Legal update

November 2022

Weinhold Legal

Contents

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

Banking, Finance & Insurance:
Daniel Weinhold, Václav Štraser, Ondřej Tejnský
Competition Law / EU Law:
Tomáš Čermák
Dispute Resolution: Milan Polák, Zbyšek Kordač, Anna Bartůňková, Michaela Koblasová, Michal Švec
ESG – Environment, Social, (corporate) Governance
Daniel Weinhold, Tereza Hošková
Family Office:
Milan Polák, Zbyšek Kordač, Michaela Koblasová
Insolvency and Restructuring:
Zbyšek Kordač, Jakub Nedoma
IT, Media & Telecommunication:
Martin Lukáš, Jakub Nedoma, Michal Przeczek
Labour Law: Eva Procházková, Anna Bartůňková, Daša Aradská, Ondřej Tejnský
Mergers and Acquisitions:
Daniel Weinhold, Václav Štraser
Personal Data Protection
Martin Lukáš, Tereza Hošková, Daša Aradská
Public Procurement & Public Sector:
Martin Lukáš, Tereza Hošková, Monika Švaříčková
Real Estate:
Pav Younis, Václav Štraser
Slovak Law:
Tomáš Čermák, Karin Konečná
Start-ups, Venture Capital and Cryptocurrency:
Pav Younis, Martin Lukáš, Jakub Nedoma, Michal Švec, Ondřej Tejnský

News in legislation

Amendment to the Act on electronic acts and documents authorised conversion

On 2 November 2022, the Government of the Czech Republic approved a bill amending Act No. 300/2008 Coll., on electronic acts and documents authorised conversion, as amended. The amendment is now before the Chamber of Deputies of the Parliament of the Czech Republic. The amendment is intended to take effect from 1 January 2023.

The amendment abolishes the rule introduced by Act No.261/2021 Coll., according to which the state will automatically set up a data box for natural persons who, as of 1 January 2023, use a means of electronic identification issued under a qualified electronic identification system (e.g. a bank identity). The automatic establishment of data boxes for all was justified primarily by the need to expand the number of holders of data boxes of natural persons on the assumption that if these natural persons are able to use the means of electronic identification, the operation of the data boxes will not cause them any major difficulties and that some natural persons for whom a data box of a natural person will be automatically established will not deactivate the data box after their own user experience.

The reasons for the abolition of the current, but still ineffective, regulation lie primarily in the current socio-economic situation. In this respect, according to the explanatory memorandum to the amendment, the legislation appears to be too ambitious. The legislator sees another argument for abolition in the unjustified burden on natural persons, since the possible deactivation of a data box requires an active act of a natural person (against its automatic establishment). The legislation would also complicate the situation of vulnerable groups of the population, who are not sufficiently prepared for the use of data boxes and the legal consequences associated with it.

The adoption of the amendment will return the legal situation prior to the adoption of Act No. 261/2021 Coll., when a data box is established for a natural person exclusively at his/her request. However, even if the amendment is adopted, data boxes will be automatically established for natural persons entrepreneurs ("self-employed persons"), associations or foundations. The establishment of data boxes for these entities will take place in three waves between January and March 2023

News in case law

On the evidence in delayed flight compensation proceedings

(Judgment of the Constitutional Court of the Czech Republic file no. I. ÚS 1768/22 of 25 October 2022)

The complainants claimed from the District Court for Prague 6 the sum of EUR 800, together with additional costs, against the defendant Smartwings, a. s. for a flight delay of more than 3 hours. In such a case, the passenger on the flight in question is entitled to compensation of EUR 400 in accordance with Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91. The defendant submitted that the applicants' flight was not delayed so as to give rise to a claim for compensation under the regulation and referred to the flight record sheet as evidence.

The District Court for Prague 6 dismissed the lawsuit. On appeal, the complainants argued that the court's decision was biased and that it based its decision only on the evidence submitted and produced by the defendant. The time of arrival logically preceded the opening of the aircraft door. The Court of Appeal concluded that the evidence submitted by the defendant was credible evidence, agreed with the conclusions of the Court of First Instance and referred to its decision.

