THE RIGHT OF ACTION IN COLLECTIVE PROCEEDINGS WITHIN THE CZECH CONCEPT

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Abstract: *The main goal of this paper is to explain the current idea of the right of action in the context of class actions, with a specific focus on the proposed Collective Actions Act. The main aim is to assess how the proposed law applies to the plaintiff's position and the group members, especially when it comes to protecting their procedural rights and the main purpose of collective proceedings. The first part of the paper defines the role of a participant, particularly their legal standing in the doctrine of civil procedure. The next part defines what class actions are. In the conclusion, the paper explains how the right of action is modified in collective action proceedings and how this right is exactly defined in the proposed Collective Actions Act.*

Key words: *right of action, standing, class actions, Collective actions proceedings, proposed Collective Actions Act, representative actions, protection of collective interests, consumer, role of participant*

INTRODUCTION

The issue of class actions is very topical in terms of the current civil procedure discourse, both at the EU and the national level. Class actions, as one of the types of civil proceedings, are used for the collective enforcement of the same or similar claims of individual persons. This institute, typical for Anglo-Saxon legislation, has been gradually implemented in recent years in individual European countries. Class actions are based on the adversarial position of the parties, so they are typical litigation proceedings where one of the parties acts in the role of the plaintiff, who by his complaint has given rise to the initiation of the proceedings, and the other in the position of the defendant, who by his procedural actions opposes the plaintiff's claims. This requirement of two parties is essential to the very notion of a civil trial; where there are no such parties, there is no trial. Compared to individual litigation, class actions are characterised by a different conception of the position of the plaintiff and his standing to conduct the proceedings and are characterised by the atypical position of the so-called members of the class action which the plaintiff represents.

The aim of the paper is to explain the current concept of right of action in the context of class actions. The text first elaborates on the doctrinal definition of the concept of standing, which is essential for understanding the enforcement of claims in civil litigation, and for the position of the defendant, which is not affected by the regulation of class actions. It then elaborates on the definition of class actions in terms of the position of the plaintiff and the individual class action members who are represented by the plaintiff(s). In relation to the forthcoming Czech legislation on class actions, the paper analyses the differences between class actions and standard individual proceedings from the perspective of participation.

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1. STANDING IN THE DOCTRINE OF CIVIL PROCEDURE

In civil procedural law, the issue of standing is closely related to the concept of a party to proceedings.[1] At the same time, it must be distinguished precisely from the requirement of procedural personality or procedural capacity.[2] That is to say, from concepts which are also more closely linked to participation in the proceedings.

The legal science traditionally understands legal standing as a condition arising from the substantive law or the substantive relationship of a party to the case,[3] or the fact that the parties to the proceedings are actually also the holders of the asserted subjective rights and obligations of substantive law, i.e., parties also in the substantive sense.[4] However, certain inaccuracies can be observed in this definition. In his work, Josef Macur states that standing in proceedings is a situation under substantive law, where the plaintiff is the holder of the subjective substantive rights which he asserts in the proceedings and the defendant is the holder of the corresponding substantive obligations. However, in his view, standing always expresses the relationship between substantive and procedural law, where the substantive relations between the parties correspond to their procedural position.[5] This makes it possible to better define standing as the relationship between the claim based on factual allegations and the factual situation arising from substantive law. If the claim thus corresponds to the substantive legal relations, then the requirement of standing is fulfilled; on the other hand, if the claim does not correspond to the substantive legal relations, standing is not fulfilled. Ján Mazák,[6] who connects standing with the position of a party to proceedings in a substantive relationship (exceptionally also in a procedural relationship, if the claim or right arises from procedural law, e.g., a motion for an interim measure, a motion to deny the amount, order or authenticity of a claim, etc.), also favours this.

In order to succeed as a plaintiff in the proceedings (to win a lawsuit), a party to the proceedings must have standing in its own right, as well as that of the defendant. Procedural law commonly divides standing into active and passive standing, depending on who is involved. If it concerns the plaintiff, it is referred to as active standing (right of action), if it concerns the defendant, it is referred to as passive standing.[7] A plaintiff has active standing (right of action) if he has the right he seeks. In other words, if the plaintiff claims and proves that he is the holder of the claimed subjective right in substantive law and makes it the subject of the proceedings in procedural law. The plaintiff lacks standing if

[1] For more details on the definition of the parties to a contested proceeding, see SEDLÁČEK, M. Pojetí účastenství v nalézacím a vykonávacím (exekučním) řízení. In: Jan Dvořák et al. *Soukromé právo 21. století*. Prague: Wolters Kluwer ČR, 2016, p. 404.

[2] WINTEROVÁ, A., MACKOVÁ, A. et al. *Civilní právo procesní. Část první: nalézací řízení. 9th updated edition*. Prague: Leges, 2018, p. 137.

[3] DRÁPAL, L. In: Ljubomír Drápal – Jaroslav Bureš et al. *Občanský soudní řád I (Civil Procedure Code). I. §§ 1 to 200za. Komentář. 1st edition*. Prague: C. H. Beck, 2009, p. 584.

[4] STEINER, V. *Základní otázky občanského práva procesního. 1st edition*. Prague: Academia, 1981, p. 240.

