only to some facts of liability for damage. If the law requires the existence of fault for giving rise to liability for damages as one of its prerequisites than we call it liability based on fault (liability based on fault); if fault is not the prerequisite giving rise to liability for damages then we call it no-fault liability (liability without fault). As for liability based on fault the civil law is based on the principle of presumed fault. This principle is determined in sec. 420 (3) of CCC under which the person who proves he did not cause damage may be released from liability. Thus under the effective law the injured does not have to prove that the wrongdoer´s conduct was based on fault but on the contrary, it is the wrongdoer who must prove he was not at fault for the damage if he wants to be released from liability. Presumption of fault is not limited only to a certain type of damage but it applies to all types of damage.

If no-fault liability is taken into consideration fault is not an prerequisite giving rise to liability, meaning that the wrongdoer cannot be exempt from liability by proving he was not at fault for the damage. In some cases of no-fault liability the law stipulates reasons for possible exemption from no-fault liability (grounds for liberation). The advantage of no-fault liability is that complex problems arisen due to proving fault are eliminated. No-fault liability allows better protection of the injured too.

VI.4 PARTIES LIABLE FOR DAMAGES

a) Parties Liable for Damages

Individuals (natural persons), legal entities and the state may be parties liable for damages.

1. As for liability of **individuals** (natural persons) it is significant whether we have a case of liability based on fault or no-fault liability.

It is necessary for liability based on fault that an individual have legal capacity to be at fault. Legal capacity to be at fault requires intellectual and volitional capability of an individual. Intellectual capability means that an individual is able to judge after-effects of his conduct (i.e. he is able to assess whether his conduct may cause damage with respect to circumstances given). Volitional capability means that an individual is able to govern his conduct (i.e. he is able to decide to act in a way he does not cause damage).

The civil law is based on the presumption that an individual of legal age and of good mental health has full capacity to act in terms of causing fault [the legal age is reached by the completion of the age of 18 or by entering into marriage under section 8 (2) CCC].

Minors or persons suffering from mental disorder have limited capacity to act in terms of causing fault and it is always necessary to assess whether they were able to govern their conduct and assess after-effects of such in each concrete case. Liability of these persons is regulated in provisions of sec. 423 of CCC (compare with section VI.8.c bellow).

No-fault liability does not require legal capacity in terms of ability to cause fault.

2. With regard to **legal entities**, it is also necessary to differentiate liability based on fault and liability without fault. If liability based on fault is concerned fault on the part of a legal entity is required. With respect to the fact that a legal entity acts through individuals it is necessary that fault be caused by a person who acts for the legal entity in a given case.
3. As for **the state** as a party liable for damages it is necessary to differentiate whether it is acting as a private person or whether it is executing public authority. If the state is acting as a private person it is liable under the same rules as legal entities. If the state is executing public authority it is liable under Act No. 82/1998 Coll., to provide for liability for damages caused during the execution of public authority due to a decision or maladministration.

It applies to both individuals and legal entities equally that if they use another person to perform activities for them (employees, members or any other persons acting in their interest) they are liable for damage caused by such persons. These persons themselves are not liable for damages; however, they may be liable to the person who used them for performing his activities [sections 420 (2), 422 of CCC].

b) Joint Liability of More than One Wrongdoers

If damage is caused by more than one wrongdoer such wrongdoers are liable in a solidary manner [sec. 438 (1) CCC]. Individual wrongdoers settle among themselves in accordance with their participation in causing damage incurred (sec. 439 of CCC).

Joint liability for damages caused occurs always where there is more than one person fulfilling prerequisites of liability for such damage. It is not significant whether such damage was caused by joint conduct of these persons or whether the wrongdoers acted independently of one another. It is

also not decisive whether individual wrongdoers are liable for intent or negligence or whether they are liable in terms of personal or no-fault liability.

Joint and several liability of wrongdoers is a rule; however, the court may decide in justified cases that those who caused damage are liable in a proportionate manner in accordance with their participation in causing damage [sec. 438 (2) CCC] In such cases by its decision the court changes joint and several liability of wrongdoers into a partial obligation, so that each of the wrongdoers is bound to settle only a determined part of damage incurred.

c) Contributory Fault on the side of the Injured

Damage does not necessarily have to be caused by the conduct of a wrongdoer but also by the injured himself. The wrongdoer is not liable for the scope of damage caused by the injured (s. 441 of CCC).

