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Historical context of prejudiciality in the civil proceedings of the Slovak Republic

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Abstract

Prejudiciality is an institute that also concerns the unity of the legal system and the jurisdictional organisation. Its proper legal regulation should ensure no discrepancy in resolving conflicts assigned to the various judges and courts that make up the judiciary. The institute of prejudiciality permeates the entire civil process. It is related to the basic procedural principles such as legal certainty the independence of judicial decision-making. The article aims to take a closer look at the historical development of this institute in the past and especially in the legal order of the Slovak Republic. The intention is reduced to Roman law and following the Slovak legal environment. At the same time, it is impossible to circumvent the connection with the legislation in the Czech Republic and their common roots in the Austria-Hungary empire. We were interested in whether the current legislation is based on its roots or has already deviated from them. This perception is essential to know the essence of a legal institute. The result is a comprehensive vision that also opens the door to the changes needed for the future.

Keywords: case law, legal certainty, prejudiciality, res iudicata, binding force

1. Introduction

In processualism, the examination of prejudiciality is a classic topic, both in theory and practice. In particular, the questions referred to provide the logical and legal basis necessary for a decision to be taken. They concern the justification for resolving or taking into account fundamental issues in the field of identification, delimitation and limitation of the subject matter of the process. It can be stated that the institution of prejudiciality is characterised by the interconnection of the elements of substantive and procedural law which are combined in it **[1]**, **[2]**.

Apart from the fact that this is one of the procedural consequences of the substantive connection between the cases under consideration, the question referred also has a logical origin in the existence of a diversity of judicial authorities in the legal system. It can be perceived as an element within the civil process and as well as the aspect of the relationship of civil proceedings to proceedings before administrative bodies, criminal courts, the Constitutional Court of the Slovak Republic, or the Court of Justice of the European Union and the European Court of Human Rights **[3]**, **[4]**.

Older legal science represented by prof. Grňa provided a definition "*Prejudiciality can generally be understood as a causal relationship between two subjective rights, one of which is conditioned by the other. Therefore, that causal relationship must exist in reality, and its nature is legal-philosophical rather than positive-legal.*" **[5]**.

Contemporary Slovak legal theory perceives prejudiciality as follows. *"In the broadest sense, the determination of a question of law means another question of law, the resolution of which is directly dependent on the operative part of the dispute, a question which may, in certain cases, be determined by the acting authority itself. However, the classical preliminary ruling means respecting the decision of another institution (in the hierarchy of the specific system of protection of the law superior to the procedural, acting authority) on the preliminary question."* **[6]**.

The institute of prejudiciality permeates the entire civil process. It is related to the basic procedural principles such as legal certainty the independence of judicial decision-making. The question referred for a preliminary ruling also affects the legal certainty of the parties to civil proceedings **[23]**.

2. Prejudiciality in the historical context

2.1. Historical development of the preliminary question referred to in roman law and the middle ages

From a historical and legal point of view, the roots of the preliminary questions are in Roman civil proceedings, where the prejudiciality was the subject of special regulation, essentially reproduced to this day. Based on the etymology, the naming itself the prejudiciality or preliminary question comes from the Latin *praeiudicium* so-called previous, preliminary proceedings or decision (*pre-* before, *judicial-* decision, proceeding). They represented decisions to which the judge could rely on the subsequent proceedings. Here we can also find the roots of decisions known as precedents- recognised as an official source of law in the Anglo-American system **[7]**.

However, this term had different meanings and a much broader and more general scope of application than today. They indicated in this way both the connection between processes and decisions and the impact that the decision may have on future proceedings. It could be different - from just a kind of moral ties, where the decision could serve only as a model for another decision, to a higher degree of relations, where the outcome of the proceedings could affect other proceedings so that it formed an integral and determining part of success in disputes. Praeiudicium was perceived as: "a type of Roman trial in which a judge's statement was limited to finding a particular circumstance of legal importance without the defendant being convicted or acquitted. On the outside, this peculiarity manifested itself in the fact that in the claimed formula, which the praetor showed the jury decided the dispute, the conditional clause was missing." **[8]**.

