The influence of jurisprudence on the formation of relations between the manager and the limited liability company

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Abstract

The procedure and internal functioning of a limited liability company in the conditions of the Slovak Republic seemed to be a long-settled question. However, the opposite is true. We were particularly interested in the question of how a de facto non-existent person can act and thereby have certain rights and obligations. As part of the study, we came across numerous jurisprudence, which completes our understanding of the term executive and also defines the framework of his actions. A very important issue is the definition of the relationship between the limited liability company and the manager. The reason is the fact that it is a business-legal relationship and therefore the protection provided to this relationship is lower compared to civil-law relationships or labor relations. In addition to the examination of a limited liability company and its manager, we focus primarily on a critical analysis of the commercial and labor law relationship between the manager and the limited liability company. To achieve our goal, we use several scientific methods designed for the study of law, such as analysis, synthesis, comparison, deduction, description. In conclusion we will critically evaluate the results of our investigation, we will compare the development of Slovak, European and Czech jurisprudence in the context of its influence on the investigated issue. At the same time, we answer the research question whether it is possible to perform the function of an executive on the basis of an employment contract.

Keywords: *Business Code, employment contract, manager, limited liability company.*

JEL Classification: K12, K22, K31

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1. Introduction

The limited liability company, as the most widespread type of business company, acts through managers. The fact that it is the most used type of business company is understandable for several objective reasons. This form of business company most closely copies the dynamic trend of the market economy while maintaining a simple structure. Most people start limited companies because the business risk is limited. The company, as a legal entity, is liable for its obligations

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with all its assets, but the partners guarantee its obligations only up to the amount of the unpaid deposit entered in the commercial register.[3]

From the nature of a limited liability company as a legal entity, it is understandable that it cannot act alone, but acts through certain persons. The legal regulation had to deal with this effectively so that, on the one hand, the company could act and appear in legal relations, and at the same time, that this company was also protected from the potential personal interests of the persons who would act on its behalf. The solution to the given problem is the creation of a statutory body that will represent the limited liability company, and the actions of this body will be considered the actions of the company. It should be mentioned that even the statutory body will be limited by various provisions so that it does not abuse its position. The statutory body in a limited liability company must be at least one natural person who will act as an executive.[4] From the phrase must, we understand that it is a mandatory body without which the company cannot exist.

The way of acting and the internal functioning of a limited liability company in the conditions of the Slovak Republic seems to be a long-settled question. The paradox is precisely that in the material world, a legal entity does not exist, it does not have a will, unlike a physical person. At the same time, however, this legal entity can own property, have rights and obligations as well as act. And the chosen procedure and internal functioning of the limited liability company as a legal entity will be the subject of this scientific study.

We were particularly interested in the question of how a de facto non-existent person can act and thereby have certain rights and obligations. As part of the study, we came across numerous jurisprudence, which completes our understanding of the term executive and also defines the framework of his actions. A very important issue is the definition of the relationship between the limited liability company and the manager. The reason is the fact that it is a business-legal relationship and therefore the protection provided to this relationship is lower compared to civil-law relationships or labor relations. It is the definition of the relationship between the limited liability company and its manager that is essential, since in this case the contracting parties define the scope of their rights and obligations.

2. Objective, methodology, material

Despite the fact that it is an issue belonging to the field of private law, the supervision of its creation and development rests with the bodies of public administration. As stated by Sararu, public administration is an activity carried out

[3] Vacok J., Srebalova, M., Horvath, M., Vojtech F. & Filip, S. (2020). *Legal obstacles to freedom to conduct a business: experience of the Slovak Republic*, „Entrepreneurship and Sustainability Issues", 7(4), pp. 3385-3394, DOI: 10.9770/jesi.2020.7.4(53).

[4] Cajka, P. & Abrham, J. (2019). *Regional aspects of V4 countries' economic development over a membership period of 15 years in the European Union,* „Slovak Journal of Political Sciences", 19(1) pp. 89-105, DOI: 10.34135/sjps.190105.

by state administration bodies, municipalities and public law institutions in the provision of public tasks. Its main goal is the operation of public welfare through the strengthening of civil society and social justice.[5]

In our scientific study, in addition to examining the limited liability company and its manager, we focus primarily on a critical analysis of two contractual relationships. The first is the commercial law relationship between the manager and the business company, and the second is the labor law relationship between the manager and the limited liability company. In order to achieve the main goal, we also chose sub-goals, namely the analysis:

- limited liability company and the position of its manager,
- contractual relations between the manager and the limited liability company

At the conclusion of our study, we will critically evaluate the results of our investigation, compare the development of Slovak, European and Czech jurisprudence and its influence on the investigated issue and answer the research question whether an executive can perform the function of an executive on the basis of an employment contract, and we will propose possible possibilities for improving the legislation.

