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COFOLA 2009: KEY POINTS AND IDEAS

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COFOLA 2009: KEY POINTS AND IDEAS

Radovan Dávid, Jan Neckář, David Sehnálek(eds.)

Masarykova univerzita
Brno, 2009

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STATE OWNERSHIP CONCERNING ENERGY SUPPLY IN HUNGARY

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Key words: State ownership; mining law; energy law.

Energy is very important in everyday life; our society is highly dependant on proper supply of energy, while economic growth demands for more and more. For generating energy natural resources or energy sources are needed, but traditional natural resources are limited. All state has to make the essential decision concerning proprietary rights to mining of natural resources (energy sources) and to produce, transport and distribute energy. Generally free competition is not carried out in mining law and in the law of energy supply, while states seriously regulate these sectors. This presence of the state can reach state ownership of the main assets and activities. In this Article I'm going to introduce legal matters concerning state property in mining and in energy production, transport and distribution in Hungary.

Act XLVIII of 1993 on Mining handles the right to own and to mine mineral raw materials. According to the relevant section of the Act "mineral resources and geothermic energy, at their natural place of occurrence, are in state property". Mineral raw materials become the property of the mining entrepreneur through exploitation, while the geothermic energy becomes the property of the mining entrepreneur through utilization. This acquisition of the right is not free, while the mining entrepreneur has to pay mining royalty according to the amount of the exploited natural resource. Concerning mining activity exploration and exploitation of mining raw materials and conveyance through pipelines of mineral oil, mineral oil products, and hydrocarbon gases (with the exception of natural gas) have to be exercised only by the Hungarian State. Generally these activities can be exercised by a company majority owned by the Hungarian State, but the Act regulates two exemptions from the application of the general rule. The state can entitle mining entrepreneurs to exercise mining activities on the basis of official license or concession.

The law concerning supply of natural gas is regulated by the Mining Act and by the Act on Natural Gas. Transportation of natural gas was originally

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exclusive state activity, but to fulfil requirements of the European legislation it was amended and since then this activity can be exercised by anyone who acquires a license from the Hungarian Energy Office. In 2003 the European Parliament and the Council have passed a Directive on establishing common rules for the internal market in natural gas. The main aim of this Directive is to open up national markets and allow competition as far as possible in this sector. According to the Mining Act storage of natural gas – while natural gas is a hydrocarbon - is still qualified as a state activity, but the State cedes this right to mining entrepreneur who acquired the official license of the Mining Supervision.

In the electricity sector the situation is very similar to the transportation of natural gas. According to rules of the Civil Code of Hungary public electrical installations and the public power grid were owned by the State until an amendment which enforced EC's obligations on creating an internal market in electricity. Generation, transmission and supply are still considerably controlled by the State and any of these activities can be exercised on the basis of a license granted by the Hungarian Energy Office. Strict conditions determine who can become a licensee. Special regulation is valid concerning atomic energy. According to the Act on Concession, which determines the main rules on operating the property exclusively owned by the state, production and sale of fissile and radiating materials can be exercised by a way of contract of concession. While the use of atomic energy is dangerous and risky, stricter obligations and responsibility is required than the obligation and responsibility of a licensee in the electricity sector.

It can be established that mining, energy generation, transport and supply are very important for operating a country. Therefore, mining and activities concerning energy supply are strictly regulated by the Hungarian State. This strict regulation appears especially in mining law. Natural resources are state owned in Hungary, although it is not the State who generally explores and exploits mining raw materials, but it doesn't mean that anyone can exercise these activities voluntary. The companies have to face well-defined conditions and control. Authorization and control are also effective means in electricity and natural gas supply, although in these sectors a competitive market approach gains more and more ground. While ensuring safety and continuousness of energy (electricity and gas) supply is great problem nowadays, European countries shall find a balance between internal market and safety. Making this decision is not an easy one, and tight control and authorization are required.

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EXPROPRIATION AS A FORM OF INTERFERENCE WITH OWNERSHIP RIGHT IN ORDER TO ATTAIN GOALS OF SPATIAL LEGISLATION OF THE REPUBLIC OF SLOVENIA (RS)

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Key words: Expropriation; Ownership right.

Due to fast economic growth and the growth of population, space is becoming a more and more restricted factor in meeting private and public needs. The arranging of space is linked to the phenomenon of planning. Purposeful and systematic use of space should therefore be carefully planned. Spatial plans represent a key element and direction in the future use of space. In the legal system of RS they represent the source for forming ownership relations with important legal consequences. Ownership relations are legal relations with the demand for complete legal system, although they are not regulated only by general laws, as Stvarnopravni zakonik, Law of Property Code (SPZ, Official Gazette of RS, No. 87/2002, 18/2007) but also by special legislation which restricts the ownership rights. Therefore it can be said that ownership right is formed outside the ownership's interest. Owner's position within the new Slovene organisation of the state is still subjected to the social binding of ownership right, however, only if it has its grounds in the realisation of public interest. Restriction of ownership right is regulated by different laws within all ownership law areas- law of contracts, substantive law, and law of succession- nevertheless, this does not mean that the constitutional right of the uniformity of ownership right is violated. When analysing the restrictions of the ownership rights, we soon come to the conclusion that the subject of the restriction is mainly the ownership right to immovable property, where the wise use of the immovable property represents the primary objective of the spatial policy and the development in a certain area. Spatial planning is thus, as seen from the owner',s point of view, the worst kind of interference with the ownership's legal status. As property is a constitutional category, the basic admissibility frames for interference with it have been set according to the principle of the rule of law. Ustava, Constitution of the Republic

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of Slovenia, already rightly sets the limits in Article 67 which defines the restriction on the ownership right in order to achieve its ecological, economic and social function. Based on that, the legislator can accept restrictions with laws which determine restriction beforehand to an unspecified number of owners. Such restrictions can refer to all owners or only to owners of specially defined objects. This means mainly for examples of constructions built in public interest, where the nature of building demands certain carrying out on an apportioned parcel. To validate the interference with the ownership right when ensuring one of the previously named functions of it, the existence of public interest and the principle of public interest should be taken into consideration. Zakon o urejanju prostora, Spatial Planning Act (ZUreP-1, Official Gazette of RS, No. 110/2002 (8/2003 revised.)) classifies the interferences with ownership right into three types: Expropriation as the most powerful interference, meaning the seizure of the ownership right Encumbrance on immovable property with temporary or permanent easement Restriction with forming a right to temporary use of the immovable property Expropriation is nowadays considered as an admissible interference with ownership right if the main legal requirements have been satisfied. There is no doubt that expropriation is an interference with the ownership right of the worst kind. In the daily use it is seen as an action that can be aimed at the citizen of the country which imposes expropriation, or at foreigners or foreign investors. The first subject area is covered by the national public law, and the second by the international economic or the international investment law. Besides the cases where the nature of public interest and interference with immovable property demands the seizure of the ownership right, there are also cases where constructing of a building in public interest can be carried out without expropriation, legal relation between the owner of the immovable property and the constructor can thus be regulated on other legal basis. In this case we speak of restriction or encumbrance upon ownership right as the so called incomplete expropriation. Two possibilities are open: the right to temporary use and the encumbrance with temporary or permanent easement. Expropriation as well as restrictions on ownership right are admissible under the same conditions. This contribution will try to present, on the basis of legislation, dilemmas regarding the right use of the institute of expropriation. We will stress on one hand questions on the effective legal protection of rights of the expropriated party and whether the expropriated party is entitled to a proper compensation based on legal regulation, as well as questions if the realisation of public benefit is enabled to expropriation beneficiaries and, based on that, the acquisition of the ownership right in &#8216,the shortest period of time.

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ORIGINS OF ESTATE PROPERTY CIVITAS ROMANA

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Key words: Pomerium; sulcus primogenius; Roman law; proprietorship.

"Datur haec venia antiquitati ut miscendo humana divinis primordia urbium augustiora faciat" Livius Ab Urbe condita, Praefatio

From the alternatives offered, I have chosen to participate in the section called "Acquisition of property by state" and therefore I hope that the topic of this paper respects the assignemnet given out by organisers (of the conference COFOLA 2009 in this area). I suppose that this section will be dominated by contributions from administrative law, event. civil law. On the other hand the field of legal history, event. Roman law will not be numerous. However I do not want Ancient Rome and its law to stay on the side, because its intellectual richness is still the source of inspiration and incomparable model for legislative authorities. As the name of the contribution, "Origins of estate property civitas Romana", indicates at its core of stands the first acquisition of estate property civitas Romana. This estate property was delimited by the first furrow sulcus primogenius that was according to the legend plough up by Romulus and marked the limits of the town called after him. The paper focuses on the first acquisition of the territory – the land where Rome was situated. Thereinafter the basic religious institutes connected with the foundation of Rome are definied.

This conference paper analyses pomerium and magistratus territorial comptences in Ancient Rome. The article compares the archeologial researches about the process of foundation of the town of Rome with the legend about the foundation of Rome as it is presented in literal sources At the end it was proven that the legend about foundation of civitas Romana influenced also the legislation that can be found for example in The Institutes of Gaius and Digesta of Justinian.

Pomerium in roman conditions transformed from Etrsucan area where auspices had taken to the place deliminating the city state and therefor showing its separation from other civitas to the outter world. The Ancient city state was not merly the town and the state in one but also a shelter for its inhabitants who were protected not only by the rempairs but also by gods

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that presented protection inside the town. Just like in other fields of life, in this domain as well there was a religious deconsecratation of oracle and the sacred limit of pomerium became a limit of jurisdiction and the territorial competence of magistrates of Roman nation. The religious boundary of a place designed for auspices happenings became the limit of territorial competence of Roman magistrates. They acted either in town domi or outside the town militae, belli. The basic limit for distinction was pomerium. This differentiation ensued from the original nature of Roman empire as a city state. The administrative acts inside pomerium and within one mile from Rome were regarded as civil acts – domi and all the other acts were military – militiae; this applied not only to acts issued in the state of war, but for example to administrative and juridical acts as well. Denominations militiae and belli areold names from the period when the competence of Roman magistrates outside the town was mainly military. This distinction was importnat especially for the application of ius intercessionis and ius provocationis.

Like for other Ancient nations, for Romans too, legal norms had a divine origin. That is why the legal regulation of limits of civitas Romana as well has its roots in ius divinum when the ramparts in Roman law were res sanctae and that is why they were strictly protected. Their destruction, damage or climbing them was penalized by the most severe punishment. The Roman jurists theirselves included the protection of city ramparts – limits of the town – to Digesta with a reference to the legend about the foundation Eternal City: Dig. 1.8.11. Pomponius 2 ex var. lect: Si quis violaverit muros, capite punitur, sicuti si quis transcendet scalis admotis vel alia qualibet ratione. Nam cives romanos alia quam aper portas egredi non licet, cum illud hostile et abominandum sit: nam et Romuli frater Remus occisus traditur ob id, quod murum transcendere voluerit.

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THE HEAP OF STONES

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Key words: Castle; historical monument; superficies solo cedit; building; pertinence; ownership.

The landscape of the Czech Republic is full of knights´ castles, chateaus, manors and their ruins that make up its beauty. Lots of them are located on the estate of the state company, the Forests of the Czech Republic that was founded to look after land covered with state forests. The company has a right of management to them. These estates have been transferred to the state during so called "First Land Reform". In contrast to the majority of reforms in other countries, the reform in the interwar Czechoslovakia touched the forests as well.

The Castle Stará Dubá is also one of those aforementioned ruins. At the time of its establishment, in the 13th century, it was one of the two aristocratic castles that were able to compete to the kings´ castles in its dimension. However, in the 15th century it switched proprietors several times, and in the second half of this century, it was besieged and conquered. In the second half of the 20th century, the complex Stará Dubá was registered as a cultural monument. This monument contains: the ruins of the castle, the foundations of the settlement round the castle, the fortification of this townlet, fortified siege camp and fortified place for besiegers' artillery.

In the year 2005, the Municipal Office in Benešov placed a duty on the Forests of the Czech Republic to care for the monument Stará Dubá under the State Monument Preservation Act. The state company brought a legal action against this decision declaring that the company had only the capacity to manage the land. The management of the company insisted on the fact that according to the valid legislation, a principle "Superficies solo cedit" cannot be applied and the proprietor of the building and the land could be different persons. They argued that according to their opinion, the ruins of the castle were a separate building and so the right to manage the land could not be applied to the ruins. The violation of this old roman principle entered the Czechoslovakia law during the period of communism in 1950. In context of the restitutions after 1989, the courts have solved several times the

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problem if this or that thing could be considered as a building. Moreover, the question from which moment a building in the process of construction could be considered as a separate thing in terms of the law has been solved. It was pronounced that the building in the process of construction was a separate thing from the moment when the disposition of the first over ground floor was evident. By opposite, it can be deduced that the building in terms of law perishes when the disposition of the first over ground floor /ground floor/ is not evident. This principle was finally respected by the Supreme Administrative Court as well. It declared that the ruins of the castle reached such a phase that not only the internal disposition of the buildings is not evident but also the contour of the enclosure wall. Nevertheless this judicial act causes a legal uncertainty – on the territory of the Forests of the Czech Republic, there is a lot of ruins of the castles. This decision could result in the practice of other municipalities that could start to impose a duty to the Forests of the Czech Republic to look after all these ruins. Without a question, such duties would charge its budget, and it could not concentrate on company´s main activity – the care of forests. Another problem is the fact that the castle Stará Dubá is so called "closed castle" – in order to prevent its use, it was destroyed so that its construction was covered by the ruins of the demolished main tower. Because it remains caved the whole castle, they closed it and they have blended with the landscape over the time. That is why it is possible that under the actual terrain the castle is preserved even with several floors like for example the castle Vízmburk that was uncovered in the years 1972-1984 century and it has caused a big sensation.

Let´s hope that before these excavations can be executed, our legal order will implement the principle "Superficies solo cedit" as a part of a new civil codification, so that similar obscurities will be eliminated.

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CURRENT PUBLIC PROCUREMENT ISSUES

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Key words: Public procurement; act; awarding procedue; novelization; contracting entity; office for the protection of competition.

The contribution analyzes the actual questions within the public procurement issues. The article describes the most important aspects including the field of public procurement during the Czech Presidency of the Council of the European Union. One part of the article focues on the problematics connected with outcoming novelization of the Act no. 137/2006 Col., on the public procurement.

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PRESCRIPTION OF A PROPERTY BY THE STATE

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Key words: Prescription; possession; state property; Civil Code; Roman Law.

This contribution focuses on the issue of property acquisition by the state. The state may acquire its property in several possible ways. In this contribution, I have chosen the institute of prescription.

The introduction of the work concentrates on the concept of state property. To ensure its functions, the state constantly needs property as it also often loses property due to physical or technical wear and tear. There are several possible ways of acquiring property by the state. The institute of prescription is one of legal forms, based on which the state may acquire property.

Possession is regulated by the Civil Code. Section 134 of the Civil Code lists conditions for possession acquisition but the current legal regulation is not a subject-matter of this contribution.

The focus of the article is based on the institute of prescription in Roman law as it is here from where prescription stems. Prescription was regulated by the Law of the Twelve Tables, and as the society developed, the institute reached a stable form based on keeping the following five requisites: res habilis, titulus, fides, possessio, tempus. The basic and most important requisite for prescription was possessio or occupancy that was based on possessio corpore (factual authority over a thing) and animus possidendi (intention to possess a thing).

The institute of prescription is also dealt with in the new Civil Code where it receives great attention. The new Civil Code has brought possession back to the forefront with an effort to extend it. The basis of the regulation has been taken over from the current legal regulation. The concept of possession will be unified as possession of a material thing and possession of right will no longer be distinguished. The new Civil Code will regulate possession acquisition in more detail, extend the concept of possessor, and the protection of possession will also be regulated. The objective of the de lege

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ferenda regulation will be to restore the traditional concepts of possession and bring possession back to the forefront of attention.

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THE OFFICE OF THE GOVERNMENT REPRESENTATION IN PROPERTY AFFAIRS AND THE MANAGEMENT OF THE STATE PROPERTY

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Key words: Public interest; authorities protecting public interest; state property; treat with the state property; public administration; the Office of the Government Representation in Property Affairs; control; the Supreme Audit Office; media.

The aim of this article is to stake the authority protecting public interest. Main interest was intended on the Office of the Government Representation in Property Affairs.

The subject of the article is to show the historic roots, the reason of his origin and the legal regulations of his activity. I was engaged in the activity of this office at large from the valid legal form, with the stress for his specifics. My intention was to survey this office with the Supreme Audit Office and to envisage their intercommunication and cooperation with the possibility of cavity of this cooperation to the future.

The Office of Government Representation in Property Affairs was established not long ago, on the 1st of July 2002. His activities was provided by Act No. 201/2002, Act on the Office of the Government Representation in Property Affairs and the main aim of this office is to improve legal services and to ensure efficient protection as well as economical administration of the property, which was owned by the state.

I described organizational structure and legal activity of this Office of Government Representation in Property Affairs. This office represents the Czech Republic, its government constituents and municipalities as well, by acting for them on trial, arbitration board and similar hearings. It also provides legal advices and prepares positions concerning matters, which is related to property, according to other government constituents, state organizations and municipalities requirement. His activity are also property administration and any other special agenda set by law. This office contributes by his activities to protect public interest. The representation of this office is

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performed by acting for other government constituents at the court hearings and similar proceedings which regards with proprietary rights of the state, financial claims, business transaction and complaints lodged with the Constitutional Court. These acting take their courses at Czech courts, at court hearings abroad and at international courts hearings. These hearings pertain to ownership, validity of contracts on property transfers and groundless enrichment to the detriment of the state.

I was engaged in the relation between the Office of Government Representation in Property Affairs and the Supreme Audit Office and I described the possibilities of their cooperation.

The activities could be more effective by integration of these two offices. The Act No. 201/2002, the Act on the Office of the Government Representation takes this form of cooperation for granted, but the Act No. 166/1993 on the Supreme Audit Office should be amended and coupled with provision of this statute.

The point of competition of these offices is just the public interest and the common property. The Supreme Audit Office represents the public interest in his activity, in spite of that it hasn´t the competence of sanction the infraction. So de lege ferenda it could be better to extend his activities in this direction. Nowadays the Supreme Audit Office is eligible to announce his results of audits in the Supreme Audit Office´s Bulletin, the form of audit conclusions. These audit conclusions are passed on to the Chamber of Deputies, to the Senate and the Government of the Czech Republic. In the event of infringement tax liability of audited persons, these audit conclusions are committed to the tax administrator as well. In the event of suspicion of criminal activity of audited persons, these audit conclusions are passed on by the head of the Supreme Audit Office to the public prosecutor or to the other active authorities in criminal trial proceedings. I was engaged in the media relation to both of these offices.

At the present time we can persuade of the positive move to the audit conclusions. The audited persons seek to avoid to remedy serious shortcomings.

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GOVERNMENT AND UNJUSTIFIED ENRICHMENT

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Key words: Unjust enrichment; government; state.

This article concerns a specific and frequently neglected situation of active legitimacy to a claim of restitution for Unjustified Enrichment pursuant to the par. 456 of the Civil Code in case the Government is entitled, because the actually deprived one is unknown. To handle and examine this institute it is necessary to overlook its wider aspects and dynamism of Unjustified Enrichment in the Czech law historically.

Institute of Unjustified Enrichment forms in a legal system specific category of legal obligations. It has a character of non-contractual and in the same time quasi-tortuous obligation because a wrongfull state is not necessary for its commencement as it is in case of obligation of damages. However it has the character of non-contractual obligation, it is closely tied with the law of obligation because Unjustified Enrichment covers typaly and functionally relating affairs, relevant in law, and is leading to restitution of valuables, distributed among legal entities, to its previous state.

Historical development of Unjustified Enrichment varied in Czech territory between natural law position, derivated from the Justinian's Code, and casuistic position, embodied in par. 360 of Civil Code No. 141/1950 Sb. While the Justinian Law holds the view about universal character of Unjustified Enrichment, categorized to typical merits of the case first by the compilers, the Civil Code from 50's solved this assignment to the contrary.

Such a dichotomy has nonetheless connotation not only historical, but is also very suitable for elaborating and understanding contemporary law. Civil Code No. 40/1964 Sb. in original text laid down art. VII of Principles and par. 415 general duty to prevent damage as well as Unjustified Enrichment (note: but at that time till 1991 denominated by communist legislators purposely by different synonyms according to a new political paradigm) at the expense of society. However, individual merits of the case of this Unjustified Enrichment were enacted and higher courts tend to practise them in their enumeration exclusively, according to a declared principles that corresponded to a polical goals of communist regime.

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With such a prism and being aware of purpose discontinuance of law after 1989 revolution in the CSSR simultaneously, it is suitable to regard with interpretation of present merits of the case of Unjustified Enrichment. They are namely considered by higher courts and theoretics strictly enumerative, however par. 451 sec. 1 Civil Code contains general formulation that could be easily understood as general clause and, moreover, modern foreign civil codes envisage them demonstratively. But according to the systematic interpretation of the whole paragraph, or (more precisely) the whole Code, there is inevitable conclusion that Unjustified Enrichment has to fulfill one of its merits of the case to become legally relevant.

Previous tract should be helpful for more following analytic treatise on par. 456 Civil Code in present application and in its statutory future as well. At present this paragraph lays down that object of Unjustified Enrichment has to be revert to the person that was impoverished and if that person is not possible to identify, it has to be revert to the Government.

Such provision could raise undesirable recall of previous practices of non-democratic regime with clear tendencies in directively administred economical system to socialize every accessible value. In spite of Civil Code in original text interfused dialectic methods of regulation of private and public law, I will try to prove that this particular provision is not only devoid of previous ideological burden but eligible instrument to redress the economical and even moral balance in society as well. Considering legislative works on the new Civil Code being in progress, such a treatise could contribute to renew interest of lawgivers in this provision since it has dissappeared from up-to-date redaction of the Civil Code. According to the practise of the executive and the courts with this provision there is, however, another assignment to deal with. Even the socialistic justice concluded in 1978 the par. 456 Civil Code is not used properly and sufficiently often. This continues to be relevant till now since there are not distinct rules in implementing statutes for executing Office of the Government Representation in Property Affairs.

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EXPROPRIATION AND FORCED RESTRICTIONS ON PROPERTY RIGHT DURING CRISIS SITUATIONS IN THE CZECH REPUBLIC

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Key words: Expropriation; ownership; restrictions on property rights; military crisis situations; non–military crisis situations.

The Charter of Fundamental Rights and Freedoms as a typical general constitutional rule does not define or specify the content of the rights in property. According to the Czech – English Law Dictionary with Explanations, ownership is the right to possess something and use to the exclusion of others. This especially concerns the typical content of this right – to posses a thing, use it and reap benefit from it. The Charter of Fundamental Rights and Freedoms both directly and indirectly assumes that laws in both public and private branches of the law define the content and boundaries of the owner´s rights. The common form of the property rights is provided for in the Civil Code. First and foremost, it includes the rights and duties of the owner, the possibility of his procedural protection, the acquisition and loss of property and expropriation in the public interest.

Civil Code (§ 128 para. 2) imposes, that a thing may be expropriated, or an ownership right may be restricted, in public interest where the purpose cannot otherwise be attained, nut only on the basis of law, solely for the given public purpose and in return for compensation. However, a regulation of forms of ownership can be found in other legal provisions, which differ from the general regulation by a special regulation of acquisition, administration, use, content, loss or termination.

The Czech legal order also accepts the classic constitutional principle, according to which expropriation or forced restrictions on property rights are possible only in the public interest and for compensation. Expropriation is therefore not perceived as a criminal sanction, or as enrichment of the public authority, but as a necessary act of the public authority in ensuring other publicly beneficial gains.

In addition, expropriation is regulated in the Act No. 183/2006 Coll.,

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Building Code and expropriation proceedings in the Act No. 184/2006 Coll., Expropriation Act. The Act No. 240/2000 Coll., Crisis Management Act (Crisis Act), regulates rights, duties and forced restrictions on property rights of natural and legal persons during the crisis situations not related to the defence of the Czech Republic against external attack. Act No. 222/219 Coll., on defence of the Czech Republic, specially regulates rights, duties, forced restrictions on property rights of natural and legal persons, as well as accelerated expropriation procedure during the crisis situation related to the defence of the Czech Republic.

This contribution deals particularly with these forced restrictions on ownership and expropriation during military and non–military crisis situations in the Czech Republic.

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Section
Autonomous will of parties

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INTEGRITY OF THE ASSENT TO THE MARIAGE IN THE ROMANIAN LAW AND IN THE FRENCH LAW

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Key words: Assent to the Mariage.

The marriage is a legal deed which results from an agreement of wills. For the valid formation of the marriage, the assent of the future husbands must be expressed in full freedom and given with full knowledge of the facts, which supposes for it to be excluded of vices. In the matter of the assent to the marriage the vices of the will are in the Romanian law: the error on the physical identity of the other husband, the fraud and violence and in the French law the error and violence, the fraud being excluded.

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THE LIMITS OF THE PROPERTY RIGHT SET BY THE PARTIES WILL

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Key words: Parties will; property right.

The reverse of the abalienation and of the transmissible character of the property right, the inalienability, may result not only from the law but even from the will of the parties. The issue of admissibility of clauses inalienability of i is controversial. Thus, the principle of defense of the property right and the principle of free movement of goods are opposed of the admission of such clauses, but the principle of freedom of will which governs the civil legal acts and the dispositions of the art.480, Romanian Civil Code, under which, in virtue of the property right absolutism, the owner has the power to selflimitation the right, require the admissibility.

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RESPONSIBILITY FOR THE ENTITLED FOR COSTS FOR STOPPING THE EXECUTION FOR PAUPER IN THE LIGHT OF THE JURISPRUDENCE OF THE SUPREME AND CONSTITUTIONAL COURT OF THE CZECH REPUBLIC

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Key words: Distrainer; execution; entitled; debtor.

On 1st september 2001, Act No. 120/2001 Coll. On Private Enforcement Agents and enforcement activities (execution order) and amending other acts (hereinafter referred to as the "Enforcement Regulations" or "ER"), which began to be implemented Enforcement decisions, respectively execution entity distinct from the courts, distrainers.

One of the uncertainties and arrears, which was ultimately corrected through amendment to the Act Enforcement Rules No 347/2007 Coll. Amending Act No. 120/2001 Coll. On Private Enforcement Agents and enforcement activities (execution order) and amending other laws, as amended, is the institutes of execution costs for terminating the execution of insolvency of the debtor.

The whole issue is embedded in particular the provisions of Section 89 in the ER, which in its original form to the entry into force of Law 347/2007 Coll., Ie 1.9.2001 to 1.1.2008 was as follows: "If there is a cessation of execution, the court may order the entitled to pay cost of execution.

Of course, the question of cost-executor in the execution to stop for insolvency of th debtor is inherently linked not only with the provisions of Section 89 ER, but in particular the fundamental principle of execution proceedings, expressed in the provisions of Section 3 of ER, which is fixed principle of refund mend of Enforcement (and other) activities in correlation with Section 2 ER, according to which the executor carries out enforcement activities independently.

Constitutional plane is enshrined in Article 11 of Constitutional Act No. 2 / 1993 Coll., The Charter of Fundamental Rights and Freedoms as part of the constitutional order the Czech Republic, according to which, everyone

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has the right to own property. Ownership rights of all owners have the same legal protection and content.

The case law of the Constitutional Court is precisely the basic principles divorced executor position, particularly its independence, which is guaranteed by law to pay, this is underlined the impossibility to refuse to carry out execution, respectively strict definition of the reasons for which such action may be rejected. On these principles the Constitutional Court built an argument that, which makes it impossible to refuse to grant compensation for the distrainer in the case of stop the exekution for the insolvency of the debtor, respectively principle that must be considered the fault of individual participants in execution proceedings and if can not put fault the debtor, it should be granted for costs against the entitled.

Since then, it was (with the correct and should be) the entitled, which bears the risk associated with any costs for failure recovery in the execution proceedings.

Thus, try to answer the question of what can find fault and when the process should be attributed to the reimbursement of costs to distrainer against the entitled.

The main criterion was to be taken into account the objective facts of the case, but under the current circumstances into account the specific subjective nature.

In addition, admittance of entitled was particularly studied in terms of its procedural care and prudence.

The above conclusions are, however, overcome the work of the legislature that the Act No 347/2007 changed and added the key provisions of Section 89 ER. This amendment came into force on 1st January 2008.

The new wording of the provisions of Section 89 It reads as follows: "If there is a cessation of execution, the participants cost and execution costs that is at fault for stopping. In the case of cessation of execution for insolvency of the debtor paid a flat rate for reasonably incurred expenses to distrainer by the entitled".

The revised provisions of Section 89 is important to note that the distinction that not only stop execution of insolvency of the debtor and "other cases" within the meaning of § 268, paragraph 1 Civil procedure act, but that instead the words "cost" execution uses the word "flat rate or reasonably incurred expenses ... ".

So, now the situation is such that in the case of the insolvency of the debtor it's the entitled ex lege, which will pay expenses incurred in the execution. Already, in my opinion, there is no appeal to the procedural (not)fault, however it si wrong regulation, which overstayed thousands different cases.

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THE UTILITY OF MEDIATION IN ROMANIA

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Key words: Mediation; Romanian Law nr.192 on mediation and the mediator profession; lack of communication.

The Law nr.192 on mediation and the mediator profession entered into force in 2006, but many Romanian have recourse to this procedure since 2003 and they could perceive the benefits and the utility of mediation. All the people were aware that the misunderstandings have arisen between them as a result of deficiencies or lack of communication and found that the mediator is the person who facilitated the restoration of dialogue and finding solutions widely accepted.

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FORUM SHOPPING: UNACCEPTABLE PRACTICE?

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Key words: Forum shopping; choice of venue; plaintiff; defendant; legal certainty; unification; bases of jurisdiction.

This contribution deals with a very important and controversial phenomenon - the forum shopping.

Some authors understand forum shopping as a natural act of seeking the most advantageous venue in which to try a case. Others criticize it because, in their opinion, forum shoppers unfairly exploit jurisdictional or venue rules to affect the results of disputes.

Therefore, the focus of this paper is to confirm or refuse the following hypothesis: "Forum shopping is an unavoidable procedural tactic of litigants that is based on the possibility to choose between jurisdictions of courts of various states. Forum shopping cannot be completely eliminated."

First, the term forum shopping is defined. It is very important to differentiate between legal and misusing forum shopping. The former is defined as an act of seeking the most advantageous venue where a case is to be tried. It is based on valid procedural rules and it expresses the principle of autonomous will. Its aim is to influence the decision of the court. The latter, on the other hand, is only an abusing procedural tactic with the aim to oppress a defendant. A typical example of that is a so called Italian torpedo. It is based on factual aspects of the case and its aim is that there is no decision at all. This article deals solely with legal international forum shopping; it does not concern misusing procedural practices of litigants.

Then, I describe the reasons of forum shopping that are caused by the lack of uniformity of 1)jurisdictional rules that are often broadly based and thus, jurisdictions concur all over the world and 2)different states´choice of law rules and internal laws.

The most decisive reasons for forum shopping are plaintiff´s familiarity with the forum and his procedural advantages (or procedural disadvantages for defendant) of the venue. Conversely, divergences between the choice of law rules and the subsequent determination of the applicable law are not as crucial for plaintiff's decisions as it is sometimes believed.

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After that, I present and comment on negatives and positives of forum shopping. There are several reasons why forum shopping is criticized:

To start with, plaintiffs are the first to decide actively about the forum and have better tactical chances to determine it. The critics of forum shopping understand it as a manipulation and abuse of laws to which are plaintiffs not entitled.

In this respect, plaintiffs have really better positions then defendants. Indeed, defendants have several tools how to fight against forum shopping – anti-suit injunctions, forum non-conveniens or negative declaration proceedings - but their efficacy depends on the nature of a dispute and jurisdictions involved (factually and potentially) in its resolution.

Secondly, the uncertainty about the venue and consequently about substantive applicable law is troublesome. Therefore, several attempts to unify the conflict of law rules, for example the Rome Convention on law applicable to the contracts, have been made. Notwithstanding, also this can create further room for forum shopping.

Last but not least, forum shopping can also overburden courts of the states, the legal systems of which are very favorable for plaintiffs (e.g. amounts of damages).

Despite the introduced arguments against forum shopping, I believe that forum shopping is not only negative. It is not a bad will of claimants but solely a logical reaction to the divergence in jurisdictional rules, choice of law rules and substantive laws in various states all over the world.

The idea of eliminating forum shopping is Utopian because there will never be completely unified laws in all states. Forum shopping can be only reduced. To achieve that effectively, it is primarily necessary to define bases of jurisdiction that are substantially connected with the forum like in the regulation Brussels I. The contractual parties can also anticipate the risk of forum shopping and to agree mutually on a particular venue and applicable law in their contract.

In conclusion, forum shopping should be recognized as a legitimate practice when procedural rules are followed. Instead of criticism, it is much more efficient to curtail the grounds of forum shopping.

For all these reasons, the hypothesis is confirmed.

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THE CHOICE OF LEX MERCATORIA IN THE VIEW OF THE INTER-AMERICAN CONVENTION ON THE LAW APPLICABLE TO INTERNATIONAL CONTRACTS

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Key words: The Inter-American Convention on the Law Applicable to International Contracts and its conception of the choice of law; choice of lex marcatoria within this Convention; content of lex mercatoria and ways of its application.

We do try to introduce the choice of law under the Inter-American Convention on the Law Applicable to International Contracts also named under its place of conclusion as Mexico City Convention. The Mexico City Convention wanted to unify the conflicts of law among the member states of the Organisation of the American States (hereinafter referred to as "OAS"), so in the Americas. If someone looks at its content, some links to the Convention on the Law Applicable to Contractual Obligations (hereinafter referred to as "Rome Convention") can be seen (e.g. excluded issues, choice of law). However, as far as the choice of law is concerned, there is one essential difference to the Rome Convention, namely the choice of lex mercatoria. Under some opinions, the Mexico City Convention enables the choice of lex mercatoria. We try to deal with this opinions, there are also mentioned the ways of application of lex mercatoria in general and in the view of the Mexico City Convention in particular.

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CONSUMER PROTECTION IN THE LIGHT OF PRIVATE AUTONOMY

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Key words: Consumer protection; private autonomy.

The private autonomy is the fundamental common european principle of private laws and together with the principle of freedom of contract as its most important formation it belongs to the legal institutes of civil law. By its individual action a person can decide whether, with whom, when and under which conditions she will go into a legal relationship. Through demonstration of her autonomous will a party realizes wanted binding legal consequences and participates in legal traffic. This classical understanding of formal private autonomy, which finds its roots in the formal-abstract principle of equality of all parties with legal capacity, understands the conclusion of a contract - always and only - as self-determination of private law subjects. According to that point of view the function of the principle of freedom of contract is exhausted in acceptance of legal consequences caused by the conclusion of a contract: pacta sunt servanda. However this classical understanding of the principle of private autonomy in national private legal orders deviates significantly from its understanding in the European Community Private Law. The European Private Law regards the private autonomy rather functionally: "as a mean for establishing of the ideal internal market". That is also the reason why e.g. the free and autonomous will of consumer to conclude a contract with the chosen person is of extraordinary importance from the functional and market-focused view of European Private Law. As a foundation of the liberal economic system the principle of private autonomy gives the shape to the free-market economy system. The fact that the free and efficient competition can only be ensured through autonomous formation of legal relations in the market place connects functionally the freedom of contract and the free competition. If due to existing competition among several offerors at the market, a consumer has the opportunity to select between them, the freedom of his choice is ensured by a possibility for concluding the contract. However, it remains questionable, whether beside the legal i.e. formal possibility for market participants to build and to put through their will autonomously and

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effectively, there is also the actual i.e. material possibility assured. If two contracting parties dispose with material freedom of contract, the existence of the private autonomy is ensured. Nevertheless nowadays there is a broad agreement on the fact that the formal private autonomy for itself is not a warranty for the implementation of freedom. Therefore almost all West and Central European Civil Codes have over the years weakened to a certain extent the overall accepted concept of autonomous will of parties. This deviation from the strict understanding of the principle of private autonomy implies the right of the national legislator to intervene into legal relationship of contracting parties when necessary for the protection of the weaker contracting party.

This compensation of disturbed contract parity is one of the basic ideas, which motivates the European legislator since 1975, when the first Consumer Protection Program was adopted and which finds its expression in numerous EC Consumer Contract Directives. The four fundamental consumer rights proclaimed in the mentioned Consumer Protection Program were derived from the economically weak position of consumers on the one hand and from the supremacy of offerors on the other. The deciding moment to which the disturbance of contract parity can develop, is the meeting of consumer and professional trader (so-called b2c situation). When a consumer cannot determine the conclusion and content of a contract because of offerors' supremacy, this leads to a no self-determination of a consumer and consequently to an unwanted contract. The violation of contractual loyalty principle is thus justified, if with the freedom to conclude a contract is unfolded only outward, while suppressed internally. Therefore the task of numerous protective legal instruments contained in the EC Consumer Contract Directives is to enable a consumer as a contracting party opposed to a trader a formation of its own decisions in accordance with the principle of private autonomy.

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QUO VADIS PROROGATION?

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Key words: Prorogation; choice of court agreement; forum; convention on choice of court agreements; regulation Brussels I.

This paper deals with choice of court agreements as the most important express of the autonomy of will of parties in international procedure law. The new Czech private international law statute (hereinafter "new PIL"), which is being prepared, together with the convention on choice of court agreements concluded on 30 June 2005 (hereinafter "CCCA") and the Regulation (EC) No. 44/2001, on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (hereinafter "regulation Brussels I") will form the basic ground and rules for prorogation in the near future as all of them will come in force. The aim of this paper is to examine the future state in prorogation and to describe limits and co-operation of all named legal documents.

There are huge differences in the taxonomy among legal document. Differences stem out of both type of legal document and the scope of legal documents. Whereas CCCA is a narrowly focused international convention, the new PIL covers the whole area of Czech private international law and has purely national origin. The regulation Brussels I stands in the middle of mentioned approaches. The regulation Brussels I was created on basis of so called Brussels convention, but it's scope is much broader than that of CCCA.

There is a great amount of similarity in the scope of all compared documents. But some discrepancies are still to be found. Both CCCA and regulation Brussels I define the scope as in civil and commercial matters. But CCCA expressly excludes from its scope for instance prorogation in labour law and in consumer law. Regulation Brussels I does not. PIL bases its scope on contractual relations and other proprietary rights, which makes the scope broader.

In personal capacity and other conditions to conclude validly the prorogation agreement are PIL and regulation Brussels I very close to each other,

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due to their rules on consumer and labour contracts. As this areas are excluded from CCCA, CCCA has no rule on an specific personal scope and requests no fulfillment of special conditions. Regulation Brussels I states one very important condition in order to art. 23 to be applied. At least one party has to be domiciled in the member-state. No such rules to be found in CCCA or PIL.

As to the form of prorogation clause both PIL and CCCA are very strict for only clause in writing is allowed. CCCA generally considers a new means of communication, whereas new PIL remains silence on this topic. Regulation Brussels I is the most progressive deed in this point of view. Not only regulation Brussels I considers generally a new means of communication, but also allow parties to conclude a prorogation on basis of customs and practices.

Differences are also noticeable in the issues of time when a prorogation may be concluded as well as in the question, whether a prorogation may be concluded for particular relationship only or for more relationships. Generally a prorogation may be concluded both before and after a dispute arises. There are some exceptions from this rule in new PIL and regulation Brussels I towards protection of weaker party in consumer and employment contract. New PIL is the only, which allows parties to agree on prorogation agreement for several legal relations together. Application of regulation Brussels I and CCCA are limited to particular relationship only.

The very important question is a relation among new PIL, regulation Brussels I and CCCA. CCCA will prevail over regulation Brussels I in areas covered in CCCA and if all parties are not resident in member state of ES. And regulation Brussels I prevails over new PIL.

The future of prorogation and derogation agreements is quite complicated. There will be three legal documents to be applied. Despite the fact, that all documents took quite similar approach, there still are some not overlapping areas. Very appreciated should be, that there is a strong and certain "hierarchy" among them, which makes the future application much easier.

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PRECONTRACTUAL RESPONSIBILITY IN THE LAW OF OBLIGATIONS AS A REINFORCEMENT OF PARTIES´AUTONOMY?

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Key words: Precontractual liability (culpa in contrahendo); parties' autonomy; good faith; compensation for damage; protection of information; principle of prevention.

Precontractual liability is actually not expressly defined in Czech legislation, but the proposal of new civil codex regulates it with the aim to enforce the parties´ autonomy during the process of contracts´ conclusion. This paper analyses the actual legislation, compares it with the codex in preparation and with two chosen francophone countries. Finally some recommendations de lege ferenda will be proposed.

Firstly it is necessary to underline that precontractual liability is not revolutionary legal novelty. Already the Roman law used the term culpa in contrahendo to express the negligence during contracts stipulation that caused disagreement of will and its manifestation. It induced a responsibility for culpable misunderstanding, event. mistake. It means that parties were responsible not only for the fulfilment of the contract, but also for the damage in case of invalid contract fault by this party.

Present legislation in the law of obligation respects the principal of contractual freedom that can be understood in two aspects. Firstly it means everyone´s freedom to decide whether or with whom he will conclude the contract. Secondly it allows the parties to choose the content of the contract. Although the Czech legislation actually does not expressly define the precontractual liability, some obligations that have to be respected can be found: the responsibility for invalid contract, the obligation to inform, the principle of prevention, the obligation to prevent disputes, respect of good manners and interdiction of abuse of information. Practice of the Supreme Court (decision of 11th October 2006, No. 29 Odo 1166/2004) confirmed especially the obligation to respect good manners and general prevention obligation (§ 415 of civil code). But the question of compensation for damage remains contro-

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versial. Actually it is accepted only in case of not common costs. Also the point of view of international private law, especially the Rome II regulation is very interesting. This norm creates a harmonised set of rules to govern choice of law in civil and commercial matters concerning non-contractual obligations, including specific rules for tort and specific categories of tort, unjust enrichment, negotiorum gestio and culpa in contrahendo. As it can be seen the precontractual liability is understood like non-contractual obligation, but this categorisation remains very controversial.

The proposal of new civil codex also includes the express rules about precontractual liability. The compensation for damage seems to change the most. The codex regulates in some specific cases even the sufficient satisfaction. The professional public represented by the Economic Chamber of Czech Republic criticises the possible abuse by a stronger party and of the whole institute.

In foreign francophone legislations, rules about precontractual liability exist as well. French law underlines two obligations. Firstly there is a right to end the contracting at all times, because the parties are not yet bound by obligation. On the other hand the process has to be treated with respect of good faith. Sudden and unreasonable termination (for example by simple hanging up of a telephone) founded liability for tort. This rule illustrates interesting parallel with proposal of Czech civil codex that uses the term "just reason" (a term frequently criticised). The Swiss legal theory also deduces some obligations from the principle of good faith. The practice of Swiss courts distinguishes four precontractual obligations: a duty to negotiate seriously, a duty to inform second party and to advise it, a duty to gather information himself and a duty to negotiate fairly. If the contract is not concluded, the aggrieved party can ask damages. There are however disagreements about the nature of this responsibility. It is neither the tort liability nor the contractual. It is defined as specific type of liability.

