Abstract: - Every natural person acquires a legal personality automatically at birth, i.e. the capacity to be the bearer of rights and obligations. Legal capacity comes when of adult age. Before reaching the legal age of majority, a natural person can make such legal actions that correspond to their intellectual and volitional maturity. The Czech legal order, namely the Civil Code, regulates the creation of representation under the law, a decision of a state authority (legal representation), and the power of attorney. This private area of law is currently undergoing major change in the Czech Republic. Although still effective, Act No. 64/1964 Coll., The Civil Code, it is known that with effect from 1 January 2014 citizens will be governed by entirely new legislation, namely Law No. 89/2012 Coll., The Civil Code. The paper presented here deals with some aspects of natural persons, legal representation and guardianship. With regard to the extent of the paper, it is not possible to detail this ever-important topic comprehensively. Therefore, the aim is to analyze both current and future legislation and identify some major modifications that occur upon effect of the new Civil Code, i.e. 1 January 2014.

Key-Words: - guardian, collision guardian, legal personality, legal capacity

1 Introduction
The chosen topic is highly relevant because it affects the position of each body of law. In the Czech Republic, Act No. 40/1964 Coll., The Civil Code, as amended, is still the effective legal norm. However, from 1 January 2014, Act No. 89/2012 Coll., The Civil Code (hereinafter referred to as “new CC”) takes effect. It is now actually valid law, but has yet to come into effect. It was entered into the Collection of Laws of the Czech Republic on 22 March 2012, and citizens have the opportunity, the right and also the obligation to become acquainted with its contents within vacatio legis [1], [2].

The aim is to analyze current and future legislation relating to the status of natural persons and legal representation. Building on this, the authors will then identify the core changes that will occur upon effect of the new CC. For the purposes of this paper, the method of analysis of relevant legal sources is used. The synthesis of lessons learned follows this analysis.

2 Problem Formulation
Is majority and legal capacity the same? Is there a difference between legal representation and guardianship? Are there features common to these two forms of representation? If so, what are these common features? Is it possible to appoint a guardian to a legal person? What is the importance of new legal institutes that the new CC introduces in terms of representation and guardianship?

2.1 The current legal framework for the status of natural persons and the institute of legal representation
The eligibility of a natural person to have rights and obligations occurs at birth, and the law also gives the competence to a conceived child if it is born alive. Eligibility for rights and obligations is unlimited and irreducible. This competence expires upon death. From such eligibility for said rights and obligations it is necessary to distinguish legal capacity, i.e. the eligibility of a natural person to take (by their own legal actions) rights and take on responsibilities. This occurs upon reaching the age of majority, i.e. 18 years of age. Current legislation allows for acquiring said majority before reaching this age only by marriage. This way of acquiring majority is not lost either by termination of the marriage or annulment of the marriage. The minor, i.e. of less than 18 years of age, has the capacity...
only to such legal actions which are proportionate to the nature of the intellectual and volitional maturity appropriate to their age. If a natural person lacks full legal capacity, legal guardians act for them. In accordance with § 22 of Act No. 40/1964 Coll., The Civil Code, as amended (hereinafter referred to as “CC”), this pertains to a person who is authorized to act on another's behalf. Rights and obligations arise from such representation directly to the person who is represented. A person who themselves is not eligible for the legal action at issue and one whose interests are contradictory to those of the represented cannot represent any other. The provisions of § 23 of the CC clearly distinguish legal representation and representation by the power of attorney. Legal representation is established by law or through the exercise of state authority. Following a decision of the state authority, representation (guardianship) may arise to such persons who are not eligible for legal capacity or if there is a conflict (collision) of interests between the legal representative and the represented, or among those who are represented by the same legal representative [8].

