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Overview of the milk and dairy products legislation in the European Union

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Abstract

European Union legislation laying down rules for the dairy sector. The legislation defines the conditions under which milk and milk products intended for human consumption can be imported into the EU. Milk and milk products must come only from third countries that appear on the list of authorized countries. Establishments, where milk and milk products are produced, must be approved for export. The TRACES system is used on imports and the consignment must be accompanied by a certificate. This system ensures product traceability and prevents the introduction of diseases. An important role is delegated to the designated border control posts (BCPs) where the appropriate customs and veterinary inspections are performed by government institutions of the country. The European Union has adopted legislation to ensure the safety of food placed on the market in EU member countries. This legislation sets general hygienic requirements for food production based on the good manufacturing practice and the HACCP system. The criteria for microorganisms, chemicals, and applicable food additives are set. Also, the legislation contains requirements for product labeling. Part of the legislation concerns the common organization of the market in milk and milk products. These regulations contain rules for direct payments, subsidies, define the school milk system, etc. Specific legislation creates rules for organic bio food production, for production and labeling of products with the Protected Geographical Indication, Protected Designation of Origin, and Traditional Specialty Guaranteed. There is also legislation that defines the labeling of products intended for specific populations, e.g. gluten-free foods, lactose-free foods, etc. Areas not regulated by the legislation include the labeling of products with certification marks designed to highlight the suitability of food for religious purposes or quality certification.

Keywords: milk, dairy products, legislation

1. Introduction

European Union legislation contains several pieces of legislation that comprehensively address the entire dairy sector. The legislation defines the conditions under which milk and milk products intended for human consumption can be imported into the EU. Milk and milk products must come only from third countries that appear on the list of authorized countries. Establishments, where milk and milk products are produced, must be approved for export. TRACES is used on import and the consignment must be accompanied by a certificate. This system ensures product traceability and prevents the introduction of diseases **[24]**. The European Union has adopted several pieces of legislation that establish rules for the production and marketing of safe food in individual EU countries. This legislation sets hygienic limits for the content of foreign substances, and microorganisms define requirements for traceability and labeling of products. Part of the legislation concerns the common organization of the market in milk and milk products. These regulations set out the rules for direct payments, and subsidies. Specific legislation creates rules for organic food production. The European Union also has specific legislation that defines the rules for labeling products with the Protected Geographical Indication, Protected

Designation of Origin, and Traditional Specialty Guaranteed. There is also legislation in the EU that define the labeling of products intended for at-risk populations, e.g. gluten-free foods, lactose-free foods, etc. Areas not regulated by the legislation include the labeling of products with certification marks designed to highlight the suitability of a food for religious purposes or quality marks **[25]**. In this article, we have summarized the legislation that applies in the European Union for milk and dairy products. In the text and the tables, in most cases, we list the legislation without amendments, which can be found directly in the Eurlex databases we have worked with. In this article, we have summarized the legislation that applies in the European Union, hygiene manuals, ISO standards and *Codex Alimentarius* standards for milk and dairy products.

2. General health rules

Regulation (EU) No 182/2011 of the European Parliament and of the Council **2016/429 [1]** of 9 March 2016 on communicable animal diseases and amending and repealing certain acts in the field of animal health and Commission Delegated Regulation (EU) **2020/692 [2]**supplementing Regulation (EU) of the European Parliament and the Council **2016/429 [1]** lay down rules concerning the entry into, and the movement and treatment of, consignments of certain products of animal origin after they enter into the Union. The conditions for entry into the Union of raw milk, milk products, colostrum, and colostrum-based products shall be based on the animal health risks posed by those products. These risks are linked to the country or territory of origin or their zone and to the species of animals from which these products were obtained. In the case of milk and colostrum, two diseases are a cause for concern - foot-and-mouth disease and bovine fever virus infection, and therefore raw milk and colostrum should only enter from third countries or territories or zones free of these diseases. Consumer health protection is ensured by the application of several pieces of EU legislation: Regulation (EC) No **178/2002 [3]**, Regulation (EC) No **852/2004 [4]**, Regulation (EC) No **853/2004 [5]**, Regulation (EC) No **2017/625 [6]**, **2019/627 [7]** form the legal basis for the production, trade and official control of food of animal origin. The general food regulation principles are well described by **[42]**.

3. Imports of milk and dairy products for human consumption into the EU

Harmonized EU legislation makes it possible to apply the same requirements for the marketing of milk and milk products in all Member States and prevents milk and milk products that can transmit infectious diseases dangerous to livestock or humans from entering the EU.

These principles also apply to consignments that are under EU transit and/or temporary storage procedures. Depending on the risk they may pose, such consignments are exempted from public health requirements but must comply with veterinary requirements.

In general, the products must come from countries that are allowed to enter milk and dairy products into the EU.

The establishment of origin must be approved and authorized as an establishment from which milk and milk products may be imported into the EU.

The third country of origin must have an approved residue control plan.

A non-EU country must meet certain requirements to obtain a marketing authorization for milk and dairy products. The most important aspects to consider before authorization are:

- the organization, structure, competencies, and powers of the veterinary services,
- third-country legislation,
- non-EU country rules on animal disease prevention and control,
- the health status of livestock, other domestic animals and wildlife,
- the regularity and speed of information on infectious animal diseases provided by the third country to the European Commission and the World Organization for Animal Health (OIE),
- hygiene requirements for the production, handling, storage, and dispatch of products of animal origin.

4. Audit

Before a non-EU country obtains authorization to place milk and dairy products on the EU market, the European Commission can carry out an audit to verify that all the criteria set out in EU legislation are properly met.

5. Authorized third countries and establishments

Based on the principles contained in EU legislation and the results of the Commission's audit, a non-EU country may be included in the list of third countries eligible for the entry of milk and milk products into the EU.

The list of these third countries provides Commission Implementing Regulation (EU) **2021/405 [8]** of 24 March 2021 establishing the lists of third countries or regions thereof from which, by Regulation (EU) No

2017/625 **[6]** authorizes the entry into the Union of certain animals and goods intended for human consumption. Before exporting milk and dairy products to the EU, the country must be listed.

All imports of milk and milk products into the EU must come from an approved establishment that has been authorized and listed for this purpose. Third countries are responsible for updating the lists of installations and informing the Commission of any changes. Lists of establishments in non-EU countries authorized to produce fresh meat are published on the Commission's website.

6. Certificate

Consignments of milk and milk products entering the EU must be accompanied by a CHED certificate. The model certificate is set out in the Commission Implementing Regulation (EU) **2020/2235** **[9]** (Chapter, 33, 34, 25 - sample certificates).

7. Public health

Public health requirements must be met. For example, a non-EU country is required to have an approved monitoring plan for "residues". Products placed on the market in the EU must comply with the requirements of food law, namely Regulation (EC) No **178/2002** **[3]**.

8. Border control

Regulation of the European Parliament and the Council (EU) **2017/625** **[6]** lays down the principles governing the organization of veterinary checks on products of animal origin entering the EU from outside the EU at border inspection posts.

Milk and milk products entering the EU are checked at the EU Border Control Station (BIP) by the Commission Implementing Regulation (EU) **2019/1014** **[10]** laying down detailed rules concerning minimum requirements for border inspection posts, including inspection centers. Member States' official veterinarians ensure that milk and milk products comply with all requirements laid down in EU legislation.

9. TRACES NT system

TRACES NT (Trade Control Expert System - New Technology) is the European Commission's online system for sanitary and phytosanitary certification required for the import of animals, animal products, food, and feed of non-animal origin and plants into the European Union, and for intra-EU trade, and animal exports and certain animal products from the EU. Exporters from third countries who plan to export products of animal origin to the EU must be registered in this system through the European Commission, which must be contacted for this purpose by the competent authority of the third country.

Detailed rules for operations to be carried out during documentary, identification, and physical checks on an

imals and goods subject to official controls at border inspection posts and following those controls are defined in the Commission Implementing Regulation (EU) **2019/2130** **[11]**.

From 14 December 2019 (date of application of the Regulation on official controls - Regulation (EU) **2017/625** **[6]**, the use of the Common Health Entry Documents (CHED) has become mandatory for the entry of animals and goods into the EU under Article 47 of this Regulation. The CHED document has several variants (A, P, PP, D), while the CHED-P document is required for the import of dairy products. CHED-P is a common medical entry document for consignments of products of animal origin, germinal products, and animal by-products (EC, 2022).

It is issued by the veterinary authorities in TRACES after an inspection. The first part must be completed by the importer to notify in advance of the import or transit of animal products in the EU 24 hours before the arrival of the goods. The second part of the form is filled in by the relevant veterinary and food administration, which confirms that it has carried out checks at the border inspection post and authorizes the entry of the products into the EU.

10. Traceability

The food traceability requirement is defined by Regulation (EC) No **178/2002** **[3]** as amended. This Regulation contains general principles for the traceability of food.

Traceability in the Dairy Industry in Europe is well described in **[28]** by **[29]** and the perceived value of dairy product traceability in modern society was analyzed by **[41]**. Traceability means the ability to find and trace food, feed, food-producing animals, or substances that are intended or intended to be added to food or feed at all stages of production, processing, and distribution. Tracibility of dairy products is important to solve the problems with hazards identified in the dairy porducts noted in RASFF system **[30]**.

Stages of production, processing, and distribution mean any stage, including import, from, and including primary food production to and including storage, transport, sale, or delivery to the final consumer and, where relevant, import, production, storage, transport, distribution, sale, and feed delivery.

Food and feed business operators (FBOs) must:

1. Ensuring the traceability of food, feed, food-producing animals, and any substances which are intended to be added to or intended to be added to food or feed must be established at all stages of production, processing, and distribution.
2. Be able to identify any person who supplies them with food, feed, a food-producing animal, or any substance intended to be added to food or feed or which is intended to be added to food or feed. To this end, such operators must have systems and procedures in place that allow this information to be made available to the competent authorities upon request.
3. Have systems and procedures in place to identify other businesses to which their products are supplied. This information shall be made available to the competent authorities upon request.
4. Foods or feedingstuffs which are placed on the market or are likely to be placed on the market in the Community must bear an appropriate label or marking enabling them to be traced through appropriate documentation or information by the relevant requirements of the more specific provisions.

11. Food labeling

Milk and dairy products must be labeled by:

- Regulation (EU) No **931/2011** **[13]** on the traceability of animal products,
- EC Regulation No **1169/2011** **[14]** on the provision of information to consumers,
- EC Regulation No **1308/2013** **[15]** on the common organization of the markets in agricultural products.
- The products must bear an oval veterinary mark.
- Nutrition and health claims may be made on products by Regulation (EC) No 258/97 of the European Parliament and the Council **1924/2006** **[16]**. Functional Foods and Health Claims Legislation is important and only the claims allowed by legislation should be used by food business operators **[33]**.
- The product ca contains several symbols present in Table 1 **[17]**.

Standards and labeling of milk fat and spread products in different countries in the world are different **[32]**. The impact of new EU Regulation No. 1169/2011 was analyzed by several authors **[36], [37], [38], [39]** and **[40]**.

The traceability requirements for food of animal origin are set out in Implementing Regulation (EU) No **1095/2010** **[12]**, **931/2011** **[13]**.

To ensure traceability, the following are required:

- the name and address of the FBO supplying the food, and
- the name and address of the FBO to which the food was delivered.

Regulation (EU) No **931/2011** **[13]** applies to all FBOs at all stages of the production, processing, and distribution of food of animal origin, including primary producers, retailers, wholesalers, intermediaries, storers, and transporters of food of animal origin.

All products of animal origin placed on the market have been marked with a health mark or identification mark.

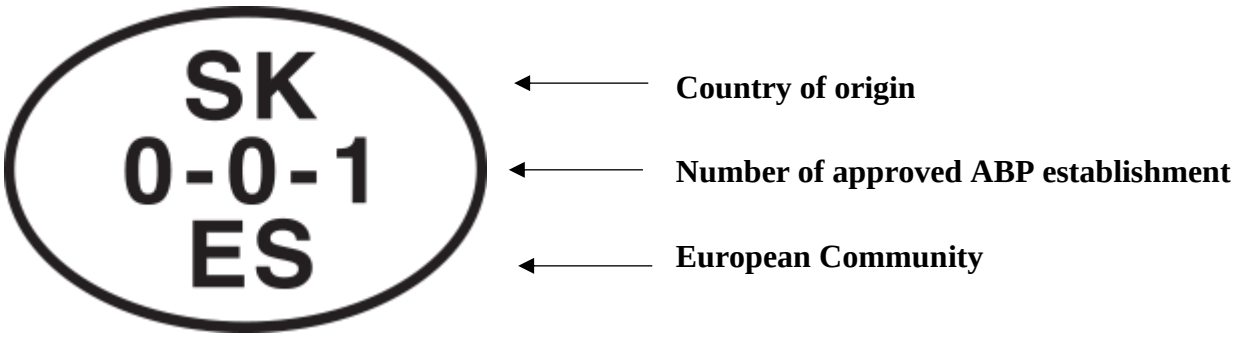

Figure 1 Example of the European union health and identification mark. Note: SK – Slovakia, ES – European Community.

Table 1 Food Packaging Symbols Explained.

Symbols	**Definition**
	This symbol is often used on containers, such as Tupperware, to show that the product is suitable for food use. It may or may not have the word "food" below the cup and fork.
	Recycling – this logo is used internationally to show that the product can be recycled. This is not an indication that the packaging has been made from recycled material. If you see a number in the middle of this image, that is to indicate the percentage of recycled material that makes up that product.
	The Green Dot In Continental Europe the 'Green Dot' trademark indicates that a fee has been paid to fund the recycling of the product. It is a financial symbol principally and indicates that the producer is part of PRO Europe's packaging recovery organisation, a company that seeks to promote economic producer responsibility. In the UK it is often used incorrectly on products to suggest they are recyclable. This is a misuse of the symbol.
	Plastic recycling – another widely used symbol to show that the plastic used in the packaging can be recycled. The PET refers to Polythene Terephthalate which is commonly used in this application. The number inside (1 – 7) defines the resin used in making the packaging.
	Keep Britain Tidy – this symbol is included to remind consumers to dispose of their waste in an appropriate manner. It does not necessarily relate to the type of packaging used, but is rather a campaign against littering.
	The Forest Stewardship Council The FSC looks after our forests and can be found on all wood and paper products as well as products such as latex that are derived from trees. The FSC logo can be found on products such as decking, charcoal, and kitchen utensils. When you buy a product with the FSC label, it's a guarantee that the trees used were replaced or allowed to grow naturally, that the rights of indigenous people are protected, and that the homes of wildlife are conserved.

12. Production

The production of dairy products is subject to the general hygiene requirements set out in several European regulations(EC): Regulation (EC) No **178/2002 [3]**, Regulation (EC) No **852/2004 [4]**, Regulation (EC) No **853/2004 [5]**, **[34]**. The processed milk must meet the hygienic requirements, which are the total number of microorganisms, the number of somatic cells, the absence of residues of veterinary drugs, and not exceeding the maximum permissible amounts of certain contaminants. The purchase of milk takes place in the form of a contractual relationship with the primary milk producer. In production, input, inter-operational, and output control is performed by the HACCP plan. The controls are also focused on the pasteurization regime, reaching the prescribed temperature and time of pasteurization as well as on the inactivation of the enzyme alkaline phosphatase. From a microbiological point of view, the legislation sets limits specifically for the production process and final products. The products must not be contaminated with pathogenic microorganisms, foreign contaminants, and physical objects. The quality requirements for raw milk as well as the final product are determined by each producer, taking into account existing requirements that apply specifically to specific products. For example, in the case of sour milk products, the legislation determines the number of living microorganisms that must be present in the product, in the case of butter, the amount of fat in the product is determined, and so on. Food additives may be added to milk products by Regulation (EC) No 258/97 of the European Parliament and the Council. in the case of butter, the amount of fat in the product is determined, etc. Food additives may be added to milk products by Regulation (EC) No 258/97 of the European Parliament and the Council. in the case of butter, the amount of fat in the product is determined, etc. Food additives may be added to milk products by Regulation (EC) No 258/97 of the European Parliament and the Council **1333/2008 [18]**. Food additives are substances that are not normally consumed as food as such but are intentionally added to food for technological purposes. Packaging materials must be suitable for use in the food industry. The production of

specific PGI, PDO and TSG products is carried out in such a way that the registered product specification **1151/2012 [19]**, **668/2014 [20]**. Other legislation is listed in the overview tables.

13. Common milk market organization

The common organization of the market in agricultural products is governed by Regulation (EU) No 182/2011 of the European Parliament and the Council **1308/2013 [15]**. For example, the regulation defines and catalogs milk and selected dairy products, addresses the contractual arrangements for the supply of milk, the obligations of first-time raw milk buyers, and obliges the Commission to report to the European Parliament on the situation in the dairy market.

Other European Union legislation in this area, which is listed in Table 2, also applies.

Table 2 Legislation for the common organization of the market in milk and milk products.

