

Internal Governance of Associations in the Czech Republic and in the Netherlands

Kateřina Ronovská*

I. INTRODUCTION

The current Czech law and the Dutch legal regulation, could be said, contain two different approaches with respect of the regulation of the internal governance of associations.

In the Czech Republic, the Act no. 83/1990 Coll., on Association of Citizens leaves the issue of the internal organisation of associations up to their articles, merely specifying that the information about the bodies forms is an essential element of articles of association. It provides that, at the time of establishment, the minimum internal organisational structure of an association needs to be specified with respect of the purpose of a particular association.¹

This regulation is explained with reference to internal autonomy of associations but it is, to a certain extent, in conflict with the protection of justified interests of members and the protection of third party rights.

It appears from the general civil law regulation that the fundamental defining characteristic of all legal persons, i.e. associations included, is the existence of a statutory body which makes external acts in the name of an association. Without this, the existence of an association would be hardly imaginable. The following bodies tend to be commonly established: a supreme body (general meeting), an executive body (the management board) and a controlling body (supervisory board or controller).

It is, however, possible for an association in the Czech Republic to have, due to the existence of only a very general legal regulation, a single body – one which represents the association in external matters.

The Dutch Civil Code, by contrast, specifies quite strictly which bodies must and may be established and also sets up the rights and obligations of such bodies, including some provisions on the manner of appointing and dismissing, as well as the requirements placed on individual members of the bodies and their rights and duties.

The text below is a comparison² of the current Czech and Dutch legal regulations which govern this area. This article, however, also contains a summary of basic changes contained in the outline proposal of the new Civil Code³, which should be, if adopted, the fundamental basis for the law of associations in the Czech Republic.

II. THE SUPREME BODY

The supreme body of an association is mostly the general meeting of all members of the association. As a general rule the members of an association are participants of this general meeting (an assembly of an association, a congress of an association, a convention, etc).

Such a body may typically take crucial decisions concerning the actual existence and activity of the association; it is vested with the most important rights (e.g. to appoint and recall members of the management and the controlling body, deal with membership issues, decide upon the termination of existence of an association).

The Czech Act on Associations of Citizen does not specify any rules for existence, convening and decision-making of such a body and leaves their formulation up to the articles of association.

In the Netherlands, the law provides that all members must have voting rights in the general meeting,⁴ but most authors agree on historical and practical grounds that an association may also have a category of members without voting rights⁵. All members have one vote, unless the articles of association regulate otherwise.⁶ The general meeting of members as the supreme body of the association has several mandatory competences: the right to appoint, suspend and dismiss the members of the management body,⁷ to receive the annual report - including the balance sheet and statement of income and expenditure - of the management board,⁸ the amendment of the articles of association,⁹ to decide about the conversion of the association into another type of legal person,¹⁰ to decide about the merger with another association¹¹ and about the splitting of the association¹², as well as to dissolve the association.¹³ The general meeting also has, according

to Art. 2:40 of the Dutch Civil Code, all competences regarding the association that have not been assigned by the law or the articles of association to other bodies.

The management board convenes the general meeting and the chairman and secretary of the management board have similar positions in the general meeting, unless otherwise regulated in the articles of association.¹⁴ The law presupposes the personal appearance of the members at the place of meeting. The articles of association may regulate that there is a meeting of delegates instead of a general meeting.¹⁵ This happens mostly when the number of members is too high to have an orderly or efficient meeting. Often the members are then divided into sections and the delegates are appointed per section. The meeting of delegates has the same competences as the general meeting of members. That means that members who are not delegates have only the right to vote for a delegate or to be voted as such.

III. THE MANAGEMENT BODY

The management body is needed for managing and seeing to everyday matters. Its task is 'management' in the broad sense of the word (performance of internal tasks) and 'external representation'. It may consist of an individual (a president) or a group body (management board of an association, committee of an association).

Its operation is determined in the Czech Republic mainly by articles of association; unless provided otherwise, the general regulation contained in Section 20 of the Civil Code shall apply if it is the statutory body of an association.

The appointment and dismissal of members of the management body of an association is not regulated in the Act on Association of Citizens, and is left up to the regulation in the articles. The main task of the management board is to manage the organisation. The legal regulation does not expressly provide for any rights or duties on the part of members of the management board and leaves this issue entirely up to the articles of association.