In this context, the core provisions are § 27 of the CC, which regulate special cases of legal representation. Within this, there is included an explicit reference to family law- this law regulating who is the legal representative of a minor. The legal representative of a natural person who has been, by a court decision, deprived of legal capacity or whose legal capacity has been restricted by a court decision is the court-appointed guardian. The law takes into account the situation under which a related natural person cannot be appointed as a guardian or another person who meets the conditions for appointment of a guardian. In such a case, the court charges a local authority with such guardianship [1], [6].

2.2 Basic provisions relating to a natural person according to the new CC

The provisions of § 23 of new CC state that "a person has a legal personality from birth to death". According to § 24, then each person is responsible for their own conduct if the same is able to assess and control this [2].

Who should ever, through their own volition, end up a state in which otherwise the same would not be responsible for their actions, the same is still responsible for matters arising from this state. This provision contains the general principle that each individual is responsible for their actions to the extent of the appropriate degree of self-incapacitation (i.e. their ability to assess their own behavior and to control it), even if it leads through their own fault to a condition which would not be otherwise considered responsible. The provisions of § 30 of the new CC refer to the age of majority. Under these provisions, a person becomes fully competent upon majority, while the age of majority is acquired upon turning eighteen years old. In fact, the new CC allows a person to acquire full competence to perform legal acts prior to the age of majority namely by granting such competence to perform legal acts or by marriage.

Consistent with current legislation, legal capacity acquired by marriage is not lost through dissolution of the marriage or marriage annulment. A distinction is made between legal capacity and legal age.

Legal capacity is the ability to act independently, i.e. to acquire through one’s conduct individual rights and obligations. It is necessary to emphasize that although a person usually acquires legal capacity with the age of majority, it is not without exception. As mentioned earlier, this can be acquired even before reaching the age of majority (i.e. emancipation, marriage) and an adult male may also lose legal capacity.

The provisions of § 31 of the new CC refer to minors. Any minor who has not acquired full legal capacity is qualified to perform legal acts as appropriate to the nature of the intellectual and volitional maturity of said minor's age.

In the case of minors, the legal capacity to act is applied through two main principles.

The first principle is that a minor has the legal capacity to act appropriately to their individual level of maturity. However, it is excluded that the minor alone and separately undertook such acts for which legal representative of the same would require court approval. The legal guardians of minors are usually parents, i.e. those who best know the minor and consequently best able to assess their state of mind, will and other individual abilities. Therefore, if a legal representative agrees that the minor can do something, the minor has legal capacity to act in these matters without hindrance. This may be a single act or a combination of forms of conduct, but is always related to some specific purpose. The permission given for these activities of the minor and the nature of conduct of the minor may not exceed the bounds of convention of social life. Via the ex nunc effect, permission shall be limited or withdrawn. As described above, this represents a general legal structure. The provisions of § 33 of the new CC allow a legal representative to grant a minor permission to enter into self-employment. Certainly this measure is very serious for the actual minor, also for other people. Therefore, it is
required that this issue is objectively assessed and decided on by the court. Current legislation does not recognize this or a similar structure. The provisions of § 34 of the new CC essentially define the minor labor law personality of a minor. Under current law, specifically under the provisions of § 6 of the Labor Code, an employer cannot negotiate with a minor the date of commencement of employment, this being a day prior to that on which the minor would end compulsory schooling [4]. Nevertheless, a minor who has not reached the age of 16 years may conclude an employment contract. Concurrently, however, their legal representative may intervene if the minor chose to take such a job that would prove detrimental to their education, development or health. At this point it is necessary to recall the provisions of § 31 et seq. of the Family Law [3], which state the concept of parental responsibility. This is a summary of rights and duties in the care of a minor, including in particular care of health, physical, emotional, intellectual and moral development and to represent the minor and to manage their assets [7]. The Charter of Fundamental Rights and Freedoms, in Article 32, paragraphs 1 and 4, stipulates that parenting and the family are under the protection of the law and childcare is a right for parents [5]. Parental responsibility lasts until the child acquires full legal capacity. Even the explanatory memorandum to the new CC explicitly states that parental responsibility is reinforced against the status quo. The provisions of § 37 of the new CC govern the issue of granting of legal capacity. Current legislation allows for reaching full legal capacity before the age of 18 years via marriage [2]. The new CC instigates a new legal instrument for granting legal capacity (emancipation) to a minor. A minor can be declared otherwise competent if they or their legal representative with his consent suggest it. The following conditions must be fulfilled: the age of 16 years, parental authorization and a certificate that the minor is able to feed them self and to manage their own affairs. When the above conditions are met, the court must grant the application. In special cases that may occur in practice, the court must consider if a proposal is in accord with the interests of the minor and if there are serious enough reasons for emancipation.

