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SECURITY THREATS AND THEIR IMPACT ON CHANGES TO THE LEGAL ORDER

AS AMEACAS À SEGURANCA E O SEU IMPACTO NAS ALTERACOES À ORDEM JURÍDICA

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Abstract: The present scholarly article discusses the security threats and aspects that have a dynamic impact on national legislation. In our case, it concerns the legislation of the Czech Republic, which is currently partly influenced by the prevailing armed conflict in Ukraine. With the level of inflation, the state has to try to deal with these negative aspects, through selected changes in the legislation of the Czech Republic, sometimes in relation to legal acts from the European Union. The main emphasis in each section of the article is on the limitation of property rights and the various powers that the state defines itself in relation to maintaining a long-term property policy strategy. The expert article is based on the scientific research activity within the research direction *"Needs and forms of strengthening competences and cooperation of security subjects"* and its sub-research task No. 3/1 of the Police Academy of the Czech Republic entitled *"Analysis and expected development of competences of the Police of the Czech Republic and police security subjects in selected areas"*.

Keywords: Law. Legal order. Property rights. Security. State society. Threat.

Resumo: O presente artigo académico discute as ameaças à segurança e os aspectos que têm um impacto dinâmico na legislação nacional. No nosso caso, diz respeito à legislação da República Checa, que é actualmente parcialmente influenciada pelo conflito armado prevalecente na Ucrânia. Com o nível de inflação, o Estado tem de tentar lidar com estes aspectos negativos, através de alterações seleccionadas na legislação da República Checa, por vezes em relação a actos jurídicos da União Europeia. A ênfase principal em cada secção do artigo é na limitação dos direitos de propriedade e nos vários poderes que o Estado se define a si próprio em relação à manutenção de uma estratégia de política de propriedade a longo prazo. O artigo de peritos baseia-se na actividade de investigação científica no âmbito da direcção de investigação *"Necessidades e formas de reforço de competências e cooperação de assuntos de segurança"* e na sua tarefa de subpesquisa n.º 3/1 da Academia de Polícia da República Checa intitulada *"Análise e desenvolvimento esperado de competências da Polícia da República Checa e assuntos de segurança policial em áreas seleccionadas"*.

Palavras-chave: Lei. Ordem jurídica. Direitos de propriedade. Segurança. Sociedade estatal. Ameaça.

1. Introduction

The year 2022 has brought Europe a completely new and unexpected situation. From the perspective of energy security in particular, Europe has to deal with the creation of a new architecture for setting prices, building new sources and networks, and finding potential additional suppliers, especially of gas, electricity and raw materials. The free market is unable to respond adequately and guarantee energy and raw material security. Governments in Europe need to get into business and play a greater role as a strategic security player for their citizens. Hand in hand, a chain of subsequent problems is being created - the issue of food security, for example, is escalating, and the risk of a possible military conflict is increasing. In the long term, the problems may also move into the area of nuclear fuel security, and the difficulties with coal supply are already evident. Globally, there will be a need to strengthen capacity in the uranium enrichment process. Emergencies will also test the functionality of the set of tools and mechanisms available for dealing with emergencies and situations.

The French Government is preparing the complete nationalisation of the energy company EDF. The French State now owns 84% of the shares in this debt-ridden energy company. EDF is facing delays in the construction of new nuclear units in France and England and is exceeding the planned construction budgets for these facilities. Half of the nuclear power plants in France are out of service due to technical problems with a direct impact on safety. France plans to use nationalised EDF as the main pillar of massive investment in new nuclear reactors to strengthen the country's energy security.

The German government is preparing for the possibility of nationalising Gazprom Germania. The energy company was abandoned by Russian gas giant Gazprom in April 2022. The eventual nationalisation will take place by way of a newly established holding company. Gazprom Germania itself is now under the administration of the Federal Network Agency and has been renamed Security Energy for Europe (SEFE). The establishment of the holding company can thus be seen as nothing other than a precautionary step for a possible restructuring process.

Germany is preparing a series of guarantees and loans to energy companies, but also the possibility of a state takeover of strategic companies. There is talk, for example, of the possibility of nationalising the refinery in Schwedt, Brandenburg, which is controlled by the Russian

company Rosneft. Already in April 2022, the German government approved legislation to allow nationalisation of energy companies.

The Finnish government is facing strong pressure from opposition parties over the course of action to save the country's energy security. The main arguments are the failure of negotiations with Germany to resolve Uniper's difficulties, the waste of taxpayers' money and the funds provided by Fortum to stabilise Uniper.

The Czech government is considering possible options for property interventions in the energy company ČEZ. From nationalization or restructuring associated with the division of the company. The CEZ energy company is characterised by the majority share of the Czech state as the largest shareholder.

The Czech government promises to raise billions of crowns from the introduction of a tax on extraordinary profits of energy, oil and mining companies and banks (the so-called Winfall Tax).

