example, where the missing person owned property in Slovakia or where persons connected with the missing person permanently reside in Slovakia. The effects of such a declaration are limited. Under Section 43 para 2 PILA, the declaration produces legal effects only in relation to persons permanently residing in Slovakia and property situated in Slovakia. In this respect, the provision differs from an ordinary declaration of death concerning a Slovak national. The Slovak court does not determine the personal status of the foreign national in a comprehensive sense. Rather, it resolves specific legal questions connected with the Slovak legal order. The fact that the foreign national's home state may regard declarations of death concerning its own nationals as falling within the exclusive jurisdiction of its courts does not prevent Slovak courts from acting under Section 43 para 2 PILA. At the same time, a declaration issued by a Slovak court may likewise produce no legal effects in the foreign national's home state

### 1.1.3.2 Determination of the Applicable Law

#### *Actual Death*

Death terminates legal personality and thereby ends the existence of a natural person as a subject of law. In Slovak PIL, the status consequences of death are governed by the same law that governs legal capacity generally. This follows from Section 3 para 1 PILA, under which legal capacity and capacity to perform legal acts are governed by the law of the person's nationality (*lex patriae*). The termination of legal capacity through death is therefore assessed under the same legal order.

In practice, death itself rarely creates difficult conflict-of-laws questions. Cross-border issues arise mainly in relation to registration and proof of death. The key question is usually whether, and under what conditions, a death that occurred abroad may be registered in Slovakia. Another issue concerns the evidentiary value of a foreign death certificate.

Where a Slovak national dies abroad, the death is registered under the relevant provisions of the Births, Marriages and Deaths Registration Act (Act No. 154/1994 Coll. As amended). A death certificate issued by the competent authority of the state where the death occurred is generally accepted in Slovakia as proof of death. This remains subject to the general requirements governing foreign public documents.

Within the European Union, these formal requirements have been substantially simplified. Regulation on public documents abolishes legalisation and apostille requirements for certain categories of public documents, including documents relating to death.

The consequences of death for succession must be distinguished from the status consequences of death itself. They are dealt with separately within succession law.

***Declaration of Death***

A declaration of death is a judicial decision establishing a presumption that a person has died. It is used where death cannot be proved in the ordinary way. This may occur where a person disappears in circumstances making survival highly improbable but no body has been recovered. It may also apply where death is certain but cannot be formally proved.

The declaration does not amount to factual proof of death. Its purpose is to resolve the legal uncertainty connected with the disappearance of the person and to allow legal relations affected by the disappearance to continue.

Slovak substantive law distinguishes between two situations. The first is where it is certain that the person is no longer alive, but death cannot be proved in the prescribed manner. The second concerns missing persons where, having regard to the circumstances, it is probable that the person has died. The substantive and procedural rules governing both situations are set out in Section 168 of the new Civil Code and in Sections 220 et seq. of the Code of Non-Contentious Civil Procedure.

Within the framework of Slovak PIL, declarations of death are governed by a special provision contained in Section 43 PILA. The structure of that provision is unusual. It cannot easily be classified either as a pure jurisdictional rule or as a conventional conflict-of-laws provision.

In relation to Slovak nationals, Section 43 PILA does not determine the applicable law. It merely authorises Slovak courts as exclusive to declare a Slovak national dead. In such cases, Slovak law applies as *lex fori*. This follows from the fact that such situations will often lack a genuine foreign element: the application is brought before a Slovak court and concerns the personal status of a Slovak citizen.

The position is more complex in relation to foreign nationals. Under Section 43 PILA, Slovak courts may declare a foreign national dead where

the person had property in Slovakia or where such declaration is necessary for the protection of rights connected with that property. In this respect, the provision has certain conflict-of-laws features, since it permits Slovak courts to issue a declaration affecting the personal status of a foreign national on the basis of a specific connection to Slovakia. At the same time, the practical effects of such declaration are limited primarily to the Slovak legal order and to legal relations connected with Slovakia. The provision therefore does not operate as an ordinary choice-of-law rule determining the applicable substantive law in the classical sense.

