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Elisher, David, Hrádek, Jiří, Janeček, Václav, Kühn, Zdeněk, Ondřejek, Pavel.
Artificial Legal Entities: Essays on Legal Agency and Liability. Praha, Warsaw,
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The monograph entitled “Artificial Legal Entities: Essays on Legal Agency and Liability” aims to answer the question of how juristic persons – as artificial legal entities without intellect or will of their own - can perform legal acts and in what way they can potentially become legally liable. Czech legal system has completely changed the conceptual approach to juristic persons since 2014 when the Civil Code came into effect. The Civil Code replaced the former civil law codex stemming from 1964, which has not complied with modern legal and economic requirements imposed on civil law codifications, because the influence of socialist principles of law was evident despite, its numerous novelizations not only in the transformation era but in recent years as well. While the concept of a juristic person before the recodification of Czech private law was based on organic theory, in the Civil Code it is based on modified fiction theory. Relatively abstract and vague language of the Civil Code gives a vast room for various interpretations of issues related to juristic persons. Even if not obvious at first sight, this theoretical shift has great implications in the practical application of law, implications which are still not fully appreciated in Czech legal doctrine.

Authors of this monograph believe that without theoretically and conceptually well founded answers on the above questions it is almost impossible to interpret and apply the respective statutory provisions on juristic person in a consistent and equal manner. The presented monograph thus responds to the recent total recodification of private law in the Czech Republic that implies a need for complete rethinking of the recent Czech jurisprudence. The monograph is a product of research led by doc. JUDr. Karel Beran, Ph.D, a legal scholar who has long been researching into theoretical aspects of juristic persons from the perspective of general legal theory. Within a project “Legal Transaction and Legal Responsibility of Juristic Persons” funded from 2016 to 2018 by the Czech Science Foundation he brought together a multidisciplinary team of experienced lawyers coming from academia, justice and advocacy. The team working on this monograph comprised not only those whose primary focus is legal theory (doc. JUDr. Karel Beran, Ph.D., JUDr. Bc. Václav Janeček, Ph.D., M.St (Oxon)), but also lawyers who specialise in legal acts and liability in legal sub-disciplines such as human rights law (JUDr. Pavel Ondřejek Ph.D.), substantive and procedural civil law (doc. JUDr. PhDr. David Elisher, Ph.D., JUDr. Jiří Hrádek, Ph.D., LL.M.; JUDr. Bohumil Dvořák, Ph.D., LL.M.), commercial law (JUDr. Petr Čech, Ph.D., LL.M.) and administrative law (Prof. JUDr. Zdeněk Kühn, Ph.D., LL.M., S.J.D.).

This collaborative approach to issues regarding juristic persons from the viewpoints of various legal fields is then reflected in the structure of the monograph and aligns with the expert profiles of the authors of individual chapters. In the first part of the monograph attention is turned to the concept of a juristic person and legal acts it makes from the viewpoint of the general legal doctrine and to its standing under constitutional law as a person vested with fundamental rights. Only then are legal acts analysed in terms of the law currently applicable in the Czech Republic, which conceives members of governing bodies of a juristic person as its representatives. However, legal conduct comprises not only substantive, but also procedural acts within civil court proceedings, where the latter show significant deviations from the former and thus require separate considerations.

The theoretical part of the monograph comprises first three chapters. The first chapter introduces the common features and effects of legal acts and of liability of juristic persons and gives the reader an overview of the structure of the book. The second chapter focuses on two essential prerequisites for a person to be able to engage in any legal conduct: reason and will. By virtue of the concept of imputability - developed by authors belonging to pure legal science - it is persuasively explained how law permits even a person without reason and will, i.e. lacking legal competence, to engage in legal conduct. In the third chapter the attention is turned to the concept of a juristic person and its

legal capacity from the viewpoint of the general legal doctrine. The author critically examines Savigny's and Gierke's approach towards the concept of the juristic person and shows, how those theories explain the creation of juristic persons' reason and will, and how it is at all possible for a juristic person to possess its own reason and will and, accordingly, to be deemed to enjoy legal capacity in a sense similar to natural persons.

Chapter four then discusses legal relationships in which juristic persons take part as persons vested with fundamental rights. The author shows the historical development which led to increasing attribution of fundamental rights to juristic persons by courts and to explicit regulation of fundamental rights of juristic persons in newly constructed fundamental rights conventions. This chapter compares the approach in legal theory and case law with the legal environment in the Czech Republic, Germany and, finally, the Strasbourg system of protection of human rights. Special attention is paid to fundamental rights of the state, municipalities and public-law corporations, a widely debated and controversial issue in Czech jurisprudence.

The fifth chapter presents how members of a juristic person's governing body create and manifest its will and what rules apply to this conduct under the Civil Code. Central issue of the chapter is that Czech law does stipulate that members of the governing body represent the juristic person, however it remains unclear what kind of representation it is. The author argues that this representation is so unique in form that it cannot be subsumed under either contractual or statutory representation, but it is a specific form of representation (*sui generis*) belonging to neither of the aforementioned categories. This chapter provides an overview of the rules and modifications applicable to representation of a juristic person by members of a juristic person's governing body including the regulation of conflict of interest, as well as the practical difficulties in their application.

Juristic persons engage in legal conduct not only in substantive, but also in procedural relations; therefore, the sixth chapter deals with the differences stemming from this duality of civil law. It is pointed out that firstly the conditions under which legal conduct of a juristic person gives rise to legal consequences are stipulated differently for substantive-law and procedural-law relationships, and secondly, substantive-law conduct differs from procedural acts not only in terms of their requisites, but also in terms of the legal consequences of a failure to meet these requisites, which is both demonstrated on an example of a Czech legal regulation. The author argues that the different approach is a result of a stronger emphasis placed by procedural law on the unambiguity of legal regulations.