Based on judicial practice the court "in proceedings related to actions for damages, is required to review whether there are grounds established for limiting liability of the defendant due to contributory fault on the side of the plaintiff" (R 22/1979).

VI.5 SCOPE AND METHOD OF COMPENSATION FOR DAMAGES

The term scope of compensation for damages includes the determination of types of damage and amounts by which the wrongdoer is required to compensate the injured. The term method of compensation for damages comprises the determination of the manner in which damages are to be compensated.

a) Damage caused to a thing, or property

As for damage caused to a thing, or property the injured is compensated for actual damage and the loss of profit [sec. 442 (1) of CCC]. Actual damage (damnum emergence) means by what amount the existing property of the injured was reduced due to a harmful event. The loss of profit (lucrum cessans) is based on the fact that the property of the injured was not increased due to a harmful event and meanwhile would had been otherwise increased if not for such an event.

The determination of the amount of damage to a thing is based on the price at the time of damage occurred (sec. 443 of CCC).

On principle, damage to property is settled to full extent. However, sec. 450 of CCC allows the court to reasonably moderate damages for reasons worthy of special attention. In so doing, the court has to take into consideration, in particular, the following: how damage was caused, personal and property situation of the individual who caused such damage as well as the situation of the person injured. Damages cannot be moderated if damage was caused intentionally.

On principle, damages are settled in a form of money regardless whether they represent actual damage or the loss of profit. If it is possible and meaningful and the injured demands so damages are

settled by reinstatement [s. 442 (2) of CCC]. Such a demand for damages by way of reinstatement is an exclusive right of the injured and can neither be replaced by the wrongdoer´s conduct nor by a decision of the court.

b) Damage to health or life

1. If damage is caused to health of the injured, the wrongdoer is bound to compensate the following:
   - Reasonable costs connected with the medical treatment. Reasonable costs connected to the medical treatment are not only costs of the medical treatment of the injured (e.g. costs of medication, costs of purchase of medical appliances, etc.) but also increased food costs (e.g. costs of a special diet) or costs incurred due to visits of relatives of the injured at healthcare facilities (this is based on the assumption that such visits facilitate medical treatment of the injured). Reasonable costs connected with the treatment are reimbursed in money to the person who covered them [s. 449 (1) of CCC].
   - Compensation of the loss of earnings (or pension payments where appropriate). Compensation of the loss of earnings compensates the type of property damage that occurs when the earnings of the injured decrease due to an harmful event. The injured is entitled to the compensation of the loss of earnings only if this loss was not covered by way of disability or social security benefits. The injured party is compensated for the loss of earnings in a form of a financial income.

The injured party is entitled to the compensation of the loss of earnings for the duration of his sick leave, to the compensation of the loss of earnings after his sick leave terminates or upon invalidity, and to the compensation of any loss of pension.

The loss of earnings of the injured for the period of his sick leave means the difference between his average earnings before he was inflicted injury and the sickness benefit paid to him for the duration of his sickness (s. 446 of CCC).

The loss of earnings after sick leave terminates or upon invalidity means the difference between the average earnings received before the injury was inflicted and the sum of earnings received after the injury was inflicted and any eventual disability pension [sec. 447 (1) of CCC]. Pursuant to changes in the development of a pay grade, the amount of compensation awarded for the loss of earnings after the sick leave terminates or in case of invalidity is periodically regulated under rules issued by the government of the Czech Republic so that it continually reflects the current pay grade.

A loss of pension of the injured party means the difference between the amount of pension the injured party is entitled to and the amount of pension he would be entitled to if the average monthly earnings of the injured party included the compensation for the loss of earnings after the termination of his sick leave (sec. 447a of CCC).

- Pain and Weakening of the Social Capacity of the Injured. Pain means the pain suffered by the injured upon impairment of his health, during his treatment or elimination of consequences of

the impairment of health. Weakening the social capacity of the injured means consequences of a permanent nature as a result of the impairment of health that have provably negative impact on his social status, in particular, his situation in terms of satisfying his needs of daily life and social needs, of performing his current profession or preparing for a future profession, of gaining further education, and of taking part in family, political, and cultural life and sports activities.