The provision nevertheless reflects the traditional connection between matters of personal status and nationality in Slovak PIL. A declaration of death directly affects the legal status of the person concerned, even though Section 43 PILA does not operate as a conventional choice-of-law rule.

### 1.1.4 Persons with Multiple Nationalities, Stateless Persons and Persons of Unknown or Indeterminate Nationality

While identification of the person's *lex patriae* is straightforward where a single nationality is held, complications arise in the case of multiple nationalities. Where the competing nationalities include Slovak nationality, Section 33 para 1 PILA resolves the conflict in favour of Slovak law. This reflects a traditional priority rule favouring the law of the forum state (*lex fori*) in cases involving its own nationals.

In cases of multiple nationalities where none of them is Slovak, Section 33 para 2 PILA provides that the decisive nationality is that which was acquired most recently. The provision thus relies on a chronological criterion rather than on an assessment of the person's closest connection.

A different rule applies where person have no nationality, where their nationality cannot be established, or where it cannot be determined which nationality was acquired last. Under Section 33 para 3 PILA, such persons are to be treated as if they were a national of the state in which they had their domicile at the relevant time. If domicile cannot be ascertained, the law of the state of their residence applies. If even that cannot be established, the person is treated as if they were a Slovak national.

This mechanism establishes a hierarchical set of connecting factors, providing a substitute connecting mechanism where nationality cannot be

relied upon and ultimately to a legal fiction ensuring that a governing law can always be identified.

## 1.2 Legal Persons

The personal statute of legal persons covers the core questions relating to the existence and capacity of entities that the law treats as independent legal subjects (e.g. their formation and dissolution, their capacity to hold rights and obligations, capacity to perform legal acts, their internal structure, and the liability of their members or shareholders for the entity's obligations). These questions have obvious cross-border relevance wherever a company or other legal entity operates in, or enters into legal relationships with persons connected to, a state other than the one under whose law it was established (legal relationships with link to several legal orders at the same time).

The substantive differences between legal systems on these questions are considerable. The conditions for forming a company, the rules on minimum share capital, the governance requirements, and the liability regime for members all vary significantly. The determination of the applicable law is therefore not a technical formality. It determines which substantive rules govern the entity's life from formation to dissolution.

### 1.2.1 Connecting Factors: The Incorporation Principle and the Real Seat Principle

Two main connecting factors have historically competed for primacy in determining the personal statute of legal persons, and their rivalry structures the entire subject. The first is the incorporation principle (*inkorporačný princíp*), and the second is the real seat principle (*princíp sídla*).

According to the incorporation principle, the personal statute of a legal person is the law under which it was created. The applicable law is fixed at the moment of formation and remains constant for the life of the entity, irrespective of where the entity subsequently carries on its activities or where it transfers its seat. On the other hand, under the real seat principle, the personal statute of a legal person is the law of the state in which the entity has its actual, effective seat. In other words, it is the place from which the legal person is genuinely managed and directed.

When comparing these two criteria, we can say that the incorporation principle has the advantage of predictability and stability. Once a legal person is formed under a given law, that law governs it throughout, and the applicable law is ascertainable from the public register of the state of incorporation. Its weakness is that it permits the founders to choose the law most favourable to their purposes regardless of any connection between that law and the state where the entity will actually operate. This phenomenon is illustrated most vividly by the practice of incorporating companies in jurisdictions with permissive requirements, such as the state of Delaware in the United States, not because the founders have any genuine connection to that place but because its company law is considered particularly advantageous.

The real seat principle, conversely, ties the entity to the law of the state with which it has the closest factual connection. It is less susceptible to regulatory arbitrage. Its difficulties are practical. The real seat is not always easy to determine, especially for groups of companies with distributed management, and a change of real seat, which may occur without formality, can trigger a change of applicable law with potentially disruptive consequences for the entity and its creditors.

