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## **CORPORATE SOCIAL RESPONSIBILITY AND ITS INFLUENCE ON QUALITY OF LIFE – CASE STUDY ON ARCELORMITTAL OSTRAVA**

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### **Abstract**

This paper deals with the concept of CSR and shows how this tool is problematic (e.g. because it exceed the legal concept). Is CSR really a responsible policy or just a mere tool of marketing? CSR in practice often fails because the consumer or the investor is not able to distinguish between socially responsible and socially irresponsible companies. This issue is demonstrated on a recent concrete example of the Czech case of ArcelorMittal - Ostrava Radvanice. This practical example is demonstrating how the legal instruments were applied in this specific case; recent recodification shift in terms of CR is outlined. In conclusion the authors discuss the possibilities of improvements of the legal regulation of CSR, they recommend to assess the companies with regard to the factual concordance of declared and actually performed CSR (e.g. lessening of negative impacts on the environment).

**Key words:** *CSR, quality of life, application practice, greenwashing, enforcement*

### **INTRODUCTION**

Corporate Social Responsibility (“CSR”) is derived from the concept of “responsible enterprising” (Khandwalla, 2003). This represents securing the economic success of enterprising while respecting social and environmental interests. It means a positive contribution of the company and mitigation of its negative environmental impacts (Directorate for Enterprise, 2010). The concept of CSR has developed mainly in relation to globalization, where the pressure to maintain a market position, the dynamics of change, requirements for creation of profit and growth in revenue often mean that some companies act with utter disregard and with a single goal, which is to maximize the profit. Social Corporate Responsibility can be defined as a voluntary commitment of companies to behave responsibly within their sphere of activity towards the environment and the whole society. The importance of the concept of CSR is comprised of such method of managing the company and building relationships with partners, which leads which leads to an improved reputation and credibility of the company. (Kuldová, 2010).

Management theorists began to explore methodically the concept of corporate social responsibility in the mid-20th century. Today, the concept of CSR e.g. in Great Britain is on a much more advanced level than in any other EU Member State. This country boasts of the function of a minister for CSR, of a strong tradition and constant updating of its CSR policy. Non-governmental organizations such as Amnesty International and the World Wildlife Fund play a key role in this matter (Duda, 2010). The law enacted in 2004 e.g. brought the obligation on British companies to publish an annual report on sustainability. Consciousness of social responsibility is well developed in Sweden too. Since 1999 large companies are obliged to publish the impact of their activities on the environment. Besides this environmental criterion, the Swedish approach to CSR is also reflected in its strong commitment to responsible foreign trade and investment. The governmental Swedish Partnership for Global Responsibility brought to Sweden exemplary upholding of the OECD Guidelines for Multinational Corporations (Prskavcová, 2007).

In contradistinction to the Western European nations with traditional democratic systems, CSR was “discovered” in the Czech Republic in the 1990s in relation to this world-wide trend. Of course, the phenomenon of CSR has been a widely discussed topic in recent years, especially in relation to multinational corporations violating in the very principle of their function a so-called triple-bottom-line.

## **METHODOLOGY**

The study was conducted in the form of a critical analysis of available data from related literature. Data for this study was collected using a number of documents dealing with CSR and quality of life. The documents are analysed in order to develop understanding of the relationship between CSR and law because there is only a little attention paid to this issue. Authors not only describe it but they also provide a new conceptual theoretical framework. This study therefore provides an important opportunity to advance the understanding of this field and serves as a necessary starting point to further empirical research. The aim of this study is to shed light on this topic through an examination of the state of approaches set by multinational corporations and recent shift in legislation as well as in jurisprudence. In conclusion the authors provide several recommendations and offer a view *de lege ferenda* with relation to New Civil Code and upcoming shift in jurisprudence. The article shows that not only the law implies all the changes, but the changes are influenced by the whole socio-economic reality.