The right to compensation for one´s pain and for one´s weakened social capacity are rights separate and independent of one another; the awarding of the right of compensation for pain is not conditioned by awarding the right to compensate one´s weakened social capacity and vice versa.

The compensation for pain as well as for the weakening of the social capacity of the injured are handled by way of a lump-sum under rates stipulated in the regulation of the Ministry of Health no. 440/2001 Coll., providing for the compensation for pain and the weakening of one´s social capacity.

The right to compensation for pain as well as the right to compensation for one´s weakened social capacity are the rights to compensation for non-property damage and they represent personal rights of the person injured and terminate upon his death at the latest.

2. If damage to health resulting in death of the injured is caused, the wrongdoer is obliged to compensate the following:

- Subsistence costs of survivors. Subsistence costs are paid to survivors for whom the deceased was factually a provider or whom the deceased owed a duty to provide them. Survivors have a right to compensation of subsistence costs only when these costs are not covered by social security benefits awarded to them for the same reason [sec. 448 (1) of CCC]. The calculation of such compensation is based on the average earnings of the deceased; however, the compensation of costs to support and maintain all survivors must not exceed the total sum, which would have been awarded to the deceased as a compensation of the loss of earnings upon impairment of his health [sec. 448 (2) of CCC].
- Reasonable funeral expenses. These expenses are settled by way of a money lump-sum to the person who actually covered them. The compensation is provided only for any amount that exceeded funeral allowance awarded under the state social support act [sec. 449 (2) of CCC].
- Lump-sum compensation of survivors. If the injured party is killed, his survivors have the right to a lump-sum compensation in the amount stipulated by the law. Under sec. 444 (2) of CCC the spouse (i.e. husband or wife) is entitled to the sum of CZK 240,000.00, each child to the sum of CZK 240, 000.00 respectively, each parent to the sum of CZK 240,000.00 respectively, each parent of a conceived but unborn child to the sum of CZK 85,000.00 respectively, each brother or sister to the sum of CZK 175,000.00 respectively and each relative who lived with the deceased in a common household at the time of the occurrence of the harmful event is entitled to the sum of CZK 240,000.00 respectively.

Under the title of damages it is impossible to claim any more than the above-stated amount of satisfaction as compensation for non-property damage resulting in death of a relative. However, "if the lump-sum compensation is not considered to be a sufficient satisfaction for harm inflicted on personal rights, it is not excluded that the person concerned may seek further satisfaction under a provision regulating the protection of personal rights." (Pl. ÚS 16/04).

The right to a lump-sum compensation is a right to compensation for damage other than to property; it is a personal right of the entitled person, and terminates upon his death at the latest.

VI.6 STATUTORY BAR ON THE RIGHT OF DAMAGES

The right of damages is statute-barred based on time limits, both subjective and objective. The key factor for the statutory bar on this right is the first deadline to run out: the moment any one deadline runs out, the right is forfeit.

The subjective time limits are of a two-year period which starts running as of the day the injured party becomes aware of damage and a person who is liable for it [s. 106 (1) of CCC].

The objective time limits are of a three-year period which starts running on the day an harmful event occurs. However, if damage is caused intentionally, then related time limits are ten years. Objective time limits do not apply to bodily injuries and the right of damages becomes statute-barred based on subjective time limits only [sec. 106 (2) of CCC].

Regarding damages caused by corrupt conduct, statutory bar is regulated in a special manner. For damages occurred as a result of corruption, subjective time limits are extended by the law to the period of three years, and objective time limits are always ten years [s.106 (3) of CCC].

VI.7 GENERAL LIABILITY FOR DAMAGES

Provisions of secs. 420, 420 (a) of CCC regulate two general cases (facts) of liability for damage: liability for damages caused by an unlawful act and liability for damages caused by the operation of a business. These general cases of liability for damages always apply unless any of special cases of liability for damages is applied.

a) Liability for Damages Caused by an Unlawful Act

Prerequisites of liability for damages caused by an unlawful act are as follows:

a) unlawful act
b) damage
c) causal relation between a) and b)
d) fault.