I suppose that in the phase of preparation of new civil codex it is not possible to say if it will enforce parties´ autonomy or not just yet. On the other hand I appreciate the express regulation of this institute that would increase the legal safeguard and contribute to the fair trade relations.

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THE DECISION-MAKING AUTONOMY OF EMPLOYMENT RELATION PARTIES-FICTION OR REALITY.

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Key words: Non equal position of the parties; legal limits; recision of contract of employment; termination without any reason.

In labour law, the decision-making autonomy is not common at all; the main reason is the protectionist character of the Labour Code. The theme of the decision-making autonomy has become a discussed issued recently due to planned conceptual amendment of Labour Code.

The crucial question is, whether it is possible to extend it to e.g.recision of contract of employment, termination without any reason or to alternation of employment relation.

The paper tries to outline the problems.

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AUTONOMOUS WILL IN THE SOCIAL SECURITY CONTRACTUAL SYSTEM

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Key words: Autonomous will; social security; contracts.

The article deals with a new topic, not very much dealt with in Slovakia. It is a problem of contractual system and obligations in the social security law, where major changes have occured in the last decade. These changes have brought a trend of "privatization" to the social security system. Therefore, one can meet variety of private-law-institutions in the social security law that used to be one of the strictly public branches of law. The author calls attention to the contractual system in social security law of Slovak Republic. This area has features of private law, however, the autonomous will of contracting parties is often very much restricted in various different ways - either in a way of limited choice of contracting partner or in the form of a duty to conclude a contract. This happens mainly in the so-called second pillar of pension insurance, which is more of character of savings than insurance. All the aspects of autonomous will present in modern private law are being dealt with in this article in the context of social security law and its specific features.

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PARTY AUTONOMY IN DETERMINATION OF APPLICABLE LAW IN ARBITRATION

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Key words: Party autonomy; applicable law; merits of the case; international arbitration; choice of law; limitations to choice of law; mandatory rules; a-national rules; fraude à la loi; arbitrators.

The aim of this contribution is to analyze law applicable to the merits of the case before arbitrators and the role of party autonomy in this context.

The author presumes that the arbitration procedure is based on a contractual doctrine, of which party autonomy is a fundamental principle. As the principle of party autonomy is widely acknowledged, the author would like to focus at determination of applicable law by choice of parties. Marginally, the author will also deal with rules for determination of applicable law in the absence of the choice by parties.

The author asks whether it is necessary for the parties to explicitly indicate the chosen law in their contract or an implicit choice may be deduced form their will. It is also questionable whether the parties may choose the substantive law of certain state directly or they first have to choose a conflict of laws rule.

Some laws or rules permit parties to choose only a national law of a certain state. The question is whether parties are also free to choose rules of law? If yes, are they permitted to choose only national rules or also a-national rules such as lex mercatoria? Lately there is a tendency in international arbitration to completely depart from national law. The possibility of empowering the arbitrators to decide ex aequo et bono or as amiable compositeur has been examined.

Although the principle that parties can choose the law applicable to their contract seems rather widely accepted, it is nevertheless not without limitations. Given the fact that arbitrators derive their powers from the will of parties, the parties will expect their choice to be recognized and applied. There is however a question whether the arbitrators can disregard the choice made by the parties, in what situations and under what conditions. One of

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the limitations to the party autonomy is the existence of mandatory rules. It is obvious that the mandatory rules of the law chosen by the parties have to be respected. The question remains whether also mandatory rules of other legal systems should be respected in order to enhance probability of recognition and enforcement of arbitral awards. The question to be answered is which mandatory rules should the arbitrators apply and what are the effects of their application. Another question is whether the arbitrators may disregard the parties´ choice that does not respect certain mandatory rules and whether in this case the arbitrators may even apply a-national rules without being expressly authorized to do so by the parties and if such an application affects the enforcement of the award.

In further part of its contribution the author endeavours to analyze the scope of law chosen by the parties to conduct their contract. The question is which matters are covered by the chosen law?

In the last part the author deals with the rules applicable in the absence of the choice by parties. In this case, the applicable law will be determined by the arbitrators. First question that the arbitrators must ask is, why there was no choice by the parties and whether they can imply this choice. If not, it has to be considered whether the arbitrators may directly apply the law (voie directe) or they have to determine the applicable law by using a conflict of laws rule first. Second question to be answered is whether the arbitrators are allowed to apply national laws only, or they may as well apply rules of law, including a-national rules such as lex mercatoria.

Given the limited scope of this contribution the author will only briefly tackle these issues and will provide just short answers bearing in mind that each of these questions deserve deeper and more sophisticated approach.

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ELECTRONIC CONTRACTING AND THE PRINCIPLE OF AUTONOMY DEALING WITH THE WILL OF THE CONTRACTORS

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Key words: Electronic contracting; electronic signature.

Nowadays, the electronic contracting (hereinafter referred to as EC) is a very common appearance. Almost every man has had a chance to work with the EC in a practical life and it has been becoming a tool which is used increasingly at closing the contracts. It follows that the practising lawyers encounter this range of problems more and more.

At first I would like to deal with the term of EC itself at its basic level. It must be said that the term is defined as making a contract with the aid of a communication electronic tool. By way of example we can mention a worldwide Internet which is these days used for contracts making, mostly consumer ones. For example, we can adduce a sales contract for customer goods.

As far as we view the general principle of autonomy dealing with the will of the contractors, we have to claim that it is one of the most important pillars of the whole private law. The principle has been applied at all contracts governed by private law and it appears that it has been also applied at EC as well. On the other hand, against the classical way of making contracts, we can chance even some specific demonstrations of this principle which, is in most cases, admitted within several levels. Those levels are following: a) a possibility to make or not to make a legal action b) to choose a recipient of the legal action c) to make a legal action with a specific contents d) to choose a form of a legal action (it is necessary to notice that within some types of contracts a written form is requested)

Within all those mentioned levels we can find specific which appears only when use EC. Further, I would like to deal with separate level in more details.

In the first place, the principle of autonomy takes effect in a possibility for a subject to make or not to make a legal action (to make a contract). The decision is influence by many factors. The most important, in my opinion,

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are two of them.

First of all it is the factor of a huge offering which man can find in a very small time – mainly through Internet. It is just the wideness of the supply that can lead to a decision to make a legal action.

The second factor is the speed and easiness which are closely connected with EC. To make a contract at these days is just a question of several moments. The subject does not have to spend all day visiting shops which are quite distant, but everything can be solved at favourable day time and mostly from their home comforts, for example.

When choosing a recipient of a legal action, we can also see additional specifics. It is especially the dilemma of wide anonymousness of each subject. For example, in Internet data environment is possible for the subjects to personate somebody else. The detection of those activities is very difficult especially for current users. In connection with the anonymousness of the subjects, there are several juridical problems and most of them are answered by electronic signature. On the other hand, we have to mention that if we want to achieve the highest degree of safety it is necessary to use the advanced electronic signature and know the exact rules how to use this tool correctly.

In the next level, that is mentioned, we can also find some specifics which are typical for EC. With the electronic contracts we can chance very often with the situation where the conditions of the contract are made only by one of the side and the second one cannot participate on the establishment in no way. The question is about the adhesion contracts – which can appear not only at EC but also at ordinary completion. The subject can only choose if the contract will be closed or not. This type of the contracts can be chanced particularly at licence contracts which are typical for different computer programme.

The last level especially deals with the questions which aim to keep the condition of a written form of a legal action. The question is highly discussed when using different tools of electronic communication. It is necessary to state that pursuant to section 40 Civil Code this operation can be considered as it was done in written form – if it is made through electronic tools which make possible to intercept the content of the legal action and to address the person who made it. Therefore, we can claim that it is possible to observe a written form while EC on conditions mentioned above.

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THE ROLE OF "CENTRAL AUTHORITY" BY THE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

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Key words: Convention on the Civil Aspects of International Child Abduction; central authority; rights of the child; cooperation between central authorities; abduction resolving proces.

The Role of the "Central Authority" under the Convention on Civil Aspects Of International Child Abduction

The wrongful removal or retention1 of a child out of it´s state of habitual residence, so-called "international child abduction" is really actual issue becouse of encreasing number of partnerships beyond borders of states and continents. If the relationship breaks it is very usual that the both parents want to be the custodial parent of the child. This is the situaction when parent abduct his own child from another parent.2

This issue is regulated by these international documents: 1/ Convention on Civil Aspects of International Child Abduction (brought up by the Hague Conference on the Private International Law, 1980) (hereinafter "Convention") 2/ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (hereinafter "Regulation") 3/ in another conventions e.g. Convention on the Rights of the Child (brought up by United Nations, 1989) we can find only basic regulation without any concrete estabilishment of rights and obligations.3

The "Central Authority" has been established in each country to facilitate cooperation between member states of Convention. The role, position and duties of Central Authority will be the subject matter of this contribution.

The Central Authority has been established by the Convention on the basis of Article 6. Member States may either establish a new state authority designated exclusively for meeting the objectives of the Convention, or an

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existing office to connect additional rights and obligations, as was the case for example in the Czech Republic or Slovakia. In the case of federal states, there can be more Central Authories for each autonomous territory, but there should always be the one on the federal level.

Generally, the Central Authorities can be understood as a kind of bridge between countries, specific laws and legal systems, they should help people and cooperate with each other Central Authority. They are specialized in this narrow field of action and professionally ensure the application of Convention (and Regulation in EU).

The Convention determine it´s main aim in the article 14, but the primary goal is to prevent such actions.5 It is not exactly said what should include such preventive action, but it is evident that the Central Authority should be especially advisory body which would help people and organisations to find way how to solve problems associated with cross – border partnership break and how to act in accordance with law and international obligations of the State.

If the case of international abduction happens the Central Authority plays another role. First, when the Central Authority requests (applies) for the assistance in securing the return of the child or, secondly, when the Central Authority is the reguqested body for the assistance.6

The exact list of main actions which should be taken by the Central Authority can be found in the Art. 7 of Convention and their content will in detail described in the contribution. Generally, the red line in all actions of the Central Authority is to solve the situation as soon as possible to prevent any further harm to any party, especially to the child, and to achive other objects of the Convention.

The Convetion accents the voluntary return for the child or an amicable resolution of the issue. For all participants, the best way how to end the abduction case is to make an agreement between parents. The Central Authority should be or can be the the mediator of negotiation of the parents and help them to draw up a valid settlement about the future residence (and custody) of the child.

Above this all stands the most fundamental priciple implicit in the article 3 of the Convention of the Rights of the Child, to take the best interest of the child as the primary consideration in all actions taken by Central Autrority and another engaged authorities, bodies of states and individualities.

Although the issue of international abduction can be seem simple, a lot of difficulties and uncertainties leached to the surface during practical application. That is why the role of the Central Austhority is unsubstitutable to obtain the aim of Convention. The Central Autrorities should be maintained in their activity and to be more known also among lay public.

... The resumé was shortened by editors ...

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PRACTICAL CONSEQUENCES OF THE PROVISION OF ART. 262 SEC. 2 OF THE COMMERCIAL CODE

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Key words: Provision of Art. 262 of the Commercial Code; provision of Art. 267 of the Commercial Code; liability; limitation of action.

In this paper I would like to devote the interpretation of the legal provision Art. 262 of the Commercial Code because I think that this legal regulation is very controversial.

Firstly I interest in the conditions that are necessary in order to have the obligation relationship under the legal provision Art. 262 of the Commercial Code. In this first part I would like to speak about the negative and controversial consequences connected with the performance of these conditions.

Secondly I would like focus on the legal persons of the relationship concluded under the legal provision Art. 262 of the Commercial Code. I deem that from this legal provision Art. 262 of the Commercial Code it is not clear if this obligation relationship can be concluded only between the undertaking person and non-undertaking person or between two undertaking persons too, or between two non-undertaking persons too.

In my opinion, the law-making body has an aim to enable to one party that is non-undertaking and concludes the obligation relationship with the undertaking to improve his legal position and so to balance the inequality of a power undertaking and non-undertaking.

Regardless of the above-mentioned aim of the law-making body I think that this legal provision is very vague in the question of the legal persons to which the legal provision Art. 262 of the Commercial Code is addressed.

With reference to the above-mentioned I think that the agreement according to the legal provision Art. 262 of the Commercial Code can be concluded both between the undertaking and non-undertaking and between two non-undertaking persons.

In that paper I would like to analyse the legal provision Art. 262 Sec. 4 of the Commercial Code in the connection with the range of the application of a legal regulation dealing with the obligation relationship contained in the Civil Code for the contract party that is non-undertaking.

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In my opinion, the legal regulation under the Civil Code dealing with the obligation relationship will be used for the party that is non-undertaking only in the range of the conditions of the origin of his liability and in other parts of the Civil Code that are more suitable for the party that is non-undertaking than the legal regulation of the Commercial Code.

However, I think, the legal regulation dealing with the limitation of action will be under the Commercial Code not only for undertaking but also for non-undertaking person.

In the last part of that paper I would like to devote the consequences of the application of the legal provision Art. 262 Sec. 4 of the Commercial Code in the connection with the legal provision Art. 267 of the Commercial Code.

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LIMITS OF CONTRACT FREEDOM IN THE PUBLIC PROCUREMENT

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Key words: Public procurement; public contract; contract freedom.

In the study, the public procurement contract, which is an essential contract in the economic activity, is going to be examined from private law viewpoint by the author. Although the contract (and in particular the pre-contractual procedure) has a strong public law nature, with the identification and further scrutinisation of private law elements, the publication tries to prove, that the public procurement contract can be arrange in the private law contract system as an atypical contract.

The first part gives attention to different private law components of the public contract and interprets the atypical nature of the contract. Beyond the systemic arrangement, the study also deals with the question of onerous contract.

The main part concantrates on the effectiveness of contract freedom as a private law principle, or to be more precise, the contract freedom limited by the contract obligation. The freedom of contract related to the conclusion of the contract. Under this principle four dimension can be scrutinized: the freedom (1) of deciding to conclude a contract or not, (2) to choose the contracting party, (3) to choose the legal type of the contract and (4) to determine the content of the contract (dispositivity).

In the case of public procurement contract we have to face up with the limitation of contract autonomy from several viewpoint. The first dimension is limited by the contract obligation (laid down by the procurement provisions), since they prescribes to conlcude a contract and also determines the contracting party. After the selection of the best tenderer, the contracting authority has no right to withdraw. The only possibility, when a contracting authority can be exempted from the obligation, if the public procurement procedure was unsuccessful. The cases of unsuccessful procedure are regulated in the Hungarian public procurement act.

After the last amendment of the Hungarian Public Procurement Act in 2008, there is a new possibility for the contracting authority to freed from the

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obligation of conlude a contract. It is the well-known private law principle, namely the clausula rebus sic stantibus, i.e. the effect of essential change in circumstances after the conclusion of contract. Under this exception, the contracting authority can refer to the change in circumstances, if (1) it ensues after the publication of the results of the selection process, (2) it was essential, (3) unforeseeable and (4) inevitable, and (5) due to this change, it is not able to conlude or perform the public procurement contract.

The examinations of the study are basically based on the provisions of the Hungarian Public Procurement Act (and the related decisions of the Hungarian Public Procurement Council), but in comparison, the author also presents the relating contract law rules of the current and the new, future Hungarian Civil Code. The national rules are completed with the Community public procurement law and the relevant case law of the European Court of Justice.

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THE EXTENT OF CHOICE OF LAW FOR CONTRACTUAL OBLIGATIONS

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Key words: Choice of Law; Rome I Convention; Rome I Regulation; the application of article 3 of Rome I Convention/Regulation; dépeçage.

In connection with the Czech Republic becoming a member of the European Union the range of rules applicable for regulation of contractual obligations in the sphere of the international private law has included since July 1, 2006 also the Convention on the Law Applicable to Contractual Obligations (further on only "Rome I Convention"). Thus there are two basic pieces of law which in conditions of collision law valid in the Czech Republic regulate the determination of the governing law for contractual obligations. The existence of such a dichotomy raises a whole range of questions concerning the extent of exclusion of the only regulation valid until then, that is the Act No. 97/1693 Col., on international private and procedural law (further on "IPL Act"). Neither the jurisprudence or the practice have solved univocally the question whether the application of the IPL Act is completely out of the question or not (for example for the issues connected with the obligation security according to § 11 IPL Act or for the unilateral legal acts according to § 14 IPL Act, if they are connected to contractual obligations).

As from December 17, 2009 the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (further on "Rome I Regulation"), will also become effective, the problem gets another dimension. The reason for that being, that Rome I Regulation is not identical to the previous Rome I Convention.

The issues arising from the relationship between IPL Act and Rome I Convention (and Rome I Regulation) is also the question of the allowed extent of choice of law for the contractual property relations. We may pose a question whether the extent of choice of law is the same according to all three regulations, or the regulation in Rome I Convention and Rome I Regulation is wider? If Rome I Convention and Rome I Regulation allow to choose the law for the contract or its part, does it mean that a different law

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can be chosen for the contract as such, another law for the issues regarding the security of obligations arising from this contract and finally still another law for the consequences of breech of this contract?

This contribution is trying to promote an opinion that the autonomy of the will of the contractual parties embodied into the institute of the choice of law in all three legal regulations is not fully free and that one could defend a position that the choice of different legal orders for different parts of one legal relationship cannot be allowed, as it would make a boundless dépeçage possible. This defense is based on arguments coming from (1) historical development, (2) system of law of conflicts of law (collision law) (3) typology of conflicts rules and (4) principles of private law.

The author is aware of the unconventionality of his arguments. Though he hopes, that it would help to launch the discussion to this theme.

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DIVORCE OR SEPARATION AGREEMENTS AND MINOR CHILD

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Key words: Parental agreement; parental responsibility; contact; visitation; child custody; child maintenance.

The extent of autonomy of the family and its members, i.a. possibility to regulate mutual relationships independently on the state´s power, is variable in different areas of contemporary family law. And, indisputably, everyone can also see the paramount shift occurring during last centuries on the matter, which of the family problems should be resolved without intervention of the state body.

This contribution analyzes the dimension to which the principle of the autonomy of will occurs in contemporary Czech family law. Specifically, it aims to the possibility of the parents to make an agreement about their rights and duties in relation to common minor children in case of divorce or factual separation of parents.

Obviously, the autonomy of the parents is limited in such cases, particularly because this kind of agreements usually concern third and also weaker party – minor child. Thus, the main questions are whether, when and in what way should the state act in the best interests of the child to fulfill obligations resulting especially from the international conventions and treaties like Convention on the Rights of the Child.

In this contribution, parental agreements are considered with special regard to four different issues arising in connection with the divorce or separation. Hence, the parental responsibility, custody (in the meaning of physical care), contact with the child and child maintenance are under consideration. The Czech law consists of slightly different rules regarding possibility of parents to deal with these questions in the agreement.

Thus, the Czech Act on Family states that parental responsibility belongs to both legal parents irrespective they are divorced or separated. Of course parental responsibility of nonresident parent is quite limited per se because he or she can not exercise rights and duties equivalently to the other parent. The

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court can suspend, restrict or deprive parental responsibility but the divorce and separation are not the reasons to take such decisions. Apparently, the parents can agree upon distribution of the rights and duties resulting from the parental responsibility but that kind of agreement cannot suspend, restrict or deprive parental responsibility of one of the parents in general.

On the contrary, custody and child maintenance can be resolved by the parental agreement as well as by the court decision. But parental agreement has to be approved by the court otherwise it is void. According Czech Act on Family, the decision or agreement on these questions has to be made before the dissolution of the marriage. However, this rule is not applicable in case of factual separation. In practice, there is noticeable great variety in the agreements accepted by parents and courts. But, in any case, the agreement has to protect and fulfill the best interests of the child.

Furthermore it is noteworthy that the agreement of divorcing or separated parents about the contact with the child does not have to be approved by the court under the Czech law.

According to the author, the contemporary Czech family law has many limits in respect of problems under consideration. Thus, with special regard to foreign legal regulations, the suggestions de lege ferenda are made in this contribution.

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DRAFT OF NEW CZECH CIVIL CODE IN THE LIGHT OF THE EU ANTIDISCRIMINATION DIRECTIVES

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Key words: Draft of new Czech Civil code; antidiscrimination directives; freedom of the will; equality treatment.

Author briefly analysis draft of the new Czech Civil code prepared by prof. Karel Eliáš from the EU antidiscrimination perspective. As it is clearly noted in the Explanatory report to new Czech Civil code the draft is based on the 'freedom of the will' principle ("Current Civil code is based on the equality principle. This approach is methodologically incorrect since private law is based on the principle of autonomy of the will..."; Explanatory report to the new Civil code, [cited 11th May 2009] available at: : http://obcanskyzakonik.justice.cz/, p. 12).

Traditionally it is assumed that the contracting party is entitled to choose the stipulator, the form and content of the contract as well as to decide about the realization of the contract. On the other hand EU antidiscrimination directives require that the contracting party in relation to the access to and supply of goods and services which are available to the public, including housing (Art. 3 par. 1h) Council Directive 2000/43/EC) has the right to equal treatment and right not to be discriminated. From this point of view offeror is limited in his decision about choice of the contracting party as well as in the decision whether to enter into the contract or not. Since EU antidiscrimination directives prefer principle of equality treatment to the freedom of the will concept this aspect should be reviewed in the preparation of new Czech Civil code.

In this regard author criticises the draft of new Czech Civil code on the ground of ignoring EU antidiscrimination legislation. Author refers to several provisions of the draft which overlaps the EU antidiscrimination directives as well as the draft of the Czech Antidiscrimination code which is still subject of the parliamentary proceedings. Finally author suggests reviewing the draft of the new Czech Civil code in respect of the EU antidiscrimination directives otherwise civil law will be based on two different approaches which would lead to several interpretative difficulties.

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THE RENT. THE RENT OF FLAT.

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Key words: The party; will autonomy; the rent of flat; the rent high.

Party will-autonomy i sone of the priváte-law principle. We can say that i tis the dominant principle. Autonomy is the peculiarity of priváte-law relations, it results from the universal recognition of a personality as a set of attributes, an essentials cathegory from which the freedom of an individuality results. Will is a psychological cathegory, its relevant-law expression is its declaration with witch law connects concrete implications.

Autonomy of will has a leader position in the system of obligation-law. It is given by the rome-law tradition and i tis representated by the well known phrase "pacta sunt servanda". In ownership-law constitute the will autonomy of a owner the basic for the exposure and realisation his estate over his objects.

The main problem not only in the theory of law but also in the praxis is producing many collisions.And that not only at the obligation-law level but also a collision in which one of the collision-parties is the ownership-law. An example are the relationships by so called regulated flat-rents from the times of vitation of flat-rents regulation by the Constitutional Court of CR with the force from 1.1.2002 till nowadays. It is necessary to mention the Constitutional Court published decision no. Pl.US-st. 27/09 till now not published in the collection of laws.

This article is dealing with the progress of Constitutional Court law decision an common courts by solving the relationships between the flatowners and renters of theese flats after the cancel of the priceregulation, by conciderration the disputes in which the subjects of matter was the payment and also disputes between the flatowners and state about compensation of a damage, where after the Constitutional Court decision could not be onvoked by the law presumated § 696/1 law no. 40/1964 Sb.,civil procedure code forced till 30.3.2006.

I am laying stress on different kind of interpretation of one of the lawprinciple and constitutional principle reward the principle of will-autonomy.Based on Constitutional Court law decisions could we see, that there are more wals

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of solutions of the collision. From 18.12.2002 could the rent have been advanced by the agreement of the flat-owner and the renter. If there was no agreement could one of the parties (mostly flat-owner) enter a lawsuit over the rent high, with witch he could regest a common rent with the statement of reasons that it has not come to the rent agreement. Flatowners had really entered a lawsuits with this claims. Common courts with an appeal to pacta sunt servanda refused those claims. Pl. ÚS 20/05 from 28.2.2006 granted under 252/2006 Sb. Has the Constitutional Court CR proclaimed, that the common courts have to (despote the absention of the concrete amendment) adjudge over the rent high and this in dependence on local surroundings after a properly consideration of all case-circumstances, by using all common principles and habits of a personel life, conclusions of the law-theory and practice of the court. In april 2006 Constitutional Court in I.ÚS 489/05 decided, that if the flatowner reasonable pretence to the renter is not fully satisfied there is no other way just to enter a lawsuit with the state of a compensation of a damage. Thereafter was decided by the praxis of the common court, that the inactivity of the lawgiver does not establish the state-responsibility for the compensation of the damage. Till the force of the law no. 107/2006 Sb., till 30.3.2006 a positive law set-up absented. Continuously was looking for a solution, especially by the praxis of the Constitutional Court. Based on its decision from the publishing of the cassation decision till 30.3.2006 there was a time in which one could sucsesfully claimed for rent high, resp. Determination. This claim was an fulfilment claim in a word of § 80 a. b) P.L.O. This way was given by Pl.Ús. 20/05 from 28.2.2006.

In its last decision from 28.4.2009 had Constitutional Court dealing with the decision in the compensation for a damage claims applicated by flatowners against the state, hen the Constitutional Court declare, that common courts must review their requiremet from the point of their law for compensation of a damage for constrainedly limitation of their ownershiplaw art. 11/4 Bill of rights by analogy by law no. 82/1998 Sb. This decision is at least debatable.

The next part of the article is dealing with the problematic of the law no. 107/2006 Sb. onesided rent-escalation which established so called sequence rent- deregulation in the flats with rent-regulation. Originally this deregulation had to be finished till 31.12.2010 but now after confirmation by the legislatur ethere has to be a prolongation till 2012. Force of this regulativ has to be on 1.6.2009. Also on the secondround is the law of flat rents.

The effect of this article should be to give not only the point of view from the side of the theory but also show on a concrete type whether in the czech law, czech law praxis could be found the solutions of those problems and wheather thees solutions can prezil in the light of the law theory.

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ARBITARTION CLAUSES (NOT ONLY) IN CONSUMER CONTRACTS AND HUMAN RIGHTS CONSIDERATIONS

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Key words: Consumer contracts; arbitration clauses; human rights; procedural gurantees; fair trial.

This paper deals with the problem of arbitration clauses (not only) in consumer contrasts and possible human rights consideration. Considerations especially from the point of view of the right to a fair trial, fair hearing. The main and in legal literature still unresolved question is if human rights guarantees should be applied to arbitration, voluntary or obligatory arbitration. In my work I will discuss among others the possible application of Article 6 Paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, with subsequent additional protocols, to arbitration proceedings.

In arbitration, one of the most important and basic principles is that the parties may adopt almost any form of procedure they like. Arbitration is a procedural mechanism based on the autonomy of the parties and recognized by law as an alternative way of resolving disputes. No one should deny the advantages of arbitration as a mean of dispute resolution in commercial maters. But in consumer law it is not so easy, this autonomy of parties is in some ways limited. Consumers are generally considered to be the weaker party in contracting process and therefore they are protected not only within national law, but also for example by European directives and regulations. Their protection we can find not only in substantive but also in procedural law. For example according to Brussels I. Regulation on Jurisdiction and Recognition in Civil and Commercial Matters in Article 17 there is a limitation on prorogation of jurisdiction clauses in consumer's contracts.

The nowadays trend is to protect consumers also in arbitration proceedings. In the daily practice consumers often concludes contracts that contain arbitration clause mainly to ad hoc arbitration tribunal. The businessmen, who abuse these arbitration clauses in their standard terms and contract

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conditions, try to remove the consumer from his judge and to deprive him from his rights. Recent works dealt with the problem of the annulment of an arbitration award by national courts on the grounds that the arbitration proceedings were based on arbitration clause as an unfair contract term under the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The Claro Case discussed in the paper mentioned above could mean one way to protect consumers against this practice.

In my opinion there can be another way that consumers could use. And this could be a breach of right to a fair hearing, fair trial. This right is settled by the Article 36 of the Czech Bill of Fundamental Rights and Freedoms as well as by Article 6 Paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This can be a starting to point to my considerations of the use, or possibility of use, of the procedural guarantees of human rights in arbitration proceedings.

In my paper I will consider application of the human rights provision mentioned above. In legal literature there is a debate whether and in which conditions the Convention on Human rights may be applied on arbitration and if this application can do more harm or good to the arbitration and its development. I will examine these opinions and their impact on protection of consumers in arbitration proceedings. Even the European Court of Human Rights has not yet stated the binding effects of human rights regulation to neither arbitrational tribunals nor the parties in dispute. Does the conclusion of an arbitration tribunal mean full and irrevocable waiver from all or only some procedural guarantees contained in Article 6 Paragraph 1 of the Convention on Human Rights? Does the human rights considerations can help to develop the arbitration in the future. Or will the introducing of human rights into commercial arbitration "open the door" to further substantive rights claims?

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BOUNDS OF AN AUTONOMOUS WILL OF PARTIES IN CASES OF SURROGACY AGREEMENTS

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Key words: Surrogacy; social parents; motherhood; parenthood; children; autonomy; contract.

Surrogacy is thought to be a method of assisted reproduction though it involves cases where, theoretically, no assistance by the third person is requested. Surrogacy agreements are used in situations when a woman is not able to bear the full term and give a birth to a child. That is why she asks another woman to do it instead of her. There are two basic model of surrogacy – full and partial. Full surrogacy covers a transfer of embryo created (usually with a help of other method of assisted reproduction) from an egg and sperm of social patents to a womb of surrogate mother where it grows and is born after some time. On the other hand in partial surrogacies an egg of surrogate mother is used becuase the social mother is not even able to produce it.

Problems that were outlined above indicates how controversial and unclear the whole issue is. It makes all the disputes that appears within the context of assisted reproduction in general even more intense and brings a number of additional debatable questions with itself. The mere essence of the contract, which is a pregnancy of a woman or a delivery and transmission of a child, makes a problematic character of a surrogacy agreement quite obvious. A question can be put whether it is possible to conclude an agreement with such an object. Opponents reply that if the answer is affirmative it narrows parent's and mainly mother's role to its biological essence meanwhile the relationship between mother and her child is thought to be a symbol of pure and the most fundamental human love, cohesion and solidarity. In addition not either the biological essence is fully apparent as was shown above in cases of partial surrogacy.

In contradiction with what was written about pure and natural feelings and emotions, surrogate mothers start their pregnancies with an intension not to build any relation to their child at all. A huge majority of countries where surrogacy contracts are regulated and non-profit agencies are allowed

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to help both parties to find each other set strict criteria for proper surrogate mothers; one of them is often the fact that they have already given a birth to at least one child. Otherwise the subject-matter of a contract forces a woman to bear a child for nine months with resistance to feelings that are natural and desirable and that she is possibly not able to judge in advance without her own personal experience.

In this regard we shall not be surprised that judges and juries have to resolve disputes who is a mother of a child when a woman that gave him a birth does not want to pass him on his social parents as was negotiated in a contract. Shall we force her to do so? What penalty shall be used for a denial of her acquittance?

Different questions may raise within the context of cases when disabled child is born. Are we allowed to set up limits for surrogate mother's behaviour during her pregnancy to prevent it to happen? How should we punish her if she does not stop smoking or drinking alcohol and the child is born with some kind of handicap as a result of that? Can we force one of the parties to keep the child when none of them want to do so?

Probably the most ethically controversial question are asked in connection with a payment for this special type of service because it contradicts the original altruistic model and idea of a surrogacy as a gift or a help to a couple that does not have any other solution of their problem available. It also makes us to think about a commodification of children, about making a business of them, assigning them the same value as ordinary types of objects we can make a contract about.

These questions show that there should be some limits of autonomous will of parties set in cases of surrogacy agreements. Different countries hold different views to this problem, some of them prohibit all types of assisted reproduction, some prohibit specifically surrogacy or it's commercial forms, some have already passed a special act regulating surrogacy in details. Czech Republic is one of a group of countries whose legal order do not mention surrogacy explicitly. It only regulates who is considered to be a mother of a child which means that there is a theoretical change to use surrogacy as a mean of becoming a parent of a child. On the other hand we must bear in mind that there are many obstacle of autonomy coming out of ethical and legal background as well. They will be examined deeply in the text

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RESIDENTIAL LEASE AND AUTONOMOUS WILL OF PARTIES?

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Key words: Residential lease; autonomous will of parties.

Autonomous will of parties belongs to the basic principles of private law. However, there are some areas of law in which the autonomous will of parties is restricted by the law, usually with justification that one of the contracting parties, or one of the parties of the legal relationship respectively, is or is to be a weaker party and that it is necessary to rectify this imbalance by the law, particularly by the law placing such party into more advantageous position. It must be pointed out that such favouring is of a mandatory nature, as a rule.

It must be stated that the author of this contribution is not a supporter of such favouring of one of the party of the contractual relationship. Typically, this phenomenon occurs in labour law, in consumer relationships as well as in tenancy law where the tenant is deemed to be the weaker party.

The problem brought along by the above mentioned correction of inequality of the parties, is the low legal certainty of the parties. It is not quite clear how widely or extensively the protection of the "weaker" party should be interpreted, and what contractual covenants could be considered as evading the law or being contrary to good morals.

In tenancy law, the following issues relate to the autonomous will of parties and its limitations respectively:

1. Agreed withdrawal from a contract The law allows for the parties to agree withdrawal from a contract. Would the agreed possibility to withdraw from a lease contract be the evasion of the law or would it be a valid covenant? The collision with the mandatory provisions could be seen namely in the provisions which regard the notice of termination of lease.

2. Restriction of the way of using residential premises /flat/ Would it be possible to agree validly that the tenant may use the flat only alone and is not entitled to accept other persons to share the common household with him/her? Would a provision be valid if tying the termination of the landlord-tenant relationship to the fact that a baby was born to the tenant? Would

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it be possible to agree that the tenant is not entitled to accept persons of different nationality to the common household? On one hand this could be considered as agreeable within the freedom of a contract but, on the other hand, this could be interpreted as invalid stipulation in which the weaker party waived its rights in advance.

3.Condition subsequent Condition subsequent is deemed as basically elegant possibility to terminate the legal relationship. A provision on termination of residential lease which would be tied to the failure to pay the rent properly and on time or any other fact (e.g. the above mentioned birth of a baby to the tenant) would be probably considered as invalid due to evasion of the law.

4. Gross violation of the tenant's duty as a reason to terminate the contract It is a question whether the lease contract can define in advance what will be considered by the parties as gross violation of the tenant's duties and so being a legal reason to terminate the residential lease contract. Although such stipulations are quite common in residential lease contracts, doubts about their validity remain. It is the court not the arrangements of the parties which should decide and determine the fulfilment of the reason to terminate the residential lease contract and the content of the concept of gross violation of the tenant's duty.

5. The landlord's withdrawal from a residential lease contract General provision of the Civil Code (Section 517 (1), Civil Code) enables the creditor to withdraw from (any) contract if the debtor does not settle the debt properly and on time even within the reasonably provided term. Is it possible to apply this provision on the landlord-tenant relationships and to withdraw from contact in case of non-payment? Probably not because the law set outs as sanction for the non-payment of rent and advances for related services a possibility to terminate the lease as a sanction of its kind.

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THE WILL AND ITS LIMITS IN ACHIEVING THE CONTRACT

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Key words: Contract Law; public order; good morals standards.

The will is one of the defining elements of human action. Transposed in The Contract Law, the will represent the base of this institution (the Contract) being materialized in the autonomy of will and freedom of contract. In the law, the autonomy of will and its correlative the freedom of contract does not have an absolute character being still limited by the French Civil Code of 1804 and the Romanian Civil Code of 1864, by the laws of public order and by the good morals standards. In time, the two institutions – the public order and the good morals standards, not being defined by the legislator and having a variable content, allowed and allow to the state to intervene and to restrict the free will of contract.

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GOOD FAITH AND INTERNATIONAL COMMERCIAL CONTRACTS

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Key words: Contract; good faith; functions of good faith; civil law; common law; the CISG; the UNIDROIT principles of international commercial contracts; interpretation of international commercial contracts; comparative law; precontractual liability.

From the point of view of legal theory, good faith is an open legal norm. Thus, it has no concrete meaning. This implies that it is for a court to determine what good faith means in specific circumstances.

Good faith embodies certain moral standards which are so important that law enforces them. It is sometimes identified with honesty, loyalty, fidelity or like.

This paper deals with good faith in the law of international commercial contracts. It criticises the opinions of some of the scholars proclaiming that good faith has been an autonomous principle of contract law in international trade or even the Magna Carta of Lex Mercatoria.

The paper, however, does not doubt the existence of principle of good faith as such, but it elucidates that the meaning of good faith depends on the context in which it operates. Thus, given that the contract between international merchants may be governed by different legal rules, it is argued that the standard of good faith depends on respective legal rules which apply to a contract.

In order to understand the legal effects of good faith on contractual relationship, it is necessary to examine its functions within the legal rules which apply to the contracts in international trade. Since national laws, the UN Convention on International Sale of Goods and the UNIDROIT Principles of International Commercial Contracts are mostly applied to international commercial contracts, the functions of good faith within these legal rules are analysed.

There have been three essential functions of good faith: Corrective, interpretative and supplementing.

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The corrective function means that good faith limits the exercise of the contractual rights and the use of contractual remedies.Furthermore, corrective function enables judge or arbitrator to adapt a contract to unforeseen circumstances which could not be taken into account in the time of a conclusion of the contract.

The interpretative function of good faith has two effects. First, there being lacunae in the contract, a court may fill them on the footing of good faith. Second, if it is not possible to establish common intention of the parties, the court should interpret a contract as the reasonable man in given circumstances.

Third, good faith supplements the contract. It means that parties to a contract are under ancillary obligations, which have not been expressed in the contract, e.g. duty not to disclose certain information obtained during the negotiation of the contract or cooperate with the other party in performance of the contract.

To sum up, this paper offers critical view on good faith in contract law in international trade. It confirms the importance of good faith, but with the caveat that what is meant by good faith depends on legal rules which apply to a contract.

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PARTIES´ AUTONOMY CONCERNING THE CONCLUSION OF ARBITRATION AGREEMENT IN REGARD TO THE CONSUMER

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Key words: Arbitration clause; consumer; parties´ autonomy; preserving dispositions; rules of equity; choice of arbiter; oral hearing; justification of the decision; New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

My presentation is focused on the arbitration clause, more precisely in relation to the protection of the weaker party. I provide several matters in which the parties may express their will and determine the way of dealing with their potential disputes.

Firstly I would like to stress the advantages of the arbitration proceeding in comparison with the national ones. Nowadays, it is not only a solution of potential disputes among businessmen, but it reaches the field of action of a big range of subjects. The national law systems tried to open this space towards the possibility of bringing whichever case before arbiters. It was visibly proven by the novel of the French Civil Code. However, it was strongly criticised, mostly because of the potentials to enforce arbitration to the weaker party and to restraint the consumer of the 'normal' national proceedings.

The European Union has reacted to this problem by several directions focused on the protection of the weaker party. One of the most important is the directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. Still it has not solved all the difficulties and we encounter the problems of interpretation and application. Its specification will be up to the European Court of Justice through the autonomy interpretation rule. In this domain, we balance the autonomy of the will of the parties (and the doctrine of professionalism) on the one hand and the essential need to protect the weaker party, because of the potential of rendering a conclusive decision. The arbiter's obligation to apply the consumer law at least on the community level was empowered in the Claro decision by the necessity of the

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compulsory review ex lege. When dealing with the arbitration clause, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) puts up quite a wide range for the parties' precisions supporting the freedom of contract. Nevertheless, there are some main domains the parties should focus their attention on in order to protect themselves, particularly when they represent the consumer as the weaker party.

The case may be decided in compliance with the rules of equity where the parties may rely on the arbiter's discretion. However, the notion of "equity" or "ex aeguo et bono" is not represented in general embracement. It is up to an individual arbiter to decide what is reasonable in the presented case and this option will consequently lead to the exclusion of all national dispositions concerning also those which focus on the protection of the consumer.

Another problem arises in connection with the choice of the arbiter when the parties may deal that he will be determined by only one of them – the non consumer. Nevertheless, the situation that the case will result in a particular person instead of the permanent arbitration court is a well-known fact which parties should already know when concluding an arbitration clause. It is supposed to be a sufficient protection of the consumer.

Two other sections which should be taken into consideration with regard to the weaker party are strictly procedural. The decision may be rendered without an oral hearing and without the justification. These opportunities may lead to unfair practices on condition that a weaker party has been legally forced to agree on them, which will ultimately imply the impossibility of the due examination and the deprivation of the remedy.

In my presentation I would like to present a well-balanced view of the subject of arbitration clause with regard to the protection of the weaker party, but I certainly do not want to cover up all the possibilities and their consequences. I would propose to carry out a general program directed to inform consumers which would imply that they also have a chance to pari passu profit from arbitration proceedings as a parallel to the national.

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AUTONOMY OF THE WILL IN ANCIENT ROME: SLAVE VS. SLAVER

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Key words: Slave; slavery; libertin; dischargee; responsibility; autonomy.

From the legal aspect, the question of the autonomy of the will, the extension of free acting generally is very interesting, in particular in the context of private law disciplines. Nevertheless, the extension of autonomy of the will in different kinds of actings is to be observed from the contemporary law viewpoint only if we admitt the principle of the equality of the law sides, in other words – if we exclude any discrimination. This law premise - which in fact is essential to preserve the autonomy of the will - was not present in all kinds of societies. Such a society was among others the one of ancient Rome. As known, the principle of equality was not applied generally, or more precisely, it was, but within the scope of private acting between two fully entitled citizens only. Nevertheless, the Romans with their elaborated concept of slave as a thing (re)– and this concept was not a Roman unicum in the ancient world – were aware of the fact the slave is a being with a will. In other words: a slave does not always do what s/he is commanded to by the slaver. A slave is not always just a instrument of the slaver´s will to commit for example a crime, in such a situation s/he would be a killing instrument. Following situations are exceptions from the stated concept of a slave as a thing: servus nullum caput habet. I will therefore try to overcome the presumption that the slave´s acting has no juridical consequences. As for the specifics of the slave as a thing, they show themselves in the civil law as well as in the criminal law, that means in the public law. If we say that in the private system slave services are an instrument of the slaver to get some profits, in the penal law the slave is not responsible for example for the pecuniary damage which is result of his/her acting and at the same time s/he demonstrates his/her will. It means: slave does not have any rights, demands. S/he actually doesn´t have any subjectivity because he is understood as an object only, not as a subject. But in the criminal procedure s/he suddenly appears and is responsible not only like other people - his/her responsibility is even higher than the one of free persons. The fact that even

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the slave can think and that s/he has his/her will, which sometimes more, sometimes less corresponds with the slaver´s will, is shown at the same time by the Roman civil and criminal procedure. If Romans wouldn´t respect that also slaves is a being with a will and thinking, how could they invite them to witness before the judge? If there would be a testimony of the witnesses whereas one of them would be a slave and the second one a Roman citizen, it is clear which of them would be more important, nevertheless, we can see that even the slave can come to be a witness. In this regard if we want to describe the specifics of law of slaves, questions of crimen maiestatis are of importance. According to Ulpianus (Dig. 48.4.1pr. Ulpianus 7) this crime (a crime against the majesty) is substantial like a sacrilege. That is the reason why there is an extended right of action in these cases . In fact that means that this crime is so important that it gives the right of action even to the libertines and slaves! They can even prosecute their master, which is in other cases unthinkable. Also in the private law it is interesting to follow up the question of autonomy of the slave´s will. It seems as if the slave was understood as a labour force and does just a manual work. But s/he is not just a soulless instrument and the slaver knows it. He does not use him/her just for a hard manual work but for example for contracting too. There is no time to waste for the slaver, it is better to send a slave to his partner. Last but not least is the slave´s own property. In this question it is even hard to say if and how the slave can dispose with this peculium. If we say (and Romans did it) that slaves can earn some money and take it for themselves, it means we give them the freedom of disposing. Then it is clear that we agree with the sentence that the slave is not just an object of law, because s/he has his/her own will.