## **CSR AND MULTINATIONAL CORPORATIONS**

We may understand the concept of CSR as an answer to the disconcerting situation if the society that is based on a ruthless profit. It concerns a complex support of priorities related to fulfilling the quality of life - as opposed to simple assessment of prosperity indicators, as it was at the beginning of the 1970s, when the focal point of interest were mainly the economic aspects of the quality of life. Nowadays the environmental aspects of the quality of life are moving to the forefront. Some multinational corporations (e.g. Wal-Mart Stores, British Petroleum, Toyota Motors, General Motors, AXA, Citigroup, HSBC Holdings and others) often encounter in their enterprising a conflict of interests with the concept of CSR. Today they are considered a new type of power, emancipated from the influence of governments, but forming the governmental decisions (Hofmann, Meloy, 2013). Multinational corporations develop economic activities on several national markets. They feature high geographical flexibility, and can quickly react to the changing local conditions by migrating their activities to more advantageous localities in another part of the world.

Multinational corporations are currently being criticized mainly for violating environmental standards and for the ecological burden of their actions, as well as for their avoidance of responsibility after accidents as well as for pollution of the environment where the local population live, etc. Many multinational corporations are trying to improve their image - that is negatively influenced by their environmentally unfriendly activities - by “green” proclamations (greenwashing) and advertising campaigns. Some companies present activities to which they are legally bound as their own voluntary acts. In certain cases, they hide the real impact of their activities, and use environmental rhetoric to gain sympathy. Meanwhile we must not forget about the opportunity of multinational corporations to use the highest quality legal services and about their capacity to pay possible damages mainly for environmental pollution. Independent multinational corporations then often attempt to change legislation to make it as advantageous for them as possible. They use multifaceted lobbying activities to achieve this. On the other hand, the media can disrupt a systematically created image created by an army of advertising and marketing agencies, press secretaries, PR experts and their positive effect on social progress, including their publicly proclaimed concepts of social responsibility. However, only marginal attention has yet focused in the Czech Republic on the issue of multinational corporations. Today however, also in our country, certain cases have begun to appear from legal application practice that illustrate that some companies originally did not take their proclaimed concept of CSR so seriously, though they were ultimately forced by the power of the public to remedy and reassess this, in essence, very cavalier attitude towards declared values. These large companies (as envi-

ronmental polluters) are often taken aback by the surprising move of a court, which sided with the opponent and imposed upon such companies the obligation to perform (their own declared) ecological measures, while ruling against any alleged breach of the principle of predictability of a judicial decision. This new trend in decision-making practice is proof of the overall new social view of CSR and the quality of life in the CR.

## **CASE FROM APPLICATION PRACTICE**

It is possible to demonstrate the problem of social responsibility in the growing influence of the weaker party in environmental law. This is then reflected in the overall environmental view on protecting the quality of life and on instruments for enforceability of this law, see Dudová (2013). It is interesting to observe how investors, or key players in industry, are gradually being forced to adjust to this trend. In this context we can mention a case (that happened in the Czech Republic) of a major industrial polluter and “a noise producer” in the Ostrava region - the company “ArcelorMittal” (hereinafter referred to as the “company”); (Frank Bold Society, 2014). A lengthy court battle began in 2008 against this Company brought by the plaintiff who owns the adjacent property regarding annoyance caused by excessive noise. A crucial factor in the entire proceedings is the fact that this concerned a neighbour’s complaint, thus it was a private law dispute. The result of the dispute basically forms a fundamental shift in social perception of responsibility of an environmental polluter; it means that even the average person can protect himself against economically much more stable player and defend his rights. In this case the verdict of the District Court in Ostrava of 14. 11. 2012, case no. 33C 343/2008-314 and the Regional Court in Ostrava of 13. 9. 2013, case no. 57 Co 223/2013-390, imposed the mentioned company the obligation to refrain from noise disturbance emanating from machines and equipment operated by the company so that the level of the noise spreading into the protected outer area of the house of the plaintiffs would not exceed a level of 40 dB in the hours from 10:00 p.m. to 6:00 a.m. as laid down by valid legislation (see the provisions of Sec 31 of Act No. 258/2000 Coll., on Public Health Protection, as amended, and implementation legislation in the intentions of Government Decree No. 272/2011 Coll.).

