

## Summary

The thesis is focused on a specific area of the private law and concerns with questions of legal capacity of natural persons, specifically with the legal conception of acquiring and restricting legal capacity. The main attention is dedicated to task of civil courts in cases of reduction capacity. The first chapter deals with the basic legal terms crucial for this issue – person, legal personality and legal capacity and their mutual relations. On the grounds of interpretation of article 5 of the Charter of Fundamental Rights and Freedoms, we can say, that in our legal order everyone is a person in legal meaning of the word. It means that everyone has a legal personality as an attribute of person and cannot be deprived of it. Legal personality means to be capable of having legal rights and duties and it is a prerequisite to legal capacity, which determines the ability of person to amend (enter into, transfer, etc.) her rights and duties. The thesis shows that on the constitutional level the legal personality and the capacity are two sides of the same coin, while for the private law the separation of these two attributes is typical. The reason for it is based on fact, that while the legal personality arises purely from the nature of a person, the capacity depends on a physical maturity. This is also the reason why a person does not acquire capacity on birth. Instead the natural person obtains capacity gradually depending on her physical development. Current civil code as well as the new civil code set down 18 year of life as the general criterion for acquisition of full legal capacity. By reaching this age a person obtains the majority.

The second chapter is concerned with the cases, where the capacity of natural person is limited directly by the law. The first case relates with the minors. In general their range of capacity is related to expected physical mature of their age. Current civil code admits obtaining majority and full capacity to a minor who reaches 16 years of life by the marriage with permission of the court. The new civil code also admits to obtain full capacity by marriage with permission of the court but it does not connected with the acquiring of majority. The new civil code also knows the institute of emancipation, which allows the court to give full capacity to a minor (16 years old or older) and knows other ways, how a minor can gain larger capacity with permission of the court than he or she has by the general criterion. Such solution allows more to take into consideration for an individual physical level of minors. The second case relates with people with

mental disorder, which makes them incapable to control or to understand their actions. Common rule for both cases is that the actions beyond their capacity will be considered invalid. According to the current civil code it will be absolute invalidity. The new civil code prefers relative invalidity.

The third chapter is concentrated on the question of deprivation and limitation of capacity determined by judgment. In general we can say, that the intervention of court to capacity of a person is used in cases, when an adult man should have full capacity by general criterion, but actually is not capable of doing his own decisions in certain areas (or in any area) in terms of his intellect and volitional development as a results of a long-term mental disorder. The institutes of deprivation of capacity and limitation of capacity can be used only in order to protect an interest of the concerned person. The thesis points out, that these institutes are only instruments, which the current civil code offers in order to protect persons with a mental disorder. Common characteristic for both of them is a conception of substitute decision making. It is based on construction, when a guardian makes decision instead of the concerned person. He acts on behalf of the person in the areas, where his or her capacity was limited or deprived. The thesis also analyses current problems and criticism connected to fundamental rights and freedom and reflects on conformity of deprivation and limitation of capacity with constitutional order. It also points out that current regulation is in contradiction with the Convention on the Rights of Persons with Disabilities, from which arise obligation for its party to pass legal frame for an alternative solution for people with mental disorder.

The fourth chapter is deals with the legal solution for people with mental disorder in new civil code. In general we can say that new civil code fulfills the requirements laid down by the Convention. The deprivation of capacity will be invalidated and the limitation of capacity will be used only as the last option in cases, where less invasive solutions cannot be used. In addition the court will be obligated to review all persons limited in capacity by judgment every three years, unless anyone else requests recovery of capacity due to changed circumstances. The alternative solutions like representation by a member of the household are based on conception of supported decision making. It is based on idea of maximum preservation of capacity, when a person with mental disorder makes her or his own decision in legal areas with help or support of another person. The biggest problem is that the new institutes as alternative

solution to limitation of capacity are unknown in our legal order and the explanatory report does not contain explanation in a needful extent. That can lead to many problems in practical use of these institutes.