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

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during September 2022 and previous months. We will inform you about next changes soon.

Labour and social security law

+ Housing allowance increase

On 1 October 2022, a government regulation will come into force which will significantly increase the normative housing costs. This will ultimately increase the amount of housing benefit and the number of households eligible for it. In this context, the Ministry of Labour and Social Affairs, which proposed the change, has also prepared several model examples for households to see how much their allowance will increase. They are available at this link:

https://www.mpsv.cz/documents/20142/2786931/TZ_zv%C3%BD%C5%A1en%C3%AD+normativ%C5%AF_14092022_final.pdf/9aef3646-ef34-15fc-4cd8-93a3efc42472.

+ Overtime pay agreement

The Supreme Administrative Court (SAC) confirmed in its judgment of 25 August 2022, No. 6 Ads 138/2022-37, that it is not an offence for an employer to agree with an employee that overtime pay is due only for the month in which the employee takes compensatory time off for overtime work. However, it is of course true that the flow of any agreement between the employer and the employee must be balanced and the employer must not enter into it in a situation where this would in practice mean that it would take advantage of its stronger position unilaterally to its own advantage, thereby delaying the payment date to the detriment of the employee. However, according to the SAC, the postponement with the employee's consent and only for a reasonable period of time related to the period of compensatory time off for overtime work is legally consistent, even though it is not explicitly supported by the Labour Code.

+ On the importance of establishing the date of the finding of occupational disease in the assessment

According to the Labour Code, one of the grounds for termination is the fact that the employee cannot perform his/her current work due to an occupational disease, according to a medical opinion. In its judgment of 25 May 2022, Case No. 21 Cdo 2964/2021, the Supreme Court has now made it clear that the validity of a termination on this ground is determined by an objective finding that the employee was not fit to work on the date of delivery of the notice due to occupational disease. That point in time is decisive, irrespective of the conclusions of the medical report used by

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the employer to prove the existence of the reason for termination. Although the date of the discovery of the illness is a compulsory element of any medical report, its inclusion is not determinative of the conclusion that a reason for dismissal (in)existed at a time prior to that date. Only the time of delivery of the notice is decisive.

Family law

+ New table to calculate maintenance

The Ministry of Justice has published a new guideline table for calculating maintenance. It is intended to allow citizens to determine the indicative amount of maintenance themselves and should help especially in situations where parents could reach an agreement on their own. Compared to the previous one, the new table is characterized by a narrowing of the basic range of the share of maintenance in the income of the obliged parent between the different age categories (the number of which has been reduced from five to four) or by taking into account the degree of involvement of the obliged parent in the care and contact with the child in the final amount of maintenance. Along with the table, the Ministry has also prepared a calculator which draws on the table and where people can calculate the amount of maintenance as a guide. It is available on the vyzivne.justice.cz website. It should be noted, however, that the table is really only of a recommendatory nature and the courts may not in practice assess maintenance in accordance with it.

Public law

+ Tax authorities may request CCTV footage of vehicle movements

In its judgment of 21 July 2022, No.9 Afs 147/2020-34, the Supreme Administrative Court addressed the question whether the tax administrator may use police records on the movement of the taxpayer's motor vehicle.

The tax administrator requested data from the Automatic Vehicle Control (AVC) system from the police and, after verifying them, concluded that they did not correspond to the logbook and therefore refused to recognize the right to deduct VAT on the purchase of the vehicle. The taxpayer argued that the police are not entitled to collect or provide vehicle data for the purposes of tax proceedings. However, the SAC did not agree with the taxpayer. According to the SAC, the tax authorities may request records from persons and authorities that are not relevant from the point of view of the tax administration, and in the present case the SAC assessed that the data on the movement of the vehicle was necessary to assess whether the taxpayer used the car for its economic activity. Moreover, according to the SAC, the police did not collect the data for the purposes of the tax proceedings, but merely provided it in accordance with the Tax Code and thus fulfilled its statutory information obligation.

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+ Setting maximum energy prices and reducing the diesel tax rate

The Senate approved an amendment to the Excise Tax Act and the Energy Act. The amendment to the Excise Tax Act reduces the excise tax rate on diesel by CZK 1.50 by the end of next year, effective from 1 October 2022. The amendment to the Energy Act then introduces an enabling provision for the government to regulate electricity and gas prices. The government has already used this power and on 13 September 2022 set the maximum prices for retail consumers of electricity at CZK 6 including VAT per kWh and in the case of gas at CZK 3 including VAT per kWh.

+ The danger that the item will be used to commit a crime cannot be inferred from the mere possibility of such use

The danger that the item will be used to commit a crime cannot be inferred from the mere possibility of such use. According to the ruling of the Constitutional Court of 22 August 2022, Case No. II ÚS 645/22, such a broadly defined condition for seizing an item in criminal proceedings would be met in principle always, since hypothetically almost any item can be used to commit a crime. Therefore, according to the Constitutional Court, the decision to seize an item must always be justified by specific circumstances which will show at least a degree of probability of the said consequence which will reasonably justify the need for such interference with the right of ownership with regard to the ordinary course of things.

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