

LEGAL ALERT

SELECTION OF LEGAL UPDATES

July 2024



Introduction of a minimum deduction for debtors

As part of a forthcoming amendment to the Insolvency Act, the Senate is likely to support the introduction of a mandatory minimum deduction from wages in foreclosure of five per cent of the minimum wage. For people with old-age, disability or orphan's pensions, the amount would be half that. This is an attempt to ensure that more money can be deducted from debtors' income than has been the case up to now. For example, organizations helping the needy (People in Need, Charity of the Czech Republic, ...) are opposed to the proposal and are asking senators not to support it. They are concerned that the measure will lead to an expansion of black labor.

Along with this change, it is also proposed to reduce the period of debt relief from 5 years to 3 years. The requirement for this reduction stems from an EU directive. However, the Czech draft amendment extends this reduction from entrepreneurs to consumers.

The question of possession of the property right after the grant of a prescription in a foreclosure auction

In May, the Supreme Court issued a decision in a case in which the plaintiff sought to have the defendant vacate a portion of land (which the defendant had attached to his land) that he had acquired by foreclosure auction. The Supreme Court followed the legal opinion of the Court of First Instance, which held that the defendant had acquired the annexed part of the land by possession. The defendant took possession after the conclusion of the purchase contract in 2008 (which did not specify the area of the land in question). The defendant did not know that the auction was taking place and was not even aware that he had an attached part of another piece of land.

The plaintiff became the owner of the land by virtue of the annexation in 2017. Although the defendant did not take possession of that part of the land until 2018 (after the expiry of the 10-year retention period), the Court of First Instance held that the plaintiff had nevertheless acquired title to that part of the land, since the plaintiff (who had auctioned the land) did not approach the defendant until 2019.

The Supreme Court therefore concluded that the acquisition of title to land by virtue of a decree granting a right of access does not extinguish the possession of title to such land or part thereof which is capable of being held. Nor does the decision to grant a right of acquiescence affect the running of the retention period.

In so far as the Court of Appeal took the legal view in the present case that the existence of a fair possession as one of the conditions for possession is extinguished by the grant of a preference at an execution auction, its decision is based on an error of law.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 22 Cdo 3664/2023)

Obligation of the home owners association (HOA) to procure repairs of common parts of the house

In this decision, the Supreme Court dealt with a situation where the owner of a dwelling unit demanded that the HOA, together with payment of a sum of money, first carry out repairs to the house (due to mold in the dwelling unit in question).

In the present case, the Supreme Court stated that even after 1 January 2014, the

unit owners' association is obliged to arrange for repairs to the common parts of the building as part of the management of the building. As a matter of principle, repairs to the common parts of the building may be carried out only if the competent body of the owners' association so decides.

However, the situation is different if the owners' association does not allow the unit owners to decide on the repair, either because it does not convene a meeting of the owners at least once a year within the statutory time limit or because it does not include a vote on the repair on the agenda of the meeting.

Such inaction by the owners' association must also be regarded as a breach of its duty to manage the building. If the assembly does not decide on the repair, it cannot be carried out. However, the failure of the owners' association to act cannot be attributable to the unit owner, who is not entitled to manage the building and has no means of seeking redress. Therefore, if the unit owner suffers damage as a result of a defect in the common parts of the building, then, in a situation where he does not have an action under section 1209 of the Civil Code, he may seek directly against the owners' association an order from the court to take measures to avert the threatened damage.

In this case, the action would be an action under section 2903(2) of the Civil Code, for the application of which it must be shown that there is a serious threat to the plaintiff's property or other values at the time of the court's decision.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 26 Cdo 19/2024)

Termination of the lease of an apartment if it is provided through Airbnb

In its decision, the Supreme Court has expressed its opinion on the provision of an apartment to third parties (e.g. through Internet platforms such as Airbnb) for short-term accommodation. According to the Supreme Court, in this case, it will be a breach of the tenant's obligation to properly use the apartment in accordance with the lease agreement and as such may be grounds for termination of the lease pursuant to Section 2288(1)(a) of the Civil Code (flagrant breach of lease obligations). This also applies if the tenant lets the apartment to third parties for purposes other than for the subtenant's accommodation.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 26 Cdo 2128/2023)

Status of a non-nominal heir in the succession proceedings

In its decision, the Supreme Court clarified that participation in the succession proceedings does not entitle the non-minor heir to contest the established assets of the estate of the deceased. A non-probate heir may object and appeal only in respect of the valuation of assets which have already been included in the assets of the estate.

Objections by a non-minor heir to the extent of the assets of the estate shall not be decisive for the succession proceedings. Thus, if such an heir considers that the deceased was entitled to other assets at the date of his death which did not come to light in the succession proceedings or were not taken into account because they were disputed and were therefore not included in the assets of the estate, he is not precluded

from asserting his right to payment of a pecuniary claim corresponding to the obligatory share (or its supplement) to the extent attributable to the other assets of the estate against the heirs by means of an action outside the succession proceedings.

(according to the judgment of the Supreme Court of the Czech Republic, Case No. 24 Cdo 2330/2023)

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