The topic was present in Roman law, but as it happened with many legal ones, institutes were subject to evolution, which was influenced by several factors. This impact from one proceeding to another, which, moreover, belongs to different authorities, particularly in the case of competition between civil and criminal proceedings, is what has been called since ancient Rome praeiudicium or prejudiciality **[9]**.

But this interesting problem had a different content according to a period of the history of the Roman empire that we are examining and the procedural system in force in this historical moment. From the beginning, e.g. civil and criminal matters in the Roman judiciary litigation procedures overlap. Therefore, magistrates and judges had to settle litigation giving priority to civil or criminal cases or addressing both as a whole. Solutions collected in various texts, especially from the imperial period, show the absence of firm rules or clear principles that address this issue. Even at the time of *cognition extra ordinem* (extraordinary or cognitive proceedings; it arises in the last decades of the 1st century B.C. - the period of the Roman Empire), the problem of prejudiciality in civil matters has not been fully resolved, as shown by the provisions of the Justinian Code (Corpus Juris Civilis issued in years 528–534.nl.). A complete theory of the decided matter- *res iudicata* and its limits (mainly subjective) is being created here, and the institution of prejudiciality is rationalised. A new meaning of *praeiudicium* emerges, issued without formalities during the court proceedings. Among the many types of Roman lawsuits, there were also so-called *pre-judicial* actions, which have led to the determination of whether there is a disputed right or fact in the application, for example, whether or not a person is enslaved. In principle, this was the case of *conditional actions*. In addition, the Roman process used the so-called *praeiudicialis formula*. The municipality ordered the jurors only to decide whether or not there was a particular legal relationship or legal fact (the most common were questions about personal status). They, therefore, differed from the *action* itself because the formula covered only the claim of the activity but not the "condemnation", hence the defendant's conviction. The *formula praeiudicialis* should have decided on the preliminary question on which further proceedings depended **[8]**.

Because the decision on secondary issues could adversely affect the decision on the main point, the defendant could have defended himself against such *praeiudicium*. The defence consisted in the fact that the court resp. The decision-making body first resolved the dispute over the more important question and then discussed the disagreement on a less critical issue, e.g. inheritance dispute, before disputing over rights in rem. The Romans also dealt with cases based on the principle of "*per minorem causa*", where the more critical thing takes precedence over the less important thing." the method of resolving the order of disputes was not the most appropriate; it often happened that the matter was dependent decided before the preliminary ruling. *However, this way of resolving the order of disputes was not the most appropriate; the dependent case was often decided rather than the preliminary one. Therefore, the principle has been adopted that a preliminary ruling is decided rather than a dependent one.* " **[5]**.

Externally, this peculiarity appeared to be the fact that in the claimed formula, by which the praetor ordered the jurors to resolve the dispute, there was no conditionality clause".
Also, the principle of legal certainty dates back to ancient Greece and Rome. The Greeks used legal certainty as to the main criterion of fair legislation, but the Romans understood it more as a requirement of judicial action. Legal certainty came from *res iudicata*. The provisional nature of the judgment was manifested, e.g., in the case of a motion for encumbrance, the appellant did not have to prove the ownership of the land if it was the subject of a judgment as a property right **[10]**.

The dual meaning with which the term praeiudicium was analysed in Roman law, referring to the connection on the one hand between trials and on the other hand between disciplines within the same process, caused some confusion which medieval lawyers and canon law sought to alleviate by using the general term quaestiones praeiudiciales. The Middle Ages brought the activity of post-glossators (16th century), who, under the influence of humanism, were more in opposition to Roman texts and turned to idealistic Plato's teachings and antiquity. During the Middle Ages, the term praeiudicium even lost its original meaning to become an exponent - in the line already profiled by Justinian's legislation - a kind of damage *sorta di danno*, the product of a particular event. He moved from a legal concept to a common language and acquired the meaning of damage - legal or moral. As a consequence of the transposition of the term praeiudicium - as a synonym of damage, from legal language to general, one of the meanings has been preserved today **[11]**.