The combination of unfavourable factors from the situation in Ukraine, tensions in the area of ensuring energy security in particular (but also food security, necessary concessions in the area of the environment, etc.) is creating a constant and escalating pressure on European governments. Under this pressure, they are forced to activate and try a range of non-standard measures and to introduce extraordinary instruments to ensure the security of their states. Not all of them, for obvious reasons, have met with only a positive response from their citizens and other individuals, including legal persons. The issue of the right to security in general in all possible dimensions and situations is becoming a topical problem. A difficult area is the consideration of the right to security in the context of existing human rights. A very socially complex intervention could be the activation of conscription, whether in the form of an obligation to perform basic military service or in a more moderate form, for example, in the form of basic area training in preparation of the population for national defence. The period of the kovid pandemic, with restrictions on, for example, freedom of movement and other rights and freedoms, has shown how sensitively European societies have reacted to these restrictions. In the case of the Czech Republic, the law on conscription already provides for a general restriction on the possibility of travelling abroad in the event of a state of national emergency and a state of war. However, the question is how society would react to such a measure (KUDRNA, 2021, pp. 146-152).

The current protection of human rights in European countries is based on a complex system of multi-level normative formation, which combines the international, EU and national

constitutional levels. Traditionally, human rights have been embedded in many international treaties, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in constitutional documents such as the Charter of Fundamental Rights and Freedoms of the Czech Republic (Charter of Fundamental Rights and Freedoms, 1993). Within the scope of European Union law, since the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights has served as the main frame of reference, which, as understood by the case law of the CJEU, both synthesises international and national human rights standards and reinforces the autonomy and unity of the EU legal order (SCHEU, 2019, p. 3).

An interesting topic that is not originally related to the issue, but the opposite is true, is not only employment, but the employment of persons with disabilities. There is 10,2% of people with health handicaps in the Czech Republic the total number of inhabitants, and almost all of them are economically passive. Even though, there is a strong initiative to include people with health handicaps in economically active groups mainly removing barriers which stop this group from becoming economically active needed results have not been met yet and there is a long-term issue within the employment of people with health handicaps. The support system would benefit from a clearer definition of funding support for people with health handicaps and a better definition of positions for people with handicaps in the job market. The primary aim of the support system should be to place people with a handicap in non-supported job markets. In the Czech Republic was created a system of employment support for people with health handicaps that operates with similar tools as foreign job markets. From this point of view, it is not needed to create new supporting tools, but it should be found how effectively use current tools. As the crucial supporting mechanism of employment of people with health handicaps can be considered their will to be employed, employers' attitude towards employment of people with health handicaps, informational and counselling system for employers, cooperation of several services (i.e., employer, charity, the Office of Labour), the duty of employer with more than 25 employees to hire someone with health handicap in the share of 4% from the total number of employees, the financial stimulus for employers in the open or supported job market, acknowledge of disability, disabled pension, and attitude of society towards a disabled person. International experiences prove that cooperation of several factors such as whole society and its attitude towards people with disabilities, level of support systems and counselling system, and cooperation of regional institutes and a person with health handicap have a significant influence on the inclusion of disabled person into the working proces (STÁREK, 2000, p. 300).

Regardless of the theoretical considerations on the nature of security in terms of the content and scope of this concept, on possible broader or narrower constructions of the definition of the concept of security, the following theses can be established:

(a) safety and its provision is always a multi-level issue directly responding to the level of technical and technological capabilities;

b) safety is linked to economic possibilities and limits;

c) security must be ensured by legally legitimate means in a legally established procedural format;

d) ensuring security in emergency situations and conditions necessarily requires extraordinary tools and procedures for dealing with them, including in the area of property law;

(e) the provision of security is always dependent on the functional interplay between the legislative, judicial and executive powers.

2. Results and Discussion

Interference with the right of ownership

In their strongest form, they are always a distinctive and extraordinary mechanism which, in extreme variants, can completely change the original ownership relations. Legal theory uses the term nationalisation (nationalisation), nationalisation (statisation) or expropriation (expropriation) for the process of transferring property. These institutes are not completely identical in content. For the purposes of the following text, however, we will use a single institute, namely expropriation.

The right to property is considered a fundamental human right. The relation of the state to the institution of property has a considerable telling power about the value anchoring of the state and its willingness to provide the necessary legal protection and material and procedural guarantees to the institution of property (VÍŠEK and KROUPA, 2020, p. 286).

By its nature, the right to property belongs to the category of fundamental rights and freedoms of the individual (core-right), and thus forms the core of the individual's personal autonomy in relation to public authority. However, like other fundamental rights, the right to property is also subject to limitations.