Prescription number	Name of the regulation
595/2004	Commission Regulation (EC) No Commission Regulation (EC) No 595/2004 of 30 March 2004 laid down detailed rules for the application of Council Regulation (EC) No 1234/2007 1788/2003 establishing a levy on the milk and milk products sector.
565/2013	Commission Implementing Regulation (EU) No 565/2013 of 18 June 2013 amending Regulations (EC) No 1731/2006, (ES) No 273/2008, (ES) No 566/2008, (ES) No 867/2008, (ES) No 606/2009 and Implementing Regulations (EU) No 543/2011 and (EU) Amending Regulation (EC) No 1333/2011 as regards the notification obligation under the common organization of agricultural markets and repealing Regulation (EC) No 491/2007.
1307/2013	Regulation (EU) No 182/2011 of the European Parliament and of the Council Commission Regulation (EC) No 1307/2013 of 17 December 2013 laid down rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 1257/1999 637/2008, and Council Regulation (EC) No 73/2009.
1308/2013	Regulation (EU) No 182/2011 of the European Parliament and of the Council Regulation (EC) No 1308/2013 of 17 December 2013 establishing a common organization of the markets in agricultural products and repealing Council Regulations (EEC) No 2454/93 922/72, (EHS) No 234/79, (ES) No 1037/2001, and (ES) No 1234/2007.
906/2014	Commission Delegated Regulation (EU) No Regulation (EU) No 906/2014 of the European Parliament and of the Council of 11 March 2014 1306/2013 as regards public intervention expenditure.
907/2014	Commission Delegated Regulation (EU) No Regulation (EU) No 907/2014 of the European Parliament and of the Council of 11 March 2014 1306/2013 as regards paying agencies and other bodies, financial management, clearance of accounts, guarantees, and use of the euro
1097/2014	Commission Implementing Regulation (EU) No 1097/2014 of 17 October 2014 amending Regulation (EU) No 479/2010 on notifications by the Member States in the milk and milk products sector.
2016/ 1238	Commission Delegated Regulation (EU) 2016/1238 of 18 May 2016 supplementing Regulation (EU) No 182/2011 of the European Parliament and the Council 1308/2013 as regards public intervention and private storage aid.
2016/ 1240	Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and the Council about public intervention and aid for private storage
2016/2080	Commission Implementing Regulation (EU) 2016/2080 of 25 November 2016 opened the sale of skimmed milk powder by a tendering procedure.
2017/1185	Commission Implementing Regulation (EU) No 2017/1185 of 20 April 2017 laying down detailed rules for the application of Regulation (EU) No 182/2011 of the European Parliament and the Council 1307/2013 and (EU) No 1308/2013 as regards the provision of information and the submission of documents to the Commission and amending and repealing several Commission Regulations.
2017/40	Commission Delegated Regulation (EU) 2017/40 of 3 November 2016 supplementing Regulation (EU) No 182/2011 of the European Parliament and the Council Amending Commission

	Implementing Regulation (EU) No 1308/2013 as regards Union aid for the supply of fruit and vegetables, bananas and milk in educational establishments and amending Commission Implementing Regulation (EU) No 1308/2013 907/2014.
2018/147	Council Regulation (EU) 2018/147 of 29 January 2018 amending Regulation (EU) No 182/2011 1370/2013 as regards the quantitative limit for the purchase of skimmed milk powder.
2018/149	Commission Delegated Regulation (EU) 2018/149 of 15 November 2017 amending Commission Delegated Regulation (EU) 2016/1238 as regards compositional and quality requirements for milk and milk products eligible for public intervention and private storage aid.
2018/150	Commission Implementing Regulation (EU) 2018/150 of 30 January 2018 amending Implementing Regulation (EU) 2016/1240 as regards methods for analyzing and evaluating the quality of milk and milk products eligible for public intervention and private storage aid.
2018/150	Commission Implementing Regulation (EU) 2018/150 of 30 January 2018 amending Implementing Regulation (EU) 2016/1240 as regards methods for analyzing and evaluating the quality of milk and milk products eligible for public intervention and private storage aid.
2018/1879	Commission Implementing Regulation (EU) 2018/1879 of 29 November 2018 amending Implementing Regulation (EU) 2016/2080 as regards the date of storage of skimmed-milk powder sold under a tendering procedure.
2018/765	Commission Implementing Regulation (EU) 2018/765 of 23 May 2018 amending Implementing Regulation (EU) 2016/2080 as regards the date of storage of skimmed-milk powder sold under a tendering procedure.
2020/532	Commission Implementing Regulation (EU) 2020/532 of 16 April 2020 laying down derogations from Implementing Regulations (EU) No 809/2014, (EU) No 180/2014, (EU) No 181/2014, (EU) 2017/892, (EU) 2016/1150, (EU) 2018/274, (EU) 2017/39, (EU) 2015/1368, and (EU) 2016/1240, as regards certain administrative and on-the-spot checks applicable under the common agricultural policy.
2020/591	Commission Delegated Regulation (EU) 2020/591 of 30 April 2020 established a temporary special aid scheme for the private storage of certain cheeses and fixed the amount of aid in advance.
2020/ 597	Commission Implementing Regulation (EU) 2020/597 of 30 April 2020 granting private storage aid for butter and fixing in advance the amount of aid.
2020/598	Commission Implementing Regulation (EU) 2020/598 of 30 April 2020 granting private storage aid for skimmed-milk powder and fixing the amount of aid in advance.
2020/599	Commission Implementing Regulation (EU) 2020/599 of 30 April 2020 authorizing the conclusion of agreements and decisions on production planning in the milk and milk products sector.
2020/600	Commission Implementing Regulation (EU) 2020/600 of 30 April 2020 laying down derogations from Implementing Regulation (EU) 2017/892, Implementing Regulation (EU) 2016/1150, Implementing Regulation (EU) No 615/2014, Implementing Regulation (EU) 2015/1368 and Implementing Regulation (EU) 2017/39 as regards certain measures to address the COVID-19 pandemic crisis.
2020/760	Commission Delegated Regulation (EU) 2020/760 of 17 December 2019 supplementing Regulation (EU) No 182/2011 of the European Parliament and of the Council amending Regulation (EC) No 1308/2013 as regards the rules for administering import and export tariff quotas subject to licenses and supplementing Regulation (EU) No 1308/2013 of the European Parliament and the Council 1306/2013 as regards the lodging of security in the administration of tariff quotas.
2020/1471	Commission Implementing Regulation (EU) 2020/1471 of 12 October 2020 fixing the interest rates to be used for calculating the costs of financing intervention measures comprising buying-in, storage, and disposal for the EAGF 2021 accounting period.

14. Food hygiene legislation

In the field of food hygiene, the legislation is listed in Table 3. The old EU legislation **[35]**, was replaced by new legislation in 2004 **[34]**. There are several regulations solving the food hygiene in the EU.

Table 3 Food hygiene legislation.

Prescription number	Name of the regulation
2020/2235	Commission Implementing Regulation (EU) 2020/2235 of 16 December 2020 laying down detailed rules for the application of Regulations (EU) 2016/429 of the European Parliament and the Council and (EU) 2017/625 as regards model animal health certificates, model official certificates, and model animal health certificates / official certificates for the entry and movement of consignments of certain categories of animals and goods into the Union, the official certification of such certificates and repealing Regulation (EC) No 1774/2002; Implementing Regulations (EU) No 599/2004 636/2014 and (EU) 2019/628, Directive 98/68 / EC and Decisions 2000/572 / EC, 2003/779 / EC, and 2007/240 / EC.
2019/627	Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for carrying out official controls on products of animal origin intended for human consumption by Regulation (EU) 2017/625 of the European Parliament and the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls.
2019/1139	Commission Implementing Regulation (EU) 2019/1139 of 3 July 2019 amending Regulation (EC) No Amending Regulation (EC) No 2074/2005 as regards official controls on the food of animal origin related to food chain information and fishery products and reference to recognized testing methods for the detection of marine biotoxins and testing methods for raw and heat-treated cow's milk.
2017/625	Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls.
16/2012	Commission Regulation (EU) No Amending Annex II to Regulation (EC) No 16/2011 of the European Parliament and of the Council 853/2004 as regards requirements for frozen foodstuffs of animal origin intended for human consumption.
931/2011	Commission Implementing Regulation (EU) No 931/2011 of 19 September 2011 on traceability requirements laid down in Regulation (EC) No 931/2011 of the European Parliament and the Council 178/2002 about the food of animal origin.
765/2006	Commission Decision 2006/765/EC repealing certain implementing rules concerning food hygiene and health conditions for the production and placing on the market certain products of animal origin intended for human consumption.
2074/2005	Commission Regulation laying down implementing measures for certain products under Regulation (EC) No 1234/2007 853/2004 and for the organization of official controls under Regulations (EC) No 854/2004 and 882/2004 derogating from Regulation (EC) No Amending Regulation (EC) No 852/2004 853/2004 and 854/2004.
2073/2005	Commission Regulation (EC) No 2073/2005 on microbiological criteria for foodstuffs.
853/2004	Regulation (EC) No Laying down specific hygiene rules for food of animal origin.
852/2004	Regulation (EC) No 852/2004 on food hygiene. Commission Communication on the implementation of food safety management systems taking into account essential requirements programs (NCPs) and HACCP-based procedures, including simplification/flexibility in implementation for certain food business operators. *Codex Alimentarius* standards - Regulation (EC) No 852/2004 on food hygiene takes into account the international food safety standards contained in the *Codex Alimentarius*. The European Commission's guidance document on the implementation of certain provisions of Regulation (EC) No 852/2004 on food hygiene sets out certain standards developed by the *Codex Alimentarius*.
178/2002	Regulation (EC) No 178/2002 laid down the general principles and requirements of food law, and guidelines for the implementation of Articles 11, 12, 16, 17, 18, 19, and 20.
315/93	Council Regulation (EEC) No Council Regulation (EEC) No 315/93 of 8 February 1993 laid down Community procedures for contaminants in food.
1881/2006	Commission Regulation (EC) No Regulation (EC) No 1881/2006 of 19 December 2006 set maximum levels for certain contaminants in foodstuffs.

15. Products not intended for human consumption

Dairy companies produce food waste and the EU has addopted health rules concerning animal by-products and derived products not intended for human consumption which should be taken into account (Table 4).

Table 4 Additional legislation for the dairy sector.

Prescription number	Name of the legislation
1069/2009	Regulation (EC) No 1/2003 of the European Parliament and the Council Commission Regulation (EC) No 1069/2009 of 21 October 2009 laying down health rules concerning animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1829/2003 1774/2002.

16. Legislation for PGI, PDO, and TSG

Products with a protected geographical indication, a protected designation of origin, and guaranteed traditional specialties are marked with quality marks by EU legislation (Table 5). The spesific labeling of traditional products is important for EU customers **[31]**.

Table 5 Legislation for PGIs, PDOs, TSGs.

Prescription number	Name of the legislation
1151/2012	Regulation (EU) No 182/2011 of the European Parliament and of the Council 1151/2012 of 21 November 2012 quality systems for agricultural products and foodstuffs.
668/2014	Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 182/2011 of the European Parliament and of the Council 1151/2012 on quality systems for agricultural products and foodstuffs.

Figure 2 Example of the European PDO, PGI and TSG marks. Note: Protected geographical indication (PGI); Protected designation of origin (PDO); and Traditional speciality guaranteed (TSG).

17. Organic agricultural production

Since 1 January 2022, Regulation (EU) **2018/848** of the European Parliament and of the Council of 30 May 2018 is the applicable legislative act, also known as the basic act, laying down the rules on organic production and labelling of organic products, repealing and replacing Council Regulation (EC) No **834/2007** of 28 June 2007. The new regulation provides for transitional periods for the implementation of certain new provisions, in particular on trade. Please refer to section 2 of Chapter IX of Regulation (EU) 2018/848, where provisions under previous Council Regulation (EC) No **834/2007** and Commission Regulation (EC) No **889/2008** may apply for a limited period.

It is on the basis of Regulation (EU) 2018/848 that the Commission adopts further detailed secondary legal acts.

The types of secondary legal acts are the following:

delegated acts, also known as Commission Delegated Regulations, which are acts of general application to supplement ("Commission Delegated Regulation supplementing") or amend ("Commission Delegated Regulation amending") certain non-essential (in the sense of complementary) elements of the legislative act;
implementing acts, also known as Commission Implementing Regulations, which are used where uniform conditions for implementation are needed.

Delegated acts amending the basic act are progressively incorporated into the so-called "consolidated" text of the legislative act and become part of it. Please note that the consolidated version of Regulation (EU) **2018/848** is made available only for informative purposes, but has no legal effect. The authentic versions of the relevant acts, including their preambles, are those published in the Official Journal of the European Union

Table 6 Legislation for organic farming.

Prescription number	Name of the legislation
834/2007	Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2454/93, 2092/91.
889/2008	Commission Regulation (EC) No 889/2008 of 5 September 2008 laid down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labeling of organic products about organic production, labeling, and control.
848/2018	Regulation (EU) No 2018/848 of the European Parliament and of the council of 30 May 2018 on organic production and labeling of organic products and repealing council regulation (EC) No 1782/2003, 834/2007.
2021/1165	Commission Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorizing certain lists of products and substances for use in organic farming.
2021/1378	Commission Implementing Regulation (EU) No 2021/1378 of 19 August 2021 laying down certain rules concerning the certificate issued to operators, groups of operators, and exporters in third countries involved in imports of organic products and products from conversion into the Union, establishing a list of recognized public inspection bodies and private inspection bodies by Regulation (EU) No 2018/848 of the European Parliament and the Council.
2021/2119	Commission Implementing Regulation (EU) No 2021/2119 of 1 December 2021 laying down detailed rules concerning certain records and declarations required of operators and groups of operators and the technical means for issuing certificates by regulation (EU) 2018 of the European Parliament and the Council / 848 and amending Commission Implementing Regulation (EU) 2021/1378 as regards the certification of operators, groups of operators and exporters in third countries.
2021/2307	Commission Implementing Regulation (EU) No 2021/2307 of 21 October 2021 laying down rules concerning the documents and notifications required for organic products and products of conversion intended for import into the Union.
2021/2325	Commission Implementing Regulation (EU) No 2021/2325 of 16 December 2021 establishing, according to Regulation (EU) No 2018/848 of the European Parliament and the council, the list of third countries and the list of public inspection bodies and private inspection bodies recognized under article 33 (2). 2 a 3 Council Regulation (EC) No 834/2007 to import organic products into the Union.
2020/427	Delegated Regulation (EU) 2020/427 of 13 January 2020 amending Annex II to Regulation (EU) 2018/848 on certain detailed production rules for organic products (OJ L 87, 23.3.2020)
2020/1794	Delegated Regulation (EU) 2020/1794 of 16 September 2020 amending Part I of Annex II to Regulation (EU) 2018/848 on the use of in-conversion and non-organic plant reproductive material (OJ L 402, 1.12.2020)
2021/642	Delegated Regulation (EU) 2021/642 of 30 October 2020 amending Annex III to Regulation (EU) 2018/848 on certain information to provide on the labelling of organic products (OJ L 133, 20.4.2021)
2021/716	Delegated Regulation (EU) 2021/716 of 9 February 2021 amending Annex II to Regulation (EU) 2018/848 on organic production rules on sprouted seeds and chicory heads, on feed for certain aquaculture animals and on aquaculture parasite treatments (OJ L 151, 3.5.2021).

2022/474	Delegated Regulation (EU) 2022/474 of 17 January 2022 amending Annex II to Regulation (EU) 2018/848 on specific requirements for the production and use of non-organic, in-conversion and organic seedlings and other plant reproductive material.
2020/2146	Delegated Regulation (EU) 2020/2146 of 24 September 2020 supplementing Regulation (EU) 2018/848 on exceptional production rules in organic production (OJ L 428, 18.12.2020)
2021/1189	Delegated Regulation (EU) 2021/1189 of 7 May 2021 supplementing Regulation (EU) 2018/848 on the production and marketing of plant reproductive material of organic heterogeneous material of particular genera or species (OJ L 258, 20.7.2021)
2020/464	Implementing Regulation (EU) 2020/464 of 26 March 2020 laying down certain rules for the application of Regulation (EU) 2018/848 on the documents needed for the retroactive recognition of periods for the purpose of conversion, the production of organic products and information to be provided by EU countries (OJ L 98, 31.3.2020)
2021/1165	Implementing Regulation (EU) 2021/1165 of 15 July 2021 authorising certain products and substances for use in organic production and establishing their lists (OJ L 253, 16.7.2021)
2021/715	Delegated Regulation (EU) 2021/715 of 20 January 2021 amending Regulation (EU) 2018/848 on the requirements for groups of operators (OJ L 151, 3.5.2021)
2021/1006	Delegated Regulation (EU) 2021/1006 of 12 April 2021 amending Regulation (EU) 2018/848 on the model of certificate attesting compliance with the rules on organic production (OJ L 222, 22.6.2021)
2021/1691	Delegated Regulation (EU) 2021/1691 of 22 September 2021 amending Annex II to Regulation (EU) 2018/848 on the requirements for records keeping from operators in organic production (OJ L 334, 22.9.2021)
2021/771	Delegated Regulation (EU) 2021/771 of 21 January 2021 supplementing Regulation (EU) 2018/848 laying down specific criteria and conditions for the checks of documentary accounts in the framework of official controls in organic production and the official controls of groups of operators (OJ L 165, 11.5.2021)
2021/2304	Delegated Regulation (EU) 2021/2304 of 18 October 2021 supplementing Regulation (EU) 2018/848 with rules on the issuance of complementary certificates certifying the non-use of antibiotics in organic production of animal products for the purpose of export (OJ L 461, 27.12.2021)
2021/279	Implementing Regulation (EU) 2021/279 of 22 February 2021 laying down detailed rules for implementation of Regulation (EU) 2018/848 on controls and other measures ensuring traceability and compliance in organic production and the labelling of organic products (OJ L 62, 23.2.2021)
2021/1935	Implementing Regulation (EU) 2021/1935 of 8 November 2021 amending Implementing Regulation (EU) 2019/723 on the information and data on organic production and labelling of organic products to be submitted by means of the standard model (OJ L 396, 10.11.2021, p. 17–26)
2021/2119	Implementing Regulation (EU) 2021/2119 of 1 December 2021 on records and declarations required from operators and groups of operators and on the technical means for the issuance of certificates in accordance with Regulation (EU) 2018/848 and amending Implementing Regulation (EU) 2021/1378 of 19 August 2021 on the issuance of the certificate for operators, groups of operators and exporters in third countries (OJ L 430, 2.12.2021)
2021/1697	Delegated Regulation (EU) 2021/1697 of 13 July 2021 amending Regulation (EU) 2018/848 on the criteria for the recognition of control authorities and control bodies competent to carry out controls on organic products in third countries, and on the withdrawal of their recognition (OJ L 336, 23.9.2021)
2021/1698	Delegated Regulation (EU) 2021/1698 of the 13 July 2021 supplementing Regulation (EU) 2018/848 with procedural requirements for the recognition of control authorities and control bodies that are competent to carry out controls on operators and groups of operators certified organic, and on organic products in third countries, and with rules on their supervision and the controls and other actions to be performed by those control authorities and control bodies (OJ L 336, 23.9.2021)
2021/1342	Delegated Regulation (EU) 2021/1342 of 27 May 2021 supplementing Regulation (EU) 2018/848 with rules on the information to be sent by third countries and by control authorities and control bodies for the purpose of supervision of their recognition under Article 33(2) and (3)

	of Regulation (EC) No 834/2007 of 28 June 2007 for imported organic products and the measures to be taken in the exercise of that supervision (OJ L 292, 16.8.2021)
2021/2305	Delegated Regulation (EU) 2021/2305 of 21 October 2021 supplementing Regulation (EU) 2017/625 with rules on the cases where and conditions under which organic products and in-conversion products are exempted from official controls at border control posts, the place of official controls for such products and amending Commission Delegated Regulations (EU) 2019/2023 and (EU) 2019/2124 (OJ L 461, 27.12.2021)
2021/2306	Delegated Regulation (EU) 2021/2306 of 21 October supplementing Regulation (EU) 2018/848 with rules on the official controls in respect of consignments of organic products and in-conversion products intended for import into the EU and on the certificate of inspection (OJ L 461, 27.12.2021)
2022/760	Delegated Regulation (EU) 2022/760 of 8 April 2022 amending Delegated Regulation (EU) 2021/2306 as regards the transitional provisions for certificates of inspection issued in Ukraine (OJ L 139, 18.5.2022)
2021/1378	Implementing Regulation (EU) 2021/1378 of 19 August 2021 laying down certain rules in accordance with Regulation (EU) 2018/848 concerning the certificate issued to operators, groups of operators and exporters in third countries involved in the imports of organic and in-conversion products into the EU and establishing the list of recognised control authorities and control bodies for the purpose of compliance (OJ L 297, 20.8.2021)
2021/2307	Implementing Regulation (EU) 2021/2307 of 21 October 2021 on documents and notifications required for organic and in-conversion products intended for import into the EU (OJ L 461, 27.12.2021)
2021/2325	Implementing Regulation (EU) 2021/2325 of 16 December 2021 establishing, pursuant to Regulation (EU) 2018/848 the list of third countries and the list of control authorities and control bodies that have been recognised under Article 33(2) and (3) of Regulation (EC) No 834/2007 for the purpose of importing organic products into the EU (OJ L 465, 29.12.2021)

Figure 3 The organic logo.

The European Union organic logo gives a coherent visual identity to organic products produced in the EU. This makes it easier for consumers to identify organic products and helps farmers to market them across the entire EU.

The organic logo can only be used on products that have been certified as organic by an authorised control agency or body. This means that they have fulfilled strict conditions on how they must be produced, processed, transported and stored. The logo can only be used on products when they contain at least 95% organic ingredients and additionally, respect further strict conditions for the remaining 5%. The same ingredient cannot be present in organic and non-organic form.

Next to the EU organic logo, a code number of the control body must be displayed as well as the place where the agricultural raw materials composing the product have been farmed **[26]**.

