



# Legal update

April 2020

## Weinhold Legal

### Contents

#### News in legislation

Amendment to the Property Valuation Act

#### New case law

A contractual penalty clause linked to a creditor's withdrawal from the contract is valid

An apology is insufficient compensation for harm caused by the filing of an unlawful insolvency petition

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 investment decisions are made.

#### Banking and financial services:

Pavel Jendrulek

#### Mergers and acquisitions:

Daniel Weinhold, Dušan Kmoch, Dalibor Šimeček

#### Court / arbitration proceedings:

Milan Polák, Ondřej Havránek, Zbyšek Kordač

#### Information technology and intellectual property:

Martin Lukáš, Václav Smetana

#### Competition law / EU law:

Tomáš Čermák, Vladimír Petráček

#### Insolvency proceedings and restructuring:

Zbyšek Kordač, Vladislav Petráček

#### Labour law:

Ondřej Havránek, Anna Bartůňková

#### Real estate:

Pav Younis, Václav Štraser

#### Public procurement:

Jan Turek

### News in legislation

#### Amendment to the Property Valuation Act

The Senate of the Czech Republic is currently discussing an amendment to the Act No. 151/1997 Coll., On Property Valuation ("the Act"), as Senate Press No. 224 ("the Amendment"). The Act regulates the methods of valuation of property and services for the purposes laid down in other legal acts (e.g. for determining the tax base for property taxes, income tax, value added tax or fees). As to the valuation methods, the Act, as currently in force, includes valuation at usual, extraordinary and ascertained prices.

The amendment extends valuation methods; the added method being a determination of market value. This valuation method is generally applied in cases where the price of an item that is unique is determined or if an item has never been traded at a given location and time.

The amendment defines market value as "*the estimated amount for which an asset or service should be exchanged at the date of valuation between a willing buyer and a willing seller, that being done during a business trade conducted in accordance with the arm's length principle, after appropriate marketing, and with both parties acting knowledgeable, with consideration and not in distress. For the purposes of this Act, the arm's length principle means that the parties of the exchange are persons who have no special relationship with each other and act independently of each other.*" However, the valuation at the usual price shall remain the primary valuation method under the Act and other valuation methods may be used only in cases where the Act expressly provides so (e.g. a building right is valued on the basis of the observed price of the encumbered land, the observed price of the building, and the total duration of the building right).

Other changes introduced by the Amendment include the specification of conditions for the preparation of price maps of building plots (the amendment introduces criteria based on which, in the case of unavailability of agreed prices or outdated agreed prices of building plots in a given municipality, prices will be determined when compared with the prices agreed in other municipalities) and rules of valuation of building rights (among other things, the Amendment clarifies the regime of valuation of building rights for an as yet to be built construction) and real estate easements (for example, the valuation procedure for real burdens established for a definite period of time should be modified).

The proposed effectiveness of the Amendment is on January 1, 2021.

### New case law

#### A contractual penalty clause linked to a creditor's withdrawal from the contract is valid

(Judgment of the Supreme Court of the Czech Republic of October 30, 2019, 23 Cdo 1192/2019)

In this decision, the Supreme Court of the Czech Republic decided on the validity of a contractual penalty clause if linked to withdrawal from the contract by the creditor because of a repeated breach of contract by the debtor.

The plaintiff (the creditor) demanded payment of the price (CZK 6,884.39 with accessories) for electricity purchased for the purposes of business under an agreement on bundled electricity supply services, with an amount of CZK 100 representing a contractual penalty for late payment for electricity, and CZK 52,000 representing a contractual penalty due to withdrawal from the



# Legal update

April 2020

contract by the creditor because of repeated breach of the payment obligations by the defendant. The plaintiff demanded also payment of the costs associated with the filing of these claims.

The contract included, inter alia, an agreement that if the plaintiff is entitled to withdraw from the contract in accordance with the Energy Act due to a repeated breach of payment obligations, the plaintiff is entitled to charge the defendant a contractual penalty including damages, suffered by the plaintiff by the defendant not taking the contracted electricity, in the amount of CZK 2,000 for each calendar month (and its part) following the date of termination of the delivery from the plaintiff until the end of the contract (including possible prolongation).