The constitutional order of the Czech Republic explicitly provides for two different possibilities of limiting the existing property right, with other possibilities implicitly envisaged. Article 11(4) of the LZPS regulates the constitutional limits and conditions of interference with the right to property in the form of expropriation. Article 11(3) of the LZPS regulates the

constitutional conditions for limiting the exercise of the right to property (HUSSEINI et al., 2021, p. 384). In addition, the LZPS does not exclude, and therefore, on the basis of the provisions of its Article 4(2), allows, by way of law, to intervene in the right to property in the form of a penalty (for example, the penalties of forfeiture of property, forfeiture of property or a financial penalty under the provisions of Articles 66, 67 and 70 of Act No. 40/2009 Coll, Criminal Code of the Czech Republic) or a measure connected with ongoing criminal (see the provisions of §§ 77b-81b of Act No. 141/1961 Coll., Criminal Procedure Code, here moreover in conjunction with Article 39 of the LZPS) or administrative proceedings, whether it is the forfeiture or seizure of the property or the restriction of its use (KÜHN et al., 2022, p. 631).

Expropriation under Article 11(4) of the LZPS can only take place in the event of a conflict with another fundamental right or in the case of the necessary promotion of a constitutionally approved public interest. A constitutionally compliant restriction of a property right is therefore only possible in the public interest, on the basis of the law and in return for compensation, while the degree and extent of the restriction must be proportionate in relation to the objective pursued by the restriction and the means by which it is achieved. In other words, if a public law institute exists in the law restricting the right of ownership without linking this restriction to the provision of compensation, a necessary condition for its constitutional conformity is the consent expressed by the owner (Finding of the Constitutional Court of the Czech Republic, 2008, No. 26/08). Further details will be provided below.

However, the possibility of limiting the right of ownership as envisaged in Article 11(3) of the LZPS also deserves attention. First of all, following the conclusions of 19th century German legal science, it states that ownership is binding. The LZPS therefore does not deal with the institution of ownership in the form of the old Roman law concept of an absolute right taking the form of 'unlimited legal dominion over a thing'. This is already because this concept does not in any way elaborate the well-known concept of abuse of the right of ownership (DIETZE, 1995, pp. 101-105). The right of ownership is inseparably linked in the Czech constitutional system with obligations and the social function of property (KÜHN at al., 2022, p. 631). This is clear from the following sentences of the quoted provision. In the first place, it must not be abused to the detriment of the rights of others or contrary to the general interests protected by law. Furthermore, it is expressly stipulated that its exercise must not harm human health, nature or the environment beyond the extent prescribed by law.

From the foregoing, it is clear that the second sentence of Article 11(3) of the LZPS gives the legislator considerable scope to restrict the exercise of the right to property, particularly

in situations of security threats, whether they concern state security or public order. These interests need not only be defined by law but may also arise from an international treaty, as stated by (HUSSEINI at. al., 2021, p. 379) or, of course, with regard to Article 10a of the Constitution, also from European Union law. Naturally, it also applies that the exercise of the right of property must not harm the rights and legitimate interests of other persons. This can be applied, for example, to the possible misuse of the right of ownership in a way that would constitute a security threat (HUSSEINI et. al., 2021, p. 379, similarly KÜHN et al., 2022, p. 627). On this matter, see also the landmark judgment of the Supreme Court of the Czech Republic, case file no. No 21 Cdo 992/99.

The jurisprudence of the Constitutional Court of the Czech Republic ("the Constitutional Court") shows that Article 11(3) of the LZPS sets very broad limits. An example of this is the ruling in Case No. Pl. In that case, the Constitutional Court assessed the constitutionality of the amendment to Act No. 13/1997 Coll. on Roads, which fundamentally tightened the conditions for the placement of billboards in the vicinity of motorways and class 1 roads on sections outside municipalities and at the same time stipulated that after a transitional period of 5 years, all billboards that do not obtain permission for their placement under the new conditions must be removed. This amendment was challenged by a group of senators as unconstitutional, arguing that its substance is expropriatory given the substantial tightening of the conditions, since virtually 100% of existing billboards cannot meet the conditions. Which the petitioners described as de facto expropriation. The Constitutional Court did not accept this argument. On the contrary, it referred to the provisions of Article 11(3) of the LZPS, which allows for restrictions on the exercise of the right of ownership for the protection of human health, hence road safety, or the protection of nature and the environment, within the limits set by law. In paragraph 70 of the above-quoted ruling, the Constitutional Court stated: 'At the same time, the Constitutional Court does not agree with the opinion of the group of senators that the consequences of the contested provisions could have a choking effect on some entrepreneurs (owners of advertising devices). The Court is led to do so by the reasons arising from the arguments concerning the proportionate or sparing regulation in the contested provisions (cf. the above-mentioned paragraphs of the present judgment), of which it is important to emphasise, in particular, that the contested provisions concern only those (that number of) advertising devices which are located along motorways and first-class roads where the public interest in their removal is particularly strong and justified. *Those advertising installations remain, of course, the property of their owners. ... It was*

therefore up to the will of the owners of these advertising installations to do so within a sufficiently long period of five years, or to relocate them or take other action."

Naturally, virtually none of the advertising companies operated billboards only in the locations in question. Nevertheless, the interference with their property was considerable and in this context the Constitutional Court's statement that the billboards in question, which are essentially things of unilateral use, could have been moved elsewhere at their discretion stands out.