18 Hygiene manulas, *Codex Alimentarius* standards and ISO standards

Regulation (EC) No **852/2004** **[4]** of the European Parliament and of the Council on the hygiene of foodstuffs of 29 April 2004, Chapter 1, Article 1 paragraph 1. states that "the guides to good practice are a valuable instrument to aid food business operators at all levels of the food chain with compliance with food hygiene rules and with the application of the HACCP principles;" and Chapter III, Article 8 paragraph 4. requires that, "The Member States shall forward to the Commission national guides complying with the requirements of paragraph 3. The Commission shall set up and run a registration system for such guides and make it available to the Member States" **[21]**.

The Codex Alimentarius Commission, established in 1963 by the Food and Agriculture Organization of the United Nations (FAO) and WHO, develops harmonized international food standards, guidelines and codes of practice to protect the health of consumers and ensure fair trade practices in the food trade **[22]**.

ISO Standards are the distilled wisdom of people with expertise in their subject matter and who know the needs of the organizations they represent – people such as manufacturers, sellers, buyers, customers, trade associations, users or regulators **[23]**.

19 Conclusion

The legal regulations of the European Union, hygiene manuals, ISO standards, and *Codex Alimentarius* standards create a framework that regulates the production of milk and dairy products, payment systems for primary producers, contains rules for their safety, and quality, labeling, control, and consumer health protection. These rules apply at all stages of the food chain, in primary production, production, and various forms of sale, including import and export. The main objectives of the legislation include consumer protection, consumer information, free movement of milk and dairy products within the EU, regulation of imports and exports of these products, and establishing a quality system for specific products such as protected label products or organic food.

References

1. Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health. OJ L 84, 31.3.2016, p. 1–208.
2. Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin. OJ L 174, 3.6.2020, p. 379–520.
3. Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. OJ L 31, 1.2.2002, p. 1–24.
4. Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs. OJ L 139, 30.4.2004, p. 1–54.
5. Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin. OJ L 139, 30.4.2004, p. 55–205.
6. Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation)Text with EEA relevance. OJ L 95, 7.4.2017, p. 1–142.
7. Commission Implementing Regulation (EU) 2019/627 of 15 March 2019 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls. OJ L 131, 17.5.2019, p. 51–100.
8. Commission Implementing Regulation (EU) 2021/405 of 24 March 2021 laying down the lists of third countries or regions thereof authorised for the entry into the Union of certain animals and goods intended for

human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council. OJ L 114, 31.3.2021, p. 118–150.

9. Commission Implementing Regulation (EU) 2020/2235 of 16 December 2020 laying down rules for the application of Regulations (EU) 2016/429 and (EU) 2017/625 of the European Parliament and of the Council as regards model animal health certificates, model official certificates and model animal health/official certificates, for the entry into the Union and movements within the Union of consignments of certain categories of animals and goods, official certification regarding such certificates and repealing Regulation (EC) No 599/2004, Implementing Regulations (EU) No 636/2014 and (EU) 2019/628, Directive 98/68/EC and Decisions 2000/572/EC, 2003/779/EC and 2007/240/EC. OJ L 442, 30.12.2020, p. 1–409.

10. Commission Implementing Regulation (EU) 2019/1014 of 12 June 2019 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points. OJ L 165, 21.6.2019, p. 10–22.

11. Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts. OJ L 321, 12.12.2019, p. 128–138.

12. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

13. Commission Implementing Regulation (EU) No 931/2011 of 19 September 2011 on the traceability requirements set by Regulation (EC) No 178/2002 of the European Parliament and of the Council for food of animal origin Text with EEA relevance. OJ L 242, 20.9.2011, p. 2–3.

14. Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 Text with EEA relevance. OJ L 304, 22.11.2011, p. 18–63.

15. Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007. OJ L 347, 20.12.2013, p. 671–854.

16. Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods. OJ L 404, 30.12.2006, p. 9–25.

17. Packaging and labelling: labels, what they are and how to use them. (2022, May 26). In Packaging-labelling-labels-design. https://blog.pack.ly/en/packaging-labelling-labels-design/packaging-labels-symbols-meaning/.

18. Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives. OJ L 354, 31.12.2008, p. 16–33.

19. Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs. OJ L 343, 14.12.2012, p. 1–29.

20. Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs. OJ L 179, 19.6.2014, p. 36–61.

21. Register of national guides to good hygiene practice. (2022, May 26). In European Commission. https://webgate.ec.europa.eu/dyna/hygienelegislation/.

22. *Codex Alimentarius* standard for milk and dairy products. (2022, May 26). In *Codex Alimentarius*. https://www.fao.org/fao-who-codexalimentarius/codex-texts/list-standards/en/.

23. ISO standards for milk and milk products. (2022, May 26). In 22. In International Organization for Standardization. https://www.iso.org/committee/47878.html.

24. EC, 2022. (2022, May 26). In TRACES NT. https://webgate.ec.europa.eu/cfcas3/tracesnt-webhelp/Content/Home.htm

25. EC, 2021. Aims of the organic logo. Available at: https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/organic-logo_en

26. Food entry into the EU. (2022, May 26). In AWE. https://www.awe.gov.au/biosecurity-trade/export/controlled-goods/dairy/registered-establishment/understanding-eu-requirements.

27. EC, 2022. Legislation fot the organics sector. Available at: https://ec.europa.eu/info/food-farming-fisheries/farming/organic-farming/legislation_en

28. Mania, I., Delgado, A. M., Barone, C., & Parisi, S. (2018). Traceability in the Dairy Industry in Europe. Springer International Publishing. https://doi.org/10.1007/978-3-030-00446-0

29. Mania, I., Delgado, A. M., Barone, C., & Parisi, S. (2018). Food Traceability System in Europe: Basic and Regulatory Requirements. In Traceability in the Dairy Industry in Europe (pp. 3–14). Springer International Publishing. https://doi.org/10.1007/978-3-030-00446-0_1

30. Leuschner, R. G. K., Hristova, A., Robinson, T., & Hugas, M. (2013). The Rapid Alert System for Food and Feed (RASFF) database in support of risk analysis of biogenic amines in food. In Journal of Food Composition and Analysis (Vol. 29, Issue 1, pp. 37–42). Elsevier BV. https://doi.org/10.1016/j.jfca.2012.09.004

31. Bonadonna, A., Peira, G., Giachino, C., & Molinaro, L. (2017). Traditional Cheese Production and an EU Labeling Scheme: The Alpine Cheese Producers' Opinion. In Agriculture (Vol. 7, Issue 8, p. 65). MDPI AG. https://doi.org/10.3390/agriculture7080065

32. Lee, C.-L., Liao, H.-L., Lee, W.-C., Hsu, C.-K., Hsueh, F.-C., Pan, J.-Q., Chu, C.-H., Wei, C.-T., & Chen, M.-J. (2018). Standards and labeling of milk fat and spread products in different countries. In Journal of Food and Drug Analysis (Vol. 26, Issue 2, pp. 469–480). The Journal of Food and Drug Analysis (JFDA), Food and Drug Administration, Taiwan (TFDA). https://doi.org/10.1016/j.jfda.2017.10.006

33. Berner, L. A., & O'Donnell, J. A. (1998). Functional Foods and Health Claims Legislation: Applications to Dairy Foods. In International Dairy Journal (Vol. 8, Issues 5–6, pp. 355–362). Elsevier BV. https://doi.org/10.1016/s0958-6946(98)00058-2

34. KOMOROWSKI, E. S. (2006). New dairy hygiene legislation. In International Journal of Dairy Technology (Vol. 59, Issue 2, pp. 97–101). Wiley. https://doi.org/10.1111/j.1471-0307.2006.00245.x

35. Burt, R., & Wellsteed, S. (1991). Food safety and legislation in the dairy industry. In International Journal of Dairy Technology (Vol. 44, Issue 3, pp. 80–86). Wiley. https://doi.org/10.1111/j.1471-0307.1991.tb00643.x

36. Fransvea, A., Celano, G., Pagliarone, C. N., Disanto, C., Balzaretti, C., Celano, G. V., & Bonerba, E. (2014). Food labelling: a brief analysis of European Regulation 1169/2011. In Italian Journal of Food Safety (Vol. 3, Issue 3). PAGEPress Publications. https://doi.org/10.4081/ijfs.2014.1703

37. Henderikx, F. (2017). Labelling of food: A challenge for many. In Veterinarski glasnik (Vol. 71, Issue 1, pp. 16–23). National Library of Serbia. https://doi.org/10.2298/vetgl170214001h

38. Marcotrigiano, v., Lanzilotti, C., & Rondinone, d. (2018). Food labelling: Regulations and Public Health implications [JD]. Annali Di Igiene Medicina Preventiva e Di Comunità, 3, 220–228. https://doi.org/10.7416/ai.2018.2213

39. Martini, D., & Menozzi, D. (2021). Food Labeling: Analysis, Understanding, and Perception. In Nutrients (Vol. 13, Issue 1, p. 268). MDPI AG. https://doi.org/10.3390/nu13010268

40. Gracia, A., & de-Magistris, T. (2016). Consumer preferences for food labeling: What ranks first? In Food Control (Vol. 61, pp. 39–46). Elsevier BV. https://doi.org/10.1016/j.foodcont.2015.09.023

41. Charlebois, S., & Haratifar, S. (2015). The perceived value of dairy product traceability in modern society: An exploratory study. In Journal of Dairy Science (Vol. 98, Issue 5, pp. 3514–3525). American Dairy Science Association. https://doi.org/10.3168/jds.2014-9247

42. Fortin, N. D. (2022). Food regulation: law, science, policy, and practice. John Wiley & Sons.

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Historical context of prejudiciality in the civil proceedings of the Slovak Republic

Katarína Ševcová

Abstract

Prejudiciality is an institute that also concerns the unity of the legal system and the jurisdictional organisation. Its proper legal regulation should ensure no discrepancy in resolving conflicts assigned to the various judges and courts that make up the judiciary. The institute of prejudiciality permeates the entire civil process. It is related to the basic procedural principles such as legal certainty the independence of judicial decision-making. The article aims to take a closer look at the historical development of this institute in the past and especially in the legal order of the Slovak Republic. The intention is reduced to Roman law and following the Slovak legal environment. At the same time, it is impossible to circumvent the connection with the legislation in the Czech Republic and their common roots in the Austria-Hungary empire. We were interested in whether the current legislation is based on its roots or has already deviated from them. This perception is essential to know the essence of a legal institute. The result is a comprehensive vision that also opens the door to the changes needed for the future.

Keywords: case law, legal certainty, prejudiciality, res iudicata, binding force

1. Introduction

In processualism, the examination of prejudiciality is a classic topic, both in theory and practice. In particular, the questions referred to provide the logical and legal basis necessary for a decision to be taken. They concern the justification for resolving or taking into account fundamental issues in the field of identification, delimitation and limitation of the subject matter of the process. It can be stated that the institution of prejudiciality is characterised by the interconnection of the elements of substantive and procedural law which are combined in it **[1]**, **[2]**.

Apart from the fact that this is one of the procedural consequences of the substantive connection between the cases under consideration, the question referred also has a logical origin in the existence of a diversity of judicial authorities in the legal system. It can be perceived as an element within the civil process and as well as the aspect of the relationship of civil proceedings to proceedings before administrative bodies, criminal courts, the Constitutional Court of the Slovak Republic, or the Court of Justice of the European Union and the European Court of Human Rights **[3]**, **[4]**.

Older legal science represented by prof. Grňa provided a definition "*Prejudiciality can generally be understood as a causal relationship between two subjective rights, one of which is conditioned by the other. Therefore, that causal relationship must exist in reality, and its nature is legal-philosophical rather than positive-legal.*" **[5]**.

Contemporary Slovak legal theory perceives prejudiciality as follows. *"In the broadest sense, the determination of a question of law means another question of law, the resolution of which is directly dependent on the operative part of the dispute, a question which may, in certain cases, be determined by the acting authority itself. However, the classical preliminary ruling means respecting the decision of another institution (in the hierarchy of the specific system of protection of the law superior to the procedural, acting authority) on the preliminary question."* **[6]**.

The institute of prejudiciality permeates the entire civil process. It is related to the basic procedural principles such as legal certainty the independence of judicial decision-making. The question referred for a preliminary ruling also affects the legal certainty of the parties to civil proceedings **[23]**.

2. Prejudiciality in the historical context

2.1. Historical development of the preliminary question referred to in roman law and the middle ages

From a historical and legal point of view, the roots of the preliminary questions are in Roman civil proceedings, where the prejudiciality was the subject of special regulation, essentially reproduced to this day. Based on the etymology, the naming itself the prejudiciality or preliminary question comes from the Latin *praeiudicium* so-called previous, preliminary proceedings or decision (*pre-* before, *judicial-* decision, proceeding). They represented decisions to which the judge could rely on the subsequent proceedings. Here we can also find the roots of decisions known as precedents- recognised as an official source of law in the Anglo-American system **[7]**.

However, this term had different meanings and a much broader and more general scope of application than today. They indicated in this way both the connection between processes and decisions and the impact that the decision may have on future proceedings. It could be different - from just a kind of moral ties, where the decision could serve only as a model for another decision, to a higher degree of relations, where the outcome of the proceedings could affect other proceedings so that it formed an integral and determining part of success in disputes. Praeiudicium was perceived as: "a type of Roman trial in which a judge's statement was limited to finding a particular circumstance of legal importance without the defendant being convicted or acquitted. On the outside, this peculiarity manifested itself in the fact that in the claimed formula, which the praetor showed the jury decided the dispute, the conditional clause was missing." **[8]**.

The topic was present in Roman law, but as it happened with many legal ones, institutes were subject to evolution, which was influenced by several factors. This impact from one proceeding to another, which, moreover, belongs to different authorities, particularly in the case of competition between civil and criminal proceedings, is what has been called since ancient Rome praeiudicium or prejudiciality **[9]**.

But this interesting problem had a different content according to a period of the history of the Roman empire that we are examining and the procedural system in force in this historical moment. From the beginning, e.g. civil and criminal matters in the Roman judiciary litigation procedures overlap. Therefore, magistrates and judges had to settle litigation giving priority to civil or criminal cases or addressing both as a whole. Solutions collected in various texts, especially from the imperial period, show the absence of firm rules or clear principles that address this issue. Even at the time of *cognition extra ordinem* (extraordinary or cognitive proceedings; it arises in the last decades of the 1st century B.C. - the period of the Roman Empire), the problem of prejudiciality in civil matters has not been fully resolved, as shown by the provisions of the Justinian Code (Corpus Juris Civilis issued in years 528–534.nl.). A complete theory of the decided matter- *res iudicata* and its limits (mainly subjective) is being created here, and the institution of prejudiciality is rationalised. A new meaning of *praeiudicium* emerges, issued without formalities during the court proceedings. Among the many types of Roman lawsuits, there were also so-called *pre-judicial* actions, which have led to the determination of whether there is a disputed right or fact in the application, for example, whether or not a person is enslaved. In principle, this was the case of *conditional actions*. In addition, the Roman process used the so-called *praeiudicialis formula*. The municipality ordered the jurors only to decide whether or not there was a particular legal relationship or legal fact (the most common were questions about personal status). They, therefore, differed from the *action* itself because the formula covered only the claim of the activity but not the "condemnation", hence the defendant's conviction. The *formula praeiudicialis* should have decided on the preliminary question on which further proceedings depended **[8]**.

Because the decision on secondary issues could adversely affect the decision on the main point, the defendant could have defended himself against such *praeiudicium*. The defence consisted in the fact that the court resp. The decision-making body first resolved the dispute over the more important question and then discussed the disagreement on a less critical issue, e.g. inheritance dispute, before disputing over rights in rem. The Romans also dealt with cases based on the principle of "*per minorem causa*", where the more critical thing takes precedence over the less important thing." the method of resolving the order of disputes was not the most appropriate; it often happened that the matter was dependent decided before the preliminary ruling. *However, this way of resolving the order of disputes was not the most appropriate; the dependent case was often decided rather than the preliminary one. Therefore, the principle has been adopted that a preliminary ruling is decided rather than a dependent one.* " **[5]**.

Externally, this peculiarity appeared to be the fact that in the claimed formula, by which the praetor ordered the jurors to resolve the dispute, there was no conditionality clause".
Also, the principle of legal certainty dates back to ancient Greece and Rome. The Greeks used legal certainty as to the main criterion of fair legislation, but the Romans understood it more as a requirement of judicial action. Legal certainty came from *res iudicata*. The provisional nature of the judgment was manifested, e.g., in the case of a motion for encumbrance, the appellant did not have to prove the ownership of the land if it was the subject of a judgment as a property right **[10]**.

The dual meaning with which the term praeiudicium was analysed in Roman law, referring to the connection on the one hand between trials and on the other hand between disciplines within the same process, caused some confusion which medieval lawyers and canon law sought to alleviate by using the general term quaestiones praeiudiciales. The Middle Ages brought the activity of post-glossators (16th century), who, under the influence of humanism, were more in opposition to Roman texts and turned to idealistic Plato's teachings and antiquity. During the Middle Ages, the term praeiudicium even lost its original meaning to become an exponent - in the line already profiled by Justinian's legislation - a kind of damage *sorta di danno*, the product of a particular event. He moved from a legal concept to a common language and acquired the meaning of damage - legal or moral. As a consequence of the transposition of the term praeiudicium - as a synonym of damage, from legal language to general, one of the meanings has been preserved today **[11]**.

The Middle Ages were characterised because the term preliminary was identified with the term conditional. The term "*questio preaiudicialis*" was used in the sense that a preliminary ruling could itself terminate further proceedings. The concept's perception has undergone significant changes even under the influence of canon law within the dialectical structure of the process and the logical reasoning of the judge in issuing the decision. In the canonical sense, a preliminary ruling was perceived as an obstacle or prohibition to decide on the primary matter unless a preliminary (or related) subject to the proceedings was resolved. From the end of the Middle Ages until the end of the 19th century. "preiudicium" means both a matter decided by the process itself and a preliminary question or a good decision with the interlocutor of the second dispute **[5]**.

2.2 Historical development of the preliminary questions in the legal order of the Slovak Republic and the Czech Republic

Slovakia and Bohemia formed a common state from 1918 until 1993, so the legislation is every day. Until the disintegration of the Austro-Hungarian Empire in 1918, civil procedural law in the territory of the Czech Republic was regulated mainly by the jurisdictional norm no. 111/1895 R.z. Act on Judicial Procedure in Civil Disputes (Civil Procedure Code) no. 113/1895 Coll., Execution order no. 79/1896 R.z. and the Act on Judicial Organization no. 217/1896 Coll. The mentioned legal regulations resulted from Klein's reform, which changed Joseph´s General Court Regime (Allgemeine Gerichtsordnung) in force since 1781. In comparison with Czech law in the territory of Slovakia until the establishment of the first joint Czechoslovak Republic, Hungarian customary law applied. At the same time, the civil proceedings were governed mainly by the Provisional Judicial Rules approved by the Judex-curial Conference from 1861 as a comprehensive piece of legislation.

If we focus our attention on the regulation of the assessment of preliminary questions during this period, the Provisional Judicial Rules did not contain any explicit limitation in this regard. The legal institute of initial questions was not explicitly regulated even in civil procedural norms valid in the territory of the Czech Republic. Still, an indication of prejudiciality can be found in the provision of Art. 268 of Act no. 113/1895 Coll. of the Code of Civil Procedure, where it states: "*Where the decision depends on the proof and the ascription of the criminal offence, the judge is bound by the content of the valid conviction of the criminal court."* In the general conditions on evidence, this provision was regulated by law, as prof. Hora states in its commentary based on the case law, disciplinary findings issued against civil servants based on a contractual obligation cannot be materially examined, not even by resolving a preliminary question. However, the court may review such results in that respect, provided that they were formally correct by the relevant provisions. The provision does not apply to criminal measures taken by administrative authorities, nor is the court bound by a finding of a foreign criminal court. Likewise, a civilian judge is attached to the content of a criminal conviction's judgment only about the substance of the offence for which the trust took place **[12]**.

