Legal update

December 2021

Weinhold Legal

Contents

The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

Banking, Finance & Insurance:
Daniel Weinhold, Václav Štraser

Mergers and acquisitions:
Daniel Weinhold, Václav Štraser

Insolvency and Restructuring:
Zbyšek Kordač, Jakub Nedoma, Michal Švec

IT, Media & Telecommunication:
Martin Lukáš, Jakub Nedoma, Michal Przeczek

Real estate:
Pav Younis, Václav Štraser

Personal Data Protection
Martin Lukáš, Anna Bartůňková, Tereza Hošková

Labour law:
Anna Bartůňková, Eva Procházková, Daša Aradská

Slovak law:
Tomáš Čermák, Karin Konečná

Family office:
Milan Polák, Zbyšek Kordač, Michaela Koblasová

Dispute resolution: Milan Polák, Zbyšek Kordač, Anna Bartůňková, Michaela Koblasová, Michal Švec

Competition law / EU law:
Tomáš Čermák, Jana Duchoňová

Start-ups and Venture Capital:
Pav Younis Martin Lukáš, Jakub Nedoma

Public procurement & Public sector:
Martin Lukáš, Monika Švaříčková, Tereza Hošková

News in legislation

Ministry of Health issued a decree on compulsory vaccination against covid-19 disease

On 10 December 2021, Decree No. 466/2021 Coll. of the Ministry of Health amending Decree No. 537/2006 Coll., on vaccination against infectious diseases, as amended (the "**Decree**"), which introduces mandatory vaccination against the covid-19 disease for certain groups of the population, was published in the Collection of Laws and entered into force the following day.

The first group of persons covered by the obligation to vaccinate under the Decree issued pursuant to Section 108 (1) of the Public Health Protection Act are people over 60 years of age. They must receive the first dose of vaccination no later than 4 months after reaching the age of 60.

The obligation to vaccinate against covid-19 disease also applies to members of selected professions specified in Section 10a of the Decree, who are at higher risk of contracting coronavirus. Specifically, these include health care workers (including medical students, medical schools and other employees of health care facilities), social services workers, members of the security forces of the Czech Republic, soldiers (professional or active reserve), members of the municipal police, etc.

In transitional provisions, the Decree provides for the obligation of persons who have reached the age of 60 years before the date of its entry into force to be vaccinated by 28 February 2022.

Although the decree itself does not provide for a penalty for failure to comply with the vaccination obligation, the Public Health Protection Act allows such conduct to be sanctioned by a fine of up to CZK10,000,-.

However, the incoming government of the Czech Republic is critical of compulsory vaccination and has publicly announced that it will at least significantly amend the decree. It is therefore necessary to monitor further developments in the coming weeks and months, which will show whether or not the Czech Republic will actually join the countries where vaccination against covid-19 is compulsory.

News in judicature

Compensation for personal injury for an accident on an icy pavement

(Judgment of the Constitutional Court file no. II. ÚS 1991/20 of 1 December 2021)

The complainant slipped on the icy and snow-covered pavement near a bus stop, which had last been cleaned more than two days earlier, and suffered a fractured ankle. By the action, the complainant sought an order that the Technical Administration of Communications of the Capital City of Prague, a contributory organisation (hereinafter "**TAC**") which administered the pavement in question under the Road Act, to pay pain damages.

The District Court for Prague 1 upheld the action in full. In its legal assessment, the Court based its decision in particular on the main grounds of the Constitutional Court's ruling of 12 April 2016, Case No. I. ÚS 2315/15, according to which it is applicable that if a pedestrian claims compensation for personal injury and states that this injury was caused by the condition of the pavement (local road), the courts must, on the one hand, examine the

Legal update

December 2021

Weinhold Legal

pedestrian's behaviour in such a way as to prevent his injury. In doing so, the courts should look at all the circumstances of the case, including whether the pedestrian chose the safest route among several possible routes, whether he adapted his walking pace to the circumstances, but also whether he chose appropriate footwear, etc. On the other hand, however, it is necessary to assess to what extent the owner of the road complied with its obligation to ensure that the road allows for safe pedestrian movement The District Court then concluded that there was a defect in the pavement's passability consisting of icing and that this defect caused the complainant to fall and be injured, and the evidence did not show that the plaintiff himself contributed to the injury, because he was wearing winter boots, could not have chosen a different route, and could not have foreseen that the sidewalk at the bus stop would be untreated. Therefore, according to Section 27(3) of the Road Act, TAC is liable for the damage thus caused.

On TAC's appeal, the Municipal Court in Prague reversed the decision of the court of first instance and dismissed the action in its entirety, since, in its view, the owner or manager of the road is liable for the damage caused by defects in the passability, which must have the character of an unforeseeable change in the passability. In the complainant's case, however, the pavement was visibly icy and covered with a dusting of snow and therefore did not constitute a defect in the passability.

