



# Legal update

October 2023

## Weinhold Legal

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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.

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### Upcoming legislation

#### Amendment to the Act on Courts and Judges

On 29 September 2023, the Ministry of Justice of the Czech Republic sent to the Government of the Czech Republic for approval a bill amending Act No. 6/2002 Coll., on Courts, Judges, Lay-Judges and the State Administration of Courts and Amending Certain Other Acts (Act on Courts and Judges) and other related laws. The main objectives of this bill are to make the courts' decision-making more efficient and to revise the legislation on the institute of presiding judges in labour and criminal court proceedings. The improvement of the efficiency of co-decision-making activities of presiding judges was already consulted in the autumn of 2018 and at the beginning of the following year with representatives of the judiciary, the Office of the Public Defender of Rights and the Institute for Judicial Affairs. The proposal to abolish to some extent the involvement of presiding judges is also contained in the so-called Anti-Bureaucratic Package, which was submitted by the Minister for Legislation and the Chairman of the Legislative Council of the Government. The bill was considered by the Government on 14 June 2023.

The bill proposes to abandon the institute of presiding judges for the adjudication of labour law disputes by courts in civil court proceedings, criminal proceedings before District Courts and certain criminal proceedings before District Courts as courts of first instance. In particular, in criminal proceedings before District Courts as courts of first instance, it is assumed that presiding judges will be retained in proceedings concerning particularly serious crimes, i.e., intentional crimes for which Act No 40/2009 Coll., the Criminal Code, as amended, provides for a maximum penalty of at least ten years' imprisonment. However, even here the bill provides for an exception, according to which presiding judges should no longer be part of the criminal chambers for the trial of property and economic crimes, the trial of which requires high expertise. However, the participation of presiding judges will continue to be required in the future, for example, in proceedings concerning the offence of murder of a newborn child by the mother under Section 142 of the Criminal Code. Although this does not fall into the category of particularly serious crimes, a possible reason for this is the possible tightening of its legal qualification.

If the bill is adopted, the participation of presiding judges in criminal proceedings before the regional court as a court of first instance will be limited to a group of the most serious crimes, mainly of a violent nature. However, this limitation will be made in favour of qualified decision-making by professional judges.

In the explanatory memorandum, the revision of the existing regulation is described as "necessary". According to this document, the proposal responds to the administrative burden of the courts, the complications associated with the formation of trial panels consisting of a judge and a presiding judges, the often-disproportionate length of court proceedings and, last but not least, the lack of participation of presiding judges in the actual hearing and decision-making. The bill is primarily aimed at responding to the practical requirement to limit the participation of the lay element in judicial decision-making as far as possible. On the other hand, it also pursues the entirely legitimate demand of the international community and the public to maintain the participation of the lay element in judicial decision-making in those cases where it is justified.

The proposed legislation is expected to come into force on 1 January 2024.



# Legal update

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### News in case law

#### **Concept of lost commission within the meaning of Section 669(1)(b) of the Commercial Code**

*(Judgment of the Supreme Court of the Czech Republic Case No. 31 Cdo 1774/2023 of 13 September 2023)*

In this judgment, the Grand Panel of the Civil and Commercial Division of the Supreme Court expressed its opinion on the so-called lost commissions of a business representative.

The issue in the case was whether the commissions lost by the representative within the meaning of Section 669(1)(b) of Act No. 513/1991 Coll., the Commercial Code, are commissions from contracts that the representative would have hypothetically concluded with customers that he would have acquired for the represented party if the business representation had continued, or commissions from contracts with current customers with whom he significantly expanded the represented party's business.

Since the formulated question of substantive law related to the interpretation of Section 669 of the Commercial Code, which implemented the content of Article 17 of Directive 86/653/EEC into the Czech legal system, the Supreme Court asked the Court of Justice of the European Union for a preliminary ruling.

With this judgment, it became clear that the existing decision-making practice of the Supreme Court, according to which the lost commissions are those which the representative would otherwise have received from the already executed transactions, cannot stand in the light of the Euroconform interpretation.

The commissions that the sales representative loses within the meaning of Section 669(1)(b) of the Commercial Code cannot be commissions from transactions already executed to which the sales representative is entitled under the contract of representation. **The lost commissions lost are therefore the commissions which the sales representative would have received in the hypothetical case of a further duration of the contract, namely for the transactions which he would have conducted in such a case with the customers he would have acquired for the represented party, as well as with current customers with whom he has significantly developed the represented party's business.**

#### **Timeliness of the Objection of Partiality of a Member of the Arbitral Court and the Information Obligation of Arbitrators**

*(Judgment of the Supreme Court of the Czech Republic Case No. 23 Cdo 2193/2022 of 30 August 2023)*

The Supreme Court ruled on the issue of the timeliness of a possible objection of impartiality of a member of the arbitration panel of the Arbitration Court.

In this case, the claimant sought the annulment of the contested arbitral award on the grounds pursuant to Section 31(c) of Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards, as amended. The court of first instance found the action

to be well-founded and set the award aside. It referred to the Rules of Procedure of the Arbitration Court in question, which provide for the possibility of raising an objection of impartiality later than before the first oral hearing. The appellate court held, however, that the applicant had objected to the arbitrator's impartiality out of time, on the ground that he could have obtained the information essential for its submission before the Arbitration Court hearing. However, the Supreme Court, as a court of highest appeal, considered this to be incorrect. In the present case, it upheld the legal conclusion of the court of first instance that *"the prudence of a party to arbitration proceedings cannot be interpreted in such a way that the party should take the initiative to find out what the individual appointed arbitrators are involved in. On the contrary, the parties to the arbitration are entitled to trust the permanent arbitral tribunal that it will appoint independent arbitrators and that those arbitrators will give a correct picture of their relations with the parties and the subject-matter of the arbitration."*

The relevant provisions of the Arbitration Act are based on the idea that it is primarily the arbitrator himself who should react if he is aware of circumstances giving rise to doubts about his impartiality and fulfil his duty to report. The parties to the dispute can then assess whether or not to raise the objection of bias. However, this assumes that the party to the dispute was aware or could have been aware of those circumstances. Knowledge of those circumstances does not depend solely on the activity of the disputing party but, on the contrary, also on the possibility of relying on the duty of notification of the members of the chamber itself.

In this case, the Supreme Court concluded that **"a ground for dismissal of a petition to set aside an arbitral award pursuant to Section 33 of the Arbitration Act does not arise where the party seeking to set aside the arbitral award was not provided with notice of the arbitrator's notification to the Arbitration Court of circumstances that could raise legitimate doubts regarding the arbitrator's impartiality."**

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