



**British Institute of  
International and  
Comparative Law**

# COLLECTIVE REDRESS CZECH REPUBLIC



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**British Institute of  
International and  
Comparative Law**

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The British Institute of International and Comparative Law exists to advance the understanding of international and comparative law, and to promote the rule of law in international affairs.

#### Vision

To be a leading research institute of international and comparative law and to promote its practical application by the dissemination of research through publications, conferences and discussion.

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# I. General Collective Redress Mechanism

There is no general collective redress mechanism in Czech law beyond traditional rules on joinder, *lis pendens* or *res iudicata*. Injunctive relief is provided for in sectoral proceedings, such as in consumer cases.

## II. Sectoral Collective Redress Mechanism(s)

### 1. Scope/ Type

There is special legislation providing for representative actions, regulating the special role of exactly defined subjects (representatives) who have a right to initiate judicial proceedings on behalf of represented groups. Yet those represented groups (e.g. consumers) are not parties to the judicial proceedings. The dispute is resolved by the court as classical contentious proceedings without any real particularities.

The list of special legal acts regulating the status of representatives includes:

- Act No. 634/1992 Coll., Consumer Protection Act
- Act No 89/2012 Coll., Civil Code
- Act No. 221/2006 Coll., on Enforcement of Industrial Property Rights
- Act No. 408/2000 Coll, on the Protection of Plant Variety Rights

The Consumer Protection Act sets out in § 25 that a motion to begin injunctive proceedings concerning the protection of consumer rights may be filed by:

- an association or professional organisation which has a legitimate interest in protecting consumers, or
- an entity set out in a “list of qualified entities”, while the right of the court to re-examine if the entity initiating court proceedings is a qualified entity shall remain unaffected. The list of the qualified entities is maintained by the European Commission and published in the Official Journal.

The Czech Republic is authorised to propose the inclusion of new association on the list, providing that this entity:

- has been incorporated in compliance with the laws of the Czech Republic,
- has been active in the field of consumer protection for a minimum of two years,
- is independent and not-for-profit, and
- has duly settled all its financial liabilities to the Czech Republic.

An applicant association shall file its application for inclusion on the list of the qualified entities with the Ministry of Industry and Trade, accompanied with the documents supporting compliance with the abovementioned requirements. If the association meets the requirements, the Ministry of Industry and Trade shall propose its inclusion on the list of the qualified entities to the European Commission.

ii. The Civil Code (CC) grants specific legal persons the right to initiate representative proceedings in two situations. According to § 2989 para 1 CC such legal person is entitled to defend the interests of competitors or customers via cease and desist orders ending situations of unfair competition.<sup>1</sup> Secondly the CC grants the right to legal persons established to protect the interests of small and medium-sized entrepreneurs to invoke the ineffectiveness of standard contract terms derogating from provisions on the time of performance or the statutory default interest rate if such clauses are grossly unfair (§ 1964 CC, as well § 1972 CC).

iii. According to § 2 para 1 of the Act on Enforcement of Industrial Property Rights, the Right holder or proprietor shall have authority to enforce rights under this act as well as a licensee and a professional organization duly recognized in its country of origin as having authority to represent the industrial property rights holders or proprietors (“Authorized Person”).

iv. According to § 26a Act on the Protection of Plant Variety Rights a special professional organization with authority to represent the rightholder (breeder who has been granted plant variety rights) is entitled to file an action as representative body. In the present state of things this entitlement is held by the Variety Owners' Cooperative (<http://www.druvod.cz/langen-5.html>).

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<sup>1</sup> However this right of representative entities is not generally applicable in whole area of unfair competition. CC excludes some special categories of unfair conduct from their disposition, in particular the question of ‘free-riding’ on the reputation (section 2982 CC), bribery (section 2983 CC), detraction (section 2984 CC) and violation of commercial secret (section 2985 CC).

## 2. Injunctive or compensatory relief

In most cases, the only relief that may be granted in proceedings described above is the injunction restraining further defendant's conduct. The recovery of consequential damages takes place in separate proceedings independent of each other. This leads to inefficient use of judicial resources and potentially divergent decisions.

## 3. Procedural Framework

Proceedings initiated by the authorized legal entity follow classical contentious judicial proceedings. Jurisdiction of the court is determined according to the general criteria set out in the CCP. Only the representative and the defendant are parties to the proceedings. The decision is binding only between the parties (with the exceptions mentioned below). It is possible to conclude a settlement (section 99 CCP). The court shall decide to approve the settlement. It shall not approve it if it infringes the law. The approved settlement has the same effects as a final judgment.

The financing of this type of proceedings is not specially regulated. Legal expenses insurance is regulated in Section 2856 et seq. of Act No 89/2012 Sb., the Civil Code. By a contract covering insurance for legal expenses, the insurer undertakes to pay the insured person's costs which are associated with the assertion of his rights, and provide associated services. These provisions are based on the implementation of Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance. Section 2857 of the Civil Code provides that stipulations restricting the insured person's freedom of choice of representative are disregarded. [Article 4(1)(a) of the Directive].