3 Problem Solution
The basic difference between legal representation and legal guardianship is in the legal cause of both of these forms of representation. Legal representation is obtained directly from law, whereas guardianship is based on a court decision. Therefore, the new CC strictly distinguishes these two legal institutes, and unlike current legislation, does not define legal representation and guardianship under the single term "legal representation" [9]. A feature common to these two forms of representation is the fact that a legally incompetent person may possess a legal representative and guardian. Another common feature is surely the fact that these representations are formed to protect an insane person and their interests. Due to the existence of these shared features, the new CC includes basic legal aspects for the above two forms of representation mutually. The second part of the code on the right of the family contains a special regulation on legal representation and guardianship of the minor, but even this adjustment is based on general arrangements. The provisions of § 458 of the new CC, via exhaustive enumeration, state which conduct a legal representative or guardian is not authorized to carry out for the represented. Specifically, they may not legally act for the principal in matters relating to the formation and dissolution of marriage or exercise parental responsibilities and rights, nor are they eligible to acquisition in case of death or a declaration of inheritance and its appeal [9]. The institute of a so-called collision guardian is regulated by the provisions of § 460 of the new CC. This legislation basically emulates current legislation. I.e. a court appoints a collision guardian to a represented person if a conflict of interests of the legal representative or guardian with the interests of the represented exists or if there is a conflict of interests between those represented by the same legal representative or guardian, or if there is such a conflict. In practice, it is not rare for a legal representative or guardian to also manage the assets of the principal. In this case, it is only routine management of property. Therefore, if this is not a matter of routine, court approval is required for handling the assets of the represented. There is no right for a legal representative and guardian to receive remuneration from the principal. The new CC states that if these subjects have a duty to administer an estate of the principal, remuneration for such administration of assets can be paid to them. A court will always decide on the amount of this, taking into account the costs of administration, the value of the managed assets, and
income from assets under management, time and the labor required for such management.

The court appoints a guardian and always determines the extent of his rights and obligations concurrently. A person to whom a guardian has been appointed becomes a person under guardianship for the duration of guardianship. The new CC applies in the provision of § 464 the option to appoint more guardians for a principal in the case of management of assets. In other words, if it does not pertain to administration of assets, a person can appoint only one guardian to a person. If concurrently a minor is represented by one guardian appointed to manage property and by another overseeing their person, the guardian of their person of the principal only has the exclusive right to represent said minor before the court in issues related to managed assets. The legislation also takes into account the situation when the court appoints more guardians, but at the same time does not determine in which matters each of them is legally qualified to act alone for the principal. In such a case, the guardians must act jointly [2], [9].

Among the new legal institutes of the new CC is the Guardian Council. For a person whose legal capacity is limited it is necessary to establish a guardian. A guardian must also be organized for a person of unknown residence, if it is necessary to protect their interests. The provisions of § 468 of the new CC expressly provide that guardianship does not terminate with the death of a guardian or their withdrawal; until the court appoints a new guardian for the principal, guardianship is transferred to the public guardian under another law. Eligibility to be a public guardian pertains to the municipality under which the residence falls of the principal under guardianship or the legal entity established by the municipality for tasks of this kind. The appointment of a public guardian in adherence to another act is not tied to his agreement [2], [9].