[5] MACUR, J. *Kurs občanského práva procesního: exekuční právo. 1st edition*. Prague: C. H. Beck, 1998, p. 47.

[6] MAZÁK, J. et al. *Základy Občianského procesního práva. 4th edition*. Prague: Wolters Kluwer (Iura edition), 2009, p. 104.

[7] STAVINOHOVÁ, J., HLAVSA, P. *Civilní proces a organizace soudnictví*. Brno: Masaryk University in Brno, 2003, p. 230.

the court finds, for example, in proceedings for compensation for damages, that the plaintiff, although claiming to be so, is not the person entitled to claim compensation for damages. The defendant has passive standing if it has the obligation which the plaintiff seeks to have fulfilled or to have determined.[8] If we follow the example, then the defendant will not have passive standing if a court in the same case finds that the defendant, although alleged by the plaintiff, is not liable for the damage.

If the plaintiff is to be successful in the case, there must be a situation where both the plaintiff and the defendant have standing. Its absence means that the plaintiff is not the holder of a subjective right or that the defendant is not the holder of the substantive obligation at issue in the proceedings. Both the right and the obligation are mutually equivalent (where there is no right of the plaintiff against the defendant, there is no obligation of the defendant against the plaintiff). If the plaintiff is not a person entitled under substantive law, or if the defendant is not a person obliged under substantive law, this leads to the dismissal of the action. It does not lead to the dismissal of the proceedings, since it is standing that determines the merits of the action and not its admissibility.[9] For this reason, standing is also not one of the procedural requirements.[10] The established lack of standing does not prevent the continuation of the proceedings, it is not a prerequisite for participation in the proceedings, but as Marek Števček[11] correctly points out, it is a prerequisite for the success of the action.

Standing in rem is relevant in any civil proceeding which can be instituted by a motion and acquires meaning only in the context of a civil proceeding,[12] since substantive law speaks only of the holder of a right or obligation and the concept of standing is thus wholly superfluous without reference to a civil proceeding.[13] Some Czech[14] and Slovak[15] proceduralists argue that the question of standing is a matter of proof, with Marek Števček giving the example of a loan. According to them, the court resolves the question of standing only in the court's decision on the merits. However, one cannot fully agree with these conclusions. In my opinion, its significance is indeed found in the court's decision on the merits, in which the merits or otherwise of the action are decided. What I find difficult to accept, however, is that standing should be a matter of proof. This does not correspond to the procedural doctrine or legal practice, when, for example, according to Alena Winterová,[16] the subject of proof are those decisive facts that need to be proved (some do not

[8] WINTEROVÁ, A., MACKOVÁ, A. et al. *Civilní právo procesní. Část první: nalézací řízení.* 9th updated edition. Prague: Leges, 2018, p. 137.
[9] DRÁPAL, L. In: Ljubomír Drápal – Jaroslav Bureš et al. *Občanský soudní řád I (Civil Procedure Code*). p. 585.
[10] See ZAHRADNÍKOVÁ, R. et al. *Civilní právo procesní. 3rd edition.* Pilsen: Aleš Čeněk, 2018, p. 202; further SVOBODA, K., ŠÍNOVÁ, R., HAMUĽAKOVÁ, K. et al. *Civilní proces. Obecná část a sporné řízení. 1st edition.* Prague: C. H. Beck, 2014, p. 135.
[11] ŠTEVČEK, M. et al. *Civilné právo procesné. Základne konanie a správne súdnictvo. 3rd Amended ed.* Žilina: EUROCODEX, 2014, p. 232.
[12] See FICOVÁ, S., ŠTEVČEK, M. et al. *Občianske súdne konanie. 2nd edition.* Prague: C. H. Beck, 2013, p. 109.
[13] STEINER, V. *Základní otázky občanského práva procesního. 1st edition*. Prague: Academia, 1981, p. 240.
[14] See DRÁPAL, L. DRÁPAL, L. In: Ljubomír Drápal – Jaroslav Bureš et al. *Občanský soudní řád I (Civil Procedure Code)*. p. 584.
[15] For example. ŠTEVČEK, M. et al. *Civilné právo procesné. Základne konanie a správne súdnictvo. 3rd Amended ed.* p. 232.
[16] WINTEROVÁ, A., MACKOVÁ, A. et al. *Civilní právo procesní. Část první: nalézací řízení. 9th updated edition.* Prague: Leges, 2018, p. 230.

need to be proved, such as notoriety, facts known to the court from its activities, etc.). In selecting these facts, the court is based primarily on the plaintiff's allegations, which it compares with the plaintiff's petition, i.e., what the plaintiff seeks, and which it further compares with the abstract facts as they arise from the statutory provision applicable to the situation. The court shall also consider the defendant's allegations, if any, and what otherwise comes to light during the proceedings. It is only on this basis that the court will assess whether there is active and passive standing in the case. It is thus a question of legal assessment, not a question of proof.

