

LEGAL NEWS MARCH 2023

AVEN + HAVEN + HAVEN



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

Civil law

+ Lessee's pre-emptive right to the housing unit

Section 1187 of the Civil Code (OZ) establishes the statutory pre-emption right of the lessee-individual to the housing unit and related non-residential premises. The pre-emption right expires if the lessee does not accept the offer within 6 months of its effectiveness. The Supreme Court (NS) in its judgment of 13th December 2022, Case No. 26 Cdo 2923/2022, dealt with the interpretation of this provision. Taking into account that this statutory provision applies to cases of privatisation of housing stock and that the legislator's intention was that the housing units under it should be acquired by their lessees when they are first transferred, the NS concluded that, in

the case of a lessee's right of pre-emption over a housing unit, the general regulation on pre-emption does not apply in the alternative. Accordingly, in the case of a historic first sale of a housing unit, the owner of the unit must first offer the unit to the lessee, not make an agreement with the prospective interested party and only then approach the lessee as would be the case under the general pre-emption regime. Under the OZ, the lessee has six months from the receipt of the offer to express whether he agrees to it. If he does not make a statement within six months, the tenant's right of pre-emption will be extinguished.

++ HAVEN ++ HAVEN

+ The manner of acting of a legal person established under foreign law

In its judgment of 23th November 2022, Case No. 27 Cdo 1803/2021, the NS interpreted that according to the legal system of the state under which the legal person was established, not only the question of legal personality and legal capacity to act, but also the determination of the statutory body and the

manner of acting by the statutory body on behalf of the legal person, as well as the consequences of failure to comply with the established manner of acting, are governed in accordance with Section 30 of the Private International Law Act and the so-called incorporation principle.

Labour law

+ Increased protection of employees in quarantine

On 1st December 2022, Act No. 358/2022 Coll. came into force, amending among other laws the Labour Code. The amendment brings increased protection for employees who have been ordered to be quarantined. It is now not possible to give them notice of termination

for redundancy, for health reasons or for failure to meet the requirements for the performance of the agreed work or for failure to meet the requirements for any performance of the work during the period of quarantine.



Penal law

Reimbursement of costs related to the victim's participation in criminal proceedings

The Constitutional Court (ÚS), in its ruling of 21st March 2023, Case No. II ÚS 357/22, significantly sided with the victims when it ruled that the right to legal aid enshrined in Article 37(2) of the Charter of Fundamental Rights and Freedoms prevents criminal courts from denying victims compensation for the costs associated with their participation in criminal proceedings, or representation by an attorney, on the grounds that compensation for the costs associated with legal representation has already been awarded in the insurance claim proceedings. The ÚS pointed out that the so-called adhesion

proceedings (i.e. proceedings concerning the claim with which the injured party joined the criminal proceedings) and the proceedings concerning the claim for insurance benefits are two separate proceedings. The ÚS then concluded that such an interpretation of the Criminal Procedure Code, according to which the award of compensation for the costs related to the participation of the injured party in the criminal proceedings is precluded by the inexpediency of the costs, is incompatible with the constitutionally guaranteed right to legal aid.

+ Child care as a ground for replacing detention

By its ruling of 14th March 2023, Case No. III ÚS 2461/22, the ÚS upheld the constitutional complaint of a parent who sought to have his detention replaced in order to secure the care of his minor son. In the present case, the child's mother had died and the father had been entrusted with the care of his son in a desperate state of mental and medical health. The care of the son required a lot of effort in such a situation. In this situation, the prosecutor filed a detention petition against the father, which the district court did not grant and decided to replace the detention with a promise by the father to live a proper life and to be supervised by a probation officer. The prosecutor challenged the district court's decision with a complaint, which the regional court upheld, and the father was taken in the detention on that basis. His

decision was subsequently overturned by the ÚS, which pointed out that the regional court should have taken into account the best interests of the minor son, who would be seriously affected by the father's detention, and taken into account the best interests of the child with adequate reasoning, as required by Article 3(1) of the Convention on the Rights of the Child. In a situation where the regional court did not give specific reasons for its decision not to use the institution of substitute detention, explaining why detention in the present case was a measure necessary to achieve the purpose of the criminal proceedings and why that purpose could not be achieved in the criminal proceedings in any other way, the ÚS concluded that the regional court's decision could not stand for lack of proper reasoning.

HAVEN ++ HAVEN ++



Ukraine

Changes in support for Ukrainian refugees

The amendment to the so-called lex Ukraine (Act No.65/2022 Coll.) should increase the share of Ukrainians in the cost of living and contribute to their integration into society, effective from April and July 2023. The amendment introduces registration of all employment contracts and agreements concluded with Ukrainian refugees, fixes the entitlement to humanitarian benefit for the first five months after the granting of temporary protection and links its amount to the subsistence level. After this period, the entitlement and the amount of the benefit will be linked to the subsistence minimum, except for people who, for example, cannot work due to age, care of a small child, disability or studies. The amount of the benefit will also be determined by the government in terms of the housing costs to

be counted. This is due to the fact that the option of the solidarity household allowance will be retained in the amendment only for cases in which people accommodate refugees in their own homes. The state will no longer send money to those who have given Ukrainians an entire apartment to occupy. The refugees are to cover the costs themselves. The amendment will also limit the length of time refugees can live in free emergency accommodation. They will be able to use such housing for a maximum of 150 days, with an exception for so-called vulnerable persons. According to the draft, refusal of the accommodation offered or leaving it for more than ten days without the knowledge of the operator will be considered to have exhausted the paid period.

NEJSTE NA TO SAMI YOU'RE NOT ALONE SIE SIND NICHT ALLEIN

www.ak-haven.cz

AVEN + HAVEN + HAVEN