The legal institute of the Guardian Council represents a completely new regulation. As stated in the explanatory report to the draft of the new CC, experience has shown that it is dangerous to entrust the destiny of an individual exclusively to another person. Therefore, following the example of some continental legal systems, the Guardian Council is established as a collective and guardian, this in relation to a guardian as a consultative and supervisory body of three members. This is the aforementioned Guardian Council which is composed of persons close to the represented. Such a Council may only be established if there is an interest in the principal from said members who form it. If such an interest does not exist, a court decides on matters of which the Guardian Council would otherwise decide. A Guardian Board shall exercise supervision over the activities of the guardian and state its opinion on some important measures relating to the principal under such guardianship. Any decisions of a Guardian Council may be canceled by a court [2], [9].

In the provisions of § 472 of the new CC, a procedure for creating a Guardian Council is governed. In the event that a guardian is appointed, the principal or any person close to the same has the right to apply for establishment of a Guardian Council. Based on this request, a guardian convenes a meeting of close persons and friends of the principal, if they are known to the guardian. The meeting must be held within 30 days from receipt of confirmation of said Council. If the meeting is not convened in time or it is not held for any reason, or if a Guardian Council is not elected, a court shall convene a meeting of its own motion. The right to attend the meeting falls to the principal under guardianship, a person close the same under guardianship and to any friends, even though they might not be invited. Each of the parties shall have one vote. In the case of participation of at least five persons, a Guardian Council may be elected. It is true that a guardian cannot be a member of the Guardian Council. A member may solely be a person who demonstrates a long-term and serious interest in the principal and the ability to manifest this in the future; also, the interests of that person must not contradict the interests of the principal. The minimum number of members of the Guardian Council is three. If the Guardian Council has only the minimum number of members, it constitutes a quorum through the presence of all, otherwise in the presence of a majority of its members. Any decisions are taken by a majority vote of the members so present. The position of member of the Guardian Council is held for an indefinite period. A member has the right to resign, this resignation becoming effective by giving written notice to the guardian and the court [2], [9].

The frequency of meetings of the Guardian Council is fixed by the new CC as an occurrence of at least once a year. The meeting shall be convened by its chairman, guardian, or any member of the Guardian Council or court upon the request of a person who can demonstrate a serious interest in the principal, or without such a motion occurring. The minutes from the Guardian Council meetings are to be prepared as a report. From this, it must be clear when the meeting took place, who participated in it, what decisions were taken, who raised a protest and who took said minutes. If it is not expressly stated in
the record who voted for and against the proposal, it is considered that all the members present at the Guardian Council meeting voted for adoption of the proposal. Written notification is then delivered by the chairman of the Guardian Council to the guardian and to the court-appointed guardian. At a regular meeting of the Guardian Council a report drafted by the guardian on the Council’s activities in the matters of the principal is discussed, the Council then expresses the list of assets of the same and the administration bill, as well as the bill for potential fees for managing the assets. The new CC expressly provides for an exhaustive list of what said guardian may not decide upon without the consent of the Guardian Council and which cases may not, without the consent of the Guardian Council, handle the property of the represented minor. Governing law even allows the possibility of the Guardian Board to act if it is in the interest of the principal, in relation to which of the remaining guardian’s decisions regarding the principal shall be subject to the consent of the Guardian Council. In any case, such a resolution may not limit the guardian in excess of reasonable circumstances [2], [9].

In practice, a situation may arise where it is not possible to establish a Guardian Council due to the lack of interest by a sufficient number of people who might be members. The court may decide in such a case on a proposal from one of these people that the scope of the Guardian Council is to be carried out by merely one of these people and decide on its appointment at the same time. If it is not possible for even the above procedure to occur, the court approves actions relating to the represented or of their assets instead of a Guardian Council.