Standing must be distinguished from procedural standing.[17] The doctrine does not deal with the issue of standing in much detail and different authors have adopted different definitions of standing.[18] Nevertheless, a reasonable definition can be found in the literature. The concept of procedural standing may be understood as the right of a procedural subject to act (to sue) in civil court proceedings based on a statutory authorisation or legal action on his own behalf on the side of the plaintiff or defendant in respect of a claimed right or obligation which is to be attributed to a person different from the procedural subject.[19]

Although neither the rules of substantive law nor the rules of procedural law use the concept of standing, legal practice cannot do without it in civil proceedings. It is of particular importance in contested proceedings, from which such institutes as, in particular, the joining of another party (see Section 92(1) of the Civil Procedure Code) or the substitution of parties (see Section 92(2) of the Civil Procedure Code) are derived.

2. THE CONCEPT OF CLASS ACTIONS

i) Origin and extension of this institute

The issue of procedural protection of collective interests (especially in the field of consumer law) has recently become a relatively pressing and debated issue not only in the Czech Republic, but also at the level of the entire European Union. The primary reason for the shift in the perception of the provision of judicial protection as a purely individualistic matter towards the possibility of setting up the judicial process in such a way as to enable the provision of collective protection to multiple entities can be seen in a number of new social phenomena. As Luboš Tichý points out, one of these phenomena is the existence of a consumer society and a consumer market dominated on the one hand by specialized corporations and on the other by an immense number of unsophisticated consumers. It is typical of such relationships that they involve considerable inequality, not only in terms of information. These cases then lead to the idea of the need to enshrine collective consumer protection as a weaker party.[20]

[17] More STEINER, V. *Základní otázky občanského práva procesního.* p. 242.
[18] Cf. MAZÁK, J. et al. *Základy Občianského procesního práva. 4th edition.* Prague: Wolters Kluwer (Iura edition), 2009, p. 105, or DRÁPAL, L. In: Ljubomír Drápal – Jaroslav Bureš et al. *Občanský soudní řád I (Civil Procedure Code). I. §§ 1 to 200za. Komentář. 1st edition.* p. 584.
[19] COUFALÍK, P. *Procesní legitimace v civilním sporném řízení. 1st edition.* Prague: C. H. Beck, 2019, p. 21.
[20] TICHÝ, L. In: Luboš Tichý et al. *Popular action in Czech, German, Austrian and Portuguese law. 1.* Praha: Univerzita Karlova v Praze, 2022.

In the wake of these situations, legislators on the European continent are looking for effective legal instruments to enable consumers to collectively enforce any claims arising from these unequal relationships. Recently, we can see how individual European countries are implementing institutes based on the original Anglo-Saxon institution known as class action (now also known as collective redress within the European Union).

The origins of what we now call class actions or class proceedings date back to the Middle Ages. The history of the Anglo-Saxon and Nordic countries shows that in their territories of the time, so-called group litigation was conducted, most often involving towns, villages and other settlements making claims against the government. Only in 1820, were class actions officially implemented into American legal scholarship because of the court's decision in West v. Randall. This litigation represented one of the first-class actions in the United States. Over time, the importance and prevalence of this institute began to increase.

The need for a legal instrument that would allow collective protection in the field of consumer law also within the European Union was noted and embodied in the EU Directive 2020/1828 on representative actions. Its transposition into the Czech legal system is to be carried out by means of the forthcoming Act on class actions, which will be a *lex specialis* to the existing procedural code in the form of the Code of Civil Procedure.

The Czech legal system has so far been more familiar with the protection of collective interests around so-called collective actions in the public interest, which are based on a supra-individual principle, where their purpose is to protect interests that go beyond private interests. Such actions are mainly brought in the public interest, where state authorities are also entitled to bring them. Unlike other types of collective actions, however, class actions that initiate class proceedings are based on a different idea. The purpose is the individual interest of many subjects, that is, actions are brought in favour of individual interests. This distinguishes them from other class actions (e.g., federal actions), which are based on a negation of a claim or on the establishment of an unlawful condition. It follows that the purpose of these actions is primarily to redress subjective rights in the form of compensation for damages or the payment of unjust enrichment. It cannot be concluded, however, that these actions are not of supra-individual importance since their secondary effect is also a directional or remedial aspect.[21] On the contrary, the idea here is that although the main purpose of class actions is the individual interest of the individual who is part of the class action, the entire litigation process has a secondary purpose within the main purpose, and that is the protection of the public interest.

Although some partial aspects of collective protection or the possibility of collective enforcement can be found in individual Czech legal regulations, these are not comprehensive regulations that would be at the level expected of a modern state governed by the rule of law. Partial elements of collective protection can be found in the current legislation, in particular in the provisions of Section 2989 of the Civil Code, which establishes the right to demand the abstention or elimination of the defective condition not only for persons directly affected by the unfair competitive conduct, but also for legal persons defending the interests of competitors or customers. Another similar example is the provision of Section 1964(3) of the Civil

[21] TICHÝ, L. In: Luboš Tichý et al. *Popular action in Czech, German, Austrian and Portuguese law. 1.*