The Constitutional Court, which dealt with the case on the basis of the submitted constitutional complaint, summarised, in accordance with the principles expressed in its earlier decisions, that

> *'if a pedestrian suffers injury to his or her health and thus interference with his or her physical integrity (Article 7 (1) of the Charter of Fundamental Rights and Freedoms) as a result of snow or ice on the pavement, the liability of the owner (manager) of the road cannot be excluded on the grounds that the condition of the pavement was foreseeable for the pedestrian. It is necessary, on the one hand, to examine to what extent the pedestrian behaved in such a way as to prevent his injury and, on the other hand, to assess the extent to which the owner of the road complied with his duty to ensure that the road allows the safe movement of pedestrians*'.

However, the court of appeal was not guided by those principles derived from the case-law of the Constitutional Court in its assessment of the applicant's case. It ruled out compensation for damage suffered simply because it described the condition of the pavement as foreseeable for the complainant as a pedestrian, without considering whether the fact that the pavement had not been treated for several days by TAC as the road manager was evidence of a breach of TAC's obligations. The Municipal Court in Prague committed a further error in that it did not deal in any way with the case-law of the Constitutional Court, even though the decision of the Court of First Instance was already based on that case-law.

For the reasons stated above, the Constitutional Court annulled the contested decision of the court of appeal, and the Municipal Court in Prague must consider the case in further proceedings in accordance with the principles set out in this ruling.

Redundancy of an employee under Section 52(c) of the Labour Code

(Judgment of the Supreme Court file no. 21 Cdo 456/2020 of 26 September 2021)

The applicant worked for the defendant in the agreed type of work as a branch manager with place of work XY. Within the defendant's organisational structure, the XY branch had the status of an L2 management level branch to which the L1 management level branches were subordinate. Following the defendant's organisational change decision, the XY branch was converted from an existing L2 level branch to an L1 level branch and L2 branch became its superior branch. Following this organisational change, the posts of L2 Branch Director and Deputy Branch Director of L2 Branch, with place of work XY, were abolished with effect from 15 January 2016 (in view of the abolition of the L2 branch XY). The post of Director of the L1 XY branch (prior to the organisational change of L2 XY) was subsumed by the former Deputy Director of the branch, G.F., with effect as of 15 January 2016. By the present action, the applicant seeks a declaration that the notice of termination of employment of 1 December 2016 is null and void, since in fact her post has not been abolished and, even after the organisational change, the defendant's branch in XY is managed by the branch manager, Ms G.F.

The District Court for Prague 1 dismissed the action on the ground that, as a result of the organisational change, the applicant had become redundant, since her post had been abolished without compensation and her post had been filled by the current director of the superior L2 branch after her dismissal. The court did not agree with the applicant's claim that she should have been offered the post of director of the L1 branch in XY and concluded that there was a causal link between the defendant's decision on the organisational change and the applicant's redundancy, since the defendant's transformation abolished the post of director and deputy director of the L2 branch in XY and the newly created post of director of the L1 branch in XY was a completely different post from the one held by the applicant at the relevant time.

On the applicant's appeal, the Municipal Court in Prague upheld the decision of the court of first instance. It considered whether the post of branch director in XY after the organisational change, designated as type L1, could have been identical to the applicant's original post and concluded that the job responsibilities of the branch director in XY before and after the organisational change must have been completely different and concluded that

> 'Part of the applicant's job description was eliminated as a result of the organisational changes at the defendant'.

It therefore concluded that the organisational change adopted was the proximate cause of the applicant's redundancy.

On the basis of the appeal brought by the applicant, the Supreme Court first held that the redundancy of an employee cannot be linked to a decision on an organisational change which, although it is no longer necessary for the employer to carry out (wholly or partly) the work activities which the employee concerned had previously carried out for the employer, the employer is free to assign the employee to other work within the agreed type of work, the performance of which would continue to be part of the employee's full-time workload.

According to the findings of fact made in the present case, the applicant was to perform the agreed type of work for the defendant as branch manager. The arrangement on the type of work to be performed did not include a more detailed definition of the branch in terms of its position in the defendant's organisational structure. On the basis of the type of work thus agreed, the applicant could perform for

the defendant the work of branch director at any level of management, i.e. both the work of L2 branch director and the work of L1 branch director. The Supreme Court therefore concluded that 'the applicant, as a result of the defendant's organisational measure consisting in the abolition of the post of L2 branch director of XY with effect from 15 June 2005, became the director of the L2 branch of XY. 1.1.2016 did not become redundant, since the type of work agreed in the dismissed applicant's contract of employment did not become redundant (in terms of its substantive content) and the defendant was still able to fulfil its obligation to assign the applicant work under her contract of employment in its new (organisation measure changed) organisational structure'. Therefore, the grounds for termination of the employment relationship by notice pursuant to Article 52(c) of the Labour Code were not fulfilled and the notice of termination of employment of 1 December 2016 is absolutely null and void. The Supreme Court therefore reversed the decision of the Court of Appeal in the same vein.

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