We want to achieve the set main goal and sub-goals mainly by thoroughly examining the relevant European, Slovak and Czech legislation as well as case law. Another focal source of knowledge are professional and scientific literary sources contained in the Web of Science and Scopus databases.[6]

We will use the methods of logic to gain knowledge about law. The methods of logic are universal and can be used in all sciences. The methods of logic determine the rules of human judgment, based on many years of experience. Their observance ensures correctness of thinking, truthfulness of thinking and its orderliness. When designing this scientific study, we also apply the method of abstraction, which ensures the unification of two thought processes and then separates the most important from them. The synthesis method finds its application in the division of the text into individual parts, followed by the analysis of these parts and finally their connection into a single whole.

Another category of methods of knowledge are scientific methods of knowledge. The use of the analytical method is essential when analyzing the current legal status of the position and powers of the manager in a limited liability company. The aim of this method is to obtain several opinions on the given issue of legislation and interpretations of individual terms. Also, in the thesis, the method of comparison was used when comparing different legal regulations in different legal branches. This

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[5] Săraru, C. S. (2023), *Regulation of Public Services in the Administrative Code of Romania: Challenges and Limitations*, „Access to Justice in Eastern Europe", 18 (1). pp. 69-83. doi:10.33327/AJEE-18-6.1-a000110.

[6] Majercakova, D. & Mittelman, A. (2016), *The constitutional protection of water as irreplaceable component of environment and all living ecosystems in the conditions of the Slovak Republic,* „International Multidisciplinary Scientific GeoConference Surveying Geology and Mining Ecology Management", SGEM, pp. 995-1000.

method will allow us to obtain similarities or differences in individual legal regulations in various legal branches. As part of learning about the current legal status de lege lata, we also use Judgments not only of Slovak and Czech courts, but also judgments of the Court of Justice of the European Union as well as doctrinal interpretation.

3. Limited liability company in general

The most typical way of doing business in the territory of the Slovak Republic is doing business through a limited liability company. It is a legal entity that creates a share capital of at least 5,000 euros, while it should be noted that the partners do not guarantee the company's obligations with their entire assets, but only up to the amount of their unpaid deposits. The Slovak legal system recognizes natural persons and legal entities. Natural persons are generally considered to be the only natural subjects of legal relations. On the other hand, legal entities (which is also a limited liability company) are considered artificial entities that are ultimately dependent on the activities of natural persons.[7]

The term legal entity is understood in various ways. We know two main theories, the fiction theory and the realistic theory. The essence of the theory of fiction is that the ability to have certain rights and obligations is expressly bound only to natural persons. This theory does not deny that a legal entity does not exist. A legal person acquires legal personality indirectly. It is obtained on the basis of a fiction, the essence of which is the transfer of the legal subjectivity of natural persons to legal entities. In the context of this scientific study, this means that the person of the executive as a natural person with all rights and obligations is essential. In principle, a legal entity can act only through the person of an executive, who transfers legal subjectivity to a legal entity, while he himself does not give up this subjectivity. This is how a legal person is perceived within the theory of fiction. Realist theory understands the functioning and actions of a legal entity differently. According to this theory, legal persons are not just fictitious persons, but are real persons, just like natural persons. The basic difference between a legal person and a natural person is that a natural person is an individual and on the other hand, a legal person is a compound person. This theory states that although only natural persons can perceive with their senses, legal persons in reality act for themselves and cannot be considered as just a fiction. On the contrary, it is a functioning entity that has a will of its own, acting through a general assembly or statutory bodies. A legal entity is therefore a person composed of several components that represent natural persons. The actions of these bodies/components are the actions of the legal entity as a whole.[8]

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[7] Horvat, M., Magurová, H. & Srebalová, M. (2017), *Protection of consumers' rights in railway in the Slovak Republic*. „Yearbook of Antitrust and Regulatory Studies", 10 (16), pp. 177-190, DOI: 10.7172/1689-9024.YARS.2017.10.16.9.

[8] Števček, M. & Ivančo, M. (2021), *The conception and institutional novelties of recodification of private law in the Slovak Republic*, in Zvonimir Slakoper, Ivan Tot (eds.), *The Law of Obligations in Central and Southeast Europe: Recodification and Recent Developments*, Routledge, London, pp. 33-49.

The subject of this study is not to clearly define what is meant by a legal entity. We cannot find a clear definition even in the applicable law, since Act No. 40/1964 Coll. The Civil Code, as amended (hereinafter referred to as the „Civil Code“) defines a legal entity only through conceptual signs. The aim of this comparison of theories is the fact that in both cases someone acts for a limited liability company. From the point of view of this study, it is irrelevant whether we understand a legal entity as a fictitious person or as a real person, the essential thing is that a certain body acts for the company, which is "represented" by a natural person. This natural person may differ depending on the legal form of the company, but in the case of a limited liability company it will be the managers.

The terms supreme body of a limited liability company and statutory body of a limited liability company should also be distinguished. The statutory body of a limited liability company is one or more managers. The highest body of a limited liability company is the general assembly consisting of all partners.