Each of the prerequisites mentioned above were explained hereinbefore. However, we may note regarding the term "unlawful act" that the Civil Code expressly contains, for all legal entities,

a general legal obligation to act in a manner preventing causing damage to health, property, nature and environment (sec. 415 of CCC). A breach of this general preventive duty amounts to an unlawful act and is a sufficient prerequisite of liability for damages occurred as a result of such an act.

It is the injured party who has to prove the existence of an unlawful act, damage and causal relation. The existence of fault is presumed and does not have to be proved by the injured party; however, on the contrary, it is the wrongdoer who has to prove he is not at fault for the damage if he wants to be released from liability [sec. 420 (3) of CCC]. The presumption of fault is not limited only to some types of damage; it applies to all cases of this type of liability for damages. However, the presumption of fault applies only to unintentional negligence; if the person injured makes allegations that damage was caused intentionally (e.g. for the purposes of a ten-year limitation period to be applied) it is upon him to prove intentional fault.

b) Liability for Damages Caused by the Operation of a Business [s. 420 (a) of CCC]

Under sec. 420a (1) of CCC anyone who causes damage to another as a result of the operation of a business is liable for damages caused by its activities. Under sec. 420a (2) of CCC damage caused by the operation of business means damage caused by:

- operational activities or a thing used for such activities
- physical, chemical, or biological impacts on the environment
- authorised performance or organization of work activities resulting in damage to real property of another or making the use of such real property of another significantly diminished or impossible.

The operation of business is presumed to be a repeated activity performed in an organised manner with the aim to achieve a certain business objective. In judicial practice the operation of business "is connected with the purpose of a business determined in its Letter of Incorporation, Business Permit or Trade Licence" (NS 25 Cdo 890/2000).

Liability for damages caused by the operation of a business is no-fault liability. The person operating the business may release oneself from such liability only if he proves that damage was caused by an inevitable event not resulting from the operation itself (an "external inevitable event"), or by an act of the injured party.

VI.8 SPECIAL CASES OF LIABILITY FOR DAMAGES

Provisions of secs. 421 to 437 of CCC regulate individual special cases (facts) of liability for damage.

a) Liability for Damages to a Thing That Is a Subject of an Obligation

Any person who takes over a thing that is a subject of an obligation is liable for its injury, loss or destruction. The prerequisites for liability for damages to a thing that is a subject-matter of an obligation are:

a) the accepting of a thing that is a subject-matter of an obligation – only personal property can be taken over (e.g. accepting a thing in connection with a contract for the repair of that thing)
b) harmful event resulting in injury, loss or destruction of a thing – this event has to occur within the period from accepting a thing to its return. It is no-fault liability and the person who accepted such a thing may be released from liability only if he proves that damage would still have been caused otherwise (i.e. even in the case the thing had not been taken over by him).

b) Liability for damages Caused by Circumstances Having Their Origin in the Nature of a Device or Other Things Used During the Performance of an Obligation

A person is liable for damage caused by circumstances having their origin in the nature of a device or any other thing used in the course of the performance of an obligation. This liability includes cases of provision of healthcare, social, veterinary and other biological services.

he prerequisites of this liability for damages are as follows:

a) harmful event having its origin in the nature of an appliance or any other thing used in the course of the performance of an obligation - anyone who uses a certain device or a thing for the purposes to fulfil his obligation (e.g. X-ray, dental drill, construction machinery, but also a chair for providing restaurant related licensed services, a syringe, etc.) is liable for any events having their origin in the device (thing) used or its nature.
b) damage
c) causality a) and b)

It is no-fault liability and no one can be released from it.

c) Liability for Damages Caused by Persons Without Legal Capacity to Consider Consequences of Their Conduct

This is liability for damages caused by individuals with limited capacity to be at fault. This includes minors and persons suffering from mental disorder (compare with section VI.4.a. above).

Liability for damages caused by minors and persons suffering from mental disorder may be held by:

a) wrongdoers themselves, i.e. minors or persons suffering from mental disorder
b) persons responsible for supervision over the above-mentioned individuals
c) legal persons a) and b) jointly and severally.

Ad a) A minor (or person suffering from mental disorder) is liable for damage if in a concrete case he is able to have control over his conduct and consider consequences thereof.