The Middle Ages were characterised because the term preliminary was identified with the term conditional. The term "*questio preaiudicialis*" was used in the sense that a preliminary ruling could itself terminate further proceedings. The concept's perception has undergone significant changes even under the influence of canon law within the dialectical structure of the process and the logical reasoning of the judge in issuing the decision. In the canonical sense, a preliminary ruling was perceived as an obstacle or prohibition to decide on the primary matter unless a preliminary (or related) subject to the proceedings was resolved. From the end of the Middle Ages until the end of the 19th century. "preiudicium" means both a matter decided by the process itself and a preliminary question or a good decision with the interlocutor of the second dispute **[5]**.

2.2 Historical development of the preliminary questions in the legal order of the Slovak Republic and the Czech Republic

Slovakia and Bohemia formed a common state from 1918 until 1993, so the legislation is every day. Until the disintegration of the Austro-Hungarian Empire in 1918, civil procedural law in the territory of the Czech Republic was regulated mainly by the jurisdictional norm no. 111/1895 R.z. Act on Judicial Procedure in Civil Disputes (Civil Procedure Code) no. 113/1895 Coll., Execution order no. 79/1896 R.z. and the Act on Judicial Organization no. 217/1896 Coll. The mentioned legal regulations resulted from Klein's reform, which changed Joseph´s General Court Regime (Allgemeine Gerichtsordnung) in force since 1781. In comparison with Czech law in the territory of Slovakia until the establishment of the first joint Czechoslovak Republic, Hungarian customary law applied. At the same time, the civil proceedings were governed mainly by the Provisional Judicial Rules approved by the Judex-curial Conference from 1861 as a comprehensive piece of legislation.

If we focus our attention on the regulation of the assessment of preliminary questions during this period, the Provisional Judicial Rules did not contain any explicit limitation in this regard. The legal institute of initial questions was not explicitly regulated even in civil procedural norms valid in the territory of the Czech Republic. Still, an indication of prejudiciality can be found in the provision of Art. 268 of Act no. 113/1895 Coll. of the Code of Civil Procedure, where it states: "*Where the decision depends on the proof and the ascription of the criminal offence, the judge is bound by the content of the valid conviction of the criminal court."* In the general conditions on evidence, this provision was regulated by law, as prof. Hora states in its commentary based on the case law, disciplinary findings issued against civil servants based on a contractual obligation cannot be materially examined, not even by resolving a preliminary question. However, the court may review such results in that respect, provided that they were formally correct by the relevant provisions. The provision does not apply to criminal measures taken by administrative authorities, nor is the court bound by a finding of a foreign criminal court. Likewise, a civilian judge is attached to the content of a criminal conviction's judgment only about the substance of the offence for which the trust took place **[12]**.

As is well known, the mentioned legal dualism persisted in the territory of Slovakia and Bohemia even after the establishment of the administrative and legal union of states. When creating a standard legal order, especially in civil procedural law, based on Act No. 11/1918 Coll. in essence, the previous civil law valid on the territory of both states was reciprocated. This means that the General Austrian Civil Code of 1811 (Allgemeines bürgerliches Gesetzbuch) and the modified Judicial Code of 1895 continued to apply in the territory of Bohemia. In Slovakia, civil regulations are in force in Hungary, particularly the Hungarian customary law. This legal situation lasted in

principle until 1950 when the first official common legal regulation regulating the court procedure and the status of participants in civil court proceedings was issued. This regulation was Act no. 142/1950 Coll. on Proceedings in Civil Matters (Civil Procedure Code, from now on referred to as Občiansky súdny poriadok" OSP) of 25 October 1950, effective from 01.01.1951.