Another of the fundamental decisions of the Constitutional Court showing that a restriction on the exercise of the right to property which comes close to interfering with the right to property itself may be made in accordance with the LZPS is the finding in Case No. Pl. ÚS 27/16 concerning the issue of so-called food banks. In that case, the Constitutional Court assessed the constitutionality of Section 11(2) of Act No. 110/1997 Coll., on Food and Tobacco Products and on Amendments and Additions to Certain Acts, which imposed an obligation on retail chains to donate to non-profit organisations for the needs of socially needy foodstuffs that were discarded by the operators due to the approaching expiry date. A group of 25 senators challenged this provision as unconstitutional, arguing that it was a measure in the nature of expropriation for which, however, no compensation was provided, as required by Article 11(4) of the LFTA. The Constitutional Court rejected this argument, referring firstly to the social function of property, and secondly to the fact that the law in fact only constitutes a restriction on the exercise of the right to property within the meaning of Article 11(3) of the LZPS, because the operators of supermarket chains themselves dispose of foodstuffs approaching the end of their shelf life. This merely means that another way of disposing of the items whose ownership is being disposed of by the owners themselves is being determined.

As is apparent, it depends only on the intensity of the public interest as to how extensive or intensive the interference with the exercise of the right of ownership, which in some cases may even be close to a restriction of the right of ownership, can be found to be compatible with the constitutional order. The only limit here is Article 4(4) of the LZPS, which prohibits the restriction of a right from interfering with its essence and meaning (KÜHN et al., 2022, p. 628). It can be assumed that restrictions on the exercise of the right to property clearly justified by a demonstrable security interest can stand in this sense. Be it measures of a punitive nature or the impending nationalisation of the property of hostile persons or states, such as freezing it.

A massive wave of nationalisation took place in Europe and elsewhere after 1945 (for example, Egypt nationalised the Suez Canal). In some countries, nationalisation was subsequently

relativised by privatisation processes. For nationalisation, a combined selection method was used to select the criteria to be assessed, which became the actual reasons for nationalisation. These were, for example, national (ethnic), criminal (collaboration) or nationalisation was carried out according to the characteristics of industries (especially the arms industry) or the size of enterprises. Ideological considerations were also used (film, press, TV, etc.).

In democratic states, the construction of property as a unified and indivisible legal institute, regardless of the person of the owner, is gradually gaining ground. The mere differentiation of ownership into state, cooperative, private, legal persons, national and other entities does not in itself undermine, relativise or render inoperative or unusable this construction. This sets the requirement for equal legal protection of all forms (types) of ownership.

Current regulation of expropriation in the Czech Republic

Given the importance of the right of property in general, it is legitimate to demand that this institute be enshrined in the basic parameters at the constitutional level. Especially in countries where property rights and interference in them have negative historical consequences. Here, it is quite legitimate to demand that, in addition to the elementary characteristics of the right to property, constitutional limits to its possible limitations should also be constitutionally enshrined. This task has been fulfilled in the Czech Republic by the Charter of Fundamental Rights of the Czech Republic as part of the constitutional order of the Czech Republic (Constitution of the Czech Republic, 1993, Articles 3 and 112).

Article 11(1) of the LZPS is a fundamental provision. Here, the right to property is presented as a right that belongs to all persons (everyone has the right to own property). The restrictive limits of this provision are approximated by Article 11(2) (the so-called reservation of ownership). The continuation of Article 11(1) is crucial for the question of expropriation, where it is explicitly stated that the right of ownership of all owners has the same legal content and protection (constitutional guarantee of all forms of ownership). Thus, the LZPS does not exclude the possibility of diversification of ownership according to specified criteria (e.g. state, cooperative, private). All forms (types) of ownership are equal, thus any form of privileged ownership is excluded in advance (HUSSEINI et al., 2021, p. 361, similarly KÜHN et al., 2022, p. 631). This dictum guarantees that no subject of law, whether in the position of expropriator or expropriated, can be favoured in the expropriation process or vice versa. However, as detailed above, the provisions of Article 11(3) of the LZPS also provide considerable scope, particularly

in the case of the existence of a proven public interest. Certain cases of limitations on the exercise of the right of ownership, as approved by the Constitutional Court, with their effects approaching in some aspects even the effects of expropriation, may lead to the fulfilment of the public authority's intention. This is without the need to use the institution of expropriation, the application of which is associated with a number of limitations, as will be shown below.

