

Legal Update

June 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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Bills under discussion

Bill amending the Registered Trademarks Act

On 2 May 2018, the Government submitted a bill amending the Registered Trademarks Act and other related regulations (henceforth the "Bill") to the Chamber of Deputies. The Bill was discussed in a general debate on 22 May 2018 at the 13th sitting of the Chamber of Deputies and then referred to committees for discussion. The Bill was included in Parliamentary Bulletin No 168.

The Bill is primarily concerned with the transposition of Directive of the European Parliament and of the Council (EU) 2015/2436 based on which individual Member States' trademark legislation is to be harmonised and unified.

Key changes specified in the Bill are: (i) deletion of the mandatory requirement for a graphic representation of a trademark preventing the registration of non-traditional trademarks, (ii) specification and revision of the reasons for refusal of protection or for invalidity, (iii) introduction of a provision enabling a trademark owner to prohibit the use of a designation as a name or trade name or a component thereof, (iv) establishment of the right to prohibit preparatory steps in relation to the use of packaging or other means, and (v) introduction of trademark owner notification by the Office of an approaching trademark expiry date.

If the Bill completes the legislative process, it should enter into force as it stands on 1 January 2019.

Recent case law

On breaking the "blocking provision" in the Agricultural Land Act

(Constitutional Court Finding No. II. ÚS 2640/17 of 22 May 2018)

Pursuant to original § 29 of Act No. 229/1991 Coll. on the regulation of ownership of agricultural land and other agricultural assets, title to assets originally owned by a church, religious society, council or congregation cannot be transferred to other persons until a law treating on these assets has been adopted, i.e. the already adopted Act No. 428/2012 Coll. on property settlement with churches and religious societies (the so-called Church Restitution Act).

Generally speaking, in order to break the foregoing provision (routinely referred to as the blocking provision), and thus duly to exercise title, it is necessary, among other things, that the transferee be in good faith.

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In this case, it was the view of the appellate court (the Regional Court in Pilsen) that the given church was the owner of the land in the period in question, so that if the State entered into a purchase contract with the transferee (the complainant), it did so in breach of the blocking provision, resulting in the absolute nullity of the purchase contract. The Regional Court further argued that there had been a lack of good faith in light of the fact that the respective purchase contract contained a provision stipulating that the buyer was made aware that if the seller's (the Czech Republic's) representation to the effect that the land is not excluded from transfer proves to be untrue, this shall result in contract nullity. The Regional Court deduced from this that the transferee could not have been in good faith and so gave preference to the restitution claim of the church over the good faith of the transferee.

The buyer (complainant) argued that the decisions of the Supreme and Regional courts infringed both its right to the protection of legitimate expectations and the principle of the good faith of an individual in the correctness of acts undertaken by a public authority.

In particular, the Constitutional Court adjudged the position of the transferee's good faith with respect to the use of the property and the circumstances of its acquisition. The Constitutional Court stressed that non-acknowledgment of the transferee's good faith for the sole reason that the given purchase contract provision relativizes the representation concerning verification of transferability by the Czech Republic (i.e. a non-owner) is inconsistent with the Constitution.

The Constitutional Court stated that the good faith of the transferee alone is not enough to break the aforementioned blocking provision, as other specific circumstances and "*circumstances of exceptional significance*" justifying the provision of protection of the transferee's basic title must also exist. Here, case law pertaining to the acquisition of title from a non-owner cannot be applied, as was attempted in the previous judgments. The "*circumstance of exceptional significance*" in this case was considered to be the fact that the church (here, the Royal Canonry) had done nothing on the land since 1943, while in contrast the transferee was a private farmer who had worked the land for 24 years, making his right stronger than that of the church, which moreover had acquired the land in 1943 for just a part of its purchase price.

The Constitutional Court thus upheld the complainant's complaint and vacated the ruling of the Supreme Court and judgment of the Regional Court in Pilsen, as these had violated the transferee's basic right to judicial protection pursuant to Article 36(1) and the right to own property pursuant to Article 11(1) of the Charter of Fundamental Rights and Freedoms.

Update

First meeting of the European Data Protection Board

The General Data Protection Regulation ("GDPR") entered into force on Friday, 25th of May 2018. At the same date, Working Party 29 ("WP 29") commenced to function as an independent European advisory body on data and privacy protection pursuant to Article 29 of Directive 95/46/EC. When the GDPR entered into effect, the Working Group became the European Data Protection Board (EDPB).

The EDPB now operates as an independent decision-making body that has legal subjectivity and is tasked with unifying the Office of the Personal Data Protection Inspector and the individual supervisory authorities of Member States (in the Czech Republic, the Office for Personal Data Protection). In addition, the EDPB should ensure standardised application of the GDPR in the European Union as well as consistency in the protection of individuals.

On 25 May 2018, the EDPB met officially for the first time, and EDPB Chair Andrea Jelinek declared: "*We will also support public awareness of the right to the protection of personal data. The EDPB is a newly established EU body based on a new management and coordination model, empowered to take binding decisions. This enables us effectively to carry out our role by providing advisory on key GDPR concepts.*"

Pursuant to the GDPR, which among other things regulates the basic operation of the EDPB, the Board is comprised of heads from one supervisory authority of each Member State as well as the European Personal Data Protection Inspector.

The EDPB should, moreover, issue instructions and recommendations or provide advisory, e.g. to the EU Commission or the general public. The EDPB is also tasked with preparing annual reports on the protection of individuals in connection with data processing in the EU as well as in third countries and international organisations.

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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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