The said legal regulation already contained a normative code of preliminary questions, specifically in the provision of Art. Seventy entitled "Preliminary questions". Under paragraph 1 of the said provision: "For its decision, the court is entitled to make a judgment also on preliminary questions, which would have to be decided by another court or authority (public administration body)." Subsequent paragraph 2 of the Art. 70 of the Code of Civil Procedure further states that: "*But if preliminary proceedings have already been initiated in the competent court or authority (public administration body), or if there is a suspicion of a criminal offence or misdemeanor and the conviction would affect the court´s decision court shall, as a general rule, to stay the proceeding until the validity of the decision on a preliminary question or criminal offence or misdemeanor.*" Thus, that provision conferred on the court the power to rule on the question on which the decision of the court depends as to the determination of the law or legal relationship. However, the provision of paragraph 2 also allowed the court in the cases mentioned there to suspend the proceedings and wait for the outcome of the already initiated proceedings for reasons of expediency so as not to unnecessarily decide on a matter that is already the subject of proceedings in a criminal court or another office (administrative office). It is not known from the available literature that, under the validity of the said Civil Procedure Code, fundamental legal problems would arise in the application of the questions referred.

At the same time, let us pay attention to Art. 92 " *If the decision depends on whether the offence or misdemeanor was committed and who committed it, the court is bound in these circumstances by the content of a valid conviction of the criminal court or authority (public authority) in the criminal case.*" Civil Procedure Code in 1950 expressly established the binding nature of the court by a decision on the commission of a criminal offence or misdemeanor. We do not find any other provisions on the critical nature of different choices. Compared to the procedural code from 1950, the scope of criminal decisions binding on a civil court has been extended. The new Code of 1963 enshrined in Art. One hundred thirty-five the binding nature of the decision on guilt, which resulted from the authority of the local People's courts to decide on them. It was not until the OSP of 1963 that binding force was established for decisions in status matters. Although there was no critical nature in those decisions, some provisions on civil status matters prohibited the assessment of status matters as preliminary questions. "*These decisions were also widely recognised in practice, as they were constitutive decisions establishing, amending and terminating a legal relationship, and it was further emphasised that these issues should not be considered differently for different purposes*." **[13]**.

The procedural code does not mention resolving questions referred for a preliminary ruling in the provisions relating to the suspension of proceeding (Art. 80 to 83). The Code made no distinction between "preliminary" and "prejudicial question". Almost less than 13 years after adopting the first codified regulation in the field of civil proceedings, a new civil procedure code was issued with effect for the territory of both Slovakia and the Czech Republic - Act no. 99/1963 Coll. Civil Procedure Code completely derogated from Act no. 142/1950 Coll. on proceedings in civil matters. However, unlike the repealed law, the newly adopted Civil Procedure Code no longer explicitly identified or defined preliminary questions. The legislation was limited to two paragraphs and was also indirect. This institute was regulated only within the provisions on the stay of proceedings (Art.109 OSP) and in evaluating evidence (Art.135 OSP). Minor changes in the assessment of the questions referred resp. The binding nature of the decisions decided by other authorities has taken place, even though those changes were minor and did not significantly affect the significance of the questions referred to.

According to Art. 109:

(1) The court shall stay the proceedings if

(a) the party has lost the capacity to act in court and is not represented by a representative authorised to conduct the proceedings;

(b) the decision depends on an issue the court is not entitled to deal with in the present proceedings. It shall also proceed if, before deciding the case, it concluded that the generally binding legal regulation concerning the matter conflicts with the constitution, law or international treaty by which the Slovak Republic is bound; in that case, it shall forward the proposal to the Constitutional Court for an opinion.

(c) decide to refer a question to the Court of Justice of the European Communities for a preliminary ruling under an international agreement

Of course, the above-mentioned legal regulation, taking into account the numerous amendments and changes made in the cited rules after the division of the common republic in 1993, applied until recently in Slovakia and the Czech Republic.

The fact is that the OSP did not contain in any provision the exact scope of the questions that can be considered as preliminary questions. However, a negative definition of initial questions can be found in Art. One hundred thirty-five of the OSP **[10]**.

