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

Civil law

+ Prohibition of short-term rentals in the statutes of the association of unit owners

On 15th March 2023, the Supreme Court (NS) made a landmark decision in case No. 26 Cdo 854/2022. In the case, a certain unit owners' association (SVJ) agreed to an amendment to its statutes that made repeated short-term renting of an apartment (typically through the Airbnb platform) possible only with the consent of all SVJ members. The amendment to the statutes was challenged in court by a member of the SVJ and, although he was unsuccessful at first instance, both the Court of Appeal and the NS upheld his challenge. In its decision, the NS held that according to Section 1175(1) of the Civil code, the owner of a unit has the right to freely manage, exclusively use and internally modify his/her unit as well as to use the common parts, while the competences of the SVJ are limited to the management, operation, maintenance and repair of the common parts of the house and the land. Therefore, the SVJ cannot interfere with the ownership of the apartments of the individual owners. Therefore, if the SVJ assembly decides to amend the statutes in order to restrict the unit owners' right of ownership with regard to the use of the apartment, it is, according to the NS, an ineffective decision.

+ The Constitutional Court has confirmed the obligation of courts to consider the possibility of entrusting a child to asymmetrical alternate care

In the February issue of Legal News, we informed you about the ruling of the Constitutional Court (ÚS), Case No. I. ÚS 3350/22, in which the ÚS emphasized that the most appropriate and simplest joint custody, although it may not be equal, is the most appropriate to ensure the equal status of parents. The ÚS has now issued a further decision confirming this legal opinion. This is the judgment of 30th March 2023, Case No I.ÚS 3522/22, which annulled the Regional Court's decision precisely because it had not considered the possibility of entrusting the child to asymmetrical joint custody, when it had, moreover, based itself only on the expert's conclusion that joint custody was not appropriate in view of the greater distance between the two parents' homes. On the one hand, the ÚS criticized the Regional Court for not being able to delegate its responsibility to decide on the best interests of the child to the expert, and on the other hand, it also expressed the important conclusion that the greater distance between the homes of both parents does not always preclude the child from being placed in (asymmetrical) joint custody.

+ Strengthening the role of the Financial arbitrator in litigation

A Financial arbitrator is an institution where consumers can resolve their disputes with financial institutions (e. g. banks, insurance companies or securities traders) out of court. The Czech Telecommunications Office (ČTÚ) and the Energy Regulatory Office (ERÚ) also offer a similar space. On 5th April 2023, the President signed an amendment to the Code of Civil Procedure that will strengthen the position of these institutions in favour of consumers by allowing them to submit written statements in proceedings to the courts, to consult the case file and to appear at hearings. At present, these institutions only have the right to give a written opinion on an action.

Commercial law

+ Compensation of sales representatives

The Court of Justice of the European Union (CJEU) in its judgment of 23rd March 2023 in Case *Q. T. v. O2 Czech Republic a. s.* (C-574/21) found that in determining the amount of compensation to be paid to a sales representative, account must be taken of the commissions that the sales representative would have earned in the event of a hypothetical continuation of the agency contract from business that would have been generated after the termination of the contract with new customers brought in by the sales representative or with customers with whom the sales representative had substantially increased the volume of business before the termination of the contract. Commissions lost by the agent as a result of the payment of one-off commissions shall not be excluded from the calculation of the amount of compensation under that provision if they correspond to a flat fee for each new contract concluded through the agent with new or existing customers of the principal.

+ Compliance with the information obligation pursuant to Sec. 55 ZOK

Section 55 of the Business Corporations Act (ZOK) requires members of elected bodies of business corporations to inform the highest body of the corporation without undue delay that they intend to enter into a contract with the corporation or an entity that is part of the same group outside the ordinary course of business. A similar duty to inform shall also apply if the commercial corporation is to secure or consolidate the debts of aforementioned entities. On the fulfilment of this information obligation in the circumstances of a limited liability company, the NS expressed its opinion in the judgment of 10th January 2023, Case No. 27 Cdo 1206/2022, according to which, exceptionally, this information obligation may also be fulfilled by the managing director informing all the shareholders of the content of the intended contract, provided that all of them give their consent to this intention or at least take note of this intention with the waiver of the right to discuss this matter (and to possibly pronounce a prohibition to conclude the contract) by the general meeting.