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EFFICIENCY OF NON-EXCLUSIVE AND EXCLUSIVE PROROGATION FROM CZECH PERSPECTIVE

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Key words: Hague Convention on Choice of Court Agreement; exclusive prorogation; non-exclusive prorogation.

This article deals with one of topics which may become very interesting for international private law soon: Hague Convention on Choice of Court Agreement concluded on 30 June 2005. This treaty was signed by Mexico, USA and EC so far. In order to come into force, the Treaty must be fully ratified by more than 2 parties. It is estimated that this Treaty will dramatically change the legal frame of enforcement of judgements in civil and commercial matters in Euro-American relations.

There were great expectations and efforts as well put into the Convention. EC countries have seen opportunity to harmonize jurisdiction rules similarly to Brussels Convention on some countries outside EU. In spite of those great efforts to establish new common rules of jurisdiction, the Convention has shrunken "only" to choice of court agreements and recognition of judgements of chosen courts. From this point of view the Hague Convention didn't succeed to become "global Brussels Convention". On the other hand many authors say that this Convention brings finally the similar means recognition of choice of courts as it has been brought by New York Convention in 1958 for recognition and enforcement of foreign arbitral awards.

This Convention regulates three basic duties of courts. First, the chosen court must hear the case, and it may not dismiss it because of forum non conveniens or on other title. Secondly, any not-chosen court must refuse the case. And last, a judgement of chosen court must be recognised and enforced in other contracting states.

This Convention aims only at exclusive choice of court agreements. However there is an option for contracting states to enlarge impact of it by bilateral treaties also on non-exclusive choice of court agreements. This distinction of exclusive and non-exclusive choice of courts is probably an interesting question for Czech lawyers, because this kind of distinction is not that usual in Central Europe. This and other related topics are developing other new

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interpretation questions, because as mentioned above, both USA and EC seem to be bound by one treaty soon. Again, as usual with any new treaty, there are expressions which are not "settled" yet, more over it is interesting that those terms and expressions have different content and meaning in USA law and EC law.

Different approach to prorogation clauses is main subject matter of this paper. We can easily find a situation, where literally same prorogation clause has different meaning in front of US court and a court of EC member state. The difference consists of two elements: the first, bundling choice of court and choice of law in US, and secondly, primary presumption that the prorogation is so called exclusive or not. The first of mentioned elements regards the fact that American courts obviously don't detach prorogation clause from choice of law agreement. In praxis any case containing choice of court is supposed to choose the law as well. The latter element regards different perception of prorogation itself: In USA choice of court is esteemed to be non-exclusive, if it's not specified. In EC choice of court is esteemed to be exclusive (see Art. 23 and 29 of Regulation Brussels I). Some authors even say that American courts don't recognize exclusive choice of court agreement at all. In this respect the case Bremen must be mentioned, because it has brought advanced limits for prorogation clauses. According to it the choice of court is limited by the measure of "substantial inconveniency" of chosen forum.

This paper's final goal is to determinate efficiency of non-exclusive prorogation compared to exclusive prorogation from perspective of Czech business party. Is it even worthy to conclude non-exclusive choice of court agreement in contracts? Or is it only residual institute which must have been regarded by the Convention in order to solve different regulation in USA and EC? The Hague Convention says that non-specified choice of court is considered to be exclusive. From European perspective it doesn't change much. But it creates many interpretation questions especially for American lawyers.

This paper is devoted also to simple determination of exclusive and non-exclusive prorogation. The exclusivity doesn't lie in choosing one single court, but in derogation of other courts. Therefore also more courts of one country (even if they are not specified) may be prorogated. A contrary non-exclusive prorogation doesn't involve derogation of other courts, which is broadly respected especially in USA.

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CONTRACTUAL DUTY IN COMPULSORY INSUARANCE

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Key words: Compulsory insurance – contractual duty; liability.

The main aim of this thesis is to analyze car damage liability insuarance. In the Czech Republic, each vehicle must possess Traffic Liability Act insurance. Damage liability arranged within the insurance covers the damage caused by vehicle and other situations which have its origin in traffic. The insured is thus protected in the case of damage caused while driving a vehicle, even when it is abandoned by reason of break down. In the general part we focuse the problem which is caused by the czech idiom, which has different legal meaning. The expression compulsory guaranty differs from the liability. Damage liability insurance counts with bonus-malus system. That´s much more fair then the former legal adoption. That means the system takes into account each driver in light of caused traffic accident. For each year without traffic accident caused by insured is discounted bonus. The insurance is arranged by the Traffic Liabilty Act which shows the principle of compulsory insurance. That means that everybody who provides a vehicle is legally bound to enter an insurance liabilty contract with any insuarance provider. When there is no insurance contract providers are bound to pay a fee to special fund adopted by the Act. This fund is administred by the Burreau of Insuarance Companies.

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ARBITRATION AND CONCILIATION CLAUSES IN CONSUMER CONTRACTS

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Key words: Arbitration; conciliation attempt; contract clause; consumer contracts.

Legal Institute of consumer contracts was to Czech law introduced in 2001. Amendments to the Civil Law has been the implementation of Community law (European Parliament and the Council).

Consumer contracts implemented in particular elements of consumer protection law. Put simply there to enhance the status of the subscriber agreement, which is the consumer. However, the legislation of consumer law is extremely fragmented and includes both the law and to a large extent also ingerence public through public law.

As regards the settlement of disputes between the parties arising from the so-called consumer contracts, is currently offering several solutions. It must be admitted that the consumer is often forcibly to the crowding in the clauses for settling any disputes. Common court therefore appears to last. Recently the absolutizacion to these contractual clauses in certain types of contracts, especially financial, is the subject of this entry. In the article, unfortunately, can not be avoided or unsystematic of Czech legislation on consumer contracts in the Civil Code.

The clauses for dispute resolution may be in the contracts typically of triple. At least the formal endorsement is proceedings before the "ombudsmann". It is logical that the application will be for large business corporations. On the contrary, the arbitration clause or the clause relating to the conduct of conciliation proceedings may be contained in the usual consumer contracts.

The arbitration clause provides for extra-judicial proceedings before the arbitrator. The problem in relation to the consumer is the fact that it is usually pre-designated the sole arbitrator, namely by the supplier. Any fair decision of three arbitrators, of which the consumer selects one arbitrator, it is rarely.

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Consumers not loaded Arbitration Court of the Czech Republic, probably the most famous institutionalized arbitration. He recommends that entrepreneurs classified arbitration clause directly to their business conditions, and further recommends that entrepreneurs publish these business conditions only in the place of posting. Implications for, typically, lay consumers are obvious and so-called informed consent certainly can not be the word. Is not negligible the fact that consumers may be often, paradoxically, arbitration expensive than court proceedings. Benefits personally sees or rather against the entrepreneurs (suppliers).

Conciliation - the procedure for settlement on the basis of conciliation clause may be either the same as the formalized arbitration proceedings, including the participation of persons arbitrator or as informal proceedings, which passes to the next phase if they are not in the time between the parties to the settlement.

From the above it is clear that the arbitral /judge/ or conciliation clauses in consumer contracts, it will automatically not be very beneficial for consumers.

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FREEDOM OF CONTRACT AND CONSUMER PROTECTION

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Key words: Consumer protection.

"Autonomy of Will" shall be understood as fundamental principle of private law. Interfering with this principle is an exemption within the scope of private law. However, within the community law which promotes protection of consumers and within implementation of Directives into particular systems of law, we can find interferences with this basic private-law principle. Notably, this applies to a prohibition of an inertia selling, i.e. offering services or goods that have not been ordered via direct supply or prohibition of consumers placing offers in regard to travel contracts (§ 852a CC and following) due to a possibility of requesting a "relative invalidity". Under the provision of §40a CC, the one who has caused the invalidity cannot enforce the "relative invalidity", i.e. if consumer made an offer while negotiating a travel contract, and if some of the contract provisions could be subject to "relative invalidity" on account of a breach of contract by the acceptant, the consumer would not be able to call for invalidity of such contract. There is another key legal institute that interferes with the principle of "will autonomy" in respect to the consumer protection – a ban on deviations that excessively or unethically give an advantage to suppliers (see § 55 CC). Even though the Directive No. 93/13/EEC applies only to provisions that were not entered into in person, the Czech implementation does not make a difference between contracts which were concluded individually or not and it imposes the "relative invalidity" on the contractual provisions that give an excessive advantage to suppliers.

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LIBERTY OF CONTRACT IN THE INDIVIDUAL LABOUR LAW RELATIONS AND ITS BASIC LIMITS

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Key words: Autonomy of will; equality before the law; labour law relations; protection of an employee.

My paper is going to be included into the section Autonomy of Will and its topic is Liberty of Contract in the Individual Labour Law Relations and its Basic Limits.

Autonomy of will is one of the leading principles of all private law disciplines. The autonomy of will and freedom of contract is together and in close connection with the equality before the law, a kind of basic presumption of the private law and private relations. The private law is in fact often being defined as a law that involves relationships between individuals who are equal to each other and who are endowed with the freedom of contract.

In consideration of the freedom of contract principle, private law should respect the free will of the individuals as much as possible. That's why I believe that non mandatory rules should significantly prevail over the peremptory rules in legal enactments which regulate private relations.

Labour law is as a branch of law regarded as a part of private law. However, it has many important particularities, due to which its private substance is not absolutely definite. We can hear such statements that the labour is a branch of law that is to be found on the frontier between private and public law or that it is a private branch of law which is notably influenced by public law attributes.

Labour law regulates legal relations arising in connection with the performance of dependent work between employees and their employers. Such relations are referred to as individual labour relations. Besides these relations labour law regulate collective labour relations, i.e. relations of collective nature concerning the performance of dependent work.

Individual labour relations are basically private relations. It was mentioned above that we can define two basic presumptions of private relations: subjects who are equal to each other and endowed with freedom of contract.

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An employer and an employee are equal to each other in the eye of law. On the other hand relations between employers and employees are affected by a kind of factual inequality as the employer is usually stronger of more powerful contracting party in comparison with the employee.

Equality of the private relations subjects and autonomy of their will are closely connected which means that they influence each other or it can be even stated that they implicate each other. This single fact indicates the factual inequality of employers and employees which have serious impact on the autonomy of their will.

According to the fact that employee is the weaker subject of the labour relationship Labour law is based upon the protecting principle (function). Protective nature of labour law is aimed to guarantee his social standard during the performance of dependent work and to provide against inappropriate use of employer's stronger position. On the other hand this protective nature of labour law represents the most significant limit of labour law relations subjects' freedom of contract.

This limitation of freedom of contract shows in the possibility of employer and employee how to derogate from the labour law rules included in Labour Code (No. 262/2006 Coll.) which is the most important source of Czech Labour law. It states that the regulation of rights and duties in labour relations may depart from the Labour Code provided that such derogation is not expressly prohibited by this Code or provided that the nature (context) of this Code's provisions does not imply impermissibility to depart therefrom. Besides that it is impermissible to derogate from the provisions which transpose the relevant EC Directives. However, this is not applicable where such is in favour of an employee.

This regulation implicates that most of the rules set in the Labour Code are peremptory which means that employers and employees can not derogate them and their liberty of contract is therefore seriously limited.

The question to be answered is whether the protective nature of labour law is always absolutely necessary or not and if there are some possibilities to restrict it in order to make it possible for employers and employees to apply their freedom of contract more intensively.

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NEW YORK CONVENTION AND PARTY AUTONOMY IN INTERNATIONAL COMMERCIAL ARBITRATION

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Key words: International comercial arbitration; New York Convention; party autonomy; arbitral award; arbitration agreement; Article V(1)(a); Article V(1)(d); Article (1)(e); Article I(1).

What the 1958 UN Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the principle of party autonomy in international commercial arbitration have in common? At the first sight it seems that nothing. The New York Convention regulates recognition and enforcement of arbitration agreements and arbitral awards; it is therefore assigned to the authorities of its Contracting states. How the New York Convention then affects the party autonomy in the international commercial arbitration?

New York Convention includes the principle of party autonomy mainly at two places – in the provisions of Articles V(1)(a) and V(1)(c). It also supports this principle by provisions of Articles V(1)(e) and I(1).

The New York Convention regulates recognition of arbitration agreements and recognition and enforcement of foreign arbitral award. Its scope depends mainly on the concepts of arbitral award and arbitration agreement. The Convention itself is not very helpful concerning the definition of arbitral awards. For the purpose of the Convention the arbitral award is deemed to be a decision of arbitrators which finally resolves a matter which was submitted to them. The Convention does cover neither procedural decisions nor interim orders.

The Convention sets two criteria for determining the foreign arbitral award. First it is the territorial criteria. The award is foreign if it has been issued in the state different form the state in which the enforcement is sought. The Convention is founded on the principle of universality which is however limited by the reciprocity reservation. According to the second criteria called functional the award is also foreign if it is not considered domestic in the country in which the recognition and enforcement is sought.

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Article II(1) states the basic condition which the arbitration agreement must fulfill in order to be covered by the Convention. Only the arbitration agreements containing some international element come within the scope of the Convention. The international element rests in the place of arbitration, nationality of parties or subject matter of the arbitration agreement.

Article V(1)(a) can be in principle divided into two parts. The first deals with the capacity of parties of arbitration agreement, the second concerns the invalidity of arbitration agreement. Article V(1)(a) contains two choice-of-law rules determining the applicable law of the arbitration agreement. The basic rule states that the invalidity of the arbitration agreement has to be ascertained according to the law chosen by the parties. The subsidiary rule speaks for the law of the state where the arbitral award has been made. Article V(1)(a) thus prefers party autonomy to the territorial concept of international arbitration.

Article V(1)(c) is another provision of the New York Convention which prefers party autonomy to the law of the place where arbitration took place. The most interesting aspect of this provision is the relation between the agreement of parties and mandatory rules of the law of the place where arbitration took place. New York Convention also confirms the possibility of parties to choose the law governing arbitration. This is reflected in Article I(1) and in Article V(1)(e).

The abovementioned cases of party autonomy seemingly concern only the stage of recognition and enforcement of foreign arbitral awards. At present, the New York Convention has 144 Contracting States which makes form it one of the most successful international conventions ever. Moreover, its provisions are highly respected and it has undoubtedly contributed to the uniformity of arbitration laws throughout the world. The same or similar provisions as were analysed in this article can be found in number of national arbitration laws.

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LEGAL CERTAINTY AND PARTY AUTONOMY IN CONFLICT OF LAWS

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Key words: Party autonomy; free choice of law; limitations of choice of law; interest analysis.

The possibility to choose a law that governs legal relationships with the foreign element shows how a conflict law reflects the principle of party autonomy. The choice of law has become the basic approach to find an applicable law for contractual obligations on both sides of the Atlantic Ocean. The victory of party autonomy in the choice of law rules gives to the parties of international contracts the high standard of legal certainty that the court or arbitrators while deciding about the governing law will prefer the law chosen by the contracting parties. Only in the case of absence a contractual choice of law by the parties the applicable law will be chosen according to the substitutional connecting factors.

There are different conceptions of choice of law by the parties, each of them deals differently with the issues of its' content, extend and limitations. Therefore there exist the conceptions that allow free choice of law and also those that allow the choice of law only in some specific situations and that limit the choice of law on the strictly specific range of the legal orders. Somewhere between these approaches there is a conception of choice of law that limits a choice of law on the law of those states who bear a reasonable relation to the transaction.

The very typical feature of the European tradition of legal thinking is an emphasis on the legal certainty based on the predictable legal rules. For the Anglo-American tradition the preference of ad hoc approach, taking into account the concrete circumstances of the case, power of the judge to create a law if the clear legal rule is missing, is typical. Although both of these systems are very different in a lot of characteristics it could be stated that in the field of choice of law rules for contractual obligations these conceptions are very close. Both of them are based on the preference of party autonomy and allow choice of governing law for regulation of contractual legal obligations with foreign element.

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The aim of this paper is to compare a level of certainty of subjects of contractual commercial legal obligations in two different approaches – free choice of law on one side and choice of law limited on choosing the law of the state that bears a reasonable relation to the transaction (hereinafter choice of law limited by the basic conflict rule) on the other side. This paper wants to verify a hypothesis that the conception of choice of law limited by the basic conflict rule gives a lower level of legal certainty to the contracting parties about the application of a chosen law as a governing law than the conception of free choice of law.

Therefore the work firstly introduces the conception of free choice of law on examples of its regulation in the Convention on the law applicable to contractual obligations (Rome, 1980). Then the paper deals with the conception of choice of law limited by the basic conflict rule as it was regulated in the Uniform Commercial Code before its' revision in the year 2001. The conclusions coming out form the comparison of these two conceptions are as follow:

- Free choice of law does not limit the range of legal orders that the parties have possibility to choose. Despite that the free choice of law is not unlimited. The limitation does not come from the basic conflict rule but from the other provisions of a conflict act.

- Free choice of law allows choosing a neutral law; choice of law limited by the basic conflict rule excludes a choice of neutral law a priori.

- If the place of settlement the disputes is in the state that prefers a free choice of law it is probably that the application of the law chosen by the parties will not be excluded. The level of legal certainty that the contractual obligation will be governed by the chosen law is lower in the state with the choice of law limited by the basic conflict rule.

- The development of a conflict law in the whole world tends to free choice of law for regulation of the commercial contractual obligations with foreign element. Free choice of law is established in the leading international conventions dealing with the unification of the conflict law. Therefore there is a higher level of the legal certainty when applying the rule wide spread all over the world.

With the respect to the conclusions said above it can be summarized that the legal order containing the free choice of law gives to the parties of the commercial transactions with the foreign element higher level of legal certainty in the question of governing law than the conception of choice of law limited by the basic conflict rule.

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COMPATIBILITY OF PROCEDURAL RULES AND CONFLICT OF LAW RULES IN EUROPEAN LEGAL REGULATION OF MATRIMONIAL PROPERTY REGIMES

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Key words: Green paper; matrimonial property regimes; Commission; conflict of law rule; unification.

Within the European Union, there are no unified rules for determination of applicable law in matrimonial property matters. Furthermore, no European legal regulation regulates questions of jurisdiction, recognition and enforcement. However, in contemporary Europe there are a lot of mixed marriages where the partners come from various Member States. Therefore, the Members´ courts must very often solve the cases with cross-border element. This is the reason why the Commission on the 17th of July 2006 submitted the Green paper on conflict of law in maters concerning matrimonial property regimes, including the questions jurisdiction and mutual recognition ("Green paper").

Traditionally, it is not popular to propose a unified rules of cross-border regulation of family relations. Particular Member states can deal with these relations separately, according to their traditions and customs. There were appeared several ways of unification in Green paper. First of all, there is the initiative to unite not only rules for jurisdiction, recognition and enforcement, but also the rules for the determination of applicable law. It is possible that the future legal regulation will regulate not only marriage, but also registered partnership and factual partnership.

The author of this contribution claims that to ensure the quality of the courts´ decision it is very important to choose particular criteria of conflict-of-law norms and procedural norms. It is possible to achieve this aim if the criteria of procedural norms are compatible with the criteria of conflict-of-law norms. The court´ decision making is at its best when applying the state´ s own legal system - lex fori. Therefore, there may be a problem with the choice of law and autonomy of will in general. But this depends

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on the system proposed in the Green paper. This kind of problem with unification of conflict-of-law rules has already appeared in connection with the new maintenance regulation that entered into force in January 2009. Great Britain refused to apply foreign law in its own courts and has not accepted this regulation. The Czech Republic also proposed to apply lex fori. Therefore, it is surprising that the Czech Republic submitted different solution of matrimonial property regime.

In this contribution, the author will try to show the problems which can arise when applying foreign law in domestic court. As an example, the author compares the Czech legal regulation of matrimonial common property and Slovak legal regulation of joint ownership. This comparison presents two very closely connected legal systems which differ in matters of matrimonial property regime. If there are discrepancies between such close legal system, similar and more significant problems may arise between other Member Sates.

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TIME LIMITS OF PARTIES' AUTONOMY OF WILL

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Key words: Freedom of will; autonomy of will; retroactivity; contractual retroactivity.

This paper named as "Time limits of parties'autonomy of will" is focused on the way how the law restricts free will in creating an obligation into the past.

At the begining of the paper, the author explains the notion of freedom of will; he emphasises that the normative form of consideration (cognition, deliberation), consisting of formal normative concepts like validity, a norm, an obligation, guilt or punishment, is based on the premise (principle) of freedom of will.

There is also the ontological (causal) form of cognition made by reality (existence, fact), space, time and the law of causation; this form of cogniton is very distictint from the normative one because the ontological form of cognition has no room for idea of liberty or a duty.

The author declares that in the law, even in the most liberal one, it is not possible to hold the principle of freedom of will pure because there must be legal provisions which reflect some human states of lack or even absence of free will.

The author also points out that modern democratic legal orders unlike opressing totalitarian ones recognize and protect the principle of autonomy of will, especially in their constitutions.

The author expresses his view based on a distiction between the principle of freedom of will and the principle of autonomy of will: The principle of autonomy of will is the manifestation of the principle of freedom of will in legal acts.

The author decribes the meaning of the principle of autonomy of will within the private law particularly present in the human's freedom whether to render a legal act or not, the freedom to choose an adressee of his legal act, the freedom to choose a content of a legal act and the freedom to choose a form of a legal act.

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Later, the author express his idea of the particularism of legal concepts within the recent legal science which is also evident in the legal concept of the retroactivity; he thinks that the phenomenon of the retroactivity is joined not only with laws but also with court and administrative decisions and with agreements and other private legal acts.

Therefore, the author offers the universal concept of the legal retroactivity and then he explores how is the rectroactivity admissible in the czech legal order as regards to legal rules, decisions and agreements.

The author refuses a tradional distiction between the genuine retroactivity and the ungenuine retroactivity because the ungenuine retroactivity is no retroactivity; whatsomore, he substitutes the term of retroactivity with the term "retrovalidity".

The author considers a retroactive rule (as well as a retroactive decision and a retroactive agreement) as a legal prescription which imposes duties into the past.

As regards laws (and other legal rules) the author finds out from the Czech Constitutional court's decisions that their genuine retroactivity is generally inadmissible whereas their ungenuine retroactivity is generally admissible.

As regards contractual retroactivity (i.e. parties' stipulation that the agreement is to take effect at a date earlier than the signing date), there is no explicit regulation concerning this issue and there is a lack of interest within both a legal doctrine and court decisions.

Nevertheless, having interpreted the nature of the principle of autonomy of will and studied the rare High court ruling concerning this issue, the author comes to a conclusion that the contractual retroactivity is generally admissible.

However, there are some legal limits of the contractual retroactivity: Contractual retroactivity will be inadmissible if a registration or an approval by a state autority is required for a conclusion or effectiveness of an agreement or if a rectroactive agreement breached rights of third persons.

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Section
Economic crisis

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ECONOMIC CRISIS IN THE PAST AND PRESENT

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Key words: Economic crisis; financial markets; employment; competitiveness.

Crisis has become a reality of the present days. Media keep bringing news about its impacts on our everyday lives and on recipes using which the powerful ones in this world try to cure this disease. How successful the treatment will be is a question that only time can answer. Most experts have nonetheless already come to the conclusion that the world after the crisis will be different from the pre-crisis world. Very often a parallel with the great economic crisis of the 1920s and 1930s is sought.

According to authors who deal with the crisis of the years 1929 – 1934 the character of that crisis was unique. It was the largest, deepest and most prolonged crisis the capitalist world has ever experienced. Why was the crisis so hard? There are several causes. First of all, the crisis hit at the same time all capitalist countries and all fields of production, mainly industry which was a defining factor of capitalist economy due to its tight connections to banks. The crisis was further deepened by the fact that the industrial fall took place at the same time as an agriculture crisis, with which it was closely knit. That did not offer the industrial countries a chance to improve their situation by means of exporting industrial products into agricultural countries as in the past.

In the effort to find a solution to the economic crisis of the 1929 – 1934 one person play a very important role. It was professor Karel Engliš, a lawyer by education, and among others a professor at the Faculty of Law and the first rector of the Masaryk University in Brno. A whole school of thought emerged around this distinguished economist, the so-called Brno school of economics (V. Chytil, I. Karvaš, Vl. Vybral et al.) that took an active part in the process of framing the crisis theory, or the effort to find the causes and ways out of the crisis of the 1929 – 1934.

The concept of an economic crisis as formulated by English started from his teleological theory on balanced order both within and out of an economic unit, which is a collection of means aimed at achieving a certain objective.

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In his opinion an economic crisis meant a disruption of this order, or the economic objective as the arranging principle that conditions certain order, the balance of economy pursuing the given objective. The order can be disrupted as a result of state interferences into the economics, that is why Engliš was opposed to them.

English saw as the main reasons for the economic crisis in the 1930s the wrong monetary policy, gold deflation and world appreciation of gold that caused a general and fast decrease of prices and money incomes while retaining their real levels. That is why he deliberated two ways out of the economic crisis. The first way would mean to eradicate the inflation by lowering all economic figures, including salaries, wages and interests. In an effort to boost the Czechoslovak export English required the decrease of prices to the level on the world markets. However, he soon realized that the choice of consistent deflation as a way out of the crisis while keeping the gold standard is not possible, and that is why he preferred the other way, i.e. to cut the deflation by undervaluing the crown but at the same time maintaining the gold currency standard.

While trying to find a way out of the present crisis we can certainly come across a whole number of questions, among others how long the crisis will last or how hard it will really affect us. We can also look for the above mentioned parallel with the crisis of the 1930s. Each crisis is specific, its extent and evolution is influenced by many factors within the period of time during which it takes place. However, we can find some common signs, among others the cause of its occurrence, which is usually a crash of the stock exchange. In this respect I consider in this paper the various factors causing the upturns and downturns of stock markets. These factors are for example monetary policies of central banks, the connections between bank and corporate spheres, breaches of the law, regulations and generally applied business practices on financial markets or technical factors of stock exchange trading.

The measures by which individual states try to struggle with the consequences of the crisis are followed with hope. Finding an affective formula in the present globalized economy is not at all easy. Most measures, preferably, must be aimed at active employment policy. However, according to many experts the popular car-scrap subsidy supporting car industry is not the right measure. An effective defence against the crisis is a complex preparedness and competitiveness in the corporate microsphere.

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MEANS OF THE EUROPEAN UNION FOR MANAGING THE MEMBER STATES' FINANCIAL CRISES

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Key words: Financial crisis; means of the EU; task; responsibility.

Everbody knows that one of the main principles of The European Union is to have a coordinated and well-functioning financial system in the EU. Furthermore the Economic and Monetary Union celebrated its tenth jubilee on 1 January 2009. According to this event it is recommended to look back at the last period and examine whether it is functioning in a good or in a bad way. Beside these, we can also see the economic events, and especially the recent financial problems of the member states. That is the reason why I would like to interconnect the analyzation of community financial rules with the events of the last few months in my essay. I will focus on the analyses of the Treaty establishing the European Community and I will try to give a complex answer for the following questions: if a financial crisis occurs in a member state, who has the task and responsibility to manage it? And furthermore, is this regulation appropriate or not?

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THE FINANCIAL CRISIS AND CURRENT TRENDS IN BANKING SECTOR

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Key words: Banking regulation and supervision; banking system; credit institution; European Union; European banking market; financial crisis.

The Czech banking system had been created during the transformation of the Czech economy towards market economy, the process of privatization and resurgence of international relations. This period of so called "wild capitalism" was characterized by rapid growth of number of financial institutions, established frequently for speculative reasons or even from illegal incentives, often followed by bankruptcy. Harmonization of the Czech law with the EC regulation and the integration into the European structures had positive, stabilizing effects on the Czech banking sector. Propitious economic environment after the accession to the EU fueled a fast development of the Czech financial institutions.

Nowadays, we can observe a wave of consolidation in the form of mergers and acquisitions in the European Union that reached the Czech banks as well. Moreover, the integration process in Europe affects also the integration of banking industry. The Czech banking sector has been much more than before 2004 influenced by events on the foreign interbank markets; directly by the situation on the EU market, however also indirectly by the situation on the world financial markets. Furthermore, because of the majority of foreign capital (nearly 75% from the EU Member States), productivity and stability of most of the Czech banks are to a considerable extent determined by development in a home country of the owner. Worldwide trends in the field of banking thus have undisputable impact on the Czech banking sector.

Last year, Europe was struck by the financial crisis as a result of a credit crunch in the USA. Whereas, the internationally acting credit institutions were badly effected, the Czech banks remained untouched. Constant liquidity surplus, credit financing from primary deposits and conservative investment strategies contributed to a relative stability of the Czech banking market. Czech banks' investments into the American risky assets were insignificant.

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The financial crisis caused acceleration of current trends and triggered some new ones. Even the legislation needs to respond to this situation. There are two possible ways – liberalization and deregulation (with the stress on market regulation) or on the contrary tightening of the regulation, or harmonization of rules on the national, supranational or international level, respectively.

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METUS REVERENTIALIS: COME-BACK OF AN OLD CONCEPT?

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Key words: Metus reverentialis; economic duress; undue influence; contra bonos mores; immorality; guarantee; mortgage; suretyship; Smith v Bank of Scotland; Mumford v Bank of Scotland.

Suretyships and mortgages have attracted severe attention in light of the recent economic meltdown. The essay entitled ‚Metus reverentialis - Come-back of an Old Concept?' analyses the reminiscences of an old legal institution in this context. Metus reverentialis, fear due to the natural respect owed to persons in authority (such as parents or husbands) was first identified in the Middle Ages when the Accursian Gloss recognized it as a general ground for setting aside a contract. The concept remained highly disputed for a long time, and some authors recently claimed that it would be almost forgotten. However, to tackle the problem of economic duress both French Code civil and German BGB offer remedies enabling a considerable degree of flexibility. In this new and relatively subtle form of coercion (i.e. economic duress) we can detect some elements of the old metus reverentialis. Its modern revival has its origin in German jurisprudence, where the problem was absorbed by immoral transactions. Following a considerable line of German decisions it appears that this principle has become accepted into Scottish law by the leading cases of Smith v Bank of Scotland and Mumford v Bank of Scotland.

The structure of the paper is construed due to the author's three main questions. First, the motives behind these above mentioned decisions are analyzed. Is it a sign of paternalism or rather a result of the current economic approaches? Second, the metus reverentialis unique dogmatic nature is questioned. It has some allusions to contra bonos mores, i.e. immoral transactions and a strong string to natural obligations. It constitutes an error of will and marks the limit of contractual freedom. Where should we place but than this legal phenomenon dogmatically? Third, the essay focuses on the legal consequences. Is it only a sufficient cause of action or automatically void thanks to its immoral character?

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ABANDONING LOMÉ

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Key words: Customs; customs preferences; custom tarif; customs policy; economic policy.

System of general customs preferences in times of economical crisis

The vast majority of legal experts actively contributing to the debate regarding customs policies agree that the system of general customs preferences requires radical simplification.

The course taken by the European Community on 28.2.1975 in Lomé resulting in the creation of a system of general customs preferences led to a dead end. The main aim of the architects of the Lome system was to establish a product- and country-related preferential treatment. These regulations however have made it more difficult to cope with the preference system, without bringing the intended effects in terms of development policy. The idea of ensuring, that preferences are granted on the fairest and most balanced basis possible, resulted in the creation of an enviroment where is no objection or differentiation depending on product-specific competitiveness or other criteria.

In times of deepening crisis, the question must arise as to whether such differentiation is justified and, moreover, likely to actually promote the economic development of the beneficiary countries. If we analize the results of this initiative the answer to our question is clearly no. This does not mean that all development policy aims of the Doha Development Agenda shoud be rejected. In the context of this agenda, customs preferences only play a minor role. The importance of technical assistance when creating competitive export structures are much more relevant for the aforimentioned countries.

The expiry of the current preference system on 31 December 2011 offers the EU the opportunity to eliminate handed-down ideas when developing a new, multi-annual system. The regulations, which state at which level of development exceeding countries shoud be removed from the list of favoured nations entirely, should be retained. On the other hand the sector- or product-specific disqualifications which, under the term 'graduation', led only to considerable uncertainty among importers shoud be rejected.

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Maybe the most important question waiting to be solved is that of the upholding of environmental and social standards within the EU. Goods that are produced under particularly advanced social and environmental conditions are almost impossible to check, as the appearance of a product does not give any indication of the conditions under which it was produced or what components and auxiliary materials were used. Companies have to take serious the social responsibility, which they bare and take appropriate measures to improve the social performance of its suppliers. In this matter additional inititive in the form of marginal customs preferences is contraproductive.

The trend of falling customs duties is not sustainable anymore. It doesn't offer pragmatic solutions for the problems in the field of customs and trade policy. We hope the new preference system will be an upheaval compared to the the previous ones.

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REGULATION OF CREDIT RATING AGENCIES - RESPONSE TO CURRENT FINANCIAL CRISIS "AS USUAL"?

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Key words: Credit rating agencies; financial crisis; regulation; acquis communataire.

The recent financial crisis has shown many weaknesses of current regulatory framework of the financial market - both the lack and insufficiencies of the legal rules and competencies and expertise of the financial market regulators. Apart of these failures on the regulatory side the crisis pointed out many shortcomings in behaviour of financial institutions and investors - lack of skills and often reckless behaviour. One of major root causes of the financial crisis is seen in development of securitised financial instruments. That is why the role of credit rating agencies assessing the credit worthiness of these structured finance instruments have became so important - most or all investor as well as regulators tended to rely on credit ratings.

Activities of the credit rating agencies which have been active since beginning of the 20th century had not been subject to any systemic regulation until very recently. Only in first years of current decade the regulatory initiatives were launched in some jurisdictions - this was followed by initiatives at the global level shortly afterwards. These regulatory initiatives unfortunately were not capturing most of the risk the activities of credit rating agencies posed to the market.

The current regulatory actions being taken both in the European Union and in other G20 states do have much in common. The main aim is to enhance transparency of the activities of the credit rating agencies, ensure pre-requisites for quality and integrity of the issuance of the credit ratings and to ensure adequate and efficient supervision of the activities of the credit rating agencies. Apart of this the new legal framework which has been recently approved in the European Community is somewhat specific and does have ambition to be a template for others to follow.

Unlike in other sectors of the financial market the European Commission

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has chosen quite new approach and established the regulatory framework for whole sector by a regulation. The legal basis used - the article 95 of the Treaty is used also in an innovative way to some extent as "substitute" of article 47(2) which is used mostly as legal basis for other pieces of the European financial market legislation.

The scope of the European regulation on credit rating agencies is basically two tiered - firstly the regulation establishes the framework for registration and supervision of the credit rating agencies secondly it creates certain obligations for financial institutions and issuers using credit ratings for so called "regulatory purposes". The Regulation significantly enhances transparency of the credit ratings and activities of the credit rating agencies. It provides for number of information to be disclosed by the credit rating agencies when issuing new credit rating and whenever major change to credit rating is made. Also rules for issuance of the credit ratings requiring credit rating agencies to establish procedures for management of the conflict of interest, establishment of internal control system and to have robust rating methodologies are designed to ensure high level of integrity and quality of credit rating.

The Regulation brings new unprecedented design of supervisory cooperation within the Community and very innovative model of supervisory cooperation with third countries. In the Community new model of colleges of the competent authorities accompanied by highly coordinated procedural rules enabling consensual decision making at the Community level. Also coordination role of the Committee of European Securities Regulator ("CESR") is significantly enhanced giving it new powers in order to achieve better harmonisation of practical implementation of the regulatory regime for credit ratings.

Although the Regulation on the credit rating agencies may be viewed as "standard" reaction to the financial crisis it contains many innovative or completely new aspects. Given the undergoing revision of financial market regulatory framework in EU this Regulation may provide us with some flavour of what may be the "new shape" of regulatory rules and supervisory infrastructure developed in response to the financial crisis.

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HUMAN RESOURCES IN TIME OF CRISIS

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Key words: Human resources; human resources management; economic crisis.

A lot of questions not only from the field of economy but also those that overreach to other different spheres of society and science are connected to the economic crisis. The law regulates the problematic of bankruptcy, giving the public support, changes in the labour law to easier removing of employees. The impact in the personal sphere caused the crisis interesting for everybody. Reduction of the production, the fear from the deflation caused by toxic packs of financial derivates, these are the topic that suddenly started to be discussed everywhere.

In a last year a lot of employers started to solve the problem of redundant employees. And till nowadays they have been solving it. The reason is a continuing decline of economy. The European Commission talks about 2,7% decline of Czech economy in the year 2009 and about the growth of the economy about 0,3 % in the next year – in fact it is a stagnation. After the recession ends, the specialists expect the restructuralization and consolidation of some of the economic sectors. The changes will be visible probably because of the low perspective of produced products and services on the market or because of the mergers of companies to reduce costs and get rid of duplicate work.

Therefore this paper deals with some problems connected to the human resources that are not so visible during the "normal state of things". Their today's visibility is caused because of the importance of fast solutions and the consequences that they can cause. These problems arise from fields of the strategy of organizations (the partial strategy of human resources), admitting and releasing new employees, motivation of the employees (atmosphere at work), their remuneration, another education and their development, problematic of job performance (higher productivity of a work, new requirement for the style and content of a work).

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Strategy – well processed and updated strategy can help an organization to settle the partial procedures and steps and also the scales that can help to measure their fulfilment. These can deal with the human resources and they can be a good help to decide, how many employees must leave the company and who are those really important employees.

Admitting and releasing of employees – the releasing of employees bears a lot of risks. Obviously there are financial problems connected to the releasing of employees (three months or contractual longer money compensation can have a great financial influence on a company for several months). Moreover the organization must bear with a risk that it will miss the knowledge and experiences of released employees in the future.

Motivation and atmosphere at work – working employees must be somehow motivated to work especially in the crisis when the employers push them to work efficiently for less money. The important is to feel the certainty about the job (not to be still afraid of being released) and to create a helpful atmosphere.

Education and development – the investments to the education and development of employees are one of those that are reduced firstly during the crisis. In a short horizon it is acceptable because the reduction of expenses for an education and development has no influence on the efficiency and competitive advantage of a company. But in a longer perspective it is not a strategy solution. All the investments to the education can strengthen the company and help it to use the end of a crisis to very fast profits. The good toll could be to propose to the employees their financial participation on their education which can strengthen their position on uncertain employment market.

Job performance – a company wants not only more work done by employees but also different types of works. It can contain not only a new amount of work from the released employees but also a new approach to the work caused by the against crisis innovations.

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SOCIO-ECONOMIC SITUATION AND TRENDS IN LEGAL REGULATION

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Key words: Financial crisis; public law; private law.

The paper discuses the role of public law in connection with the financial crisis the world is facing today. The question is discussed both from general and particular points.

First of all an idea expressed by Petr Havlan in his book Veřejné vlastnictví v právu a společnosti (Prague : C.H.Beck, 2008, p. 245-246) is presented as a starting point of further discussion. Havlan pointed out that "there is no question that public propertyhas its unsubstitutable role in recent state in spite of the fact that not all the experiences connected with the public property in the past were just positive. It has shown several times – considering what was stated above it shall show more and more frequently – that it is the last (although imperfect!) guarantor of such values as solidarity, social equity or social justice. It means the values, regardless of beliefs of some, which are much closer to the majority of people than, let us say, something like social Darwinism." As the same author pointed out (ibidem, p. 255), institutional safeguarding of public property existence is necessary. It seems that recent financial crisis has started to change the measures of perceiving certain social-economic problems and of their possible solutions. For an example, a year ago it was almost unimaginable that the state supported a company going to pot or rescued banks in troubles, in the light of new circumstances such activity of the state, or more generally, of public power, seems to be acceptable. In this connection also the approach to public law regulation (which has been perceived usually as restricting) changes, or at least should change as public law regulation appears to be one of the ways out of recent financial crises. Furthermore the relation of private and public law is discussed. It is pointed out that the approach to public law and private law legal regulation changes simultaneously with socio-economic situation of society.

As a certain example of the relation between public and private law regulation in the changing world of today the position of allowance organizations

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of territorial self-governmental units of the Czech Republic is presented. In the conditions of the Czech territorial self-governmental units allowance organizations have still played an unsubstitutable role. The legal position of the organizations in question is regulated first of all by the Act no. 250/200 Coll., on Budgetary Rules of Territorial Budgets, which has been amended by the Act no. 477/2008 Coll.,which came into force on 1st April 2009. It is a matter of question if the amendatory act helps to consolidate the public property's position of the last "rescue point", or if it causes more problematical situations solving of which shall necessitate expenditure of considerable effort. The legal position of allowance organizations is described. The attention is paid to their former position before the amendatory act came into force. These legal subjects sui generis had (traditionally) no legal capacity to own property. This quality (sometimes hard to understand, especially for foreigners) changed as the amendatory act came into force. In brief it is possible to note that the allowance organization might acquire property into its ownership on principle only if its establisher allows it which makes the capacity of allowance organization to own property a bit relative and more confusing. The amendatory act brought much more problematic points which made the new regulation almost inapplicable. In the light of these facts a question is discussed whether such trend in legal regulation of the most common public legal entity established by territorial self-governmental units could be accepted.

In the conclusion it is stated that more complications connected with the existence and legal acting of the legal subjects in question could possibly lead to serious problems – we must keep in our minds that there are still thousands of allowance organizations and considering their economical potential they still play quite an important role in the economy of the Czech Republic – especially in these days.

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WHAT WILL BRING THE NEW INSURANCE ACT?

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Key words: Insurance; insurance act; reinsurance; private insurance; state supervision.

The theme of my article is the planned new Insurance Act and reasons for its preparation. I would like to describe the basic features of this completely new regulation of private insurance in the Czech Republic.

In accordance with the legislative work plan, the government presented a new bill regulating private insurance to the Chamber of Deputies of the CR. It will be a third act regulating the basic conditions for the initiation and running of insurance companies and reinsurance transactions, as well as the system of supervision in the insurance industry, in our state in the post-communist era. Different requirements of the EU on the performance of insurance and reinsurance activities in the framework of "Single Insurance Area" were the main reasons for processing of a new, integrated and systematic legislation in the form of a new act. The main reasons for the draft law can be briefly summarized as follows: I. It is necessary to transpose Community law instruments related to private insurance into the Czech legal order - mainly the Directive 2005/68/EC on reinsurance and amendment of Council Directives 73/239/EEC, 92/49/EEC, and Directives 98/78/ES and 2002/83/EC, as well as the statement about regulation of certain amounts provided by life and non-life insurance directives according to inflation (2006/C 194/07) and also the Directive 2007/44/EC, amending Council Directive 92/49/EHS and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC, as far as the procedural rules and evaluation criteria of the prudential assessment of acquisitions and increasing participation in the financial sector are concerned. II. The estimated volume of necessary legislative changes is so large that it is not appropriate just to amend the existing Insurance Act No. 363/1999 Coll. III. Significant changes forced by new Reinsurance Directive, are reflected in the Act as a whole. IV. The overall structure of the current Act, which is tributary to the time period before the CR became a member of the EU. V. Upcoming major changes at the level of Community law in the field of private insurance, in connec-

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tion with the so-called Solvency II project, will require a total change of the Insurance Act structure so that its clarity and readability is preserved. VI. Another reason for these fundamental changes is the global economic crisis and its impact on the financial sector in the CR and the need for the implementation of other security mechanisms in whole Europe.