By contrast, in the Netherlands, the appointment of members of the management body (board) of the association is regulated in the law. There is also given space for individual variation.¹⁶

Normally the general meeting allows the possibility to all of its members¹⁷ to directly or indirectly¹⁸ participate in the voting process. It is allowed that the articles of association regulate that less than half of the management board are appointed by others than members. Normally the members of the management board are chosen from among the members, but the articles of association may rule that members of the management are outsiders.¹⁹

The competence to *dismiss* the members of the management body (board) of an association is given to the body that has appointed the members of the management. It seems practical to assume the general meeting may also dismiss a member of the management board when the appointing body does not do so, when the concerned member of the management board does not function well.

The law describes for the association the task of the management - manage the legal person.²⁰ It thus has to do everything that, according to its purpose and stated means helps to realize the purpose of the legal person.

Legally the management board has a representative power for the organization.²¹ The management board of an association has duties towards the general meeting of members: it has to care for the proper convening – and informing – of the general meeting of members, for an orderly general meeting of members²² and for the execution of lawful decisions, taken at that meeting. The management board of an association is (for the greatest part) appointed by the general meeting of members and is responsible to that body. The management board has to render annually an account of its activities to the general meeting of members²³ and to establish the annual balance sheet and statement of income and expenditure.²⁴

The articles of association may regulate that the general meeting has to approve of certain acts of the management board. The management board of an association does not have the competence to take decisions in situations that are not regulated in the articles of associations. According to art. 2:40 of the Dutch Civil Code, this competence lies with the general meeting of members. Of course, in urgent situations, the management board can take (provisional) measures. The management board also has to make proposals in case of structural changes of the organization like conversion,²⁵ merger²⁶ and splitting.²⁷

IV. THE CONTROL BODY

The control body tends to be established mainly in order to secure supervision of economic activities of the association.

The supervisory body of an association in the Czech Republic, if established under the articles, mainly makes sure that the means of the association are used in harmony with its purpose and goals. It may consist of an individual (controller) or a group body (a controlling or a supervisory board). Its establishment is not mandated by the law even in those cases when the associ-

ation is the recipient of subsidies from public budgets, which is somewhat counter to the principles of protection of public interests. However, if an association wants to be transparent, then the existence of such a body is more than desirable.

In the Netherlands, articles of association may also establish other bodies to which specific competences can be assigned that the law does not obligatory confer to bodies regulated by law. The supervisory body (board or individual body) is not a mandatory body, but is created in bigger associations and associations with an enterprise. The law takes the existence of a supervisory board in certain rules into account.

The members of the supervisory body have the task to review the annual report, with balance sheet and statement of income and expenditure, and sign this, together with members of the management board.²⁸ The articles of association may assign more competences to the supervisory body. In general, the task of the supervisory body is to supervise the policy of the management board and the general course of affairs of the association and, if relevant, its enterprise and to advise the management body. The members of the supervisory body have to perform their task in the interest of the association and its enterprise.²⁹ The articles of association may assign the supervisory board the right to suspend the members of the management board and to convene a general meeting of members to decide about the dismissal of them. Different from what one would think, the supervisory body has not automatically the competence to represent the association in case of conflicting interests between the board (members) and the association. It may receive this competence in the articles of association.

The regulation of the appointment and dismissal of the members of the supervisory board is left to the articles of association. Mostly this is the competence of the general meeting of members.³⁰

V. OTHER BODIES

Both in the Czech Republic and in the Netherlands, some other bodies may also be created by the articles of association. These include a competition committee, a ballot committee etc.

In addition, in the Netherlands, in case that the association has not a supervisory body and in case that the annual report, balance sheet and statements of income and expenditure are not accompanied by a statement of a registered accountant³¹, the general meeting of members appoints an audit committee of at least two members.³²

VI. INTERNAL GOVERNANCE IN THE PROPOSAL OF THE NEW CZECH CIVIL CODE

In spring 2005 and again in 2008, the draft version of the new Czech Civil Code was published in the form accepted by the Ministry's re-codification committee and submitted to legal professionals for a wider discussion. Under the approved legislative intent, the first part of the draft proposal sets the legal regime of legal persons in a general manner, as well as the specification of the regulation of the corporate and foundation³³ types of legal persons, including the legal forms of associations, foundations, endowment funds and institutions. There is the intention that the Act No. 83/1990 Coll. on Associations of Citizens should be cancelled, the regulation of associations should be shifted into the Civil Code and the legal form of association should serve as a general regulation for legal persons of the corporation type. The proposal takes over some aspects from the currently valid legal regulation of associations (Act No. 83/1990 Coll.). Other features are 'borrowed' from the legal regulation of cooperatives and other business companies.³⁴