The establishment of a limited liability company has two basic phases. Foundation and origin. This type of legal entity can be established by a natural person as well as a legal entity. The Act no. 513/1991 Coll. Commercial Code as amended (hereinafter referred to as the „Commercial Code“) does not stipulate whether the founder should be an entrepreneur or a non-entrepreneur. A limited liability company can also be established by one person. However, it should be kept in mind that the prohibition of chaining one-person companies with limited liability, regulated in §105a of the Commercial Code, applies. Prohibition of chaining one-person companies with limited liability The Commercial Code defines that "A company with one partner cannot be the sole founder or sole partner of another company. A natural person can be the only partner in a maximum of three companies."

The process itself takes place in two phases, as we mentioned above. The first stage is the establishment of the company. A company can be founded by both a legal entity and a natural person, while they must observe the prohibition of chaining one-person companies with limited liability. The company is established either on the basis of a partnership agreement or a memorandum of association.[9] The difference between these two documents lies only in the fact that the partnership agreement is used in the situation of founding a company by several persons, and the charter is used in the case when the company is founded by only one person. The moment of establishment of a limited liability company is the moment of valid signing of the partnership agreement or charter. However, at this moment, the limited liability company is not yet created, because the condition for its creation is registration in the commercial register. The application for registration in the commercial register must be submitted within 90 days of the establishment of the limited liability company. At the same time, however, the company does not have to wait idly for registration in the commercial register in the period between its

[9] Funta, R. & Ondria, P. (2021). *Data Protection in Law Enforcement and Judicial Cooperation in Criminal Matters*, „TalTech Journal of European Studies”, 11 (2), pp.148-166, DOI:10.2478/bjes-2021-0019.

establishment and creation. During this period, the founders, persons exercising the powers of the statutory body, or other persons on the basis of a power of attorney may act for the company. However, these persons are jointly and severally bound by the proceedings during this period. In this case, the Commercial Code protects third parties from the negative consequences of actions before the establishment of the company.

The moment of the establishment of the company is a very significant moment. A limited liability company is created at the moment of registration in the commercial register. At this time, the proposal for registration can only be submitted electronically. The basic prerequisite for the establishment of a company is the submission of all necessary documents:

- proposal for registration in the Commercial Register of the Slovak Republic,
- partnership agreement or charter,
- articles of association, if they were approved before the establishment of the company,
- statement of the deposit administrator confirming the repayment of deposits or their parts by partners,
- expert opinion, if the share capital is even partially made up of non-monetary deposits,
- a document proving the creation of a trade or other business authorization for the subject of the limited liability company's activity,
- an affidavit of fulfillment of the conditions regarding the prohibition of chaining one-person companies with limited liability,
- consent of the tax administrator with registration in the commercial register.

If all the necessary documents are submitted, the registry court will assess them and then decide on the registration of the company in the commercial register. After its registration, it is advisable to have an extract from the commercial register available for legal acts. However, it should be noted that not every company that is founded will be established. There are many companies that are founded, but the founders eventually retreat from the common intention to do business, or after receiving the decision of the registry court to refuse entry into the commercial register, they decide not to remove the defects of the filing and therefore the limited liability company will not be established.[10] There is still a large number of established limited liability companies, and an average of twenty thousand limited liability companies are established every year.

After the establishment of the company, the company can start operating. The organization of a limited liability company takes place through its bodies. The highest body of the company is the general assembly. The other two bodies, which

[10] Mitterpachova, J., Stevcek, M. & Ivanco, M. (2019), *The privat law aspects of sharing economy after the "user case"*, „International Journal of Transformation Studies". 7 (2), pp. 58-78.

according to the Commercial Code are the bodies of a limited liability company, are the managers as an obligatory body and the supervisory board in the position of only an optional body.

In a very similar way, as a company is created, it also disappears. The Commercial Code also distinguishes between two phases in the event of the termination of the company's operation. Cancellation and termination, similar to establishment and creation. From the point of view of the form of the decision, cancellation has a constitutive effect and termination has only a declaratory effect. It follows from the above that the dissolution must be preceded by the dissolution of the company. The company can be dissolved for several reasons listed in the Commercial Code. This is the voluntary dissolution of a limited liability company based on a decision of the general meeting, the dissolution of the company by a court decision or the dissolution of the company directly by law. The first type of company dissolution is fully in the hands of the supreme body of the limited liability company and can decide to dissolve the company for any reason. In the case of a decision on the dissolution of a limited liability company, it must be specified whether it is a dissolution with liquidation (the property of the dissolved company does not pass to the legal successor) or without liquidation (the property passes to the legal successor either by merger, merger or division). The court has the right to decide on the dissolution of the company, only for reasons established by law. An extensive calculation of these reasons is contained in the mandatory provision of Section 68 of the Commercial Code.[11] Likewise, the Commercial Code foresees the dissolution of a commercial company in several places. Such a cancellation is called an "ex lege cancellation". This means that the company will be dissolved directly on the basis of the law. Freedom of contract allows the subjects of commercial relations to define such reasons in the partnership agreement, and thus if the facts foreseen, either by the partnership agreement or the law, occur, the given company will be dissolved. After the dissolution of a commercial company, it is necessary to take only one action that has a declaratory effect, and that is the deletion of the commercial company from the commercial register. The moment a commercial company is deleted, it ceases to exist.

