Legal Update

March 2019

Weinhold Legal

Content

The information in this newsletter is correct to the best of our knowledge and belief at the time of going to press. Specific advice should be sought, however, before investment and other decisions are made.

Banking and Financial Services:
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Labour Law:
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Real Estate:
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Legislative Amendments

Government bill amending the Electronic Communications Act – simplifying a change of mobile operator

In late February, the Government submitted a bill amending the Electronic Communications Act.

According to its explanatory memorandum, the bill is designed to promote competition on the electronic communications market by simplifying and speeding up a change in mobile service provider and limiting the fines that can be imposed for terminating a fixed-term contract.

Mobile customers are currently bound by fixed-term contracts (usually 24 months). In the event of early termination of such contract, the law allows a contractual penalty of 20% of the agreed monthly performance remaining until the end of the agreed period and the obligation to pay the costs associated with the equipment that was provided to the customer on advantageous terms.

The bill would allow a fixed-term contract to be terminated after three months without financial penalty. Any penalties for early termination of a contract within its first three months may total no more than 5% of the total of the remaining payments. The obligation to pay for equipment provided on advantageous terms would remain.

According to the bill, the administrative burden is reduced with the introduction of a "one-stop shop" like one would find when changing one's bank or energy provider. All a customer will have to do is contact the new provider, which in turn will see to it that the transfer from the original operator is carried out; there should be no interruption of service. Breach of an obligation pertaining to a change of provider would now be considered a misdemeanour.

At the same time, it is proposed that the contract termination period when switching between operators (and transferring a number) be shortened to two days from the current 10.

The proposed changes should apply not only to natural persons (individuals), but also to what are known as micro-enterprises in the sense of the European Commission definition (natural persons and legal entities doing business with fewer than 10 employees and turnover of less than EUR 2 million).

The amendment must still be discussed in the Chamber of Deputies and it isn't yet clear in what form it will finally be adopted. The amendment itself will certainly not solve the problem of high prices, though its submitters believe it can help to speed up the arrival of a fourth mobile operator on the Czech market.

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Recent Case Law

Can an audio recording of a conversation made without the knowledge of the recorded person be used as evidence in court

(Czech Supreme Court Judgment No. 21 Cdo 1267/2018 of 14 August 2018)

In the case under review, an employee (the applicant) was given notice of employment termination due to redundancy. However, the employee would not accept the termination and insisted that the employer keep him on (and, moreover, promote him to a higher position) and eventually threatened – if he did not get his way – to take the employer to court, which would prevent the employer from receiving the grants on which, as a non-profit organisation, it was dependent. Because of these threats, however, the employer fired the employee with immediate effect. In the subsequent dispute over the immediate termination, a recording of the threat was presented as evidence and the Supreme Court had therefore to consider two key issues:

1) Can an audio recording of a conversation made without the knowledge and consent of the recorded person be used as evidence in court?

In assessing this question, it is necessary to consider, on one hand, the right of the employee to protect his privacy and, on the other hand, the right of the employer to exercise its subjective private rights in court proceedings. Restriction of the right to protect one's character must be interpreted restrictively and may not be used in a disproportionate manner. This measurement of protected rights cannot be addressed on a general level; every case must be assessed individually. The final decision is always at the court's discretion.

In the view of the Supreme Court, in this case the content of meetings could be (and was) proven by the testimony of witnesses present at the meetings. Under such circumstances, the Supreme Court believes it is not possible to breach the right of the employee to the protection of privacy and use audio recordings made without his consent as evidence in court.

2) Can an employee who threatens an employer be fired with immediate effect?

An employee may only exceptionally be fired with immediate effect if that employee has grossly violated an obligation ensuing from the legal regulations pertaining to the performed work.

If the employee threatened his employer with a lawsuit seeking the invalidation of his firing, this constituted his statutory right to seek a review of the validity of his firing. An employer may not in any way penalise or disadvantage an employee for having attempted lawfully to claim his rights (even more so, if he only threatens to claim them).

If, however, the employee threatened that if the employer did not keep him on in a certain position he would prevent that employer from obtaining grants for its activity, the employee then undoubtedly committed a violation of the obligation laid down by the Labour Code to refrain from acting at variance with the legitimate interests of the employer. Outright disloyalty to an employer indicating a complete loss of the confidence that is necessary in labour-law relationships warrants the finding that the employer cannot reasonably be asked to keep the employee on, even through the end of the notice period. The Supreme Court therefore amended the decision of the appellate court and rejected the employee's suit seeking the invalidity of his firing with immediate effect.

Discriminatory behaviour while negotiating a lease

(Czech Supreme Administrative Court Judgment No. 7 As 190/2017 of 19 July 2018)

The Supreme Administrative Court dealt with the question of an administrative delict comprising a violation of the ban on consumer discrimination in the provision of services or the sale of products under the Consumer Protection Act. According to the Czech Trade Inspection Authority, a real estate agency will have committed an administrative delict by saying it needed to know whether an interested party in an e-mail inquiring about leasing a flat was of Roma origin.

The key question in this case was whether discrimination can have occurred simply by an entrepreneur sending a response to an e-mail from someone interested in a flat in which the entrepreneur asks whether the person is of Roma nationality, or whether the question alone isn't an expression of discrimination and if any discrimination could occur in the case of the rejection of the interested party in the course of negotiations to execute a rental agreement.

According to the court of first instance, any subsequent step, i.e. refusal to broker the execution of a rental agreement or refusal to provide a walk-through of an apartment solely because the interested party is of Roma origin, would constitute a violation of the principle of fair and equal treatment. However, this did not happen.

In contrast, the Czech Supreme Administrative Court found that a simple question about ethnic origin (for no objective reason) can represent infringement of the dignity of the person to whom this query is addressed. It was clear, moreover, that being of Roma ethnicity would be decisive in any further brokering of a lease.

The real estate agency's objection, i.e. that the given information had been required by the owner of the real estate, does nothing to alter the fact that the real estate agency was the service provider and, indeed, while providing the service informed the customer of the given criterion and, in so doing, acted in a discriminatory manner.

We hope you will find *Legal Update* to be a useful source of information. We are always interested in your opinion about our newsletter and any comments you may have regarding its content, format and frequency.

Please e-mail your comments to veronika.hlavata@weinholdlegal.com or fax them care of Veronika Hlavatá to +420 225 385 444, or simply contact your usual partner/manager.