The expropriation is related to Article 11(4) of the LZPS. Here, the constitutionmaker set 3 basic conditions that must be met cumulatively. First, the existence of public interest is presumed. Secondly, the expropriation must take place on the basis of law (one cannot expropriate directly from the Charter of Fundamental Rights and Freedoms). And third, compensation must be provided in all cases. Interpretively, we conclude that the provisions of Article 11(4) are a breach of the constitutional guarantee of the right to own property under Article 11(1). Neither is it dealt with in any other part of the constitutional order of the Czech Republic (Constitution of the Czech Republic, 1993, Article 112). However, the LZPS linked expropriation in Article 11(4) to the institution of compulsory restriction of the right to property. Consequently, this construction means that:

(a) expropriation and compulsory restriction of the right of ownership cannot be completely identical in content and scope;

(b) expropriation constitutes a stronger interference with the right to property than a mere restriction;

(c) expropriation changes the original owner, while compulsory restriction does not change the person of the original owner;

(d) a compulsory restriction implies a lesser intensity of interference, where only a change in the extent or quality of one of the components of the property right is involved.

It is also appropriate to define the material scope of what is meant by Article 11(4) of the LZPS. This provision applies to the expropriation of an asset without further restriction. It applies to both movable and immovable property.

Individual constitutionally guaranteed conditions of expropriation

These conditions have already been presented in the previous text. These are the existence of a public interest, the condition of expropriation by law and the condition of compensation. All the conditions are cumulative, so all of them must be met, not just one or more of them.

Public interest

It is an indisputably vague legal concept with blurred boundaries (KÜHN et. al., 2022, p. 632). Legal scholarship has long attempted to define the public interest in various ways. However, it usually ends by stating that:

(a) the public interest is the kind of interest that is of general utility;

(b) the public interest is one that overrides a private or group interest;

(c) the public interest is the direct opposite of the private interest;

(d) the public interest need not be identical to the state interest, general interest, economic, social, environmental, etc. (HUSSEINI et al., 2021, p. 394).

Even in cases where the public interest exists and is proven in the relevant proceedings, the condition that the pursued purpose cannot be achieved in any other way still applies. For example, by agreement between the expropriator and the expropriated. The LZPS itself does not help the sharp definition of the concept of public interest at first sight. In Article 11(3), it states as follows:

Ownership shall bind. It may not be abused to the detriment of the rights of others or contrary to the general interests protected by law. Its exercise shall not harm human health, nature or the environment beyond the limits set by law.

The LZPS therefore clearly distinguishes (not equates) the concepts of public and general interest (HUSSEINI et al., 2021, p. 389). In the literature we find the view that the general interest is a broader concept than the public interest. In other words, the public interest is only a part of the general interest, and not every general interest necessarily constitutes a public interest (KOUDELKA, 2013, p. 18). It cannot be ruled out that in promoting the collective interest as an interest with the hallmark of the public interest, the interests of pressure, lobbying and other groups may emerge. The established case law of the Constitutional Court of the Czech Republic has long held the opinion that the public interest cannot be merely declared. It must be proven in individual and concrete expropriation proceedings. The Constitutional Court proceeds from the premise that it is entirely within the competence of the executive and not the legislative power to identify and prove the public interest in a particular case. If the opposite procedure were applied, the right to judicial review of the established conclusions on the existence or non-existence of public interest would be restricted (Constitutional Court of the Czech Republic, 2008, No. 24/08). However, it should be taken into account that EU legislation (for example, Regulation No. 347/2013/EU of the European Parliament and of the Council on trans-European energy networks) already considers specific projects of common interest to be of

public interest. It is precisely this specificity that the Constitutional Court of the Czech Republic has found objectionable in several of the cases it has dealt with - in the opinion of the Constitutional Court, the legal norms in question thus lose the required characteristic of generality and the public interest is declared a priori. Challenging the existence of the public interest is one of the current options of legitimate defence for expropriates (expropriated). The other is to challenge the amount of compensation awarded. Both options leave a wide margin of manoeuvre, considerably prolong the expropriation proceedings and cause a high degree of legal uncertainty on both sides. Even the adoption of other legislation has not fundamentally improved this situation (Act No. 184/2006 Coll., on expropriation; Act No. 416/2009 Coll., on accelerating the construction of transport, water and energy infrastructure).

Existence of a legal basis

Article 11(4) of the LZPS provides, inter alia, that expropriation may only be effected by law. It does not explicitly address the possibility of whether expropriation is also possible directly by law. Two theses are offered in favour:

(a) Expropriation can only be carried out by law, in the form of an administrative act;

(b) expropriation can be carried out directly by law itself.

The solution of this question goes beyond the chosen topic. It may be briefly noted that both options (a) and (b) have their supporters and opponents. The formulation based on law has historically been used in constitutional law (Constitutional Charter, 1920, Article 109). The situation is not made easier by the fact that individual elements of the constitutional order (i.e. legal provisions with equal legal force) do not use and distinguish formulations based on law or by law in the same way (Constitution of the Czech Republic, 1993, Article 2(4) or Charter of Fundamental Rights and Freedoms, 1993, Article 4(1)). Looking at the established case-law of the Constitutional Court of the Czech Republic, one can lean towards and plead for variant ad a). Thus, there must be a law with expropriation title and on the basis of this law expropriation can take place in the form of an administrative act.

