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ADVOKÁTNÍ KANCELÁŘ

LEGAL NEWS MAY 2021

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during May 2021 and previous months. We will inform you about next changes soon.

Civil law

+ The end of child debtors

Act No. 192/2021 Coll. amending the Civil Code and related regulation, effective from 1st July 2021, has been declared. The amendment aims to prevent children from entering adulthood saddled with debts (e .g. from fines for off the books ticket). The new Section 899a of the Civil Code therefore provides that a child's debt may, even after his or her 18th year of age, be recovered only from assets acquired by the person before 18th year of age. A similar provision then reappears in the Code of Civil Procedure (Section 262c), but these restrictions do not apply to claims arising from the underage person's business.

The child's debt arising from legal acts performed before he or she became fully legally competent is then guaranteed by the parent who acted for the child or gave his or her consent to the legal acts. Furthermore, according to the law, no further consideration will be given to any contractual penalty that has been negotiated with a child under 15 years of age. In addition to stow away, section 2920 (3) of the Civil Code provides that damage caused by a child under 13 years of age is compensated by the person who has neglected to supervise him properly and if the damage was not caused as a result of neglect of proper supervision, then the child himself, but only if he caused it by an act of the nature of an intentional offence or if it is fair having regard to his assets and those of the injured party. If, even in such a case, the person responsible could not be found to pay compensation, the child's parent will replace him or her if this is fair having regard to his or the injured party's financial situation.

The law also lays down restrictions in the case of the recovery of rent from a rental relationship that passed to an underage child after the death of the tenant. From the point of view of procedural law, it makes it impossible for the court to issue an order for payment or judgment by default against the underage.

Covid 19

According to the government regulation No. 188/2021 Coll., on the establishment of a further bonus period of the compensatory bonus, the bonus period was extended to the **whole month of May 2021.**

+ Decision-making practice of the NSS in relation to emergency measures

Recently, there has been a considerable media coverage of number of decisions of the Supreme Administrative Court (NSS) challenging emergency measures in

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connection with the pandemic situation. In the following lines we would like to summarise the decisions issued so far.

The NSS annulled the measure on restrictions on trade and services (judgement from 22nd April 2021, File No. 6 Ao 11/2021-48), measure prohibiting the retail sale and operation of convenience stores (judgement from 20th May 2021, File No. 8 Ao 4/2021-75), measure restricting the operation of restaurants and casinos by requiring customers to provide a proof about successful Covid test or vaccination (judgement from 21st May 2021, File No. 6 Ao 22/2021-44) and measure about an obligation to cover the mouth and nose while moving outside the residence (judgement from 27th May 2021, File No. 7 Ao 6/2021-112). The first two measures were annulled for procedural defects while the Ministry of Health issued them without prior approval of the government, or without proper reasoning. Third measure was annulled for exceeding the law as the law only allowed to restrict the activities of commercial or manufacturing establishments and not the establishments where services are provided (such as the restaurants). The fourth measure was cancelled by the Ministry before the NSS could do so, but the NSS at least found it unlawful, as it was justified contrary to the requirements of the laws and NSS decisions. In relation to the first and third measure which were annulled for its illegality it is now possible to consider that the harmed restaurant operators will be able to claim compensation from the Czech Republic for the suffered damage.

On the other hand, the measures about mandatory testing of employees (judgement from 27th April, File No. 6 Ao 2/2021), about mandatory testing of pupils in schools (judgement from 6th May 2021, File No. 5 Ao 1/2021-65) and about mandatory testing of employees in health and social services with antigen tests (judgement from 20th May 2021, File No. 10 Ao 1/2021) were not found to be contrary to the law.

Foreigners

+ More strict language requirements for permanent residence permit

Government regulation No. 199/2021 Coll., effective from 1st September 2021, increases the level of Czech language examination for the purpose of obtaining a permanent residence permit to A2. The stricter exam will be taken by those who apply for permanent residence on 1st September 2021 and later. Those who apply up to and including 31st August 2021 will still take the exam at A1 level even if the exam date will be announced after 1st September 2021. The price of the exam is 2 500 CZK but the first exam is paid by governmental voucher.

Taxes

+ Purchases from abroad will be subject to VAT

With effect from 1st July 2021 the VAT will be collected of all imported shipments regardless of their value. In this context, the so-called “E-commerce VAT Amendment” establishes a double VAT payment regime. If the seller undertakes to pay the VAT on imported goods, he will pay it. For shipments up to 150 EUR he will be able to choose a simplified One-Stop-Shop regime. The seller will register and obtains a tax registration number (DEČ). If the seller is not settled in the EU, he will be obliged to register through an EU-representative.

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However, if the seller does not explicitly undertake to pay the VAT, the customer will pay it under the simplified procedure if the carried has obtained a special permit for it, otherwise under standard customs procedure. That is why higher attention of customers buying goods in foreign e-shops is now appropriate.

From judicial decisions

+ Right of a witness to silence in criminal proceeding

According to Section 100 (2) of Act No. 141/1961 Coll., the Criminal Procedural Code, a witness has right to refuse to testify if he would expose himself or a person close to him to the risk of criminal prosecution. In the decision from 20th April 2021, File No. III. ÚS 1679/20, the Constitutional Court (ÚS) ruled that the prosecuting authorities cannot deny a witness this right on the ground that he is already being prosecuted because the testimony could strengthen the raised accusations. As the authorities did so, their action was contrary to the Charter of Fundamental Rights and Freedoms. According to the ÚS, the procedural impossibility of using a witness´s testimony in his own criminal case is not an evaluative criterion in deciding whether a witness is entitled to refuse to testify. A contrary approach would allow criminal proceedings to be brought on the basis of the circumstances which emerged from the witness´s testimony in a particular case against the person who gave such testimony.

+ Unlawful exclusion from the register of job seekers

The Supreme Administrative Court (NSS) in its judgement from 11th May 2021, File No. 1 Ads 52/2021-31, stood up for a woman who was excluded from the register of job seekers by the Labour Office after she failed to appear at a scheduled meeting at its office without any excuse. The woman had been registered since 2018 and had properly fulfilled her duties and had successfully found a new job from the beginning of 2019. According to the court there was nothing to suggest that a unique job offer had been prepared for the woman at the meeting on 26th November 2018 she missed which would have led to frustrating of such an opportunity. If the Labour Office, then excluded the woman from the register, it acted according to the NSS is a wholly unreasonable manner. According to the NSS the activities of the Labour Office as an administrative body are a public service and therefore the removal from the register should be an extreme measure, not just an ordinary instrument for dealing with the Labour Office agenda, since the exclusion has quite serious consequences for the applicant, including the denial of assistance in securing employment and the loss of right to obtain unemployment benefits.

Do not hesitate to contact us with any particular question.

YOU'RE NOT ALONE

We will inform you about next legal news.

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