Both the Court of First Instance and the Court of Appeal ruled that the plaintiff's claim regarding the contractual penalty (CZK 52,000) was indefinite. They also stated that under the currently applicable legislation (Section 2048 of Act No. 89/2012 Coll., Civil Code, as amended), a contractual penalty can be negotiated only in the event of a breach of the contractual obligation, and in the present case, the contractual penalty is linked to plaintiff's withdrawal from the contract which is an exercise of a right and not a breach of contractual obligation (even though the plaintiff withdrew from the contract because the defendant breached the contractual obligation). The Court of First Instance also stated (and the Court of Appeal agreed) that the agreement in the contract on which the plaintiff based her claim was contrary to good manners and would therefore also have to be declared null and void.

The Supreme Court of the Czech Republic stated that it is necessary to differentiate the situation in which the contractual penalty is to be paid by the debtor if the debtor withdraws from the contract, from the situation in which the right to the contractual penalty results from the debtor's breach of the contractual obligation and the creditor withdraws from the contract at the same time. In the present case (that is, in the second mentioned case) the contractual penalty is not agreed for the case of exercise of the right (as is in the first mentioned case). The party who withdraws from the contract is not penalized, so it is not a matter of sanctioning the exercise of the right. It is essential for the conclusion of the Supreme Court of the Czech Republic that the law does not prohibit the parties from establishing the right to payment of a contractual penalty when there is a breach of obligations by the debtor and also the withdrawal from the contract by the creditor. Alternatively, establishing the right to a contractual penalty could be linked only to the breach of the obligation by the debtor, however, the contractual penalty could become payable only at the moment of a withdrawal from the contract by the creditor.

As a result, the Supreme Court set aside the judgment of the Court of Appeal (and the judgment of the Court of First Instance, respectively).

## **An apology is not sufficient compensation for the harm caused by the filing of an unlawful insolvency petition**

*(Judgment of the Supreme Court of the Czech Republic of November 29, 2019, 29 Cdo 4804/2017)*

The Supreme Court of the Czech Republic assessed whether an apology is sufficient to redress the harm caused by an unjustified insolvency petition or whether also adequate financial satisfaction is necessary. It concluded that an apology was generally insufficient.

The plaintiff sought compensation for non-material damage caused by an unjustified (bullying) insolvency petition filed by the defendant in the form of an apology (published in the nationwide edition of the newspaper "Hospodářské noviny") and further he sought monetary compensation of CZK 200,000.

The Municipal Court in Prague ordered the defendant to publish an apology as proposed by the plaintiff, but dismissed the claim for payment of CZK 200,000 concluding that by filing an insolvency petition that was rejected for not satisfying the required legal conditions, the defendant interfered with the plaintiff's reputation. The harm suffered by the applicant lies in the damage to his standing with his employees, business partners and the general public. The court also pointed out that the defendant even filed an appeal against the decision rejecting the insolvency petition, which led to the insolvency proceedings being extended for almost six months. Even so, it found an apology as an appropriate form of satisfaction. Likewise, the Court of Appeal considered monetary compensation to be superfluous and unnecessary, both in view of the plaintiff's undoubtedly very good financial situation and in view of the fact that the plaintiff did not provide any evidence that the defendant's rejected insolvency petition had any significance economic impact on his business, or that he had lost customers or business partners as a result.

The Supreme Court of the Czech Republic had already ruled previously (on which its ruling in this case was based) that when determining the amount of adequate monetary compensation, the court must take into account, inter alia, that the insolvency petition questions the very essence of good reputation of a legal entity (businessman), namely its ability to fulfill its obligations properly and in time. In order to assess the seriousness (extent) of non-material damage caused to the good reputation of a legal entity, it is of no legal significance whether, as a result of the insolvency petition, the legal entity (in addition to non-material harm) also suffered damage to its property. In another ruling, the Supreme Court of the Czech Republic stated the need to assess the creditor's (insolvency petitioner's) liability (as a general civil liability for damage based on the presumption of fault) for damage or other harm caused by the initiation of insolvency proceedings and by the measures taken throughout the insolvency proceedings if the insolvency proceeding is suspended or the insolvency petition is rejected and if that is a fault of the petitioner.

In view of its earlier conclusions, the Supreme Court of the Czech Republic ruled that if an insolvency petition is rejected and if that is a fault of the petitioner, then in conjunction with the finding that the insolvency petitioner does not have a claim against the insolvency debtor, the apology of the petitioner will not usually be sufficient to redress the non-material damage caused to the good reputation of the alleged debtor - legal entity (as a result of the publication of initiation of an insolvency proceedings in the insolvency register and in the commercial register). The Supreme Court of the Czech Republic therefore set aside the judgment of the Court of Appeal to that extent.

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