



Legal update

April 2024

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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Legislation News

Advocacy Act

On 10 January 2024, the Government approved a bill amending Act No. 85/1996 Coll., on Advocacy "**the Bill**"), as amended.

The purpose of the Bill is to incorporate all necessary technical updates and significant innovations to make the Advocacy Act a modern piece of legislation. The Bill therefore introduces several key changes.

Regarding the protection of the confidentiality of attorney-client communications, this primarily concerns the clarification of the existing legal provisions on the attorney-client confidentiality obligation. The primary objective of the Bill is to protect the confidentiality of information and the legitimate interests of the client, not to protect the attorney. The protection of confidentiality under Section 3a of the Bill is based on the analogous legislation contained in Section 1730(2) of Act No. 89/2012 Coll., the Civil Code ("**Civil Code**"). According to this provision,

"if a party obtains confidential information or communications about the other party in the course of contract negotiations, it shall take care that they are not misused or disclosed without lawful justification. If it breaches this duty and is thereby enriched, it shall give to the other party what it has been enriched by."

The legal provision in section 3a of the Bill is therefore constructed on the intention of the legislature to ensure that certain specifically defined information must be treated under a particular regime. A person who obtains such information is not entitled to dispose of it arbitrarily, but is obliged to deal with it in a qualified manner, as provided by law, so as to prevent its misuse either by that person or by a third party, and to prevent its unauthorised disclosure (i.e. without lawful justification). In this sense, confidential information is information whose nature implies that it must not be misused or disclosed. The Bill defines them as

- a) information constituting the content of the communication of an attorney, a legal trainee and other persons referred to in Section 21(9)(a) with a client in the course of practising advocacy and
- b) information obtained or generated in the course of or in the immediate connection with the practice of advocacy, insofar as it is capable of revealing information about the content of the communication referred to in (a) or about the legal services provided, if such confidentiality is in the client's interest.

In the event that doubts arise as to whether certain information falls within the definition of confidential information pursuant to Section 3a, or if it cannot be clearly determined from the circumstances of the case that it is confidential information, the general rules of legal conduct (e.g., pursuant to Section 7, Section 551, Section 583, Section 2900 of the Civil Code) will govern the conduct of the person handling the information.

Furthermore, the current legislation on the practice of law provides that the practice of law can only take place within the prescribed weekly working hours, which corresponds to 40 hours per week. Newly, cases worthy of special consideration will be assessed on a case-by-case basis depending on the specific circumstances of each case.

This amendment also improves the legal regulation by extending the protection of attorneys and their clients against so-called "vinklaering" (i.e. unauthorised offer, mediation and provision of legal services by persons who are not authorised by law to do so or who perform such activities illegally) and sets out the attorney's procedure in connection with the verification of the client's electronic signature (so – called eLegalization). Newly, lawyers would be able to perform eLegalization in a similar way as the authorities under the Authentication Act, i.e. using Czech POINT. The proposal therefore includes the authorisation for the lawyer to use the data of the persons in the basic population register when making a declaration on a document in electronic form, to the necessary extent.

The amendment is to enter into effect on 1 July 2024, with the exception of the provisions relating to the declaration of authenticity of the electronic signature, which take effect on 1 January 2025.



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Case Law

Coexistence of a Management Contract and a Performance Contract

(ruling of the Constitutional Court of 23 January 2024, Case No. III ÚS 410/23)

The decision of the Constitutional Court of 23 January 2024 concerns the legal assessment of a situation in which a member of the statutory body concludes with a company, in addition to a contract for the performance of his/her duties, another employment contract called a "management" contract.

According to the factual background, it appears that the complainant has held the position of Chairman of the Board of Directors of a public limited company since 1998 and also the position of CEO under the aforementioned management contract. He was removed from both positions in December 2008. In January 2009 he was also dismissed from his employment on the grounds of redundancy.

This was followed by several lawsuits in two separate branches. The currently commented part of the dispute concerned a claim by the public limited company for reimbursement of the amount paid to the complainant in the form of an extraordinary remuneration for his work as CEO, since the company considered the management contract to be invalid under the Labour Code, given that the management contract required approval by the general meeting to be effective. The courts then ruled similarly on this point, that is to say, against the complainant's.