4. Manager of a limited liability company

The manager acts for the limited liability company. His actions are therefore considered to be the actions of the company itself. This is a manifestation of the will of a limited liability company. According to the legal diction, the statutory body is one or more executives. The exact number of managers always remains at the discretion of the partners of the limited liability company.

The Commercial Code determines that if the founders of the company have elected several directors, each of them is entitled to act on behalf of the company

[11] Chochia, A. & Kerikmae, T. (2018), *Digital Single Market as an Element in EU-Georgian Cooperation,* „Baltic Journal of European Studies", 8(2), pp. 3-6, DOI: 10.1515/bjes-2018-0012.

independently, unless the articles of association stipulate otherwise. However, the last part of the sentence, after the comma, is very important. It defines the possibility for us to adjust the actions of individual managers in the social contract. This means that, for example, in the case of two executives, the articles of association may specify that both of these executives act together. Limitation of executive authority should be distinguished from the way of acting of executives.

The number of managers also depends on the economic size of the limited liability company. The larger the business company is economically, the greater the number of executives should be in it. The main idea is that a larger number of executives will ensure greater flexibility of the company during the normal operation of the given business company. On the other hand, however, a larger number of executives increases the risk of concluding contracts that are disadvantageous for the business company. Of course, such contracts can also be concluded by a company with only one manager, but the partners are better able to control a smaller number of managers.

The Commercial Code in § 133 paragraph 2 determines in a mandatory manner that the administrator can only be a natural person who, at the time of entry in the commercial register, is not listed as an obligee in the register of authorizations for execution according to a special law.[12] In this, we are looking at the difference compared to partners in a limited liability company. A partner in a limited liability company can be both a legal entity and a natural person. In the case of the performance of the function of an executive, the Commercial Code allows the appointment of only a natural person. In principle, it does not matter whether the manager will be appointed from among the partners or from persons who are outside the company (§133 paragraph 4 of the Commercial Code). However, based on practical experience, it is more appropriate when the manager is also a partner in a limited liability company. This is mainly due to the fact that in this case the manager also has a certain psychological relationship with the company, which consists in a higher commitment to its benefit.[13] On the other hand, a situation may arise when a partner does not have sufficient management skills, and in this case it is more appropriate to have an executive from among persons who are outside the company. Because on the one hand it is very important that the manager is interested in the prosperity of the company, but on the other hand he must also have certain management skills.[14]

[12] Gregusova, D, Capandova P., & Srebalova. M. (2016), *Safeguarding obligations through securities*. Paper presented at 3rd International Multidisciplinary Scientific Conference on Social Sciences and Arts, SGEM 2016, Albena, Bulgaria, August 24-30, 2016, pp. 769-775.

[13] Matejkova, J. & Pavelek, O. (2020), *Claim trading as a misuse of law,* „Law and financial markets review", 14 (1), pp. 29-32, DOI:10.1080/17521440.2019.1582204.

[14] Sidak, M., Slezakova, A. Hajnisova, E. & Filip S. (2023), *Determination of Public Supervision Aspects and Legal Pillars of Activities of Financial Agents in Central European Countries*, „Administrative Sciences", 13 (3) pp. 1-19, 78, doi:10.3390/admsci13030078.

5. Contracts between the manager and the limited liability company

As we have already stated, the manager, unlike the supervisory board, is a mandatory body of a limited liability company, without which the company cannot exist. The appointment of an executive function can occur in two ways. The first way to create the position of manager is the agreement of the partners on the manager before the registration of the limited liability company in the commercial register. A mandatory condition of the partnership agreement is the designation of the manager and, at the same time, the procedure. The second method of creation of the position of manager is regulated in §125 paragraph 1 letter f) of the Commercial Code.[15] In this case, the function of manager will be created for a natural person by his appointment based on the decision of the general meeting or the sole shareholder. After the creation of the position, it is necessary to conclude a contract between the limited liability company and the executive.

5.1 Performance of the function of an executive without a contract and a de facto statutory body

One of the fundamental questions to which we must find an answer is whether the manager can perform his function in a limited liability company without a contract. We find the answer to this question in § 66 paragraph 6 of the Commercial Code. The law assumes that after the creation of the position of executive, a contract on the performance of the position of executive will be subsequently concluded. In the event that the company does not conclude a contract on the performance of the executive function, the Commercial Code strictly stipulates that the legal relationship between the company and the executive will be adequately governed by the provisions of the mandate contract.[16] This means, in the event that the contract on the performance of the function of the executive was not concluded, the legal regulation automatically comes into effect and it provides for the administration of the provisions of the mandate contract. An interesting modification in the context of performing the function of an executive without a contract is the so-called person. de facto statutory body.[17]

With the amendment of the Commercial Code in 2017, the institute of de facto statutory body was also introduced. This institute is regulated in § 66 paragraph 7 of the Commercial Code. We cannot find a legal definition of a de facto statutory body in the Commercial Code, but legal theory understands this institution. The aforementioned provision imposes on certain types of persons the duties of a

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[15] Srebalová, M. & Vojtech, F. (2021). *SME Development in the Visegrad Area*, „Eurasian Studies in Business and Economics", 17, pp. 269-281, DOI: 10.1007/978-3-030-65147-3_19.