As is well known, the mentioned legal dualism persisted in the territory of Slovakia and Bohemia even after the establishment of the administrative and legal union of states. When creating a standard legal order, especially in civil procedural law, based on Act No. 11/1918 Coll. in essence, the previous civil law valid on the territory of both states was reciprocated. This means that the General Austrian Civil Code of 1811 (Allgemeines bürgerliches Gesetzbuch) and the modified Judicial Code of 1895 continued to apply in the territory of Bohemia. In Slovakia, civil regulations are in force in Hungary, particularly the Hungarian customary law. This legal situation lasted in

principle until 1950 when the first official common legal regulation regulating the court procedure and the status of participants in civil court proceedings was issued. This regulation was Act no. 142/1950 Coll. on Proceedings in Civil Matters (Civil Procedure Code, from now on referred to as Občiansky súdny poriadok" OSP) of 25 October 1950, effective from 01.01.1951.

The said legal regulation already contained a normative code of preliminary questions, specifically in the provision of Art. Seventy entitled "Preliminary questions". Under paragraph 1 of the said provision: "For its decision, the court is entitled to make a judgment also on preliminary questions, which would have to be decided by another court or authority (public administration body)." Subsequent paragraph 2 of the Art. 70 of the Code of Civil Procedure further states that: "*But if preliminary proceedings have already been initiated in the competent court or authority (public administration body), or if there is a suspicion of a criminal offence or misdemeanor and the conviction would affect the court´s decision court shall, as a general rule, to stay the proceeding until the validity of the decision on a preliminary question or criminal offence or misdemeanor.*" Thus, that provision conferred on the court the power to rule on the question on which the decision of the court depends as to the determination of the law or legal relationship. However, the provision of paragraph 2 also allowed the court in the cases mentioned there to suspend the proceedings and wait for the outcome of the already initiated proceedings for reasons of expediency so as not to unnecessarily decide on a matter that is already the subject of proceedings in a criminal court or another office (administrative office). It is not known from the available literature that, under the validity of the said Civil Procedure Code, fundamental legal problems would arise in the application of the questions referred.

At the same time, let us pay attention to Art. 92 " *If the decision depends on whether the offence or misdemeanor was committed and who committed it, the court is bound in these circumstances by the content of a valid conviction of the criminal court or authority (public authority) in the criminal case.*" Civil Procedure Code in 1950 expressly established the binding nature of the court by a decision on the commission of a criminal offence or misdemeanor. We do not find any other provisions on the critical nature of different choices. Compared to the procedural code from 1950, the scope of criminal decisions binding on a civil court has been extended. The new Code of 1963 enshrined in Art. One hundred thirty-five the binding nature of the decision on guilt, which resulted from the authority of the local People's courts to decide on them. It was not until the OSP of 1963 that binding force was established for decisions in status matters. Although there was no critical nature in those decisions, some provisions on civil status matters prohibited the assessment of status matters as preliminary questions. "*These decisions were also widely recognised in practice, as they were constitutive decisions establishing, amending and terminating a legal relationship, and it was further emphasised that these issues should not be considered differently for different purposes*." **[13]**.

The procedural code does not mention resolving questions referred for a preliminary ruling in the provisions relating to the suspension of proceeding (Art. 80 to 83). The Code made no distinction between "preliminary" and "prejudicial question". Almost less than 13 years after adopting the first codified regulation in the field of civil proceedings, a new civil procedure code was issued with effect for the territory of both Slovakia and the Czech Republic - Act no. 99/1963 Coll. Civil Procedure Code completely derogated from Act no. 142/1950 Coll. on proceedings in civil matters. However, unlike the repealed law, the newly adopted Civil Procedure Code no longer explicitly identified or defined preliminary questions. The legislation was limited to two paragraphs and was also indirect. This institute was regulated only within the provisions on the stay of proceedings (Art.109 OSP) and in evaluating evidence (Art.135 OSP). Minor changes in the assessment of the questions referred resp. The binding nature of the decisions decided by other authorities has taken place, even though those changes were minor and did not significantly affect the significance of the questions referred to.

According to Art. 109:

(1) The court shall stay the proceedings if

(a) the party has lost the capacity to act in court and is not represented by a representative authorised to conduct the proceedings;

(b) the decision depends on an issue the court is not entitled to deal with in the present proceedings. It shall also proceed if, before deciding the case, it concluded that the generally binding legal regulation concerning the matter conflicts with the constitution, law or international treaty by which the Slovak Republic is bound; in that case, it shall forward the proposal to the Constitutional Court for an opinion.

(c) decide to refer a question to the Court of Justice of the European Communities for a preliminary ruling under an international agreement

Of course, the above-mentioned legal regulation, taking into account the numerous amendments and changes made in the cited rules after the division of the common republic in 1993, applied until recently in Slovakia and the Czech Republic.

The fact is that the OSP did not contain in any provision the exact scope of the questions that can be considered as preliminary questions. However, a negative definition of initial questions can be found in Art. One hundred thirty-five of the OSP **[10]**.

Other matters which another authority may otherwise decide may be considered in advance by the court itself. By Art. 135 par. 1 of the OSP, the court was bound by a valid decision of the competent authorities that a criminal offence, misdemeanour or other administrative offence punishable under special regulations was committed and who committed it. As well as by a decision on personal status, except decisions in block proceedings. According to earlier case law, e.g. decision of the Supreme Court of the Czechoslovak Socialist Republic of 10 August 1965, the court was bound by a decision issued in block proceedings. However, the amendment to the OSP of 1991 (Act No. 519/1991 Coll., which amends the Code of Civil Procedure and the Notarial Code as amended until 31 December 1992) stipulated, among other changes, that a decision in block proceedings does not bind a civil court. Respecting Art. 7 of the OSP, which defined the jurisdiction of civil courts, it cannot be ruled out that a civil court may not be entitled to assess issues interfering with criminal or administrative law. A civil court may intervene in another branch of law to prove the facts. "*However, a civil court is never entitled to infer from certain facts the consequences established by criminal or administrative law*." **[14]**.

The OSP, therefore, distinguished, on the one hand, the right of the court to assess a particular issue and the right to issue a definitive decision on these facts.

As is clear from the wording of the provision of Art 135 OSP, a civil court is not bound by any correct decision of a criminal court or administrative authority. A civil court may draw its conclusions in the course of fact-finding, except for sound decisions that a criminal offence or administrative offence has been committed and who has committed it. The manner of resolving the question referred by the court will be reflected only on the grounds of the decision **[16]**.

The statement itself is affected only indirectly in the sense in which the court ruled. Therefore, the court decides whether to deal with the matter for a preliminary ruling itself or to await the competent authority's decision and stay the proceedings until then. If the competent authority decides otherwise on the given initial question, this makes the admissibility of the reopening of the proceedings (Art. 228 par. letter a) OSP).

Unlike the Code of Civil Procedure of 1950, the Code of Civil Procedure of 1963, as amended by Art. 135, extended the binding nature of civil courts by several rulings of a criminal decision, following the authorisation of local people's courts to decide criminal cases. At the same time, the new rules explicitly enshrined the binding nature of courts by decisions on personal status. They specified the critical nature of courts by decisions of other bodies. In the sense that if the competent authority has already issued a decision on a question that has arisen before the court, the court is obliged to rely on it. After the adoption of the OSP, a doctrinal debate on the issue of preliminary questions took place in the legal community in the 1960s. Above all, we can mention the related works of a prof. Winterová, prof. Černý and prof. Macur. Many of the conclusions of these authors are inspiring even after years, also because the legislation has not changed in principle in this direction.

When examining the provision of Art. 135 of OSP, it is not possible to circumvent the terminological difference in the terms used to be "bound by a decision" and the term "based on a decision" stipulated in para. 2 of the analysed provision. It is questionable whether this conceptual difference was the legislator's targeted intention to emphasise the different approach of the court or whether it was just a terminological inattention. Several authors dealt with the discrepancy in detail, specifically prof: Winterová and prof. Černý is currently just after adopting the Procedural Code, and they are in opposition in their arguments.

Prof. Winterová thinks that the term "to be bound by a decision" must be seen in light of the binding nature of the operative part of the final court decision. The decision is generally critical on the parties to the proceedings, hence on those who may influence the content of the decision through their procedural conduct. However, the essential nature of decisions can be extended to third parties and all authorities. The provision of Art. 159 of the OSP states that, except for the participants in the proceedings, the decision is binding on all bodies. In contrast, the provision of Art.135 par. 2 defined that the court is based on a decision on other civil matters. Prof. Winterová concludes about what is examined "… *any civil decision binds the court if the question addressed by that decision arises as a preliminary question later on in another dispute. Only for decisions issued by bodies other than courts, the court is just based on them.*" **[17]**.

The distinction between the terms“ based on a decision ”and“ to be bound by a decision ”is also noticeable in the case of law even more recently. *“Although it is not for the courts in this situation to interfere in any way in the legal relations established by a valid decision of an administrative body, they are not unconditionally bound by it in their decision-making on matters related to the decision, unless it is a decision on misdemeanour or other administrative offence or a decision on personal status. By the provisions of § 135 par. 2 of the OSP, a court is required to rely on that decision in respect of a question on which another authority is otherwise competent to*

decide, without, however, the Code of Civil Procedure requiring it to consider that question in the same way." Lavický also agrees, discussing the ambiguous acceptance of the mentioned terminology in detail **[18]**, **[24]**.

Prof. Černý takes a different position, leaning more towards blurring the differences between the above concepts **[19]**.

Relying on the case-law of the Supreme Court of the Slovak Socialist Republic of 28 June 1974, the judgment states that "*the term" the court is based on it "also expresses, in principle, the binding nature of the court by this decision*." **[20]**.

A similar position was taken by the Supreme Court of the Czech Republic on 19 February 2013, also eliminating the difference: a civil court cannot assess and review a decision of an administrative body (specifically a tax office) and is obliged to use it to resolve a preliminary question. *" However, the stated obligation of the tax office's payment order for the levy for breach of the budget regulations and the penalty for late payment for the violation of budgetary discipline for the court is not absolute. The court shall rely on such a decision only if it assesses in civil proceedings (as a preliminary or substantive question) whether there has been a breach of budgetary discipline on the part of the recipient of the payment order.* "

After outlining both different positions, we must conclude that we are in favour of the work of prof. Winterová. We believe that the legislator defined this terminological difference quite deliberately, and it was not just a random difference in the legislative text. We look at the notion of "being bound by a decision" as a strict obligation from which it is impossible to deviate. On the other hand, we understand the term "based on a decision" as defining a certain presumption of the correctness of a decision of an administrative body. So that the court will only proceed from it unless the contrary is proven or there is no doubt about it. We start from the diversity of decisions of administrative bodies, and thus, consequently, the inconsistency of the nature of administrative prejudiciality. This is probably what the legislator intended and reflected in this terminological difference.

A grammatical interpretation may, on the one hand, impose an obligation to decide the competent authority into account, but on the other hand, seem to allow a different assessment of the question referred, provided that the referring court states in the reasoning the relevant reasons does not identify with the authority (i.e. "deals" with it). If the wording of Art. 135 par. 2 OSP perceived as not very clear, the wording in Art. 194 par. 2 of the CSP raises the same doubts from our point of view, even though the explanatory memorandum to the given provision of the Civil Procedure Code states that the current wording of the condition of Art. 135 par. 2 OSP is "specified".

We believe that the phrase "the court will take it into account" should be interpreted as meaning that the court should assess whether there are compelling reasons, in this case, to consider the issue differently. Admittedly, the parties to the proceedings will also legitimately expect that the question already resolved will be respected by the other institutions and the courts in civil proceedings. Their case will be decided by the question thus answered. If the civil court wants to deviate here, he must have good reasons for doing so, which he will explain adequately. Not to mention the judgment of the Constitutional Court of the Czech Republic of 10 July 2008, file no. Zn. II. ÚS 2742/07 (130/2008 USn.), where he emphasised the principle of the legal expectation of the participants that in further proceedings, the decided preliminary question will be respected.

The legislation respected the classical postulate that if a civil court considers a preliminary question, this can only be reflected in the reasoning of the decision, not directly in the operative part.

3. Actual legal regulation of prejudiciality in the Slovak Republic and Czech Republic

After the disintegration of the shared state in 1993, the Czech Republic still applies the 1963 code of procedure of the joint federation but is preparing a new code. Legislation of prejudiciality in the Czech Republic is based on Art. 109 par. 1 OSŘ, which regulates the involuntary termination of court proceedings, and Art.135 OSŘ (Act No. 99/1963 on the Civil Procedure Code- *Občanský soudní rád OSŘ)*. The currently discussed recast of civil procedural law in the Czech Republic states in the legislative intent states: *"If the resolution of the dispute depends in whole or in part on a question referred for a preliminary ruling which is the subject of any other judicial or administrative proceedings, the court may suspend the proceedings until the judicial proceedings are terminated."* The court may also stay the proceedings in the primary matter if a dispute arises as to the admissibility of the intervener or principal intervener. Suppose there is a suspicion of a criminal offence, and the conviction would affect the court's decision. In that case, the court may suspend the proceedings until the lawful decision on the criminal offence is given. The Court shall stay the proceedings if it decides to refer a question to the Court of Justice of the European Union for a preliminary ruling which it is not empowered to deal with in the present case. ' This concept is in principle identical in content with the Slovak legislation **[21]**.

3.1. Situation in the Czech Republic

The Czech legislation addresses the optional suspension of proceedings in a dispute over the admissibility of intervention in more detail. This is intended to address the long-standing debate. Historically, the position persisted that in this situation, it is appropriate to suspend the proceedings, which was broken by the judgment of the National Council of the Czech Republic of 30 June 1999, file no. 2 Cdon 1843/97. Other case law also stated, "*Until a final decision is made on the admissibility of the intervention, the proceedings cannot be continued."* And the CŘS itself did not explicitly address this situation. The recodification tends to be based on historical tradition and to adjust this situation, preferring to suspend the proceedings before stopping them.

The questions of prejudiciality are outlined in point 180 of the legislative proposal in the context of the provisions on evidence. "*If the court's decision depends on whether the crime was committed and who committed it, the court is bound by the content of the verdict of a valid conviction of a criminal court. This does not apply if the party has not had the opportunity to comment in the criminal proceedings."* Which emphasises the subjective limits of binding. As the proposal states, the alternative of not including this provision was also considered, inspired by German and Austrian legislation. Thus, the judge is not bound by the criminal decision and can also take evidence regarding the facts found in the criminal proceedings and, if necessary, assess them differently. The principle of free evaluation of evidence and directness are emphasised. However, such a procedure is also uneconomical and risks conflicting decisions, which was probably the reason for keeping this provision. The proposal rejected the remaining diction of the original Art. 135 of OSŘ. It does not agree with the equivalent status of valid convictions with decisions of administrative authorities on the commission of a misdemeanour or other administrative offence and the perpetrator's person. *"In addition, it is equally incompatible with the principle of the separation of powers and the independence of the court and the judge."* On the margins of status decisions, the proposal considers this provision superfluous, as the prohibition on the preliminary assessment of such decisions follows ipso facto from the constitutive nature of those decisions.

Another part of Art.135 of the Civil Procedure Code, which allows the court to pre-assess other issues than criminal and status issues, although it is up to another body to decide on them, is also perceived differently. It is not considered a preliminary assessment of matters of a private nature. *"The rule is therefore incomplete, and it can be said that it is also superfluous. Situations where a court in civil proceedings is entitled to consider a question in advance and when it may not do so will follow the rules laid down for the optional or compulsory stay of proceedings. "* The proposal again solves the problem of the concept of "based" on a decision that has already been issued. *" Art.135 par. 2 OSŘ: "based on the decision" is not the same as the binding nature of decisions. The decision of the administrative body is an authentic instrument, and the court will rely on its content unless the presumption of its truth is rebutted."* There are undoubtedly many observations and considerations that could also benefit our legislation.

3.2. Situation in the Slovak Republic

As part of the recodification of civil proceedings in the Slovak Republic, the question of prejudiciality was reflected in Art. 162 of Act no. 160/2015 Coll. The Contentious Civil Procedure Code (from now on as CSP-Civilný sporový poriadok) connected the suspension of proceedings. It was only with this code that the very concept of prejudiciality was officially introduced into the legislative text of the law. The binding nature of the court is reflected in Art. 193 of the CSP. A question on which a public body (other than the body under Art. 193 of the CSP) has the power to decide can be assessed by the court itself, but the civil court cannot decide on it (Art.194 CSP). If it decides on the question referred to in paragraph 1, the court shall consider and include it in the grounds for the decision. In this respect, two types of situations can be logically distinguished. The question has not yet been decided or has already been the subject of a decision. The first possibility conflicts with the jurisdiction of the competent court, namely whether the court is entitled to assess the question itself. As a basic rule in civil proceedings, a court is entitled to consider (as preliminary) issues for another body to decide whether they fall within a civil court's jurisdiction. As part of the fact-finding, the court is entitled to find out and assess the entire factual basis of the claim, even in cases where the legal assessment of such real issues falls within the field of other legal branches (e.g. criminal or administrative law) **[25]**.

The current legislation in the actual Slovak Contentious Civil Procedure Code (Civilný sporový poriadok CSP adopted following the recodification of procedural law in 2016) has chosen the term "take into account" such a decision instead of the term "be bound by a decision". The commentary on the CSP states: "*In principle, however, "taking into account "an existing (and by its nature valid) decision of another body is not binding on the court (Art.190 a contrario) and therefore there is no obligation of the court to comply with this decision. This postulate stems from the constitutional connotation, according to which the court is prioritised and, in a sense, a "superior" body of law enforcement - no other body has the general clause "prohibition of denial of justice (denegatio iustitiae)" established competence to provide protection where it is not entrusted to any other body. Of course,*

even this nature cannot be interpreted purposefully, and the requirement that public authorities decide on the same issues in principle applies in direction. Therefore, it is desirable that the court, in order, rely on the decisions of the competent authorities and only, as ultima ratio, proceed to correct the conclusions of the other competent authorities in justified cases **[22]**.

Decisions of the Constitutional Court bind the court on the declaration of non-compliance of legal regulation with the Constitution of the Slovak Republic, constitutional law or an international treaty by which the Slovak Republic is bound. It is further secured by decisions of the Constitutional Court or the European Court of Human Rights concerning fundamental human rights and freedoms. The court is also bound by the conclusion of the competent authorities that a criminal offence, misdemeanour or other administrative offence punishable under a special regulation has been committed and by who committed it, as well as by a decision on the personal status, establishment or dissolution of the company. According to the explanatory memorandum, the legislator also considered introducing binding judgments of the Court of Justice of the EU. However, he did not make that adjustment since the findings of the Court of Justice are critical only inter partes.