Currently, private insurance is regulated primarily by Act No. 363/1999 Coll., on insurance and on amendment to some related acts (Insurance Act). This Act was preceded by Act No. 185/1991 Coll., Insurance Act, whose main task was to define the basic rules for business in the private insurance and to eliminate the state monopol in this business. It laid down the general principles of the pursuit of activities, such as the authorization to do business on the basis of an approved application, the determination of authorized legal forms of insurance companies, some rules of control over their management and the creation of a state supervision authority in the insurance industry, which became the Ministry of Finance. This first post-communist "Insurance Act" in a relatively short time created conditions for the application of market policy in the field of private insurance, and thus started the process of business development in the financial market, however, this legislation had typical defects of the spontaneous law making of the first half of the nineties. For example, we can mention the insufficiently defined financial control, too general measures of the supervising authority - Ministry of Finance, insufficient demands on the financial reserves of insurance companies, granting the licences not according to the character of activities carried on (dividing into the classes of insurance), but according to insurance conditions, etc. Insurance Act No. 363/1999 Coll. regulates the conditions for the pursuit of insurance and reinsurance activities and the state supervision of the pursuit of insurance and reinsurance activities. The Insurance Act refers to the insurance and reinsurance companies having its seat in the territory of the CR, which pursuit this kind of undertaking, or insurance and reinsurance companies, which have their seat in the territory of other Member State of the EU (or EEA), but operating in our territory, and finally, the Act also applies to insurance and reinsurance companies having its seat in the so-called third countries (i.e. in countries outside the EU or EEA) undertaking in the territory of the CR. The Act also regulates the state supervision, which is exercised by CNB.

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ECONOMIC CRISIS IN THE LIGHT OF TAXES

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Key words: Crise; taxes; equipment.

The article deals with actual development of legal regulations of selected taxes, its prospective influence on companies at the time of crisis. So-called economic packets for the time of crisis often contain various tax or quasi-tax arrangements that shall give support to entrepreneurs in the time of crisis. Its real impact – regarding particular entrepreneurs and economy as a whole – can be evaluated in the following time period. This article considers the evaluation of the most fundamental tax and quasi-tax arrangements that were accepted recently.

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CAUSES, IMPACTS AND RECOVERY

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Key words: Debt; risky assets; economic cycle.

Causes of economic crisis, recovery and the way out of the crisis

The in these days so often discussed economic crisis has originated in the USA. In the country, which success is established on the potential and abilities of individuals, freedom of choice and neverending desire for progress. It is obvious, that the world economy could not simply avoid the attack of the crisis. The global economic linking works thus simply as a channel for diffusion of the crisis into the rest of the world. It is generally known, that many countries are dependent on american markets and the connections in the financial world is these days a must. The causes of economic crisis are not so simple to identify and describe. I have to stress at this point, that the situation has been caused by several long and short term reasons, which reached its peak in a certain period of time. Also we have to distinct between the macro and micro economic reasons. In adition we must not forget about the responsibility of certain institutions, which by its imprudent policy also helped to develop the crisis. It is known, tht the USA are a country, which lives on both the internal and external deficit. The state budget and mainly the external trade balance have been in the past years in a huge deficit and USA have been trying to eliminate this double deficit. But these deficits are a source of disharmony and a potential cause of serious economic disturbances. Another story are the so called subprime credits and mortgages. In the USA was a relatively high demand for new housing and the US government supported this business by its policy. But once the housing was available even for those, who had not enough credit to pay for its mortgages the serious disturbance was set out to break. The rating agencies also underestimated the situation and the illness of bad and risky financial assets started to spread out. Once the financial institutions found out, that there was just too much of the toxic and risky assets in their portfolios they started to look for the way how to dissolve the risk of loosing liquidity. The value of assets was highly inflated and after it was clear, that the subjects are not able to pay for these assets tha values of assets rapidly went down and the whole market colapsed.

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Later it was only a short way for the downturn to move from the financial markets into the real economy, banks were very cautious for furhter lending and the crisis paralysed the whole economy. It is apparent that no economic growth can last forever. It is a simple natural and economical appearance, which has been empirically proven many times in the history. It has been caused by several elements, it is going to show a future consequences both the negative and positive. Many economic theories try to reason and describe the economic cycling and fluctuating. Each of them shows several different reasons and real causes of economic fluctuations but also mechanisms of economic recovery. It is going to be no different this time despite the fact, we are now facing very specific, new and so far not confronted situation. And it simply can not be the same downturn as in the history because of the specific aspects and elements of the crisis, which has brought the economic evolution. One fact is clear, the crisis caused severe economic loses and will cost immense additional expenses – no surprise, that the regular taxpayers are going to cover these expenses, who else would? Money and revenues have to be created somewhere in the economic cycle. It is not the case that someone is going to pay for this – there is always someone, who will have to make the money again and pay for the damages. For the future nevertheless it has also one very important economic impact: the selection of ill and bad investment. That I think is very crucial, because the bad assets and poor quality investments will leave the markets and the economy can start over strong and healthy without the infected elements. And the better this selection is, the brighter the economic perspectives are. The role of law and government intervention in this situation is very disputable. The evolvement of markets and economy is usually unpredictable. Exagerrated regulation and legal interference into the economy might block the smooth running of economic development. In this respect I see the role of law as supervisory instrument in behind the economic procedures and as a tool for responsibility against those, who unfairly profit at the expense of others. I do not believe that the government will ever have effective tools to prevent similar crisis. As long as the government is trying to heal the hurts and help out those who acted unwary before, it will only give new opportunities to moral hazard and risky actions.

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ARE CONCERNS RELATED TO CATASTROPHIC SCENARIOS IN THE UPCOMING ECONOMIC CRISIS JUSTIFIELD?

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Key words: Financial crisis; economic crisis; mortgage crisis; crisis of consumption and indebtedness; market failure; state failure; marketing misleading ; hyperinflation; education system; preferences in behavior; analysis of causes and ways out of the crisis.

The contribution is aimed at pointing out to the less discussed connections in the present global situation focusing on the causes of the operation of today's economic systems. Pure raising of questions of the existential nature becomes suspicious for attracting attention just for its own sake, as we may hear and see today anywhere around us. When we ask the question whether the present global crisis results from the extension of "a greedy" consumption which is a part of the operation of the market economy in the global era of the development of the society, then, in general considerations, we may come to potentially positive conclusions.

Those who have not understood, up to where the consumption not covered by productivity might lead, have had the opportunity to see the outbreak of the largest global economic decline in a new economic reality since World War II demonstrated by the so called "broken" financial and credit (especially mortgage) "bubble" on the relevant world markets with subsequent economic implications. According to pessimistic scenarios, the economic crisis may last ten or more years, and it may result in the war conflicts and revolutionary changes.

In addition to these most frequently used causes and underlined global aspects of extension of the economic recession or depression, the contribution focuses its attention from various angles to the idiom of "sustainable development" used by politicians quite often. The deviation from the real economy as one of the key causes of the crisis is elaborated more. In addition to economic and social risks (possible scenario of hyperinflation and currency collapses, unemployment, using up resources having no alternatives

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for renewable substitutes, etc.), the contribution also illuminates considerations on the failure of the non-regulated market mechanism and the systems of state and public administration, the issue of institutional education, the issue of marketing misleading being an integral part of the market system, breach of or the disappearance of the competitive environment, emptied values in the so called consumption-based society. It is clearly difficult to look for the ways out of this vicious circle of unbalanced, i.e. non-sustainable, economic situation. It is possible and welcomed to propose lists of solutions with no system changes in place just for a special purpose, but it brings the postponement of introduction of necessary dramatic changes, the reform of previous reforms. The opinion is articulated here saying that in the given situation partial solutions cannot be efficient long-term, only the knowledge of the aim to be achieved in order to overcome the yet known problems of the system.

Vague political declarations of the top representatives at both domestic and international stages on sustainable economic development should be filled with the real content of productivity and the quality of life of the stakeholders. The contribution is laconic by stating that the "era of greediness and rapacity" in a pseudo-competitive environment of those unproperly chosen and existing at the cost of other economically productive ones is at its end, and a painful process of recovery is upcoming.

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THE GLOBAL ECONOMIC CRISIS - WHAT WENT WRONG AND THE WAYS OUT

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Key words: Economic crisis; financial instability; financial markets; global recession; speculations; Bretton Woods; WTO; UNCTAD; tariffs; international community; monetary system; developed countries; developing countries; liberalism; trading system.

The aims of this contribution are clear: Firstly, to briefly analyze the present phenomenon of "global financial and economic crisis" which is without any doubts the biggest one since the end of the Second World War times and creation of the Bretton Woods system institutions, while more than 75% of the world economy is now under the recession. Unfortunately the present crisis is usually described in very narrow perspective and thus is not always assessed thoroughly, while the whole complex process that lead to this crisis (composed also of oil and food prices crisis) in last 10-15 years is often underestimated. Secondly, the goal is to provide possible incentives regarding the "ways out" of this crisis, especially from the perspective of the developing countries which are hit by this crisis very strongly and which are not in the position to help themselves without coordinated support from the international community.

What has in fact happened on the global scene? The downturns in the global economy are often of the cyclical nature and thus expected. The present situation is nevertheless of very specific nature while many causes lead to the global collapse at the same time. Among the main indicators one can name: to much liquidity in the world economy, too many savings in China as one of the biggest world economies, individual misbehavior etc. In the end of the days, all these individual factors are closely related to the present crisis, but cannot be analyzed separately while the recent crisis is of complex nature. The core of the present financial and economic crisis lies according to my opinion in huge speculative movements (especially in the commodity markets, stock markets and currency markets) and the blind faith in the efficiency of the financial markets which together created

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global imbalances that were supported by the lack of the effectively working international monetary system.

The post war system was based on unprecedented presumption that the full liberalization on global scale is absolutely necessary for the benefit of all. This presumption now turned out to be wrong while the liberalized playing field allowed the speculators to create money in the huge shadow banking system while simply moving actives and passives on their balance sheets and thus simply only redistributing the debts and speculating in them. Very often (and I need to say that mainly from the developing countries sides) the United States are blamed for the recent global economic situation. This assessment is very simplistic and is overlooking the basis economic interrelations. The American market is of course one of the most important one on the global level, nevertheless, it is still on of the sub-prime markets where the speculations in market instruments and especially financial derivates were conducted in massive amount. In the end of the day, this is nothing more than a single piece of the whole domino that collapsed.

In the present situation it is crystal clear that the market is not able to help itself anymore and the interventions coming from the national level (governments) and a real reconstruction and reform of the global monetary and financial institutional system (which failed mainly the good governance requirements) on the global level are absolutely necessary. The responses will of course vary country from country since some countries have naturally better "immune system" than others, especially in the case of developing countries (and in particular the least developing countries and countries with economies in transitions that are totally dependant on the support coming from the international community) the situation is critical. These groups of countries are in the unprecedented situation while were pushed in last decades to open their markets, lower the tariffs and accept many conditions to enter to the multilateral trading system and thus integrated in global economy. The main response on the national level dwells definitely in easing the monetary institutions and through that the overall economic situation. Especially all the "sick" financial instruments and their derivates must disappear from the market (for example while issuing the state bonds as a part of the solution) – the pure cutting of the interest rates close to zero might not be sufficient in this stage.

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SEVERAL NOTES ON THE NEW INCOME TAX ACT

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Key words: Crisis; tax; income; income tax; proposal.

Complex tax breaks or changes in taxation are a generally accepted solution to stimulate the market at the time of the economic crisis. In this time, there are political pressures to introduce benefits for car scrapping or to accelerate tax depreciation in the Czech Republic. There are also views on the reduction of the rate of income tax or similar adjustments to reduce tax liability entities, which would result to have a positive impact on the economy of the Czech Republic.

An ongoing government policy is to promote economic growth realized by supporting the business environment and promotion of foreign investments. This support is done by fiscal instruments, particularly income tax, although it is often through fiscal instruments in violation of the principles of good tax policy (especially with the "low rate, broad base"), it should be consulted within broader economic context. Despite all this however, the largest support of business are simple taxes, with a minimum of interpretative ambiguities. A simplification of the legislation is the main objective of the new Income Tax Act, which, however, began to be prepared before the outbreak of the economic crisis. A simplified and well-organized system should reduce the costs incurred by entrepreneurs on the performance of the duties assigned to them by the Income Tax Act.

Characteristic sign of the existing legislation is a large number of subnovels, where a significant portion of them has been proposed by the Chamber of Deputies during its existence of more than fifteen years. The result of this frequent interference in the Income Tax Act can be assessed in two spheres. A significant advantage is undoubtedly being stipulated by various provisions as well as having access to the system, on the other hand chaotic state and reduced clarity of the law is significantly a disadvantage. The objective should be to achieve simplification, however, this can not be understood as the unconditional limiting of the number of words and different sections, but as the optimal scheme of setting and achieving adequate clarity.

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Factual intention of the draft of the new Act was submitted to the Government and the working groups of the Government Legislative Council due to the detection of possible comments from other sectors.

The basic premise, which the whole new legal framework is based on, is that every income should be the object of the tax. In practice, it will not be necessary to distinguish between incomes, which are an object of the tax and incomes, which are not object of the tax.

The significant changes will be done within the structure of the Act itself. The current standard is divided into three main parts - the provisions for personal income tax, provision for corporate income tax and the common provisions. The structure of the draft should, by contrast, be based on individual elements of the tax. Within these various parts general provisions common to both legal and natural persons will be include, and then individual provisions for specific tax subjects will be mentioned.

Transfers of property ownership taxation will be changed too. In the moment of the force of the new legislation, the Inheritance Tax and Gift Tax will be abolished and all transfers of movable and immovable property based on presentation and succession will be considered as an income and the setting of income taxes will be used.

Among other changes the system for taxation of partnerships is now being based on consideration as a transparent entity.

The question is whether the forthcoming proposal will see the light of the world. In the current unstable political situation, where new Government has a mandate only to early elections in mid-October 2008 and taking into account the possibility of governance left after these elections, it is possible that political will requests a completely different task and it will be necessary to revise the text significantly.

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ECONOMIC CRISIS - ARGUMENTS OF ITS ORIGINATION AND ITS POTENTIAL SOLUTIONS

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Key words: Economic crisis; bank – financial crisis; regulative rules; fragmentation of privat ownership; crisis of social significances; savings; cash; human resources; crisis as a opportunity.

Introduction

The most used word in economic, political and public live - around the world and in our place too, is the word "crisis". This "phenomenon" calls crisis, did to get in across the all society and the most involved questions are "Where did it all start?", "Why and how long will it exist?" and "What are the solutions of this crisis?". The aim of this contribution is to attempt to answer for next both issues.

Where did it all start?

The most frequent thesis are, that the focus or original cause of this crisis was bank – financial crisis in the USA, which overgrew gradually to economic crisis. One of the opinions is, that the base of bank – financial crisis was real estate crisis, if the USA banks offered real estate financing very gladly, or lured the people for it, which didn´t have sufficient of finance to refund it, mainly in the middle and long term level. This is truth, but only in part. There were bank – finance institutions and funds, which conduct all the same, in west Europe, and partially in Japan, China, Russia, India and other parts of the world too. Consequently this is a global crisis which absorbs the entire world.

Why did it all come into being?

A number of politicians, economists and analysts look for answer upon this question. According to state secretary from Ministry of finance of Slovak republic, Mr. Palko , the main reason of current world´s economic crisis is absence of regulation rules of re-bound global financial market. According this author the main responsibility for this situation is on political leaders of world´s economical powers. This look at crisis is more political. Next look

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at an arguments accruing economics crisis origination is economical. This look focuses from fragmentation of private ownership. According its authors , the main reason of the origin of crisis is a fragmentation of ownership in big financial institutions. Third of views flows is general all-society look. Its author said that main reason for origination of crisis is the crisis of social significances, not only in material area, but mostly in cultural – moral and human areas.

What are the solutions of this crisis?

A number of opinions want to find an answer for this question. General opinion is, that the best solution of this crisis is solution, which was tested in really conditions of economic life. Therefore it´s the best to take solutions, which were successful for its solutionists by the resolving of crisis impacts in past. The most distinguished and the most successful representative of management in Europe was Tomáš Baťa. He proved to solve troubles elicited by economic crisis, more effectiveness. Petr Smutný director of business restructuring section in Pricewaterhouse coopers company in Czech Republic offers the bundle of solutions, how to overcome impacts of current crisis. His solutions are the most similar to Bata´s solutions. His bundle of crisis solutions involved four base phrases: 1. No time, it is necessary to think – managers must immediately to receive the decisions to save expenditures. 2. Priority funds - in spirit a slogan "Cash is the king". Payments of purchasing costs are inevitable. 3. Valued living resources – to let off people means to give up valued asset definitely. 4. Not only treats – treats aren´t the only effect from long – term look at manages of firm. ,

Conclusion

Failure of USA real estate market is generally considered as a focus of world´s economic crisis, but behaviour of bank – financial institutions in other parts of world have their share in it too. We can classify the reasons of crisis origination into 3 groups- economic, political and all-society reasons. And besides exists so a number of opinions, how to solve this crisis, which we can to classify on three groups, analogous to reasons of its origination. The most significant economic solutions of current world´s economic crisis are solutions, nearly interconnected with successful solutions realized in past.

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WHAT INFLUENCE HAS THE ECONOMIC CRISIS ON LOCAL AUTHORITIES?

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Key words: Local authorities; regional budgets; economic crisis; tax revenues.

The decline of economic performance, which is being reflected from the second half of last year in the Czech Republic, has a considerable impact not only for the state budget, but also for the budgets of regions, towns and villages. Some decline from last year is expected in revenues of the budget, especially in tax revenues.

Thanks to setting of financing local and regional authorities, there was the regular growth of tax revenues in recent years. Tax revenues constitute the main part of the total municipal budget revenues and significant part of the budgets of the regions. These resources can be used to cover current (operating) expenses and capital (investment) expenses. The increase was always in the range of 5 to 12% every year (with one exception in 2006 - the impact of the now repealed joint taxation of spouses, and then reduce the rates of personal income tax). According to the state final account for the year 2008, the tax revenues of municipalities in the Czech Republic were 154 billion crowns, representing nine percentage increase over the previous year. Tax revenues of regions were nearly fifty in 2008, that is more than eight percent increase.

Given that signals the growing economic crisis came in the autumn increasingly, the budgets of local and regional authorities were prepared for this year and then approved by the competent authority without any increase in tax revenues. The Ministry of Finance originally predicted increase of tax revenues about 4%. This assumption has been prepared in September 2008. Calculations of the Ministry was based on the anticipated growth of state economy by about 5%. From today's perspective it was very optimistic expectations.

Many local governments prepared its budget with zero increase of the expected total tax revenues, according to recent developments. It appears that these realistic parameters realistic of local budgets will not be fully realized.

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New Finance Minister Eduard Janota has informed that the decrease of tax revenues of local budgets will be about eleven percent in 2009. This figure derives from the current prognosis.

Where it will be necessary to look for savings? At a time when subsidies are drawn from European Union funds, which require a certain percentage of co-financing from own resources of local and regional authorities, will be relatively difficult to reduce the investment area. The economic situation will undoubtedly generate a relatively high pressure on the indebtedness of local and regional authorities.

The government assumed that the amendment of the budget determination of taxes for local governments, with effect from the first January 2010, should provide new criteria for the redistribution of shared tax. Most likely its approval will be postponed due to the difficult economic situation. Any changes could territorial budgets further destabilize. Territorial authorities can not expect good times.

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LEGISLATION CHANGES IN PREPARATION AND POSSIBILITY OF THEIR ABUSE

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Key words: Labour code; law of bankrupcy; driven wreckage; financial crisis.

The solution of global financial crisis is not only a complex economic question, but also a political topic. Governments and politicians all around the world submit plans for solving the problem. A 787-billion-dollar economic stimulus package, the largest in US history, was approved within weeks of Obama's inauguration. The Federal Reserve and Treasury Department have launched a series of multi-trillion-dollar programmes to help the financial sector revive. On the other hand, European politicians are still discussing the financial crisis and are having a hard time finding a common procedure. In the name of global financial crisis, the goverment of Czech republic introduced interesting amendments of act with intention to lower the impact of global financial crisis. These thoughts go down with general public.

The paper is focused on possible negative consequences of amendments in preparation or passed. The objective of the paper is not to judge intentions but to show concrete abuse of legal system.

The Labour code novel is officially based on the principle "What Is Not Prohibited Is Permitted." The concept of the novel contains subsidiary application of Civil code in the light of Labour code principles. This definition is very problematic because of absence of more detailed regulation. There is possibility to abuse civil institutes like inclusion, stipulated damages, assingment of claims, right of retentions etc. The next problematic point in new regulation is relative nulity of legal acts and impossibility to nullify act when nulity is caused by appealling subject. New terms and institutes absent not formulated in that detail. Trial period work regulation potentialy allows a delayed period of 10 months. Warning regulation is too disposable. The law of trade unionist protection against warning is very easily evadable. The posibility to work 300 hours p.a. without taxes payment is also established. Tee payment of overtime could be agreed as part of full payment. All aforementioned institutes of law are easily exploitable. E.g., an employer

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signes up an employee for a virtual managerial post. The employer dissmisses the employee after 6-month trial period and then signes him up again for a regular post with new 4-month trial period because of manager post incompetency. There is no regulation of this possibility in the novel.

If Labour code novel was passed, the interpretation of the Labour code novel would become dependant on judicial practice. Most of problems would be probably solved by court decisions, but there will be a period of uncertainity.

The law of bankrupcy novel is prepared. The new law institute called moratorium is primarily determined as suspensive protection against creditors, but it could be also abused as risky chance against property execution. Controversial is also the possibility of tax payment delayed for 3 months and bank loan without duty of taxation. The most dangerous is the proposal which allows new creditors to settle their claims from older creditors pledge. This allows company owners to make fictive claims.

The law of bankrupcy novel is intended to protect companies that have financial problems. Judges will have a very difficult position because they decide whether to permit moratorium or loan dutiny insolvency. These tasks could be very complicated.

There was presented very risky concept, when the Czech Republic as majority shareholder of ČEZ energetic company could decide that whole previous year profit will be portioned out between shareholders. This could lead to stockjobbing and mistrust of the czech stock market. The consequences of procedure could blockated whole year company benefit.

Driven wreckage is interesting politic topic. Abroad not long ago was shown gang, which sell "wrecked" cars to Africa.

There are many ways how to reduce effect of the global financial crisis. Every good intention includes possibility of abusion and it is very hard predict if positive effect of provision will be more valuble than negative consequences. Diversification have different forms, human crativity, mistakes in law, unadvisible political dicisions, high requirements on judges.

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THE ECONOMIC AND FINANCIAL CRISIS AND TRADE-RELATED DEVELOPMENT UNDER THE WTO UMBRELLA

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Key words: WTO; economic and financial crisis; trade-related development; trade-distortive measures; Doha round.

Economic and financial crisis - two words which are shaking with current political situation all over the world and which are filling up the front pages of major newspapers and magazines. We have been witness to the deepest global economic downturn since World War II. The reason of current economic and financial crisis has been the subject of discussion already for some time, but what is nowadays unambiguously more important are its consequences and impact on behaviour of WTO Members as world trade players. The Doha Round is famous for its disability to be successfully finished in already so many artificial deadlines because of the WTO Members lack of political will to find compromises and collective way. It was launched as an act of post 9/11 international solidarity with many open question marks.

Regarding to the crisis is the behaviour of WTO Members truly reverse. As a common answer to the current situation, trade barriers around the word are going up. In spite of the assurance of G20 Members during the Washington summit last November and London summit meeting last month to protect free trade, 47 protective measures were adopted by 17 of G20 members since the Washington summit . The form of used trade-distorting measures varies from tariff increases, more strict import standards, bans, restrictive import licensing, anti-dumping actions, discriminatory government procurement, undervalued exchange rates, environmentally motivated trade restrictions, to subsidies and so called famous "stimulus packages" as state aid. Using some of these measures doesn't have to breach current obligations of WTO Members. In fact, the wide spectrum of new protectionist measures share according some experts two common features – they are WTO-legal and largely unaddressed by the ongoing Doha Round. Some experts already proposed the launch of so called "Crisis Round", which would aim to hold

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the line on protectionism and would be completed in 12 months . In an exemplary way Members can legally raise applied tariffs up to the bound levels or use safeguards or antidumping measures. On the other hand, some of the countries take advantage from the globalization and interdependency. They refuse to impose protectionist measures, because it would raised their own prices and it could caused another ineligible side affects.

The WTO secretariat foretold that global trade will fall of by 9 % in the year 2009, which is one of the steepest drop in the history of past 80 years of international trade . The financial and economic crisis is the well-timed period for various open trade unfriendly lobbyists and other economically insecure populations which will put pressure on the world leaders. The economic decrease has already created new macroeconomic sources of protectionist pressure. Many protectionists measures can be hidden behind the climate debate and take green face. The G20 agreed to refrain from raising new barriers to investment or to trade in goods and services regardless of whether the measures complied with trade laws. Let's hope that WTO will keep the situations under the control and Members will not move to the trade wars which could ruin more than 60 years of trade liberalizing efforts. The situation is constantly monitored by the Trade Policy Review Body which undertook an annual overview of developments in the international trading environment which are having an impact on the multilateral trading system. The DG Pascal Lamy issued an important report about the financial and economic crisis and trade-related developments. In this report is emphasized the importance of keeping open markets and not to solve the burdensome situation by imposing trade-restrictive measures.

Until now the promoters of further multilateral trade liberalisation were afraid of proliferating RTAs, which were in their eyes seen as "blocking stones" of further development. The economic and financial crisis is certainly even greater threat to trade liberalization as reversals from the current level of global openness could have immense consequences.

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DOPING FOR NATIONAL ECOMONIES WITHIN THE LIMITS GIVEN BY THE EUROPEAN UNION

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Key words: Economic crisis; state aid; export; import.

Despite the fact that the current economic crisis is serious it is most probably not the worst world crisis ever. The truth on the other hand is that most of us are too young to have any similar personal experience with such situation. Also the legislation which was made mostly in "good times" is now being heavily tested.

It is hard to tell what the best solution of the recent situation is. Economic analytics see the solution of the current crisis in massive fiscal stimulation of national economies. Such stimulation may really be useful from the economic point of view. The question is whether it is possible under the law for states to use public finances in order to stimulate business.

Our article has no intention to judge on economic aspect of this issue. Its aim is to deal solely with its legal aspects. The problem is that any state aid, even such which is justified from the economic point of view by the current economic crisis, must be provided in accordance with recent legal regulation of state aid.

The legal problem with fiscal stimulation most probably does not arise in unitary states or federations like are the USA. Unfortunately, we are in the European Union (in order to simplify, we use the term European Union; however, everything that was said and that will be said in further reading is regarding only to the first pillar of the EU and there it would have been more precise if we spoke about European Community) which is organized differently and that causes in time of crisis unexpected difficulties.

Where is the problem? Unlike ordinary states, the European Union is an international organization which has acquired some competences in economic affairs that are traditionally exercised only by states. European Union has power to regulate all issues concerning the internal market which includes regulation of free movement of goods, persons, services and capital, and external trade as well. European Union also regulates public procurement and

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state aid. In all the above mentioned areas measures suitable to stimulate the economy can be adopted. However, Member states are not free to introduce them if they are not complying with EU rules.

European Union may therefore seem to be a power like state organization. The truth is different. Its main weakness is that it has only limited competences in the sphere of economic policy. Economic policy is indeed regulated by Articles 98 and subsequent of the EC Treaty. These provisions however clearly state that the economic policy is conducted primarily by the Member states and that the European Union is only to coordinate them.

The other problem related to the lack of real competences is that the Union has only limited funds which it can use to stimulate business and consumers to spend money which seems to be necessary in order to restore the market optimism and restart the economic growth.

What has been said so far implies that the European Union sets most rules concerning both the internal and external trade with goods and services, rules for state aid which also heavily affect the trade within the whole Union, but the financing and practical realization falls within the competences of Member states. This situation in combination with the principle of non-discrimination based on ground of nationality of origin creates a dangerous mix as states who try to help their national trade or business in fact often involuntarily finance businesses from other states.

All what has been said so far implies that it will be the Member states that have to primarily fight the crisis and bear the burden and costs of financial stimulus. The European Union is not totally helpless though.

The Commission has adopted the communication No. 2009/C 16/01 Temporary Community framework for State aid measures to support access to finance in the current financial and economic crisis. This is not sufficient though. The best thing the European Union can do is:

[A] to establish the permanent platform which could help sharing of the experience, important data and closely coordinate state actions. This goal is currently performed by the Council. The question is whether it is sufficient. We do not think so;

[B] Adopt efficient and less restrictive rules on state aid and find more additional resources to directly finance some preferred key industries;

[C] Adopt efficient rules on export subsidizing and locate resources on export guarantees and insurance;

[D] Heavily intervene in the area of communications. Pressure on Member states is necessary in order to develop more interstate highways and high-speed railways. Especially in the CEE.

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"FINANCIAL CRISIS" OR HEALING PROCESS?

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Key words: Economic downturn; Community Reinvestment Act; Freddie Mac; Fannie Mae; Equal Credit Opportunity Act; mortgage-underwriting standards; homeownership rate; financial instruments; governmental interfering; bubbles; minimum wage laws.

Quotation: "The free market punishes irresponsibility. Government rewards it." Harry Browne

Generally, the purpose of this article is to point out one of the approaches to the ongoing economic downturn. Especially, the author emphasizes that the so-called "crisis" has been rather caused by governmental interference with natural market forces than by a lack of regulations. Firstly, he explains that the Community Reinvestment Act and the Home Mortgage Disclosure Act forced banks to change their mortgage-underwriting standards. Secondly, the article deals with the reasons why investors misperceived the mortgage-related risks so badly and, lastly, the author shows that there are many similar laws that should be repealed.

What is the root cause of the current economic downturn? The author emphasizes that the Community Reinvestment Act (CRA) shall be understood as one of the major causes of the current economic mess. Having been passed in 1977 and having supplemented the Home Mortgage Disclosure Act (HMDA) of 1975, the Community Reinvestment Act forced banks to give loans to low-income borrowers, especially then, by "requiring banks to conduct business across the entirety of the geographic areas in which they operated, thus preventing them from doing business in suburb."

The consequences of these laws were crucial. Banks had to change their mortgage-underwriting standards so that they could follow up with the statutory requirements that had been imposed on them. In other words, the long-lasting standards of granting loans, which had been proven by banks´experience, had to be changed due to a governmental order. Thus, the natural market process has been interfered with an artificial intervention. Hence, a large number of mortgagees defaulting on their payments was just a question of time.

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By taking the abovementioned assertions into consideration, we can easily figure out that since there were more people granted loans (the demand for home was on the rise),prices of homes reached extreme levels. However, as the price increase was pushed up by an artificial force (banks had to satisfy a particular number of low-income applicants), such increase was to drop and decline precipitously one day. The peak was reached in July 2006 (S&P Home Price Index) and the price had declined 31% since then.

The author also explains why the mortgagees were not interested in continuing to pay the installments. They often owed much more than what their homes were worth. Hence, although the idea of making sure that even the low-income clients may obtain mortgages at affordable price, which would not be set according to the actual risk but rather by guaranteeing their solvency by governmental institutions such as Freddie Mac and Fannie Mae, might seem beneficial and high-minded, the actual consequences could be extremely risky for the society and economy as a whole.

Further, the author of this article ponders over the question why did the investors that were buying the pools of mortgages underestimate the risks of such deals? In other words, why have not the investors consider carefully the risks of the mortgages that had been granted with a lack of reasonable underwriting standards? Having presented ideas of Professors Liebowitz and Schwartz, the author asserts that such failure of investors had been caused by them not knowing exactly what they were going to spend their money on. However, misleading reports of rating agencies played their role too.

Last but not least, the author presents that there have been many laws similar to the CRA and HMDA. Even though most of them are still considered beneficial, many of these laws are hurting both the entire economy and even the individuals that are to be protected by them. Just as an example, the author explains how minimum wage laws are actually hurting the employees and causing unemployment.

Generally, this article should be read as a reminder that not every process of markets shall be regulated by laws, which are always just an artificial obstacle to natural market process. Sometimes, it is better to let the natural market forces to run their course.

Quotation: "If government wishes to alleviate, rather than aggravate, a depression, its only valid course is laissez-faire – to leave the economy alone. Only if there is no interference, direct or threatened, with prices, wage rates, and business liquidation will the necessary adjustment proceed with a smooth dispatch" Murray N. Rothbard

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CERTAIN ARRANGEMENTS OF EMPLOYERS AT THE TIME OF "CRISIS"

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Key words: Contract of employment; collective agreement; unemployment; crisis of automotive industry; avoidance of contract in employment relationship.

The author of the article is engaged in functional consequences of the crisis in labour law. He demonstrates the concrete examples of automotive industry practice in Vysočina region as a result of crisis expressed in collective agreements and contracts of employment. The author also deals with the related problems of interpretation when the crisis of automotive industry is understood to be the reason for a change, the argument for an application of unused juridical institutes of the labour code, and the interpretative frame for the interpretation of the law.

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GLOBAL ECONOMICAL CRISIS AND ACCOUNTANCY STANDARDS

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Key words: IFRS; IASB; IAS; SEC; NASBA.

The working paper discusses the effect of the economical crises on the accountancy methods and discusses the changes which may be taken to avoid similar crisis in the future. The banking system plays important role in the world economy thus any crisis will have immediate effect on the system, the banking system is also in need of restructuring, the crisis has therefore brutally illustrated two facts.

First factor is connected to the banking systems, since the banks perform maturity transformation – lending long and borrowing short – depend crucially on confidence in banks and between banks, which if lost can take a long time to recover. And that the most important risks in banking are systemic not idiosyncratic: illiquidity in one bank or securitized credit market having potential impacts on the behavior and liquidity of others, lack of confidence in one bank or securitized credit market potentially draining confidence and liquidity from others And second, that if the banking system is impaired huge economic loss can result. As recent IMF research illustrates that recessions which followed banking crisis were on average much deeper and longer lasting than those where banking failure was absent. The international Financial Accounting Standards are also discussed in the paper where the New York State Society of CPAs is quoted.

The crisis unveiled discrepancies within the accountancy methods used by financial institutions for example in the US there are voices calling for a change in the way the financial institutions account for illiquid assets to help stem the financial crisis. Most of us have been surprised how long it has taken to restore confidence in the global banking system given the huge public interventions and the clear commitment, confirmed by action, that after Lehman Brothers no other systemically important bank or investment bank will be allowed to fail, for if the chain of bankruptcies' continued then the impact would be devastating.

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There is a believe that mark-to-market accounting is totally appropriate for tradable assets in a liquid market, however there are opinions that in illiquid market, fair value accounting is problematic. It is perhaps exacerbating problems Many banks blame fair value accounting, also known as mark-to-market, which requires assets be valued at market prices, for billion of dollars in write-downs on mortgage assets in the sub prime crisis.

But for illiquid mortgage assets, banks have to value assets at fire- sale prices in the market turmoil, but may not plan to sell the assets now and their value could grow in the future. In EU the situation differs from the US the EU has relaxed mark-to-market accounting to ease requirements for marking down investment to help banks have more healthy balance sheets.

What the European Union has done is to moderate some effects of fair value accounting in illiquid market circumstances. This is what has not been done in the US thus contributing to the current problems. The international account standards represent a factor which can in future prevent the repetition of the current crises. The National Association of State Boards of Accountancy (NASBA) stated that there may be constitutional issues for non-public companies if the U.S. adopts IFRS standards. U.S. GAAP currently applies to both public and non-public companies in the U.S. NASBA said if the SEC adopts IFRS for public companies it is unclear what will result for private companies, or non-issuers.

The primary justifications for the increasing recognition given to these standards (IFRS) are economic. Outsourcing the manufacture of accounting standards to a single private agency appears to be a rational, lower cost option – lowering both economic and political costs for individual states as long as they continue to retain residual decision rights with respect to the adoption of IFRS. However, such outsourcing must also be perceived to be legitimate. IFRS confer institutionalized legitimacy because they possess three characteristics required of a technology for global governance. These are sponsorship by powerful interest groups/regulators, internationality and plasticity.

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DEALING WITH CONSEQUNCES OF THE GREAT DEPRESSION IN WEIMAR REPUBLIC AND IN THE THIRD REICH

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Key words: The Great Depression; financial crisis; Germany; the Third Reich; the Weimar Republic; regulations over financial markets; tightening the financial regulations.

During the era of the "Golden Twenties", the Weimar Republic was getting used to the hard conditions that had been put on it by the Versailles Treaty. Most of countries were flourishing. However, the prosperity was based on the permanent flow of funds from the United States to Germany. The United States crisis got spread to Europe very fast, because the United States had been the greatest lender during the First World War and, during the twenties, it was giving loans to the European countries.

In 1931, the financial crisis got worsened. Consequently, because of a lack of funds, the German banks got into default on their dues. The continuing efflux of capital had been lowering the bank reserves and, hence, a collapse of a first bank followed by collapse of the entire system of German banking was just a question of time. A hold-back of withdrawals of deposits instigated a panic between depositors and, therefore, they started withdrawing their money from financial institutions even more.

The financial crisis was the reason of establishing a governmental supervision over German banks. The German government took over guarantees and stated that any property of banks cannot become a subject to bankruptcy proceedings, nor be a subject of execution. Next to that, the Reich's government closed all the public and private financial institutions temporarily. On 14th and 15th July, 1931, the stock exchange was closed. Further, until July 18th, 1931, banks were allowed to carry out withdrawals of deposits and financial transactions only if the money to be transferred were intended for wages or pensions. The forced deceleration of the financial markets, which lasted for three weeks, was used by the Reich government to plan wide changes within the relationship of state and bank sector. This was

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supposed to be "rescue" of the financial institutions that were hit by the crisis.

On July 15, 1931, the trading of foreign financial means (coins, banknotes, treasury notes, checks and bills of exchange) was stopped and, further, it was subject to governmental supervision, which abolished free convertibility of the Reich's Mark. This measure was followed by a ban on publishing other than the official quotes, regarding foreign currencies, Reich's Marks and other valuables, that were to be stated by currency exchange.

On June 1, 1933, the massive governmental measures against unemployment were tackled. It was based on the Act on lowering unemployment rate and, these measures and often called as so-called "Reinhardt's program". This program was dealing with the following scopes of application: - a direct brokering of employment - voluntary donations to national labor - transferring the working women to households - granting newly-wed loans

At the party convention of 1936, Hitler announced the so-called "second four-year plan" that required even more interfering with the German economy. Its main purpose was to achieve a goal that German economy was independent of import of foreign raw materials. The idea of being self-sufficient played a very important role within the then ongoing military preparations. Great amounts of money were spent on equipment of Wehrmacht. By announcing the second four-year plan, the stage of the relatively market autonomy of economy, in which the large private industrial enterprises had been participating in Hitler's armament plans since 1933. Although a central planning of economy was not attained, the governmental interventions had grown. This article points out the fact that it is not possible to follow the same or similar ways of dealing with economic crisis, which were carried out by national socialists after 1933, because even these measures shall be looked at as a part of the other crimes that were done during the era of the Third Reich. When looking at historical data, it is important to take into consideration all the aspects of the Nazi policies, because the fragmentary success that had been achieved within some economical sectors could have not been achieved without the other awful crimes.

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DEFENDING SOCIAL RIGHTS IN ECONOMIC CRISIS: MORE ACTIVE CONSTITUTIONAL POLICY AND GREATER POSITIVE OBLIGATIONS OF THE STATE

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Key words: Economic crisis; social state; constitutionalism; doctrine of the positive obligations of the state; social and economic human rights.

We must not forget about the political and philosophical ideas regarding democratic, social and just society. The economic crisis and mysteriousness of the future of global political systems and global society should not be accepted as the end of the Social State and other fundamental principles of the modern constitutionalism. Quite in contrary, it is a new opportunity to defend social and economic human rights and to create an European Social State worthy of its name.

We should act accordingly and increase, reinforce social and economic rights. We should make a few changes in systemic understanding of the concept (an fundamental constitutional principle) of Social State. We should also expect and demand more from the State, which claims its sociality as a political quality and one of the most important criteria for its legitimacy.

Our attitude towards the social and economic rights should be more responsible. From this point of view we should increase our consciousness about the importance of the doctrine of positive obligations of the State. This doctrine should especially be applied for more determined and effective realization of the constitutional principles of sociality, solidarity and social equality on one side and for those fundamental human rights and freedoms that are most closely connected to sociality and economy on the other. Constitutional policy should be used as a mean to achieve these goals.

Social role of legal scholars, all lawyers and especially judges could be among the most important roles to achieve this goals. Constitutional judges should hesitate less when using this doctrine to decide cases involving social and economic fundamental and constitutional rights. In this context slightly increased judicial activism would not seem illegitimate. This could be an important, eventhough quite ambitious step towards the genuine European

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Social State.

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ECONOMIC CRISIS AND THE CZECH REPUBLIC

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Key words: Economic downturn; GDP; government; Czech Republic.

This article deals with the recently economic downturn. Economic downturn affects through all social classes, however, the main impact of this economic downturn is on low social classes. Economic downturn is often marked as economic crisis. This economic crisis starts with decreasing number of orders which is caused rational (natural) or irrational reasons (human made). Human made like proactive regulations, protection some interests, state bank policy or unexpected consumers behaviors are the most often reason for economic downturn.

Purpose of this article is to point out economic situation before economic downturn and during the first months economic downturn in the Czech Republic in 2009 and analysis approaches of government to solving the situation and methods how to rebuild economic growth. The first part of this article describes and analyses economic environment in the Czech Republic, the next analyze and compare advantages and disadvantages of government intervention and the rest offer prediction of next development.

Economic development was positive in 2007; however the first indication shown changes in development. Financial turbulence was appearing in USA in August 2007 and it changes in credit crisis at beginning of 2008. This event leads towards to turning of credit cycle. Turning of credit cycle shows of price changes of assets, fluctuation of interest rate and exchange rate. This situation is very difficult for positive economic development and stability of financial system. This environment brings a lot of insecurities to whole economic processes.

Economic was stable in the Czech Republic for a long time. The first outcome of this economic downturn was appraising of Czech crown in spring 2008. The other step of changes economic cycle was decreasing of dynamics Czech exports in autumn 2008. There are the first companies with worse sales which lead toward insolvency of companies. Companies product glass and porcelain goods published bankruptcy, the next branches with problems

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were automobile companies, carriers etc. Nowadays, all sectors of economic publish their losses and weak companies leave the market.

After the first information about scandal with mortgage in USA, people divide into two groups along to their opinions. The first group believes that economic downturn is caused by a lack of government regulation, the second group emphasizes that the reason for economic downturn is caused by a lot of governmental interference. Government is broken into two groups too. Protectionisms spread in words a lot of politicians. These words are loud before to call an elections. The second part of this paper should be point out advantages and disadvantages of government regulation and protectionisms. Where is the best rate between freedom and regulation?