Ad b) Persons who are responsible for executing supervision over minors (persons suffering from mental disorder) are persons who have such a duty is imposed on them by the law, an official decision or any other legal fact (parents, adoptive parents, guardians, foster parents, school, kindergarten, crèches, mental hospitals, etc.)

The person who has a duty to execute the supervision may be released from such liability if he proves he did not neglect his duty of due supervision over a minor (person suffering from mental disorder).

Ad c) Minors or persons suffering from a mental disorder and persons having a duty to execute supervision over the former are liable for damage jointly and severally if all elements stated above are applicable to them. If in a concrete case neither the minor (or person suffering from mental disorder) nor the person who has a duty to supervise such a person is held liable, then such a case is qualified as coincidence within the legal sense of the term "coincidence", and damage is borne by the injured.

The Civil Code also regulates cases where a person by his own fault puts himself in a position when he cannot control his conduct or consider consequences of such a conduct (e.g. cases of intoxication). In such cases the wrongdoer is held to be liable for damage to the full extent. Meanwhile, persons who put the wrongdoer in such a position intentionally are liable jointly and severally.

d) Liability for Damages caused by the Conduct against Good Morals (sec. 424 of CCC)

The prerequisites of liability for damages caused by the conduct against good morals are:

a) conduct against good morals (providing false information, misinterpretation, abuse of a right, etc.)
b) damage
c) cauality between a) and b)
d) fault – fault in the form of intent is a prerequisite of this case of liability for damages. Intentional fault is not presumed, it must be proved by the injured.

e) Liability for Damages Caused by the Operation of Means of Transport (secs. 427 to 431 of CCC)

Persons liable for damage caused by the operation of means of transport are:

1. Individuals (natural persons) and legal entities running a transportation business – these are persons whose fundamental purpose of their business is to operate and manage any type of transportation industry, particularly, transport by railway, road, water and air, regardless whether this is a public or individual means of transport and what means of transport they operate (it may be anything from a horse and buggy to a rowed ferry transport, etc.)
2. Operators of an individual motor vehicle, motorboat or airplane (regardless of the driving mechanism) – here the operator means the person who has a permanent, factual, and legal ability to use the means of transport and organize its operation. Generally this is the owner of the means of transport, but it can also be another person (e.g. a lease holder).

   In certain cases there are other persons liable for damage instead of the operator:

   - Unauthorised users. An unauthorised user is a person who uses means of transport unknowingly or against the will of the operator (e.g. person who steals means of transport). However, the operator is liable jointly and severally with an unauthorised user if he

enabled that the means of transport be used due to his negligent conduct [sec. 430 (1) of CCC].

- An operator of a company on whose property repairs of means of transport are carried out – this person is liable for the whole period the means of transport is under repair [sec. 430 (2) of CCC].

he prerequisites of liability for damages caused by the operation of means of transport are:

a) an event initiated by a special nature of means of transport
b) damage
c) causality between a) and b).

An event initiated by the special nature of a concrete means of transport is the fundamental prerequisite of this liability. The special nature of a means of transport means specific features of the means of transport through which the danger of the means of transport is manifested which may objectively cause damage (high speed of a vehicle, its limited movement and manoeuvrability, high weight of a vehicle and its load, the creation of high temperatures or excessive noise, etc.).

Liability for damages caused by the operation of means of transport is no-fault liability. The operator may be released from this liability only if he proves that damage was caused by circumstances having no origin in the nature of the operation (any of all defects, including material and engineering deficiencies, as well as any failures of the driver of a vehicle do have their origin in the nature of operation) and that damage could not have been prevented despite using all efforts required (i.e. external inevitable event).

f) Liability for damages Caused by an Extremely Dangerous Operation

Operators of extremely dangerous operations are liable for damage initiated by the nature of such an extremely dangerous operation to the same extent as the operator of means of transport. The prerequisites of liability for damages caused by the extremely dangerous operation are:

a) an event initiated due to extremely dangerous operation
b) damage
c) causal relation between a) and b)

An extremely dangerous operation means an operation within the course of which appliances, instruments or technological processes used cannot be put under full control even when due caution in accordance with the latest scientific and technological knowledge is being provided in the given situation, making that operation unpredictable and increasing the risks of damage to surroundings due to their use itself.