The company appealed against the judgement of the court of first instance, in which it mainly objected that the principle of predictability of the court decision has been breached, because the court deviated from the existing consistent judgement-making practice, thus allegedly affected the right of the company to a fair hearing, and the verdict was really surprising. The company for its over-limit noise annoyance wanted to use mainly the exemption from noise limits that have been imposed by the regional public health authority. The fundamental problem of the dispute was to judge whether in this specific case, annoyance by noise exceed the common limits of the neighbourhood. In the company’s opinion, the court erred if it based its ruling solely on the finding that in the particular matter, the public health noise limit was exceeded, and then deduced from this finding that annoyance of the plaintiff is occurring above the level relative to conditions. The company held the opinion that the court should look at circumstances such as the local custom of noise annoyance. The company argued in this context that this is increased the level of noise also in consequence of automobile traffic and other sources of noise, thus the borders of the common level of noise the in the neighbourhood are “shifted”. The question of local conditions was repeatedly discussed in the dispute, especially in relation to the administrative exception from upholding noise limits permit to the company.

The court of appeal arrived at the conclusion that the appeal of the company is not justified, and thus upheld the decision of the court of first instance. It mainly pointed out the circumstance that if the company decided to do business in the given location in this specific field, the Public Health Protection Act and its implementation legislation were already in force and valid at that time. When the company began its business in this locality legal standards concerning public health protection with determined limits of health protection against noise were already valid, and it was the duty of the company to act according to the legislation. Therefore, it is not possible to regard the request of the plaintiff as unreasonable interference into the company’s ownership rights in the given matter. In terms of the period of occurrence of adverse affects of noise on health. The court found it to have been proven that the property in question had been under the ownership of the plaintiff and his family since the 1940s, thus it could not be attributed to the detriment of the plaintiff that he implicitly

accepted the given condition. General courts arrived at the conclusion that in this case, the level of noise from other sources is not decisive for judging this case, and it does not relieve the plaintiff of his right to demand protection against the company. The important fact in this dispute is protection of health. The actual exceeding of the public health limit, which is determined by the legislator for health protection, leans towards the conclusion that the health of the plaintiff and his family is threatened by the company's activities. The courts thus concluded that the company is obliged to refrain from the negative influence of excessive noise. The company was forced to accept the rendered decision and secure the appropriate noise protection measures, even despite its repeated attempts to reverse these court decisions.

This case significantly moved the boundary of legal consciousness. We consider it essential in the given context to observe the current enforcement of rights according to the new legislation. In the intentions of the provisions of Sec 1012 of the New Civil Code ("NCC"), the owner is prohibited from disturbing the rights of other persons above a level relative to the conditions, or from performing such activities, whose main purpose is to annoy other people or cause damage to other people. Under the provisions of Sec 1013(1) of the NCC, the owner is obliged to refrain from anything that causes the situation that *inter alia* even noise and other similar effects (emissions) penetrate the estate of another owner (neighbour) in a limit not relative to the local conditions, and significantly limit common use of the estate; this also concerns animals entering. It is prohibited to bring emissions (air pollution) to the estate of another owner regardless of the level of such influences and degree of annoyance of the neighbour, unless it leans upon a special legal reason. The legislation contained in Sec 1013(2) of the NCC may be mentioned as a fundamental change in the existing legal consciousness.

According to the new legislation is applied that if emissions are the consequence of operation of a factory or similar facility, which was officially approved, the neighbour is only entitled to compensation for injury in money, though the injury was caused by circumstances not considered during official negotiations. This is not valid if during performance of operation, the scope in which it was officially approved is exceeded. The prohibition of emissions in the first paragraph of Sec 1013 are derived from the previous legislation (Sec 127 Act No. 40/1964 Coll., Civil Code), whereas the listing of emissions remains non-exhaustive. The new version distinguishes between direct and indirect emissions. Direct emissions are direct continuation of the owner's activity (e.g. such as channelling drainage water into neighbour's estate), and indirect emissions which are not directly evoked by this activity, because in its open consequence it is only conditional to natural influences (falling ash, spreading of noise, proliferation of rodents on unused grounds or not duly maintained ones, etc.). Indirect emissions are prohibited under conditions that they are not relative to the local conditions and are significantly limiting to the normal use of the grounds in the given location. In the intentions of the provisions of Sec 1013(2), the NCC now eliminates any possibility of seeking an injunction for noise emissions from an officially approved factory (in case of noise emissions, this concerns indirect emissions); however, if such emissions exceed the normal level and significantly limit use of the neighbour's estate, the neighbour is entitled to compensation for this damage.

