ADVOKÁTNÍ KANCELÁŘ

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We would like to introduce you to a few new legislative and case law developments from November and the preceding months of 2021. We will keep you informed of further changes in the coming months.

Personal data protection

+ The Data Controller must provide proof of legal title for the data processed by the Data Processor

The Supreme Administrative Court dismissed the appeal of SMS finance, a.s., which was ordered by the Office for Personal Data Protection to delete the data of persons whose processing it did not provide legal grounds for pursuant to Article 6 of the GDPR, by judgment of 7 October 2021, ref. no. 7 As 146/2021-26. In particular, the data of persons obtained through the company's tied agent. SMS finance, a.s. defended itself by arguing that it is not in the position of a controller when processing personal data carried out by its tied agents, as its tied agents are independent business entities. However, both the Municipal Court in Prague and now the Supreme Administrative Court (SAC) disagreed with its view. In its judgment, the Supreme Administrative Court stated that even if the tied agent (i.e. the Data Processor) is at fault in its activities, the ultimate responsibility for the correct processing of personal data lies with the controller for whose benefit it operates. According to the SAC, this is particularly so because in the case of the described intermediary relationship it was SMS finance, a.s. that also defined the purpose for which the tied agents were to collect and process personal data.

Tax law

+ Acquisition of movable assets from a business establishment and its subsequent purchase

The Supreme Administrative Court (SAC), in its judgment of 30 September 2021, ref. no. 9 Afs 28/2021-43, dismissed the appeal in a dispute concerning the denial of the right to deduct VAT on the acquisition of movable assets used for the business of a tax subject who subsequently acquired the remaining part of the business plant of which these assets became part. According to the Supreme Administrative Court, the acquisition of an item and the acquisition of part of a business establishment constitute a complex commercial transaction which cannot be viewed as two separate transactions and the overall substance must be examined. The SAC agreed with the conclusion of the tax authority, which pointed out that at the time of issuing the tax invoice for the acquisition of the movable assets, a contract for the transfer of the (remaining) part of the business establishment had already been concluded. The acquisition of the movable goods must therefore be regarded as part of the transfer of part of the business establishment, whereas the transfer of part of the business establishment is not subject to VAT and therefore no right to deduct tax can be derived from the acquisition of the movable goods.

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Intellectual property law

+ A trademark registered in bad faith is invalid

In its judgment of 16 November 2021, fer. no. 10 As 2021-2021-37, the SAC found that the company Česká muzika, spol. s r.o. applied for the trademark "Šlágr TV" in bad faith in 2011. The SAC therefore concluded that it was invalid because the registration infringed the related rights of the Hungarian and Romanian companies with which Česká muzika, spol. s r.o. had originally concluded a commercial cooperation agreement. The companies in question still operated Sláger TV in Hungary, for which they had also registered a trade mark of the same wording in Hungary. Česká muzika, spol. s r.o. applied for its trade mark at a time when the negotiations on mutual cooperation were at their peak, and such a course of action can hardly be regarded as bona fide according to the SAC. Therefore, the SAC concluded that whether Česká muzika, spol. s r.o. intended to gain an advantage by speculatively registering the mark at the end of the negotiations or perhaps already at the time of registration it intended to renege on the negotiated agreement and effectively push the Hungarian and Romanian companies out of the Czech Republic, these were not practices that the court could grant legal protection to.

Foreign law

+ Review of the decision not to grant citizenship on the grounds of a threat to national security

In its ruling of 19 October 2021, Case ref. no. III. ÚS 2116/21, the Constitutional Court (ÚS) ruled that the Ministry of the Interior violated the complainant's fundamental right to a fair trial when it rejected her application for citizenship on the basis of a negative opinion of the security services on the grounds of a threat to the state. The Ministry did not allow the applicant to see the documents of the Security Service, citing the threat of disclosure of classified information. However, according to the Constitutional Court, the disclosure of classified information could not have occurred because the information was known to the complainant. Therefore, according to the Constitutional Court, it was only for the Ministry to assess their relevance in relation to the complainant's application for citizenship. According to the Constitutional Court, the complainant should subsequently have had the opportunity to respond to that assessment and, if she disagreed with the decision, to try to persuade the administrative authority in her appeal that her application should have been granted. And if the Ministry refused her application without informing her of the reasons for doing so, and limited itself to stating only the fact that there was a threat of disclosure of classified information, for which there was no legal or reasonable reason to keep secret, since it was known to the applicant, it infringed her right.

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Criminal law

+ The right of the convicted person to inspect the file

In its ruling of 8 November, Case ref. no. II. ÚS 2156/21, the Constitutional Court pointed out that the right to inspect the case file, as a component of the constitutionally guaranteed right to defence, together with other guarantees of a fair trial does not belong only to the accused, but also to the convicted. For that reason, this right may also be restricted to the convicted person only on the basis of the law. The courts may not create further conditions for this interference with the right of defence without express statutory provision, even in the case of a person who has not entered into custody and who is in hiding from the law enforcement authorities (in the present case, the defence counsel of such a person wanted to inspect the file). The Constitutional Court concluded that the convicted person (and his defence counsel) has the right to inspect the file without having to prove the reasons why he wishes to do so. Although the law allows for serious reasons to deny the accused access to the file, this is only during the pre-trial proceedings. A similar procedure against a convicted person in execution proceedings has no legal basis and is therefore unconstitutional.

Private law

+ The employer shall be solely liable for damage caused by the employee in the performance of his/her duties

The plaintiff was caused damage to his kitchen counter by an employee of the defendant employer. The case reached the Supreme Court (SC), which in its judgment of 26 October 2021, ref. no. 25 Cdo 1029/2021, interpreted the provisions of Section 2914 of the Civil Code, according to which whoever uses an agent, employee or other helper in the course of his activity shall compensate for the damage caused by him in the same way as if he had caused it himself. However, if a person undertakes to carry out an activity independently in the performance of another person's duties, he is not considered to be an assistant; if that other person did not carefully select him or did not supervise him sufficiently, he is liable for the fulfilment of his obligation to compensate for the damage.

The Supreme Court had to deal with the unclear wording of sec. 2914 of the Civil Code regulating liability for injury caused by a so-called auxiliary person used by another (main) person in his/her activities. It reasoned that, given the wide and varied status of the entities involved (e.g. employee, statutory body, official, mayor, member of an association, representative of an HOA, and a number of different agents), it is necessary to assess for each of them whether, according to the degree of autonomy or, on the contrary, dependence of the auxiliary person on the principal person, the principal person's independent liability prevails, or when there is sufficient reason for the auxiliary person's autonomy to give rise to its own obligation to indemnify. The Supreme Court also pointed out that even under the Labour Code, the employee's apparent dependence on the employer is clear, and therefore, unless the employee deviates from this framework in

the event of a damage event (e.g. by intentionally causing damage), the ambiguous wording of the first sentence of sec. 2914 of the Civil Code must be interpreted as meaning that the employer is solely liable for the damage caused by the employee, as if it had been caused by the employee himself, even if it was caused by the personal activity of the employee whom he used to do so. In addition to the above, the Supreme Court also added that the second sentence of sec. 2914 of the Civil Code deals with cases in which the principal uses an "independent assistant", i.e. a person who carries out activities for the principal on his own behalf and at his own risk. Such an assistant or subcontractor is liable for the damage himself. However, if the natural (legal) person has not carefully selected or insufficiently supervised such a person, he is liable for the performance of his obligation under the tort within the meaning of sec. 2018 of the Civil Code and the injured party may claim against such a guarantor on the basis of sec 2021 par. 1 of the Civil Code.

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