The subsequent group of issues discussed in this monograph pertain to liability of a juristic person. Once a general explanation has been provided in terms of the juristic persons' capacity to bear liability, an answer is sought to the question of what can be imputed to such persons on the grounds of no-fault and fault-based liability and based on the alternative notion of vicarious liability. The section dealing with liability then concludes with a chapter on juristic persons' liability for administrative offences.

The aim of the seventh chapter is to explain how it is possible that a person who – as was shown in the third chapter – cannot be deemed to truly enjoy legal personality can be liable for a wrong and thus be a subject of liability. The author argues that a sovereign legislator is free to determine whether and to what extent a juristic person and the persons representing it shall bear liability; however, it is necessary in this respect that the legislation also determines the legal ground for the inception of liability for any harm caused, which differs for no-fault and fault-based liability. No-fault liability arises upon the mere occurrence of an event which is defined by law as giving rise to such liability. Liability based on fault requires wrongdoer's unlawful conduct. Having regard to the above, such illegal conduct can never be perceived as the juristic person's own illegal conduct, because a juristic person necessarily acts through specific individuals, who are simultaneously natural persons. The illegal conduct must then be imputed to the juristic person in order to establish its liability based on fault.

The eighth chapter strives primarily to define no-fault liability of juristic persons in private law with regard to its functions and in comparative perspective. The author shows long term trend in

tort law that no-fault liability is increasingly becoming the dominant liability relationship in private law, despite the declared primacy of liability based on fault and underpins his argument with number of comparative examples from European countries (France, Germany, Austria, Italy, Poland, Spain, the Netherlands and others). The author derives from a detailed overview of cases of liability for activities and liability for damage caused by a thing in the Civil Code that there is no general approach and the individual questions need to be assessed on a case-by-case basis, depending on the specific description of the conduct or event concerned. As there is a *numerus clausus* of cases of no-fault liability the specific elements described by the law determine what can be imputed to juristic persons on the grounds of no-fault liability.

The ninth chapter introduces the legal regulation of liability based on fault under the Civil Code, and aims to answer questions crucial for the creation and imputing the obligation to compensate damage to a juristic person. As it was shown in previous theoretically oriented chapters a juristic person cannot act itself, but rather that unlawful conduct of specific natural persons is imputed to it. The author deals with the issue of imputability of unlawful conduct of a natural person to a juristic person, i.e. under which circumstances this occurs and to what extent the capacity to be liable for a wrong can be inferred. For a liability based on fault to be incurred, the mere existence of unlawful conduct is not sufficient; even in the case of juristic persons, it holds that the given unlawful conduct must be culpable. For this reason, in the final part of the chapter the author clarifies what constitutes negligence on the part of a juristic person and whether and how it can be distinguished from unlawfulness of a conduct by analysing conduct of both natural and juristic persons.

The tenth chapter puts forth two provoking claims regarding vicarious liability. First, that every legal system must be capable of theoretically devising the idea of vicarious liability (as opposed to direct liability). Second, that juristic persons may be liable only vicariously for wrongs committed by other persons, who ultimately have to be human beings. The author arrives at those conclusions by analysing the changing relationship of the terms liability and responsibility in the historical development of Czech law, which was marked not only by radical changes in the understanding of law as such and the problematic connection of the Czech legal terminology with the German one, but especially by the normative theory of law. A peculiarity of the Czech tradition in the normative theory of law, which is analysed in this chapter primarily through the work of František Weyr, is that it has arrived at the concept of vicarious liability by analysing the abstract nature of legal duties, i.e. regardless of any positive legal system. The author focuses on the normativists theory of vicarious liability and advances its argumentation.

The aim of the eleventh chapter is to explain the changes and the existing regulation of the liability of juristic persons under administrative law. The historical development, which resulted in enactment of Act No. 250/2016 Coll., on liability for infractions and proceedings concerning infractions and the act itself is analysed. The author addresses the problem of double jeopardy (*ne bis in idem*) from the view of case law of the European Court of Human Rights and its impact on the Czech practice reflecting the situation that the substantive definition of the merits of infractions committed by juristic persons remain scattered over hundreds of special laws and, moreover, proceedings on these infractions continue to be conducted separately before various administrative authorities. The twelfth chapter summarises the findings of the authors of previous chapters.

The present monograph seeks to contribute to a wider international scholarly debate on this topic. This is why the book was written in English and published besides the Czech Republic in Slovakia, Poland and Hungary. The concept of a juristic person is inevitably present in every legal system and every legal order thus needs to specify the way in which a juristic person shall act and be held liable. Therefore, the presented monograph approaches the issues from comparative point of view, not only international, but also historical and cross-field. The ambition of the book is by no means only to show possible comparisons, but it also tries to apply the outcomes to find generally applicable solutions and answers.

The starting point of this monograph is Czech legal system, but the issues encountered and solutions offered therein may be appealing to academics and practicing lawyers in other countries as

well, especially in countries of Central and East Europe. Those countries share common legal history and tradition, experience of socialist rule of law and transformation and modernisation of civil law leading to its recodification. The present monograph offers an insightful analysis of the concept of a juristic person, its ability to act and its liability, which relevance is not limited to the Czech context. The monograph will without any doubt find a large international readership from those who are interested in comparative law research or practicing law in the Czech Republic.

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