However, the complainant argued that the decision of the general courts to declare the management contract invalid violated his constitutionally guaranteed rights, such as the right to a fair trial, but also violated the principle of autonomy of the will and the principle of *pacta sunt servanda*.

The case was therefore heard by the Third Chamber of the Constitutional Court, which did not uphold the complaint and dismissed it. According to the Court, although a contract for the performance of duties concluded with a member of the statutory body of a commercial corporation may be subject to the Labour Code regime, it must comply with the limits set by the mandatory (non-transgressible) norms of commercial and civil law. The limitations resulting from these mandatory norms respect the principle of *pacta sunt servanda* and the autonomy of the will of the contracting parties. One such restriction is, for example, the requirement that the agreed remuneration of a member of the statutory body be approved by the highest body of the public limited company (the general meeting). This ensures the protection of the rights and legitimate interests of shareholders, third parties and the joint stock company itself. This means that, according to the Constitutional Court, the requirement of approval of the above-mentioned legal action by the general meeting constitutes a reasonable restriction of the autonomy of will and contractual freedom. This measure is legitimate as it aims to protect the rights of the corporation, its members and, indirectly, third parties, including creditors.

Compensation for death in service/work accidents

(ruling of the Constitutional Court of 7 February 2024, Case No. I. ÚS 1143/23)

The father, who was a police officer, tragically died in 2014 in a traffic accident caused by his colleague, another police officer, while driving a service vehicle. Subsequently, both the daughter and son of the deceased police officer have sought compensation in both civil and administrative courts for the mental anguish they suffered from the loss of their loved one.

First, the applicants applied to the Director of the Regional Police Directorate (now intervener) for compensation for non-pecuniary damage for the loss of their father. In addition, they brought an action before the civil courts under section 2956 of Act No 89/2012 Coll., the Civil Code. However, the court dismissed the civil proceedings for lack of jurisdiction

and referred the matter to the administrative authorities. In the meantime, the Deputy Director of the Regional Police Directorate discontinued the proceedings on the complainants' claim for compensation, partly for inadmissibility and partly for withdrawal of the claim. According to the administrative authorities, the daughter was compensated pursuant to Section 106 of Act No 361/2003 Coll. on the service of members of the security forces ("the Service Act"), whereas the son received nothing on the grounds that he was not a dependent child and thus did not meet the criteria for compensation under Section 109 of the Service Act. The complainants then applied to the Regional Court, but were also unsuccessful. The Regional Court dismissed the applicants' action against the intervener's decisions, arguing that the administrative authorities had correctly assessed the applicants' claims under the Staff Act and not under the Civil Code.

In its decision of 14 February 2024, the Constitutional Court did not uphold the arguments presented in the complaint of the survivors of a police officer who was tragically killed in a crash of his official vehicle, due to the lack of legal basis.

Specifically, it held that the surviving complainants can and could avail themselves of a claim for compensation for emotional distress caused by the death of a loved one under the compulsory liability policy with the insurer of the vehicle, which means that they can also seek compensation in other ways. The legal order thus provides the applicants with a way of possibly compensating for the non-pecuniary damage caused by their father's death, and the inequality created by the compensation scheme under the Service Act can therefore be overcome.

However, the Constitutional Court concluded that it could not ignore the current legislative arrangement regarding compensation for work – related injuries compared to service-related injuries. While in the case of employment, any person close to the victim is now able to claim compensation corresponding to the degree of suffering (pursuant to Section 31 of Act No 262/2006 Coll., the Labour Code), in the case of the security forces, a fixed amount still applies pursuant to Section 109 of the Service Act, which cannot be increased. This provision also limits compensation to the spouse or dependent child and the parent living in the same household. However, neither the Explanatory Memorandum nor the case-law provides an explanation for such a fundamental difference. Although the matter at hand does not provide the Constitutional Court with a sufficient basis for a thorough assessment of any shortcomings of the current legislation in the light of the constitutional principle of equality, this judgment at least indicates areas that need to be examined. The **Constitutional Court therefore invited the legislator to consider whether the differences between the compensation of employees and members of the security forces were indeed justified**. If this is not the case, it may be necessary to amend the Act.

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