The applicants then lodged a constitutional complaint in which they stated that the courts had, in their view, acted with a bias in favour of the defendant by relying

Legal update

November 2022

Weinhold Legal

solely on the evidence provided by the defendant in assessing the length of the flight delay. In particular, they argued that the courts had failed to assess all the evidence in its interconnectedness and had not taken into account the judgment in Case II. ÚS 2226/21 concerning the nature of the evidence of the flight record and the approach of the Court to the assessment of such evidence.

The Constitutional Court concluded that the constitutional complaint was well-founded. The reasoning of the decisions of the courts at both instances does not comply with the requirements for reasoning formulated by the Constitutional Court in its previous case law. One can agree with the complainants' view that the courts disregarded the contested decision in Case No II. ÚS 2226/21, according to which, if the only key and credible basis for proving the length of the flight delay at the destination is to be the flight record, moreover, drawn up by the operating air carrier, which is free to dispose of the data recorded in such a record according to its own interests, such a procedure is contrary to the meaning and purpose of the regulation. The purpose is to protect passengers as the weaker party to the contract. In such a case, passengers would have no real possibility of proving the length of the flight delay in a dispute with the operating air carrier.

According to the Constitutional Court, the principle of predictability of judicial decisions, the related principle of legal certainty and the protection of the legitimate expectations of the parties are an integral part of the right to a fair (due) process. If a party itself refers to a previous relevant court decision in a similar case, such an objection must be included in the reasons for the decision and properly dealt with. However, the Court of Appeal departed from the interpretation contained in the judgment in Case No II. ÚS 2226/21 without giving any convincing reasons for its decision.

Liability of the tenant of business premises for damage

(Judgment of the Supreme Court of the Czech Republic file no. 25 Cdo 2342/2021 of 29 July 2022)

The District Court for Prague 2 ordered the defendant to pay compensation for damages, based on the finding that in the non-residential premises used by the defendant company as a tenant, the non-residential premises of another tenant were flooded (office equipment was damaged). The applicant (the insurer of the owner of the damaged premises) paid the damaged tenant the amount claimed in respect of the insurance claim. According to the lease agreement between the landlord and the defendant, the defendant was obliged to pay for minor repairs related to the use of the leased premises and costs related to routine maintenance. The Court of First Instance considered the case by analogy under Section 2937(1) of the Civil Code and concluded that the defendant, in view of its contractual obligation to pay for minor repairs related to the use of the non-residential premises and the costs associated with routine maintenance, was also obliged to supervise the items located in the leased non-residential premises. According to the Court of First Instance, the defendant neglected to properly supervise the supply hose, which burst and caused the damage, without the defendant proving in the proceedings that it had visually checked the condition of the supply hoses in any way.

On the defendant's appeal, the Municipal Court in Prague amended the judgment of the Court of First Instance by dismissing the action and decided on the costs of the proceedings before the courts of both instances. It agreed with the findings of fact of the court of first instance and with the application of Section 2937 of the Civil Code, but, unlike the court of first instance, it concluded that the burst water supply hose should be assessed as an unforeseeable 'unfortunate accident' which the defendant could not have prevented within the scope of its supervision of the leased property.

The applicant appealed against the judgment of the Court of Appeal. The Supreme Court held that if, in the given situation, the Court of Appeal concluded that the defendant, as the tenant of the premises, had not neglected to exercise due care (within the meaning of section 2937 of the Civil Code), over the supply hose to the washbasin, since its bursting must be assessed as an unforeseeable "unfortunate accident" which the defendant could not have prevented within the scope of its supervision over the subject of the lease, its legal assessment is incorrect, since it is precisely such care that the law requires of tenants in the context of their efforts to effectively prevent damage to other people's property. The defendant did not allege anything about the method of inspecting the supply hose that would justify the application of the liberation ground, and the Court of Appeals concluded that common practice did not require it to do anything in that regard because a defect could never be effectively prevented. However, that would mean that the proper oversight includes actual inaction, an untenable conclusion that calls into question the very nature and purpose of the liberation ground.