Other matters which another authority may otherwise decide may be considered in advance by the court itself. By Art. 135 par. 1 of the OSP, the court was bound by a valid decision of the competent authorities that a criminal offence, misdemeanour or other administrative offence punishable under special regulations was committed and who committed it. As well as by a decision on personal status, except decisions in block proceedings. According to earlier case law, e.g. decision of the Supreme Court of the Czechoslovak Socialist Republic of 10 August 1965, the court was bound by a decision issued in block proceedings. However, the amendment to the OSP of 1991 (Act No. 519/1991 Coll., which amends the Code of Civil Procedure and the Notarial Code as amended until 31 December 1992) stipulated, among other changes, that a decision in block proceedings does not bind a civil court. Respecting Art. 7 of the OSP, which defined the jurisdiction of civil courts, it cannot be ruled out that a civil court may not be entitled to assess issues interfering with criminal or administrative law. A civil court may intervene in another branch of law to prove the facts. "*However, a civil court is never entitled to infer from certain facts the consequences established by criminal or administrative law*." **[14]**.

The OSP, therefore, distinguished, on the one hand, the right of the court to assess a particular issue and the right to issue a definitive decision on these facts.

As is clear from the wording of the provision of Art 135 OSP, a civil court is not bound by any correct decision of a criminal court or administrative authority. A civil court may draw its conclusions in the course of fact-finding, except for sound decisions that a criminal offence or administrative offence has been committed and who has committed it. The manner of resolving the question referred by the court will be reflected only on the grounds of the decision **[16]**.

The statement itself is affected only indirectly in the sense in which the court ruled. Therefore, the court decides whether to deal with the matter for a preliminary ruling itself or to await the competent authority's decision and stay the proceedings until then. If the competent authority decides otherwise on the given initial question, this makes the admissibility of the reopening of the proceedings (Art. 228 par. letter a) OSP).

Unlike the Code of Civil Procedure of 1950, the Code of Civil Procedure of 1963, as amended by Art. 135, extended the binding nature of civil courts by several rulings of a criminal decision, following the authorisation of local people's courts to decide criminal cases. At the same time, the new rules explicitly enshrined the binding nature of courts by decisions on personal status. They specified the critical nature of courts by decisions of other bodies. In the sense that if the competent authority has already issued a decision on a question that has arisen before the court, the court is obliged to rely on it. After the adoption of the OSP, a doctrinal debate on the issue of preliminary questions took place in the legal community in the 1960s. Above all, we can mention the related works of a prof. Winterová, prof. Černý and prof. Macur. Many of the conclusions of these authors are inspiring even after years, also because the legislation has not changed in principle in this direction.

When examining the provision of Art. 135 of OSP, it is not possible to circumvent the terminological difference in the terms used to be "bound by a decision" and the term "based on a decision" stipulated in para. 2 of the analysed provision. It is questionable whether this conceptual difference was the legislator's targeted intention to emphasise the different approach of the court or whether it was just a terminological inattention. Several authors dealt with the discrepancy in detail, specifically prof: Winterová and prof. Černý is currently just after adopting the Procedural Code, and they are in opposition in their arguments.

Prof. Winterová thinks that the term "to be bound by a decision" must be seen in light of the binding nature of the operative part of the final court decision. The decision is generally critical on the parties to the proceedings, hence on those who may influence the content of the decision through their procedural conduct. However, the essential nature of decisions can be extended to third parties and all authorities. The provision of Art. 159 of the OSP states that, except for the participants in the proceedings, the decision is binding on all bodies. In contrast, the provision of Art.135 par. 2 defined that the court is based on a decision on other civil matters. Prof. Winterová concludes about what is examined "… *any civil decision binds the court if the question addressed by that decision arises as a preliminary question later on in another dispute. Only for decisions issued by bodies other than courts, the court is just based on them.*" **[17]**.

The distinction between the terms“ based on a decision ”and“ to be bound by a decision ”is also noticeable in the case of law even more recently. *“Although it is not for the courts in this situation to interfere in any way in the legal relations established by a valid decision of an administrative body, they are not unconditionally bound by it in their decision-making on matters related to the decision, unless it is a decision on misdemeanour or other administrative offence or a decision on personal status. By the provisions of § 135 par. 2 of the OSP, a court is required to rely on that decision in respect of a question on which another authority is otherwise competent to*

decide, without, however, the Code of Civil Procedure requiring it to consider that question in the same way." Lavický also agrees, discussing the ambiguous acceptance of the mentioned terminology in detail **[18]**, **[24]**.

