Hair as a Corporeal Chattel in the New Civil Code in the Czech Republic

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Summary

The article is focused on the problems of the parts of the human body that can be painlessly separated and that renovate by the natural way. The authors concentrated in the text on the hair as the corporeal chattel in the light of the New Civil Code in the Czech Republic.

Keywords: New Civil Code ; The Czech Republic; Hair; Corporeal Chattel

New Civil Code (in abbreviation “NCC”) the great code of private law that is effective in the Czech Republic from 1st January 2014, incorporates the definition of the thing according to the formulation situated in § 285 of the General Civil Code from 1811 (in abbrev. “ABGB”) [1,2]. According to § 489 NCC a thing in the legal significance is “everything what is different from the person and serves for the need of people” and also § 493 NCC “human body not its parts, even if they were separated from the body, they aren’t the thing” [1].

Hair, as a part of the human body that can be painlessly taken away without desensitizing and that is able to renovate by the natural way, is affected with a special exception contained in § 112 NCC. Hair can be inspected as a corporeal chattel by the irrefutable legal assumption. As well as it has the status of the thing of legal references through the paragraph described above.

“A man, whose hair was cut off, can have law for protecting against dealing with his/her hair in an unusual way, so in this case the law is individual personal law of a person to this separated part of body, but not absolute personal law which extinguishes by this separation” [3].

NCC remembers also such situations when: “If e.g. there is somebody cut at a hairdresser’s, he/she can reasonably suppose that everything will be done with his/her in a usual way, so like with a rubbish and it won’t be used for any other purpose: e.g. if the customer is a famous or popular person and hair won’t be sold out to the admirers. If it would be used like this, there would be needed necessary agreement of the affected person” [4].

At the end we have to stay at the problem of the expression “have right. By the grammatical interpretation of the provision § 112 NCC we can analyse questions concerning property dealing with hair. A person, who is growing hair on the head, is its origin owner. It is important to know that the owner’s rights to the hair can form earlier. Given problems we will demonstrate in the following examples.

A person “ABC” without hair after chemotherapy wants to buy hair from a person “CBA.” Persons can make a contract between themselves about pre-contract of sale or they can make a contract of sale with suspensive condition by § 548 section 2 NCC [1].

In the first case on the basis of the person “ABC” appeal, the person “CBA” makes a contract of sale and de facto sells hairless person hair. Since the moment of making the contract of sale it is possible to consider the person “ABC” for the owner of hair of “CBA” person. In the second case the agreement will be effective when the “CBA” person´s hair will grow to such length that will correspond with wish of the person “ABC.” With a smile we have reasonable cause to believe and state that in both cases the object of sale appears on the head of “CBA.” Let’s presuppose that person “CBA” will carefully take care about his/her beautiful and thick hair. We introduce this information about this fact with an accent on the legal regulation of pre-contractual liability that is situated in competent provisions of NCC.

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reasonable cause to believe that” which is used twice in present tense in the provisions of § 112 NCC. In the year 2013 the advocate Mr Michael Mann from the city of Brno described to the difficulties of the special expression in the provisions which we are thinking about, before the effectiveness of the main code of private law. The text of § 112 in the New Civil Code is formed like this: “The man can leave a part of own body to the other person only on conditions given by other legal regulation. The regulation isn’t effective if it is concerning hair or similar part of human body which have reasonable cause to believe that can be painlessly taken away without desensitizing and that are able to renovate by the natural way; these have reasonable cause to believe that they can be left to the other person even if there is an award and they are looked at as a corporeal chattel” [1].

According to the quoting provision there is a real condition for establishing fiction of the thing that the parts of the human body: have reasonable cause to believe that they can be painlessly taken away and they are able to renovate by the natural way [3]. On the first place the New Civil Code introduces hair. Similar parts of the human body comprise e.g. – eyebrow, hair on the body and nails. With these parts of human body (as the things) we have reasonable cause to believe that they can be manipulated realistically, they can be left other person, (steal) – and with or without consideration [3]. We add that those are applied to protection of possessive right by means of possessory action [3].

From the view of the mentioned advocate we can close this theme with the affirmation that by cumulative fulfilling both conditions, hair as a private part of the human body even “before cutting” can become a thing of legal act [5].

References
2. Vseobecny zakonik obcansky z roku 1811 (§ 285 ABGB).
4. Duvodova zprava k Novemu obcanskemu zakoniku, s. 68.