The proposal brings a whole range of changes concerning internal governance of associations. The proposed regulation in the new Civil Code relies on the traditional triad of bodies of associations. The obligatory bodies should be: the supreme body (a meeting of members) and the management body – either collective or individual (a committee, a director). The existence of the body of a control and review nature is not obligatory only if an association (in the articles) wishes so.³⁵ The proposal also includes the possibility of establishing an arbitration committee.

As regards the position of the supreme body of an association (i.e. the general meeting), the proposal delimits, in a mandatory way, its minimal competence, the manner in which it is convened and managed, the preparation of the relevant documentation, the rights of members of association in connection with the members' meeting and the invalidity of a resolution.³⁶

Legally, the position of the management body of the association is regulated by the proposal by the principle that the supreme body of an association (i.e. the general meeting) must have either direct or indirect effect on the appointment of such a body. In other cases, the legal regime of this body of the association should be determined by the general regulation of the legal position of statutory bodies, which is common for all types of legal persons.

The duty to create a control or revision body is not included, even in respect of the future, as an obligatory requirement in the draft proposal of the new act.

However, mostly, any association which wishes to be a recipient of subsidies and loans from public bud-

gets should, establish such a body in order to supervise its proper management and its transparency³⁷.

The draft proposal also includes the new possibility of establishing an arbitration committee, which is authorised to settle disputes between members and the association, including to decide on dismissing a member from the association. An objection may be filed against the decision of the commission, which is then decided upon by a court. A decision by the arbitration committee may, if certain conditions specified by law are satisfied, be directly enforceable.

The final shape of the new regulation of private law is presently still being discussed among professionals, legislators and politicians.

VII. CONCLUSIONS

To conclude, there is a clear distinction between the Czech and Dutch conceptions of internal governance of associations.

On the one hand, the Czech Act on Association of Citizens leaves the regulation of internal relations entirely and exclusively up to the provisions in the articles. The Dutch Civil Code, on the other hand, specifies quite strictly which bodies must and may be established and also sets up the rights and obligations of such bodies, including some provisions on the manner of appointing and dismissing, well as the requirements placed on individual members of the bodies and their rights and duties.

The absence of rules for the internal organisation (i.e. by a dispositive regulation that would be applied unless the articles of association provide otherwise) gives rise to a number of disputes and stalemate situations in actual practice.³⁸ This is mainly the result of insufficient delimitation of powers of the individual internal bodies established in associations.

The draft proposal of the new Czech Civil Code contains, sometimes following the model of the Dutch Civil Code, a whole range of provisions regulating the position of internal bodies of the association.

The proposed regulation is, however, relatively extensive and sometimes too influenced by the regulation of internal relations of business companies, which the author of this article does not consider to be optimal. Although the explanatory note to the draft proposal proclaims the freedom of associations when regulating their internal relations³⁹, the law sets a relatively strict regulation which appears too complex for the purposes of associations (especially small and medium size associations).

The regulation of the internal organisation of associations should, on the one hand, respect the broad conception of autonomy and self-governance of associations but, on the other, the law should provide at

least some basic internal structure of the association, mainly in order to provide protection to members and to forestall the possible creation of disputes concerning competencies.

* JUDr. Kateřina Ronovská, Ph.D., works as an assistant professor of civil law at Faculty of Law, the Masaryk University of Brno, the Czech Republic, email: katerina.ronovska@law.muni.cz.

¹ See Art. 6 Section 2 of the Act on Association of Citizens, which provides the following: The articles shall disclose: ...d) its bodies, their establishment and determination of said bodies and its members authorized to act in the name and on behalf, of the association...

² Any comparison of legal regulations always needs to take into consideration the cultural and historical differences in the development of the relevant countries. The extent and content of the legal regulation then follows from the political situation and the level of the legal culture of the given states.

³ Eliáš, K, Zuklínová, M: Consolidated version of the proposal of the New Civil Code from 30. 6. 2008, www.justice.cz, cited 8. 9. 2008.