Since the regulation for compensation for damage stands in the NCC on the principle that upon its compensation, *restitutio in integrum* take precedence, which in the given case is not possible (the cause would have to be removed, thus the officially approved factory operation), it is possible to request only monetary compensation. Of course, this changes the overall view of the law on the quality of life and protection from adverse influences of the environment. Factual protection (not only) from noise emissions is thus again becoming hard to enforce (even despite the newly established positive trend in the decision-making process of the courts). An officially approved exception from noise limits basically means legitimizing operation in the mode of *contra legem*. It is therefore a question whether officially approved operation exceeding the noise emissions limits according to permitted exceptions remains in line with newly established legal criteria, compare with Dudová (2011). Therefore, in the given context, the interpretation and application of this new legislation will have an utterly important meaning, in just this regard to exceptions from noise limits of officially approved operation. Hence, it is necessary to consider most thoroughly whether *de lege ferenda* exceptions should be eliminated from noise limits in the interest of protection of the quality of life and human health, or at least adequately amended.

## **CONCLUSION**

The Supreme Court in its judgment of 28. 1. 2015 Ref. No. 22 Cdo 636/2014, came to a different conclusion. In his opinion, in addressing the question whether the operation of facilities serving the industrial production, whose work is otherwise in compliance with public law, beyond a reasonable level, it must come from a comparison with other locations in which they operate similar facilities; if the site operates under the relevant permits, industrial production, not reasonable level compared with places where such production is operated.

The Supreme Court concluded that in this case the courts wrongly came from the fact that the operation of the business of the defendant cancelled the plaintiff beyond limits set by hygienic limits, the exemption for body hygiene services not considered as relevant and considered whether plaintiff defendant cancelled in excess of reasonable similar industrial sites. According to the Supreme Court the previous court decisions based on incorrect legal assessment of the matter under § 241 of Code of Civil Procedure.

The authors of this paper lean towards more thorough support of the concept of CSR in the Czech Republic. To explain the stated issue, they attempted inter alia to demonstrate potential misuse of this concept when the companies only want to improve their image. The authors believe that the misuse of the image of the corporate responsible company is a form of unfair competition. The issue of social responsibility deserves, in the future, an entire series of empirical examinations, which will help uncovering the true values preferred in a certain company and their concordance with the concept of CSR. In the future the authors recommend assessment (and possibly sanctions) of companies with regard to the factual concordance of declared and actually performed CSR in lessening negative impacts on the environment (i.e. more closely examine how the company attempts to present itself to the public and what the reality is).

## **SUMMARY**

We may understand the concept of CSR as an answer to the disconcerting situation in a company founded often on ruthless profit-making. In the Czech Republic, this concept has expanded in the past two decades with regard to the social and environmental influences on the quality of life. Some multinational corporations often encounter in their enterprising a conflict of interests with the concept of CSR. Many multinational corporations are trying to improve the overall image about their often negative influence on the environment through “green” proclamations (greenwashing) and advertising campaigns. Some companies present activities to which they are legally bound as voluntary acts. Today however, in our country, certain cases have begun to appear from legal application practice illustrating that certain companies originally did not take their proclaimed concept of CSR so seriously, though they were ultimately forced by the power of the public to remedy and reassess this, in essence, very cavalier attitude towards declared values. The authors demonstrate this issue as it stands in the Czech Republic by a current case from application practice. This concerns a private case, a so-called neighbour vs. neighbour legal dispute regarding annoyance by excessive noise against the company Accelor Mittall in Ostrava-Radvanice. The result of the dispute basically forms a fundamental shift in social perception of liability of an environmental polluter in that even the average person can protect himself against a much stronger player economically, and defend his rights. In the paper, the authors indicate a legislative shift in similar cases after adoption of the new Civil Code. The company being sued was eventually forced to comply by means of enforcement of one’s right to receive corrective actions, which however did not prevent the company from taking advantage of this necessity on its Webpage. Application practice of the courts is still not comprehensive in this matter as we see from Supreme court decision. The authors of this paper lean towards more thorough support, sustainable decision-making and inspection of CSR in the Czech Republic.

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