In the Czech Republic, contingency fees are permitted [see Article 10 of the Resolution of the Board of the Czech Bar Association No 1/1997 laying down the rules of professional ethics and competition of lawyers in the Czech Republic (Code of Ethics)]. However, a reasonable contingency fee should generally not exceed 25% (see Article 10(5) of the Code of Ethics).

The paying of judicial costs is governed by the 'loser pays' principle.

Only the parties of the proceedings are entitled to initiate the enforcement of the final decisions.

It is important to stress here, that some of aforementioned special representative actions fall within the scope of § 83 para 2 and § 159a of CCP. This means, that also for this type of proceedings, the rules on *lis pendens* and *res judicata* apply in a broad way. This concerns in particular injunctive proceedings against unfair competitive behaviour and unlawful conduct in consumer law. In these categories of disputes, if the action is brought by a representative body (or a court already made a final decision on the merits in a representative action), the concerned subjects (rightholders) can no longer initiate proceedings or be a party to the present proceedings, but (controversially) the decision is still binding on them (unlike in classical proceedings where the decision is binding only *inter partes*).<sup>2</sup> This broad interpretation of *lis pendens* and *res judicata* limits the right of concerned persons to get the access to court. In all other cases (e.g. protection of the interests of small and medium-sized entrepreneurs, enforcement of industrial property rights and protection of plant variety rights) the classical *lis pendens* principle according to section 83 para 1 CCP applies. This means that initiation of proceedings precludes further proceedings being brought before the court between the same parties (i.e. the plaintiff and the defendant), but any other concerned person may bring an action, i.e. there may be several cases involving different claimants on the same subject matter. The Court should join these concurrent proceedings. However, this is not a mandatory. Joining cases is fully in the court's discretion. If there is a previous judgement on the same subject matter, the court must take it into account. It is also in the discretion of the court whether it will adhere to the previous judgement or deviate from it. In latter case, it needs too duly explain why it followed a different reasoning.

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<sup>2</sup> Similarly, if a person concerned (the holder of the right) initiated the proceedings, representative body lost the right to fill the action or become a party to the proceedings.

## 4. Impact of the Recommendation/Problems and Critiques, including

### a. Consequences where no collective redress mechanism is available

The current absence of collective redress mechanisms for individuals is unsustainable. This is also acknowledged by the Ministry of Justice, which has set up a working group on the preparation of legislation on collective redress. According to the Ministry's legislative plan, the draft articles/objectives of the future legislation should be presented in September 2017.

The key points of the draft legislation are:

- The source of inspiration lies in American class action proceedings.
- The material scope of the Act should be general, i.e. it should not be limited to consumers, unfair competition etc.
- All types of claims (i.e. compensation, delay, determination, etc.) should be permissible,
- The procedural legitimation (standing) before the court should be primarily granted to the members (individuals) of the concerned group. The right of associations dedicated to the protection of certain interests to initiate collective redress is also considered.
- The opt-out system should be applied as a general principle. There are discussions about the introduction of an opt-in system for cases in which it would be required by the circumstances (based on the courts discretion and decision).
- Financing/funding of collective redress should be primarily based on private resources.
- A special stage of the proceedings should be introduced in the form of a 'certification' decision. Here the court should make a decision by means of a resolution with the possibility of appeal against it.
- The draft legislation significantly enhances the role of the judge. Judges will have a larger discretion than in "classical" individual proceedings.

### b. Problems relating to access of justice/fairness of proceedings

Currently, the crucial problem is access to court. The wording of § 83 para 2 CCP prevents other plaintiffs bringing actions concerning the same claims resulting from the same conduct against the same defendant.

Those concerned by the proceedings can only participate as interveners. Often, however, they did not receive any information about the fact, that such proceedings were initiated. Nonetheless the decision is binding on them. However, they are not entitled to file a motion for enforcement proceedings in case a defendant fails to fulfil his duties.

Although the rules in the CCP are sometimes referred to as a "collective action" under the CCP, there is no collective protection of rights present here.

## III. Information on Collective Redress

### 1. National Registry

There is no national registry in the Czech Republic.

### 2. Channels for dissemination of information on collective claims

Currently, the courts have no duty to publicly inform about the initiation of proceedings. On the other hand, the CCP enables - in matters of rights violated or threatened by conduct of unfair competition, protection of intellectual property rights and in matters of consumer protection - that the court shall be authorised to grant the participant, whose motion was satisfied, upon request and depending on the circumstances of the case, the right to publish the judgement at the expense of the unsuccessful party. The court shall also determine the extent, form and manner of publication (section 155 para 4 of CCP). This ensures that those who wish to take an action for compensation are informed about the outcome of the proceedings.

## IV. Case summaries

As there is a serious gap in the legal regulation of collective redress, there are no key cases until now that would be worth mentioning.

Charles Clore House  
17 Russell Square  
London WC1B 5JP

T 020 7862 5151  
F 020 7862 5152  
E [info@biicl.org](mailto:info@biicl.org)

[www.biicl.org](http://www.biicl.org)

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