For completeness, it is also necessary to mention the third connecting factor, the control principle (*princíp kontroly*), which determines the personal statute by reference to the nationality of the persons who exercise controlling influence over the entity.[10] This criterion was historically relevant in wartime and post-war contexts where the identification of enemy-controlled companies was necessary, but it has limited practical importance in contemporary PIL and is not used in Slovak law.

### 1.2.2 Incorporation Principle in the Slovak Private International Law

Slovak private international law has traditionally presented a certain systemic peculiarity in relation to the personal status of legal persons. Although the general conflict-of-laws rules on personal status are contained in PILA, the specific rule determining the personal statute of legal persons was not contained in PILA itself. It was laid down in Section 22 of the Commercial Code.

[10] KUČERA, Z., PAUKNEROVÁ, M., RŮŽIČKA, K., ZUNT, V. *Úvod do práva mezinárodního obchodu.* Dobrá Voda u Pelhřimova : Aleš Čeněk, 2003, p. 53.

Section 22 of the Commercial Code provides, in relation to a foreign legal person, that the legal capacity which it possesses under the legal order under which it was established is equally recognised within the Slovak legal order. Its internal legal relations and the liability of its members for its obligations are likewise governed by the legal order under which it was established.

The choice of the incorporation principle in Section 22 of the Commercial Code is explicit. The question of which law governs a legal person is answered by asking not where the entity is managed, and not who controls it, but under which law it was created. For a company formed under German law, German law is the personal statute. For one formed under Slovak law, Slovak law applies, in both cases regardless of where either company has its operational centre.

Commercial Code also uses the criterion of the registered seat for a different purpose. Section 21 para 2 of the Commercial Code defines a foreign person as one whose registered seat is outside the Slovak Republic. This use of seat is a criterion for classifying a legal person as domestic or foreign and is not to be confused with the connecting factor for determining the applicable personal law. The two uses of seat are distinct.

### 1.2.3 Scope of the Personal Statute of Legal Persons

Under Section 22 Commercial Code, *lex incorporationis* governs three expressly identified categories: the legal capacity of the foreign legal person, its internal legal relations, and the liability of its members for its obligations.

These categories cover a substantial part of what is traditionally understood as the personal statute of a legal person. They include, in particular, questions concerning the existence and legal personality of the entity, its capacity to hold rights and obligations, its internal organisational structure and governance, the legal position of its members, and the extent to which members may be liable for the obligations of the legal person.

The personal statute must nevertheless be distinguished from the law applicable to individual external legal relationships entered into by the legal person. The fact that a company is governed by German law as its *lex incorporationis* does not mean that German law necessarily governs every contract concluded by that company or every non-contractual obligation

arising from its activities. Such questions are governed by the conflict-of-laws rules applicable to the particular legal relationship, including, where applicable, the Rome I and Rome II Regulations.

### 1.2.4 Change of Personal Statute and Cross-Border Mobility

An important development introduced by the new Civil Code is the express regulation of cross-border transfers of the seat of a legal person. Sections 261–263 address both the transfer of the seat of a foreign legal person to Slovakia and the transfer of the seat of a Slovak legal person abroad, including the legal consequences of such transfers.

Section 261 governs the transfer of the seat of a foreign legal person to the Slovak Republic. Such a transfer is permitted if it is allowed under the legal order governing the legal person. The foreign legal person must also comply with the requirements imposed by Slovak law on the legal form it intends to adopt following registration. The application for registration must be accompanied by a declaration confirming that the applicable foreign law permits the transfer and identifying the legal form to be adopted under Slovak law.

Following registration in the public register, the foreign legal person is regarded as a Slovak legal person. From the effective date of the transfer, Slovak law governing the relevant legal form applies to its internal organisation and to the liability of its members and members of its governing bodies for debts arising after the transfer. Section 261 further provides that the effects of the transfer are otherwise governed by the provisions of special legislation concerning changes of legal form.

