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Jeseniova 1151/55 130 00 Praha 3 +420 212 246 725 info@ak-haven.cz www.ak-haven.cz

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We would like to introduce you to some legislative and case law news from July, August and the months leading up to 2021. We will keep you informed of further changes in the coming months.

Procedural law

+ Amendment to the Enforcement Code

A major amendment to the Civil Procedure and Enforcement Code was promulgated under No. 286/2021, which will bring a number of changes in the field of enforcement proceedings with effect from 1 January 2022.

The most important change that comes with the amendment is the setting of the maximum period of execution for monetary benefits at 6 years. However, this does not apply, for example, to claims for maintenance for a minor child or compensation for injury to health. After the expiry of the 6 years, the execution may continue for a further 6 years, provided that the creditor pays the advances for its continuation. After twelve years, the execution will be stopped. The period of pending execution will also be included in this period.

The amount recovered will be credited first to the costs of the execution, then to the principal (the debt to be recovered) and only then to the accessories (which will not continue to grow as a result) and the costs of the creditor. In the case of execution on monetary benefits in the form of deductions from wages commenced after 1 January 2022, the Act introduces a lump sum compensation for employers in the amount of CZK 50 per month. This amount will be satisfied in priority to other claims.

In enforcement proceedings against natural persons in favour of a public entity (the state, local governments, health insurance companies or legal entities with state participation), the debtor is allowed to get rid of a part of the debt by paying only the principal and the amount of CZK 750 excluding VAT on the costs of enforcement. If the debtor does so within three months from the date of the amendment's entry into force (and it should be noted here that this provision will enter into force as early as 28 October 2021), the execution will be stopped and the debtor will be exempted from paying the principal and the remaining costs of the proceedings.

Another new feature is the possibility to request the executor to issue a copy of the entire executor's file in electronic form free of charge.

Foreign law

+ Amendment to the Act on the Residence of Foreigners

On 2 August 2021, Act No. 274/2021 Coll. amending the Act on the Residence of Foreigners on the Territory of the Czech Republic entered into force. The Act brings with it three main changes, the most important of which is the obligation for foreigners coming to the Czech Republic for a period longer than 90 days to arrange comprehensive health insurance (the Act does not give foreigners a choice, they must arrange it with VZP). The second significant change is the issuance of ID cards with biometric data to foreigners from third countries. Those who already have the cards must exchange them for new ones by 3 August 2023. Although citizens from other EU Member States will not be issued with biometric cards, they will now be issued with registration certificates for a fee (this applies to temporary and permanent residence, renewal of movement cards or family residence

permits). Furthermore, the law will distinguish between close and distant family members in the case of family members, with stricter rules on residence permits for the distant ones (they will have to attach to the application a certificate of the total monthly income of the whole family after reunification and proof of health insurance for the entire period of residence).

Case law:

+ Interpretation of extrastatutory agreements

In a recent decision of 16 March 2021, Case No. 27 Cdo 1873/2019, the Supreme Court (SC) considered the validity of a shareholders' agreement (the so-called SHA) arrangement which entitled shareholders to nominate a certain number of members of the company's board of directors and obliged them, in the event of the company's financial distress, to arrange for the board members nominated by them to agree on the amount of a specific sum which the company would invite the shareholders to lend to it under a subsequently concluded loan agreement. According to the SC, a distinction must be drawn between commercial management and strategic management, and the provision of financing may fall into the latter category, where shareholders can give directions to the board. With regard to the nomination of directors on the basis of SHAs, NS concluded that such arrangements should rather be viewed as valid. However, he added that if the SHA obliged shareholders to give instructions to board members that interfered with the conduct of the business and to ensure that the board complied with them, even if the board members thereby breached their duties in the exercise of their functions, including the duty to act with due care, such an arrangement would be invalid. However, it is not impossible for shareholders in an SHA to undertake to intercede with board members for a particular resolution of a matter and/or for the achievement of a particular result.

+ Permanent establishment for VAT purposes

In its decision of 3 June 2021 in Titanium (C-931/19), the Court of Justice of the EU (CJEU) interpreted that a property which has no human resources at its disposal through which it can act independently does not meet the characteristics of a permanent establishment for VAT purposes. The case involved a Jersey-based company which was engaged in the management of properties located in Austria. It let those properties to an Austrian company. According to the Austrian tax authorities, Titanium was liable to pay VAT in Austria because its only activity was the letting of real estate in Austria and, therefore, the real estate constituted its permanent establishment. However, according to the CJEU, the rental properties in Austria cannot be regarded as its permanent establishment, since there is no human or technical apparatus in them which would enable the services in question to be provided independently.

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The declaration of bankruptcy does not extinguish the right to deduct VAT

In BE, DT (C-182/20), the CJEU was asked a preliminary question as to whether the opening of insolvency proceedings gives rise to an obligation on the part of the taxable person to correct VAT deductions made before the declaration of insolvency. In the case in question, following the declaration of bankruptcy of a Romanian company, a tax audit was carried out in respect of that company and the Romanian tax authorities issued a payment order for the payment of additional tax on account of the correction of VAT deductions made in respect of transactions carried out before the declaration of bankruptcy. The tax authority justified its decision on the grounds that the company had ceased to carry out economic activity as a result of the declaration of bankruptcy. However, according to the CJEU, the pending insolvency proceedings do not prevent the company from carrying out economic activity and, therefore, it cannot automatically be denied the right to deduct VAT. According to the CJEU, it cannot be concluded that the economic activity after the declaration of insolvency does not pursue an economic purpose, but only the repayment of debts.

Decision rejecting a request for conditional release

By his constitutional complaint, the complainant (i.e. a person serving a prison sentence) defended himself against the decision of the ordinary courts rejecting his application for conditional release. According to the general courts, the applicant fulfilled all the conditions for conditional release except one, namely the expectation that the convicted person would lead a proper life in the future (the applicant was a recidivist who had already been sentenced many times). The complainant defended himself before the Constitutional Court (CC) on the ground that the decision of the ordinary courts was not based on convincing reasoning, since the ordinary courts had based it solely on reference to the complainant's extensive criminal record. However, the complainant pointed to considerable efforts at reform and to facts (e.g. in the form of disciplinary awards) suggesting that he would lead a proper life in the future and claimed that he felt that the general courts had simply 'broken the stick' on him. The Constitutional Court sided with the complainant and annulled the contested decisions in its judgment of 13 July 2021, Case No III.ÚS 575/21. According to the Constitutional Court, the reasons for the decision to reject the application for conditional release must also include a clear and comprehensible explanation of the specific manner in which the convicted person is to act in order to demonstrate improvement and be expected to lead a proper life. According to the Constitutional Court, even the argument of the offender's rich criminal history cannot prevent the possibility of his conditional release, since the possibility that the convicted person will change, reform and can be expected to lead a proper life can never be excluded.

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