Code, which provides that even legal persons established to protect the interests of small and medium-sized entrepreneurs may invoke the invalidity of an agreement on the time of performance of an obligation or on interest on default. The provision of collective protection is also related to the legal regulation in the Commercial Corporations Act, which in the provisions of Section 390 provides for a specific procedure for exercising the right to compensation in the event of shareholder displacement. This provision is also referred to in other related rules. Elements can also be found in the areas of industrial property protection, banking, insurance, and corporate law. The above provisions are also relevant from the point of view of procedural law, where their effects are addressed by the provisions of the Code of Civil Procedure, which provide for derogations from the general rule of the bar to proceedings and the bar to a final decision. Section 83 establishes the barrier of *lis pendens*, i.e. the barrier of a pending proceeding, and Section 159a the barrier of *rei iudicatae*, i.e. the barrier of a final judgement (contained in Section 159a of the Civil Procedure Code), for the same claims arising from the same action but asserted by other actions brought by other plaintiffs against the same defendant.[22] Therefore, it is obvious that in the future, in an effort to create effective collective consumer protection, these obstacles must be removed or set up in such a way that consumers can subsequently assert their claims at least in individual proceedings (discussed in detail in the chapter on the effects of class actions).

ii) The meaning and purpose of class actions

The essence of class actions is therefore to enable disputes concerning the rights or legitimate interests of several persons with the same or similar factual or legal basis to be heard and decided together. By similar factual basis is meant those operative facts which are the same or which are similar to such an extent that it is impractical for rights or legitimate interests based on those operative facts to be heard and determined in one particular class action. In practical terms, this means that through one so-called class action, all subjects who have claims arising from a given infringement can assert them in a single court proceeding.

Perhaps hidden at first glance, but the essential purpose of this type of procedure is to ensure better access to justice for all persons who would otherwise find individual enforcement of their rights unprofitable. The aim of its introduction is thus to deal with social and legal areas with so-called *diffuse harm*, i.e., cases in which in principle most of the harm suffered is not recovered and the ill-gotten gains remain with the wrongdoer.[23]

As is the case with most EU regulations, the substantive scope of the Czech legislation on class actions will apply only to the area of consumer disputes, i.e., to relations between businesses and consumers. The idea is that the first contact of the Czech judiciary with this, for our legal system, atypical institute should serve for the enforcement of rights of persons who are the weaker party. This is mainly because, compared to substantive protection of the weaker party, ensuring procedural protection of the consumer is the biggest legislative challenge in many jurisdictions.

In this context, however, it is necessary to mention that the European, and subsequently also the Czech, context of collective protection leans towards the so-called representative

[22] See the explanatory memorandum to the Act on collective proceedings, p. 44.
[23] ÚLEHLOVÁ, S. *Class actions: Opt out or Opt in?* Brno: Czech centre for Human Rights and Democracy, 2020.

model,[24] where only consumer organisations can file a lawsuit on behalf of the affected consumers. In the context of the Czech legislation, these are based on the provisions of Section 25(2) of the Consumer Protection Act, according to which associations or professional organisations with a legitimate interest in consumer protection or a body listed in the list of persons entitled to bring actions for the abstention from unlawful conduct in the field of consumer protection may bring a petition before the court requesting the abstention from unlawful conduct in the field of consumer protection; i.e. in particular, requesting the abstention from a certain practice that violates the rights of the consumers concerned.[25] Although it defends the interests of consumers and not directly its own interests, only the consumer organisation is a party to these proceedings and consumers are not involved in the proceedings. These are qualified entities that have standing as plaintiffs in these proceedings.

3. RIGHT OF ACTION IN CLASS ACTIONS

From the above analysis of the meaning and purpose of standing and the institution of class actions, the question arises as to how standing and procedural standing will be set in class actions. As already mentioned, it is the rule in individual court proceedings that the parties to the proceedings are those who have standing. Class actions, as classical adversarial civil proceedings, are based on a purely formal concept of the parties. The party who brings the action will always have the status of the plaintiff in the proceedings, whereas the person whom the plaintiff names as the defendant in the action, i.e. the person against whom the action is directed, will always be the defendant.[26] *"The foregoing shall apply mutatis mutandis also to the designation "party" to the proceedings, which, as in individual litigation, is the plaintiff and the defendant."*[27]

As a standard doctrine, either a member of a class or a non-profit entity (i.e., in the Czech case, a consumer non-profit organization) is entitled to bring a class action if the statutory conditions are met. It is therefore necessary to distinguish between two variants, either whether a member of the class sues as the holder of a substantive claim who has standing, in which case it is a class action with elements of a class action, or if the action is brought directly by a non-profit person on the basis of the standing conferred by law, in which case it is a representative action. The Czech legislator decided to base class actions on the latter option, i.e., on the principle of representation or the so-called representative principle. This means that only the agent or representative is entitled to bring the action. In the context of this legislation, then, a consumer organisation. Such a model, based on the limitation of the right of action to bring collective actions, is typical of EU legislation, in contrast, in Anglo-Saxon countries, any member of the class, i.e., any injured party, is able to bring a class action.[28]

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[24] This is also clear from the title of EU Directive No. 2020/1828 on representative actions.

[25] STIER, B., TZANKOVA, I. *The culture of collective litigation: A comparative analysis, Class action in context: How Culture, Economics and Politics Shape Collective Litigation.* Cheltenham: Edward Elgar Publishing, 2016, p. 37.