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Personal data

+ Whistleblower Protection Act

On 21st April 2023, the Chamber of Deputies approved the Whistleblower Protection Act. The Act should protect whistleblowers of crimes and offences with a maximum fine of at least 100 000 CZK and their relatives and persons involved in the preparation of the report from dismissal, reduction of pay, disciplinary measures, transfer to another job, change of working hours and interference with the right to protection of personality. Such and other retaliatory measures could carry a fine of up to one million CZK. Conversely, a whistleblower could be fined up to 50 000 CZK for knowingly making a false report. Under the bill, public institutions, including municipalities over 10 000 inhabitants and companies with at least 50 employees, will have to designate an employee to manage the whistleblowing agenda. Some entities could share the internal whistleblowing system. Other notifications will be collected and assessed by the Ministry of Justice. The Ministry would also provide advice to employers, potential whistleblowers and the public. The bill will now be debated by the Senate but given that its passage is necessary due to the delayed implementation of European regulations, for which the Czech Republic has already been sued by the CJEU, it can be assumed that the Senate will also pass the bill. We therefore recommend that those affected by the new regulation start working on the introduction of internal notification systems.

+ Changes in teleworking between the Czech Republic, Germany and Austria

The Czech Republic has concluded a framework agreement with Germany and Austria on the teleworking regime, effective from 1st March 2023. The agreement applies to employees working for a Czech employer in Austria or Germany. The agreement increases the limit for keeping an employee in the Czech insurance system from 25 % to 40 % of his/her total working time or remuneration. However, the employee must apply to the Czech Social Security Administration (ČSSZ) to remain in the Czech insurance system. If the employee performs more than 40% of his/her work activities in Austria or Germany, he/she can also apply to remain in the Czech insurance system, but in this case he/she will no longer be entitled to have his/her application granted. In addition, an EU-wide agreement is currently being negotiated.

+ Use of GPS mileage data on a company vehicle as a reason for termination of employment

The European Court of Human Rights, in its judgment of 13th December 2022 in the case *Florindo de Almeida Vasconcelos Gramaxo v Portugal* (complaint No. 26968/16), found no violation of Article 8 of the European Convention on Human Rights, guaranteeing the right to privacy in a case where an employee was dismissed on the basis of the mileage data obtained from a GPS device in a company vehicle. The data showed that the employee had not properly recorded the mileage travelled in the official vehicle for

private travel purposes and had interfered with the operation of the GPS device. The Court upheld the national courts in finding that the use of the GPS device was admissible if it was not used to monitor the employee's work performance.

Taxes

+ VAT in the case of energy supplies at regulated prices

The Ministry of Finance issued a statement making it clear that compensation for the supply of electricity and gas at the capped prices constitutes consideration from a third party on which the electricity or gas supplier must pay VAT, since the receipt of compensation increases the tax base. Where the customer of the electricity or gas is the final consumer and the original supply was therefore made under the normal VAT regime, the energy supplier is obliged to pay output VAT on the total amount of compensation received. However, it does not have to issue corrective tax documents for individual customers to increase the tax base.

If the original supply of energy was subject to the reverse charge, the energy supplier should quantify the specific part of the compensation relating to a particular customer and issue a corrective tax document for that customer under the reverse charge. However, if the energy supplier deducts output VAT on the full amount of compensation received in the same way as if the original supply had been under the normal tax regime and does not issue a corrective tax document, the tax administration will not challenge this practice.

+ Obligations of accommodation service providers according to the General Financial Directorate

Following legislative changes and CJEU case law, the General Financial Directorate (GFŘ) issued updated information on the tax assessment of the obligations of accommodation service providers. In particular, the GFŘ explained the difference between an accommodation service and a lease in such a way that it is not so much the duration of the contractual relationship that is important, but rather whether the user is entitled to use the property in the same way as the owner (as in the case of a lease).

In the case of offering accommodation via internet platforms, the GFŘ points out that the use of such a platform may be provided to both taxable persons and others. Thus, the tax liability may arise in certain circumstances both for the accommodation provider (intermediary fee) and indirectly for the guest (fee for the use of the internet platform). It is therefore necessary to examine who is ultimately the recipient of such services and what the nature of the service is. If the recipient of the service is a VAT payer, the obligation to declare the tax lies with him. Where the recipient is a taxable person who is not registered as a taxable person, he becomes an identified person on the date of receipt of the service. Only in the case where the recipient is a non-taxable person, the tax on the service shall be paid by the intermediary platform itself on behalf of that person.

The GFŘ also points out that if the provision of accommodation fulfils the characteristics of a business, then even in the case of

otherwise non-businesspersons, income from accommodation is subject to tax as income from employment. If an individual meets the conditions set out in the Income Tax Act, he or she may also enter the flat-rate regime and tax such income on a flat-rate basis. In this context, providers should also bear in mind other obligations that may arise in connection with the provision of accommodation services, such as the obligation to keep accounts, tax records or records of income and receivables.

Finally, the GFŘ has also clarified that if accommodation services are provided in the immovable property, it will be subject to the relevant property tax rate set for business (10 CZK per sqm of built-up or floor area). However, the taxable unit/building will be considered to be used for business even if it is not occupied on 1 January of the tax year.

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