Examples of extremely dangerous operational activities include activities dealing with explosives and detonating agents, activities where leakage of dangerous substances occur, and activities taking place in mines, foundries, and quarries, operational activities in power plants and gasworks.

This liability is also no-fault liability, which the operator of the extremely dangerous operation may be exempted from only if he proves that damage was caused by an inevitable event having no origin in the operation.

f) Liability for Damages Caused to a Thing Brought in and Deposited (secs. 433 to 437 of CCC)

The Civil Code regulates:

1. Liability of operators providing accommodation related services [s. 433 (1) of CCC]. These operators are liable for damage caused to things of individuals accommodated that were brought in by them or for them. "Things brought in" here means things brought to premises devoted to accommodations or to depositing things, as well as things handed over to the operator or to any of his employees (doorman, receptionist, room maid, etc.) for this purpose.

Persons liable are operators providing said temporary accommodation such as managers of hotels, pensions, hostels, tourist's hotels and chalets, etc.

2. Liability of operators running business activities usually connected with depositing things [s. 433 (2) of CCC]. These operators are liable for damage caused to things of individuals that were deposited on a place intended for the purpose of depositing things or on a place were things are traditionally deposited.

Business activities usually connected with depositing things include for example the operating of cafés, restaurants, hairdresser's, healthcare institutes, theatres, cultural institutes, schools, reading rooms, cafeterias, etc.

By "deposited things" we mean things traditionally deposited by an individual for the purposes of using the operator´s services when an individual loses his immediate supervision over them (e.g. leaving one´s coat on a hanger when visiting a restaurant). However, if an individual does not lose supervision over a thing (e.g. a guest of a restaurant leaves her handbag beside her on a table) such a thing is not considered to be deposited under sec. 433 (2) of CCC. Things have to be deposited at a place intended for this purpose (e.g. cloakroom, hanger) or at a place where things are usually deposited (e.g. a restaurant guest leaving a coat on the chair where he is sitting).

3. Liability of operators of garages and other operations of a similar type (secs. 435 of CCC). These operators are liable for damage caused to means of transport placed in garages and appurtenances to thereof.

Some common rules can be applied to all the types of liability stated above. They are all cases of no-fault liability. The person liable may be released from liability only if he proves that damage would have been caused otherwise (even in the event the thing would not have been brought in or deposited). The operator cannot be made exempt from liability for damages by a unilateral statement nor by any agreement made with the injured before such damage occurs [s. 433 (3) of CCC].

Regarding the scope of damages, the law stipulates that for jewellery, money and other valuables the operator is held liable only to the extent determined by regulations. These regulation include Statutory Rule No. 258/1995 Coll., which limits the liability of the operator to the amount of CZK 5,000.00. This limitation of damages is, however, not applied if damage to valuables was caused by employees working in the operation or if valuables were accepted by the operator for the purposes of depositing them (s. 435 of CCC).

The right to damages with respect to things brought in or deposited must be asserted towards the operator without any delay, within fifteen days after the injured is informed of damage at the latest. If the right to damages is not asserted within this period it terminates (sec. 583 of CCC).

VI.9 CASES FOR STUDY:

- Judgment of the Czech Constitutional Court of 5th April 2005, file number Pl. ÚS 16/04.
- Judgment of the Czech Supreme Court of 25th March 2001, file number 29 Odo 378/2001.
- Judgment of the Czech Supreme Court of 28th May 2003, file number 25 Cdo 43/2002.

VI.10 QUESTIONS:

1. What functions does liability for damages perform and what do these functions express?
2. State basic prerequisites of liability for damages and characterise them.
3. What are circumstances excluding illegality. State examples.
4. What does contributory fault on the part of the injured mean and under what conditions does it apply?
5. What types of damage are compensated when caused to property and in what manner?
6. What types of damage are compensated when caused to health and upon death of the injured and in what manner?
7. What are moderating powers of the judge and under what conditions are they applied?
8. What are the time limits invoking the statutory bar on right of damages?
9. State individual cases of general liability for damages and characterise them.
10. State individual cases of special liability for damages and characterise them.

Introduction to the Czech Civil Law I.

Parties, Ownership, Sale, Lease, Liability for damages

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