[26] ŠÍNOVÁ, R., JURÁŠ, M. *Účastenství v civilním soudním řízení.* Prague: Leges, 2015, p. 44.

[27] See the explanatory memorandum to the Act on collective proceedings, p. 145.

[28] GORYWODA, L., HATZIMIHAIL, N., NUYTS, A. Market Regulation, Judicial Cooperation and Collective Redress. In: Arnaud Nuyts – Nikitas Hatzimihail (eds.). *Cross-Border Class Actions, The European Way.* Munich: Sellier European Law Publishers, 2014, p. 37.

It is therefore necessary to distinguish between the position of the plaintiff, i.e., the representative who represents the class, and that of a member of the class. A class member is a person who, in substantive law, is the holder of subjective rights that have been affected or are claimed in a class action. In the case of an individual proceeding, the member would have standing to bring the action individually and would thus have standing as a plaintiff. However, the above-mentioned organization has the status of a plaintiff in the class actions, even though it is not the substantive holder of the subjective rights in question, i.e., it does not have standing to bring the action according to the proceduralist doctrine. Its position in the given proceedings is based on its procedural standing.[29]

The Czech draft law on class actions sets out specific conditions that a non-profit organisation must meet in order to initiate and conduct proceedings. The plaintiff must be a non-profit organization subject to control by the Ministry of Industry and Trade, must represent a class of at least twenty members in bringing the class action, the class must be properly represented, there must be no abuse of rights, and the claims of the individual class members must be similar as to the factual issues involved, with an emphasis on the expediency and economy of such a hearing.[30]

Therefore, only the plaintiff, i.e., the non-profit (consumer) organization in question, which is acting on its own behalf in the class action, but in the interests of the interested class members, has standing to bring the class action. The interest of the persons involved is always emphasized by the legislators in this context, it is a legal safeguard to prevent abuse of representation where a non-profit organization would act in its own interest or in the interest of the defendant. Here, it is worth recalling the previously mentioned conclusion that participation in civil proceedings is not conditioned by the doctrine of substantive standing, i.e., an organization may be a party to the proceedings even without a substantive relationship to the case at hand.[31] Its participation is both derived directly from the law and based on the basic condition of participation, which is procedural subjectivity. In the context of a class action, multiple persons, i.e., multiple non-profit organizations, each representing a different specific group of persons, may also appear on the plaintiff's side. The bill imposes a duty on the plaintiff or plaintiffs to act with professional diligence in the proceedings, to procure documents and evidence favourable to the protection of the asserted rights or legitimate interests of the class, and to receive and handle submissions from interested class members. These are special obligations that go beyond the obligations already imposed on the parties to the proceedings by the Code of Civil Procedure, such as the duty to allege or the duty to prove. In this context, it is worth pointing out the different approaches that can be found in other European legal systems.[32] The right of action of an injured party or a non-profit organisation is not typical of all European legislation on this issue. Perhaps the most remarkable route has been taken by the Finnish

[29] NETOLICKÁ, B. *Postavení účastníka v hromadném řízení. (Thesis).* Olomouc: Faculty of Law, Palacký University Olomouc, 2021.

[30] See the explanatory memorandum to the Act on collective proceedings, p. 145.

[31] SEDLÁČEK, M. *Pojetí věcné legitimace v civilním procesu a možnosti nápravy jejího nedostatku. Košické dni súkromného práva.* Košice: Šafárik Press, 2021, pp. 304–314.

[32] HENSLER, D. *The global landscape of collective litigation in Class action in context: How Culture, Economics and Politics Shape Collective Litigation.* Cheltenham: Edward Elgar Publishing, 2016, p. 8.

legislation, which has conferred the power to bring an action only on the so-called consumer ombudsman.[33] The Austrian legislation has taken a similar decision regarding right of action, positively limiting it to the list of all public state organisations, with the exception of the well-known Austrian Consumer Association (Verein für Konsumenteninformation, VKI), which is a non-governmental organisation.[34]

A close examination of the plaintiff's standing in the class action raises questions about the standing of individual class members and their dispositive rights. It is clear from the foregoing analysis that the dispositive acts in the class action will be performed solely on behalf of the plaintiff, i.e., not by the individual class members. Class members have limited status. A fundamental right they have is the ability to decide whether they want to be part of the class or not. A class member may join a class action from the commencement of the class action, which is by filing a class action, until the expiration of the filing period by filing an application, which is by filing with the court.[35] This is the essence of a class action based on an opt-in system, i.e., injured parties have the right to opt-in and become a member of the class. Simply put, however, their disposition of the subject matter of the proceedings and procedural rights ends there, since once they become an interested member of the class, they have a special procedural status *sui generis*.[36] If we look at the Czech procedural rules, this position is unprecedented in the Czech legal system. The members of the class are not parties to the proceedings, nor are they interested parties or anything similar, but they do have several procedural rights in the proceedings (e.g., the right to comment on the subject matter or the proceedings or the right to inspect the file). While it may seem inconceivable at first glance that class members cannot actively intervene in their own claim, upon further examination of the purpose of class proceedings, it is apparent that preserving the dispositive rights of all members would be unrealistic in practice. Indeed, if all class members were allowed to present their motions, evidence, and exercise all of their procedural rights, the proceedings would never reach an end, as there may be hundreds to thousands of such persons on the plaintiff's side. Notwithstanding the fact that this procedure would significantly increase the costs of the proceedings.