Prof. Černý takes a different position, leaning more towards blurring the differences between the above concepts **[19]**.

Relying on the case-law of the Supreme Court of the Slovak Socialist Republic of 28 June 1974, the judgment states that "*the term" the court is based on it "also expresses, in principle, the binding nature of the court by this decision*." **[20]**.

A similar position was taken by the Supreme Court of the Czech Republic on 19 February 2013, also eliminating the difference: a civil court cannot assess and review a decision of an administrative body (specifically a tax office) and is obliged to use it to resolve a preliminary question. *" However, the stated obligation of the tax office's payment order for the levy for breach of the budget regulations and the penalty for late payment for the violation of budgetary discipline for the court is not absolute. The court shall rely on such a decision only if it assesses in civil proceedings (as a preliminary or substantive question) whether there has been a breach of budgetary discipline on the part of the recipient of the payment order.* "

After outlining both different positions, we must conclude that we are in favour of the work of prof. Winterová. We believe that the legislator defined this terminological difference quite deliberately, and it was not just a random difference in the legislative text. We look at the notion of "being bound by a decision" as a strict obligation from which it is impossible to deviate. On the other hand, we understand the term "based on a decision" as defining a certain presumption of the correctness of a decision of an administrative body. So that the court will only proceed from it unless the contrary is proven or there is no doubt about it. We start from the diversity of decisions of administrative bodies, and thus, consequently, the inconsistency of the nature of administrative prejudiciality. This is probably what the legislator intended and reflected in this terminological difference.

A grammatical interpretation may, on the one hand, impose an obligation to decide the competent authority into account, but on the other hand, seem to allow a different assessment of the question referred, provided that the referring court states in the reasoning the relevant reasons does not identify with the authority (i.e. "deals" with it). If the wording of Art. 135 par. 2 OSP perceived as not very clear, the wording in Art. 194 par. 2 of the CSP raises the same doubts from our point of view, even though the explanatory memorandum to the given provision of the Civil Procedure Code states that the current wording of the condition of Art. 135 par. 2 OSP is "specified".

We believe that the phrase "the court will take it into account" should be interpreted as meaning that the court should assess whether there are compelling reasons, in this case, to consider the issue differently. Admittedly, the parties to the proceedings will also legitimately expect that the question already resolved will be respected by the other institutions and the courts in civil proceedings. Their case will be decided by the question thus answered. If the civil court wants to deviate here, he must have good reasons for doing so, which he will explain adequately. Not to mention the judgment of the Constitutional Court of the Czech Republic of 10 July 2008, file no. Zn. II. ÚS 2742/07 (130/2008 USn.), where he emphasised the principle of the legal expectation of the participants that in further proceedings, the decided preliminary question will be respected.

The legislation respected the classical postulate that if a civil court considers a preliminary question, this can only be reflected in the reasoning of the decision, not directly in the operative part.

3. Actual legal regulation of prejudiciality in the Slovak Republic and Czech Republic

After the disintegration of the shared state in 1993, the Czech Republic still applies the 1963 code of procedure of the joint federation but is preparing a new code. Legislation of prejudiciality in the Czech Republic is based on Art. 109 par. 1 OSŘ, which regulates the involuntary termination of court proceedings, and Art.135 OSŘ (Act No. 99/1963 on the Civil Procedure Code- *Občanský soudní rád OSŘ)*. The currently discussed recast of civil procedural law in the Czech Republic states in the legislative intent states: *"If the resolution of the dispute depends in whole or in part on a question referred for a preliminary ruling which is the subject of any other judicial or administrative proceedings, the court may suspend the proceedings until the judicial proceedings are terminated."* The court may also stay the proceedings in the primary matter if a dispute arises as to the admissibility of the intervener or principal intervener. Suppose there is a suspicion of a criminal offence, and the conviction would affect the court's decision. In that case, the court may suspend the proceedings until the lawful decision on the criminal offence is given. The Court shall stay the proceedings if it decides to refer a question to the Court of Justice of the European Union for a preliminary ruling which it is not empowered to deal with in the present case. ' This concept is in principle identical in content with the Slovak legislation **[21]**.