Specific position of Act No. 222/1999 Coll., on ensuring the defence of the Czech Republic

An emergency situation in which it is necessary to activate extraordinary means to achieve the defence of the Czech Republic at a level appropriate to the threat in question is a cause for reflection. The reflection does not lead to the need for such specific legislation. It is

fully justified by the fact that without the ability to ensure defence, a state is unable to ensure its sovereignty, fulfil its obligations and be a full subject of international law, or to fulfil its tasks in terms of domestic law. One of the tools here is the special legislation on expropriation, which is partly independent of the law on expropriation. Principles:

(a) Special procedural regulation of expropriation subject in particular to the considerations of speed and expedition;

(b) This instrument can only be legitimately used in specific situations;

(b1) State of national emergency,

b2) state of war,

(c) expropriation is carried out in summary expropriation proceedings;

(d) movable and immovable property and rights thereto may be expropriated (movable property cannot be expropriated under the Expropriation Act);

(e) the limiting condition here is the purpose - i.e. securing the defence of the Czech Republic and this need cannot be otherwise addressed;

(f) expropriation is always for compensation.

Summary expropriation proceedings may be initiated only on the proposal of the administrative authority. The Act on the Provision of Defence of the Czech Republic states that this administrative authority should be the Ministry of Defence of the Czech Republic. Alternatively, however, it assumes that this administrative authority may also be another entity. In that case, however, it requires that the proposal for expropriation must always be accompanied by a confirmation from the Ministry of Defence that the expropriation will take place for the purpose of ensuring the defence of the Czech Republic (written guarantee). The proposal must also specify which movable or immovable property is involved (individual designation), the reasons for the expropriation in relation to the defence of the Czech Republic. The parties to the expropriation proceedings and the reasons why no other solution can be achieved (to acquire the movable or immovable property in another way) must also be individualized. The Act on ensuring the defence of the Czech Republic then contains a number of shortened time limits compared to the standard expropriation regulation. For example, the time limit for submissions by parties to expropriation proceedings may be reduced to up to 3 days (Article 49(2)). The reasons are obvious - the need for speed of the proceedings. It is obligatory to carry out a local investigation, in the framework of which a valuation of the movable or immovable property which is the subject of the expropriation proceedings is carried out in accordance with special regulations. The Act on Securing the Defence of the Czech

Republic uses a special term for the decision on expropriation - it is referred to as an expropriation decree. Compensation for expropriation is paid by the Ministry of Finance; the claim to receive compensation is constructed as non-barred. It is surprising that an appeal with suspensive effect could be lodged against the expropriation assessment. This mechanism did not testify to the need, in a state of national emergency or even a state of war, for decisions to be implemented in the shortest possible time. It can be concluded that the legislation deserves more elaboration and detail.

Ensuring the security of the Czech Republic is a complex problem, where the defence of the state is one of the fundamental parts, especially in relation to sovereignty and the ability to perform its functions. The Act on the Provision of Defence of the Czech Republic is a piece of legislation from 1999. However, it has been amended 13 times until 9 January 2023. At present, it is a legal instrument capable of providing mechanisms for dealing with the emergence of a state of national emergency or a state of war. Apart from the issue of special expropriation proceedings, it also defines objects important for the defence of the state (Article 29 of the Act). The necessary room for manoeuvre is created by the wording of Section 29(2)(d), which allows the Government of the Czech Republic to flexibly define land and buildings that may be of strategic importance for the defence of the state in the above-mentioned states. Subsequently, an important part of the possible measures and scenarios is also Section 53 of the Act, which aims at the possibility of restricting the freedom of movement and residence, including the exercise of the right of assembly.

The exacerbated security situation in Europe caused by the war in Ukraine has led the Ministry of Defence of the Czech Republic to take stock of a number of regulations governing the provision of national defence. The reason for this was the realisation that all regulations of this kind corresponded in principle to the needs of the peacetime period that has prevailed in Europe for the last 30 years or so.

One of the regulations that is now being discussed in connection with the question of whether it is appropriate to amend it and adapt it to the current deteriorated security situation is Act No 222/1999 Coll. on the defence of the Czech Republic, which has already been cited. During its evaluation, it was found that the above-described provisions regulating the possibilities of using the institute of expropriation for the purpose of ensuring the defence of the state are limited by the purpose of carrying out construction works or construction modifications. The cited Act, as currently in force, does not allow expropriation for any other purpose.

The Ministry of Defence finds itself in the situation that currently some objects important for the defence of the state are located on land that is not owned by the state or is surrounded by such land owned by private persons. The existing legislation does not allow for expropriation in the form of deprivation of ownership or in the form of its restriction, for example in the form of an easement. Naturally, the Ministry has assessed this situation as unsustainable and is currently preparing an amendment to Act No 222/1999 Coll. on ensuring the defence of the Czech Republic. Its essence is to introduce another legal purpose for the use of the institute of expropriation, albeit as an extreme instrument for ensuring the functionality of objects important for the defence of the state. The bill envisages as a preferred solution the purchase of the relevant real estate at the normal price, in justified cases up to four times such price. Only in the event that it is not possible to resolve the situation by purchase, it is envisaged to establish an easement by court. Naturally, with appropriate financial compensation for the owner of the encumbered property. Expropriation in the form of deprivation of ownership, naturally under the conditions laid down in Article 11(4) of the LZPS, is considered as a last resort.