Due to the special regulation of class action, special rules are needed in matters relating to the status of the claimant, one of which is where there is a transfer or transfer of rights of a class member. In individual court disputes in such cases there is procedural succession according to the provisions of Section 107 and Section 107a of the Code of Civil Procedure. Procedural succession means a situation where a legal fact has occurred only after the commencement of proceedings which has resulted in a change in the holder of the legal capacity to sue, which cannot be responded to by the procedure of joining a party to the proceedings or by substituting a party. A party may intervene only in proceedings before the court of first instance,[37] and is excluded in appeal proceedings. The purpose of the legal regulation of this institute is to prevent the dismissal of an action for lack of standing if it can be remedied by the intervention of another party or by substitution of parties.

[33] Section 4 Act on Class Actions (Ryhmäkannelaki) (444/2007).
[34] NETOLICKÁ, B. *Postavení účastníka v hromadném řízení. (Thesis)*.
[35] § Section 29 of the Class Actions Bill.
[36] See the explanatory memorandum to the Act on collective proceedings, p. 48.
[37] FICOVÁ, S., ŠTEVČEK, M. et al. *Občianske súdne konanie. 2nd edition*. Prague: C. H. Beck, 2013, p. 110.

In this way, the plaintiff is allowed to correct his original (at the time of filing the action) mistake as to who is the holder of the asserted right or against whom the right should have been properly sued. This will widen or change the circle of the original parties during the proceedings. At the same time, however, the court must also look at the expediency of their application (Jaruška Stavinohová and Petr Hlavsa attribute the interests of economy to this[38] see below) for their meaning to be fulfilled. Therefore, it is not appropriate to grant such a motion if it is obvious that even after a change in the parties, the action will still be dismissed for lack of standing.[39] According to Jaromír Jirsa, it is primarily a procedural decision that does not resolve the issue of standing to all its substantive consequences, which means that the court may resolve it differently in the final decision.

Procedural succession is an institute that even class actions cannot avoid. However, it is necessary to distinguish between the procedural succession of a plaintiff and that of a class member. For both entities, procedural succession has different legal consequences. A plaintiff may be subject to procedural succession if he loses the capacity to be a party in the course of a class action or if he does not meet the statutory conditions for being a plaintiff in the class action (for example, if the non-profit organization has been dissolved). In such cases, there must be a change in the person of the plaintiff, and whether the plaintiff has a successor in title who meets all the statutory requirements for a plaintiff is then reviewed by the court. However, the situation is different if there is a transfer or assignment of rights for a particular member of the class. If a member of the class has a fact which involves the transfer or assignment of a right which is the subject of the class proceedings from the original member of the class to another person, the original member must notify the court of that fact with the consent of the new member of the class. However, the procedural consequence of a situation where there is no legal successor (either because there is no successor or because there is no interest in continuing the proceedings) is different. While the absence of a successor plaintiff will result in dismissal of the action, the absence of a successor class member affects only a specific subclaim and not the entire pending class action.

Another institute, which is common in standard individual litigation proceedings, is the joinder of a party, which is applied in proceedings in the course of which it has been established that the right which the plaintiff seeks to be granted does not belong to him alone, but only in conjunction with another person whose participation in the proceedings on the plaintiff's side is necessary to establish the right to action in the case.[40] It is also a situation in which the plaintiff does not claim the right he seeks to be granted exclusively against the defendant, but it is necessary for another person to act on his side (in order to establish passive standing). As Alena Winterová points out, this is the case, for example, of co-owners who all have to sue or be sued for the invalidity of a contract on the transfer of property from their co-ownership. Another typical example is a procedural

[38] STAVINOHOVÁ, J., HLAVSA, P. *Civilní proces a organizace soudnictví.* Brno: Masaryk University in Brno, 2003, p. 231.

[39] JIRSA, J. In: Jaromír Jirsa et al. *Občasné soudní řízení. Soudcovský komentář. Kniha II. § 79–180 občanského soudního řádu. 3rd edition.* Prague: Wolters Kluwer ČR, 2019, p. 84.

[40] WINTEROVÁ, A., MACKOVÁ, A. et al. *Civilní právo procesní. Část první: nalézací řízení. 9th updated edition.* Prague: Leges, 2018, p. 146.

situation related to matrimonial property. If the lack of standing is not met, then the action must be dismissed on that ground. An application by a party to join a party to the proceedings, a decision of the court admitting the additional party to the proceedings and the consent of the third party to be joined as an additional claimant shall be required for the entry of the additional party to the proceedings.[41] In accordance with Jana Bajánková's statement, no one can become a plaintiff against his will. If the person joining in place of the plaintiff does not consent, the court cannot substitute its decision for that consent. In such a case, the court would have to reject the application to join. On the other hand, the consent of the party who is to join as an additional defendant is not required. Only the plaintiff determines the scope of the parties, so consent is not required here.