3.1. Situation in the Czech Republic

The Czech legislation addresses the optional suspension of proceedings in a dispute over the admissibility of intervention in more detail. This is intended to address the long-standing debate. Historically, the position persisted that in this situation, it is appropriate to suspend the proceedings, which was broken by the judgment of the National Council of the Czech Republic of 30 June 1999, file no. 2 Cdon 1843/97. Other case law also stated, "*Until a final decision is made on the admissibility of the intervention, the proceedings cannot be continued."* And the CŘS itself did not explicitly address this situation. The recodification tends to be based on historical tradition and to adjust this situation, preferring to suspend the proceedings before stopping them.

The questions of prejudiciality are outlined in point 180 of the legislative proposal in the context of the provisions on evidence. "*If the court's decision depends on whether the crime was committed and who committed it, the court is bound by the content of the verdict of a valid conviction of a criminal court. This does not apply if the party has not had the opportunity to comment in the criminal proceedings."* Which emphasises the subjective limits of binding. As the proposal states, the alternative of not including this provision was also considered, inspired by German and Austrian legislation. Thus, the judge is not bound by the criminal decision and can also take evidence regarding the facts found in the criminal proceedings and, if necessary, assess them differently. The principle of free evaluation of evidence and directness are emphasised. However, such a procedure is also uneconomical and risks conflicting decisions, which was probably the reason for keeping this provision. The proposal rejected the remaining diction of the original Art. 135 of OSŘ. It does not agree with the equivalent status of valid convictions with decisions of administrative authorities on the commission of a misdemeanour or other administrative offence and the perpetrator's person. *"In addition, it is equally incompatible with the principle of the separation of powers and the independence of the court and the judge."* On the margins of status decisions, the proposal considers this provision superfluous, as the prohibition on the preliminary assessment of such decisions follows ipso facto from the constitutive nature of those decisions.

Another part of Art.135 of the Civil Procedure Code, which allows the court to pre-assess other issues than criminal and status issues, although it is up to another body to decide on them, is also perceived differently. It is not considered a preliminary assessment of matters of a private nature. *"The rule is therefore incomplete, and it can be said that it is also superfluous. Situations where a court in civil proceedings is entitled to consider a question in advance and when it may not do so will follow the rules laid down for the optional or compulsory stay of proceedings. "* The proposal again solves the problem of the concept of "based" on a decision that has already been issued. *" Art.135 par. 2 OSŘ: "based on the decision" is not the same as the binding nature of decisions. The decision of the administrative body is an authentic instrument, and the court will rely on its content unless the presumption of its truth is rebutted."* There are undoubtedly many observations and considerations that could also benefit our legislation.

3.2. Situation in the Slovak Republic

As part of the recodification of civil proceedings in the Slovak Republic, the question of prejudiciality was reflected in Art. 162 of Act no. 160/2015 Coll. The Contentious Civil Procedure Code (from now on as CSP-Civilný sporový poriadok) connected the suspension of proceedings. It was only with this code that the very concept of prejudiciality was officially introduced into the legislative text of the law. The binding nature of the court is reflected in Art. 193 of the CSP. A question on which a public body (other than the body under Art. 193 of the CSP) has the power to decide can be assessed by the court itself, but the civil court cannot decide on it (Art.194 CSP). If it decides on the question referred to in paragraph 1, the court shall consider and include it in the grounds for the decision. In this respect, two types of situations can be logically distinguished. The question has not yet been decided or has already been the subject of a decision. The first possibility conflicts with the jurisdiction of the competent court, namely whether the court is entitled to assess the question itself. As a basic rule in civil proceedings, a court is entitled to consider (as preliminary) issues for another body to decide whether they fall within a civil court's jurisdiction. As part of the fact-finding, the court is entitled to find out and assess the entire factual basis of the claim, even in cases where the legal assessment of such real issues falls within the field of other legal branches (e.g. criminal or administrative law) **[25]**.