It is clear from the above example that the current situation is very dynamic and leads to steps that were not perceived as necessary until recently. Further developments can be expected, particularly in the area of national defence regulations.

Protection of expropriation

The right to a fair trial requires that the results of the expropriation procedure should not stand outside the possibility of subsequent judicial review or a hearing of the expropriation before a court. Interference with the right to property is a sensitive legal issue, according to both the LZPS and the case law of the European Court of Human Rights, particularly with regard to the recognised principles of a modern democratic state governed by the rule of law. Judicial protection here is complicated, based on the so-called dual model, i.e.:

(a) courts adjudicating under the Administrative Procedure Code;

(b) courts adjudicating under the Code of Civil Procedure (Part Five).

The jurisdiction of the court is influenced by which statement(s) contained in the decision are challenged. In the case of (a), the action is against the expropriation decision; in the case of (b), the action is against the expropriation compensation decision.

Act on national sanctions against foreign companies

This legislation (referred to as the Sanctions Act for short) targets foreign companies and foreign individuals who commit serious violations. The law expands the range of sanctions for listed offences compared to the EU sanctions list. Among the sanctions will be, for example, a ban on entering or staying on the territory of the Czech Republic, as well as freezing of assets. Restrictions may also be imposed on organisations or regimes that commit massive human rights violations, use terrorist methods or cyber attacks.

The existence of a sanctions list is necessary to fulfil the purpose of the law. The inclusion of entities on the sanctions list will be decided by the government on the proposal of the Ministry of Foreign Affairs. Any objections to inclusion on the sanctions list should be directed to the Ministry of Foreign Affairs and will be decided by the government. Defence will also be possible by way of judicial review; the first instance court will be the Municipal Court in Prague. The preparation of the law was accelerated by the conflict in Ukraine. The Czech Republic will thus join the ranks of other EU states that have such national legislation - for example, France, Latvia, and the Netherlands. In 2022, the Government of the Czech Republic adopted resolution number 524 on the draft law. By this resolution, it approved the draft law, instructed the Ministry of Foreign Affairs to prepare the final text of the government's draft law and obliged the Prime Minister and the Minister of Foreign Affairs to take the necessary further steps to adopt the sanctions law.

The object of the legislation is to protect the interests of the Czech Republic in the preservation and restoration of international peace and security. The fight against terrorism and respect for international law are declared to be of equal importance. The law is also intended to strengthen the protection of human rights, promote democracy and the attributes of the rule of law.

The subject is anyone against whom restrictive measures may be applied under the relevant European Union regulation. That is, within the meaning of acts adopted under Title V, Chapter 2 of the Treaty on the Functioning of the European Union. They may be both natural persons and foreign legal persons.

The European Union sanctions list and the sanctions list under the relevant Czech legislation will stand side by side. Therefore, if the entity is not included in the EU sanctions list after the expiry of the deadline of 1 month from the submission of the proposal, it may be included in the sanctions list through the national channel of the Ministry of Foreign Affairs. The Sanctions Act also provides for the obligation of confidentiality in specified cases. It also stipulates that this

obligation does not cease upon termination of the service, employment or other relationship under which it arose. The Sanctions Act also provides for a duty of confidentiality in specified cases. It provides, mutatis mutandis, that this obligation does not cease on the termination of the service, employment or other relationship in which it arose. The Sanctions Act also lays down the conditions under which judicial review proceedings may be brought in respect of cases under that Act.

3. Conclusion

Security Aspects of the Conflict in Ukraine and Their Impact on the Change of the Structure of Joint Stock Companies and Ownership Strategy in the Czech Republic

One of the legal instruments enabling a **change in the ownership structure of joint stock companies is the "squeeze-out" institute.** This represents a forced (essential qualitative characteristic) transfer of participating securities - shares (usually referred to as the squeeze-out process). In the Czech Republic, it is regulated in the Commercial Corporations Act, § 375 et seq. The objective here is to concentrate the capital in the hands of only one shareholder, provided that this shareholder acquires a share in the company of at least 90 % (a lower limit of the share amount is set). Whoever has this limit is referred to and acts as the major shareholder. The main features of the squeeze-out process can be simplified as follows:

(a) it is up to the major shareholder to decide whether or not to proceed with the process. Its discretion is fully preserved and respected. He cannot be compelled in any way to initiate the expulsion process.

(b) Minority shareholders, with such a high shareholding of the main shareholder, logically have a significantly suppressed decision-making component linked to share ownership. Due to their real position in the company, they participate mainly in the form of capital, i.e. in the form of an investment with a view to its appreciation. They have only minimal influence on the direction and development strategy of the company.