Thus, the recodification has not brought any major turnaround to the issue compared to the past. We see a shortcoming of the Slovak legislation is the absent legal definition of the relationship of prejudiciality to *res iudicata*. The correct regulation of the institute of prejudiciality and its proper application by the courts should contribute to implementing and enforcing the principle of legal certainty. We assume that a question which is resolved with the effects of *res indicate* is bound by the tribunal in a subsequent proceeding when in this subsequent proceeding it appears as a logical precursor to what is the subject of it, provided that the parties to both proceedings are the same or res iudicata is extended to them by a statutory provision. In some countries, such a rule is also enshrined directly in procedural standards (e.g. the provision of Article 222.4 LEC of the Spanish Procedural Code-Ley de Enjuiciamiento Civil Art. No.1/2000 Coll). It would be appropriate to enshrine such wording in civil code in our country, either in the provisions governing the prejudiciality or in the regulation of the binding nature of the decision, obstacles of *res iudicata* or principle *ne bis in idem*. Without this principle working, decisions would be taken that would address one legal issue more than once, even in contradiction, contrary to the regulation of legal certainty.

The second dimension is the contact of the activities of the civil court, which deal with questions referred for a preliminary ruling falling within the competence of other state bodies (in principle, most often administrative bodies. Nor is it quite clear to define an optional stay of proceedings when the court considers whether to refer a preliminary question to an executive authority or view the question itself. Here, the exact criteria for the procedure would be required. Otherwise, the courts will proceed differently.

4. Conclusion

The paper aims to point out several aspects that the assessment of preliminary questions in the proceedings of civil courts brings and how their assessment affects the coherence and inconsistency of court decisions. The regulation of initial questions in civil proceedings is constant and stable. Even the recodification changes that the legal code of the civil process underwent in the Slovak Republic and the Czech Republic did not bring significant changes in this topic. It adheres to its historical roots. The issue is relevant in connection with the possibilities of reforms, which can be said to be ongoing. The question referred for a preliminary ruling also affects the legal certainty of the parties to civil proceedings.

We pointed out the shortcomings of the legal regulation of prejudiciality in the Slovak legal order. Certainly, Slovak legislation must be geared to current trends. For example, today, we are no longer considering only the preliminary questions referred to the Court of Justice of the European Union and the European Court of Human Rights. Protocol no. 16 to the European Convention on Human Rights (Roma, 1950) opened a preliminary ruling before this judicial institution. In some European countries (Netherlands, Lithuania), there is an effort to give the courts of lower instances the possibility to refer a preliminary question to the nation's highest judicial institutions to interpret the law for a particular case.

References

1. Broniewicz, W. (2015). Postepowanie ciwilne v zarysie [Civil proceedings in outline]. (520 p). Warsawa: Lexis Nexis. ISBN: 978-83-278-0628-4. (In Polish)
2. Colmenero Guerra, J. A. (2005). Ley de enjuiciamiento civil y legislación complementaria [Civil procedure law and complementary legislation]. (934 p.). Madrid: Tecnos, Biblioteca de Textos Legales. ISBN 84-309-4265-3. (In Spanish)
3. Cuyvers, A. (2017). Preliminary References under eu Law. In East African Community Law (pp. 275–284). Brill | Nijhoff. https://doi.org/10.1163/9789004322073_017
4. Jolowicz, J. A. (2000). On Civil Procedure. Cambridge: Cambridge University Press. ISBN 9780511549540 https://doi.org/10.1017/cbo9780511549540
5. Grňa, J. (1930). Prejudicialita v civilním řizení. Sbírka spisů právnických a národohospodářských Prejudiciality in civil proceedings [Collection of legal and national economic files]. (p. 10). Brno: Nakladatelství Barvič & Novotný. (In Czech)
6. Števček, M. et al. (2012). Občiansky súdny poriadok. Komentár [Civil Procedure. Comment]. (2nd edition, p. 1544). Prague: Czech Republic: C.H.Beck. (In Czech)
7. Wetzell, G. W. von. (1861). System des ordentlichen Civilprozesses (2nd edition, p. 705). Leipzig. (In German)
8. Otto, J. (1903). Ottův slovník naučný. Dvacátý díl [Otto's educational dictionary. Twentieth part]. (p. 388). Prague: Czech Republic http://www.archive.org/stream/ottvslovnknauni13ottogoog#page/n423/mode/2up (In Czech)
9. Robles Reyes, J. R. (2003). La Competencia jurisdiccional y judicial en Roma [Jurisdictional and judicial competence in Rome]. (p. 20). Murcia, Spain: Universidad de Murcia. (In Spain)
10. Dozhdev, D. V. (2008). Rymskoe chastnoe pravo [Roman private law]. (p. 784). Moscow: Izdat. Gruppa INFRA M-NORMA. (In Russian)
11. Menestrina, F. (2009). La Pregiudiciale Nel Processo Civile [Prejudicial Judge in the Civil Trial]. (p. 9). Charleston: Nabu Press. (In Italic)
12. Hora, V. (1922). Civilní řád soudní a Jurisdikční norma s dodatky [Civil Code of Court and Jurisdictional Norm with amendments] (p. 432 and 433). Prague: Československý kompas. (In Czech)
13. Winterová, A. (1967). Prejudiciální otázka v občanském soudním řízení [Prejudicial question in civil court proceedings] In Socialistická zákonnost: časopis pro právní praxi (Vol. 15, p. 96). Ministry of Justice of the Czechoslovak Socialistic Republic (In Czech)
14. the Administrative Procedure Code, Act no. 71/1967 Coll. of Czechoslovak Socialistic Republic, Art. 40,
15. Drápal, L. & Bureš, J. (2006). Občanský soudní řád, komentár- I.díl [Code of Civil Procedure, Commentary - Part I]. (7th edition, p. 621). Prague: C.H.Beck (In Czech)
16. Horváth, E. & Andrášiová. A. (2015). Civilný sporový poriadok – komentár [Civil dispute procedure – comment]. (844 p.). Bratislava: Wolters Kluwer. ISBN. 978-80-8168-318-3. (In Slovak)
17. Winterová, A. (1967). Prejudiciální otázka v občanském soudním řízení [Preliminary question in civil court proceedings] In Socialistická zákonnost: časopis pro právní praxi (vol. 15, p. 97). Ministry of Justice of the Czechoslovak Socialistic Republic. (In Czech)
18. Lavický, P. et al. (2016). Zákon o rozhodování některých kompetenčních sporů (Občanský soudní řád § 1 až 250). [Act on the adjudication of certain competence disputes (Code of Civil Procedure § 1 to 250)]. (pp. 672-673). Wolters Kluwer: Prague. (In Czech)
19. Černý, M. (1967). Ještě k výkladu ustanovení § 135 OSŘ. In Socialistická zákonnost: časopis pro právní praxi, (Vol. 15, No. 8, p. 468). Ministry of Justice of the Czechoslovak Socialistic Republic. (In Czech)
20. Judgment of the Supreme Court of the Slovak Socialist Republic of 28. 6. 1974, File Reference sp. zn. 2 Cz 53/74.
21. Věcný záměr Civilního Řádu Soudního [The legislative bill of Civil Procedure Code] The Ministry of Justice of The Czech Republic. https://crs.justice.cz
22. Števček, M., Ficová, S., Baricová, J., Mesiarkinová, S., Bajánková, J., & Tomašovič, M. (2016). Civilný Sporový Poriadok: Komentár [Civil Dispute Procedure. Comment]. Bratislava: C.H. Beck. ISBN 9788074006296 (In Slovak)
23. Fonseca, E. Z. G. (2011). Pregiudizialità e rinvio (contributo allo studio dei limiti soggettivi dell'accertamento) [Prejudiciality and referral (contribution to the study of the subjective limits of the assessment)]. (388 p). Bologna: Bononia University Press. ISBN 978-8873956235.
24. Lavický, P. et al. (2014). Moderní civilní proces Spisy Právnické fakulty Masarykovy univerzity v Brně [Modern civil process. Files of the Law Faculty of Masaryk University in Brno]. (268 p). Brno: Masarykova univerzita. ISBN 978-80-210-7601-3. (In Czech).

25. Deák, M. (2016). Nad jedným rozhodnutím, alebo nezabúdať na prejudicialitu [Above one decision, or don't forget the prejudice.]. In Justičná revue. (Vol. 63, No. 4, pp. 584-589). The Ministry of Jusitce of the Slovak Republic.

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Preliminary negotiation of the dispute as a vision of effective judicial proceedings

Veronika Václavová

Abstract

The presented article discusses the new institution of the recoded civil process, namely the institution of preliminary discussion of the dispute, the purpose of which is to conclude a settlement and its regulation in Act no. 160/2015 Coll. Slovak Republic, The Civil Procedure Code, as amended. The aim of the contribution is to point out the potential of the given institute and its validity in the Slovak legal order, while the author emphasizes the need for its greater use in judicial practice, while based on her own experience, theoretical starting points and codes, she will evaluate the importance of introducing the given institute into the Slovak legal order. The author is also of the opinion that through the preliminary discussion of the dispute, the court proceedings can be made more efficient since even though the purpose of the given institute is primarily to conclude a settlement, its goal is also to speed up the dispute proceedings and ensure its procedural economy.

Keywords: civil process, preliminary discussion of the dispute, optionality, adversary, economy, efficiency, default judgment, settlement, res judicata

1. Introduction

The article discusses the institution of preliminary discussion of the dispute, the legal regulation of which is found in the second part of the Civil Procedure Code. Its entire wording is comprehensively defined in the provisions of § 168 to § 172. The Slovak legal system in question before the introduction of Act no. 160/2015 Coll. He did not know the civil dispute procedure. It is thus one of the new institutes of the recoded civil process.

From the provisions of § 168 par. 1 of Act no. 160/2015 Coll. The Civil Dispute Procedure as amended (hereinafter referred to as the "Civil Dispute Procedure") indicates that the preliminary hearing of the dispute precedes (according to the law only optional) the hearing itself in a specific civil disSuppose it is possible and at the same time expedient. In that case, time expedient, it should prevent the prolongation of the civil process and make the resolution of the dispute between the parties more efficient already within the preliminary discussion of the dispute. The contribution provides a view of the analyzed institute, and the reason for its inclusion in the Slovak legal order, while at the same time pointing out the need for its use in practice and the related justification, respectively, the unfoundedness of the optionality of the given institute. It also compares the institution of preliminary discussion of the dispute with the former institution of conciliation proceedings. Subsequently, it approximates the economy of proceedings and adversariality; in the sense of adversariality, it defines a default judgment.

Finally, he talks about the ideal of preliminary discussion of the dispute, which is the settlement of the dispute by reconciliation.

2. The reason for the incorporation of the institute of preliminary discussion of the dispute into the Slovak legal order

Even though Act No. 460/1992 Coll. The Constitution of the Slovak Republic (hereinafter referred to as the " Constitution of the Slovak Republic ") in Art. 48 par. 2 guarantees everyone, among other things, the right to have their case heard without unnecessary delays, as stated by L öwy A . and Mitterpachová J., the civil process is constantly troubled by the length of the court proceedings, especially with reference to outstanding cases and the burden on the appeal courts **[1]**, which cannot be disagreed with. Also, in terms of Art. 17 of the Code of Civil Procedure, the court proceeds in such a way that the matter is discussed and decided as quickly as possible, while preventing unnecessary delays in the proceedings, at the same time acting economically and without unnecessary and disproportionate burden on the parties to the dispute and other persons.

Not only national legal regulations oblige courts to act without unnecessary delays, but also transnational ones, which results from Constitutional Act no. 23/1991 Coll. which states the CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS as a constitutional law of the Federal Assembly of the Czech and Slovak Federative Republic, according to which: *"everyone has the right to have his case heard publicly, without unnecessary delays and in his presence, and to be able to comment on all evidence presented ."* **[2]**. Notification no. 209/1992 Coll. of the Federal Ministry of Foreign Affairs on the negotiation of the Convention on the Protection of Human Rights and Fundamental Freedoms and the Protocols following this Convention, according to which: "*everyone has the right to have his case heard fairly, publicly and within a reasonable time by an independent and impartial court established by law, which decide on his civil rights or obligations."* **[3]**. The right to discuss the matter within a reasonable period, or without delays is thus considerably relevant, and it is necessary to pay attention to this fact.

In many proceedings, however, it happens that the court does not act on the matter for a long time, and this inactivity is most often justified by an excessive number of cases or a lack of judges, which we understandably do not dispute. However, the Constitutional Court of the Slovak Republic stated in its decision that the deficiencies in the organization of the procedural actions of the court cannot be justified by the insufficient staffing of the necessary number of judges **[4]**. In another finding, the Constitutional Court of the Slovak Republic stated that when deciding whether there really were unnecessary delays in court proceedings, it considers three basic criteria, which are the complexity of the case, the behavior of the party to the proceedings and the court's procedure **[5]**.

In view of the above, it was necessary to resolve the situation in question within the framework of the civil process recodification. Thus, the introduction of the institution of preliminary discussion of the dispute began to be negotiated, and finally, this institution was also implemented from the Slovak legal order. It should be added that the inspiration for its establishment was also foreign legal systems and foreign practice. Baricová J., and Števček M. state that the foreign experience with the legal regulation of the preliminary discussion of the dispute with the specific application of the given institute significantly helped to ensure the procedural economy of the dispute proceedings **[6]**. It should be added that by the principle of process economy, we understand the principle of speed and economy of action.

3. Institute for preliminary discussion of the dispute and institute for conciliation

It might seem that before the introduction of the Civil Procedure Code, the legal system of the Slovak Republic did not know a similar institute and preliminary discussion of the dispute, or its purpose, which is mainly the pursuit of reconciliation, is a complete novelty in Slovak law.

The predecessor of today's Civil Dispute Procedure was Act No. 99/1963 Coll. Civil Procedure Code, as amended (hereinafter referred to as " Civil Procedure Code "). Even if the wording of the institution of preliminary hearing of the dispute is not found in the Code of Civil Procedure, we would draw attention to its provisions § 67 to § 69, which contain the regulation of conciliation proceedings.

The institution of the conciliation procedure consisted in the contentious relationship, the nature of which allows for it, to be resolved in a timely manner through a court-enforceable conciliation, thereby avoiding a proper proceeding on the matter. Provision § 69 of the Code of Civil Procedure exhaustively states: *"the purpose of conciliation proceedings is to conclude peace."* **[7]**. Similarly, the purpose of the preliminary discussion of the dispute is to conclude a settlement (if possible and expedient), in such a way that the court is offered the possibility to speed up the proceedings.

It should be added that the institution of conciliation proceedings in its original version was not incorporated into the Civil Procedure Code, but was significantly recoded and subsequently transformed into the provision of § 148 of the Civil Procedure Code governing conciliation. As follows from the provisions of § 170 par. 2 of the Code of Civil Disputes, the court will try to resolve the dispute by amicable settlement, while based on the provision of § 148, the settlement will not be approved in a situation where it would be in conflict with generally binding legal regulations. However, we believe that the institution of preliminary discussion of the dispute can also be considered as a kind of extension and, of course, a related modification of the institution of conciliation, despite some differences between the individual institutions. The institution of preliminary discussion of the dispute is much more complex, as, in the case of preliminary discussion of the dispute in a situation where the dispute is not resolved by reconciliation or mediation, the court will order a classic hearing. The difference between the preliminary hearing of the dispute and the conciliation procedure is also noticeable in the fact that the purpose of the conciliation procedure was not to determine the fulfilment of procedural conditions. In contrast, in the preliminary hearing of the dispute, the court examines the fulfilment of these conditions. At the same time, during the conciliation procedure, the possibility of forcing the presence of the participants and their cooperation was excluded, which is the opposite of today's institute of preliminary discussion of the dispute.

4 The validity of the optional preliminary discussion of the dispute

The institution of preliminary discussion of the dispute is characterized by its optional nature, which follows from the wording of § 168 par. 1 of the Code of Civil Procedure, according to which the court orders a preliminary hearing of the dispute before the first hearing unless it decides otherwise. On the one hand, the purpose of the institute is to clarify the subject of the dispute. Still, on the other hand, it is not a mandatory institute, so it is up to the court to decide whether to order a preliminary discussion of the dispute before the first hearing. Despite the fact that the optionality of the preliminary discussion of the dispute is presumed by law, the legislator assumed before its legislative definition that its use would be the rule rather than the exception.

As stated by Judiak P., the manifestation of optionality is that the judge is entitled to order a straight hearing in accordance with Section 177 of the Code of Civil Procedure, which in some cases does not lead to the speed and efficiency of the proceedings **[8]**. To this end, we refer to the decision of the Regional Court in Trnava, which stated that this is always an optional act of the court, and in the case of any type of procedure according to the Civil Procedure Code, there is no obligation imposed by law to preliminarily discuss the dispute. However, according to him, it is a relatively practical institute, which can be used to make the procedural procedure leading to the decision that ends the proceedings in a fundamental way more efficient and simpler. He adds that its purpose is aimed both at eliminating possible deficiencies in relation to the procedural conditions and amicable resolution of the dispute and at basic procedural actions that are directly related to the discussion of the case and decisions on the merits **[9]**.

According to Baricová and Števček, if the court comes to the opinion that a preliminary discussion of the dispute can bring about a faster and more efficient resolution of the dispute in the process, it will order it on the spot **[10]**. It should be added that due to the great impact that the preliminary hearing of the dispute can have on the overall course and decision of the court, the approach of judges to this institution is crucial, even from the point of view of the further development of judicial practice. At the same time, the legislator expressed his will for the courts to apply this institution as often as possible. So far, however, the institute of preliminary discussion of the dispute has not been used in practice to the expected extent. As part of the lege considerations ferenda, we would therefore recommend to the

legislator the introduction of a mandatory regulation of the preliminary discussion of the dispute in cases established by law, i.e., especially in cases where a settlement can be expected between the parties to the dispute. It is not, for example, a property settlement, when often neither party is interested in waiving their demands. In other cases, the optional nature of the given institute would be maintained. More significant use of the preliminary discussion of the dispute in application practice would be beneficial for possible proposals for legislative changes that could eliminate its shortcomings.

5 Contradiction vs. economy of action

Preliminary discussion of the dispute is to reflect the principle of the speed of proceedings and has the prerequisites for at least partial elimination of future potential reasons leading to delays in the proceedings. Actions that can be used to prevent delays in the proceedings include, for example, the examination of the fulfilment of procedural conditions, an attempt at reconciliation, or a preliminary legal assessment of the matter. In connection with the principle of the speed of proceedings, we point to the statistical data published by the Ministry of Justice of the Slovak Republic, which shows that the average length of proceedings in civil law cases in the Slovak Republic in 2017 was approximately 21 months **[11]**.

As can be seen from the Explanatory Report to the government's draft Civil Procedure Law, the legal regulation of the preliminary hearing of the dispute is based on the consistent application of the principle of procedural due diligence of the parties, which, as A. Podivinská **[12]** claims, causes a natural limitation of the court's evidentiary initiative and also its transfer almost without exception to the parties to the dispute **[13]**. Since the task of the court is not to take evidence, and this obligation is on the part of the plaintiff and the defendant, the adversarial nature of the proceedings is applied. According to the resolution of the Supreme Court of the Slovak Republic, in an adversarial process, the party to the dispute should be the bearer of the procedural initiative. He further adds that the plaintiff is particularly endowed with procedural due diligence, and thus responsible for the course of the dispute **[14]**. It follows from the ruling of the Constitutional Court of the Slovak Republic that the essence of adversarial justice and the related equality of arms is that all participants in the proceedings have a real opportunity to use their procedural rights to present arguments and also the opportunity to respond to the opposing party's counterarguments, which is especially true in litigation in which the plaintiff and the defendant face each other and where the adversarial nature of the proceedings is applied in its entirety **[15]**.