[16] Peracek, T. (2022), *E-commerce and its limits in the context of consumer protection: the case of the Slovak Republic*, „Juridical Tribune - Tribuna Juridica", 12 (1), pp. 35-50, DOI:10.24818/TBJ/2022/12/1.03.

[17] Jankelova, N., Joniakova, Z., Cajkova, A. & Romanova, A. (2021), *Leadership Competencies in communal policy*, „Politicke vedy", 24 (1), pp. 181-204, DOI: 10.24040/politickevedy.2021.24.1.181-204.

representative that the ordinary statutory body of the company has and at the same time burdens this person with a responsibility similar to that of the statutory body of the company. It can be any person.[18] However, the Commercial Code establishes certain characteristics that must be fulfilled in order to be a de facto legal entity. It is true that this person will not be registered in the commercial register, but at the same time there is a condition for the actual performance of the mandate.

The definition of the very concept of actual exercise of jurisdiction is problematic. It is true that the factuality of the action excludes that the assumption of responsibility of this person is his actions externally. It is enough if he decides, manages, organizes in the background, even without the knowledge of the company, partners or even third parties about this person. Jurisprudence on the concept of actual exercise of jurisdiction does not yet exist. For this reason, according to Bondareva & Zatrochova it is necessary to proceed from the explanatory report to the amendment to the Commercial Code from 2007.[19] According to it, it must be the exercise of scope, i.e. repeated, continuous activity. A one-time impact on the transaction is not sufficient to meet the requirements of the legal standard. However, this does not exclude his potential penalty under tort law. In this case, the legislator narrowed the scope of persons who „belong" to the category of de facto statutory body. This means that the one-time influence of a certain person, which would also cause damage to the company, does not become a factual statute according to the law.

5.2 Contract on performance of the executive function

The contract on the performance of the function of an executive is one of the most typical contracts concluded by executives with a limited liability company. The Commercial Code directly assumes that the manager will have concluded this contract. The mandatory formality of this contract is that it must be in writing and must be approved by the general meeting or the sole shareholder. The Commercial Code does not explicitly establish the obligation of remuneration (in contrast to the mandate contract).[20] It is self-evident and common practice that remuneration is also agreed upon in this type of contract. In the event that no agreement is reached, the contract on the performance of the executive function is free of charge. An agreement within the contract on the performance of the function of an executive,

[18] Dušek, J. (2018), *How to Measure Intermunicipal Cooperation in Conditions of the Czech Republic*. In „Modeling Innovation Sustainability and Technologies"; Springer: Cham, Switzerland, pp. 149-156.

[19] Bondareva, I. & Zatrochova, M. (2014), *Financial support for the development of SMEs in the Slovak Republic*, Paper presented at 2nd International Scientific Conference on Contemporary Issues in Business, Management and Education (CBME), pp. 541-548.

[20] Matejkova, J. & Pavelek, O. (2019), *The Protective Purpose of the Contract and the Liability of an Expert towards a Third Party in Czech, Austrian, and German Private Law*, „Baltic Journal of Law and Politics", 12 (2), pp. 163-185.

which would exclude the responsibility of the executive, is prohibited.[21] If it contained such an arrangement, the contract would be invalid in this part.

The law does not set many requirements for the content of the contract itself, but legal practice agrees that the contract should contain the following provisions:

- designation of the contractual parties - the company and the manager,
- introductory provisions - the company has appointed a certain person to the position of manager,
- subject of the contract - the contract regulates the relationship between the executive and the company in the performance of the executive's function,
- remuneration of the executive - as a rule, the executive is paid for the performance of his function,
- rights and obligations of the manager,
- other arrangements - e.g. benefits for the executive in the form of a business phone or a car, the obligation of confidentiality, etc.,
- final provisions.

5.3 Mandate contract between the manager and the limited liability company

In the event that the limited liability company does not conclude a contract on the performance of the executive function, the legal regulation is automatically applied, which presupposes the use of the provisions on the mandate contract. The mandate contract is regulated in § 566 to § 576 of the Commercial Code. Provision § 67 of the Commercial Code refers to the appropriate use of the mandate contract. A contract of mandate, unlike a contract for the performance of a function, can also be concluded orally, but the legal regulation already defines this contract as a remuneration contract. The contract for the performance of the function can also be free of charge, but the mandate contract must be remunerative, as this is one of its conceptual features.[22] That is, if the company wants the executive to perform the function without the right to remuneration, it is necessary to conclude a contract on the performance of the function.