The new CC, explicitly in the provisions of § 486 et seq., regulates the issue of guardianship of a legal person. One reason for this treatment pertains to uncertainties arising from current legislation, as to whether a legal person can be appointed a guardian. It is clear that there exist practical reasons for legal regulation of the guardianship of a legal person, i.e. not only the interests of that person, but often public interest. The court may appoint a guardian to a legal person that needs to have its affairs managed or rights defended. A guardian of a legal person can only be a person who meets the conditions for eligibility as a member of a statutory body. If the guardian fails to meet these conditions, the court replaces the same without undue delay with a new guardian [2], [9], [10], [11].

As regards the rights and obligations of the guardian of the legal person, provisions on the rights and obligations of a statutory authority shall apply mutatis mutandis. In other words, the scope of a guardian is adequately covered by the provisions on statutory authority. The guardian is imposed an obligation by a court to take care with due diligence that the activities of statutory body are restored. It respects the will of the legal person to appoint a specific person as a guardian. Therefore, if the founding legal act determines that a certain person has been appointed as guardian of a legal person, the court appoints as guardian such a person, if this person is eligible to do so and agrees to the appointment.

4 Conclusion

The private area of law is currently undergoing major change. After nearly 50 years, the validity and effectiveness of existing legislation, i.e. the Civil Code, the Commercial Code, the Family Act, are enacted from 1 January 2014 via Act No. 89/2012 Coll., The Civil Code, which is currently already part of valid Czech law, the same having been promulgated on 22 March 2012. For the addressees of legal norms, i.e. for natural and legal persons, this indicates the need to get to know during vacatio legis this very extensive legislation. Nevertheless, the principle of ignorance of the law is no excuse.

Given the extent of this paper, the objective and ambition was not held to comprehensively detail the issue of entities in relation to issues of representation and guardianship. However, the choice of topic was not made randomly. This issue is essential for the correct perception and understanding of the position of subjects of law. Each entity may find them self during their life, in the case of legal persons for the duration of its existence, in a situation where they will not be able to act for them self. This area of law has undergone, via the new CC, a number of very significant changes, and brought about a number of legal institutes that have not yet been laid down in law. For example, distinguishing the terms legal capacity and majority. Current legislation does not utilize the concept of legal capacity, a clear definition of the diversity of legal representation and guardianship, including the definition of their common features, the institutional guardianship of a legal person, the institutional Guardian Council, specification of the position and function of a collision guardian for a weaker body of law - a minor.

The new legislation follows the general tendency towards continental European conventions that is conceptually follows the Central European tradition of legal thought. The preparation of the new CC was
based, among other things, on critical assessment of civil codes from range of continental Europe culture. These were especially Austrian, Swiss, German Code, then Italian, Dutch, Polish. From the latest modifications these were legal codes Quebec and Russia. The French, Belgian, Spanish, Portuguese, Liechtenstein civil laws were taken into account. It can be stated that the legislation contained in the new CC represents standard civil code of continental type. The legal regulation of individual fundamental institutions is conventional to the standard legal regulations of continental Europe, with respect to a tradition of central European legal thought. The fact is that Germany (BGB) and Austrian (ABGB) legislation are closest to the Czech legal culture. For example a proposal for modification of the legal framework a legal capacity of minors to act who have not got full legal capacity due to its granting or by marriage, patterns were mainly German Civil Code (BGB) and Dutch Civil Code (NBW). New CC regulates an institute of granting of legal capacity of minor. Here especially modern Russian and Quebec legislation (CCQ) was an inspiration [9], [12], [13].

In summary, Law No. 89/2012 Coll., The Civil Code, is valid, but still ineffective, and responds to the need for change in private law. There is very wide scope for further analytical articles on the issue. The new institutes will be established from January 2014. It will certainly be interesting to see how quickly they find their place in everyday life. At the same time, it is expected that their utilization shall not be possible without difficulty. Such challenges will need to be identified at the time, examined by experts, or specified in an amendment. It can be expected that a number of papers on this issue will be published, where a variety of views on the theoretical and practical aspects of the content of the new CC will be discussed.

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