However, within the framework of the preliminary discussion of the dispute, the economy of the proceedings is also applied (and the related speed of the proceedings, as these are significantly related to each other, both of which involve preserving the procedural economy of the proceedings, whether from a time or financial point of view), which, as Ficová S. claims, expresses the requirement that the provision of protection of rights and legitimate interests in civil proceedings is not associated with disproportionate material expenses of the court as a state body, but especially of the participants" **[16]**. Mazák J. also states that the obligation to act and make decisions economically is implicit, as it is impossible to imagine the proceedings well enough, which would be governed by a principle other than the principle of economy, for example, the principle of non-economics **[17]**. As it follows from the above that the economy of the proceedings is intended to protect mainly the participants in the proceedings, the question arises as to whether the adversarial nature of the proceedings does not hinder its economy, as it burdens the parties to the dispute to present evidence (for example, an expert opinion).

On the other hand, however, we believe that the use of both principles is justified at the preliminary hearing of the dispute, as long as the party informs the court at the preliminary hearing of the dispute that it can prepare an expert opinion. Still, already at that time the court has enough presented relevant evidence, which it will mark as undisputed, the party to the dispute can thereby avoid additional costs, the expenditure of which would be unnecessary in the course of the proceedings.

5.1 Default judgment as a means of speeding up proceedings

"In adversarial proceedings, the procedural responsibility for conducting the dispute rests with the disputing parties. Therefore, if the plaintiff does not respect the obligation imposed by the court (in this case, it is the obligation to participate in the ordered hearing), the form of the decision corresponds to

this," **[18]** the decision of the Supreme Court of the Slovak Republic states. In such a case, the court is authorized to decide in the form of a default judgment, which, according to another resolution of the Supreme Court of the Slovak Republic, represents a sanction for the party to the dispute who does not show interest in the dispute in the proceedings and causes unnecessary delays **[19]**.

A default judgment is a form of abbreviated decision, which can be considered as one of the means to streamline and speed up court proceedings. According to the decision of the Constitutional Court of the Czech Republic, default judgments are based on the fact that the party in the proceedings does not defend its rights, despite the fact that it had the opportunity to do so and despite the fact that it is an adversarial dispute governed by the principle of negotiation, in which the party has in one's own interest to contribute to the clarification of the facts in the event that the claims of the other party are false, incomplete or otherwise deviate from reality **[20]**. However, in order for the court to be authorized to make a decision in this form, all conditions established by law must be met. Among them is compliance with the procedure in accordance with the provisions of § 167 of the Code of Civil Procedure, i.e. hand-delivering the summons, which, as follows from the decision of the Supreme Court of the Slovak Republic, means that the summons is delivered in such a way that the addressee confirms with his signature on the document delivery confirmation acceptance of default **[21]**, and timely summoning of the disputing party and at the same time the fact that the disputing party does not appear without a serious reason. According to the decision of the Constitutional Court of the Slovak Republic, the law does not specify the term "serious reason" and leaves this question to the discretion of the court in terms of assessing the specific situation. It is necessary to add that the prerequisite for a decision in the form of a default judgment is also the failure to fulfil the conditions for stopping the proceedings, rejecting the claim or rejecting the claim.

The possibility of making a decision in the form of a default judgment can really speed up the proceedings and help to eliminate or prevent the occurrence of unnecessary delays (and in practice, this actually happens), however, it is necessary to thoroughly examine the reasons why the party to the dispute does not appear **[22]**. It is so important that the party to the dispute informs the court in advance and apologizes, of course, if it is possible, that he cannot appear for objective reasons, which again helps in the speed and, at the same time, the economy of the proceedings, as it not only relieves the other party of the dispute, so that delivered.

6 An ideal in the form of resolving a dispute amicably

The most ideal way to resolve the matter within the framework of the preliminary discussion of the dispute is to settle the dispute amicably, while the provisions of § 170 of the Code of Civil Procedure indicate that, as far as it is expedient and possible, the court will try to resolve the dispute amicably, or recommend the parties to the dispute to try to settle the dispute through mediation. Also, Art. 7 of the Code of Civil Procedure shows that leading the parties to an amicable settlement of the dispute is one of the basic principles of court proceedings, while Horváth E. and Andrášiová A. add that it should serve to clarify the subject of the dispute and also to discuss procedural options, including the possibility of ending the dispute amicably **[23]**. The result of the preliminary discussion of the dispute should thus be the clarification of the subject of the dispute, issues of evidentiary law, and at the same time, the judge's legal assessment. However, this is a kind of ideal that is not achievable under all circumstances, as it is often not requested by the parties to the dispute (for example, in the case of property disputes), therefore the preliminary discussion of the dispute often does not end in reconciliation. However, suppose no settlement was reached (and the court did not issue a default judgment, or the plaintiff did not use the institution of withdrawal of the claim in accordance with the provisions of § 144 et seq . of the Code of Civil Procedure). In that case, he is obliged to prepare documents for the hearing, and it is not excluded that the hearing follows on from a preliminary hearing dispute.

7 Conclusion

The Institute of temporary dispute resolution is still a relatively new institution of the Slovak civil process, which is currently not receiving the expected attention, which is not in favour of its application in practice.

As part of the preliminary discussion of the dispute, the court is obliged to inform the parties of the dispute with its opinion on the matter under discussion. Even if it is only a preliminary opinion, the court shows the parties the path that its opinions can take. It is, therefore, possible that, based on them, the plaintiff decides to end the dispute even before the hearing. The court is obliged to express its opinion at the beginning. In contrast, the court's legal opinion can significantly help the parties evaluate the procedural risk and possible success or failure. However, this does not rule out that the party against which the court expressed a legal opinion during the preliminary hearing will win the dispute.

We are of the opinion that the institute of preliminary hearing has the potential to speed up court proceedings and, subsequently, limit delays in court proceedings to the greatest possible extent. Despite the fact that Horváth and Andrášiová claim that: *"the legislator expects that its use will be the rule rather than the exception, as it expects it to streamline and speed up concentrated litigation,"***[24]** even though a few years have already passed since the adoption of the Civil Litigation Code, given the institute is still not being used to the extent that was expected and its full potential cannot be manifested.

However, it is necessary to add that the applicability of the obstacle res must be considered in the decision-making process during the preliminary discussion of the dispute indicate, or obstacles to a validly decided case, which excludes the court from discussing again the same case in which it was legally decided. According to the resolution of the Supreme Court of the Slovak Republic, res indicates procedural conditions, and its existence leads to its termination at every stage of the proceedings without further ado **[25]**. Pursuant to the provision of § 230 of the Code of Civil Procedure, the same claim, which has already been legally decided, can be considered the same thing if it is based on the same legal reason arising from the same factual situation.

References

1. Löwy, A. & Mitterpachová, J. (2021). Census per atrium legalis (preliminary legal assessment) as a procedural defect. In Judicial Review, (Vol. 73, Issue 6-7, pp. 772-782).
2. Constitutional Act No. 23/1991 Coll. CSFR. stating the Charter of fundamental rights and freedoms as a constitutional law of the Federal Assembly of the Czech and Slovak Federative Republic (1991).
3. Notification no. 209/1992 Coll. CSFR of the Federal Ministry of Foreign Affairs on the negotiation of the Convention on the Protection of Human Rights and Fundamental Freedoms and the Protocols related to this Convention (1992).
4. Ruling of the Constitutional Court of the Slovak Republic dated 01.01.1996, file no . stamp II. ÚS 26/95 (1996).
5. Ruling of the Constitutional Court of the Slovak Republic dated 21.06.2000, no. stamp I. ÚS 3/2000 (2000).
6. Števček M., et al. (2002). Civil dispute procedure. Comment. 2nd edition, Bratislava: CH Bec, p. 639.
7. Act No. 99/1963 Coll. CSSR, Civil Code of Court, as amended (1963).
8. Pavelková, B., Judiak , P. & Skorková , V. (2018). Basic pillars of civil court proceedings and their roots in the Roman civil process, Pan-European University, Faculty of Law, p. 5.
9. Resolution of the Trnava Regional Court, Slovakia, dated 31.10.2018, no. stamp 10Co 310/2017 (2017).
10. Števček M., et al. (2002). Civil dispute procedure. Comment. 2nd edition, Bratislava: CH Bec, p. 639.
11. Slovak Ministry of Justice. [online]. [cit. 2023-01-10]. https://www.justice.gov.sk/Stranky/Sudy/Statistika-priemerna-dlzka-konania.aspx
12. Explanatory report on the draft law on the Code of Civil Procedure (2023). https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=408705
13. Podivinská, A. (2023). Proof. In Pravne noviny. https://www.pravnenoviny.sk/dokazovanie
14. Resolution of the Supreme Court of the Slovak Republic dated 31.08.2020, sp . stamp 4Obdo 34/2020 (2020).
15. Decision of the Constitutional Court of the Slovak Republic dated 06/07/2016, file no . stamp III. ÚS 32/2015 (2016).
16. FICOVÁ, S. (2008). Civil procedural law: basic proceedings. 2nd edition . Bratislava: Comenius University in Bratislava, Faculty of Law, p. 69.

17. MAZÁK, J. et. al. (2007). Fundamentals of civil procedural law. 3rd edition. Bratislava: IURA EDITION, p. 38
18. Resolution of the Supreme Court of the Slovak Republic dated 31.08.2020, sp . stamp 4Obdo 34/2020 (2020).
19. Resolution of the Supreme Court of the Slovak Republic dated 30.09.2020, sp . stamp 4Obdo 84/2019 (2019).
20. Ruling of the Constitutional Court of the Czech Republic from 06.20.2011, file no . stamp I. ÚS 329/08 (2011).
21. Resolution of the Supreme Court of the Slovak Republic dated 27.10.2010, no . stamp 4 Cdo 240/2010 (2010).
22. Ruling of the Constitutional Court of the Slovak Republic from 13.12.2018, file no . stamp ÚS 369/2018-56 (2018).
23. Horváth, E., Andrášiová, A. & Henčeková, S. (2018). Civil dispute procedure. Bratislava : Wolters Kluwer, p. 373.
24. Horváth, E., Andrášiová, A., & Henčeková, S. (2018). Civil dispute procedure. Bratislava : Wolters Kluwer, p. 372-373.

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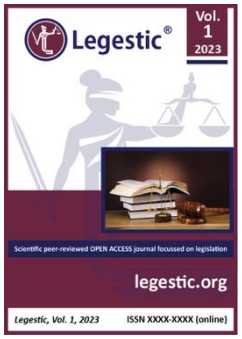

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Institute of personal use in the legal regulation of socialist Czechoslovakia in the years 1948-1989

Martin Skaloš

Abstract

This article describes the institute of personal use in the legal system of socialist Czechoslovakia in the years 1948-1989. The article aims to point out the changes in the legislation of the institutes of substantive rights in the legal order of socialist Czechoslovakia in the years 1948-1989 with special attention to property rights. The most fundamental change was the breaking of the unified institution of ownership, and on the contrary, new diverse forms of use of agricultural land and housing gained importance, which significantly suppressed the broad meaning of ownership. Currently, the Civil Code (Act No. 40/1964 Coll.) does not contain the relevant provisions on personal use of land since amendment No. 501/1991 Coll. the right of personal use of the land, which arose before the amendment in question came into effect according to the legal regulations in force at that time, was changed to the ownership of natural persons. It meant that a citizen who, for personal use, established a building on land belonging to the state thereby became the owner of the land in question.

Keywords: development, substantive rights, Civil code, legal order, Czechoslovakia.

1. Introduction

After an absence of almost forty years, the general, institutional, and comprehensive regulation of property law returned to the Czechoslovak legal order through the amendment of the Civil Code (Act No. 509/1991 Coll.) **[1]** and is contained in its second part. Until April 1, 1964, during the period of validity of the Civil Code (hereinafter referred to as the Civil Code) from 1950, there was still a separate regulation of real property rights, including individual types of real rights, but in a significantly modified form, mainly influenced by the replacement of the single concept of property right with a system of several types and forms ownership in the sense of the dominant socialist doctrine.

The ideological coloring of the concept and content of the Civil Code from 1950 was shown in a new light after the publication of the next Civil Code in 1964. If in the Civil Code from 1950, the traditional institutions of Roman and continental law, as well as the overall concept of the code, were influenced by the ideas of Marxism-Leninism, then in the Civil Code from 1964, they were completely deformed programmatically **[2]**.

A number of traditional institutions, which are the cornerstone or unifying element of civil law of the continental type, have either been completely eliminated or at least pushed to the margins of legal regulation. In the adjustment, traditional institutions such as tenure and holding, servitudes **[3]**, leases were eliminated, and on the contrary, alternatives were introduced in the form of personal use, services, etc.

2. Changes in the field of ownership after the adoption of the Civil Code of 1950

From January 1, 1951, civil law relations throughout the territory of the Czechoslovak Republic were governed by the new Act No. 141/1950 Coll. **[4]**, which was characterized by a relatively significant degree of abstractness of the legislation. However, this did not apply to the area of regulation of property rights **[5]**. Property law was considered the "foundation and backbone" of the new civil law **[6]**, breaking the Roman law concept of unified private property as the conceptually unlimited dominion of man over things and distinguishing exploitative private property from the socialist property and non-exploitative personal property **[7]**. This distinction of individual types of ownership continued in its unchanged form until 1964.

The basis of the new civil law, which was based on the Constitution of May 9, was a new type of property, socialist property **[8]**, which was the strongest pillar of the socialist construction of the state. The highest form of socialist ownership was then stating socialist ownership, the object of which was the common property of all the people - national property. In addition to it, communal ownership was recognized, but it was not elaborated in the Civil Code (§ 149), cooperative ownership (ownership of people's cooperatives), personal ownership of means of personal consumption, and, to a limited extent, private ownership (§ 158).

According to the explanatory report to the Civil Code, "property rights are not defined by the syllabus; the definition of ownership does not even seem necessary." **[9]**. Only the state and people's cooperatives could be socialist owners. Only the state could be the owner of national property. The state managed the national property either directly through its authorities or could entrust parts of the national property to national and municipal enterprises, which then managed these property assets according to special regulations. Parts of the national property could also be entrusted to people's cooperatives, mainly agricultural ones, for permanent use (§ 103) **[10]**. However, this provision could in no case be interpreted in such a way that the state would transfer the ownership right to the mentioned organizations. It was only about the right to use part of the national property, not to appropriate it. This also corresponded to the rule enshrined in Article 102, according to which national property was exclusively state socialist property.

The provisions on the limitation of property rights are based on the provisions of § 9, § 161, and § 164 of the Constitution of May 9, which subordinates the exercise of everyone, including individual ownership, to a unified economic plan. Increased protection of socialist property **[11]** is manifested, and civil-law restrictions are imposed so that things cannot be transferred from socialist property to private ownership, by establishing the fundamental inalienability of objects of socialist property. However, as long as socialist production aims to satisfy the personal consumption of workers, it is of course permissible for the products of socialist production to be transferred to personal ownership, which is expressed by the freedom of disposal within the framework of "ordinary management." **[12]**. Furthermore, the requirement that the individual coordinate his interests with the interests of others are remembered companies; therefore, it is necessary to establish restrictions arising from the interests of neighbors, immission, etc., while abandoning the existing case history and leaving the discretion of the court. In addition, the owner is obliged to tolerate the necessary use of the thing by a third party in a state of emergency or in the general interest (§ 108 of the Civil Code).

The Civil Code of 1950 abandoned the traditional principle that "the surface gives way to the land" **[13]** or that "the owner of the land is also the owner of the structure built on it" **[14]**. The main reason for the implementation of this step was the problems that could arise for unified peasant cooperatives: under the previous valid regulation, buildings built by unified peasant cooperatives on private land would become the property of the owner of the land. Likewise, thanks to this move, it was possible for individuals to build privately owned houses on a state or cooperative land. Therefore, the provision of § 155 stated that the owner of the building can be a person different from the owner of the land **[15]**.

3. Ownership structure in the 1964 Civil Code

The Czechoslovak legal order defined 4 basic forms of ownership: state ownership and cooperative ownership (as collective forms of ownership), and then personal ownership and private ownership (as individual forms of ownership). The names of individual types of ownership differed in the course of development, but above all with the adoption of the Civil Code of 1964 **[16]**. For example, it stopped using the term state ownership, as the legislator used the broader term "socialist social ownership", which includes state ownership. Although the adjective "social" was already used with socialist ownership by the OZ from 1950 (§ 100), in this case, it was rather an ideological expression of the nature of the institute than part of the name of a new form of ownership.

The so-called socialist property itself was not a type of property right, but a category of a set of legally privileged types of property, which included state, cooperative, and personal property. The Civil Code from 1964 established that the source of personal property can only be the citizen's work for the benefit of society (or any other honest source) and that the objects of personal property must be consumable in nature. In addition, the Civil Code from 1964 established as a criterion for the determination of personal property the extent of the property, given not only by the volume of the property but also by the size of specific things, especially family homes (§ 128). The exact limit of the scope of the property was not explicitly established by law. Section 126, which established that personal property serves to satisfy personal material and cultural needs, was a certain guideline for judicial decision-making. The Civil Code from 1964 also allowed private ownership, the basis of which was the ownership of the means of production, newly limited by the fact that it could not serve the exploitation of man by man, that is, that the means of production could only be used by their owner.

According to § 129 of the Civil Code from 1964, only a single-family house could be in personal ownership, because this number ensured the dignified right of the worker to housing and at the same time prevented the (then unacceptable) accumulation of property. If a citizen-owned two or more family houses, the second and subsequent houses were not personal property, but private property. The same conclusions applied to building plots. Personal property was supposed to exist only to the extent sufficient to satisfy the basic needs of the individual. Anything else that did not serve to satisfy these needs could no longer be part of personal property. In the future, however, it was assumed that personal property would not be necessary for a communist society because the basic needs of each individual would be met directly from the resources of the entire society **[17]**.

In contrast to personal property, private property as another form of individual property did not have the nature of socialist type property. This was primarily reflected in the development of the legal regulation of private property. While at the beginning of the 1950s, private property was perceived as a survival of old bourgeois relations, but as at least a tolerated form of ownership within the policy of gradual transition to socialist economic conditions, in the 1960s it became an undesirable institution. Therefore, the regulation of private property in the Civil Code from 1964 was hidden until the final provisions of the code (Part 8. Final provisions, Chapter 1. Regulation of other civil law relations, § 489 et seq.) **[18]**, wherein § 489 it was stated that civil law relations arise also from individual ownership to things that are not the subject of personal ownership (private ownership), and that this ownership is also protected against unauthorized interference. It is obvious that the Civil Code from 1964 also provided for the removal or a drastic reduction of private property and considered personal property to be the only permissible form of an individual property.

In the spirit of promoting economic centralism, the Civil Code was supposed to ensure programmatic uniformity of the standard of living as part of the regulation of property rights, as well as state supervision over all property transactions in the state **[19]**. This is most clearly seen in the provisions of § 130 par. 2, which, within the framework of the regulation of personal property, established that "things accumulated contrary to the interests of society beyond the personal needs of the owner, his family, and household do not enjoy the protection of personal property".

The provision of § 490 par. 2. According to his diction, citizens could only transfer undeveloped building plots to the state or a socialist organization. Since in the 1960s, due to the phenomenon of squatting and the related interest in building land, the frequency of trading with private building land began to increase (since the state was unable to satisfy this interest), the said provision was supposed to

prevent these business practices. Undeveloped building plots could only be alienated between relatives in the direct line and between siblings.