The current legislation in the actual Slovak Contentious Civil Procedure Code (Civilný sporový poriadok CSP adopted following the recodification of procedural law in 2016) has chosen the term "take into account" such a decision instead of the term "be bound by a decision". The commentary on the CSP states: "*In principle, however, "taking into account "an existing (and by its nature valid) decision of another body is not binding on the court (Art.190 a contrario) and therefore there is no obligation of the court to comply with this decision. This postulate stems from the constitutional connotation, according to which the court is prioritised and, in a sense, a "superior" body of law enforcement - no other body has the general clause "prohibition of denial of justice (denegatio iustitiae)" established competence to provide protection where it is not entrusted to any other body. Of course,*

even this nature cannot be interpreted purposefully, and the requirement that public authorities decide on the same issues in principle applies in direction. Therefore, it is desirable that the court, in order, rely on the decisions of the competent authorities and only, as ultima ratio, proceed to correct the conclusions of the other competent authorities in justified cases **[22]**.

Decisions of the Constitutional Court bind the court on the declaration of non-compliance of legal regulation with the Constitution of the Slovak Republic, constitutional law or an international treaty by which the Slovak Republic is bound. It is further secured by decisions of the Constitutional Court or the European Court of Human Rights concerning fundamental human rights and freedoms. The court is also bound by the conclusion of the competent authorities that a criminal offence, misdemeanour or other administrative offence punishable under a special regulation has been committed and by who committed it, as well as by a decision on the personal status, establishment or dissolution of the company. According to the explanatory memorandum, the legislator also considered introducing binding judgments of the Court of Justice of the EU. However, he did not make that adjustment since the findings of the Court of Justice are critical only inter partes.

Thus, the recodification has not brought any major turnaround to the issue compared to the past. We see a shortcoming of the Slovak legislation is the absent legal definition of the relationship of prejudiciality to *res iudicata*. The correct regulation of the institute of prejudiciality and its proper application by the courts should contribute to implementing and enforcing the principle of legal certainty. We assume that a question which is resolved with the effects of *res indicate* is bound by the tribunal in a subsequent proceeding when in this subsequent proceeding it appears as a logical precursor to what is the subject of it, provided that the parties to both proceedings are the same or res iudicata is extended to them by a statutory provision. In some countries, such a rule is also enshrined directly in procedural standards (e.g. the provision of Article 222.4 LEC of the Spanish Procedural Code-Ley de Enjuiciamiento Civil Art. No.1/2000 Coll). It would be appropriate to enshrine such wording in civil code in our country, either in the provisions governing the prejudiciality or in the regulation of the binding nature of the decision, obstacles of *res iudicata* or principle *ne bis in idem*. Without this principle working, decisions would be taken that would address one legal issue more than once, even in contradiction, contrary to the regulation of legal certainty.

The second dimension is the contact of the activities of the civil court, which deal with questions referred for a preliminary ruling falling within the competence of other state bodies (in principle, most often administrative bodies. Nor is it quite clear to define an optional stay of proceedings when the court considers whether to refer a preliminary question to an executive authority or view the question itself. Here, the exact criteria for the procedure would be required. Otherwise, the courts will proceed differently.

4. Conclusion

The paper aims to point out several aspects that the assessment of preliminary questions in the proceedings of civil courts brings and how their assessment affects the coherence and inconsistency of court decisions. The regulation of initial questions in civil proceedings is constant and stable. Even the recodification changes that the legal code of the civil process underwent in the Slovak Republic and the Czech Republic did not bring significant changes in this topic. It adheres to its historical roots. The issue is relevant in connection with the possibilities of reforms, which can be said to be ongoing. The question referred for a preliminary ruling also affects the legal certainty of the parties to civil proceedings.

We pointed out the shortcomings of the legal regulation of prejudiciality in the Slovak legal order. Certainly, Slovak legislation must be geared to current trends. For example, today, we are no longer considering only the preliminary questions referred to the Court of Justice of the European Union and the European Court of Human Rights. Protocol no. 16 to the European Convention on Human Rights (Roma, 1950) opened a preliminary ruling before this judicial institution. In some European countries (Netherlands, Lithuania), there is an effort to give the courts of lower instances the possibility to refer a preliminary question to the nation's highest judicial institutions to interpret the law for a particular case.

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