Conversely, Section 262 regulates the transfer of the seat of a Slovak legal person abroad. Such a transfer is permitted where provided for by EU law or allowed under an international treaty binding on the Slovak Republic, provided that the legal person becomes subject to a foreign legal order following the transfer. The transfer takes effect upon removal from the Slovak public register, with an indication of the transfer, on the date of registration in the foreign register. The provision also preserves the liability of members and members of governing bodies for debts arising before the transfer, to the same extent as before the transfer.

Section 263 supplements these rules with safeguards for creditors. A Slovak legal person intending to transfer its seat abroad must publish its

intention and notify all known creditors at least three months before the planned transfer. Creditors may request adequate security for their claims that are not yet due within three months of publication. In the absence of an agreement, the matter may be decided by a court.

From the perspective of private international law, these provisions are significant because they regulate not merely the geographical relocation of a legal person but also its transition from one legal order to another. In particular, the transfer of the seat of a foreign legal person to Slovakia results in its recognition as a Slovak legal person and the application of Slovak law to specified aspects of its internal legal relations and liability. The new Civil Code thus supplements the traditional conflict-of-laws question of which law governs a legal person with rules addressing how the applicable legal regime may change in the context of cross-border mobility.

For commercial companies within the European Union, these provisions must be read together with the special rules governing cross-border conversions and other cross-border transformations, as well as EU law on freedom of establishment. The Civil Code therefore establishes a general framework for cross-border transfers of the seat of legal persons, while special company-law provisions and EU law remain relevant to particular forms of corporate mobility.

### 1.2.5 Interaction with EU Law

The incorporation principle reflected in Section 261 of the new Civil Code must be applied in the broader context of EU freedom of establishment.

The case law of the Court of Justice, beginning notably with Centros[11] and subsequently developed in cases such as Überseering and Inspire Art[12], significantly restricts the ability of a Member State to deny recognition to a company validly constituted under the law of another Member State merely because its economic activities or actual centre of management are located elsewhere.

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[11] Judgment of the Court of Justice of the European Union of 9 March 1999, *Centros Ltd v Erhvervs- og Selskabsstyrelsen*, Case C-212/97, ECLI:EU:C:1999:126.

[12] Judgment of the Court of Justice of the European Union of 30 September 2003, *Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art Ltd*, Case C-167/01, ECLI:EU:C:2003:512.

EU law has subsequently developed beyond the question of recognition of foreign companies and increasingly protects cross-border corporate mobility itself. The freedom of establishment and EU secondary legislation concerning cross-border conversions, mergers and divisions therefore interact with national rules determining the personal statute of legal persons.

Accordingly, Section 261 of the Civil Code cannot be considered in isolation. For legal persons connected with other EU Member States, its application takes place within the framework established by Articles 49 and 54 TFEU, the case law of the Court of Justice and applicable EU secondary legislation. For legal persons established under the law of third States, by contrast, the national conflict-of-laws rule retains a substantially greater autonomous role.

## 1.3 State as a Subject of Slovak Private International Law

Unlike natural persons and legal persons, the position of the State as a subject of PIL is exceptional. As a rule, the State acts primarily as a subject of public international law exercising sovereign authority. Only in certain specific situations does the State enter into legal relationships of a private-law nature and may therefore be regarded as a subject of PIL.

Under Slovak law, this approach is reflected in Section 2 of the new Civil Code, according to which the State acts as a legal person where it participates in civil-law relations. In such cases, the State does not exercise public authority but appears in legal relations on an equal footing with other private-law subjects. Individual state authorities act on behalf of the State in these relations.

The State may be regarded as a subject of PIL particularly in two situations.

First, the State may enter into private-law agreements with natural or legal persons. In such situations, the State does not act in the exercise of sovereign authority but participates in legal relations comparable to those between private parties.

Second, the State may appear as a party to proceedings before the courts of another State in matters of a private-law nature. In principle, international law is based on the sovereign equality of States, from which it follows that one State is not subject to the jurisdiction of another State