Legal Update

May 2018

Weinhold Legal

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The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

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Legislative amendments

GDPR related Bill on the processing of personal data

On 18 April 2018, a bill on the processing of personal data and the amending of some related laws had its first reading in the Chamber of Deputies ("**Bill**").

The Bill is designed to replace Act No. 101/2000 Coll. on the protection of personal data, inasmuch as it implements the European general directive on the protection of personal data (General Data Protection Regulation, GDPR) as well as a criminal law directive that regulates the processing of personal data by judicial and police authorities.

The Bill primarily addresses the position of the Personal Data Protection Office and exceptions in Czech law that are permitted to Member States by the GDPR. For example, the Bill establishes a minimum age of consent to the processing of personal data of 15 years old, while the GDPR stipulates an age of 16.

The Bill proposes the maximum fine for personal data administrators be reduced. As is already the case, a fine of up to CZK 1 million may be imposed for a violation of the prohibition on disclosure of personal data under another legal regulation, e.g. the Criminal Code; if the violation occurs via the media, then up to CZK 5 million. An administrative body or processor of data can face a fine of up to CZK 10 million for breach of the obligation in the case of processing data for "criminal law" purposes. For a public entity, the maximum administrative fine for violating GDPR rules is CZK 10 million.

Given the exigencies of the legislative process, there is virtually no possibility of the Bill being adopted and entering into effect before the GDPR effective date of 25 May 2018. Notwithstanding, the GDPR will take effect in its full scope in the Czech Republic as of this date.

Recent case law

On eligibility of a legal entity to act before a court

(Constitutional Court Ruling No. IV. ÚS 3172/17 of 1 February 2018)

In this case, the Constitutional Court dealt with a violation of Art. 36(1) of the Charter of Fundamental Rights and Freedoms ("**CFRF**") and Art. 6(1) of the Convention on the Protection of Human Rights and Fundamental Freedoms ("**Convention**") guaranteeing the rights to due process and access to courts.

In her constitutional complaint, the complainant claimed a judicial decision on an interim measure infringed her fundamental rights and sought the decision's annulment.

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The complainant sought an injunction against secondary participants to refrain from interfering with her title to land; the Court of First Instance granted her petition to impose the injunction and enjoined her to file an action in the same case with the competent court by a stipulated deadline. The respondent appealed the decision and the Court of Second Instance sided with the respondent and denied the petition to impose an injunction, arguing the Court of First Instance had erred as the petition lacked the signature of another member of the statutory body, as it is registered in the public companies registry.

In her constitutional complaint, the complainant argued that Art. 11 of the CFRF had been violated; she later added a claim of violation of Art. 36(1) of the CFRF.

The Constitutional Court stated the appellate court had erred in its assessment that the petition was defective owing to the absence of a signature of a second member of the statutory body. It deemed this finding to suffer extreme defect, as the provision of § 21(1) (a) of the Civil Procedure Code stipulates the chair of the statutory body shall act on behalf of a legal entity, which requirement was met in this case. The Constitutional Court added that a body governed by public law also violates the right guaranteed by Art. 36(1) of the CFRF and Art. 6 of the Convention if its formalistic interpretation of sub-constitutional law procedural standards denies the results of the will of a party to proceedings, which the law ties to such expression of will.

Consequently, the Constitutional Court fully accommodated the constitutional complaint and reversed the contested appellate court decision.

Exclusion from unjust enrichment of one who enriched another knowing he was under no such obligation

(Czech Supreme Court Judgment No. 28 Cdo 5089/2017 *of* 11 January 2018*)*

In this case, the applicant requested the respondent be ordered to pay him CZK 170,000 together with statutory arrears interest. The applicant asserted he had entered into a "contract on an interest-free loan" for CZK 200,000 with his employer, which had been remitted to an account of the respondent (his girlfriend at the time) on which the contractual parties had verbally agreed. The defendant only returned CZK 30,000 to him and still owes CZK 170,000 despite having received a request for payment.

The applicant claimed the court should view the case as constituting the unjust enrichment of the respondent. In her defence, the respondent stated there had been a legal reason for her acceptance of the funds in question (investment in a joint venture with the applicant), though she did not properly specify this reason.

The Court of Appeal adjudged the case in accordance with a provision under which one who enriches another while knowing he is not obliged to do so is not entitled to the return of the rendered performance unless it was rendered for a legal reason that later failed to arise or ceased to exist ("exclusion from unjust enrichment").

According to the Court of Appeal, it was not proven that a loan agreement had been executed between the parties; thus, the applicant had wittingly rendered a "non-debt". Hence, there is no entitlement to the recovery of unjust enrichment.

The Court of Final Appeal adjudicated the case and reversed the judgment of the Court of Appeal. It concluded in its decision that a requirement for exclusion of entitlement to the recovery of something an enriched party acquired is that the renderer, at the moment the performance was rendered, was aware it had no obligation to render the performance. However, if it goes unproven in proceedings that the renderer was aware he was not obliged to render the performance at the moment it was rendered, the exclusion cannot be applied.

A party who asserts in its procedural defence that a legal reason existed for accepting disputed assets must duly prove such entitlement. It will not suffice merely to assert that the given transfer of assets occurred due to an unspecified legal relationship. The relationship must be defined and substantiated, the legal fact on which it was based must be identified, etc. In such a case, the burden of proof is borne by the respondent who, nonetheless, failed here to meet it.

We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

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