The provisions on the mandate contract contain disproportionately more mandatory provisions compared to the amendment of the contract on the performance of the executive function. However, it should be borne in mind that even in the case of a contract on the performance of the function of an executive and also in the case of a mandate contract, the conditions set forth in § 133 to § 136 of the Commercial Code apply to the executive. Thus, even if certain things are not

[21] Nováčková D, Paškrtová L. & Vnuková J. (2023), *Cross-Border Provision of Services: Case Study in the Slovak Republic*. „Administrative Sciences", 13 (2), 54, doi:10.3390/admsci13020054.

[22] Funta, R. (2012), *The EU decline? Future prospect through investment strategy*. Paper presented at 13th International Scientific Conference on International Relations - Contemporary Issues of World Economcs and Politics, pp. 60-64.

regulated in the social contract or the mandate or the contract on the performance of the function of the executive, the legal regulation is the minimum that must be observed. For example, if the company concludes a mandate contract with an executive and does not agree on confidentiality provisions, this does not mean that the executive does not have to observe confidentiality. However, the mandatory wording of § 135a paragraph 1 of the Commercial Code regulates the obligation of confidentiality in such a way that "the executive is obliged to maintain confidentiality about confidential information and facts, the disclosure of which to third parties could cause damage to the company or endanger its interests". In practice, this means that even in the event that a non-disclosure agreement has not been agreed upon, the executive must still comply with it, since the legal regulation is applied.

The essential elements of the mandate contract include:

- determination of the contractual parties – the manager and the company and the limited liability company,
- determination of a business matter – performance of the executive function,
- negotiation of compensation – there is no possibility to negotiate a mandate contract free of charge. In the event that the mandate contract does not include an agreement on remuneration, it is necessary to pay the manager the remuneration that is common at the given time for the given work.[23]

On the basis of the above, it is more advantageous for companies to enter into contracts with executives on the performance of their functions, mainly for several reasons. First of all, the contract on the performance of the function contains a larger number of dispositive provisions, and thus this regulation is more advantageous for companies, because the contracting parties can deviate more from the mandatory legal norms regulated by the mandate contract. The second advantage is that the mandate contract must be remunerative, which the performance contract does not have to be. It is mainly used by one-person companies with limited liability, where the sole partner is also the sole manager.[24]

As regards the responsibility of the manager towards the limited liability company, several judgments of the Supreme Court of the Slovak Republic can be applied to this question. In connection with the fulfillment of the instructions of the limited liability company, if the manager commits, during the procurement of matters, another such illegal action that fulfills the elements of the substance of a criminal offense, or a misdemeanor or an administrative offense, he is responsible for such action, regardless of whether from from the point of view of civil law or

[23] Jankelová, N., Jankurová, A., Beňová, M. & Skorková, Z. (2018), *Security of the business organizations as a result of the economic crisis*, „Entrepreneurship and Sustainability Issues", 5(3), pp. 659-671, DOI: 10.9770/jesi.2018.5.3(18).

[24] Janakova, H. & Zatrochova, M. (2019). *Current modern forms of managerial education applied at technical university*. Paper presented at 13th International Technology, Education and Development Conference (INTED), pp. 2872-2880.

other relationship falling within the field of private law, it bears responsibility only towards the limited liability company.[25] By virtue of his position, the manager is also obliged to proceed with professional care when arranging matters, according to the company's instructions, e.g. from the general assembly and especially in accordance with its interests. The manager's actions contrary to his interests result in the manager's responsibility for the damage caused to the business company.[26]

5.4 Employment contract between the manager and the limited liability company

The essential question that needs to be answered is whether a natural person can be in the position of executive only on the basis of an employment contract. In the 1990s, it was common practice for limited liability companies to enter into employment contracts with executives. This is not possible nowadays. This is as a result of legal regulation, and at the same time, numerous jurisprudence of Slovak and Czech courts regulate this issue for us.

The legal regulation in § 261 paragraph 6 letter a) of the Commercial Code classifies the relationship between an executive and a limited liability company among absolute commercial obligation relationships. In the case of absolute commercial obligation relationships, neither the subject nor the nature of the activity is essential, but the essential feature is the object of the obligation relationship.[27] As a result of this, the relationship between the manager and the limited liability company will always be governed by the Commercial Code. In this case, the law already directly excludes us from concluding an employment contract as a basic legal institution of employee protection. In addition, an employment contract cannot be concluded according to the Commercial Code, but only according to Act no. 311/2001 Coll. The Labor Code, as amended (hereinafter referred to as the „Labor Code“).