Supporters of regulation stress stabilization of economic conditions, protection rights of investors and total renew economic growth with their intervention into economic. Opponents stress invisible danger connected with this approach. State debt will be increased with using of this instrument and government will be limited in utilization of stabilization policy in future. Which kind of this policy is better? It depends on political opinion and for the position of view. High state expenditures bring advantages in short time because economic increases. This approach is acceptable especially for low income people. High state expenditures represent danger in long time and economic development is not sustainable. Difficult situation is with support of companies introduced "national products" and companies with long position (often a lot about one hundred years) in the market. It is difficult to prohibit protectionisms. Government should realize a minimum of intervention in the market because it is no solution to help one companies or branches and concurrently to discriminate other companies or branches.

Forecast for the next future is very difficult predicted. It depends on many of variables. The first variable is development of world economic. It is necessary to strengthen situation in financial markets which is very difficult to realize. Banks should be stopped afraid of lending money especially in the Czech Republic where they have stable position for a long time and their bank credit are not specificity as losing. The second variable is international political stage and national political stage and their approaches towards intervention and protectionism. Nowadays, national political stage is highly instable before early elections in the Czech Republic. The third variable is connected with consumers' behaviors. If consumers will believe in economic, they will start to buy more products and economic will increase.

Generally, this article offers the view into these three topics which are closely connected. There are presented data, results of realized researches and ideas publicized in journals, on websites and in other sources. These data and ideas will be filled in comments of author.

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INSURANCE LAW IN THE MIRROR OF ECONOMIC CRISIS

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Key words: Credit protection insurance; export-credit insurance; insurance against unemployment.

Insurance law can help on cutting down the damaging effects of economic credit crisis mellowing with mainly three types of contract: credit protection insurance, insurance against unemployment, and export-credit insurance contract. All three contracts belong to non-life insurance branch, it means damage insurance, which exempts - partly or totally - the insured person from the negative financial effects of a damaging event.

According to loan contracts a credit-loan insurance contract is primarily destined for defending the creditor´s property interests, whereas insurance against unemployment is primarily connected to property interests of the debtor, but naturally indirectly they protect the financial safety of the other contracting party too.

In the case of credit protection insurance contract non-payment of the debtor is qualified as insured event, the insurer so vaporizes non-payment risk among creditors being exposed to similar or same perils. Credit protection insurance is usually group insurance, that is to say it´s premium depends not single debtors´ perils, but averaging these can we get the by the insured payable insurance premium.

Insurance against unemployment recovers the debtor´s ability to pay in the case of his/her regular source of income´s falling out in such way, that the insurer pays its money paying service directly to the creditor, as a beneficiary of the insurance contract, that is to say it turns off the peril connected to the debtor´s willingness to pay.

The above mentioned two insurance contracts give excellent possible solution in such economic environment, where parties are distrustful against each other, debtors struggle liquidity problems, the creditor´s financial reserve or missing, or low amount, at the same time parties don´t want to hold aloof unduly to form loan contracts.

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Export-credit insurance transaction is an instrument for serving lowering foreign exchange-, or rather mainly exchange rates in the period of between formation and accomplishment of the contract. Economic crisis comes together with notable volatility of currency rates, especially legal currencies of smaller states can become defenceless victims of international processes. Rapid and large-scale disadvantageous changing of exchange rates being valid at the time of formation of the contract can ruin economically the financial position of exporting companies and their financing banks in worst case, the institution of export-credit insurance provides for this situation a reassuring solution.

All the three above described methods usually only lower, but not nullificate the damaging effects of the insured events - considering the payable insurance premium, franchise and other insurance technical solutions -, but in my opinion all three types of contract are capable of relevant risk lowering, recovering trust needed by formation of the contract, so to sum up to mellow the effects of the economic crisis.

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Section
Information in law

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THE PROHIBITION OF DISCLOSURE OF TAPPING BY § 8C OF THE CODE OF CRIMINAL PROCEDURE

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Key words: Tapping; freedom of speech; right of privacy; journalists.

On 1st April 2009 Act No. 52/2009 Coll. amending Act No. 141/1961 Coll., Code of Criminal Procedure (hereinafter referred to as "TR"), as amended, and certain other laws came into force. This act, however, is far better known as "muzzle" act. The article primarily put the accent on the provision that adds to TR new section 8c, according to which no one shall without the consent of the person to whom such information relates, disclose information relating to the regulation or execution of eavesdropping and recording of telecommunications traffic in accordance with Section 88 TR or information derived therefrom, data on telecommunications traffic detected on the basis of the order pursuant to Section 88a, or information obtained by monitoring people and things in accordance with Section 158d of paragraphs 2 and 3 TR if they allow the identification of the person and not be used as evidence in court. The law raises controversy from the start, both among the general public and among experts and even fell to his unconstitutionality; recently was even a group of senators filed the Constitutional Court a proposal to repeal this provision. These objections are based, in particular, that the law violates the Constitution guaranteed the right to freedom of expression, respectively right to information, it is anchored primarily on the provisions of Article 17 Charter of Rights and Freedoms. This is however not an absolutely unlimitable right, but it may be, under certain precisely given conditions, restrict, but only by act with the force of law and more. In contrast proponents of this law argue otherwise Constitution guaranteed right - the right to privacy, which is necessary to look at the constitutional level in Article 7 Charter, which states that the physical integrity and privacy is guaranteed. And in Article 13 of the Charter, which defined the right to the confidentiality. It is therefore obvious that both of these rights have clearly specified constitutional entrenchment - the question remains, how to decide, which of these constitutional rights take precedence. Indeed, this is not simple question; result from the finding of the Constitutional Court, no.

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IV. U.S. 154/97, published in the Collection of the findings and resolution to the Constitutional Court, Vol. 10, No. 17, p. 113 et seq.

To understand the severity of interference with these constitutional rights is necessary to first understand what, how, when and to whom in fact that the law prohibits. When asked "what?" may be the answer information - information on the regulation or execution of eavesdropping and recording of telecommunications traffic pursuant to Section 88 or information derived therefrom, data on telecommunications traffic detected on the basis of the order pursuant to Section 88a, or information obtained by monitoring individuals and affairs in accordance with Section 158d of paragraphs 2 and 3. On the "how" issue, there is a response to their publication. However, the "what" issue can be considered for publication, is nowhere defined in this Act, and therefore you can consider several versions of the interpretation or the "rent" definitions of other laws. Neither the definitions thus created, which could approximately sound as "the first presentation, execution, presentation, exposure, or other disclosure of the contents of printed matter or disseminated file, film, radio, television or other similarly effective way, or more than two people present at the same time, can not be for several reasons quite acceptable. The "when" issue is clearly determined by a range of time covered by the provisions of Section 88, 88a and § 158d, paragraphs 2 and 3 TR, but with one exception - the wiretaps protection ends when it was used as evidence in court. The "who" issue deals mainly with differentness between the media and law enforcement authorities. According to the author's opinion, because of reasons mentioned above, the Section 8c TR can not be considered as aim to law enforcement authorities. The last issue deals with the possibility of penalties (sanctions) for infringements of the law. To begin with criminal and administrative law sanctions as well and subsequently with its adequacy, especially with regard to selected findings and decision of the Constitutional Court and the Supreme Administrative Court.

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APPLICATION FOR THE PROVISION OF INFORMATION ON THE ENVIRONMENT IN CZECH REPUBLIC AND IN SLOVAKIA

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Key words: Proviosion of information; request for the provision of information.

Provision of information represents basic element of nowadays "knowledge society". The quality of information (speed of its provision and value of its content) is very important for success in most of human activities, especially in business and even ecological activity. It is common that these types of activities (business and ecology) need and request for the same information, i. e. information about the environment. However, each of these activities may wish to use it for different aim and purpose.

This article focuses on differences between Czech and Slovak legislation of providing information about the environment. It critically overviews provisions of law which rules the conditions of the right to request for the provision of information. In both countries there are the same constitutional provisions of law regarding the right of public to be provided by timely and complete information on the state of the environment. However the statutes which apply constitutional provisions differ a lot in particulars.

The first wide difference is that in the Czech Republic, contrary to Slovakia (211/2000 Coll), there are two statutes regulating application process for the provision of information (123/1998 Coll. and 106/1999 Coll.). As there are two application process frameworks, varying in elementary rules, the applicants lose their certainty about right processing of their application.

Clearly there are common points in both process frameworks, such as termless access of all natural persons and legal entities to information provided by liable entities and the same grounds to deny provision of information, but both frameworks differ significantly.

At the beginning the applicant can ask the liable entity, using any usual way to contact it (including email, phone call, fax), to provide him or her information relating to their competence. The requirements on information

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which the applicant has to fill about himself in the application, aiming to clear from whom it is submitted, differs from unspecific formulation "it must be clear who is the applicant"(123/1998 Coll.) to specific request of pertinent information about the applicant (106/1999 Coll.). More significantly the process duality takes effect on making decisions whether to prove information or deny the application. The liable entity has to decide which statute will be applied. If the application is processed in terms of 123/1998 Coll., information will be provided for free but in the period of 30 to 60 days (relevant reasons), if the application is processed in terms of 106/1999 Coll., information will be provided in the period of 15 to 25 days (relevant reasons), but may be charged with administrative charge. Comparatively, provision of information in Slovakia is free of administrative charges and should not take more then 8 to 16 business days (relevant reasons). Most extensive difference implied of the duality of providing process occurs when information is not granted and the liable entity did nothing. In case the application is processed in terms of 123/1998 Coll., the applicant can appeal against fictional issue of denying to provide the information, but in terms of 106/1999 Coll. the applicant can just make complaints against inactivity. Whereas if the appeal is rejected the applicant may take action to the court to defend his constitutional rights. In case of just complaining against passivity of liable body, there is no decision against which an action could be taken. In Slovak legislation if the liable entity fails to act in the time limit, it is deemed to have issued a decision whereby it withholds the information, against which the appeal can be taken.

Described differences between providing environmental information and other information in the Czech Republic are concluded by recommendation to Czech legislators to follow Slovak good practice. Contrarily the Slovak Republic should eliminate provisions of law discriminating large municipalities´ offices and state offices from small municipality offices in their basic information duties.

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GENERAL DETERMINATION OF RIGHT TO INFORMATION AND PUBLIC ADMINISTRATION RELATIONS

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Key words: Information; public administration; right to free access to information.

The idea of democracy, of course, includes the people´s right to be aware of information concerning public affair administration. The principle of Public administration publicity means that all the subjects have a right to free access to infomation (with exception of these information that have been legally excluded).

What we should consider as the key point of this topic is the term "information" that could be understood as a certain message or a way of communication. It´s necessary to distinguish between the interpretation of the information freedom and the interpretation of the access to information. The right to information is narrowly connected with the execution of Public administration which brings explicite duty to inform about the activity of Public Administration body. We can find this duty, for example, in § 22, Act No. 2/1969 Coll., about estabilishment of ministries and and the other central Public Administration bodies.

As it was previously mentioned, the right to information is one of the essential prerequisite of every democratic political system. The international legal basis, applicable also for the Czech Republic, started being designated by the Universal declaration of human rights (1948), that contains, in the Article 19, the right to search, accept and distribute information. The subsequent document regulating the right to information is the International Covenant on Civil and Political Rights (1966) and its optional protocols; with the controversial idea that the right to information, especially the right to passing on and spreading the information, doesn´t enjoy absolute character and it could be also liable to certain limitations. The Europen regulation of the right to information is included in the Charter of Fundamental Rights

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of the European Union, in Article 11 about Freedom of expression and information.

Our rule of law brings also its own protection of the right to information. The constitutional base could be revealed in the Charter of Fundamental Rights and Freedoms. The right to information, in the Article 19, is counted among the political rights and the state is supposed to ensure it. The purpose of the right to information is to provide for the citizens all necessary knowledge about public affairs. The limitation of this right is possible, but all restrictions of could be done only on the legal basis. The general law regulation in the area of free acess to information is the Act No. 106/1999 Coll., on Free Access to Information (Free access Information Act).

The Charter mentions explicitly also one specific case of right to information which is the right to information about the state of the environment and the natural sources, focused exclusively on the area of environment. This right is then in Act No. 123 on Access to Information on the Environment, special to Free Access Information Act.

The Free Access Information Act became effective from 1. 1. 2000 and it adjusts the provisions for free access to information and sets forth the basic conditions, by which the information is provided.

This law defines who could be the Applicant and who should provide the information but the vagueness of obliged subject definition doesn´t ensure sufficient certainty who is really obliged subject and who is not.

The law distinguishes two legal ways how to get the information; on the basis of their application or by publication. The provision of required information should be predominantly free of any charge.

The obliged subject has also right to refuse required information in certain cases presumed by this law; e.g. protection of secret facts, protection of personality and privacy, protection of business secret, protection of confidentiality of property standing or other.

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RIGHT TO INFORMATION AND COPIES OF JUDGEMENTS

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Key words: Information; final judgement.

The fact that final judgments must be given in a copy by the courts (according to the statute 106/1999 Sb., about free access to information) is now clear. Situation is getting clearer even in other types of adjudication. However it is still a question how is the situation about non-final judgments. According to §11 of the statute 106/1999 Sb. many people says that the situation is clear even here and that the non-final judgments can not be provided.

Author of this thesis sees the situation differently; the non-final judgments are not only to be provided, but it is necessarily to provide them.

One of the crucial principles of functioning of the legal system and courts is the principle of publicity. The court proceeding are in principle public and even if the proceeding is for some serious reason non-public, then at least the rendition of judgment is public. This means that the judgment could be known to the public; not only the verdict but also the justification (even if only in a minimalized form). This means that there is not a reason not to allow the public to have the non-final judgment is a written form.

Independency of courts is used as a main argument for not-allowing the information about "deciding function of the courts". This argument is insignificant, because the written judgment is made at the end of the deciding (usually after the oral announcement), and therefore the court can not be influenced in his proceedings and thoughts by giving the copy to public.

Only argument to be seen by the author is the case of judgments that have not yet been delivered to the parties of the proceedings. Here is to be decided if protection of the parties privacy should be taken in consideration or if the publicity of court proceeding should be preferred and also the freedom of information which is connected to it. Despite of the problematical ethical dimension of this question is the author's opinion that allowing the non-final judgments is necessary.

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ELECTRONIC FORM OF PROCEDURAL ACTS IN THE CIVIL PROCEDURE LAW

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Key words: Procedural act; legal act; court; participant; service; electronic form.

The main aim of the Czech civil procedure law is to protect the rights and interests statutorily regulated in the Civil, Commercial, Family and Labor Codes. It also regulates the relations between subjects of law, but only in the sphere of procedural law. The relations within the sphere of substantive law are based on the principle of free will, but any conflicts may only be solved in civil litigations.

The civil procedure is defined as the procedure of court, participants, eventually of other procedural subjects in action of providing protection to subjective rights that arise from the civil, commercial, family or labour legal relations. The relations between the subjects of procedure ensue, change or expire from the procedural acts. The procedural acts both of courts and of the participants depend on the instruments and facilities that may be used for their adopting. These procedural acts have to respect the technological development that is also visible in the sphere of development of instruments through which the acts may be performed. If the court performs the procedural act it is also connected with the institute of its service.

Czech Civil Procedure Code was adopted in 1963 and originally it allowed the one and only way how to service the documents of courts to its recipient, respectively participant of the proceedings. Until 2000 the preferred way of delivering the documents was delivering of post. But since 2000 the Czech legal regulations has also been allowing to service the documents in other ways, especially electronically. It means that by present-day legal regulations the Czech courts are also allowed to deliver the documents also electronically. Big expectations are connected with the new act no. 300/2008, on electronic acts that will come into force on 1st July 2009.

The procedural acts are not performed only by the courts but also by the participants. The participants may also use more then one way how to deliver their documents to courts. In addition to (oral) tradition the

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documents may also be sent by post. In this way the Civil Procedure Code has also changed a lot and now fully respects the technological development. Since 2000 the participants may also use electronic post (mail) to deliver the documents to courts. Also these procedural acts will be affected by new act no. 300/2008, on electronic acts that will come into force on 1st July 2009.

The relatively new legal regulation that allows delivering and servicing the documents electronically, respectively allows performing the procedure acts electronically, also entails some problems that are closely connected with the substance of the electronic form of the acts. Firstly in Czech (legal) history there exists the ways of delivering and servicing the documents, respectively of performing the procedural acts, but no body also has any experience with it. Because of that it is very necessary to check the new legal regulation, to co-operate both in legal and technological spheres and to discuss both potential and really existing problems.

This article deals with the new legal regulations of the form of procedural acts, which was (within last six months) affected by more than one amendment. It describes the changes provided by the amendments, their potential effects and also the problems they may entail.

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FREE ACCESS TO INFORMATION IN THE FRAMEWORK OF EU REGARDING CZECH REPUBLIC

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Key words: The European Union; information; Regulation; journalist; responsibility of the media; public authorities; the right to information; free access to information.

The orientation of this work is to look at the institute of the right to information and free access to information in the European Union. Important core of this contribution is to look at institute of free acces and right to obtain information by the view suitable for journalist, civic society and wide public, who needs to cover this tool for responsible fullfilment of their work. Because of this use, there is a brief overview upon this adjustmnent in Czech legal conotation. In this part are set up some links to codes which are functioning as an applicable norm of this constitutional right. European dimension is also thereafter included. Author pointed out a relevant importance of information in todays contemporary world of postmodern information society. Impact of media work and their responsibility in working with information is also mentioned. Important term in this relation is "accountability". This chapter of information importance is endidng by finding of Czech Constitutional Court, where freedom of information and access to information prevail together with bringing transparency upon public agenda prevails over secret of person as a value. Then there is the anchor of the international definition of this legal institute. Setting right of information in universal Declaration and in frther charters and documents related to specific internatiobnal bodies therefore shows its importance in democratic society. The core work lays in the analysis of free access to information in the European Union and its institutions as well as national adjustment in individual Member States, focus in this area is mainly aimed to Czech Republic as a demonstrative expample. Basic legal context and summary of the laws are therefore described in a simple and concrise form in order to use that for the journalistic practice and use also for civic society, non-governmental organizations and laic public

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representatives. However it is simplified, basic overview brings a brief look at certain adjustments in two levels - at level of European Union institutions and on the other hand at Member State level. Every member state has its assumed links between international values of free access of information and specific national codes arangement. General statements, basic rules and also demonstrative rehearsal of exeptions to this rule together with legal remedies are also included in this work among other institutional coments and remarks. Chapter including arangement with sensitive and secret documents is laso included. These fact makes an EU law to information analysis. The work is based on inter-relations with the law, the European dimension of the issue of the right to information and last but not least its facing to a number of topical issues. Work offers many incentives for responsible work with information in order to increase the transparency of public activities by the applicants like media as a control element of democracy. It also provides short overview to this problematics for personal comparison between legal adjustment of free access to information among Member States herein represented by Czech Republic as well as look into transparency work within european institutions. Wide scale of literature and open resources also provides huge oportunity for further research in alanysis of european free access to information. Author sources many materials from fore czech media anayltics and journalist as well as from front legal officers at the European Data Protection Service office. Work includes also some crucial non-govermental efforts on free access of information and also points out some examples from practise, especially in Czech Repuezmblic framework. This work has an amtition to briefly sum up and show how is right to obtain information and free access to information solved and which ways of adjustment are existing within Europe. One of main aims is to provide a guide for applicants where to look and what to do, wheather they may use this tool for obtain information.

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THE OFFICIAL LANGUAGE IN THE ADMINISTRATIVE PROCEEDINGS

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Key words: Language; language law; administrative procedeings; administrative justice; minorities.

The aim of this paper is to examine conditions of the language in the administrative proceedings and in administrative justice, primarily in the Czech Republic and for comparison in some other countries. The language used by public administration (state and self governing) bodies is fundamental element of language law and administrative procedural law. Czech language as official language is embodied neither in the Constitution nor in any common act. Particularly for this reason, Code of Administrative Procedure may be regarded as key enactment of language law. General principles of language usage in the administrative proceedings were set in section 16.

Generally, administrative proceedings with foreigner or with member of minority are not carrying out regularly or commonly. Administrative proceedings can be divided into written and oral part. Czech language shall be used for internal communication of public administration bodies and predominately for communication between an administrative body and persons who are affected by the activities of an administrative body. Usage of foreign language in administrative proceedings is limited but not completely disallowed. Among foreign languages the Slovak language holds unique position because participants in the proceedings may also use this language for oral hearing and filings in writing. Code of Administrative Justice presumes dealing with fillings written in some foreign language (with the exception of Slovak language). These documents must be submitted by a participant in their original along with their officially certified Czech translation – at own expense. The Code sets language requirements for oral hearing. Participant in proceedings who declares that he or she does not speak Czech (or Slovak) language has right to hold an oral hearing with the help and the participation of an interpreter. In proceedings to deal with an application participant obtains an interpreter at his/her own expense. On the other hand, when public

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administration bodies act ex officio, costs of interpretation and translation share these bodies.

Exception to this rule is an administrative proceedings for granting international protection, on which is focused significant part of my paper. Right to free interpretation and translation for the whole duration of the proceedings was given to international protection seekers. Right to act in the proceedings in a foreign language is not limited only to mother tongue, whereas applicant can act in the language in which he or she is capable of communicating (not mother tongue or official language). Legal enactment of usage of only mother tongue could have caused lot of problems; for example obtaining qualified interpreter assuming that applicant's mother tongue is the language of exotic or in other way unusual. Right to claim free interpreter is key instrument of legal aid provided to applicants and it is guaranteed by state. Reason for this legal aid is the fact that international protection seekers faced serious difficulties in country of origin or last country of residence and often arrive on Czech territory without a sufficient amount of money and thus they would not be able to afford qualified interpreter. Another part of my paper is dealing with language rights of members of minorities traditionally and for a long time established in the territory of the Czech Republic. Language belongs among basic elements that forms nation and connects its members. Democratic and legally consistent state shall ensure to its citizens - members of minorities to adequately participate in proceedings. Without doubt, most speakers of minority languages also speak official language of state of their citizenship, but not all of them and if they do so, often without a sufficient level required for effective claiming their rights and for successful participations in proceedings. Although there is a minimum of such claims, Czech citizens have right to choose whether to use the language of their minority both in oral hearings and for written fillings, or to act in Czech language. In case, that respective administrative body has no officials speaking the minority's language, member of minority shall by himself obtain an interpreter, at the expense of administrative body.

Language aspects of other important alien laws, such as Citizenship Act and Act on Stays of foreigners, cannot be ignored.

The paper is further occupied by the language in administrative justice. The Code of Administrative Justice does not regulate aspects of foreign language usage. Legal regulation of this issue is contained in the Code of Civil Procedure. Under section 18 subsection 2, the administrative (regional in most cases) court shall appoint an interpreter to the participant of proceedings, whose mother tongue is other than Czech language, when such demand transpires.

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NEW ASPECTS OF CONSUMER INFORMATION IN THE EUROPEAN UNION

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Key words: Consumer information; European Commission's proposal; review of consumer directives.

In the European Union numerous directives guarantee protection for consumer rights. These rules cover the following subjects: doorstep selling, unfair contract terms, package travel, timeshare, distance selling, price indication, injunctions and consumer sales. Surveys (such as Eurobarometer Nr. 224 and Nr. 298) have shown that despite of common framed rules, consumers rarely take part in cross-border selling. The European Commission has already realized that common steps should be taken in order to enhance consumers' confidence. In 2008 the Commission launched its new proposal about consumer rights (COM)2008/614 final). It proposes merger of four directives on consumer protection, including directive 85/577/ECC on contracts negotiated away from business premises, directive 93/13/EEC on unfair terms in consumer contracts, directive 97/7/EC on distance contracts, directive 1999/44/EC on consumer sales and guarantees. Besides laying down uniform rules on common themes of the revised directives, the Commission also suggests switching minimum harmonization to maximum harmonization. Thus member states should adopt the same rules as laid down in the directive.

Consumers' right to be informed is one of the common subjects appeared in most of the consumer protection directives. The Commission states that establishment of a single regulation could serve better consumers' interests than "spread" rules. The proposal does not deal with the directive 2005/29/EC on unfair market practices (UCP directive), although it establishes regulation about obligation of enterprises to give information about their offered products. Conformity among the directives, revised by the Commission, and UCP directive should be achieved as well.

The Commission collected the basic information that should be provided for consumers in case of conclusion of sale or service contracts. The list contains those core characteristics of products that mainly affect consumer deci-

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sions. Therefore traders are obliged to inform consumers about for instance the arrangements for payment, delivery, performance, complaint handling policy; the existence of right of withdrawal; conditions of after-sales services and commercial guarantees. This list of information should be the part of the concluded contract as well. The European legislator will allow member states to determine effective legal instruments if traders breach information obligation. The proposal also set up specific information requirements for intermediaries. In case of off-premises and distance selling contracts traders should give further facts about for example the existence of code of conduct; the conditions and procedure for exercising right of withdrawal; address where consumes can send complaints if it differs from trader's geographical address. A standard form is annexed to the proposal that contains the main information consumers should receive how to exercise the right to withdraw.

The aim of Commission's proposal is to simplify, update the existing rules and summarize them into one, single directive. There is no doubt that the continuous review of consumer protection regulation in the European Union is necessary. Nevertheless, the European legislator is faced with new challenges generated by the technical development of 21st century. Minimum harmonization in the field of consumer law has led to divergent national provisions. Full harmonization of some common aspects, as a solution to the above mentioned problem, may increase both consumers' and traders' confidence. Clearly defined provisions serve the interests of fair traders as well because following the legal expectations will be easier. It should be also noted that this reviewing procedure involves only four major issues and leaves out the rest of consumer law directives. Consumers, before deciding purchase, are already provided with information by commercial instruments such as wide range of advertisements. Maybe it is worth dealing with the compliance of all directives consisting rules on requirements of reliable consumer information.

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THE IMPORTANCE OF INFORMATION ACCORDING TO THE RIGHT OF ASSEMBLY OR (ALIAS) EXTREMIST ASSEMBLY IN PRACTICE

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Key words: Right of assembly; extremism; extremist policy.

The importance of information according to the right of assembly (extremist assembly in practice)

The author's intention in the named tribute was to emphasize the importance and necessity of information, its legal aspects, accuracy and opportuneness in relationship to the right of assembly. The paper also aims at the very special location- the city of Brno, which has ever been one of the most important places in the Czech Republic within the context of extremism, extremist assemblies and the execution of this law itself. Another reason to accentuate this section of administrative law epecially in Brno was that the todays conferation for young lawyers also takes place in here.

It is pointed at various right- and left-wing extremist groups and their capability to realize the main targets of their defined policy. Comparison of the practice in the whole republic to that in Brno shows some interesting details that were also mentioned in this paper. It focuses at the preventive and repressive action of the local administration, clericals, police, the cooperation among them and the missing parts of administrative law according to the concerned right of assembly during the last seven years.

There are many crucial problems in the communication and cooperation in the czech judicial system, that were listed and named in this tribute and that accent the daily work of city-administration in Brno, preparedness of its clericals to solve the question which arise in the area of the right of assembly. One of the fundamental problems mentioned by the author is the legal term given to the clericals for making the final decision about permitting or prohibition of the suggested assembly. It is obvious that the correctness of any decision in this case always depends on the number of information, quality and the truthfulness of the given information, but also

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on the personal quality and competence of each clerical to act and decide in this short-time term.

The current situation in the field of legislation requires rapid changes and expansion of progressive methods, that could assist by the decision process of the administration and that would give to all the concerned persons a clear comprehensible instruction how to treat with the extremists, how to use and process information, how to avoid misunderstandings in the contact with any of those extremist groups and how to apply these solutions in the individual case.

To administer the right of assembly would demand many special measures, such as taking the experts to give a practical expression to each assembly or gathering, consult their opinions and put them into the main part of every decision's reasoning or to establish an institution staffed with many well-educated and occupational skilled persons, whose principal function would be to assist the clericals to solve these questions and work on improvement of the contemporary social situation according to the best available objective information in the field of extremist policy.

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INFORMATION IN COMMERCIAL PRACTICES ACCORDING THE HUNGARIAN LAW

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Key words: Commercial practices; consumer; consumer protection.

My research topic is the unfair competition. In this article I would like to have a look at the information in commercial practices, how the information and the misinformation is regulated in the Hungarian law, concerning consumer protection, trade, competition and advertising. In this short document I would like only highlight the most important laws.

Markets need confident consumers who can make informed choices from a wide range of goods and services at competitive prices. For achieving this goal the European Union adopted the 2005/29/EC Directive, which prohibits unfair commercial practices that harm consumers' economic interests. This will apply to commercial practices in all business sectors. The Directive aims to eliminate obstacles to the proper functioning of the internal market for consumers. The Unfair Commercial Practices Directive has two major consequences: it will harmonise unfair trading laws in all EU Member States; it will introduce a general prohibition on traders not to treat consumers unfairly.

The rules in the Directive were implemented in the Act XLVII of 2008 on unfair consumer practices to consumers. The Act establishes a prohibition on unfair business-to-consumer (B2C) commercial practices by introducing - a general duty on businesses not to trade unfairly with consumers, - specific categories of misleading actions and omissions, and aggressive commercial practices. The majority of commercial practices – which would be defined as unfair under the general prohibition – fall under two categories: these are either misleading (actions or omissions) and aggressive practices, - a short annex of 31 misleading and aggressive practices which will be unfair, and therefore prohibited, in all circumstances. These practices include: 'bait and switch' tactics, falsely claiming to be a signatory to a code of conduct; and creating the impression that the consumer cannot leave the premises until a contract is formed.

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The Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition prohibits the misleading of competitors in economic competition, so this Act regulates the misleading activities in the business-to-business relation (B2B) contrary to the Act XLVII of 2008. The following conduct shall be construed as misleading activity: the disclosure of untrue facts, the suppression of the goods' non-conformity, where a purchase is falsely purported as an extraordinary bargain etc.

The Act XLVIII of 2008 on Business Advertising Activity regulates the misleading and comparative advertisements in the business-to-business relation (B2B). According to the Act it is forbidden to publish misleading advertisements. For the purpose of defining a misleading advertisement the following items shall be taken into consideration: general characteristics of the merchandise, the disposition of the advertiser, the price of the merchandise etc. Besides comparative advertising may be published if it satisfies the conditions listed in the Act. (i.e.: not misleading, no unfair advantage etc)

The Act CLV of 1997 on Consumer Protection states rules regarding the proper information to consumers which ease the access to information about goods. Certain defined goods may only be placed on the market with a user's manual and instructions attached. The user's manual and instructions shall provide clear, understandable information to consumers on the use, application, preservation and handling of the goods. When placing goods on the market distributors shall inform consumers in writing regarding the sale price and the unit price, or the service fee.

The Act CLXIV of 2005 on Trade defines special information obligation for traders. For example: in connection with trading activities conducted away from a commercial establishment, the trader shall inform consumers in accordance with the statutory provisions applicable to the activity, form or mode of commerce etc., the trader shall inform consumers of the business hours of the commercial establishment and of any subsequent changes.

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INFORMATION IN LAW IN RUSSIA NOWADAYS

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Key words: Information; Law; Russia.

There is quite a big influence of legal sphere on information processes in modern society. First of all this is due to growing impact of information technologies in all areas of our life as well as globalization of information technologies. Electronic documents and even actions of some internet users may be under legal control nowadays. This is obvious that law has to be up-to-date with current technological progress. In this report author considers mechanisms that regulate information processes in Russian Federation, gives commentary on some laws, decrees and other legal documents regulating that area.

Amongst them author would like to mark out the most important documents:

- Presidents decree from 28th june 966 1993 "On the concept of legal informatization of Russia". The main targets for informatization of Russian Federation have been defined in this document.

- Federal law on information, information technologies and data protection. This law defines principles used as basis of legal regulation of relations that arise in area of information, information technologies and data protection. Definition of information as an object of legal relations is given in this document. A degree of government intervention into this area is determined as well.

Author has considered definitions of electronic document and electronic document creator.

Every epoch of informational relations creates its own legal norms and legal institutes. The author believes that many challenges of modern society closely related to the electronic environment of social communication. They demand adequate answers from modern legal theory and law practise. One of this answers is informational law followed in line with global trends.

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OBLIGATION TO PUBLISH A SECURITY PROSPECTUS

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Key words: Obligation; publish; security prospectus; security; investment instrument; public offering; registration document; issuer.

The aim of this paper is to analyze the ogligation to publish a security prospectus in the view of the financial law regulation on the capital market. Publishing a security prospectus is main obligation connected with public offer of securities and creates the capital market more suitable for customers. Security prospectus must be completely matter-of-fact on the contrary to marketing documents that does not have so strict regulation and does not have to be published like a prospectus. We will focus mainly on the legal aspects of the area although there are also economic and marketing aspects of prospectuses which are very important for activities with public offering of securities.

Public offering of securities is most often executed in the form of securities quotation on regulated market with investments instruments (practically it means on the stock exchange). Although there are other possibilities, but every time there is very strict public law regulation. Public offer of securities means every notification to big group of people containing information on offered securities and required preconditions for their acquiring sufficient for investor to make decision whether to buy or to go stagging these securities.

At latest at the beginning of the public offering the creating and publishing of so called security prospectus that is a standardized document containing all information that should taken into advice by the investor during his or her investment decision making. The condition for prospectus publishing is its approval by the Czech National Bank.

Obligation to publish a security prospectus is not applicable to offering securities strictly aimed only at the qualified investors (banks, investments firms, financial institutions, legal persons fulfilling at least two criteria out of three – actives size, turnover size and employees number), aimed at limited number of subjects, limited by the size of the investment or face value, offered to existing shareholders or employees without charge, offered in connection

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with takeover proposal in exchange for other securities related to company merger, dispensed as a form of dividend and other similar cases. All these cases are called safe harbours by theory.

The prospectus must contain all information classified as indispensable for investors in order to make informed assessment of offered security and rights connected to it, property and obligations, financial standing, profit and losses, expected future development of the enterprise and financial situation of the issuer. It is also recommended to incorporate information on leading persons of the issuer. It must be enunciated clearly and must allow easy analysis even to laical investors.

It comprises of three essential parts: a) registration document containing information on the issuer of the security, b) certificate of security provides information on security itself, c) recapitulation of the project is a synoptic certificate that should serve as a basic source of the information for non-professional investors.

The prospectus must be published without unnecessary postponement, usually using internet at webpages of issuer and investment firm. Among other ways we may find statewide daily journal, brochure, webpages of the regulated market organizer etc.

The main source of prospectus regulation in the Czech Republic is the Act No. 256/2004 Sb., on Business Undertakings on the Capital Market, as amended. On the European Community level it is the Prospectus Directive 2003/71/EC, as amended, which was implemented into states' national legal systems. In the Czech Republic the amendment was done by the Act No. 56/2006 Sb. Another important amendment came with the implementation of MiFID directive that was handled by the Act No. 230/2008 Sb.

Inside the European Community the prospectus is bound to the state where it was approved by the body of supervision on capital market and usable as such in that state. When the issuer intends to make a public offering in other country he may request the certificate of prospectus approval from the Czech National Bank which is then sent to the body of capital market supervision in the given country in a translation (provided by the issuer or the subsidiary subject) and then the prospectus is deemed approved in that foreign state and does not have be approved once more.

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THE RIGHT TO INFORMATION ON THE ACTIVITIES OF PUBLIC ADMINISTRATION - COMMENTS ON THE BACKGROUND OF THE POLISH LEGAL SOLUTIONS

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Key words: The right to information; activities of public administration; openness of public authorieties; basic rights.

The right to information on the activities of public administration - comments on the background of the Polish legal solutions

The right to information directly related to the principle of openness of public authorities activities, is one of the fundamental rights that would allow a wide use of social control over the organs of authorities and create a civil society. It is also important due to individual interests of citizens, in connection with exercising their subjective rights. The Republic of Poland in the art. 61 of the Constitution bestows the public right to obtain information on the activities of organs of public authority as well as persons discharging public functions. Detailed way of exercising the right to information is contained in a number of laws. The right to information is of a special importance in the relationship between an individual and a public administration body. The essential value for exercising the right to information, and therefore to increase the level and quality of governance, have the guarantees and legal instruments to enabling individuals to exercise their rights, as well as language and the way they are given. On the one hand, a wide range of entities belonging to the realm of public administration responsible for provision of information and a broad objective scope determining what public information is could indicate that these guarantees are complete and effectively safeguard the rights of individuals. In addition, specific institutions regulated by law, such as in particular: the binding official interpretation relating to tax obligations, official interpretation of public contribution connected with a business run and a rule guaranteed in administrative proceedings to inform the parties of the case on facts and legal

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issues vital for its settlement – make an individual's position comfortable and stable. However, there shouldn't be forgotten far-reaching restrictions on access to information due to protection of secret information and other secrets protected by law, including those on grounds of individual privacy and entrepreneur confidentiality. A problem is the quality of information given, which refers to the language that officials use (frequent use of official jargon), as well as the method the information is formulated (not applicable in situations where it has been explicitly defined in law). Another important factor limiting the exercising of an individual's subjective rights is the range of guarantee and means of legal protection. The fact is that a person whose request for public information was denied or whose submission for public information was discontinued, is explicitly entitled to legal remedies in the course of administrative proceedings as well as control of the contested decision exercised by administrative courts or common court of law. But the current difficulties are related to the phenomenon of an organ inactivity (so-called authorities' silence). This is a problem causing lively discussions both in the doctrine of law and jurisdiction- which is manifested primarily in conflicting judgments of administrative courts. These contradictions relate to the question of whether an action against inactivity of an organ obligated to give information, brought before the regional administrative court, provided for by the administrative proceedings law, is granted or not. And if so, under what conditions. Another controversial issue concerns the provision of information within the time much longer than required by law, which result in the fact that obtaining such information is no longer attractive, or even in extreme cases, causes damage. The abovementioned issues have not been precisely regulated by the legislature, require system analysis and interpretation with regard to the basic principles of operation of the public administration, including civil liability rules for so-called delict of public authority.

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RELEASING OF WIRETAPPING RECORDS IN MASS MEDIA

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Key words: Wiretapping records; media law; freedom of press.

Author focuses on changes which have been brought with Act No 52/2009 Sb. from the perspective of the constitutional law. Patricularly journalists are very unsatisfied with this act and are affraid of chilling effect of the act. In author's opinion most of these objections are unjustified.

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REPORTING DUTIES OF COLLECTIVE INVESTMENT SUBJECTS TOWARDS THE CZECH NATIONAL BANK

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Key words: Annual report; collective investment funds; Czech National Bank; investment company; management company; receiving data; reporting duty; reports; statute; unit trust.

First part of the paper is devoted to the collective investment in general and describes shortly the collective investment subjects - collective investment as whole forms important part of the capital market, where are daily traded and settled huge quantities of securities contracts, notably purchases and repurchases of investment certificates and shares. Subjects issuing these securities under the collective investment schemes are collective investment funds - investment companies and unit trusts. The main difference between collective investment funds is in juridical subjectivity - investment company is a legal entity (joint-stock company), which met special legal requirements and which issues shares, unit trust is not a legal entity, it is the aggregate of assets belonging to all holders of unit certificates of the unit trust. Other subjects of collective investment schemes are managing companies which manages assets in unit trust and may manage asset of investment company.

The second part of the paper introduces the fundamental legal regulation and presents briefly entities of supervision - the area of collective investment schemes is regulated on one hand by the CIS Act enacted by legislators, on the other hand by implementing regulation and other provisions stipulated by the Czech National Bank as an entity of the unified supervision on financial markets. The supervision over collective investment could be divided into supervision performed by private entities and supervision performed by the public entity. In the concrete is the supervision realized in the first line by the depository of the collective investment funds (the bank with special entitlement on which were transferred authorities of the state), the second line of the supervision realized by the Czech National Bank as an entity of the unified supervision on financial markets and is connected on the first line.

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Further the paper deal with the main topic, which are information provided by the collective investment subject to the Czech National Bank - in order to pursue high-quality supervision the Czech National Bank needs to get as much necessary information from the collective investment subjects as possible. This information could be irregular, which means that is not sure if the situation which is the information about will occur, like information about establishment of an organizational unit of investment company's enterprise, information about suspension of issuing or repurchasing of unit certificates of unit trust etc.) or regular, which means that exists requirement to get some information periodically – weekly, monthly, twice a year, every year etc. (information on the structure of assets of a collective investment fund, semi-annual report, annual report, etc.). The regular information has a form of a report.

Other part of the paper is focused on detailed reports, on their construction and technical procedure of their transfer to the Czech National Bank – the primary regulation on reporting duties of a collective investment subject is settled by the ninth part of the CIS Act, more detailed information can be found in Decree No. 603/2006 Coll., on information duties of a collective investment funds a managment copany, as amended, which elaborately describes all essential parts of each report required by the Czech National Bank and among other it states number to each particular report and related code of data file, which should obliged subject send via automatic collection data system.

In the final part of the paper the author pay the attention to the problems related to the reporting duties and highlights some interesting points of view of the Czech National Bank.

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THE PROCESS OF PROVIDING INFORMATION

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Key words: Right to information; administrative courts; fiction of negative decision; complaint.

In our contribution we decided to pay particular site of providing information and access to them. Such legislation is contained in the sources (in particular) of Administrative Law. This is due to the fact it is primarily public administration, with which the issue of providing information and access to them is most connected. It obviously holds that access to information is an important guarantee of the legality of a control mechanism not only in public administration, but in a democratic rule of law at all.

Given above, we focused on the core rules for the selected region that is a Act No. 106/1999 Col., on the free access to information, as amended. The Act represents a fundamental procedural arrangements and legal framework for the provision of information, unless they not fall under other laws. This is for example Act No. 123/1998 Coll., on the right to environmental information, as amended. Latter Act we used for the purpose of horizontal comparison. It is interesting to follow the development path of both laws. They were originally designed and were built on the same foundations and similar institutes. The contribution we examined the differences in the two laws. The question that needs to be asked then is, how meaningful is that the information about the environment is subject to specific law.

In addition to the two laws, there are a number of other regulations under which the procedure in cases where the applicant is seeking certain information. It is always necessary to examine whether the regulation is so complex, to avoid the use of such laws. Fulfill this condition represents such as access to administrative file or the provision of data from cadastre.

Due to Act No. 61/2006 Coll. occured the Act No. 106/1999 Coll. the relatively significant changes. Therefore the case theories and the case law adopted in relation to this Act may continue, which is somewhat paradoxical, but serve as an inspiration for the appliacation of Act No. 123/1999 Coll.

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The Act No. 106/1999 Coll. as a result of the amendment has chosen a somewhat different approach and case law only creates.

The issue of free access to information has legal dimension. We therefore base the definition constitutional and international. The basis is, therefore, the Charter of Fundamental Rights and Freedoms and in particular some of the Council of Europe documents. In all cases, we can conclude that the right to information can get into conflict with other guaranted rights, in particular the right to privacy nad personal data. It is therefore be treated so as to guarantee both the requirement of openness in public administration, while respecting other constitutionally guaranteed public subjective rights.

We deal with the procedural regulation of providing information, which is own core and central part of our contribution. Thoroughly therefore we focuse on institutes, which are both referred to the law significant. The first is fiction negative decision and the second is complaint.