(c) The activation of the squeeze-out institute negates the will of minority shareholders, who have no legal levers and instruments against the main shareholder's actions. This must be compensated for. The instrument of compensation is the obligation of the major shareholder to provide adequate compensation, i.e. consideration, to the minority shareholders. This compensation must respect the market value of the shares.

(d) The technique for determining the market value of the shares is a persistent problem. The crucial factor here is the time at which the squeeze-out occurs. From the minority

shareholders' point of view, this is a forced involuntary sale. The moment of activation of the squeeze-out process is entirely at the disposal of the major shareholder. This fact gives him the freedom to choose the appropriate moment and to maximise the value of his investment.

(e) The minority shareholder cannot successfully defend the squeeze-out. However, it may object to the amount of the consideration in court proceedings. The existence of a possible judicial review of the expropriation process as regards the amount of the consideration guarantees the protection of acquired rights and legitimate expectations. In these circumstances, the expulsion of minority shareholders brings the movement of shares closer to the process of transferring shares to another owner, subject to the necessary derogations. It must be respected that the effectiveness of the expulsion requires that the process be set up with respect for the position of the major shareholder vis-à-vis the minority shareholders. The major shareholder undoubtedly concentrates the mechanisms of operation of the joint stock company, the investment strategy and other steps necessary for the proper functioning of the company and the generation of profits. The Constitutional Court of the Czech Republic has also found the squeeze-out process and therefore the squeeze-out institute to be legally compliant and in line with the constitutional order of the Czech Republic. In the ruling of 27 March 2008, Case No. Pl. ÚS 56/05 of March 2008, the threshold of 90% of the share capital was considered constitutionally compliant. It should be noted here that the Constitutional Court of the Czech Republic assessed the 90% limit itself as a limit within the discretion and judgment of the legislator. It did not therefore exclude the possibility that the legislator could set the threshold differently, either higher or lower.

The main conclusion is that the squeeze-out cannot be used to deal with cases where the largest shareholder does not hold at least 90% of the majority of the company's shares. A minority ownership below 90% of the shares prevents him from legally applying this institute. However, this parameter can be changed. In the Czech Republic, there is a tendency for the set limit to move downwards - i.e. below the 90% threshold. The reduction of the majority from 90% to 85% is required only for joint stock companies with majority state ownership. Other modifying factors are the possibilities associated with the demerger of joint stock companies of strategic importance (spin-offs) and the creation of sister companies of the demerged company. The whole issue falls within the scope of the Act on Transformations of Business Corporations.

The second legal instrument is that the Ministry of Finance of the Czech Republic has prepared and submitted the Strategy of the State Ownership Policy. The role of the state as an owner has currently proved to be insufficient, underestimated and not very active. State

ownership policy in times of emergencies lacks effective, rapid and legally foreseen instruments and mechanisms. The present document respects and builds on the 2015 Organisation for Economic Co-operation and Development Recommendations for the Governance of State-Owned Enterprises. The Czech Republic's Corporate Governance Code was issued in 2018. This Code elaborated on the theses of the rules contained in the 2015 Recommendation and in some respects developed and supplemented it with experience from the international and Czech environment. It is aimed at state-owned enterprises and companies with state participation. The strategy is anchored on three relatively separate pillars:

(a) Definition of the role of the State. It is necessary to start with a detailed overview of which state-owned enterprises and which companies with state participation are within the competence of individual ministries. Subsequently, their differentiation should be made on the basis of the materiality criterion.

(b) Corporate governance - the state has a sophisticated system of rules for the management and development of these activities.

(c) Institutional framework - For the full exercise of ownership rights in state-owned companies and state-owned enterprises, an institutional environment is set up, including the necessary tools for management, governance, development and overcoming potentially arising emergencies and situations.

After 1989, the role of the state in the economy was substantially reduced. The situation in 2023 is such that the state still carries out a large part of business activities. Taking into account the need for the functioning of the economy and the need to implement a strategy of ownership policy in areas crucial for the very functioning of the state, ensuring the necessary level of security and other factors, two basic starting points can be set:

(a) The state should be the owner only where activities cannot be efficiently provided by the market alone. Moreover, the state also acts here as a counter to the possible existence of natural monopolies.

(b) The State has an interest in ownership that is defensible in terms of strategic interest. These include ownership of critical infrastructure, energy and raw material security, food security, including the needs of state supervision, surveillance and testing.

In order to fulfil the institutional framework, a partially decentralised system is applied in the Czech Republic. As a rule, the state's ownership rights and its founding powers are exercised by individual ministries. A key need is to increase the coordination of these activities across ministries. A situation where a central portfolio manager is created is not yet on the agenda in the

Czech Republic. However, strengthening the coordination mechanism as well as further rationalisation of the still fragmented ownership structure of the state is a current challenge. State-owned or state-owned companies and state-owned enterprises still represent an important sector of the Czech economy. For example, ČEZ a.s. alone manages assets of over CZK 700 billion.

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