⁴ Art. 2:38 of the Dutch Civil Code

⁵ E.g. minors, members on the waiting-list for an allotment, members who have not yet qualified in certain aspects. A minor may exercise his voting rights unless the articles of associations state otherwise. In the last case the legal representative may vote for the minor. See art. 2:13 s. 2 of the Dutch Civil Code.

⁶ Art. 2:38 s. 1 of the Dutch Civil Code

⁷ As stated at the beginning, this rule is allowed in the articles of association.

⁸ Art. 2:48-49 of the Dutch Civil Code

⁹ Art. 2:42-43 of the Dutch Civil Code

¹⁰ Art. 2:18 of the Dutch Civil Code

¹¹ Art. 2:317 of the Dutch Civil Code

¹² Art. 2:334m of the Dutch Civil Code.

¹³ Art. 2:42 s. 4 of the Dutch Civil Code.

¹⁴ See art. 2:41 s. 1 and art. 38 s. 2 of the Dutch Civil Code

¹⁵ Art. 2:39 of the Dutch Civil Code

¹⁶ Art. 2:37 s. 1-3 of the Dutch Civil Code.

¹⁷ Certain types of members may not, according to the articles of association, have the right to vote.

¹⁸ This may be via regional or sectional electors, but the electors could also be the directly appointed members of the supervisory board.

¹⁹ Art. 2:37 s. 1 of the Dutch Civil Code

²⁰ See art. 2:44 s. 1 and 2:291 s. 1 of the Dutch Civil Code

²¹ For more details, see art. 2:45 and 2:292 of the Dutch Civil Code. As in the case of public and private companies (and other legal persons) the association or foundation has only limited possibilities to object to third parties that the members of the management board have not represented the legal

person in accordance with the articles of association. See more about this in Dijk-Van der Ploeg: Van vereniging en stichting, coöperatie en onderlinge warborgmaatschappij, 4th edition, 2002, p. 171.

²² The chairman of the management board normally chairs the meeting of the general meeting of members. The chairman of the meeting has the right to establish that a decision is made and – in case of an oral proposal – the content of the decision. See art. 2:13 s. 3 and art. 41 of the Dutch Civil Code

²³ Art. 2:47 of the Dutch Civil Code

²⁴ Art. 2:48 of the Dutch Civil Code

²⁵ Art. 2:18 of the Dutch Civil Code

²⁶ See art. 2:312 of the Dutch Civil Code (concerns all legal persons).

²⁷ See art. 2:334f of the Dutch Civil Code (concerns all legal persons).

²⁸ Art. 2:48 s. 1 of the Dutch Civil Code

²⁹ This is the description of the task of the supervisory board of the public and closed companies limited by shares: art. 2:140/250 s. 2 of the Dutch Civil Code

³⁰ Compare *Rechtspersonen (Legal persons)*, (loose leaf), *Stille, Vereniging*, art. 48 nr. 5.

³¹ Or an accountant-administration consultant

³² See art. 2:48 s. 2 of the Dutch Civil Code

³³ The new term ‘foundation’ [“fundace” in Czech] is not a synonym for ‘foundations’ [nadace in Czech], but a general designation of some property base devoted to a specific social purpose.

³⁴ Many debatable issues have already been discussed with the main drafter of the proposal and subsequently modified in such a way that they correspond to the needs of the non-profit sector.

³⁵ See Art. 239 of the draft version of the general part of the Civil Code, in: Eliáš, K, Zuklínová, M: Consolidated version of the proposal of the New Civil Code from 30. 6. 2008 2008, www.justice.cz, cited 8. 9. 2008.

³⁶ See Art. 222- 238 of the draft version of the general part of the Civil Code, in: Eliáš, K., Zuklínová, M: Consolidated version of the proposal of the New Civil Code from 30. 6. 2008, www.justice.cz, cited 8. 9. 2008.

³⁷ The granting of subsidies is partly regulated by law and partly a matter of the policy of the central or local government authorities. The funding conditions are mostly not set down by law. The grant rules are set by individual ministries and public funds, e.g. the State Fund for the Environment, the Grant Agency of the Czech Republic etc. After the reform of the public administration carried out at the beginning of the new millennium, the situation has improved. Nowadays, even regional units and municipalities have their own policies on providing subsidies.

³⁸ For more details on this issue, see e.g. Telec, I.: *Spolkové právo [Law of Associations]*, C. H. Beck, Praha, 1998, p. 132.

³⁹ The explanatory note mentions the specification of the “statutory minimum”; associations may regulate their competences beyond this minimum.