For the court to be able to rule on a party's joinder, the conditions of the proceedings must first be met. If these conditions are not yet met, e.g., one of the parties does not have standing, or the defects in the action have not yet been remedied, or the court fee has not been paid, etc., the court cannot decide on the joinder. First, all obstacles to the continuation of the proceedings must be removed. If they cannot be removed, the proceedings will be discontinued (for failure to comply with the procedural conditions). Cost-effectiveness is a decisive factor in allowing the joinder of another party. The principle of economy is considered to be contravened if the joinder would lead to further evidence that would not otherwise be necessary and would have the effect of delaying the decision of the case between the existing parties (cf. Supreme Court of the Czech Republic 33 Odo 503/2004). However, restrictive interventions by the court must be interpreted (like any exception to the rule) restrictively, i.e., the conflict with the principle of procedural economy must be manifest (cf. Supreme Court of the Czech Republic 25 Cdo 1651/2009). A different situation arises if the plaintiff proposes that another party join the proceedings, which together with the existing plaintiff or defendant will have the status of an indissoluble partner.[42] I therefore agree with Ljubomir Drápal that in such a case there is usually no reason for the court not to allow the addition of another party for reasons of procedural economy. However, the court will not admit the joinder to the proceedings if it is proposed solely because of the applicant's uncertainty as to whether a fact has occurred after the commencement of the proceedings which the law links to the transfer or transition of the obligation at issue in the proceedings (cf. Supreme Court of the Czech Republic 28 Cdo 337/2007). The proposed joinder of another party to the proceedings has legal effects only if the court admits it (cf. Supreme Court of the Czech Republic 32 Cdo 1389/2007). The court shall decide on the application for the admission of a new party to the proceedings by an order to be served on the existing parties and on the party who is to join the proceedings. This also results in a change in the subjects of the procedural legal relationship. This also means that the effects of the initiation of the proceedings as they existed at the time of the initiation of the proceedings cannot continue to have any effect on the other party. This is reflected in the substantive law, where the substantive effects occur on the date on which the court receives the application to join another party to the proceedings.

[41] FICOVÁ, S., ŠTEVČEK, M. et al. *Občianske súdne konanie. 2nd edition*. Prague: C. H. Beck, 2013, p. 110.
[42] DRÁPAL, L. In: Ljubomír Drápal – Jaroslav Bureš et al. *Občanský soudní řád I (Civil Procedure Code). I. §§ 1 to 200za. Komentář. 1st edition*. p. 601.

It is only on this date that the limitation and prescription periods start to run. This is assuming, of course, that the court has finally granted the motion. Otherwise, of course, there remains the right of the plaintiff to pursue his claims in a separate action (in separate proceedings).

In the context of a class action, whether a class member is an independent holder of the substantive claim asserted is only considered after the admissibility of the action has been assessed. This fact shall then be assessed for each of the members separately. The principle of substitution of parties (Article 92(1) of the Civil Procedure Code), which occurs when the wrong person sues or is sued from the beginning of the proceedings because another person has active or passive standing, applies only mutatis mutandis in the context of class actions. This procedural instrument serves, in general terms, for the case where the original plaintiff (or defendant) does not have standing in the proceedings, either alone or in conjunction with another. For example, compensation for damages may be sought from a party that is not liable for the damage; or someone who has no ownership or other right to the item may sue for its return.[43] The essence of the substitution of parties is that the originally substantively illegitimate party withdraws from the proceedings, and another (third party) enters in its place.

As in the case of the institute of joining another party to the proceedings, it is possible to define certain conditions[44] that must be met for a party to be substituted. The first of these is the applicant's proposal, in accordance with the dispositive principle, including the proper reasons for it. However, unlike the joining of a party, the substitution must also be agreed to by all the other parties to the proceedings, as this results in a complete change in the procedural relationship. Without such consent, the substitution of a party cannot proceed, and the court would continue the proceedings with the original parties. Another condition is the consent of a third party if he is to become a new plaintiff in the litigation; the consent of the new defendant is naturally not required. Although the plaintiff is the master of the dispute (dominus litis), once the proceedings have been commenced, it cannot, by his procedural act, decide whether the defendant remains a party to the proceedings.

Similarly, to the list of prerequisites for joining another party to the proceedings, the question arises whether, if all the above conditions are met, the court is obliged to grant the applicant's application or whether it has some discretion in its decision. From the linguistic interpretation (according to Renáta Šínová from the lexical-semantic interpretation)[45] of the examined provision of Section 92(2) of the Code of Civil Procedure, it can be concluded quite clearly that the court does not have to grant the motion in every case. In particular, the court shall not permit the parties to be substituted if such a procedure would be contrary to the principle of the economy of proceedings. After all, the purpose of the quoted provision is, in accordance with the opinion of Jaruška Stavinohová and Petr Hlavsa,[46] precisely in the interest of economy, to prevent the dismissal of

[43] WINTEROVÁ, A., MACKOVÁ, A. et al. *Civilní právo procesní. Část první: nalézací řízení. 9th updated edition*. p. 146.
[44] See ŠTEVČEK, M. et al. Civilné *právo procesné. Základne konanie a správne súdnictvo. 3rd Amended ed.* p. 236.
[45] ŠÍNOVÁ, R., JURÁŠ, M. *Účastenství v civilním soudním řízení*. Prague: Leges, 2015, p. 165.
[46] STAVINOHOVÁ, J., HLAVSA, P. *Civilní proces a organizace soudnictví*. p. 231.

an action if during the proceedings it turns out that the original plaintiff, or defendant, does not have standing, and the proceedings can be continued with another, substantively standing entity.