Numerous jurisprudence also follows on from the above. The Supreme Court of the Slovak Republic similarly formulated the thesis in its decision that the function of an executive can only arise on the basis of a contract on the performance of the function of an executive or on the basis of a mandate contract, it must never be the subject of an employment contract. Therefore, if the employment contract contained the position of manager, it would be nonsense. These are two diametrically different institutes.[28] The Supreme Court of the Czech Republic in Judgment confirms this opinion and states: „however, since the performance of the function of a member of a statutory body is not a dependent activity within the meaning of § 2 paragraph 1 of the Labor Code, this agreement does not make the relationship between a member of a statutory body and a commercial by the corporation, labor-

[25] Judgment of the Supreme Court of the Slovak Republic No. 4 Sž 154/1999 dated May 30, 2000.
[26] Judgment of the Supreme Court of the Slovak Republic No. 3Obo 186/2007 dated March 10, 2007.
[27] Kubickova, L, Rasticova, M. & Hazuchova, N. (2022). *What Are Czech Seniors Afraid of? Study on Feeling of Safety Among Seniors*. „Sage Open”, 12 (3), DOI:10.1177/21582440221116106.
[28] Judgment of the Supreme Court of the Slovak Republic, No. 5 Cdo 92/97 dated November 26, 1998.

legal relationship. Even if this relationship is subject to the regime of the Labor Code, a member of the statutory body cannot be considered an employee."[29]

However, there may be certain situations where a natural person could be both an executive and at the same time an employee based on an employment contract. The simplest example is a situation where a natural person is in the position of executive as a statutory body of a limited liability company and at the same time this natural person is employed as a regular employee (not top management). This situation is permitted by law and there is no problem with it. This is also confirmed by the Judgment of the Supreme Court of the Slovak Republic. In his opinion, it is also not excluded that one person performs the function of the manager of a limited liability company and is also its employee. There is a strange situation when the same natural person signs the contract both as an executive (on behalf of the company) and at the same time as an employee, but the Commercial Code does not exclude such a possibility. It should be noted that this natural person will have two contracts with the limited liability company. The first will be the contract on the performance of the executive function or mandate contract and the second contract will be an employment contract.[30]

What is interesting, however, is the opinion of the Constitutional Court of the Czech Republic, which in its judgment stated that in the absence of an explicit prohibition of a member of the company's statutory body to carry out activities that belong to the statutory body in the labor-law relationship, the only constitutionally-convenient interpretation is such an interpretation that respects the principle of „pacta sund servanda". In his opinion, the commercial-legal argumentation of general courts regarding the impossibility of carrying out the activities of a statutory body based on a contract subordinate to the Labor Code is insufficient and unjustified.[31]

This opinion is also shared by the Court of Justice of the European Union, which stated in the case of Ender Balkaya (C-229/14) that a member of the management body of a capital trading company who, for remuneration, performs activities for the benefit of the company that appointed him and of which he is a fixed part and who can be dismissed from their position at any time and without restriction meets the conditions to be designated as an „employee" within the meaning of European Union law.[32] This opinion is based on the earlier decision of the Court of Justice of the European Union in the case of Dita Danos (C-232/09), according to which the concept of worker in the sense of Council Directive 92/85/EEC and the subsequent established jurisprudence of the Court of Justice of the European Union is an autonomous concept that is not can be interpreted

[29] Judgement of the Supreme Court of the Czech Republic No. 31 Cdo 4831/2017 dated April 11, 2018.
[30] Judgment of the Supreme Court of the Slovak Republic, No. 1Sža 27/2015 dated April 21, 2015.
[31] Opinion of the Constitutional Court of the Czech Republic, No. I.ÚS 190/2015 dated September 13, 2016.
[32] Judgement of the Court of Justice of the European Union Case of Ender Balkaya, No. C-229/14 dated July 9, 2015.

according to the legislation of the member states, but it is necessary to define it according to objective criteria.

However, the second option is a bigger problem in practice. This is the situation when the same natural person should hold the position of executive on the one hand and, on the other hand, be, for example, the general director, which is a position very similar to the position of executive, but it is not the same. It is true that a limited liability company must have at least one manager, but it does not have to have even one director. The executive has the scope of powers defined directly in the Commercial Code, namely acting on the outside of the company and at the same time managing the business of the company. The general director does not have defined powers in the law, so the definition of powers is left to the employment contract. Another difference is that the position of manager is implemented through contracts regulated in the Commercial Code, and the position of general director is implemented through contracts regulated in the Labor Code. In any case, the issue of the concurrence of these two positions is not clear-cut at all.[33]

The employment contract can establish the position of general director without any problems. More important, however, is the content of this employment relationship. Experts currently agree that the content of the employment relationship cannot overlap with the content of the executive function. If the business director (who is also an executive) should also provide accounting management in the job description, then the employment contract is invalid in this part.[34]

The second line of understanding of this issue is formulated by jurisprudence. In this case, the Supreme Court of the Czech Republic does not dispute the fact that if a natural person fulfills the conditions established by the Commercial Code and other generally binding regulations, he is entitled to act for an entrepreneur independently as a so-called legal representative. However, the court perceives as problematic precisely the situation when such a natural person is both a statutory body and a legal representative. For a better understanding of the issue, under the term legal representative, we can understand, for example, a business director. The Supreme Court of the Czech Republic tried to look at this issue from several points of view. If we were to proceed only from the grammatical interpretation of the legal regulation of proceedings on behalf of a legal entity and its representation, we would come to the conclusion that such a person would be simultaneously authorized to perform legal acts as its statutory body and at the same time could represent a legal entity person on the basis of legal authorization. The court emphasizes that it is not excluded that a member of a statutory body may, by virtue of his function, act only together with another person (restriction of executive authority), while, however, a person meeting the conditions of legal representation

[33] Judgement of the Court of Justice of the European Union Case of Dita Danos, No. C-232/09 dated November 10, 2010.

