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LEGAL NEWS
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Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during February 2023 and previous months. We will inform you about next changes soon.

Copyright law

+ Unequal joint custody

In its ruling of 8th February 2023, Case No. I.ÚS 3350/22, the Constitutional Court (ÚS) again expressed its opinion on the issue of joint custody for children. The ÚS returned to its previously held conclusion that even the simplest joint custody, even though it may not be equal, is the most appropriate to ensure the equal status of the parents. According to the ÚS, the symbolically and psychologically important factor is that it is not only alternate care for the parents but also for the child himself. The general courts should therefore opt for the model of joint (albeit unequal) custody, since only this model ensures that the parents are on an equal footing without feeling more (and less) "entitled" to the child by one of the parents. The decision of the ÚS is very important, as it indicates that the ÚS is beginning to return to its older decision-making practice, which it has been forced to correct in the past under the weight of criticism from the professional community.

+ Prohibition to change the decision to the worse in community property settlement proceedings

On 26th January 2023, the Supreme Court (NS) issued a judgment in case No. 22 Cdo 2258/2022, which is not only significant for the decision on the division of the community property, but will certainly be of fundamental importance for the civil procedure as such. In civil proceedings, unlike in criminal proceedings, the question of the prohibition on the appellate court changing the decision of the court of first instance to the detriment of the appellant (the so-called principle of the prohibition of *reformationis in peius*) has not yet been fully clarified. In its judgment, the NS made it clear that the proceedings for the settlement of the community property regime before the Court of Appeal cannot end worse for the party who alone brought the appeal than the outcome of the proceedings before the court of first instance. At the same time, the NS acknowledged that the prohibition of reformation *in peius* does not apply in proceedings governed by the principle of formality, i.e. in particular in uncontested proceedings (e.g. in matters concerning the custody of minors or in certain matters concerning natural and legal persons).

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+ Incurrence of liability after the debt is due and demand for performance

The NS confirmed in its resolution of 15th November 2022, Case No. 20 Cdo 2644/2022, that a debt that is already due and the debtor has already been called upon to fulfil it can still be secured by the establishment of a surety at this time, because it is a valid debt that has not expired. According to the NS, a guarantee may be created at any time during the life of the debt, even after the fact, even if the debt is already due and the debtor has been called upon to perform it.

+ New model form for withdrawing from a consumer contract

On 18th February 2023, Government Regulation No. 29/2023 Coll. came into force, by which the Government issued a new text of the model instruction on the right to withdraw from a contract concluded with a consumer at a distance (e.g. by telephone or electronically) or outside business premises (e.g. on a purpose-organised tour). The model withdrawal form has also been redesigned. The texts are annexed to the government regulation.

+ Class actions

The Chamber of Deputies has been presented with a new government bill on class actions, which will introduce the institution of class actions for consumers into Czech law. The form of the bill may still change during its discussion, so we will continue to monitor this matter. At present, however, the draft provides only for non-profit organisations to bring actions on behalf of consumers, and consumers themselves will have to actively join the proceedings within a set time limit.

Coronavirus

+ Liability for damage caused by coronavirus measures

At the time of the pandemic, the question of state liability for damage caused by government coronavirus measures was widely discussed among the legal and lay public. In the meantime, the issue reached the NS, which in its resolution of 22nd November 2022, Case No. 30 Cdo 2713/2022, ruled that the State should be held liable for the damage caused by these measures not under the Act on State Liability for Damage Caused by Misconduct in Office, but directly under the so-called Pandemic Act. It is not possible to claim damages under both acts at the same time. The Pandemic Act does not require that the damage be caused by an unlawful decision or an incorrect official procedure in order for liability to arise. It is sufficient if the damage is causally linked to the issue of the coronavirus measure. This makes it much easier to obtain compensation for damages, as the State can only be exonerated from liability if it proves that the victim caused the damage himself. Only if the coronavirus measure is annulled for unlawfulness and other conditions are met at the same time can compensation be considered under the Act on State Liability for Damage Caused by Misconduct in Office.

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Energy crisis

+ Amendment to the government regulation on energy price capping

On 4th February 2023, an amendment to the government regulation on energy pricing came into force. The amendment introduces rules for determining the amount of public support that can be obtained by individual entities due to the capping of energy prices, and it also sets out the obligations to be fulfilled by eligible entities in this context (in particular, to notify the Ministry of Industry and Trade of the use of support and the fulfilment of related obligations).

Personal data protection

+ Collection of biometric and genetic data of the accused

On 26th January 2023, the Court of Justice of the European Union (CJEU) issued its judgment in *Ministerstvo na vatrešnite raboty* (Case No. C-205/21), in which it declared the systematic collection of biometric and genetic data of each accused person for the purpose of their police registration to be contrary to the requirement to ensure enhanced protection in relation to the processing of sensitive personal data. According to the CJEU and its interpretation of the relevant directive, such collection is only possible where there are serious grounds for believing that a particular person has committed a criminal offence. Moreover, effective remedies against the collection must always be available.

In this context, it cannot be overlooked that the Czech Supreme Administrative Court has also recently referred a similar preliminary question to the CJEU, so that the CJEU can be expected to answer this question directly in relation to Czech legislation in the future.

Taxes

+ Proof of service from the parent company and the principle and legitimate expectation

The Regional Court in Brno, in its judgment of 28th November 2022, No. 30 Af 57/2021-76, dealt with the issue of provability of the provision of services for the purposes of tax deductibility of costs for consultancy services from the parent company. In its judgment, the court admitted that it is reasonable to expect that the documentation in an inter-group relationship would be less formal than that between two unrelated persons. On the other hand, the court stated that a routine meeting or exchange of information between an owner and an owned person will generally not give rise to a deductible expense because it will not go beyond the normal relationship on the part of the owner.

As regards the taxpayer's objection concerning legitimate expectations, since the tax authority did not challenge the invoices from the parent company during the tax audit, the court stated that it is crucial to consider the whole matter not only through the lens of those invoices, but the tax records as a whole. The invoices did not stand up in contrast to their other content.

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+ Non-payment of VAT incorrectly stated on the tax invoice

In its judgment of 8th December 2023 in *Finanzamt Österreich* (Case No. C-378/21), the CJEU ruled that if the recipients of the service are only final consumers who are not entitled to deduct VAT, the VAT invoiced in error does not have to be paid. The case involved a sports venue operator who incorrectly charged customers the wrong VAT rate, subsequently submitted a supplementary tax return and claimed a refund of the difference in rates, which was refused by the Austrian tax authority. However, the CJEU found that the tax authority's action was incorrect. However, its above conclusion only applies where the recipients of the services are final consumers who cannot claim input VAT deductions.

+ Error on tax document in triangular trade

In its judgment of 8th December 2023 in *Luxury Trust Automobil GmbH* (Case No. C-247/21), the CJEU explained that the European VAT Directive distinguishes between the reference to the relevant provisions of the Directive or national legislation when special schemes are applied and the clear identification of the recipient of the transaction who is responsible for settling the tax. For that reason, it is necessary not only to indicate explicitly on the tax documents that the simplified triangulation scheme is being used, but also to clearly identify the last party in the chain who will settle the tax. To this end, the latter should state the phrase: 'The tax will be paid by the customer'. In the case in question, it was specifically the case of an Austrian company which purchased luxury cars in the UK and sold them to a Czech entity, which transported them from the UK to the Czech Republic using the simplified triangulation scheme.

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