Mentioned was competent bodies in this field. These are called "mandatory subjects" because they have legally imposed obligation information either active or pasive form of publish and make available. Generally the issue of providing information and access to information is based on the principle to provide everything that is not explicitly excluded. Mandatory subjects are obliged by law to provide the information requested, unless there are set of exemptions where it will not be provided. In the case of refusal providing the information requested is appropriate use of either the institute fictive negative decision or complaint.

It is mentioned the use of remedies and judicail review. Our findings is complemented and confronted with the legal opinions of literature, the conclusions contained in the relevant case law and by practical experience. We were particularly inspired by the jurisprudence of Supreme Administrative Court and Constitutional Court.

The aim of our contribution was to analyze the procedural aspects and procedural arrangements for the provision (refusal) of information. Procedural aspects take on the importance when the requested information is not properly provided.

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THE RIGHT TO INFORMATION IN THE TAX PROCEEDINGS

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Key words: Tax proceedings; acces to the files; tax audit; non public part of the tax file; advice duty.

The aim of the article is to search the influence of the Right to Information on the tax proceedings. The Right to Information is the basic human right concretely contained in the part of Political Rights of the Charter of Fundamentals Rights and Freedoms. This right is contained in the Tax Administration Act (Act no. 337/1992 Coll) quite sporadically. For that reason it is necessary to analyse some specific tax proceedings institutes and try to find if the Right to Information is applicated in general. It is possible to divide the Right to Information into two parts (for purposes of the article). First there is the right of a person to be informed about information which is collected by the state about this person. Secondly there is the duty of the authority to inform a person about its procedural rights. This right can be restricted too. Specially there is the significant role of the Principle of the Secrecy and Closed Proceedings in the tax proceedings. Authors of the article focused their attention on the area of the advice duty, the access to the files, the official language, the final report of the tax audit, implied assessment of the tax basis and on the Right to Information at the appeal instance. Authors tried to find out if the restriction of the Right to Information is legal and previously mentioned institutes of the tax proceedings are applicated correctly.

Specific parts of the article:

THE ADVICE DUTY

This part of the article is focused on the advice duty of the administrative body during the tax proceedings. There is no common regulation of the advice duty in the Tax Administration Act. That is why it depends on the discretion of the administrative body how to implement the Right to Information in the tax proceedings.

THE ACCESS TO THE FILES

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Connected with the main topic (the Right to Information) seems to be the most important institute for the realization of this right in the tax proceedings - the legal institute of the access to the files.

Generaly in the tax proceedings is a tax file divided into two main parts - the public and nonpublic part. With the Right of a tax payer to Information is connected a very important question, if a tax payer could have unlimited Right of the access to the files. In the possibility of accesing to the public part of a tax file is answer relatively easy, but in the case of the accessing to the nonpublic part of the file we could find some practical problems. The main part of the issue is concerned on the topic of access to tax files and to practical problems of the limitation of the Right to Information of a tax payer when he requiring information from the nonpublic part of the tax file. In this issue we could find the part, which is concerned on the correction and limitation of the Right to Information through the liability of the tax secret. Quite extensive part of this issue is concerned on the judicial opinion, which allowed the Right of tax payer to Obligatory Access into a Report of a Local Authority used for the appeal instance.

Almostly the last part of this issue is concerned on the Right of Guarantor to the Access to the File of a tax payer (in this case a tax debtor) in connection with the waranty of guarantor. The last part of this issue is concerned on the Right to Information in connection with assessment of the tax base using the implements.

THE OFFICIAL LANGUAGE This topic is concerned on the Right of tax payers to Act in Native Language in the tax proceedings. Is it also mentioned the Right to Interpreter and Carry of Costs.

FINAL REPORT OF TAX AUDIT - RIGHT TO INFORMATION CONNECTED WITH THE RESULTS OF THIS PROCEEDINGS

This part of the issue is concerned on the Right of a tax payer to Information during tax audits. There are named specific rights in the tax audit and the main part is concerned on the stage of ending of the tax audit. That means the Right of tax payer to Get Summary of Conclusions of the tax Audit, and the Right to Discuss the Report of Tax Audit. There are also mentioned possibilities, that should occur during the stage of discussing the final report, in connection with inaction of a tax payer.

IMPLIED ASSESSMENT OF TAX BASES

The specific institute of the tax law, that´s means assessment of tax liability in accordance with the tax return. The exclusivity of this institute is based on the Principle of Economy of the Tax Proceedings. The decision of assessment of the tax bases is not issued obligatory.

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THE DELIVERY OF COMPULSORY PAYMENT ORDER DE LEGE LATA AND DE LEGE FERENDA

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Key words: Civil procedure code; compulsory payment order; summary procedure; delivery; service; affidavit of service; delivery in ones own hands; substituted service; legal fiction of delivery; delivery by public data network; data box; electronisation of justice.

Introduction The paper is devoted to the issue of delivery of a compulsory payment order as the constant weakness of summary procedure. Within the scope of the valid legal regulation, the accent is put on the issues which cause interpretative difficulties in the practice of law. The second part of the report is focused on the legal regulation de lege ferenda in terms of the latest amendment of Civil Procedure Code whereof aim would be acceleration, effectiveness and avoiding all delays in civil procedure therefore in the summary procedure.

1. The legal de lege lata Both general and special rules of delivering regulated in Civil Procedure Code("CPC";) are used for the delivering of a compulsory payment order. Thus we have to apply not only provisions §§45 to 50i but also §§172 to 173 CPC. The compulsory payment order won't be issued if it is delivered abroad. In addition in accordance with the provision §173 sub. 1 the compulsory payment order must be delivered to one's own hands only without substituted service. It's inadmissible to deliver the compulsory payment order by its deposition at the post-office or the court in compliance with §46 sub. 3 and §47 sub. 3 CPC. Not even application of the legal fiction of delivery is out of the question (§46 and §47 sub. 5, 6 CPC). The delivery by the public data network is considered to be the delivery in one's own hands in compliance to the valid legal regulation. Whereas the compulsory payment order is issued without hearing of the defendant, then is obvious, that the conditions mentioned in §45f sub. 1 CPC won't be fulfilled. If the compulsory payment order is delivered to more defendants and fails to deliver to only one of them, the court will cancelled it in its entirety, continue in the initiated proceeding and decide about prosecuted claims. Thereinbefore outlined facts result in the delays in summary procedure and

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thus this institute of law doesn't perform the purpose of speedy and effective extortion of undisputed pecuniary claims. The paper also deals with the actual significance of affidavit of service, question of compliance with the conditions of non-delivery of the compulsory payment order and delivery to the plaintiff.

2. The legal regulation de lege ferenda At the beginning of the year 2009 Civil Procedure Code has been amended by the Act No. 7/2009 Coll. which would come into effect from 1st July 2009 and include new legal regulation of the delivery system. In connection with electronisation of justice the amendment classifies newly the delivery by public data network to a data box registered in accordance with the Act No. 300/2008 Coll. The data boxes will be set up and administered by the Ministry of interior. The data boxes of individuals, sole traders and artificial persons not mentioned in §5 sub. 1 of the Act. No. 300/2008 Coll. will be set up free of charge by request within 3 days. Other artificial persons, public authorities, regional or local authorities will have the data boxes set up tacitly immediately after the formation. The compulsory payment order will be possible to deliver to a data box and the crucial moment will be the login by entitled person. If this person doesn't login the data box within 10 days, the document is considered to be delivered by the last day of the ten day's term (legal fiction); it's not applied in case other legal regulations exclude the substituted service. This implies that legal fiction in the summary procedure cannot be applicable nor in this case. In my opinion the number of subjects having a data box won't be high. Therefore the question is whether or not the amendment leads to the acceleration and effectiveness of the summary procedure itself.

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INTERNATIONAL COOPERATION IN TAX ADMINISTRATION - PRACTICAL ASPECTS

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Key words: Praktická hlediska výměny informací; povinnosti výměny informací; omezení výměny informací.

International cooperation in the administration of taxes is one of effective means to combat international tax avoidance and tax evasion. The main objective of the OECD on the tax issue is the cooperation of tax authorities in the fight against tax fraud. Exchange of information between the foreign tax administrations contribute to finding a large amount of tax bodies, tax administration by itself has not been able to determine, without external assistance. International exchange of information is possible only if the tax administration initiated the relevant tax proceedings. In this country the tax proceeds through domestic legislation, but if it is a question directed to the border of our state, the Council Directive 77/799/EEC on the exchange of information.

Responsibilities and restrictions of information exchange

The law on international assistance in the administration of taxes to remember a situation where the exchange of information may be excluded. In this case, the competent authority to consider whether or not to provide information, not to his duties. The competent authority for refusing to provide information in the case of the Ministry of Finance only.

In particular the following situations:

o In the absence of reciprocity, the other State. The requested State may refuse to provide information if the requesting State is unable to similar information, the requested State to provide reciprocal. Contracting State can not take advantage of the tax system of another Contracting State if they are wider than its own system. The requested State is not obliged to go beyond its own law or administrative practice. The requirement of reciprocity also implies a certain balance in the range and volume of information provided.

o In the event of danger, discovery commercial or professional secret. The requested State shall be obliged to provide information, where it would lead

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to disclosure of commercial, industrial or professional secrets. For taxpayers who are engaged in trade or other business, is of considerable importance to its trade secrets revealed some of their competitors. Therefore, there is no obligation to give information which would reveal the commercial, industrial or professional practice. It is the competent authority to determine whether the "sensitive" information will be forwarded or not a local tax office should identify what data might be "sensitive". The usual duty to preserve the confidentiality of tax information in all countries subject to trade secrets. But in general does not have a taxpayer or a third party the right to refuse to provide such information to the Tax Authority. With similar problems may be encountered also some specific professions - (doctors, lawyers) in the request for information, which relate to a particular client because the information subject to secrecy in accordance with special legislation.

o If the disclosure of information was contrary to the interests of state and public policy.

o In the event that the State has not exhausted its own usual sources of information.

o In the event that the requesting State is unable to ensure adequate secrecy of the information provided. The reason for the refusal to provide information may be insufficient treatment obligation not to disclose the requesting State, respectively benevolent legislation dealing with information obtained in the tax proceedings in the requesting State as opposed to modifying the existing in the State.

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TRANSLATION OF LEGAL TEXTS

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Key words: Translation; legal texts; translating contracts.

This paper deals with the questions of legal language, legal translation and conceptual equivalence. As the internationalisation of society has brought closer contacts among foreign countries in various aspects, translation of various legal documents becomes a relevant part of an everyday legal life. The European Union as well as the states themselves produce a large amount of legislation with which the companies and individuals have to deal. Still, an important part of legal relationships is carried out by means of 'private' regulations set by bi- or multi-lateral contracts by the individuals themselves (within a given legal context). Therefore, translating these contracts becomes a big issue and the main activity of numerous translation agencies.

Nowadays, English is the Latin of today. It is the main language of international trade and commerce. It is not only the language of contracts when one of their parties comes from an English-speaking environment but even when no native English-speaking party is involved. Although in certain cases English serves as the 'neutral' language of legal agreements, the general understanding of English is not at such a level that they would not need to be translated to people's mother tongues. Apart from that, legal English and ordinary English are not identical languages (Gubby 2007, 9) and the mastery of ordinary English does not mean a mastery of legal English. Therefore, to communicate properly the rights and obligations set in a contract is crucial.

This paper shortly comments on the most problematic points arising when translating a contract from Czech into English and vice versa. It focuses on the problems of translation of legal concepts and it tries to specify basic requirements every truly competent legal translator should fulfil. To step away from the dry theory, reference is made to an experiment conducted for the purpose of writing my BA thesis, focusing solely on the translation of contracts. Examples of actual translational solutions are given and commented on; and the experimental hypotheses are analyzed.

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RIGHT TO INFORMATION AS AN INSTRUMENT OF CHICANERY

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Key words: Right to information; personal data protection; chicanery; free access to information.

Right to information can be executed in various ways, as a duty vested in specified subjects to disclose particular information, or as the right to observe the files kept by these subjects, and/or a duty to provide information on demand made by an approved subject.

The right to apply for information and corresponding duty to process such applications and produce and provide the required information may actually be to a certain extent overused or in fact abused. In terms of chicanery, the purpose of submitting such applications is not to get the required information but "only" have the liable subject process and deal with the applications in question. Practically, such chicanery may result in consequences similar to those which the town of Šimanov in the region of Vysočina must have faced. In the said town, one applicant chronically kept submitting so many applications for information that he paralyzed all operations in the town; this resulted in resignation of the whole board of representatives and the town has had to be governed by an appointed town administrator.

The abuse of the right to information is a newly occuring phenomenon. Some applicants demand information not because of the information itself but because they intend to substantially increase the amount of work carried out by the office. However, the irony is that there are two legal instuments which can be applied in the given context in the Czech Republic. To wit, these are the Act No. 106/1999 Coll., on free access to information, and the Act No. 101/2000 Coll., on the protection of personal data. The majority of the said chronic complainers/applicants hassle the liable subjects utilizing the provisions of the Act on Free Access to Information, whereas using the right to information included in the Section 12 of the Act No. 101/2000 Coll., on the protection of personal data, would be more convenient and effective.

The problem of the whole legal regulation regarding the provision of information on demand is how to prevent and avoid the abuse of law admin-

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istration in terms of chicanery for this is something the Czech legislation is not capable of.

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AGGRIEVED PARTY AND THE RIGHT TO INFORMATION ABOUT CRIMINAL PROCEEDINGS

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Key words: Aggrieved party; criminal proceedings; information.

The paper deals with possibilities of aggrieved party to gain information about criminal proceedings in Czech Republic. First of all, I would like to introduce and briefly describe the new concept of modern criminal policy called restorative justice developed in countries with common law system and its possibility to be applied in Czech criminal law. Restorative justice focuses on victims of crimes and finds the solution of criminal cases in rehabilitation of victims and reparation of damages rather then punishing offenders.

To fulfill the idea of rehabilitation of victims and reparation of damages, the victims or the aggrieved parties must be informed about their rights in criminal proceedings and details of their criminal cases. It is impossible to claim their rights for reparation and rehabilitation effectively without this information.

The main goal of the paper is to describe the position of aggrieved parties in the criminal proceedings, particularly in relation to their rights to information about criminal proceedings, as we can find in Czech Criminal procedure code, as well as to find out if the current legislation in this field is sufficient or not.

At the beginning of the excursus to the field of Czech criminal legislation mentioned above, it is necessary to answer the question, who is to be considered as an aggrieved party in the Czech criminal law and briefly describe other rights of aggrieved parties. The Czech criminal procedure code defines aggrieved party as a person who suffered bodily harm, damage to property, moral or other damage as a result of a criminal offense. As to this definition the most important right of the aggrieved party in Czech criminal law is to claim damages from the accused. In respect of damage caused by a criminal offense shall also have the right to submit a motion asking the court to impose, in its sentencing judgment, the accused a duty to compensate such damage.

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This basic and most important right of the aggrieved party could be effectively claimed and granted, the aggrieved party needs to have all the relevant information about the criminal case. The Czech criminal procedure code says only, that the bodies active in criminal proceedings shall advise the injured of his rights and enable their full exercise. As to this brief article of the Czech criminal procedure code, the next part of the paper presents several arguments to explain why the legislation related to right of aggrieved party to information about criminal proceedings should be considered insufficient.

The following part of the paper deals with other rights of aggrieved parties mentioned in the Czech criminal procedure code, e.g. the right access to the files, the right to give an opinion to the matter, the right to participate in the main hearing and open court hearing, the right to supplement the evidence, the right to have a closing speech and the right to appeal. In certain cases the aggrieved praty also has the right to give his consent with criminal prosecution. Agrrieved may also choose a representative.

This paper will also discus a very important right of the aggrieved party to receive or claim information about release of accused or convicted persons in a given criminal proceedings, if the body active in criminal procedure finds out, that aggrieved is in danger

The next part deals with potential possibilities of further development of the legislation related to aggrieved parties, particularly with their right to information about criminal proceedings.

The last chapter represents a brief summary of alternative solution of criminal acts in representative foreign legislation.

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EXCHANGE OF INFORMATION IN THE DIRECT TAXATION POLICY OF THE EU MEMBER STATE

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Key words: Exchange of information; administrative assistance; direct taxation; taxation policy; European Union; bank secrecy.

This paper deals with the exchange of information which can be considered as a basic element of the mutual assistance in tax matters. Sharing information between tax authorities represents one of the possible strategies how to deal with impacts of cross border operations on the markets and financial interests of the countries involved. The other option for each single state is to conduct unilateral measures to ensure the objectives of domestic tax policy. Than the double taxation might be difficult to solve when there is lack of national tax policies coordination.

In the paper the specific conditions given by the membership in the EU are examined. Exchange of information attains particular importance within the EU, because the Member States are not fully free when designing their national tax systems. They have to follow the harmonized rules, avoid restrictions on fundamental freedoms and respect the principle of non-discrimination. These conditions make it more difficult for one single member state to manage its national taxation system and raise an adequate level of revenues. Therefore the system of mutual assistance in tax matters has been developed within the EU. Nevertheless, further development of EU assistance system seems to be necessary. Especially sufficient means of combating cross-border tax fraud and evasion, which will not have adverse effect on the further integration of markets and will not bring excessive administrative costs, are to be sought.

In this paper, there are three specific elements of the assistance examined in particular. Firstly, limits on the exchange of information and on administrative capacity of the member state providing the assistance? Secondly, limits on the exchange of information according to treaty relations of the of the member state providing assistance? And thirdly, limits on the exchange of information according to common rules on the EU level. It is argued that the basic coherence among these elements is desirable. Therefore the

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attention is devoted to the proposals of the Community legislation in the respective field.

According to the Commission's plans these proposals shall replace current EU legislation, which cover exchange of information i.e. the "Mutual Assistance" Directive (77/799/EEC), than the Directive on recovery of tax claims (2008/55/EC) Savings Taxation Directive (2003/48/EC). These new legal instruments shall be complemented with the new approach to the relationships to non-EU member countries in order to create broader and more coherent level playing field for economic relations. New elements introduced by these proposals may also evoke some indirect implications for national tax systems, therefore they are examined further.

There are several new elements aimed at increasing of efficiency of information exchange itself e.g. use of forms, electronic communication, improvement of language regime, compulsory time framework or automatic exchange of information. Some other elements should strengthen the capacity of tax authorities when accomplishing the tasks at national level e.g. simultaneous controls, presence of foreign officials, sharing experience, feedback obligation, disclosure of information for other than tax purposes. Other new principles shall remove some existing obstacles. In accordance with the OECD Model Tax Convention standards, the member states will be prevented from refusing of provision the information based on bank secrecy or lack of domestic tax interest or from refusing to conduct administrative enquiry on request. As regards to the relations with non-EU countries it is prescribed the compulsory sharing of information from outside the EU. These information can than be circulated within the EU which might be considered as creation of free movement of tax information area.

These new elements are analysed in the presented paper and new principles and standards are identified. Then the implications for the national tax policy are assessed in the foreseen structure. On the grounds of this, the classification of information and instruments of their exchange is presented, which might help to define the response within the national legislation.

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INFORMATION DISCLOSURE

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Key words: Act No. 106/1999 Coll. on Free Access to Information; right to information; providing information upon request; information disclosure; manner allowing remote access.

Act No. 106/1999 Coll., on Free Access to Information, as amended (hereinafter the "Free Access to Information Act"), implemented Article 17 paragraph 1, 2, 4 and 5 of the Charter of Fundamental Rights and Freedoms and fulfilled constitutionally enshrined right to information.

Free Access to Information Act introduced from 1. 1. 2000 into the Czech legal order two forms of providing information, that is providing information upon request, in the scientific literature also referred as passive providing of information, and providing of information through information disclosure (so called the active providing of information) .

The first type of providing of information is in the Czech literature, and particularly in the case law of the Czech administrative courts in relation to the specific application of the relevant provisions of Free Access to Information Act, given the relevant attention. In my opinion the latter form of providing of information, which in the recent years mainly due to European Union Law has gone through several significant changes, is not given relevant attention by the individual authors. I have therefore focused in my contribution on this form of providing information, i.e. providing of information through disclosure.

The provisions of Free Access to Information Act, which are dedicated to the providing of information through their disclosure, are not numerous. The list of these provisions, fails if, introductory provisions defining for example basic terms in the sphere of providing of information, is substantially reduced to the provision of § 4 and § 5 of the Free Access to Information Act. This contribution therefore deals, in particular with those provisions of Free Access to Information Act.

First of all, the text brings the individual area of information that the competent subject (body) is obliged to disclose at its permanent seat and in

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its bureau in a location that is generally available. Those information basically concern the method of establishing of the competent body, including the conditions and principles under which it operates; description of its organizational structure; review of the most important legislation under which the competent subject acts and decides. Furthermore, this includes, for example, legislation issued within the scope of the competent subject, and the lists of the main documents, namely of the conceptual, strategic and programmatic nature. Some of this information is the competent subject obliged not only to provide by the disclosure, but also allow their duplication.

In addition to the area of information provided, this contribution also deals with the various modes of information disclosure (publication). Through those modes is reflected the growing influence of information and communication technologies and the constant evolution in this area. In this context, appears in Free Access to Information Act the obligation of the competent body to disclose certain area of information also by the manner allowing remote access, i. e. mainly through the Internet sources.

Given the fact that the issue of providing of information attracts the attention of the European Communities, this contribution reflects the changes in the European Union Law concerning the free access to information particularly in relation to the European Parliament and Council Directive 2003/98/EC of 17. 11. 2003, on the reuse of public sector information.

The aim of the contribution is to outline in the broad the issue of providing of information and its disclosure, so it may be understood as a basis for further scientific studies in this sphere.

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DIRECT APPLICABILITY OF MIFID DIRECTIVE

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Key words: Directive implementation; direct applicability of directive; finacial instruments; financial market of the EU.

Currently many Polish enterprises is contended with problems referring to execution of financial commitments deriving from contracts with banks. These agreements have concerned derivatives and have been signed due to many reasons. Firstly, having regard high exchange rate of Polish zloty to main foreign currencies (euro, dollar) in the half of 2008, Polish exporters securing the profitability of goods production, were using currency options mainly based on zloty exchange rate to euro. Secondly, increasing exchange rate of zloty induced to taking actions with typically speculative nature to achieve high profits. In these situations there were using financial instruments named as CIRS (Currency Interest Rate Swap).

In the second half of 2008 exchange rate of zloty began to drop rapidly, what changed financial conditions of companies radically, which had drew up mentioned contracts. Commitments deriving from them caused significant financial loses and the problem has been so crucial that event Polish government has engaged itself in reaching the solution. There have been appeared many conceptions of solution and one of them has been calling into question the validity of contracts with regard to misleading investors by the insufficient information or lack of it on risk connected with these financial instruments.

In Community law there have been established provisions which main subject is to protect private investors position in scope of risk investment during conclusion of such transactions. Crucial act here is Directive no 2004/39/EC named as MIFiD (Markets in Financial Instruments Directive), which constitutes particularly in article 19 informative duties of investment companies (including banks) to their clients. It seems that in many cases described above, situations would not have been appeared if directive had been implemented into internal legal order and what has not been made by Polish legislative bodies yet.

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In this reason there is appear a question, if and in what scope provisions of the directive may be directly applied. Directive as the Community legal act needs to be implemented, however principles of Community law (priority, direct effect, direct applicability)mainly established by the European Court of Justice and its law-case referring to legal nature of directive, give a possibility to directly application of its provisions, also in situations as mentioned above.

The paper deals with selected aspects of the Directive 2004/39/EC implementation into domestic legal order, possibilities of direct applicability of its provisions in case of lack of the implementation having regard a protection of private investors interests and legal effects of lack of the implementation for a member state responsible for such negligence.

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Section
Legal, economic and social aspects of the movement of persons in the European Union

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MOBILITY OF STUDENTS AND THE NEW LAW ON HIGHER EDUCATION IN POLAND

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Key words: Mobility; students; higher education; Bologna Process.

The free movement of persons in the European Law is declared in the European Community Treaty. These provisions are also relevant to the rights of entry and residence of academics and students in each member state of the EU. Mobility of students lies in the heart of the European policy. However, according to Article 149 of the Amsterdam Treaty no European Union institution has a juristiction over higher education. Their influence is limited only to the encourangament role.

Inevitably, the process which facilitates harmonization of higher education and thereby increases mobility of students and researchers is going outside the European Union. Until The Bologna Declaration the higher education policy was underrepresented in the European policy, at large. The main intention to accept this document was to make European higher education stronger in a global, world market of education. In order to this state - parties underlined the need of increasing of mobility of students, teachers and researches. It is also worth mentioning that even though the Bologna Declaration is a soft law, which means there are no formal requirements to implement it into state legal systems, all national governments do this, as they feel they cannot fall behind others. It is also true for Poland as a participant of the so-called Bologna process has to adjust its own higher education policy in a way it can be at least comparable with their counterparts elsewhere in Europe.

The aim of this article is to show how Polish law on higher education relates to mobility of students, especially to the incoming ones. Internationalization of higher education is one of the most important goals of the Polish government and all higher education institutions.Poland pursues to increase a number of incoming as well as outgoing students since it is aware that mobility is a condition sine qua non of building a modern society of knowledge.

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The subject of Polish higher education is based on the Constitution of the Republic of Poland, the statute Law on Higher Education and several regulations. State higher education is free of charge. This is guaranteed by article 70 s. 2 of the Polish Constitution, which states that Education in state schools shall be without payment. Statutes may allow for payments for certain services provided by state higher education institutions. It is clear that this provision is applicable in a case of non-national students, too.

The new Law on Higher Education of 27 July 2005 (LHE) came into force in 2005. It is the main act that regulates all aspects on higher education and contains provisions that introduce Bologna rules into Polish law. The basic conditions of scholarship and studying in Poland for foreign candidates are set in Chapter 4 "International Co-operation of Higher Education Institutions in the area of Education and Research", of this act.

According to article 45 LHE, EU and EFTA citizens are enrolled for either full-time or part-time studies on the same conditions as Polish citizens. The same conditions are also granted inter alia to foreigners with a permission to settle down, with a status of refugee granted in the Republic of Poland, offered temporary protection in the territory of the Republic of Poland as well as to immigrant employees with a citizenship in one of the EU or EFTA countries.

The conditions and requirements mentioned above are explained in details in Regulation, made in 2006 by the minister of higher education and science, of undertaking and following by foreigners of degree programmes, training courses and their participation in research and development work. In this case Regulation of nostrification of higher education diplomas obtained abroad are of importance, too.

Polish higher education law creates a sufficient framework for mobility of students. Now the main responsibility for development of international co-operation lies with higher education institutions themselves.

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IMPACTS OF MIFID DIRECTIVE TO THE CZECH LEGAL ORDER

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Key words: Capital market; commodity derivatives; financial instruments; investmen firm; tied agent.

The act No. 256/2004 Coll., on Conducting Business on the Capital Markets has been changed very deeply in the last year. It is because secondary communitarian law had to be implemented in the Czech legal order. Deep changes has been done in the summer of 2008 by implementation of directive 2004/39/EC, on markets in financial instruments (hereinafter MiFID). The objective of directive is creating an integrated financial market throughout European Union, in which investors are effectively protected.

The aim of this article is to analyze legal impacts of implementation of this directive to the Czech legal order. Generally, it must be said, that legal framework of regulation of conducting business on the capital market has been tighten up and the range of financial instruments has been widened. There are two parts dealing with this problem. The first one, deals with changes in organization of subjects of capital market and the second describes different content of financial services, rights and duties.

Basic difference has been made in rules describing legal statutes of investment firms. There has been widened the range of business activities of these subjects. Each of them must have a license issued by Czech National Bank. A new legal subject has been introduced by implementation of MiFID, it is so-called tied agent. Tied agent is a natural or legal person, under responsibility of only one investment firm on whose behalf of it acts, promotes investment and services to clients, receive and transmits instructions or orders from the client, etc. He must be registered in the evidence administered by the Czech Nation Bank.

Major changes have been made in organization of regulated market. There are no more differences between regulated and not-regulated markets. That's why the statues of RM-SYSTEM has been changed into regulated market with the new name RM-SYSTEM, the Czech Stock Exchange. Non

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professional clients must buy and sell on regulated markets via licensed securities traders. Direct access to the stock exchanges is provided also to the investors that meet at least two of the following three conditions: 1) those that manage their own assets in financial instruments of more than 1 million Kč, 2) those that complete a trading volume of more than 5 million Kč in the previous 12 months, 3) those that complete a minimum of 40 transactions during the previous 12 months. The same conditions are of course applied also for the Prague Stock Exchange. Since 3 February 2009 a new license has been given by Czech National Bank to the Prague Energy Exchange, business platform for trading with electricity. Transformation to standard exchange has been done because commodity exchange is now considered to be one of investment instruments. An alternative to the regulated market is so-called Multilateral Trading Facilities run by market operator or investment firm. It is a system, which brings together multiple third-party buying and selling interests in financial instruments.

Considering changes in the activities of mentioned subjects, it is necessary to pay attention to the fact, that investment advice is now part of main investment services. These means, that advisor has to be licensed by the Czech National Bank. Implementation of directive MiFID has also brought a new division of clients into two groups: professional clients and retail clients. Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a professional client, the client must comply with legal criteria. One of the fundamental objectives of directive is also high level of retail clients. They must be asked to provide certain information to allow a proper assessment of their investment knowledge and experience. Trader must ensure, that given service matches the client's profile and must do suitability test.

Generally it can be said, that MiFID has brought many advantages especially for those interesting in investments on capital markets in European Union. Clients have the same level of protection in all member states. It supports free capital movement, cross-border transaction, etc.

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THE MOVEMENT OF LEGAL ENTITIES: JOINT VENTURES

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Key words: Posting of workers; JV; strategical aliance; coopetarion; joint ventures.

Single market legislation for services:

The movement of legal entities represents a significant part of the internal market, to be more exact of "single market legislation for services" of the European Union. The aim of the single market legislation is to enable an effective and simple movement of legal entities. The directives of European Union (hereinafter referred as "EU" are directed into three core areas: Posting of workers, providing of services and recognition of qualification.

These directives were supposed to simplify the process of providing services abroad. The aim of the directives was also to unify at least some of the national requirements the foreign companies must comply with when working abroad, and to improve access to information concerning these requirements. Despite the effort of the European Union and all the additional activities, the movement of legal entities is not working and the companies are not encouraged to move. The paper will present some of the practical problems which hinder the companies to provide services abroad.

Practical problems overview:

The will present some of the practical problems the companies have to dealt with.

Possible solutions:

There are some possible approaches which may help the companies to move and minimize the above mentioned problems.

A. Local attorney office or consultancy company, local accounter

Finding a local attorney seems to be a great idea. The paper will present the possitives and negatives of this approach.

B. Cooperation with a local partner

Cooperation with a local partner is another possible approach. It means that you will find a suitable partner for you goals, anybody who may contribute to your objective and help you to achieve your plans. The paper will

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discuss pros and coins of cooperation with the local partner and highlight where the local partner may make the providing of services and posting of workers easier and cheaper. Then, the paper will describe the most common forms of cooperation, its general features, positives as well as negatives. The overall electivity of the solution and the financial impact shall the leading points of view.

The paper will introduce following forms of cooperation with local partner:

- Simple contracts (customer supplier, service contract, distribution contract, sub-contractors position). This form of cooperation is the simplest one. It does not require transfer of assets and control so that the parties to the contract remain autonomous).

- Strategic Alliance (SA) is more sophisticated form of cooperation with the foreign partner. SA is often called as "contractual Joint ventures". SA is cooperative business activity, formed by two or more separate partners for strategic purposes. In contrast to the Joint Ventures, the partners do NOT create a separate and independent legal entity. However, they allocate the ownership, operational responsibilities and financial risks and rewards to each member while preserving each member's identity/autonomy. Strategic alliances allow members to cooperate in flexible and inexpensive way. Also the transaction costs are lower.

- Joint Ventures (JV) is defined as cooperative business activity, formed by two or more separate partners for strategic purposes, which create an independent business entity, and allocates ownership, operational responsibilities and financial risks and rewards to each member, while preserving each member member's identity/autonomy.

- Mergers and acquisitions (M&A) are another form of cooperation. Nevertheless, because of the complexity of this issue and of its particular characters, won't be discussed in this paper.

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ABUSE OF IMMIGRATION LAW: MARRIAGES OF CONVENIENCE (EUROPEAN LAW AND ITS TRANSPOSITION INTO THE CZECH LEGAL ORDER)

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Key words: Marriage of convenience; immigration law; family life; residence permit.

The issue concerning the so-called marriage of convenience, i. e. marriage concluded between the national of a certain state and a foreigner only for the purpose of obtaining the residence permit in that state for the later, is tackled by many states and also within the European Union – the area without internal frontiers. The aim of this contribution is there fore to outline the European legal approach to this issue and its reflection in the Czech legal order.

Regarding the European law, the marriage of convenience is dealt with in the directive 2004/38/EC concerning the right of the Union citizens and their family members to move and reside freely within the territory of the Member States. Article 35of the said directive states that Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this directive in the case of abuse of rights or fraud, such as marriages of convenience. This directive, however, does not define the term. A good guidance in assessing the meaning of the term in the community law could be the Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience. This resolution defines the marriage of convenience as a marriage concluded between a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State. The resolution also obliged the Member States to withdraw, revoke or not renew a residence permit granted to a third country national on the basis of the marriage of convenience. The legal status of this resolution is, however, unclear.

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The European Court of Justice has not elaborated on this matter yet, although it seems from some of its judgments (C-351/95 Kadiman, C-109/01 Akrich and C-127/08 Metock) that the ECJ considers the marriage of convenience as an abuse of the community law with the effect that the right (for residence permit) stemming from the community legislation was not conferred.

In the Czech legal order, the main questions of immigration law are covered by the 1999 Act on Residence of Foreigners. The way of implementing the above mentioned European measures was quite long and consisted of three separate amendments to the said Act.

The first amendment came to force on the day when the Czech Republic entered the European Union. In this time, the directive 2004/38/EC was only one day in effect and there fore it could not be implemented. The amendment, however, did not even take into account the above mentioned resolution. Thus, the 1999 Act on Residence of Foreigners contained no provision dealing with the marriage of convenience until April 2006. Nevertheless, this absence was successfully solved by the judiciary. The Supreme Administrative Court held that marriage of convenience was an immoral act amounting to violation of public order, which was a reason for expulsion of the foreigner (judgment 2 As 78/2006-64).

The second amendment effective from April 2006 onwards introduced a possibility to refuse an application for residence permit, if the applicant got married with the purpose of obtaining the residence permit. This was, however, not applicable, if a child was born or adopted in this marriage. The directive 2004/38/EC was thus not fully implemented and the limitation of refusal was questionable.

Finally, beginning 21st December 2007, the third amendment came into effect. It almost copied the wording of the directive; however, this approach was largely criticized by NGOs, because of its possible negative consequences on mixed marriages. The above mentioned resolution continues not to be implemented into legislative measures at all.

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CITIZENSHIP OF THE EUROPEAN UNION FROM THE POINT OF VIEW OF SOCIAL BENEFITS CLAIMS FROM OWN STATE

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Key words: Citizenship of the European Union; right to free movement and the right of residence; social benefits; claims from own state.

An implementation of the citizenship of the European Union into the European Community law by the Treaty on European Union, which entered into force on 1 November 1993, represents an important shift forward to a new level of the EU member states integration. The former primarily economic co-operation among the member states has turned into integration focusing much more on the member states citizens.

The significant merit in this progress is to be assigned to new Art. 18 para. 1 EU Treaty according to which "[e]very citizen of the Union shall have the right to move and reside freely within the territory of the Member States." This new provision enabled the member states´ citizens who are not yet (students) or no more (retired persons) economically active to move almost without any restrictions within the borders of the other EU member states. The requirement of performing an economic activity, which has been a precondition for enjoying the freedom of individual's movement, has lost on its importance. The former distinction between economically active EU citizens and those who were non-economically active has been abolished.

Furthermore, as consequence of the EU citizenship implementation into the European Community law, the non-economically active EU citizens, when taking advantage of their free movement right according to Art. 18 EU Treaty, fall within the scope of non-discrimination provision stipulated under Art. 12 EC Treaty. This means that those people who have exercised their freedom to move and to reside in another EU member state must not be handled differently from those who have not used this possibility, provided no justification for different treatment does exist. As result thereof, any national legislation contradicting this rule is generally considered inconsistent with the freedoms conferred by Art. 18 EC Treaty on all EU citizens. These

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measures also apply on the national social security systems, in particular on granting social benefits, which represents one of the challenges arising from the increase of cross-border movement of EU citizens the member states must face.

The social benefit issue is usually mentioned from the sole point of view of the relationship between the host member state and an individual whose nationality differs from that of the host member state in case the right to free movement and right of residence have been exercised by this person who has, with reference to the provisions of Art. 18 EC Treaty, also applied for financial support before the host member state authorities. This relationship became much more obvious after the judgment of the European Court of Justice (ECJ) in case C- 184/99 (Grzelczyk) in which the ECJ invented a financial solidarity between nationals of a host member state and nationals of other member states.

However, this is only one side of the coin. Its other side is represented by cases in which an individual exercising his/her right to free movement seeks social benefits from his/her home state, i.e. from the state whose nationality the individual possesses. Since the citizenship of the Europan Union has been acknowledged by the ECJ as a fundamental status of nationals of the member states, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of the nationality, no home state is allowed to make any differences between its own nationals. As consequence thereof, the national may apply for social benefits from his/her home state even if he/she does no more live here, possibly stay in other member state for certain shorter period of time. The only preconditions, similar to those of the first mentioned type of relationship, are a cross-border aspect and an enough conclusive degree of integration of the applicant into the society of that home member state. It is worth mentioning that especially the degree of integration needs to be deeply examined since the common requirement of a permanent residence in a home member state has not to be found reasonable under the given circumstances of the single case.

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INITIATION OF ENTITLEMENT TO SICKNESS BENEFITS REPRESENTING AN EXAMPLE OF PROBLEMS WITH INTERPRETATION OF THE SECONDARY EC LEGISLATION

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Key words: Sickness benefits; problems with interpretation of the secondary EC legislation.

Initiation of Entitlement to Sickness Benefits Representing an Example of Problems with Interpretation of the Secondary EC Legislation

The freedom of movement represents one of the fundamental principles on which the European Union had been built. The aforementioned term refers to free movement of goods, persons and capital. This contribution deals with the matter resulting from the practical implementation of Council Regulation (EEC) 1408/71 that features rather a narrow extent; however, it quite well refers to the general problem that accompanies enforcement of the secondary legislation of the European Community – its generality, confusion and incomprehensibility.

Problems related to implementation of the secondary legislation of the European Community accompanies a majority of allowances coordinated by Council Regulation 1408/71 – regardless of the fact whether such allowances are connected with pensions, long-term care or illnesses. They accompany both initiation of the entitlement to an allowance as well as determination of its extent. In some cases the European Court of Justice clarified implementation of Council Regulation 1408/71; however, new issues have arisen in connection with enlargement of the European Union.

Cash allowances granted in case of an illness substitute the loss of income that may not be obtained in the course of an illness, thus serving for coverage of common life essentials of the sick. Considering the aspect of enforcement of the coordination rules in accordance with Council Regulation 1408/71, the type, extent and conditions applicable to granting of cash allowances are determined by the legislation of the competent country. As regards the Czech Republic, this scope is covered by sickness benefits. This contribution is to

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describe a situation in which – in spite of enforcement of the aforementioned coordination rules – an indisputable determination of a competent authority did not occur.

Except for persons that are concurrently employed on the territory of a member state and self-employed on the territory of another member state as well as government officials concurrently employed in more than one member state and insured in one of the states within a special system, there is a general rule which stipulates that a person to whom Council Regulation 1408/71 applies proves to be subject to the legislation of only one member state. The respective state is to be determined in accordance with the Regulation. One of the rules stipulates that a person who no longer remains subject to the legislation of one member state while the legislation of another member state has not commenced to be applicable yet is to be subject to the legislation of the member state on the territory of which he/she dwells and solely that legislation is to apply (Art. 13 Item 2 (f) of the Regulation).

In this specific case Mr. XY was employed at a Czech entity from 1 January 2005 to 19 January 2005 and performed work activities for it on the territory of the Czech Republic. On 23 January 2005 he was found to be unable to work and the period of sick leave lasted until 22 January 2006. At the time of his sick leave his address of residence was in the Slovak Republic; however, in connection with his illness he sought medical assistance in the Czech Republic in which he was repeatedly hospitalized and he stayed there even during the time period when he was released into residential care administered by his family members residing in the Czech Republic.

Under normal circumstances Mr. XY would be entitled – in accordance with the wording of the Act on Health Insurance of Employees – to health insurance allowances resulting from the title connected with the period of protection. However, the District Social Security Administration rejected his application with a reference to Art. 13 Item 2 (f) of Council Regulation (EEC) 1408/71 while stipulating that Mr. XY was covered by the legislation of the Slovak Republic. Nevertheless, the Slovak insurer also rejected the application for sickness benefits.

The matter of granting benefits related to sickness and maternity under the period of protection has been on the agenda of the Administrative Commission on Social Security for Migrating Workers several times; however, all the proceedings were always terminated while stating that it was not capable to adopt a unanimous approach to this matter. This contribution will attempt to provide detailed specifications related to both the diametrically opposite opinions while listing the reasons for my inclination to one of them. Nevertheless, I do not intend to suppress the fact that this controversial issue may be finally resolved solely by the European Court of Justice within the scope of proceedings related to the so-called preliminary matter.

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SELECTED ASPECTS OF THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES

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Key words: Directive 96/71/ES; free movement of workers; posting of workers; hard core of working conditions; concept of service.

This contribution is concerned with the mobility of workers through the Institute of the posting of workers. An author brings the concept of service through may be posting of workers carried out, as well as provides a comparison of the secondment the employee with the freedom of free movement of workers.

To achieve the purpose of legislation, the posting of workers is important to define the concept posted worker and also reflect the problems of its definition. An author, in addition it explains determination of the law applied for posting. In conclusion, the author provides the basic elucidate of hard core conditions of the Directive 96/71/EC and certain selected problems of its transposition.

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PRINCIPLE OF RECOGNITION IN THE EC LAW, RECOGNITION OF DECISIONS IN MATTERS RELATING TO MAINTENANCE OBLIGATIONS

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Key words: EC law; principle of recognition; maintenance obligations.

Contribution Principle of Recognition in the EC Law, Recognition of Decisions in Matters Relating to Maintenance Obligations deals with the principle of recognition within the European Union Law. Particular attention is paid to the recognition of decisions in maintenance obligations, which has been adopted recently.

In the first part, the contribution explains the term recognition and its double dimension. First dimension is represented by recognition purposed to create favourable conditions for an efficient achievement of the basic freedoms (a duty of member state to recognize goods which is being traded in a member state of origin as sufficient to the domestic "secure" terms; analogically with services, mutual recognition of qualifications). The second dimension, vice-versa, is sort of reaction at realization of the free movement (should prevent avoidance of law enforcement by moving out of the jurisdiction of state which has issued a binding decision).

