



Not litigating is standard

SK: The new law against bureaucracy also introduces new obligations

CZ: Registration in the Register of Beneficial Owners of legal entities

CZ: Close person

The Constitutional Court recently brought up a point that may seem obvious: Taking a case to court isn't normal. If you nevertheless decide to sue, you must count on the fact that it may be expensive. You must also bear in mind that it may take a long time, and that justice is sometimes blind.

Nevertheless, sometimes there is no other option. A diligent manager – a businessperson, must manage his assets responsibly. He cannot allow debts to remain unpaid. A diligent manager – the state, then must ensure that the courts work the way they should: quickly and efficiently. The situation today is not ideal. In some places it works better than in others. Years ago the Mediation Act introduced "reconciliation professionals". The pending amendment to the Code of Civil Procedure seeks to reduce the length of court proceedings. The institute of class action lawsuits now being prepared should strengthen the position of consumers. Obstructing justice in all likelihood will be a criminal offence.

So, what is the role of us lawyers? To help the managers. To lead them to an agreement. To know how to advise when to sue and when not to.

Jan Krampera

In summary

CZ: Registration in the Register of Beneficial Owners of legal entities

On 31 December 2018, the deadline for registration of the beneficial owners of legal entities registered in the Commercial Register into the Register of Beneficial Owners will expire. A beneficial owner is, among others, a person who, alone or together with persons acting in concert, holds more than 25% of the voting rights or has a share in the registered capital of more than 25%. (JKo)

CZ: Close person

The Constitutional Court ruled on the concept of a close person in the context of the right to refuse to give testimony if doing so would put him or a close person at risk of criminal prosecution. It is generally known that friendship may in some cases be equally solid or even stronger than family relationships. (DF)

CZ: Favourable satisfaction of homeowner association claims related to building administration

When selling a debtor's unit in auction, the homeowner's association has the right to 10% of the auctioned price, before satisfying the creditors (e.g. before the bank which financed the purchase of the apartment). The condition is that the homeowner's association exercise its claims against the debtor in insolvency proceedings. (DV)

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SK: The new law against bureaucracy also introduces new obligations

Since 1 September 2018, a law against bureaucracy has been in effect (the "Act"), designed to eliminate unnecessary administrative burdens on citizens and businesses, in particular by removing the obligation to submit to the public authorities various documents already available to them (extract from the Commercial Register, extract from the Criminal Register, ownership deed, etc.). Public authorities are obliged to collect and use data recorded in public administration information systems in their official activities and not to retrieve these data from citizens and businesses.

Despite its noble intentions, the Act also increases the administrative burden on citizens and businesses. It also amends the Trades Licensing Act (TLA), under which natural and legal persons have a new obligation to report a trade consisting in the submission of a document – consent to the processing of personal data necessary for the purposes of the TLA. Since the Act itself is the legal basis for the processing of personal data for the purposes of the TLA, the submission of a notice of appeal is ineffective and contrary to the GDPR.

Simona Laktišová

CZ: Joint action of the executive director and proxy

The Supreme Court ruled that it is not permissible for an executive director and a proxy to act jointly on behalf of a company.

In the specific case, the company requested that the manner of acting on behalf of the company stipulated in the memorandum of association be recorded in the Commercial Register, namely that "*At least two directors jointly, or one director together with one proxy, shall act on behalf of the company. If the company has only one director, the joint acting of the director and the proxy is excluded.*"

The court's decision was confirmed by the Supreme Court of the Czech Republic, which stated that the provisions of the memorandum of association on the joint acting of the executive director and the proxy as the manner of representing the company towards the members of its statutory body contradicts the law and manifestly violates rights relating to the status of persons and thus public order. The proposed manner of acting of the statutory body is not admissible, as it would mean that the proxy is on equal footing with the executive director, i.e. that the proxy is also the statutory body of the company.

Tomáš Jelínek

CZ: Courtesy car even in case of total loss, says Constitutional Court

A certain standard of living must be maintained for insured persons when their vehicle is damaged. The policyholder has the right to reimbursement of the cost of renting a courtesy vehicle between the time of the accident and the payment of the amount for the destroyed vehicle, since not everyone can afford a new vehicle without receiving indemnity from the insurance company. (PKr)

CZ: Government draft amendment to the Labour Code

Another amendment to the Labour Code is in the commentary procedure. In addition to the adjustment system for the increase in the minimum wage, it will introduce, for example, shared job positions, a new way of calculating leave, records of working time for agreements made outside of employment, and simplified regulations on sending mail to employees. (VO)

CZ: Appropriate consideration for squeeze-out

According to the Supreme Court (29 Cdo 3024/2016), the consideration for shares should not be lower than the purchase price at which the main shareholder acquired the shares prior to the general meeting that led to the transfer of shares to the main shareholder, even if the price included a surcharge for obtaining a majority share. (VF)

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CZ: Chaining of liability

In labour relations, situations may arise where an employee other than the one who has been unjustly enriched is liable for the damage caused to the employer by unjust enrichment. The Supreme Court of the Czech Republic also recently dealt with this question in Resolution No. 21 Cdo 346/2018 of 22 May 2018.

It has to do with the so-called "chaining" of liability, a situation where there is a liability relationship between the employer, the employee who caused the damage by bringing about the unjust enrichment of another employee, and the employee who has unjustly enriched himself. Unjust enrichment occurred in the present case when one employee wrongfully paid out part of his salary to someone else.

The court ruled that the primary obligation to compensate the employer for wrongly paid money falls to the person who was enriched in this way, i.e. the "enriched" employee. It added, however, that this employee is only required to return the money if he knew or ought to have known that the amounts were wrongfully or incorrectly paid and the employer makes the claim within 3 years of the date of its payment, and if the enriched employee is capable of returning the money (in view of his financial situation).

By contrast, the employee who wrongfully paid the salary/payment to the "enriched" employee is only obliged to pay damages to the employer if the "enriched" employee is not obliged or is unable to return the money. In other words, the employer must first seek the return of the money from the enriched employee and only then, in the event of failure (impossibility), it may claim damages from the employee who caused the enrichment.

Roman Šolc

News from Dvořák Hager & Partners

Jan Krampera became a new partner of the firm. He heads the Litigation and Arbitration Department.

Attorneys **Eliška Miklíková** and **Jiří Kokeš** have joined the Prague office, as have associates **Ondřej Šudoma**, **David Fabián** and **Jaroslav Srb**.

In Bratislava we welcome attorneys **Helga Maďarová** and **Ján Macej**.