Shortly after the publication of the Civil Code in 1964, it became clear that the programmatic legislative experiment in the form of a radically conceived code of civil law had not succeeded. Therefore, in 1982, extensive amendment No. 131/1982 Coll., which fundamentally changed the text of the OZ from 1964, by returning most of the important institutes. Conceptually, possession was re-introduced, and institutionally, also holding, albeit in a significantly distorted form reflecting legislative efforts to suppress the meaning of property rights and replace it with the institution of personal use. Similarly, a number of other indispensable institutes were resuscitated, the restoration of which was required by practice. According to the inserted provision of § 453a, things that the owner cannot use in the usual way as a result of his illegal actions were subject to confiscation and became the property of the state. It was a provision directed primarily against emigrants, i.e. j. to people who left Czechoslovakia without a state permit or crossed the state borders illegally. The property of these persons (primarily real estate) belonged ex lege to the state **[20]**.

4. The right of personal use

A key change in the previous arrangement of property rights (communist doctrine rejected the very concept of property rights) was the hard enforcement of entirely new institutions, the purpose of which was to wean people from the need to own, while the advantages of using things over owning them were repeatedly emphasized. The traditional institution of property rights was largely relegated to the background to replace it with certain substitutive institutions designed to force people to change their approach to property. These were primarily different variants of the so-called institute. of personal use, which was to gradually replace not only property rights but also real rights, including real rights to other people's property (mainly encumbrances). In practice, it was an institute entitling primarily an individual to use property in the state and cooperative ownership, in a form similar in content to real rights to someone else's property. So it was a kind of quasi-ownership, or about creating an impression about him. Its significance, however, had primarily an ideological background and was proclamatively expressed in § 124 of the Civil Code from 1964, which described the role that use should play in the reform of society under the influence of civil law norms: "Public facilities serve the social use of citizens, such as transport, health, cultural, social, physical education, and recreation." § 124 of the Civil Code from 1964 (Act No. 40/1964 Coll.) **[21]**.

The distribution of assets among the members of the socialist society was not carried out only based on the acquisition of property into personal ownership, but also by allowing the state to leave part of the socialist property to citizens for personal use **[22]**. Thus, it was not a transfer of ownership rights, but the provision of the possibility of using a part of the socialist (common) property to satisfy legitimate material and cultural needs. Personal use of apartments, other rooms, and the land was regulated in the provisions of § 152 et seq. The right of personal use was canceled after the change in social conditions after 1989 when it was changed by law to either ownership or lease **[23].**

The institution of personal use was not a complete novelty. Structurally, it was built on the older institution of permanent use, which was modified already in the Civil Code from 1950 (§ 103 par. 2 of the Civil Code from 1950). In contrast to personal use, which was supposed to satisfy the personal needs of citizens, the purpose of permanent use was primarily to provide part of the national property for the use of socialist legal entities, but primarily peasant cooperatives, that is, non-state organizations. The object of permanent use could be both movable and immovable property, although according to vl. born no. 110/1953 Coll. **[24]** it was possible to hand over movable things for permanent use only exceptionally if there were special reasons for this. Thus, in practice, the institute of permanent use most often served for the establishment of buildings on state land, which was the basis for the later institute of personal use of land. However, permanent use differed from it in that its subject could only be a socialist legal entity, and thus it could not even serve to satisfy the personal needs of citizens.

The institute of personal use (or "rights of personal use") was designed primarily for individual legal disposition of land and apartments. The personal use of land was a substitute not only for the ownership

right to land but also for other traditional real rights, especially the abolished institution of real burdens (or servitudes). The Civil Code from 1964 regulated the institute of real burdens, but only with regard to the ongoing legal relationships from the previous Civil Code. However, the future of real rights to another's property was indicated by its placement at the very end of the Civil Code among the final provisions (§ 495). The specific meaning of personal use was defined by § 198 of the Civil Code from 1964: "The right of personal use of land is used so that citizens can build a family house, a holiday cottage or a garage or set up a garden on the land to which the right is established." (§ 198 of the Civil Code from 1964).

First of all, the Civil Code regulated the personal use of apartments. According to the provisions of § 153, it was valid that state, cooperative, and other socialist organizations leave apartments to citizens for personal use without determining the period of use, and that for payment (only if the law provides otherwise). In the first place, it was necessary for the local national committee or other competent authority to decide on the allocation of the apartment according to the regulations on the management of apartments (or another legal fact). Based on this decision, the citizen has the right to have the organization conclude an agreement with him on handing over and taking over the apartment. With the creation of the agreement, the citizen became an authorized entity, when the right consisted of the use of the apartment. In addition to this possibility, the Civil Code also recognized the personal use of a cooperative apartment, when the right for a citizen to have a cooperative apartment allocated for personal use by the cooperative body was created by paying off the member's share.

Furthermore, the Civil Code regulated the personal use of other living rooms. According to the provisions of § 190, the right to use a living room arose based on an agreement that was concluded after the local national committee or another body competent under the regulations on housing management made a decision on the allocation of a living room in facilities intended for permanent residence. Similarly, it was possible to obtain the right of personal use of a room not used for living, such as a garage, studio, warehouse, etc. A completely separate category was the so-called personal use of land. However, the decision on the allocation of land for personal use was not entrusted to the local but to the district national committee **[25]**.

Personal use of land was in a certain sense a necessity, stemming from the ideological prohibition of personal ownership of land. In practice, however, this meant a paradoxical disadvantage for the otherwise politically privileged layer of the working class, for whom the availability of land for construction was very limited. Building plots, which were increasingly required, were either privately owned or owned by the state, which, however, could not transfer these plots to personal ownership. Personal use of land (as well as apartments) allowed the state to satisfy the demand of citizens while simultaneously maintaining ownership and control of the state over real estate.

Personal use gradually became a universal means of solving the difficulties that quickly began to appear after the introduction of the Civil Code of 1964. An example in this direction can be the institute of endurance, which was eliminated by the Civil Code in 1964, but in response to complaints from the practice, it was re-introduced by amendment no. 131/1982 Coll. [26] The amended version of the Civil Code in § 135a established that holding does cause a change in the subject of property rights (as well as the traditional understanding of this institution), but the acquirer will not be the holder, but ex lege the state. At the same time, the holder himself will only have the right to agree on the personal use of the land held with him. It was a break-neck adaptation of a traditional institution, the existence of which proved to be necessary in the legal order, in the spirit of the new civil law.

5. Conclusion

While in the first stage of civil law reform, traditional Roman law institutions were deformed according to the ideological requirements for the construction of a people's democratic legal order, in the second stage, based on the adoption of the Civil Code in 1964, several of these institutes were eliminated and replaced by completely newly constructed institutes corresponding to the construction criteria socialism and communism. The most fundamental change was the breaking of the unified institution of ownership, and on the contrary, new diverse forms of use of agricultural land and housing gained importance, which significantly suppressed the broad meaning of ownership.

The Civil Code of 1964 introduced the institution of "personal use of land", which in a certain way shared characteristic features with the right of construction. It was mainly about the fact that based on personal use of land, a citizen could set up a building on state land and then use the land together with the building. However, the goal pursued by the institute in question was diametrically different from the essence of construction law. The right of construction was supposed to somehow break the "surfaces solo credit" principle, to enable the builder to set up a building on someone else's land and then use it.

The Civil Code from 1964 was amended in detail in connection with the introduction of the so-called personal use of apartments and land, legal conditions inside and outside construction housing cooperatives, the meaning of which was based on the newly introduced concept of the so-called cooperative apartments. The Civil Code of 1964 paid special attention to the adjustment of the legal relationship of citizens to apartments and land. The regulation of the use of the apartment itself represents 37 provisions, together with the regulation of other residential and non-residential premises and land 69 provisions, which compared to the regulation of possession or holding after the amendment in 1982 is a difference of 68 provisions of the law. Likewise, the 1964 amendment to the Civil Code included only two provisions (9 paragraphs) in the 1964 amendment to the civil code, which regulated the ABGB in 58 paragraphs. On the contrary, the colossal legal regulation of apartments and land was further expanded with the 1964 amendment to the Civil Code.

Currently, the Civil Code (Act No. 40/1964 Coll.) does not contain the relevant provisions on personal use of land, since amendment No. 501/1991 Coll. the right of personal use of the land, which arose before the amendment in question came into effect according to the legal regulations in force at that time, was changed to the ownership of natural persons. It meant that a citizen who, for personal use, established a building on land belonging to the state, thereby became the owner of the land in question.

References

1. The law amending, supplementing, and amending the Civil Code Col. SR. Retrieved from https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1991/509/
2. Bobek, M., Molek, P., & Šimíček, V. (eds.). (2009). Komunistické právo v Československu. Kapitoly z dějin bezpráví [Communist law in Czechoslovakia. Chapters from the history of injustice]. (p. 436). Brno: Nakladatelství Mezinárodní politologický ústav. ISBN 978-80-210-4844-7. (In Czech)
3. Štefanko, J. (1999). Prvý Občiansky zákonník: platný od roku 1951 do roku 1964 s dôvodovou správou a so súvisiacimi predpismi zameranými na vecné právo. [The First Civil Code: valid from 1951 to 1964 with an explanatory report and related regulations focused on substantive law]. (p. 105). Šamorín: Heuréka. ISBN 80-967653-7-X. (In Slovak)
4. Civil Code 141/1950 Col. SR. Retrievet from https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1950/141/
5. Fico, M. (2013). Vývoj inštitútov vecných práv [Development of institutes of property rights]. (p. 97). Košice: UPJŠ. ISBN 978-80-8152-009-9. (In Slovak)
6. Knapp, V. (1952). Vlastnictví v lidové demokracii [Ownership in people's democracy]. (pp. 403-404). Praha: Orbis. (In Czech)
7. Skaloš, M. (2021). Vývoj inštitútov vecných práv vo svetle právnej úpravy územia Slovenska. 1. vyd. [The development of institutes of real rights in the light of the legal regulation of the territory of Slovakia. 1st ed.]. (p. 402). Banská Bystrica: Vydavateľstvo Univerzity Mateja Bela – Belianum. ISBN ISBN 978-80-557-1875-0. (In Slovak)
8. Venědiktov, A. (1950). Státní socialistické vlastnictví, I. díl [State Socialist Ownership, Part I]. (pp. 20-22). Praha: Orbis. (In Czech)

9. Explanatory report of the government of the Czechoslovak Republic on §100 - § 106. (2023, February 20). In PSP. http://www.psp.cz/eknih/1948ns/tisky/t0509_10.htm.

10. Neuman, A. (1959). Československá právní řád na cestě k socialismu [Czechoslovak legal order on the way to socialism]. (p. 191). Praha: Slobodné slovo. (In Czech)

11. Lazar, J. (1984). Buržoázne vlastnícke koncepcie z hľadiska marxistickej právnej vedy [Bourgeois property concepts from the point of view of Marxist jurisprudence]. (pp. 20 et. seq.). Praha: Vydavateľstvo SAV. (In Slovak)

12. Skaloš, M. (2022). K niektorým historickým a právnym aspektom vybraných vecnoprávnych inštitútov po roku 1948 [To some historical and legal aspects of selected property law institutes after 1948]. In Švecová, A., Lanczová, I., & Gajarský, A. Právno-historické trendy a výhľady VII. (pp. 125-126). Praha: Leges. ISBN 978-80-7502-655-2. (In Slovak)

13. Takáč, J. (2015). Možné postavenie zásady „superficies solo cedit" a inštitútu práva stavby v právnom poriadku Slovenskej republiky [Possible position of the " superficies solo cedit" principle and the institute of construction law in the legal order of the Slovak Republic]. (pp. 412 et. seq.). Brno: Masarykova univerzita. ISBN 978-80-210-7897-0. (In Slovak)

14. Fiala, J., Kindl, M. et al. (2009). Občanský zákoník. Komentár. I. díl. [Civil Code. Comment. Part I]. (p. 353 et. seq.). Praha: C. H. Beck. ISBN 978-80-7357-395-9. (In Czech)

15. Vojáček, L., Schelle, K., & Tauchen, J. et al. (2012). Vývoj soukromého práva na území českých zemí. I. díl. [The development of private law in the territory of the Czech lands. Part I.]. (pp. 418-419). ISBN 978-80-210-6006-7. (In Czech)

16. Lazar, J. (1993). Občianske právo. I. diel. Všeobecná časť. Vecné práva. Dedičské právo. [Civil law. Part I. General part. Real rights. Inheritance law.]. (pp. 9-10). Bratislava: Univerzita Komenského. ISBN 80-85719-02-9. (In Slovak)

17. Vojáček, L., Schelle, K., & Tauchen, J. et al. (2012). Vývoj soukromého práva na území českých zemí. I. díl. [The development of private law in the territory of the Czech lands. Part I.]. (pp. 453-454). ISBN 978-80-210-6006-7. (In Czech)

18. Bobek, M., Molek, P., & Šimíček, V. (eds). (2009). Komunistické právo v Československu. Kapitoly z dějin bezpráví [Communist law in Czechoslovakia. Chapters from the history of injustice]. (pp. 453-454). Brno: Nakladatelství Mezinárodní politologický ústav. ISBN 978-80-210-4844-7. (In Czech)

19. Vojáček, L., Schelle, K. (2007). Právní dějiny na území Slovenska [Legal history in Slovakia]. (pp. 403-404). Ostrava-Přívoz. ISBN 8087071434. (In Czech)

20. Bobek, M., Molek, P., & Šimíček, V. (eds). (2009). Komunistické právo v Československu. Kapitoly z dějin bezpráví [Communist law in Czechoslovakia. Chapters from the history of injustice]. (p. 439-440). Brno: Nakladatelství Mezinárodní politologický ústav. ISBN 978-80-210-4844-7. (In Czech)

21. Civil Code 40/1964 Col. SR. Retrievet from https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1964/40/

22. Knapp, V. Luby, Š. et al. (1974). Československé občanské právo. I. svazek. 2. vydání [Czechoslovak civil law. Volume I. 2nd edition.]. (pp. 75 et. seq.). Praha: Orbis. (In Czech)

23. Češka, Z. et. al. (1987). Občanský zákoník. Komentár. I. svazek [Civil Code. Comment. Volume I]. (pp. 539 et. seq.) Praha: Panorama. (In Czech)

24. Government regulation on the management of national property by budgetary organizations Col. SR. https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1953/110/

25. Vojáček, L., Schelle, K., & Tauchen, J. et al. (2012). Vývoj soukromého práva na území českých zemí. I. díl. [The development of private law in the territory of the Czech lands. Part I.]. (pp. 455-156). ISBN 978-80-210-6006-7. (In Czech)

26. The law amending the Civil Code and regulating some other property relations Coll. SR. Retriever from https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1982/131/

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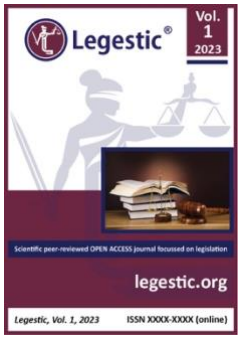

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Limitation periods in consumer disputes

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Abstract

This contribution analyzes the court's *ex officio* obligations in consumer disputes regarding the statute of limitations within the Council Directive 93/13/EEC framework on unfair terms in consumer contracts and current legislation. It also considers recent case law developments. The statute of limitations aims to allow debtors to contest or confirm debts that they may not recall or that are disputed. However, the legislation infringes upon debtor autonomy by mandating protection, creating an asymmetry between suppliers and consumers. The concept of procedural protection for the weaker party in consumer disputes aligns with the EU's internal market's sustainable development. The court's *ex officio* consideration of limitations is crucial in achieving this goal. Slovakia's entry into the EU led to adopting procedural protection measures, exceeding minimum harmonization standards, and fulfilling international obligations. Slovak civil legislation reflects the inequality between consumers and suppliers, resulting in specific substantive law derogations to address this disparity. Including a protective *ex officio* statute of limitations in consumer, disputes represent a baseline for consumer protection in civil court proceedings, offsetting debtor information deficits. This analysis reveals the coexistence of two fundamental principles in civil litigation: equality of parties and protection of the weaker party in consumer disputes. The court's *ex officio* approach upholds the principle of safeguarding the weaker party and enhances equality in dispute resolution. In conclusion, introducing an ex officio court obligation to apply the statute of limitations in consumer litigation guarantees consumer protection and is necessary to ensure weaker litigants' fundamental human right to a fair trial.

Keywords: consumer, supplier, consumer credit, limitation, unjust enrichment

1. Introduction

Consumer protection legislation in the context of consumer credit is continuously evolving and expanding, and the individual instruments are often refined. The current legislation, together with the case law, constitutes a fairly coherent and sufficient set of instruments that should compensate for the unequal position of the consumer and the supplier and ensure adequate protection for the consumer. Determining the degree of liability or co-liability of the various parties to the contractual relationship is a very sensitive legal issue. The principle of the protection of the weaker party has been frequently mentioned in recent decisions of the Constitutional Court and the Court of Justice of the European Union, as consumers often have problems repaying these types of loans and can easily obtain a new loan to refinance the previous one.

The statute of limitations is one of the most important legal facts under which legal consequences, i.e., rights and obligations, arise. The primary purpose of the limitation is the protection of the debtor, and the secondary purpose is the public interest in protecting legal certainty.

Applying the principle of protection of the weaker party to the dispute leads to the fulfillment of the principle of equality of the parties in a set of civil disputes in which the court should implement the procedural deviations determined by the legislator. Each of the statutory procedural derogations is a manifestation of the legislator's will to remove obstacles of an objective nature, which result in an unequal position of the parties to a consumer dispute concerning the effective exercise of their procedural rights and obligations. A party to a dispute may not, in exercising the fundamental human right to obtain judicial protection for his or her rights that have been threatened or infringed, suffer from a factual inequality consisting in the objective impossibility of obtaining relevant evidence or from an information deficit which is characteristic of the ordinary consumer. The economically more powerful subject of the legal relationship has virtually unlimited possibilities already in the choice of the procedural representative through whom he acts in his dealings with the court. Compared with the defendant, the plaintiff is at a significant disadvantage. Given the complicated nature of court proceedings involving claims arising from consumer contracts, it seems almost unrealistic that the consumer should deal directly with the court.

2. Statute of limitations

The basis of consumer policy is based on primary European Union law but is mostly regulated in secondary law. Directive 93/13/EEC regulating unfair terms in consumer contracts can be regarded as the basis for general consumer protection legislation at the European level, and other consumer protection directives have followed it. The Directive aimed to unify the Member States' legislation on unfair contract terms and, at the same time, to set a uniform minimum standard of consumer protection and, to some extent, harmonize consumer protection policy across all Member States of the European Communities **[1]**.

The court is obliged by its official duty to examine in every proceeding whether a consumer relationship is involved to ensure the legal protection of the consumer; the protection of the consumer *ex officio* also follows from Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. It follows from the case law of the Court of Justice of the European Union that factual inequalities must be balanced. A real balance must replace the formal balance. The Court of Justice has repeatedly emphasised that an unequal relationship between consumer and supplier can only be compensated for by positive external intervention *ex officio*. We consider the Charter of Fundamental Rights of the European Union to be one of the sources of law, where Article 38 states: "The Union's policies shall ensure a high level of consumer protection". The Charter of Fundamental Rights of the European Union is considered part of primary law and a reference for our legislation. Since the accession of the Slovak Republic to the European Union, the principle of effective consumer protection has also been reflected in the Slovak legal order through European law, in which the provisions of the Treaty on the Functioning of the European Union and Article 38 of the Charter of Fundamental Rights and Freedoms, accompanied by several directives, are its legal basis. Directive 93/13/EEC was one of the first regulatory measures in consumer protection adopted on European territory **[2]**.