[34] Horvathova, Z. & Cajkova, A. (2019). *Frameworkof the sickness insurance in the Czech Republic and selected countries of the European Union*, „European Journal of Transformation Studies", 7 (1), pp. 106-125.

would not be so restricted and could perform legal acts independently. However, the court could not identify with this legal opinion, and so, using several types of interpretations, it came up with a large number of objections. The first objection consists in the fact that the highest body of the limited liability company decided that the members of its statutory body may not perform legal acts separately, but together, and so it follows from the nature of the matter that such a decision cannot be circumvented by entrusting the statutory body itself its member (or himself) by a certain activity that entitles him to act independently. The second objection consisted in the responsibility of a member of the statutory body. In general, the responsibility of statutory bodies is significantly higher than in the case of employees, as a rule in terms of the extent of responsibility, the conditions for its creation, bearing the burden of proof, etc. It should also be remembered that a member of the statutory body, under the conditions set by the Commercial Code, is not only responsible for damage caused to limited liability companies, but also guarantees their obligations. Based on the above, the court concluded that it would be a denial of the legal regulation of the liability of the statutory bodies of commercial companies and cooperatives if the statutory body itself could relieve its members of this responsibility by entrusting them with activities that would enable them to perform legal acts on behalf of a limited liability company and no guarantee. Based on the above-mentioned arguments, the court came to the clear conclusion that a person who is a statutory body of a legal entity cannot also be its legal representative.[35]

Older jurisprudence held the opposite opinion, namely that it allowed the concurrence of these functions. It is this inconsistent opinion on a complicated issue that creates legal uncertainty. However, if we follow the latest jurisprudence in matters of concurrence, significant complications may arise in the normal operation and running of the company, especially in the case of large and organizationally complicated limited liability companies.[36]

6. Conclusion

In our scientific study, we tried to provide the most comprehensive view of the statutory body of a limited liability company. There is no doubt that this feature ranks as one of the most important features. we base our opinion on the fact that this is a mandatory function that every limited liability company must have and therefore we can claim that the position of manager is irreplaceable.

In the introductory part of this study, we clarified the theories that explain how a legal person can actually exist as a certain artificially created entity, to which the law grants a number of rights and obligations. This legal entity can realize rights and obligations only through the person of the executive. Thanks to a natural person

[35] Judgment of the Supreme Court of the Czech Republic, No. 31 Odo 11/2006 dated September 15, 2008.

[36] Judgment of the Supreme Court of the Czech Republic, No. 29 Cdo 2074/2000 dated March 14, 2002.

who acts as an executive in a limited liability company, the limited liability company can act directly and personally. It is important to deal with this issue, especially because a limited liability company is the most common form of business not only in the territory of the Slovak Republic but also in other countries.

The scientific study provides an overview of the position of the manager, his scope and relatively comprehensively solves the issue of not only the commercial obligation relations between the manager and the limited liability company, but especially the labor law relationship between these two entities. The entire work is supplemented by substantial jurisprudence of the judiciary of the Slovak and Czech Republics. Using possible methods, we tried to bring the most comprehensive overview of the performance of the executive function.

As part of the investigation of the relationship between the manager and the limited liability company focused on the management of the business company, we did not encounter any serious contradictions. This relationship is unconditionally subject to the regime of the Commercial Code, either on the basis of a contract on the performance of the function of an executive or a mandate contract. A problematic and, despite our efforts, unresolved relationship is the employment relationship. Although the legislation allows the manager of a limited liability company to be an employee of this capital trading company, but not in the position of manager but only as an ordinary employee. This legal diction is based on the jurisprudence of both the Supreme Court of the Slovak Republic and the Supreme Court of the Czech Republic, which apply a strict interpretation of the norms of positive law. However, this unity of legal opinions is disturbed by the jurisprudence of the Constitutional Court of the Czech Republic as well as the Court of Justice of the European Union. Unlike general courts, however, they look at the matter not only from the point of view of positive law, but especially from the point of view of natural law and the philosophy of law. However, in our opinion, they violate one of the basic principles of legal certainty, since these opinions are often "detached" from reality. As part of the answer to the research question, we are also of the opinion that the performance of the executive function can only be subordinated to the regime of the Commercial Code and is not an employment relationship. We consider such legal regulation to be sufficient and do not recommend its addition. Based on the above conclusions, we are convinced that we have succeeded in fulfilling the set goals.

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