

LEGAL ALERT

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Limitation of state aid for solar power plants: amendment to the Energy Act

The proposed amendment to the Energy Act, the so-called Lex OZE III, intends that all solar power plants with a capacity of more than 30 kW, which were put into operation in 2009 and 2010, will have to undergo an individual assessment of the proportionality of state aid on an annual basis, to which they should also apply themselves. If they do not apply, the operators of these solar plants will have their state aid payments suspended. Furthermore, consideration is being given to, for example, lowering the threshold for a reasonable profitability rate, which is set as an internal rate of return (IRR).

Lex OZE III has already passed the 2nd reading in the Chamber of Deputies, where one of the amendments is this criticized proposal. Arguments against its inclusion in the amendment to the Energy Act point, for example, to the issue of retroactivity of the proposal, the contradiction with the notification or that the proposal did not go through the proper approval process or impact assessment.

The death of the seller before the entry into the Land Registry does not affect the effectiveness of purchase agreement

In this case the Supreme Court dealt with the question of the effectiveness of the purchase agreement of immovable property concluded by the testator as the seller before her death and the effect of her death before the application for registration in the Land Register was filed.

The Court of Appeal concluded that the death of the deceased after the conclusion of a valid and effective purchase agreement for the transfer of

immovable property, but prior to the filing of the application for the entry of the ownership right in the Land Register does not affect the effectiveness of the purchase agreement. In the absence of an application for registration in the Land Register the material effects of the contract are not fulfilled.

The Supreme Court also dealt with the settlement of the inheritance, which included the purchase price paid to the testator before her death. At that point in time, the funds already belonged to the testator and should therefore have been included in the list of assets of the estate as a separate asset and not as a claim by the testator against the purchaser for payment of the purchase price, which is dependent on the status of the transfer of ownership of the immovable property to the purchaser.

It was decisive for the resolution of the situation that the testator had appointed a testamentary heir of the funds, which the Supreme Court interpreted as meaning that the funds obtained from the sale of the immovable property also fell under this wording of the will while the other immovable property were to be divided among the individual heirs on the basis of the legal succession, since no will had already been made on this subject. On this point, the Supreme Court held that the funds obtained from the sale of the immovable property were not to be divided according to the legal shares of inheritance but were to be allocated to the heir designated by the will.

(according to the judgment of the Supreme Court of the Czech Republic, case No. 24 Cdo 2512/2024)

Liability for damage caused by the operation of a motor vehicle

In a recent decision the Supreme Court considered the situation of whether a deer running into the road in front of an oncoming car, which after the collision threw the deer onto the oncoming vehicle, was considered a circumstance originating in traffic.

The Supreme Court concluded that the damage caused to a motor vehicle by a deer thrown by another vehicle which ran into its path was caused by the special nature of the traffic and the circumstances which originated in the traffic. The operator of the vehicle cannot therefore be exempted from the obligation to compensate for the damage caused, or for the damage caused to the other car on which the deer fell.

The legal regulation of the obligation to pay for damage caused in connection with the operation of transport or means of transport establishes strict liability. The person liable (the operator) cannot therefore exempt himself from the obligation to compensate for the damage by proving a lack of fault. Liability is excluded only if the so-called liberalisation ground is met.

This decision of the Supreme Court can be considered a breakthrough, as the commentary literature¹ generally refers to the intervention of the animal as a circumstance that comes from outside (the so-called external accident) and does not originate from the operation of the vehicle, so it is possible to be exempted from compensation for damages if the given conditions are met.

The Supreme Court stated that there is no doubt that the very movement associated with the speed and kinetic energy of a vehicle is a specific characteristic of its operation, and if in connection with these physical phenomena an object in the vehicle's path is ejected, e.g. a stone that

causes damage to the windshield of another car, such damage occurs in connection with the operation of the motor vehicle, i.e. its activity and movement.

As to the deer as a factor affecting the course of the accident, the Supreme Court added that when the object causing the damage is outside the vehicle that set it in motion without the special characteristics of its operation, it would have remained in place and its transmission and the damage would not have occurred. Thus, the operation of a motor vehicle is the cause of the movement of an object that causes damage by striking another vehicle. Even though a living animal is a creature endowed with senses and is viewed as a thing only if the nature of the matter does not contradict it, and in this case it was not immobile prior to its impact with the vehicle these distinctions are not decisive because here too the movement and speed of the vehicle itself manifested a distinctive and specific characteristic of its operation without which the animal would not have been thrown and no damage would have been caused. The application of the liberalisation ground is therefore excluded.

The Supreme Court further stated that from the moment of the first collision, the animal was no longer in control of its actions and began to act like an inanimate flying thing due to the impact of the vehicle. The animal's behaviour was therefore interrupted by the collision with the vehicle and its further movement was already dependent on the circumstances originating in the operation of the motor vehicle which hit it (speed, direction of movement of the vehicle, etc.).

¹ Cf. e.g. commentary to § 2927 [Damage caused by the special nature of traffic]. In: Petrov, J., Výtisk, M., Beran, V. et al. Civil Code. 2nd edition (3rd

update). Prague: C. H. Beck, 2024 or Lověťinský, V. Objective liability in Czech tort law. 1st edition. Prague: C. H. Beck, 2021, p. 63

(according to the judgment of the Supreme Court of the Czech Republic, case No. 25 Cdo 3742/2023)

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