

LEGAL ALERT

SELECTION OF LEGAL UPDATES

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So-called eviction order or easier eviction of problem tenants

In mid-June, the government approved a change to the law that should allow landlords to more easily evict tenants who are illegally using the apartment or house by shortening and simplifying the court proceedings.

This would be a new order procedure that would apply to cases where there was a tenancy relationship between the landlord and the former tenant that no longer exists. The proceedings will be initiated on the application of the landlord, who will have to prove that he actually owns the property (by identifying the flat or house, with the court subsequently checking the ownership in the Land Registry). Furthermore, that the former tenant (as the defendant) no longer has a valid legal reason to use the flat (a subsisting lease) and that the landlord has given the defendant written notice to vacate. This notice to vacate must be sent to the (former) tenant at least 14 days before the court action is brought.

The Supreme Court has introduced a new criterion for granting a compensation for impairment of social work to be assessed under the previous legislation

In its recent decision, the Supreme Court states that the courts should consider the Methodology for the Compensation of Non-Material Injury to Health when determining the amount of compensation for the plaintiff's impairment of his/her social life. They should have ascertained from that methodology the amount of compensation to which the applicant would have been entitled if it had been

determined in accordance with that methodology.

In the present case, the appellant claimed a sum of money from the Czech Republic as a compensation for the personal injury consisting in the impairment of her social life which she allegedly suffered as a result of the criminal prosecution. Although there were several adverse circumstances in the applicant's life (breakdown of her marriage, debts or development of a mental illness, ...), the criminal prosecution was, according to the Supreme Court, decisive for the occurrence of the harmful consequences.

The conditions for compensation for the impairment of social life were fulfilled, and the court initially applied the provisions of the Civil Code and the Methodology for the Compensation of Non-Material Injury to Health. However, according to the Supreme Court, in determining the amount of the compensation in question, account must be taken of whether, as a result of the greater time lapse since the end of the Methodology, there has been a significant disproportion between the compensation to be awarded and the compensation which would have been awarded in the same case under section 2958 of the Civil Code.

Case law of the European Court of Human Rights: violation of the right of access to a court in connection with the rejection of a constitutional complaint on the ground of failure to exhaust all remedies

The European Court of Human Rights held that the Czech Constitutional Court had erred in concluding, without any further explanation, that the applicants should have lodged an appeal with the Supreme Court before applying to the

Constitutional Court. It had thus failed to examine the complaint on the merits, thereby infringing the applicants' right of access to a court (under Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms).

In the present case, the complainants, after failing before the Court of Appeal, turned directly to the Constitutional Court, since the monetary benefit at issue did not reach the minimum amount laid down by law for the admissibility of an appeal. It is not possible to appeal to the Supreme Court on the grounds that the amount of the monetary benefit does not exceed CZK 50 000. The applicants decided to proceed in this way precisely in order to avoid the later rejection of their constitutional complaint on the ground of delay.

Landlord's obligation to inform the tenant of the right to seek judicial review of the validity of the termination of the lease

In its recent decision on the tenant's right to apply for judicial review of the validity of the termination of the lease, the Supreme Court stated that the content of the termination notice includes not only a notice to the tenant of the right to apply for judicial review of the validity of the termination, but also a notice of the time limit within which the tenant must apply. Otherwise, the notice would be void absolutely (pursuant to Article 588 of the Civil Code), since the breach of Article 2286(2) of the Civil Code is not only contrary to the law but also manifestly disturbs public order. Absolute nullity occurs from the outset without further delay and does not produce any intended legal consequences.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 26 Cdo 2029/2023)

Good faith of the acquirer of a right registered in the public register

In its recent decision, the Supreme Court stated that the provision on material publicity of entries in the public register protects not only such a purchaser of a right who acquires his right in reliance on the entry in the public register of the existence of this right with the transferor (including in the case of the assessment of the existence of the assignor's lien in connection with the assignment of a claim), but also such a purchaser of a right who acquires his right in reliance on the entry in the public register of the (non-)existence of such legal defects which are entered in the public register.

Thus, if at the time of the conclusion of the contract of sale in question the disputed lien had been deleted from the public register and was deemed not to exist, any good faith in the correctness of such an entry also protected the purchaser of the title according to the state of the entry in the public register on the date of the application for entry of the right in the land register; in other words, the good faith of the purchaser of the title extends to the fact that the lien did not exist on the date of the application for entry in the public register.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 21 Cdo 2967/2023)

Time limit "without undue delay" in cases of agreed withdrawal from the contract

In its decision, the Supreme Court addressed the conditions for the creation and exercise of the right of withdrawal. Among other things, it stated that the law (in view of Section 1969 of the Civil Code) clearly envisages the possibility of negotiating a right of withdrawal in the event of default by the debtor by linking it to the criterion of (non)material breach or by directly stating it as a ground for

withdrawal. It also permits the negotiation of conditions for its exercise in derogation from the provisions of the Civil Code, i.e. it does not exclude the possibility of negotiating the right of withdrawal in the event of default by the debtor, even if its exercise is not limited by a time limit without undue delay.

According to the Supreme Court, the 'without undue delay' period is not linked to withdrawal as such, but only to certain cases expressly provided for by law. In the case of withdrawal from a contract for default, the law only links it to that period in the case of substantial default. However, by the agreed ground, the parties make it clear that the creditor may withdraw from the contract without further delay in the agreed case, without any room being left for the need to distinguish between the legal distinction between the materiality and the immateriality of the default. The case of default for which the parties agree on a right of withdrawal depends on their common will. The Supreme Court concludes that it cannot even be assumed that every case of default for which the other party's option to withdraw is agreed in the contract is always indicative of the materiality of that default.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 31 Cdo 3823/2023)

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