In which situation is there no substitution of a party? This is not the case if the procedure is intended to remove an error consisting in the incomplete identification of an otherwise unquestionable party to the proceedings or if the party to the proceedings does not have standing.[47] In such a case, according to Jana Bajánková, the subject itself does not exist, therefore its substitution is not possible. This is underlined by Ján Mazák,[48] who works with the concept of the so-called non-subject in the same sense. Thus, substitution can only occur between parties for whom the procedural condition of eligibility to be a party to the proceedings is met.

In addition, case law has consistently held that it is an impermissible circumvention of the law that, in order to avoid a possible dismissal of the action and the need to obtain the defendant's consent to the substitution, the statutory procedure for substitution is replaced by, for example, a motion to join another defendant with the proviso that the action against the original, passively substantively ineligible defendant will subsequently be partially withdrawn or the action against him dismissed[49] (Supreme Court of the Czech Republic 29 Cdo 797/2014).

The court shall decide on the substitution of a party by order. If the court accepts the substitution of a party for another party, it is also obliged to decide on the costs of the proceedings between the original parties, even without a motion, since the proceedings end for the substituted party.[50] The decision to admit the substitution is thus the last decision concerning him. The reason for which the court may allow substitution is always lack of standing. In other words, the plaintiff proposed to avoid dismissal of the action for this defect and thus failure in the case. Therefore, he will also normally be obliged to reimburse the costs incurred by the original defendant (who withdraws from the proceedings) until the court decides on this. The substitution of parties is not admissible in appeal proceedings, in the same way as in the case of the joinder of a party to the proceedings.

When the parties are substituted, an entirely new procedural relationship is created. The new party is not bound by the procedural acts of its predecessor; the proceedings start essentially all over again. Here again, what has been said regarding the effects of a final decision in relation to the joinder of another party applies. The substantive effects are only effective when the substitution is applied in court. Thus, for example, the limitation period for a claim against a defendant who, as a result of the admission of a substitution, takes the place of the original defendant is necessarily interrupted only by the filing of an action against him, not already at the time of the filing of the action against the original defendant. The participation of the party who has withdrawn from the proceedings shall cease and the proceedings in respect of that party shall be terminated.

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[47] FICOVÁ, S., ŠTEVČEK, M. Et al. *Občianske súdne konanie. 2nd edition.* p. 111.

[48] MAZÁK, J. et al. Základy *Občianského procesního práva. 4th edition.* p. 106.

[49] JIRSA, J. In: Jaromír Jirsa et al. *Občasné soudní řízení. Soudcovský komentář. Kniha II. § 79–180 občanského soudního řádu. 3rd edition.* p. 87.

[50] Cf. DRÁPAL, L. In: Ljubomír Drápal – Jaroslav Bureš et al. *Občanský soudní řád I (Civil Procedure Code). I. §§ 1 to 200za. Komentář. 1st edition.* p. 602.

In a class action, substitution of a party is one of the procedural rights of the plaintiff, i.e., not a class member. Only the plaintiff may move the court to replace himself unless he cannot fairly be required to continue the class action. Just cause is defined as a certain unforeseeable situation or a change in personal life which renders the applicant unable to perform his duties properly, in particular to act with professional diligence. If such a situation arises, the plaintiff must state to the court the reason for the exchange and provide the consent of the new plaintiff. Of course, the new plaintiff must meet the statutory conditions for standing and accept the status of the class action as it is at the time the final decision to replace the plaintiff is made.[51]

Other procedural tools that are commonly used in individual litigation, such as the community of parties (Art. 91 CCC) or secondary participation (Art. 93 CCC), are not suitable for resolving class actions. This follows primarily from the fact that, in substantive law, it is not the rights and obligations of the plaintiff that are decided, but the rights and obligations of the members of the class involved.

CONCLUSION

Based on the analysis, it can be concluded, that active standing deviates significantly from its standard concept in the context of collective proceedings. Given its intrinsic nature, standing in collective proceedings is not based on substantive law as in individual proceedings, but is conferred on the claimant directly by law. However, that does not mean the substantive claim has no place. On the contrary, the existence of more than one person with a substantive claim is necessary for the commencement and conduct of collective proceedings. Those persons are entitled, within the limits of individual proceedings, to bring actions individually.

Nevertheless, if these individuals wish to pursue their claims collectively, they cannot initiate a class action on their own to begin a class proceeding. Instead, active standing passes to one specific person, i.e., the representative (most often non-profit organizations), who is entitled to bring it. Persons who have a substantive claim and are so-called members of the group represented by the representative do not lose their claim. They only transfer their standing to the representative, i.e., the plaintiff, for one specific class action. The representative acting as a plaintiff in the class proceedings therefore has a special standing applicable only in civil class proceedings.

[51] NETOLICKÁ, B. *Postavení účastníka v hromadném řízení. (Thesis).*