Based on the principle of effectiveness, the Court of Justice has required the national court to apply *ex officio* certain provisions of the Union directives in consumer protection, notwithstanding the contrary rules of national law. That requirement was justified by the consideration that the system of protection introduced by those directives is based on the idea that the consumer is at a disadvantage compared with the seller or supplier in terms of bargaining power and level of information and that there is a not inconsiderable risk that, in particular, because of his ignorance, the consumer will not point to the legislation which is intended to protect him [see, to that effect, Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts **[3]**.

The institution of limitation has been given great weight in Roman law, with the emphasis placed on ensuring legal certainty, and it has retained that character to the present day. Before the adoption of the Civil Code (Act No 64/1964 Coll.), Slovak private law distinguished between limitation causing the

extinction of a right (*praescriptio extinctiva*) and limitation under which a right was acquired (*praescriptio acquistiva*). At present, prescription is a substantive legal institute governed by the provisions of Article 100 et seq. of the Civil Code **[4]**.

It can be stated that the substantive purpose, the very essence of limitation, is not to avoid debt but on the contrary, to open the possibility of not paying a debt that the debtor does not remember with certainty or which is disputed between the parties in this sense. In this respect, the current legislation interferes with the autonomy of the will, since it essentially imposes on debtors protection which should be (exclusively) theirs to use **[5]**.

Limitation (in Latin "*inveteratio*") is one of the legal consequences of the futile expiration of the time provided by law without the rightful subject exercising or enforcing its right in court. By limitation, we mean the qualified expiry of the time provided by law to exercise a right, which has elapsed without the right having been exercised. As a consequence of limitation, the obliged entity may counter a judicial exercise of the right with a plea of limitation, which results in the extinction of the claim belonging to the content of the subjective right, i.e. the extinction of judicial enforceability. As a result of the plea of limitation and the extinction of the claim, the right cannot be judicially recognized by the entitled party. As a consequence of limitation, although the original subjective right of the entitled subject is not extinguished, it is weakened in the component that constitutes the claim. The entitled party may seek recognition of his right and the time-barred right in a court of law and may even be successful unless the obliged party raises a limitation objection before the court. However, if the obliged party pleads limitation before the court and raises a limitation objection, the claim is extinguished, and the court will not uphold such an action **[6]**.

The Constitutional Court of the Czech Republic stated in the proceedings under Case No. I. ÚS 2063/2017 that the legislator embodied the protection of the weaker party in the legal order. The basis for the protection under consumer law is the de facto unequal position of the consumer against the entrepreneur, who may benefit from greater professional experience, better knowledge of the law, or easier access to legal services. The stronger position of the entrepreneur is also based on the professional background that he generally possesses and which corresponds to his legal obligation to record, report, and tax certain income from his customers. The supplier should also be expected to behave generally fairly towards the consumer. If he fails to do so, he betrays the other party's confidence in the contractual relationship in the honesty of his conduct, and there is no legal protection for such conduct. In interpreting and applying the statutory provisions governing consumer relations, the general courts must respect the constitutional principle of the protection of the weaker party arising from the principle of equality expressed in Article 1 of the Charter of Fundamental Rights and Freedoms and including the principle of consumer protection, and reflect that principle in their reasoning and judgments. In relationships involving parties whose starting positions are significantly unequal, such as those between a businessman and a consumer, it cannot be satisfied that both parties will be afforded the same legal remedies, i.e. a kind of formal equality because in reality the inequality of starting points also causes inequality in the result itself. The solution to this situation lies in the imbalance of the subjective rights and obligations of the parties to a private law relationship, by giving the weaker party more rights and the stronger party more obligations. The purpose of the legislation in question is to seek to achieve a true balance by legally balancing the underlying economic, informational, professional, and other differences that exist between the parties. In other words, to achieve equality as an objective, the inequality of starting positions needs to be categorised by an equally unequal regulation of rights and obligations **[7]**.

Procedural conditions which, as may be the case in a trial on the merits, prohibit both the trial court and the appellate court adjudicating an action on a warranty based on a contract of sale from qualifying based on facts and law which they have or could have on a simple request for further explanation, the legal relationship in question as a sale to the consumer, unless the latter expressly invokes that status, would lead to the consumer being subject to the obligation to qualify his situation fully in law himself, under the threat of losing the rights which the European Union legislature intended to confer on him by Directive 1999/44. In an area where, in many Member States, the procedural rules allow individuals to

represent themselves before the courts, there would be a considerable risk that, mainly due to ignorance, the consumer would be unable to comply with that level of requirements **[8]**.

The Court of Justice (First Chamber) has also held in Mostaza Claro C-168/05 that Council Directive 93/13/EEC of 5. April 1993 on unfair terms in consumer contracts must be interpreted as requiring the national court seised of an action for annulment of an arbitration award to assess the nullity of the arbitration agreement and to annul that award on the ground that that agreement contains an unfair term, even though the consumer invoked that nullity not in the context of the arbitration proceedings but exclusively in the context of the action for annulment **[9]**.

3. Obligations of the *ex officio* approach of the court to the statute of limitations in consumer disputes

In civil law relations, the court takes into account the limitation of a right only upon an objection raised by the debtor during the court proceedings. In such proceedings, the court cannot then recognize the limitation of the right, but in relations based on a consumer contract according to Section 54a, first sentence, of the Civil Code, the limitation of the right cannot be enforced at all, i.e., asserted in court. The court takes into account such unenforceability of the right even without the debtor's objection **[10]**.

The provision of § 54a of the Civil Code is the legislator's reaction to the declaration of § 5b of Act No. 50/2007 Coll. on Consumer Protection as incompatible with the Constitution of the Slovak Republic. This provision was declared incompatible with Article 46(1) in conjunction with Article 1(1) of the Constitution of the Slovak Republic by the finding file no. ÚS 11/2016 of 7 February 2018. A time-barred right under a consumer contract cannot be enforced or validly secured; the provision of §151j(2) is unaffected. The content of a time-barred right under a consumer contract may be changed, replaced by a new right, or restored to enforceability only by an act of the debtor who knew of the limitation **[11]**. The Constitutional Court of the Slovak Republic in the case PL. ÚS 5/2021 of 12 May 2021 in point 19 of the resolution stated that in the circumstances of the case under consideration, it is a substantive regulation which, with the moment of limitation of the right from the consumer contract, also links the change of the legal nature of the claim, namely from a claim that is judicially and subsequently enforceable to a claim that is (primarily) unenforceable (i.e., not "only" time-barred, similarly as in the case of § 845(1) of the Act on the enforcement of claims against consumers) or § 455(2) of the Civil Code) **[12]**.

In civil law disputes, if the claim secured by a pledge is not duly and timely satisfied, the pledgee may satisfy or seek satisfaction from the pledge even if the secured claim is time-barred **[13]**.
A time-barred right under a consumer contract cannot be enforced or validly secured. In this construction of the legal rule, it is possible to speak of a so-called 'spurious preemption' of rights under consumer contracts. It is a hybrid between classical limitation and preemption in that, although it does not extinguish the supplier's time-barred claim against the consumer, it becomes objectively unenforceable, even without the need for a plea of limitation by the consumer. The impairment of the right is linked to an objective legal fact - the qualified lapse of time within the scope of the limitation provisions. The general limitation period is three years. *Ipso facto in* consumer legal relations, the claim is not weakened after the expiry of the limitation period (as is the case with classical limitation) but is directly extinguished. After the expiry of the limitation period, the right under the consumer contract cannot be secured by any security device **[14]**.

In the present context, it is necessary to conclude that, concerning the needs of application practice, the obligation of *ex officio* procedure of supervisory authorities and bodies assessing claims under consumer contracts to examine and evaluate obstacles to the exercise of the seller's right against the consumer is clearly established.

The court's obligation to examine the statute of limitations *ex officio* follows from the decision of the Court of Justice of the European Union C-485/19 of 22.4.2021 LH v. Profi Credit Slovakia s.r.o. in the first paragraph of the operative part of the judgment, the Court of Justice held that the principle of effectiveness precludes national legislation which provides that an action brought by a consumer for the recovery of sums unduly paid based on unfair terms within the meaning of Council Directive 93/13/EEC on unfair terms in consumer contracts or the basis of terms contrary to the requirements of Directive

2008/48/EC on credit agreements is subject to a limitation period of three years from the date on which the unjustified enrichment was obtained. It follows from the reasoning that by requiring the consumer to bring an action within three years of the date on which the unjust enrichment occurred, where that enrichment may have occurred during the performance of a long-term contract, procedural conditions such as those at issue in the main proceedings are of such a nature as to make it excessively difficult for the consumer to exercise the rights conferred on him by Directive 93/13 or Directive 2008/48. They are, therefore, contrary to the principle of effectiveness. There is a not inconsiderable risk that the consumer concerned will not invoke the rights conferred on him by European Union law during the period prescribed (the three years laid down in Article 107(2) of the Civil Code begins to run from the date on which the unjust enrichment occurred. The limitation period also applies where the consumer cannot judge whether a contractual term is unfair). The possibility of extending the limitation period on the condition that the consumer proves the seller's or supplier's intention, as provided for in Article 107(2) of the Civil Code, cannot rebut the above statement **[15]**.

As stated by the Constitutional Court of the Slovak Republic in its ruling of 7 February 2018 in the case PL. ÚS 11/2016, the statute of limitations, like preclusion, is unique in that it stands in the middle of the intersection of substantive and procedural law to the extent that it belongs to both substantive and procedural law or neither of them. The question of judicial enforceability is part of substantive law, a rule of conduct between two equal private individuals. In limitation, the subjective right and the claim stand in contrast. The former is not extinguished. The latter is. The court is barred from discovering it in a traditional statute of limitations case. As mentioned earlier, the uniqueness stems from the complexity of deciding temporality and the equality of subjects. By its very nature, limitation reflects personal initiative, responsibility for managing one's affairs, and the debtor's honor in always being able to pay his debt. Limitation expresses society's concern that debts should be recovered in court, with the participation of the State, only within a reasonable time because the need for proof and knowledge of the debt in general increases with time. The point is not to pay an old, uncertain obligation. Still, the statute of limitations, by specifying the exact time of the claim, suppresses the causation of the debt and is applicable even if the debt is undisputed. The statute of limitations, therefore, also essentially consumes the plea of good faith. From this perspective, the limitation is also a 'contest' between the parties, in which, on the one hand, the creditor must sue within a reasonable time and, on the other hand, the debtor must know his position and the court is a 'discreet' arbiter. However, good morals remain present in that the debtor can pay the debt without the risk of unjust enrichment on the creditor's part. The substantive purpose, the very essence of limitation, however idealistic it may sound, is not to avoid the debt but to open up the possibility of not paying a debt of which the debtor has no certain recollection or which is disputed between the parties. From that point of view, the legislation in force interferes with the autonomy of the will since it essentially imposes protection on debtors, which should be theirs to use **[16]**.

Therefore, The court is obliged to consider the limitation period *ex officio*. The legislation aims to introduce legal certainty in consumer relations. The objective of the legislation is to strengthen consumer protection by taking account of defects in claims often based on unfair contractual terms at a time when the amount receivable is disproportionately increased as a result of deliberately late enforcement of a right against the consumer, at a time when the consumer cannot reasonably expect litigation given the passage of sufficient time, that is to say, when he may no longer have any contractual documentation and when he may no longer remember anything about the contractual relationship in question, since he cannot reasonably be expected, after more than three years, to retain the documentation and all the facts in his memory which he could subsequently use in his defense. This is mainly a case of a subject who is ignorant of the law and cannot raise substantive objections competently because of weakness and ignorance, including the objection of limitation.

Concerning the enforceability of rights under consumer contracts, under Section 54a of the Civil Code, the court examines whether the plaintiff's claim is time-barred, even with a statute of limitations objection being raised. We refer to the legal opinion expressed in the decision of the District Court of Vranov nad Topľou file no. 8Csp/18/2020 dated 14.9.2021, where the plaintiff filed a claim against the defendant for payment of EUR 9,861 with default interest at 5% per annum from 21.4.2020 until

payment. The grounds for bringing the action are that on 24.8.2015, the plaintiff concluded with the defendant a contract for the issue and use of a credit payment card, based on which the plaintiff undertook to provide the defendant with a credit card for which he maintained an account. The defendant failed to fulfill its obligations under the contract despite several requests from the plaintiff. The defendant drew down the approved loan but did not fulfill his obligations under the contract properly and on time and did not make the loan repayments. Therefore, the plaintiff canceled the loan, of which he informed the defendant by letter dated 2 June 2017. This was preceded by a notice from the claimant to the defendant inviting him to pay his debt and informing him that if the installment due in March 2017 were not paid by 25.5.2017, the lender would be entitled to cancel the loan. The defendant did not comment on the application, did not attend the hearing, and did not justify his absence. The court, after taking evidence, concluded that the claim brought in the action was time-barred, regarding Section 54a of the Civil Code in conjunction with Section 879v of the Civil Code, according to which a time-barred right under a consumer contract cannot be enforced or validly secured. The claim was delivered to the district court on 28 May 2020, i.e., when the provision mentioned above of Section 54a of the Civil Code was in force, and the court, therefore, examined whether the plaintiff's claim was already time-barred, even without the statute of limitations objection being raised. The court held that in the present case, the limitation period began to run from the due date of the installment for which the plaintiff prematurely repaid the loan. That is to say, the one that triggered the consumer credit repayment. It is clear from the pre-action notice that the plaintiff's repayment of the loan was due to non-payment of the installment due in March 2017. Based on the above, the Court concludes that the repayment was due to default on the installment due in March 2017 and that the limitation period for the repayment of the entire balance of the defendant's debt under the second sentence of Article 103 of the Civil Code began to run on that date at the latest. The limitation period, therefore, expired in March 2020 **[17]**.

4. Conclusion

The substantive purpose of the statute of limitations is not to avoid the debt in the first place but to open up the possibility of not paying a debt that the debtor does not remember with certainty or that is disputed between the parties in that sense. From that point of view, the legislation in force interferes with the autonomy of the debtor's will since it essentially imposes protection on debtors, which should be up to them to use. In the opinion of the Constitutional Court, the contested legislation, by its simplistic and straightforward nature, is asymmetrical since it places all suppliers (creditors), as it were, on the side of the 'bad' ones and consumers on the side of the 'wronged' ones. However, according to judicial practice, the way the legislation is set up often results in the most reactive consumers being assisted, while the more responsible ones often appear at the hearing and acknowledge the debt, which under procedural law automatically leads to an action being brought by way of an acknowledgment judgment.

The concept of procedural protection of the weaker party in consumer disputes results from a transnational interest in the sustainable development of the internal market of the European Union, and the *ex officio* obligation of the court to take account of limitation constitutes a key factor in achieving that objective. The accession of the Slovak Republic to the European Union was an important milestone in developing civil procedure in our territory from the point of view of procedural protection of weaker parties in civil disputes. The legislator reacted to this state of affairs by adopting the concept of procedural protection of weaker parties to disputes, which occurred in the framework of the recodification of the Civil Code of the provisions of Section 54a of the Civil Code. By adopting the concept of procedural protection of weaker parties to disputes in the provisions of the recodified Civil Disputes Code, the Slovak legislator not only went beyond the framework of minimum harmonization standards but also expressed a particular interest in the fulfillment of international obligations and the fulfillment of the fundamental values of the Union, in particular concerning the decision of the Court of Justice of the European Union C-485/19 of 22 April 2021 in the case of LH v. Profi Credit Slovakia s.r.o.

The civil legislation of the Slovak Republic directly reflects the unequal position of the consumer and the supplier through the Civil Code. The adoption of individual substantive law derogations is the legislator's response to factual inequality between the parties in a consumer dispute, manifested primarily

in the context of the effective realization of the procedural rights and obligations of the parties to a consumer dispute. The transposition of the protective *ex officio* statute of limitations in consumer disputes constitutes a minimum level of consumer protection in civil court proceedings. Therefore, the information deficit of the debtor is compensated by an increased level of court intervention in the ongoing court proceedings. We can say with certainty that the consumer is in a procedurally disadvantageous position since we are basing this on the nature of the subjects. The unequal position of the parties to these disputes is based on the nature of the subjects of the sets of legal relations that enjoy the legal protection of consumer legislation. We are talking, in particular, about relations between the supplier and the consumer. The Slovak legislator has adopted specific procedural derogations to eliminate the de facto inequality between the parties to a consumer dispute. A concrete manifestation of the legislator's intention is conditional adherence to the investigative principle. The court is an *ex officio* investigator but respects the principle of formal truth. Because of the specific nature of consumer litigation, it may side with the consumer even without a plea of limitation, as this is necessary for a fair decision on the merits.

The analysis has led us to a rational conclusion on the coexistence of two fundamental principles of civil litigation: the principle of equality of the parties and protection of the weaker party in a consumer dispute.

Modern civil procedure is called upon to give litigants an equal opportunity to exercise their procedural rights and obligations. In conclusion, we can thus reasonably conclude that the court's *ex officio* approach to the statute of limitations in consumer disputes not only contributes to fulfilling the principle of protecting the weaker party to the dispute but also contributes to deepening the principle of equality of the parties to the dispute and thus to the overall concept of the right to a fair trial. Given the complexity and peculiarities of court proceedings involving claims under consumer contracts, introducing an *ex officio* obligation on the court to apply the statute of limitations in consumer litigation constitutes a consumer protection guarantee. For that reason, the legislative definition of procedural derogations is a necessary step by which the legislator seeks to protect the fundamental human rights of weaker litigants to a fair trial.

References

1. Bejček, J. Consumer protection, or even hypocritically disguised protection of fidelity? Právní rozhledy. 2013, no. 13-14, p. 477.
2. Art. 10 of Directive 93/13/EEC on unfair terms in consumer contracts.
3. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.
4. VADAS, E., 2017. Manuduction (instructional) obligation in consumer disputes. In. Law, business, economy VII.: Proceedings of the scientific symposium: 11-13 October 2017, Vysoké Tatry. - Košice: University of Pavol Jozef Šafárik in Košice. p. 491 - 499. ISBN 978808152525285.
5. The ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 11/2016 of 07.02.2018.
6. CIRÁK, J. - FICOVÁ, S. et al. Civil law. General part. Šamorín: Heuréka, 2009, p. 323. ISBN: 978-80-89122-51-6.
7. The ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 11/2016 of 07.02.2018.
8. Judgment of the Court (First Chamber) C 497/13 of 04 June 2015 in Froukje Faber v. Autobedrijf Hazet Ochten BV.
9. Judgment of the Court (First Chamber) C-168/05 of 26 October 2006 in Elisa Maria Mostaza Claro v. Centro Móvil Milenium SL.
10. The first sentence of Section 54a of the Civil Code was challenged before the Constitutional Court of the Slovak Republic (2020). In najpravo.sk [online]. Available from: https://www.najpravo.sk/clanky/ustanovenie-54a-veta-prvaobcianskeho-zakonnika-bolo-napadnute-na-ustavnom-sude-sr.html [cited 2023-02-20], p. 1.
11. Act No 40/1964 Coll. of 26 February 1964, provision §54a of the Civil Code.

12. Ruling of the Constitutional Court of the Slovak Republic in case PL. ÚS 5/2021 of 12 May 2021.
13. Act No. 40/1964 Coll. of 26 February 1964, §151j(2) of the Civil Code.
14. ŠTEVČEK, M., et al. 2019. Civil Code I. Commentary. 2nd edition. p. 736.
15. Judgment of the Court (First Chamber) C-485/19 of 22 April 2021 in LH v Profi Credit Slovakia s.r.o.
16. The ruling of the Constitutional Court of the Slovak Republic, Case No. PL. ÚS 11/2016 of 07.02.2018.
17. Judgment of the District Court of Vranov nad Topľou Case No. 8Csp/18/2020 of 14 September 2021.

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