Then the contribution pays attention to the new law on recognition of decisions in matters relating to maintenance obligations: Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

It gives the main characteristics of the regulation (scope, force, general context of its origin...), then describes the range of "decisions" eligible to be recognized and, vice-versa matters which are not subject of recognition. Finally the paper describes the procedure of recognition within two different regimes. One is applicable to Member States bound by the 2007 Hague Protocol, other to those, whose are not.

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REVIEW OF THE LAW RELATING TO THE FREE MOVEMENT OF LAWYERS WITHIN THE EU

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Key words: Legal profession; free movement; establishment; provision of services; recognition of diplomas.

Treaty of Rome 1957 established four fundamental freedoms of the internal market. All workers, including professionals were granted the right to move freely within the borders of the European Communities. Lawyers were one of the first groups that started to benefit from the rights that were provided for by the provisions of EC Treaty and consequently started moving around Europe.

The development of the rules regulating the free movement of legal professionals within the EU illustrates the expansion and enlargement of the European Communities, as both processes run parallel to each other. Deriving from judgments of the European Court of Justice, the extensive set of legal rules has been established. Currently, the legal professional who wants to practice law in one of the EC Member States, can choose from a wide range of possibilities.

In general, the provisions on the free movement of lawyers come down to the basic dichotomy, which differentiates between the temporary provision of services and permanent establishment in a host Member State. In the latter situation, one deals either with the law relating to the recognition of the professional qualifications, or with the rules regulating legal practice in the host Member State under ones home professional title.

Firstly, the provision of legal services is regulated under the Directive 77/249, which applies "to the activities of lawyers pursued by way of provision of services" and defines a notion of a 'lawyer' by referring to the list of designations under which the legal profession is pursued in a different Member States. Such a person shall adopt a professional title as used in the Member State from which he comes, indicating the membership to the professional organisation or the court of law before which he is entitled to practise.

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Secondly, the issue of the recognition of legal qualifications is covered by the horizontal Directive 2005/36/EC on the recognition of professional qualifications. The provisions of this commonly called Diploma Directive cover the issues of the the recognition of professional qualifications for lawyers, whose purpose is to practice immediately under the professional title of the host Member State. The fundamental assumption standing behind that piece of law is that the recognition should be granted automatically to the 'finished/end products,' i.e. the fully qualified lawyers, and not solely to the university degrees. Yet, the ruling of the ECJ in Morgenbesser case undermines this principle, as it "extends the right of mobility to those still in training and not yet fully-qualified lawyer."

Finally, the provisions of the so-called Establishment Directive 98/5/EC, aim at facilitating the practice of the profession of lawyer on a permanent basis in a self-employed or salaried capacity in a Member State other than in which the professional qualification was obtained. Under the Directive every EU qualified lawyer, once registered with the competent authority in the host Member State, can practice law under "his home-country professional title." The title shall be expressed "in the official language [] of his home Member State, in an intelligible manner," which would make it clearly distinguishable from national professional titles. Accordingly, such a lawyer is entitled to carry on the same professional activities as his colleagues from host Member State and may "give advice on the law of his home Member State, on Community law, on international law, and on the law of host Member State." Moreover, the rules set out in the Directive enable to circumvent the strict requirements of Diploma Directive – in principle, it is possible to gain admission to the local Bar without the need to sit the aptitude test or to undertake the adaptation period, as long as the European lawyer practices "effectively and regularly for a period of at least three years" in the host Member State.

Summing up, the development of the EC law within the area of free movement of workers removed major impediments for those courageous individual lawyers, who want to practice law in different Member States. It seems that currently it is relatively easy to move from one Member State to another, and the only restraint is ones willingness.

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VISA INFORMATION SYSTEM (VIS) AND THE EXCHANGE OF DATA BETWEEN MEMBER STATES ON SHORT STAY-VISAS

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Key words: Visa Information System; Member States; personal data protection; security level; the integrity of the visa-issuing process.

The setting up of the Visa Information System (VIS) constitutes an important part of the EU common visa policy and has been the subject of several instruments. In April 2003 Commission produced a feasibility study on the VIS commissioned. in September 2003, the Commission proposed an amendment of a previous Regulation laying down a uniform format for visas. The main goal was to introduce biometric data (facial image and two fingerprints) in this new visa format. These biometric data would be stored on a microchip. In December 2004, the Commission adopted a proposal for a Regulation concerning the VIS and the exchange of data between Member States on short stay-visas. The VIS is based on a centralised architecture comprising a database where the visa application files are stored: the Central Visa Information System (CS-VIS), and a National Interface (NI-VIS) located in the Member States. The Member States should designate a central national authority connected to the National Interface and through which their respective competent authorities will have access to the CS-VIS. The competent authorities other than visa authorities, which will have access to the VIS and defines the access rights to be granted to them: - the competent authorities for carrying out visa checks at external borders and within the territory of the Member State, - the competent immigration authorities - the competent asylum authorities.

Central system for the VIS will be ready by December this year and could start operating in the first region, North Africa, in early 2010, but main problems with VIS still are: the age limit for fingerprinting; encouraging Member States to cooperate while permitting contracts with external providers as a last resort, data protection and security; and a service fee for external providers.

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The purpose of this article is to present problem, how to ensure the need for using the data processing records in order to ensure the security of data, and details the respective responsibilities to ensure this security level. Very important are a further legal instrument, which will define in particular the system and its operation, including the categories of data to be entered into the system, the purposes for which they are to be entered and the criteria for their entry, the rules concerning the content of VIS records, the rights of access for authorities to enter, update and consult the data and rules on the protection of personal data and its control.

One of the biggest problem is Member State cooperation while permitting external providers. There is no problems with the general concept of outsourcing, but there must be secure conditions to ensure the integrity of the visa-issuing process, to ensure that outsourcing is only a last resort and that data protection and security are guaranteed.

Conclusions arising from contribution. First choice is means of limited representation, co-location or common application centres, and only where those solutions are not appropriate to cope with a high number of applicants or secure a good geographical coverage does outsourcing come into play. The compromise makes clear that Member States remain responsible for compliance with data protection rules and for any breaches of national law.

Second element is that, in third states that prohibit encryption, special rules apply: electronic transfer of data between consulates or between an external service provider and the Member State would be banned, and Member States would have to ensure that the electronic data is transferred physically in fully encrypted form on a CD which has special conditions attached to it.

It should be noted the trends in the different legislation of the member states concerning standards of personal data protection and many public bodies who has an access to this data. In SIS II and EURODAC we can find personal data of people who usually are criminals or terrorist. Those third country citizens are not welcomed in the Member States. But in VIS there are personal data of every citizens who are going to cross European Union frontiers. Not only those who has broken the law. That is why complex legal analysis of VIS is so important.

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CONNECTING CRITERIA AFTER CARTESIO

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Key words: Connecting criteria; freedom of establishment; incorporation theory; real seat theory; abuse of law; lex societatis.

The aim of the contribution is to answer to a question whether the ECJ's decision in Cartesio brings a new approach to the Member States competence to in the area of determination of "nationality" and lex societatis of a company. It is submitted that this question should be answered in affirmative.

Whilst the Member States (hereinafter, MS) have competence to define connecting factors which are relevant to determination of law applicable on companies and their "nationality", such competence is not absolute.

After Centros, Überseering and Inspire Art, the MS have to recognize a company validly created under the laws of another MS. Consequently, substantive and private international law provisions of the host MS do not apply to incoming foreign companies unless there is a proof of abuse of law. However, unconditional recognition is required only if the home MS allows the company to leave its territory without imposing dissolution and liquidation. Therefore, exercise of this right to its full extent very much depends on the home MS being an incorporation theory country. In principle, only companies coming from incorporation countries may transfer their de facto real seat by establishing a branch in another MS.

Furthermore, it is submitted that Cadburry Schweppes qualified Centros and Inspire Art only in a limited way regarding the principle of abuse of law. In order to be able to benefit from more favorable tax regime a company must have a genuine economic link with the territory on which it is established. However, this requirement should be limited to situations of secondary establishment (e. g. imposed on a subsidiary and branch in relation to the "primary seat" or parent company being established in another MS).

Daily Mail, SEVIC and Cartesio lay down conditions related to change of lex societatis. A company thus may change its lex societatis by the way of cross-border merger or a transfer of the seat which is defined as connecting factor under the national laws. None of the transformation operations shall

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entail dissolution and liquidation of the company. Even though Cartesio vests the power to accept such emigrating company in the host MS, the author suggests that such power is limited to enforcing application of its company laws governing formation of domestic companies. Überseering case law is therefore limited to recognition of foreign companies (entering the territory with no change in lex societatis), while SEVIC case law should be applied to situations of conversion or "acceptance" of emigrating companies (entering the territory and changing its lex societatis).

Cartesio does not overrule Daily Mail to the extent that a company must comply with the requirements of the home MS related to maintaining of the status of a company governed by its laws. On the other hand, developments in the exit taxation case law of the ECJ suggest that company might be allowed to change its applicable tax law under the Cartesio principle. Where the transfer of tax residence and transfer of the connecting factor relevant for determination of lex societatis coincide, the latter is of greater importance. The concept of connecting factor used by the ECJ in its case law thus has to be interpreted as referring broadly to both substantive and private international law provisions.

The EC law does not have influence on the MS competence to define requirements related to formation of companies. As confirmed in Cartesio, national laws are under the scrutiny of the EC law only if it was already established that a company acquired the right to freedom of establishment under national laws. A controversial point of Cartesio lies in the fact that it distinguishes between migrating companies according to whether they wish or do not wish to change their lex societatis. Whilst the first situation falls within the scope of ECT, the latter does not. Despite this logical flaw, the solution adopted by the ECJ seems to be the only acceptable one under the current state of law.

Finally, it is submitted that after Cartesio, the 14th Directive on cross-border transfers of registered office is no longer necessary.

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THE ELECTORAL RIGHTS OF THE CITIZENS OF THE EUROPEAN UNION IN THE REPUBLIC OF POLAND

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Key words: Election; EU citizenship; electoral rights.

Art. 19 paragraphs 1 and 2 of the Treaty establishing the European Community introduced active and passive electoral rights in elections to the European Parliament and local government units. Apart from the Treaty itself, detailed solutions regarding electoral rights to local government units and European Parliament have been stipulated in the Directive 93/109/EC of 6th December 1993 and 94//80/EC of 19th December 1994 respectively. Poland's accession to the European Union was connected with the obligation to adapt legal provisions to the Community laws in this aspect as well.

Pursuant to the Directive, the electoral rights in elections to the European Parliament should be granted to EU nationals fulfilling other electoral conditions required by a given State with regard to its own nationals. The EU Directive admitted the possibility of granting this right provided there is a certain minimum period of residence within the electoral territory of this State. Nevertheless, this condition should be deemed to have been fulfilled also when citizens have resided during this period in other Member States as well. Additionally, a Member State of residence may check whether an EU national who expressed his wish to exercise his right to vote in this state has not been deprived of this right in the state of origin. The Directive granted passive electoral right to EU nationals who fulfill other voting conditions required by a given state with regard to its own nationals. What is more, the Directive stipulated that if nationals residing in a state are allowed to stand for election under only one condition of being this state's nationals for a certain minimum period, it is acknowledged that EU nationals have fulfilled this condition if they have been nationals of one of the Member States during this period. In response to the above, the Act of 23rd January 2004 Election Ordinance to the European Parliament granted active electoral rights to Polish nationals and EU nationals who permanently reside within the territory

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of the Republic of Poland, who attained 18 years of age not later than on the election day, and who are registered on the electoral roll. At the same time the Act excluded individuals who are deprived of electoral rights in the country of origin from the right to vote whereas passive electoral rights have been granted to individuals who have the right to vote and who attained 21 years of age not later than on the election day, and who have been permanently residing within the territory of the Republic of Poland or other Member State. At the same time the Act excluded individuals deprived of the electoral rights from the right to stand for election.

As far as municipal elections are concerned, the Directive 94/80/EC introduced a possibility of active and passive right to vote to EU nationals in Member States of which they are not nationals, identically understanding the rule of domicile, and additionally allowing in Art.5: first of all, facultative exclusion of individuals deprived of electoral rights in the country of origin from the possibility to stand for election. Second, a possibility to restrict the right to hold the office of elected head, deputy or member of the governing college of the executive of a basic local government unit only to Member States own nationals. Moreover, Member States may also stipulate that citizens of the Union elected as members of a representative council shall take part in neither the designation of delegates who can vote in a parliamentary assembly nor the election of the members of that assembly. Pursuant to the above, the Polish legislator has also granted active electoral rights to municipal council to EU nationals who are not Polish nationals and who attained 18 years of age not later than on the election day, who permanently reside within the territory of this municipality, and who have been registered on the permanent electoral roll in this municipality not later than 12 months before the election day. Whereas the right to stand as a candidate has been granted to EU nationals who are not Polish nationals also when they have been registered on the permanent electoral roll during 12 months preceding the election day, and have attained 18 years of age during 12 months preceding the election day or not later than on the election day.

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THE EUROPEAN ARREST WARRANT

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Key words: The European Arrest Warrant; European Union; the traditional suverenity of the national regulations; principle of reciprocity; principle of dual criminality; principle of mutual recognition of judicial decisions; criminal law; the Criminal Procedure Act.

The European Arrest Warrant, valid throughout the European Union has replaced extradition procedures between Member States of the enlarged Europe. Such a warrant may be issued by a national issuing judicial authority if the person whose return is sought is accused of an offence for which the maximum period of the penalty is at least a year in prison, or if he or she has been sentenced to a prison term of at least four months. A decision by the judicial authority of a member state to require the arrest and return of a person should therefore be executed as quickly and as easily as possible in the other Member States of the European Union. The European Arrest Warrant means faster and simpler surrender procedures and no more political involvement. It also means that Member States can no longer refuse to surrender to another Member State their own citizens who have committed a serious crime, or who are suspected of having committed such a crime in another EU country, on the ground that they are nationals. Improving the surrendering procedure between EU Member States was made possible by a high level of mutual trust and cooperation between countries who share the same highly demanding conception of the rule of law.

Purpose of the European Arrest Warrant is to replace lengthy extradition procedures with a new and efficient way of bringing back suspected criminals who have absconded abroad and for people convicted of a serious crime who have fled the country, in order to forcibly transfer them from one Member State to another for conducting a criminal prosecution or executing a custodial sentence or detention order. The European Arrest Warrant enables such people to be returned within a reasonable time for their trial to be completed or for them to be put in prison to serve their sentence.

The European Arrest Warrant is based on the principle of mutual recognition of judicial decisions. This means that a decision by the judicial au-

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thority of a member state to require the arrest and return of a person should be recognized and executed as quickly and as easily as possible in the other Member States.

The European Arrest Warrant is one of the main interventions to the traditional suverenity of the national regulations which break and restrict so historical things as the principle of non-citizens to another state, principle of reciprocity or dual criminality principle

But there are no obstructions to not using it only because there could be a fear that in the other state there will not be treated this person fairly etc. This will denial the trust between the states in the criminal law process and proclamation of breaking the democracy.

The Czech Republic was not the one of the European Union State at the time of implementation of the European Arrest Warrant, so it could not be active at the creation of the regulation. But it became acquainted with this process and its importance to the candidate states. So after the accession to the European Union on 1th May 2004, Czech Republic was binded to transpose the obligations of the frame decision including the regulation about the European Arrest Warrant. After long discussions this new regulation was adopted into the Criminal Procedure Act into the part XXV.

In our article we deal what exactly is the European arrest warrant, how was the framework decision adopted, conditions for using the European Arrest Warrant in criminal matters and discuss the most often matters connected with the European Arrest Warrant not only in the Czech Republic, but in other European countries.

The European Arrest Warrant is still the young institute of the criminal law, but after some first embarrassments is the full institute of criminal law and it is used by courts all levels. Every state wants to fight against the criminality and has to cooperate with other state if it could be stated as democratic state.

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CONSUMER PROTECTION IN THE EC/EU - FROM MINIMUM TO MAXIMUM HARMONIZATION?

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Key words: Consumer protection; EC; EU; consumer acquis; harmonization.

Norms on consumer protection in the EC/EU, the so-called consumer acquis, have recently got into focus of scholars as well as general public in connection with The Green Paper on Revision of Consumer Acquis (COM (2006) 744 final). The paper pointed out to the biggest issue related to consumer acquis, the minimum harmonization principle, and problems connected with it. It is of general knowledge that consumer protection in the EC/EU is based on that principle, enabling member states to adopt common standards of protection (i. e. the minimum standard required) while maintaining - if they wish so - higher level of protection.

Quite naturally, such system might be partially convenient both for tates with high level of consumer protection, which can go beyond "European" standards, as well as for those with low level of protection, which can only adopt the required measures by their own means and than live happily ever after. However, consumers together with businesses might not be so happy about different standards of consumer protection in Europe.

The EU, and above all the European Commission, is very well aware of this situation and the unsatisfactory level of legal certainty which is a result of heterogenous level of consumer protection in Europe. In the Green Paper the Commission therefore suggested several methods of solution, two of them based on some level of minimum harmonization combined with other legal means, one of them based on full harmonization. The Commission thus criticized the principle of minimum harmonization, but at the same time was unable to abandon it completely. This fact is a little surprising taking into consideration that already in the so-called Consumer Policy Strategy 2002 - 2006 (COM (2002) 208 final) of 2002 the Commission itself mentioned the need for full harmonization for achievement of high level of consumer protection across the EU. It is nevertheless necessary to highlight that full harmonization was aimed at directive 94/47/EC on timeshare and 90/314/EEC

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on package travel entirely. Despite this limitation, a sheer fact of mentioning full harmonizatin can be considered revolutionary.

The 2002 Consumer Policy Strategy indicated that the idea of full harmonization may not be completely forgotten, as the 2007 Consumer Policy Strategy (COM (2007) 99 final) shows. It admits that while any possible new proposals shall be judged individually, if the need for a new regulation is proved, the new legislation will be based on full harmonization. Full harmonization as a principle of consumer acquis is also stated in Art. 4 on the proposed Directive on Consumer Rights (COM (2008) 614 final) which expressly prevents member states from maintenance or introduction of provisions diverging from those in the directive in their national law.

Nonetheless, as was the case of the 2002 Consumer Policy Strategy, the proposed directive does not cover all areas of consumer protection in the EU. It is therefore questionable whether the Commission (or the EU in general) intend to introduce such "double-headed" approach to consumer protection in the EU, in which some issues - typically consumer contracts - would be fully harmonized whereas other would further function on principle of minimum harmonization. In this paper, the question raised above together with some major developments in consumer protection regulation, are discussed.

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VISA FACILITATION AND READMISSION AGREEMENTS BETWEEN THE EUROPEAN COMMUNITY AND THE REPUBLIC OF MACEDONIA

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Key words: Visa policy; Readmission; European Community; Macedonia; EU Enlargement.

In December 2005, the Republic of Macedonia was granted candidate country status for EU membership. In spite of that fact, external EU borders remain closed for Macedonian citizens who, in order to travel to EU Member States, must be in possession of a Schengen Visa. Obtaining one is time consuming, costly and demotivating process.

In 2007, the "Agreement on facilitation of issuance of short-stay visas between the European Community and Macedonia" was signed and entered into force in 2008. This agreement is considered to be a transitional step towards the lifting of the visa obligation. The text of the document reads that the need for its conclusion is to facilitate people to people contacts as an important condition for a steady development of economic, humanitarian, cultural, scientific and other ties, by facilitating the issuing of visas to citizens.

Prior to the signing of the visa facilitation agreement, the "Agreement on readmission of persons residing without authorization between the European Community and the Republic of Macedonia" was signed. The latter was seen as a prerequisite for conclusion of the visa facilitation agreement and it was argued that the EU is exchanging simplified visa regime for bona fide travelers for a legal instrument governing extradition of Macedonian illegal immigrants or any other illegally residing third country nationals who traveled to the EU via Macedonia.

This article analyzes both of the agreements. It examines the events that preceded them as well as the current level of their implementation. It explains particularly the legal, political and administrative aspects of the agreements and explicates the implications for both Macedonia and the European Community.

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REFLECTION ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION IN CRIMINAL MATTERS, DEMONSTRATED ON THE IMPLEMENTATION OF THE EUROPEAN ARREST WARRANT IN THE EU MEMBER STATES

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Key words: European arrest warrant; free movement of persons; extradition/surrender of nationals; double criminality; implementation; proportionality; fundamental rights observance.

This paper will focus on the possible problems with the application of the principle of mutual recognition in criminal matters, as demonstrated on the problems encountered while implementing the European Arrest Warrant (EAW), as the most well-known, ambitious and striking instrument, giving effect to the principle of mutual recognition in the EU and pursuing the effective sanctioning of criminal offenders, who take advantage of free movement of persons within the EU.

First and foremost the position of the three constitutional courts (in the Czech Republic, Poland and Germany) adjudicating on the constitutionality of the national legislation implementing the EAW will be examined. The ECJ judgement on the validity of the EAW framework decision will then be also briefly remembered. Finally, looking at the Commission report on the implementation of the EAW, great advantages and successes of the EAW will be stressed. However, at the same time some shortcomings in the implementation of the EAW will be mentioned as well.

In this respect, some practical instances of problems will be also emphasized, particularly from the perspective of the protection of fundamental rights, proportionality and legal certainty.

From this perspective the conclusions will be drawn that although the instrument of the EAW itself contributed a lot to the more effective and speedy judicial cooperation in criminal matters in the matter at stake (surrendering persons within the EU for criminal prosecution and/or serving imprisonment), it shall not be implemented mechanically by the competent

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judicial authorities, but due account should be rather taken to the proportionality, while protecting the fundamental rights and freedoms, especially where other competing instruments to bring criminals to justice may be at disposal and the genuine mutual trust, based on common standards (both in procedural and substantive criminal law) between the EU member states, is still largely missing.

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THE EUROPEAN AND INTERNATIONAL ASPECTS OF ALIEN DETENTION

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Key words: Detention; asylum; alien; liberty; European Court of Human Rights.

This contribution is concerned with the national and european aspects of administrative detentions of aliens. In the introduciton, it delimits the concept of administrative detention (i. e. the detention which is ordered by an administrative body and not by an independent court) and offers a concise overview of the constitutional and international legal fundaments for the administrative detention.

The contribution further analyses some examples of alien detentions in the Czech legal order (i. e. the detentions pursuant to tha Aliens´ Act nr. 326/1999 Coll. and the Act on Asylum nr. 325/1999 Coll.). These detentions are however dealt with not only from the national perspective but (predominantly) from the european perspective.

The contribution thus examines the impact of the European Convention on Human Rights and the jurisprudence of European Court of Human Rights on the national regulation. It largely focuses on the weak spots in the Czech regulation (for example, the length of judicial review of administrative detentions).

Furthermore, the contribution surveys the current state of alien detention regulation in the law of European Union (mainly in the context of the Common European Asylum System) which is however still in the very beginning.

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Section
Political-security and economic relations between the European Union and third states and international organizations

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CZECH SANCTIONS POLICY IN THE SWIRL OF EUROPEANIZATION

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Key words: Europeanization; international economic sanctions; sanction policy.

In February 2006 the Parliament of the Czech Republic approved a new Sanctions Act. Thereby, the Czech foreign policy obtained the most up-to-date national legal tool which, together with coercive measures, enables to support the struggle for maintaining peace, security and stability in contemporary world. The Act replaced an older norm adopted in 2000. The original norm was based on by that time already an obsolete concept of sanctions imposed exclusively on states and representatives of state power. In addition, it was not applicable with regard to the self-executing legal acts of the European Communities, and did not include elaboration of several important procedures such as deliberation of particular sanctions measures or of the competences of the relevant state authorities. The new Sanctions Act was followed with the government order no. 210/2008 Coll. concerning implementation of exceptional measures in the fight against terrorism. Sanctions imposed by the EU are, actually, directed not only against states and non-state actors and non-European individuals and groups connected with terrorism but also against terrorists coming from the EU. Simultaneously, against European subjects it is impossible to impose directly applicable measures within the framework of the Common Foreign and Security Policy. Herewith, a room opens for individual states to safeguard realization of sanctions measures on their own – the Czech Republic did this through the above-mentioned order. With regard to changes in the European sanctions lists the government order was updated on 16 March 2009 under no. 88/2009 Coll.

It is out of question that the adoption of the act no. 69/2006 Coll., as well as of the subsequent government orders concerning implementation of exceptional measures in the fight against terrorism manifests the ongoing process of Europeanization of the Czech sanctions policy. The term Europeanization comprehends the impact of European integration processes at the domestic

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level, i.e. the changes induced by integration processes in various spheres of internal environment of the member states. Their extent is given among others by the extent of competences transferred to the level of the EU. As a result of the European influence either explicit or implicit changes occur in the domestic environment. The explicit changes are targeted in their nature. They are demanded directly by the institutions of the EU which more or less strictly decide about their shape. The implicit changes cannot be derived directly from the decisions of European bodies. They can be induced by them but they can be based also on other developments not connected with the decision-making processes within the EU.

For the European sanctions pattern the prevalence of strict models of governance based on the instrument of so-called hard power and overlapping the three pillar structure of the EU is typical. Sanctions measures include regulations, common positions and decisions of the Council of the EU. Another tendency obvious at the level of the EU is the use of targeted sanctions limiting possible negative impacts on civil population. Hence the sanctions are to damage the richest social strata and the elites directly responsible for the sanctioned behavior. Simultaneously, they can also restrict members of non-state groups endangering international security – most recently the ones connected with international terrorism. The targeting of economic sanctions leads in practice to listing of organized groups and individuals who should be their targets. Considering the principles of good governance and the respect to human rights a possibility of examination of sanctions measures by the European Court of Justice is of particular significance.

Shifts in the Czech legal settlement or, more precisely, creation of the room for implementation of European sanctions in the Czech national environment are implicit changes in their nature. They do not result from the decision-making process embodied in the secondary legislation of the Community. Considering the extent one can speak of accommodation as far as the new Sanctions Act is considered, and of transformation regarding the governmental orders concerning implementation of exceptional measures in the fight against terrorism. Except the requirements connected with the EU membership the new shape of the sanctions policy reflects broader international trends, especially the shift from general sanctions to targeted ones.

Since the Czech Republic does not impose unilateral sanctions, its foreign policy tradition together with its legal order permit only the application of sanctions adopted by the Security Council of the UN or the EU. As these sanctions overlap considerably, the Czech sanctions policy since the admission to the EU can be considered as a very precise reflection of the European sanctions policy both with regard to concrete provisions, as well as to longer-term trends.

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EXCLUSIVE RRGHT OF THE EURATOM SUPPLY AGENCY TO CONCLUDE CONTRACTS WHOSE PRINCIPAL AIM IS THE SUPPLY OF ORES, SOURCE MATERIALS OR SPECIAL FISSILE MATERIALS

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Key words: The Euratom Supply Agency (ESA); the exclusive right to enter into contracts; ores; source materials or special fissile materials; third countries; Corfu Declaration.

The Euratom Supply Agency (ESA) takes a very specific role in the European Law, where the Euratom Treaty (Treaty) is making it into a unique body created by this founding document almost 50 years ago. Art. 52 of the Treaty grants to ESA two rights that the authors of the Treaty saw as constituting its main instruments. These are the right of option and the exclusive right to enter into contracts. These rights are tangential, not mutually exclusive, as a result of which the Agency may exercise both consecutively. Entering into supply contracts means buying, selling, renting, etc. ESA is the only body able to purchase ores, source materials or special fissile materials from outside the Community. Art. 64 of the Treaty establishes that ESA enters into contracts exclusively for importing and may impose conditions only as regards quantity, quality, delivery dates, transport, etc. ESA cannot enter into contracts involving issues of International Law for which it has no competence: for example contracts establishing the possibility of imposing conditions on re-exporting.

There exists a secondary legislation adopted under the rules of the Chapter VI. of the Treaty. The most important are the Rules on balancing the demand and supply of nuclear materials. Under the current Rules, a simplified procedure for application of the Treaty rules is established and contracting parties are negotiating their contracts directly between them and submitting these contracts for conclusion by the ESA. Under this procedure, the powers of ESA to conclude the supply contracts can bee seen as an action of validation. Nevertheless, in the case if the contracting parties do not respect the

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wording of the Treaty and do not submit the contract for the conclusion by ESA, the contract may be declared void by the national court.

Special restrictions were established by the so called Corfu Declaration (CD), adopted jointly by the Council and the Commission in 1994. This was primarily for the purpose of preventing the inflow of very low prized material and enriched uranium into the Community (from the countries of the former Soviet Union in particular) in order to maintain the variability of the supply sources. Briefly, CD provides that the market share of European enrichers in the Community may not fall bellow 80 percent. European users may obtain maximum 20 percent of theirs enrichment supplies from ex – Soviet sources.

Most currently, the European Parliament (EP) in its Report on the 50 years of the Treaty has expressed its vision on ESA by suggesting that on the basis of the current Treaty rules it becomes a true observatory of the nuclear fuel market. The EP is calling the strengthening the role of ESA in the context of ensuring the energy security of the European Union.

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WTO, LEGAL FRAMEWORK FOR FOREIGN INVESTMENTS AND CHINA

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Key words: Foreign investments; joint ventures; tax law; protection of intellectual property rights.

The level of foreign direct investments in the People's Republic of China has risen dramatically in 1980's as a result of the "open door" policy. China has become the main destination for foreign investors willing to invest into various sectors, including investors from European Union countries. However, the appropriate legal provisions had to be enacted in order to attract foreign investors seeking for supportive laws and favorable conditions for doing business in China.

China became the 143rd member of the WTO on December 11, 2001. China as member is required to perform duties and obligations. In the field of legal framework, China's accession to the WTO has resulted in new enacted laws or amendments to economic laws, laws on intellectual property rights and tax laws.

This contribution deals with the basic overview of legal environment for foreign investments in China. It focuses on the laws on foreign investments, the forms of foreign investments such as joint ventures and foreign wholly owned enterprise. Furthermore, it briefly deals with two issues which are relevant for foreign investors – the tax law and the protection of intellectual property rights.

LAWS ON FOREIGN INVESTMENTS A Chinese foreign venture is an enterprise which is established in China according to the laws of China, in which foreign investors share in part or in whole the power to control the venture, depending on the proportion of the capital invested in the venture.

The first law dealing with the foreign investments was adopted in 1979 (the Law on Chinese Foreign Equity Joint Ventures). As a result of successful attraction of foreign investors, the laws regulating two new forms of investments were promulgated in 1986 and 1988, i.e. the Law on Foreign Wholly Owned Enterprises and the Law on Chinese Foreign Contractual Joint Ven-

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tures. At that time, there was no other form of enterprise legislation in China.

The contracts such as Chinese foreign equity joint ventures and Chinese foreign contractual joint ventures performed in China are not eligible for choice of law made by the parties. The mandatory rules must be applied. Therefore, under Article 126 (2) of the Contract Law, the Chinese laws exclusively apply to the contracts performed in China. The application of Chinese laws is required and no foreign law may touch any part of the contractual obligations. Otherwise, the choice of law made by the parties will be invalid and unenforceable.

In 1993, China has promulgated the Company Law of the People's Republic of China. The foreigner investors may newly establish their investments in form of company limited by shares. Nowadays, there are many such companies in China.

TAX LAW The foreign investors are concerned with Chinese tax law. Before 2008 the Chinese taxation system distinguished the income tax rate for domestic and foreign funded enterprises. There was need to unify the income tax rates for domestic and foreign funded enterprises because until 2008 the foreign funded enterprises enjoyed "supra-national tax treatment". Instead, such enterprises enjoy nowadays the national treatment, pursuant to the WTO rules.

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS The People's Republic of China did not have a comprehensive intellectual property law system until 1980's. With its admission to the WTO, China has had to be concerned with its successful implementation of WTO treaties, including the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement However, the practice and the enforcement of intellectual property laws are facing challenges. In current China, many intellectual property cases arise only because of the lack of knowledge of intellectual property rights among Chinese society. For example, there are many cases in practice dealing with the rushing registration made by another party. To conclusion why we have included this issue: to warn foreigner investors, to confirm that all intellectual property rights shall be registered in adequate time within the authority.

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THE POLITICAL, LEGAL AND ECONOMICAL ASPECTS OF THE PROCESS OF ROMANIA'S INTEGRATION INTO THE EUROPEAN UNION

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Key words: Intergation; reforms; democracy; EU; Romania; internal policies; foreign policy.

The changes in Europe since 1989 placed Romania in a new geopolitical context, this being placed in a position to redefine its options, embracing, at the outset, the idea of opening to Europe. The political context in which the Romanian approaches are situated, regarding the integration into the community structures, is placed under the sign of the profound changes that have occurred in the Romanian society after 1989 (changes who refers to building a democratic society and to the establishment of a market economy) and under the sign of the challenges of the European Union: the need for internal structural reforms, accompanied by its inevitable extend to European countries that subscribe to the same democratic values. However, the Romania's opening to Europe was considered to be the solution to overcome the major drawbacks arising from the country's location into an area located at the intersection of two axes: one of interaction of two great powers - Russia and Germany - and one of junction (meeting) of two major areas of instability and insecurity - the former Yugoslav area and the former Soviet space. Therefore, since 90 years, the Romania's integration into European Union becomes a primary objective of its foreign policy, number one priority of Romania in the dynamics of international relations. In the light of those shown, the aims of the present study is to present the evolution of the integration process of Romania into the European Union and its impact, process that required numerous legislative, institutional, economic changes, with major implications in all areas, but which was seen by many as representing the only viable alternative that Romania had to that date. Also, the study shows how Romania, member of the European Union from January 1, 2007, understood to assume the responsibilities involved by this status and

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to contribute to the projects on the European agenda regarding both the internal policies and the foreign policy of the European Union.

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ECONOMIC RELATIONS BETWEEN THE EUROPEAN UNION AND THE HELVETIC CONFEDERATION

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Key words: European Union; Switzerland; differential integration; bilateral regulation; legal sovereignty.

The article focuses on legal grounds, development and forms of economic relations between Switzerland and the EU. Swiss-EU relations are marked primarily by a strong economic integration, which in legal terms is expressed in different forms and procedures reserved for the relations between the EU and third countries.

The purpose of this paper is to identify opportunities and limitations arising from the differential economic integration. The differential integration between the EU and Switzerland has a purely pragmatic base and has been developed by a number of bilateral agreements aimed at securing a high degree of integration of Switzerland, without simultaneous membership of the EU structures. In this process the community law has gained an increasing impact on the Swiss law, without the possibility of the Federation's participation in the procedures of establishing legal principles, in addition, it should be noted that the differential integration do not know any instruments for settlement of disputes arising on their background. Conclusions from existing economic relations are important to both the EU and Switzerland. From the Swiss point of view, weaker parts of a diversified integration, state-law, economic issues and practical deficiencies may lead to the conclusion that only a full membership of Switzerland in the EU could guarantee hope and future for traditional Swiss identity in its new position, and long-term continuation of bilateral regulation of relationship will encounter fundamental and practical problems. The accession of Switzerland to the Agreement on the European Economic Area or formation of a customs union with the EU could lead to erosion of substantive legal sovereignty, due to the fact that the transfer of decision-making powers to the EU is not balanced by sufficient participation in decision-making procedures. Switzerland as a member of EC, because of its experience with direct democracy and to its history

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as the first multilingual and multicultural republic of Europe, could make a major contribution to the development of European institutions and the fight against deficits of democracy in the EU.

The task of the Helvetic Confederation authorities is to release the European integration of Switzerland from the present context of its pure interest policy and informing its still skeptical society about the need for integration in the long term prospect, as well as carrying out open, public debate on the future of Switzerland in Europe and the world.

It seems that thanks to bilateral agreements between the EC and Switzerland, political and economic isolation of Switzerland has been reduced to a stable level, which has increased its negotiating position. For the EU the question arises how far can and should be implemented sensible and diverse integration with third countries. Export and expansion of Community law in order to create an economic sphere of influence leads, together with a progressive diverse integration to problems of dependence and deficits of democracy, as shown in the case of Switzerland. Substantive rights and obligations must be proportionate to the possibility of participation in their establishment. Also in this case, there must be an appropriate structure-substance pairings. Otherwise, regulation of relations only on the basis of WTO law should be remained, and preferential regulations should be shaped on the basis of ranges indicated in the art. XXIV GATT and Art. V of GATS, and thus reduce them to the provisions relating to free trade and economic integration. Regulations going beyond the indicated range should be based on membership, which brings sufficient participation and democratic legitimacy of the decisions made. Differential integration with third countries without participating rights should therefore be limited, also in the interest of the EU legitimacy for the actions taken.

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THE EULEX MISSION IN KOSOVO

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Key words: The legal framework of the EULEX mission (the Council Joint Action 2008/124/CFSP); the implications of Kosovo' s independence; the UNMIK; organized crime.

Kosovo's Post-Independence – Test for the EU's Common Foreign and Security Policy. What role has the EULEX mission to play in Kosovo?

Various interventions of an international community in failed states or otherwise unstable territories showed the crucial importance of the rule of law in establishing or re-establishing an order in post-conflict societies. The territorial status of one of the world's newest states, Kosovo, was resolved by its unilateral declaration of independence on 17 February 2008.

The current situation in Kosovo brings many points of major legal interest. This paper explores some of these legal issues, namely the role of the largest civilian operation the EU has ever launched. This paper assesses the implications of Kosovo's independence, analyses the legal framework of the EU mission and addresses some of the challenges this misssion may face.

The legal basis for the establishment of the European Union Rule of Law Mission in Kosovo, (hereinafter EULEX) was the Council Joint Action 2008/124/CFSP (hereinafter Joint Action). The Mission Statement describes the role of the EU mission in the following words "EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices" (Article 2).

Yet, both Pristina and Belgrade have very different expectations, although they agree that EULEX will face many challenges. This paper will address some of these challenges, which include, but are not limited to the following:

(1) Prior to Kosovo's independence, there was another international organization in place: the UN deployed the United Nations Mission in Kosovo

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(hereinafter UNMIK), which was established within the framework of the United Nations Security Council Resolution 1244 (hereinafter Resolution 1244). However, the presence of UNMIK, as opposed to the broad agreement on the need for NATO/KFOR to stay in Kosovo, was judged far less positive due to its inefficiancy and lack of commitment from the UN to report and control the spending of its funds. Will the EULEX mission learn from the UNMIK mistakes?

(2) Inter-cla violence and organized crime: mafia infiltrated into politics and law enforcement authorities (including border control). Powerful clans who control both the government and the mafia will continue to have an interest in a weak central government. Organized crime is creating very unstable environment and is closely interconnected with high unemployment, functioning of an impartial and independent judiciary and serious shortages of foreign investment capital. Moreover, any international loans will be in a current financial crisis arguably even harder to obtain.

(3) The Joint Action recognized that the EULEX mission "will be conducted in a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty"(Paragraph 14).

(4) In a report by the UN Secretary-General Ban Ki-moon, EULEX is described as a status neutral mission. The Secretary-General proposed a six-point compromise plan in order to make it more acceptable also for Serbs. Nonetheless, this compromise substantially weakened the EULEX mandate. In addition, many Serbs from the Serb-controlled northern municipalities in Kosovo will probably not cooperate with EULEX anyway, while already arguing that it is being deployed without specific UN authorisation.

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Section
Reorganization of enterprise

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RESTRUCTURING OF COMPANIES WITH AN EMPHASIS TO THE CURRENT MARKET SITUATION

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Key words: Restructuring business crises outsourcing.

The article concerns with the restructuring of the non-performing loans and distressed debt trading and other questions arising in connection with the financial insolvency of the company.

The author describes means and ways of restructuring before the company is declared insolvent and presents parallels between regulation included by Czech and English law.

The author further presents and analyzes the current position of the companies on the market and investigates in deep all impacts on its proper operation and functioning.

The reality of the credit crisis is that established businesses are now finding themselves on the edge of distress. The one thing that the credit crisis guarantees is change. While the current lack of liquidity presents a problem for many companies, sector consolidation is inevitability. Coming out of a soft market, also, the upsurge in insurance claims and litigation has now begun. Difficult market conditions increase the likelihood of fraudulent behaviour and its detection, with several high-profile cases already making the headlines this year. While the economic downturn already puts increasing pressure on management teams, scrutiny of directors' behaviour is naturally also coming under the spotlight.

Each company has to address the challenges this brings the company through their knowledge of the European marketplace, the regional difficulties of cross-border mergers and the private equity space - whether they are looking at opportunities to grow or to rationalise their business. Current market conditions present opportunities and challenges for institutional investors. Restructuring investment vehicles and funds set up are complex challenges that can often take up a great deal of time. The company shall also ensure to have tax efficient structures in place and to upgrade their tax structure if needed. Furthermore, the author addresses other issues relating to restructuring, disputes, tax authorities and foreign investments.

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As the regulatory environment visibly tightens and increasing scrutiny is placed on those taking responsibility for private investor and institutional funds the author analyzes and describes an increasing need to enhance the company's operation schemes and addressing the deficit issues. The prospect of merger or divestment activity only increases this need. Outsourcing can drive business efficiency and save costs it can also significantly increase the risk profile when not properly implemented. Equally a programme embarked upon in better times may not have the documentation required to safeguard the investments at this stage of the economic cycle. It is a strategic business option of particular interest to all companies in the economic downturn.

The author further refers to government plans discussed in some countries in order to increase the internal bank's market operation and involve banks to push bad loans out and get cash to the bank with the aim to replace them. The idea is that the bank should stop hoarding the capital as a buffer against the future write-downs, and so start lending again. The mechanics of the plan should involve banks, which will transfer toxic assets at 90 per cent of their book value into government-managed vehicles and then get government bonds of equal value in return. Banks shall pay an insurance fee for this privilege. The banks shall also compensate the government-managed vehicles for any loss suffered on toxic assets, as determined by auditors. Last, but not least, the author introduces and analyzes the situation when some of the company's customers or suppliers become insolvent. This is a substantial risk to each business with so many commercial contracts in place. In such a case, all legal steps shall be commenced immediately.

The author sums up and presents her predictions on the current development of economic situation and explains certain issues concerned in connection with the restructuring.

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TERMINATION OF AN EMPLOYMENT RELATIONSHIP BY AGREEMENT

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Key words: Employment relationship; termination; agreement; redundancy payment; Labour Code.

One of the possible ways how to terminate a relationship is to make an agreement. This possibility is to the participants of employment relationships given by § 49 of the Czech Labour Code (Code number 262/2006 Coll.)

To terminate a relationship it is necessary to reach the agreement between the employer and the employee. That means where they both agree on the termination of the concrete employment relationship, it will terminate on the agreed day. As we can see one of the fundamental terms is to fix the day when the relationship will end. It is not necessary to determine the day by accurate setting of calendar day, it is also sufficient to concretize the day by reaching a concrete aim or finishing of a concrete objective. Anyway there shouldn't be any doubt about the last day of the employment relationship.

Because an act like this is very consequential, a form is given to the participants by law. Therefore an agreement on the termination of the employment relationship between the employer and the employee must be in writing, otherwise it shall be void.