Prohibition of competition

(Judgment of the Supreme Court of the Czech Republic file no. 21 Cdo 1316/2021 of 26 July 2022)

By the action filed with the District Court in Prostějov, the plaintiff sought payment of CZK 7,500,000 with 8.05% interest on late payment per annum from 10 August 2017 until payment, on the grounds that from 1 September 2008 to 31 December 2015 the defendant was employed by the plaintiff as an operations director. Although the defendant knew (should have known) that he was subject to the prohibition of competition under, inter alia, Article 432 of the Civil Code, he had been acting as managing director of the company A., which was to act as a competitor of the plaintiff, since 18 January 2011. The applicant discovered this fact in March 2017. Since the defendant did not have the plaintiff's consent to carry out this activity, he violated his obligations arising from the prohibition of competition, and thereby caused damage to the plaintiff equal to the profit that company A. achieved in 2013, 2014 and 2015.

The District Court in Prostějov dismissed the lawsuit. It concluded that if the plaintiff became aware of the defendant's competitive activities in March 2017, the three-month period for exercising rights under Section 432(2) of the Civil Code began to run, but the objective period had expired earlier if the defendant had engaged in competitive conduct from 1 January 2013 to 31 December 2015. Furthermore, the Court of First Instance concluded that the entrepreneur can claim the right to compensation instead of the right under Section 432(2) of the Civil Code, therefore, if the right under Section 432(2) of the Civil Code has expired by not exercising it within the time limit, the plaintiff cannot claim compensation under Section 432(3) of the Civil Code.

On the plaintiff's appeal, the Regional Court in Brno upheld the judgment of the court of first instance because it

> *"fully agrees with the conclusion of the court of first instance on the prescription [...] of the plaintiff's claim for compensation for damages".*

A claimant may claim compensation for damages under section 432(3) of the Civil Code only if the original claim (under section 432(2) of the Civil Code) is an existing claim. If the rights under section 432(2) of the Civil Code have been extinguished by prescription, the plaintiff cannot claim damages from the defendant in place of those rights.

The Court of Appeal has ruled that from the point of view of systematic interpretation it is significant that the provisions of Section 432 of the Civil Code refer to three separate rights (or three separate groups of rights). Only in the case of rights under paragraph 2 is their extinction expressly regulated if they have not been exercised within the prescribed (subjective and objective) time limit. However, according to the provisions of Section 654(1) of the Civil Code, which regulates

Legal update

November 2022

Weinhold Legal

prescription, if a right has not been exercised within the prescribed period, it will lapse only in cases expressly provided for by law. Moreover, in the case of compensation for damages, there is no point in the beneficiary being placed in such a very restrictive position, particularly in comparison with other beneficiaries in other cases of compensation for damages.

The above interpretation leads to the conclusion that the right to compensation for damages caused to an entrepreneur by a violation of the prohibition of competition by his representative does not expire if the right under Section 432(2) of the Civil Code is extinguished by prescription, and that this right to compensation does not have to be exercised within the time limits specified in Section 432(2) of the Civil Code.

The information contained in this bulletin should not be construed as an exhaustive description of the relevant issues and any possible consequences, and should not be fully relied on in any decision-making processes or treated as a substitute for specific legal advice, which would be relevant to particular circumstances. Neither Weinhold Legal, v.o.s. advokátní kancelář nor any individual lawyer listed as an author of the information accepts any responsibility for any detriment which may arise from reliance on information published here. Furthermore, it should be noted that there may be various legal opinions on some of the issues raised in this bulletin due to the ambiguity of the relevant provisions and an interpretation other than the one we give us may prevail in the future.

Please send your comments to: **matej.novak@weinholdlegal.com** or contact the person you are usually in touch with. To unsubscribe from publications: office@weinholdlegal.com

© 2022 Weinhold Legal
All rights reserved