Normally the reasons for the termination of the employment relationship are not an obligatory part of the agreement, but if the employee so requests, it must be stated in the agreement. It is especially pragmatic if the employment relationship is terminated by agreement because of reasons included in § 52 a), b) or c) Labour Code, that means in the case that the employer's undertaking, or its part, is closed down; or the employer's undertaking, or its part, relocates; or the employee becomes redundant owing to the decision of the employer or the employer's competent body to change the tasks, technical equipment, to reduce the number of the employees for the purpose of increasing labour efficiency or to introduce other organizational changes. It is also pragmatic in the case that the employment relationship is terminated for the cause that according to a medical certificate issued by the occupational health care establishment or under a ruling of the competent

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administrative agency having reviewed the medical certificate, the employee is not allowed to perform his current work due to an industrial injury, an occupational disease or due to threat of an occupational disease, or if the employee's workplace has been subjected to a maximum permissible level of some harmful exposure under a ruling of the competent agency concerned with the public health protection (which is the reason included in § 52 d) Labour Code). In all that cases the employee is entitled to receive from the employer redundancy payment.

In the case that above mentioned reasons aren't namely mentioned in the agreement, the right of the employee to get the redundancy payment is not affected, anyway by recovering of this redundancy payment from the employer at court the employee must prove that the reason for termination of the employment relationship was the one with which the law connects the right to get the redundancy payment.

Because of the necessity of written form, the employer shall hand over one copy of the agreement terminating the employment relationship to the employee.

Conclusion

To terminate the employment relationship by agreement is very easy and unpretentious. The only two obligatory things to remember are to make this agreement in a written form and to specify the day of the end of the employment relationship. Anyway it is very reasonable and pragmatic to mention also the reason or the cause of the termination, especially for the case when the right of the employee to obtain the redundancy payment is given.

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PROTECTION OF EMPLOYEE RIGHTS IN EUROPEAN LAWS IN CONNECTION WITH STRUCTURAL CHANGES OF EMPLOYERS

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Key words: Employee rights; structural changes of employers; globalization; productiveness; employment.

Within its life, every organisation or its part can get into a situation, when its stability or even existence is endangered. Such a situation is usually called a recession or crisis. Explanation of the term crisis in literature is ambiguous; it is seen as a certain unwanted state of an organisation or as a process, which – if not stopped – leads to a decline or liquidation of a subject. Under any structural changes, though, we have to keep in mind the rights of employees on the regulated level. When delimitating the rights of employees in the Czech Rep. it is necessary to come from the Directives of the Council, reports of the commission to directives of the Council or opinions of European economic and social committee, which impose on the member states the duty to converge their legal regulations regarding keeping the rights of employees in case of transfers of businesses (directive 2001/23/ES). The issues of professional life quality, productiveness, and employment in the context of globalisation and demographic challenges have been addressed by the Opinion SOC/232 issued in September 13, 2006, by the European economic and social committee, which includes these attitudes and conclusions: Synergies between economic, employment, social and environmental policies should improve Europe's competitive position in the world through creating new areas of employment in sectors of the economy with good future prospects and boosting growth through innovation. Europe should therefore focus on its strengths, which are to be found in the high quality of its products and services, its well-trained workforce and its social model. Programme objective is to create not only more, but better jobs. Globalisation brings with it risks consisting in the fact that the European economy, owing to increased intl. competition and the restructuring of the intl. division of labour, could lose jobs through restructuring and relocations

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unless new areas of employment are developed. In the area of growth, productivity and employment, it was admitted, that alongside the continuing high level of unemployment, the productivity growth slows down. Within the support of innovations it is required – alongside with the increasing investment in research and development – to improve skills in the use of new technologies, change working structures through new forms of work organisation empowering the individual, increase the number of women in senior management posts, improve working conditions so that older people in particular are able to carry on working, and to provide working conditions that meet age-related needs. In June 18, 2007, the Commission issued a Report on Directive 2001/23/EC, on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, which codifies Directive 77/187/EEC, as amended by Directive 98/50/EC. The Directive is aimed at protecting a business' employees in the event of a change of employer and, in particular, ensuring that the employees' rights are safeguarded. It works on the premise that there are differences in the Member States regarding the protection of employees in this area, and concludes, that it is necessary to harmonise that protection. The aim of harmonisation is twofold – to ensure comparable protection of employees' rights in the Member States and to approximate the obligations which the rules of protection place on European undertakings. The directive will be used on transfers of undertakings, businesses or parts of undertakings or businesses. What to say as a conclusion? The first Directive playing a significant role in protection of employees' right was and still is the Directive 77/187/EEC, specifically important for its introduction of the principle of duration of the labour contract in spite of a change of legal entity of employer to the legal regulations of Member States. Consequently in 1998 there was done a revision of this document, which in hand with the judicature of the ECJ specified and still sharpens the term "transfer of employees' rights". Recently we can quote the verdict of the ECJ in the matter C 466/07, subject of which was a request of decision in preliminary question based on the Art. 234 EC, put by the decision of Landesarbeitsgericht Düsseldorf from August 10, 2007, in the process of Dietmar Klarenberg vs. Ferrotron Technologies GmbH, or in the matter C 458/05, subject of which was a request of decision in preliminary question based on the Art. 234 EC, put by the decision of Oberster Gerichtshof (Austria) from November 16, 2005, in the process of 24 employees against Princess Personal Service GmbH. These verdicts and analyses imply that the quoted directive – due to seeking balance between protection of employees and freedom to continue in economic activities – contributed in a significant way to making the restructuring operations in Europe more acceptable from the social viewpoint.

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LEGAL REGULATION OF COLLECTIVE REDUNDANCIES

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Key words: Dismissal; notice of termination; agreement on termination of an employment relationship; notice period; redundancy payment; collective redundancies; information; consultation; participation; worker's representatives; trade union; job office.

The loss of employment may have serious social consequences not only for an employee concerned but also for his or her family. Because of the present economic crisis a lot of enterprises in Europe close down or reduce their production which, in many cases, leads to collective redundancies. The aim of this article is to analyse the European Union regulation, including the case-law of the European Court of Justice, concerning this issue and its implementation into the legal order of the Czech Republic.

The current legal regulation of the Czech Republic implements the Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (hereinafter Directive) which consolidates the previous regulation included into the Council Directive 75/129/EEC of 17 February 1975. The later regulation is based, inter alia, on point 7 of the Community Charter of the Fundamental Social Rights of Workers adopted on 9 December 1989 in Strasbourg (hereinafter Community Charter). According to this provision, the improvement in the living and working conditions must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies. Collective redundancies shall be also the subject of information, consultation and participation for workers stated in point 17 of the Community Charter.

Collective redundancies means dismissals effected by an employer for one or more reasons not related to the individual workers. The Directive enables to the Member States to define the number of such redundancies in two ways:

I. Over a period of 30 days: - At least 10 in establishment normally employing more than 20 and less than 100 workers, - At least 10 % of the number of workers in establishment normally employing at least 100 but less

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than 300 workers, - At least 30 workers in establishment normally employing 300 workers and more.

II. Over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishment in question.

The scope of application of the Directive does non include collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts. Workers employed by public administrative bodies or by establishments governed by public law (or, in Member States, where this concept is unknown, by equivalent bodies) and crews of seagoing vessels are excluded from the scope of application of the Directive too.

The Directive requires from an employer contemplating collective redundancies to begin consultation with the worker's representatives. The consultation means a process of negotiation with a view to reaching an agreement. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed at aid for redeploying or retraining workers redundant. Other employer's obligation regarding collective redundancies consists of written notification to the competent public authority of any projected collective redundancies. Projected collective redundancies shall take effect not earlier than 30 days after this notification. Provisions regulating individual rights with regard to notice of dismissal are not concerned.

In the Czech Republic the collective redundancies is governed by the act no 262/2006 Coll. Labour Code, as amended. The legislature chose the first definition of collective redundancies stated in the Directive. The acts-in-law causing the termination of an employment relationship are notice of termination and, under conditions laid down, agreement. The reasons for termination of an employment relationship are so called organisational reasons. They consist of following situations: a) The employer's undertaking, or its part, is closed down, b) The employer's undertaking, or its part, relocates, c) The employee becomes redundant owing to the decision of the employer, or the employer's competent body to change the activities, plants and equipment, to reduce the number of employees for the purpose of increasing labour efficiency or to introduce other organisational changes.

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DISTINCTION BETWEEN SALES CONTRACT AND CONTRACT ON SALE OF ENTERPRISE

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Key words: Sales contract; sale of an enterprise; Commercial Law; Commercial Code; business contracts.

The sale of enterprise is one of the essential tools used in the process of reforming business. It allows transfer of an enterprise as a whole (with all tangible and intangible assets including contractual rights and obligations) and therefore is often used in fundamental corporate changes. The sale of enterprise is a typical (nominate) contract according to Czech Commercial Code and is covered by §§ 476-488 of the Commercial Code.

However, the sale of enterprise is not the only contractual type available when a business facility is to be purchased or sold. Most often the basic simple sales contract is used to achieve similar results. The differentiation between sales contract and sale of enterprise may become quite a hard task in certain situations and the cases when both contracts are permissible are less then sparse.

To make a clear distinction between these contract types we have to search for the true and precise meaning of the term "enterprise", as the types of contracts based on the principle of sale are most easily recognizable by their objects. The Czech law uses the term "podnik" which is defined in § 5 sec. 1 of the Commercial Code as complex of tangible as well as personal and intangible business assets. This excludes the use of basic sales contract whenever the personal aspects (employment relations) or transfer of rights and obligations appear.

This topic is also regularly being dealt with in court decisions, most important of which is probably the Supreme Court decision no. 21 Cdo 857/2004 issued on 14.10.2004. This decision draws the line between contractual types based on the sold object while disregarding legal importance of the headline or name of the contract. Supreme Court decision no. 21 Cdo 1323/2000 issued on 25.5.2001 deals with matters of distinction between sale of part of enterprise and sale of multiple assets. This decision specifies that the part of enterprise which may be sold based on sale of enterprise contract

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has to constitute a separate organizational unit and include the personal aspect and contractual rights and obligations.

It should also be noted that the commercial sales contract is actually meant for use in sale of goods and other movable assets, while immovable assets are excluded from its range. Therefore, the immovable assets have to be transferred individually by a civil law sales contract or as a part of the enterprise via sale of the enterprise contract.

As described above, searching for the distinction between different contractual types might become quite a demanding activity. It is important to examine the actual business case carefully before choosing the contractual solution to avoid serious complications later.

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CREATION OF HOLDING STRUCTURES AT MERGE: THE PERMISSION OF "IMPASSES"

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Key words: Holding structure; impasses; merge designing; escrow agent.

Legal designing of corporate structure of any merge is extremely volume and multiplane work at which realisation it is necessary to take into consideration a huge layer of commercial, legal, tax and financial questions. To capture all these questions or even their big part within the limits of one article it is simply impossible, and consequently in this work author would like to concentrate on some problem aspects of the permission of impasses at creation of holdings.

In the first part of article merge designing is considered, approaches used in modern business practice to creation of corporate structure of merge which in most cases are based on three basic concepts are considered.

In the second part of article which is called "From each deadlock there are only four exits", the author would like to stop on one of most complicated questions arising in legal practice of creation of such regulation, – the permission of so-called "impasses". In this part mechanisms and procedures of the permission of impasses are in detail considered and the example of such situation is resulted.

In the third part under the name "Escrow agent", the author does a conclusion on the basis of the stated material and considers advantages of creation of the holding companies in the countries of Anglo-Saxon system of the right where the institute escrow agent has a stable legislative basis and long-term practice of application for the permission of similar situations.

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THE PROTECTION OF PARTICIPANTS' AND CREDITORS' RIGHTS IN THE REORGANIZING COMPANIES.

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Key words: Reorganization proceedings; special legal regulation; legal personality of company; property complex; succession; predecessor; successor; rights of participant; minority shareholder; conversion; rights of creditor.

This contribution shows us quite an emphasis recently on protection of participants' and creditors' rights during the reorganization. The aspiration to the most optimal economic and legal business management structure make modern companies to resort to the reorganization proceedings. So, reorganization is one of the methods of creating widespread holding structure in the modern economy that allows to protect safely against hostile take-overs and has other advantages.

However the author demonstrates in practice how the reorganization institute is not always used in good faith and frequently makes a significant material damage both to company's creditors and its minority participants. This article describes effective ways of creating the regulation and control mechanism that helps to reduce risk of reorganization with infringement of rights and interests of creditors and participants.

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DYNAMICS SYSTEMS PRINCIPLE WITHIN BUSINESS ECONOMICS

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Key words: Entropy; laws of thermodynamics; dynamics system; interdisciplinarity; energy.

The fundamental research question of this article is conception of transition units among branches of science in context of International Systems of Units (SI). The main focus is interconnection of physical units with economics. Principle of this system is based on dynamics' analytics. Presented system is created for description of dynamics behaviour. Current know edge of business environment needs specific approaches for conformity of changes. One of the fundamental principles is global view of worldful. Furthermore, all implications have to absorb knowledge potential of most of several branches of science. Primarily management of business enterprises require approaches which overlap not only to business economics, human research, information technology, law and other sciences. Very high level of mathematics economics is generally known likewise. Real economics practice indeed pointed to those managers, economists, analysts, lawyers and the others need techniques from many additional hard skills and soft skill from several branches of science. Present progression is based on multidisciplinarity and interdisciplinarity. Findings reach from psychology to physics and its particular part on the other side. Several issues are adherent with interdisciplinarity and multidisciplinarity of this approach. If analysts use f.i. laws of thermodynamics for valuation purposes there is problem with understanding of particular quantities. There is not exist generally accepted system of units among branches for sufficient understanding. The reason is understand "the same thing means the same" even if the units consequences are different in different branches. Scientific methods employed covers fundamental principles, methodology and techniques. In literature searching chapter we use namely observation and analysis. General expression of energetic stability of system is further expressed with Laplace transform. Analytics dynamics for equation of feedback system we use Lagrange differential equation of second order. For formulation of transfer units we apply synthesis and comparison.

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In particular parts we show analogy of hydraulics, pneumatics and acoustics systems. The differences among these systems are only in compressibility of used medium. In addition we express thermal system. More detailed we illustrate chosen branch – business economics. For business economics are especially considerable the first and the second laws of thermodynamics. Accordingly these matters are relatively distant to economics. Rudimental thoughts on this issue comes from Nicholas Georgescu-Roegen "The Entropy Law and the Economic Process". Implication from physics to economics is relevant via system entropy. In physics, entropy of isolated thermodynamics system never does not slope down, but only increase in non-reversible transformations in all processes. In business economics the entropy is presented by cash flow. Based on analogy physics units are equivalent with economics consequences. Other analogy is caloric and warmness. Business entropy expresses the effectiveness of financial management. In fine, the way of creating correspondent parameters are similar for all branches. Auditing computing different measures and units in several branches confirm this methodology. Analogy among exact branches should be improve and enlarged into sciences. Our question for further research comes from conclusion of our research in progress. The next branch which we want to put in our dynamics system unit is law. Our next direction is on law units in continental law system. Further, the system is based on linear external environment which is labour-saving presumption but does not reflect effectively reality. Next question is implication nonlinear environment and nonlinear within.

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REENGINEERING OF HUMAN RESOURCES

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Key words: BPR; HR; labor law.

An economical crisis as we read in all newspapers and hear from the authorities is a very urgent problem. Therefore many employees now here that they have to be dismissed, because we have the economical crisis. However this is a wrong way to handle the situation. Economical crisis has to be taken as an opportunity to change the system and not only to cut the costs by dismissing.

Reengineering is a concept of changing the environment in the company. The biggest change, through the word of the "Father of Reengineering" Michael Hammer, is in the thinking of the people in the company – in the process approach. Reengineering, in the whole phrase Business Process Reengineering (BPR), is considering a company as a list of processes. And, of course, Human Resources (HR) are one of the processes in every company.

HR reengineering, as an actual opportunity how to make the company strong enough to survive the economical crisis, is has to be taken very globally and through the whole company. Many companies in Czech Republic see HR only as a recruiting. This gives a enormously big space for BPR and the process approach.

This thesis is describing all the necessary restructuring steps that have to be done in a company where the only sing of HR is an employment contract to fulfill all the HR essential areas such as benefits, career options, etc. It also considers all the legal and economical aspect of the changes throughout the process of reconstruction of a company.

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Section
Social responsibility of the legal person

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SOME COMMENTS ON THE USE OF BLACKLISTS IN PUBLIC PROCUREMENT

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Key words: Public procurement; blacklists; integrity; corruption; qualification of suppliers; self-cleaning.

1. Introduction

An important part of the social responsibility of legal persons is undoubtedly their integrity in relation to the transparent and non-corruption public procurement. Introduction of so called "blacklists", i.e. lists of suppliers excluded for certain reasons from the participation in award procedures may be one of important tools to promote better environment in public procurement. At the same time this subject raises many questions.

On 4th May 2009, the Czech Government approved the proposal of the amendment to the Act No. 137/2006 Coll., on Public Contracts, which contains i.a. totally new provisions concerning the register of economic operators excluded from award procedures (blacklist). Introduction of this new institute reflects the Governmental Decision No. 1199 of 25th October 2006 on Strategy of the Government in the fight against corruption in 2006-2011.

2. Blacklists under the EU and Czech Law

In the first part, the article focuses on the possibilities provided for by the EU law (especially Directives 2004/18/EC and 2004/17/EC) for introduction of blacklists into public procurement and gives examples of their use in several countries/organizations. This general introduction is followed by detailed examination and assessment of the proposed provisions on blacklist in the Czech Public Contracts Act. The current proposal differs significantly from the original intention in the above mentioned Governmental Decision as it is limited only to provision of false information or documents when proving qualification. In the administrative procedure, the supplier can be fined up to 10 mil. Czech Crowns and at the same time be excluded from participation in award procedures for the period of 3 years. However, the original aim of the Government was to exclude companies engaged in corruption practices. The paper tries to identify the reasons why this goal was not fulfilled and suggest possible solutions for the future.

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3. Different approaches to blacklists

It is clear that the exclusion from award procedures may be connected to different facts, especially corruption practices, provision of false information or even unsatisfactory performance of the public contract. This part of the paper tries to determine advantages and disadvantages of the respective solutions and obstacles to their introduction. It also deals with some procedural aspects of the blacklists, e.g. which body should keep the register and what should be the procedure for the inscription on the blacklist.

4. New approach to assessment of qualification and so called self-cleaning

In the last part, the paper deals with an alternative approach to the proving of basic qualification requirements (exclusions according to art. 45 of the Directive 2004/18/ES) of suppliers in the award procedures which could have some common effects with blacklists. The present Czech system is based mostly on actual status and does not reflect the behavior of the supplier in the past. Due to this fact, the system is quite formal and the successful prove of qualification depends mostly on the fact whether suppliers are able to provide contracting authorities with all documents than on their long-term conduct. It is therefore suggested that non compliance with the basic qualification requirements could have effect of excluding the supplier from award procedures for certain period. At the same time, so called "self-cleaning" should be allowed in certain cases when the supplier would prove that he adopted adequate measures to prevent such situations in the future.

5 Conclusions

In general, there is no doubt that blacklists could be a useful tool in the fight against corruption practices in public procurement. However, there are many practical and theoretical obstacles that limit their use significantly. The new Czech proposal for introduction of blacklist can be welcome but its effect will be quite limited. The suggested new approach to proving of basic qualification requirements could be a good alternative solution in this regard.

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LIABILITY OF EXPERT INSTITUTES FOR EXPERT OPINION

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Key words: Liability expert institutes expert opinion the Expert and Interpreter Act.

This paper discusses the liability of expert institutes for expert opinion. This is a current topic, as expert opinions are paramount to court deliberation. Expert opinions are also used in many areas by private individuals. At the same time, the standard of these opinions is problematic, especially their impartiality. The ombudsman, non-governmental organizations of lawyers, and other jurists think that this problem is caused by inappropriate legal regulation, which does not enable to efficient supervision and penalization experts. The Ministry of Justice, therefore, prepared an amendment to the fundamental piece of legislation in this respect, the Act No. 36/1967 Coll. (The Expert and Interpreter Act).

The author analyses the liability of expert institutes from different points of view. Their liability is less clear than that of individual experts, because the Czech legislation provisions on this are very brief. The author tries to formulate arguments to support the proposition that existing legislation includes sufficient amount of supervision and penal powers, but that these are not used efficiently by the authorities concerned. A necessary condition for improvement is sufficient activity on part of the courts which appoint experts and register expert institutes, as well as on part of the participants who suffer loss as a result of inaccurate or false expert opinions.

The paper is divided into five parts, each discussing a different kind of liability. The first part describes the purpose of providing expertise and defines the concept of expert institutes. The Expert and Interpreter Act states that there are two types of expert institutes: (1) private expert institutes, providing expertise in order to make profit and varying in terms of the quality of their professional standards; (2) scientific institutes and universities, highly qualified and providing expertise on the most difficult cases (including the review of expert opinions). The author stresses that, according to Czech legislation, both types of institutes are very important.

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The second part analyses expert liability according to the Expert and Interpreter Act. This act sets the conditions which the institutes have to fulfill in order to provide expertise and sanctions, if their duties are unfulfilled. The author points out that, in theory, legal regulation does not impose any specific criteria or sanctions on expert institutes. In practice, however, the Minister of Justice permits the registration of an expert institute, only if the institute meets relatively strict requirements. The policy of the Minister is desirable, because professional quality is necessary for providing expertise.

The next part tries to answer the question who has the right to assess whether an expert opinion is materially correct. At the moment, there is no such authority in the Czech Republic. The author considers this a major problem as far as the liability of experts goes. He believes the problem can be tackled, providing that parties and courts (which supervise expert institutions) use their already existing powers more actively. In addition, the author gives a short description of applicable penalties (i.e. reduction of expert fees, warning, and deletion from the Register of Expert Institutes).

These penalties are discussed chiefly with regard to the decision-making practice, as the law is not very precise in this respect. The author also evaluates the amendment to the Expert and Interpreter Act; it is stricter and more detailed than the original law. He appreciates that the amendment includes regulation of administrative delicts, as this enables the infliction of fines on expert institutes.

The third part examines criminal liability. The Czech penal code includes the crime of perjury, but does not recognize the criminal liability of legal entities. Therefore, expert institutes cannot be made criminally liable. The third part tries to answer the question if individuals who have produced an expert opinion on behalf of an expert institute can be made criminally liable. Making individuals criminally liable in this case seems very difficult, as the law stipulates that only an expert institute is responsible for its expert opinion.

The liability for loss under private law is another topic discussed by the paper. It is examined in the fourth chapter. This kind of liability is relevant, if somebody suffers loss due to an expert opinion. For the claimant, this type of liability is much more important than the penalties under public law mentioned above. The most complicated aspect of this type of liability is the causal relation. The author lists court decisions which state that it is important to discover the main cause for damage. As with public law, the author examines whether an individual employee of an institute can be made liable for loss caused by an expert opinion he gave on behalf of his institute.

Ethical liability is discussed further on. Ethical behavior is instrumental for the capacity to provide expertise: an expert opinion has to be given by a reputable institute and a person that can be trusted to be impartial.

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LIABILITY OF NUCLEAR FACILITIES OPERATORS FOR NUCLEAR DAMAGES

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Key words: Liability for nuclear damages; liability of nuclear facility operators; Vienna convention on civil liability for nuclear damage; atomic law.

The liability for nuclear damage is currently embodied in the Vienna Convention on Civil Liability for Nuclear Damage and Paris Convention on Third-Party Liability in the Field of Nuclear Energy, which were linked by the Joint Protocol adopted in 1988. The conventions are based on civil law principles. The main principle of both conventions is the exclusive liability of operators of the nuclear installations, which is, however, limited in amount. The operator must maintain insurance for the amount stated in the applicable national legislation. Other states, such as the United States that are not party to the Conventions, have adopted their own systems of liability of nuclear facilities operators. All current systems secure only relatively small financial resources for the coverage of nuclear damages.

Pursuant to both Conventions victims of a nuclear accident would be compensated in a relatively meagre manner. It is estimated that the damages of the Chernobyl accident amounted to $235 billion in Belarus alone. However, both Conventions provided a total compensation of only $1.5 billion. The compensation of damages exceeding this level is left to national laws and ad hoc political solutions. The current situation also raises questions of how the current system could be updated and what other options for covering nuclear damages are available.

Any possible liabilities of the plant owner would be subject to the polluter pays principle, which is a basic environmental principle according to which polluting firms must pay for their pollution. However, the polluter pays principle is effective only in small accidents where the claims do not exceed the financial capacity of the polluter. In case of significant damages, such as a nuclear accident, the strict exercise of this principle would cause the bankruptcy of the polluter. Bankruptcy thus sets a limit on the polluter pays principle.

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One of the ways to increase the liability of the plant owners for the damages is to increase insurance coverage. However, determining effective insurance coverage can be difficult because insurance companies need extensive experience with similar cases to be able to provide effective insurance and the possible amount of distribution cannot be calculated with sufficient accuracy.

The liability of the plant owner according to the polluter pays principle with or without mandatory insurance has serious limitations. It seems that the insurance industry is not willing to accept a larger amount than the present 700 million of liability coverage. It is also clear that liability should be covered by a party with significant financial reserves.

Another possibility is to transfer liability to the nuclear power-producing industry with either a vertical or horizontal guarantee. A vertical guarantee supposes that the companies in a chain of production would cover the liability of other companies in the chain. A horizontal guarantee supposes that plant owners in competing corporations would be jointly liable, which would increase their liability and compel them to diversify risks. This model, nevertheless, has its limitations. A major problem is that implementation of this model assumes the harmonization of national legislation on nuclear power production and makes each plant contribute a certain amount as guaranties. Another problem is that negotiations of this system may incorporate redistribution in favour of some against the interests of others, which could be an obstacle in negotiating contracts. The implementation of this system is possible in a country such as the U.S. or within the European Union. Nevertheless, even this system cannot provide enough money to cover all the damages of a serious nuclear accident.

If the nuclear power industry cannot secure coverage of potential damages, there remains only one subject with sufficient financial capacity to bear such liability – the state. The state could and should be liable not only because it has sufficient financial capacity to cover all damages but also because the state can influence the probability and extent of potential nuclear accidents by permitting nuclear plants within its territory and setting safety requirements.

However, in case of significant nuclear damages, the extent of damages can be on the verge of the financial limitations of the state. A feasible solution is the creation of a system of mutual risk sharing by a pool of states which could provide most of the financial resources to cover such damages. The context of a supranational community, such as the European Union, is the ideal environment for developing such systems.

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THE TASKS OF LOCAL GOVERNMENTS CONCERNING SOCIAL ASSISTANCE ACCORDING TO POLISH LAW

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Key words: Polish law; local government; social assistance.

Among local governments in Poland one can distinguish: commune, district and voivodeship (province) governments. In Poland, like in other European states, only a part of local and regional tasks is carried out by organs of central government administration, subordinate to the Council of Ministers, the Prime Minister or particular ministers. A significant portion of these tasks is carried out by organs of local governments, which are subordinate to the given administrative unit – either local (commune and district) or regional (voivodeship).

A local government is a form of self-organization of the local or regional community and a kind of public administration, in which citizens legally form a community and decide about the fulfilment of certain administrative tasks which are regulated by law and connected with the needs of the given region's inhabitants. Local governments are to function relatively independently, although supervised by central government administration in a legally regulated way.

According to a legal act governing social assistance, which was introduced on 12th March 2004 (Journal of Laws No.64, item 593; last amended: Journal of Laws of 2007 No. 221, item 1649), institutions which realize the state's social policy are responsible for social assistance. It is aimed at enabling particular persons and families to overcome certain life's difficulties, which are insurmountable for them without external help. Organs of both central and local governments are obliged to partake in organizing social assistance, in co-operation with non-government organizations, the Catholic Church, other churches, religious groups, and both legal and natural persons.

Since commune governments constitute the most fundamental form of self-government in Poland, this article elaborates only on issues connected

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with commune governments. According to the legal act introduced on 8th March 1990 (Journal of Laws No. 16, item 95; as amended), communes are obliged to fulfil three types of tasks: internal tasks, mandatory internal tasks and delegated tasks, commissioned by the central government administration. In terms of social assistance, the act regulates that among internal tasks of a commune are such tasks as granting special purpose benefits and providing assistance in achieving financial independence, which might take the form of benefits, loans or help in kind. Other tasks include: the upkeep of social assistance homes, day-care centres and other support centres functioning within the commune, as well as referring persons in need to the aforementioned facilities, and the co-operation with labour offices, the purpose of which is to publicise information concerning places of employment, available trainings and career counselling programmes.

Among mandatory internal tasks of a commune the act covers such tasks as: summarizing the overall needs of the commune connected with social assistance, developing programmes aimed at solving social problems, addictions prevention and treatment, integrating families in high-risk groups, providing persons in need with shelter, meals and clothes, granting and paying permanent benefits and purpose benefits covering the costs connected with acts of God, granting and paying purpose benefits covering the costs of medical assistance for the homeless and other persons without income, who cannot have the aforementioned costs covered by the National Health Fund according to regulations governing social insurance, and paying social insurance premiums on behalf of person who are unable to work due to the necessity of giving direct, personal care to their chronically or very seriously ill family members.

Delegated tasks of a commune include: granting and paying permanent benefits and purpose benefits covering the costs connected with natural and ecological disasters, and paying health insurance premiums and organizing special care services for people with mental disorders.

Therefore, is it only fair to say that commune governments are obliged to fulfil a most extensive range of social assistance tasks.

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DEFICIENCIES IN CRIMINAL LIABILITY IN THE FIELD OF SOIL PROTECTION IN THE CZECH REPUBLIC – THE ABSENCE OF CRIMINAL LIABILITY OF LEGAL ENTITIES?

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Key words: Liability; criminal liability; soil protection; criminal liability of entities; sanction; law enforcement.

Introduction.

It is obvious that legal persons are not individuals as natural persons; their substance is based on legal fiction, which connects natural persons into a legal entity with some rights and duties.

Exclusive criminal liability of individuals is set out in the Czech Republic. Any legal person cannot commit a crime. Despite the fact that the benefits of environmental offences falls to a legal person, offenders are within the interpretation of The Criminal Code, only private individuals.

The Czech body of law provides a system of administrative offences in order to penalize breach of environmental regulation committed by legal entities, but it is evidently dissatisfactory (inefficient), because it is favoring predictable penalty sanctions which can be easily calculated into costs of particular non-ecological project. Despite the fact, that there was the new Criminal Code adopted, the Czech system of prosecution for environmental offences is inefficient especially because of these reasons: (a) the body of the environmental offences is too complicated - it refers to special environmental law spread through many regulation, (b) the length of investigation stage - the time spent on elaboration of particular environmental expert's statements, (c) the necessity of proving the guilty (culpableness), (d) the absence of legal person's criminal liability, etc.

Methods of liabilities.

In complicated structure of legal entity, it is more difficult than it is acceptable to find out and to convict a particular natural person who commits offence and conviction of such person does not constitute enough incentive

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effect (for such legal entity) in order to avoid the occurrance of other offenses. For these reasons there are two main problems in criminalization of legal entities: 1) a conception of criminal liability of legal persons and 2) consequences of criminal liability.

There are more theories and conceptions which establish criminal liability of legal entities, but the most suitable for methods of criminal offences against environment in the Czech Republic are two: the conception of strict liability and the model based on imputation of liability.

Sanctions.

The necessity of forceable punishing is the practical reason for criminalization of legal entities. The criminal liability of legal entities provides solutions that enable infliction into the most sensitive places of legal persons and to operate more efficiently on addressee of criminal regulations. For these reasons, criminal law and it's criminal liability includes more efficient sanctions than administrative liability such as: publication of judicial ruling, adjudicated fulfillment of environmental audit, community service, welfare service, judicial prohibition of business activities, supervision over legal entity, sequestration, equity fine, dissolution of legal entity etc.

Conclusion.

The criminal liability of private individuals cannot compensate for liability of legal entities. In order to prohibit calculation of penalties into any projects costs and prohibit hiding of responsible persons in structure of legal persons (companies) it is necessary to establish effective criminal liability of legal entities.

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TOWARDS LIABILITY FOR ENVIROMENTAL LOSSES IN EUROPE

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Key words: Environmental liability; environmental losses; environmental damages; Lugano Convention; Environmental Liability Directive (EC).

Liability for loss or damage represents important element of legal system. Environmental liability scheme occupies experts´ attention since the beginning of increasing interest for environmental protection in Europe, i. e. the 1970s. The system of liability in the scope of environmental protection is quite complicated, what appeared especially within efforts to harmonize environmental liability scheme in the framework of European Union. This trouble comes out particularly from different background of legal traditions when classification of particular categories of law can differ from jurisdiction to jurisdiction.

Environmental losses have local, transborder (international), and even global impacts. Legal (administrative) instruments are one of the measures that can be helpful as regards prevention or moderation of these losses, they can effectively settle the way of reinstatement of damaged or destroyed components of the environment and (or) compensation for the environmental damages as well. However, the environmental liability system has not been settled down yet, especially in the framework of international law. On the other hand there was significant progress in this area regarding European Community law, which has influenced national, i. e. Czech law, as well.

The principal aim of this article is to present and compare selected legal instruments representing substantial role in the framework of liability for environmental losses scheme - Convention on Civil Liability for Damages Resulting from Activities Dangerous to the Environment (Lugano Convention) and Directive 2004/35/CE of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (EC Environmental Liability Directive). Despite of the fact that Lugano Convention is an international law instrument, while EC Environmental Liability Directive belongs to the European Community law, both have at least one common feature - they nowadays represent the

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most significant legal documents regulating liability for environmental losses in Europe.

At the very beginning of the article the system of environmental liability has to be shortly described. Next two parts focus separately on above mentioned documents (development guiding their "birth", their scope, important terms, liability scheme, preventive and reinstatement measures etc). After the presentation of Lugano Convention and EC Environmental Liability Directive their similarities and differences are highlighted in the next chapter (of comparative character). It is interesting to follow the influence of earlier adopted Lugano Convention on Community law and find quite surprising final result of relatively long term "gestation" period in the form of EC Environmental Liability Directive.

Last but not least, the brief investigation of liability for environmental losses in the Czech law system, regarding influence of the examined legal documents, takes place in the last part. Emphasize has to be primarily imposed on transposition of EC Environmental Liability Directive into the Czech legal order because of two main reasons: 1) the Czech Republic belongs to the majority of European states which has not signed Lugano Convention yet and 2) the date for implementation of EC Environmental Liability Directive has already passed (30. 4. 2008) and the Czech Republic (late but yet) has brought into force new Act No. 167/2008 Coll., on prevention and remedying environmental damage and amendment on some laws, transposing the EC Directive.

In conclusion it is necessary to point out that this article is "drop in the ocean" of vital discussion on environmental liability at all levels - national, European Community level and international. It will be interesting to follow and evaluate further development of legal instruments in this area and especially their application in praxis.

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DEBUREAUCRATISATION AND REFORMS OF PUBLIC ADMINISTRATION

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Key words: Bureaucracy; debureaucratisation; reforms of public administration; simplification; administrative burdens; standard cost model (SCM); government regulation; new public management; administrative science.

1) Introduction

This article deals with the problems of Debureaucratisation and Administrative Reforms abroad, particularly is focusing on theoretical level and some scientific terms, briefly summarises existing problems and points out interesting diversities and similarities.

2) The term "Bureaucracy"

Professional corps of officials organized in a pyramidal hierarchy and functioning under impersonal, uniform rules and procedures. Its characteristics were first formulated systematically by Max Weber, who saw in the bureaucratic organization a highly developed division of labour, authority based on administrative rules rather than personal allegiance or social custom, and a "rational" and impersonal institution whose members function more as "offices" than as individuals. (Britannica Concise Encyclopedia)

3) The term "Debureaucratisation"

Debureaucratisation means lessening the role or size of bureaucracy. In the era of privatisation and liberalisation the role and size of bureaucracy is lessening. this phenomenon is termed as "debureaucratisation".

4) Reforms of Public Administration

Decentralising and deconcentration character of the public administration reform excludes increase of the regions' proportion on the account of municipalities; satisfaction of regions is possible only by decrease of the state proportion. It is obvious that finding optimal proportions is highly difficult mainly in connection with tension of the State budget on the one side and with necessity to implement decentralisation to the regional level even financially on the other one.

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5) Simplification

Superfluous and obsolete rules and documentation requirements must be removed. Moreover, indispensable process rules must be simplified to the extent possible. We have to identify the administrative burdens of new, relevant legislation to prevent new rules and requirements from stifling various social service offers.

6) Administrative Burdens

Administrative burdens are the cost imposed on businesses, when complying with information obligations stemming from government regulation.

7) Conclusion

Current situation is here represented especially by a wide comparative insight into problems connected with measurement of Administrative Burdens (SCM measurement). Reforms of public administration proceeding in the Czech Republic between years 1989 and 2000 were considered as a service for a free citizen, a shift from a centralistic decision-making process, which was made on every more significant detail, to full exercise of the self-government at the municipal and regional level.

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SOCIAL RESPONSIBILITY IN GAMING LAW - WORDS OR DEEDS?

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Key words: Rates bets; social responsibility; Gaming Act.

Social Responsibility in Gaming Law - Words or Deeds?

Social Responsibility in gaming law may be considered appropriate at least from the operators of lotteries or other similar games. Lotteries and other similar games are regulated by Act No. 202/1990 Coll., on Lotteries and Other Similar Games, as amended (further "Gaming Act"). This Act (though very poorly) regulates the games, such as cash and material lottery, tombola, numerical lotteries, games in casinos, games on winning gaming devices, rates bets and other. The social responsibility can be seen differently from various types of games. In the paper I pay my attention to rates bets, which can be carried out in the stone branches and from the beginning of the year 2009 even through the internet (meaning legally via the internet).

This kind of game I selected because in addition to winning gaming devices can be considered as the most danger (high probability of non-material addiction – gambler and high accessibility of gambling for less than 18 years of age) and the most popular.

The biggest rates bets operators in the Czech Republic are 5 companies - FORTUNA a.s., CHANCE a.s., SAZKA a.s., SYNOT TIP a.s. TIPSPORT a.s. These companies in the year 2007 founded the Rates Bets Operators Association (abbreviation APKURS). In the association framework they issue "Declaration of principles of social responsibility APKURS", which indicates that they are aware of their social responsibility and consider important to declare openly their opinions in the various fields of this problem. Under the term social responsibility they mean the integration of social responsibility and the universal social values in their business and marketing activities. In the context of sports betting they see two main problems. The first is to prevent access of minors to the betting, the second is the risk associated with the emergence of pathological gamblers. In addition, the Declaration state that do not wish children and minors betting, and that if the adult chooses to bet, it should always be a free and informed decision, which will at all

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times take into account the real financial possibilities. In addition, they also don't wish to cause anyone by betting financial difficulties or addiction to gambling or family threats. Their aim is to set up an environment where sports betting will be only for adults, on reasonable level, according to their financial means and on the basis of free and informed decision.

The Declaration also defines the basic principles of social responsibility. These, however, from my point of view appear somewhat strange, duplicate in relation to the Gaming Act and, in some cases incredible. The Declaration indicates that the basic aim of companies in the field of rates betting is to create on the first place the proceeds, on the second the profit. Proceeds, accordingly to the Gaming Act means the base from which the percentage is payment to public utility purposes. It is difficult to imagine that companies operating rates bets, and not just those, not interested primarily in profit. The association also declared "help needed", like that they pay the percentage of the proceeds for public utility purposes. This obligation, however, is determined in Section 4, Subsection 2 and Section 16 of the Gaming Act. They in the section devoted to "placement and operation of terminals," indicate that they are binging to not place their premises or terminals in schools, school facilities, social and health care facilities, state institutions and churches. This obligation is not laid down by law, but in the present state, where are allowed rates betting via the Internet, the operators tend to close the stone branches anyway. Members APKURS also declare that they are aware of the fact that for some people gambling can cause serious personal and social problems. They inform their employees about this problem, learn them to distinguish signs of the addiction and certainly did not support it – even by refusing bets. Refusal of bets in stone branches I can hardly imagine and the bets via the Internet even less. It is therefore questionable whether social responsibility and declared principles that they outlined is only a blank expression of a new trend called "corporate social responsibility", which becomes part of corporate philosophy, or is real, and at least partly followed by those companies. It is probably utopia to expect that, for example, instead television advertising spots appears spots about where to gambling addiction can lead, or that the on rates bets tickets appears similar warning like on tobacco products.

However, some responsibility should be here. The declaration also contains a "safe bet rules" (Ten for safe betting), the principles which will enable compliance to minimize the risks associated with sports betting. I can well imagine that these rules were in the premises, respectively, exposed on the Internet, or introduced to people before they start betting. However, everything the companies stated in the Declaration is not binding, so if something consciously or unconsciously infringed nothing happens ... people will play and so on.

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PENALTIES APPLICABLE LEGAL PERSON ROMANIAN CRIMINAL LAW

Criminal liability of legal person is not a new problem. Their origins in ancient law, it lies at the end of sec. the nineteenth century the attention of European criminal doctrine, for today to get a tooth the central themes of scientific and legal approaches. Study the historical evolution of this institution is able to support the idea that the criminal liability of legal persons is in perfect agreement with the fundamental principles of criminal law, the very nature of the legal person is justified by the needs of socio-economic.

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ENTERPRISE LIABILITY UNDER PRINCIPLES OF EUROPEAN TORT LAW (PETL)

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Key words: Principles of European tort law; enterprise liability; fault based liability; strict liability.

Principles of European Tort Law (PETL) is one of the most interesting legal tool from the soft law category, therefore first part of the paper focuses on their fundamental characteristic.

The goal of PETL is to serve as a basis for the enhancement and harmonization of the tort law in Europe. They can serve as a kind of framework for the further development of a harmonised European tort law.

The Principles follow a concept of fault which corresponds to the largely prevailing opinion in most European systems. On the other hand lability based on fault has been considerably marginalized by the emergence of a number of statutes introducing so called risk-based lability, i. e. strict lability, whereby the operators of activities, holders or owners of goods and materilas presenting a qualified danger for people.

Enterprise lability is based on reversal of the burden of proving fault in the sense that the potentially liable entrepreneur can exonerate himself by proving that he has conformed to the required standard of conduct. Whether this type of lability can still be considered as a variety of lability based on fault may appear questionable, even if the connecting factor is still misconduct.

Therefore enteprise lability under Principles is not strict lability. Enterprise lability is fault based liabilty though with a reversal of the burden of proving fault. It is placed into the grey zone between fault and strict lability intending to bridge the fault concept on the one side with the nofault regime on the other.

The major motivation underlying art. 4:202 is the concern that victims may not be able to identify the proper cause if their losses although it can be traced to an enterprise that takes advantage both of human auxiliaries or technical aquipment.

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The claimant has to prove that the cause lies within the sphere of the enteprise by showing that it was a defect of such enterprise or of its output. If they succed, the ball lies in the field of the enterprise which then needs to rebut the presumption that this defect established by the claiment came about because enterprise failed to exercise all proper care to prevent the loss.

Art. 2:202 does not necessarily presuppose that the auxiliary has done something wrong. It may be that harm has been caused by an auxiliary without any violation of the required standard of care on his side. Nevetherless the enterprise can be held liable if proper organization could have avoided the negative consequences of such occurences. However, it is still up to victim to prove such defects in the entrepreneur‘s work schedule and that these ultimately were the cause of his/her loss.

Therefore central point for the victim is a defect of the enterprise or of its output which must be proven by himself in addition to the causal links leading from the defect to the harm in question. This is the main weakness of the enterprise lability provision, however art. 4:202 para. 2 defines broadly the term defect by pointing at safety standards which can objectively be expected from enterprise.

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