



Czech competition authority restricted during on-site investigations

On 17 February 2016, the Czech Constitutional Court published its decision in the matter of the so-called 'bakery cartel', which may improve the position of companies during dawn raids.

In the matter of the so called 'bakery cartel', which has received significant media coverage, the Constitutional Court annulled the judgments of the Supreme Administrative Court and the Regional Court in Brno and returned the case to the Supreme Administrative Court to assess the legality and necessity of investigations conducted by the Office for the Protection of Competition (the "**Office**").

In its decision, the Constitutional Court applied the judgment of the European Court of Human Rights (the "**ECHR**") in which the ECHR concluded that on-site investigations conducted on the premises of a baking company constituted a violation of the company's right to respect for its 'home' within the meaning of Article 8 of the European Convention on Human Rights.

The case in question dates back to 2003, when the Office initiated proceedings against three baking companies and imposed, in the first instance, a fine of CZK 120 million (approx. EUR 443,541) on the companies. After years of legal battles, one of the baking companies filed an application against the Czech Republic with the ECHR.

The company claimed that its right to respect for its home and correspondence was violated when the Office conducted a dawn raid on the company's premises under the Act on the Protection of Competition. The ECHR assessed the legitimacy of the investigation according to three criteria: 1) whether national law supported the investigation; 2) whether the investigation's aim was legitimate; and 3) whether it was necessary to interfere with the company's rights. The ECHR found that the investigation met the first two conditions, but that a lack of judicial review of the Office's on-site investigations meant that the last criterion was not fulfilled (necessity of the interference).

The ECHR concluded that legislation and practice must provide such guarantees and conditions in regards to on-site investigations by administrative bodies that would prevent arbitrary actions in violation of the company's right to respect for its home. This doesn't mean that a court has to first approve an on-site investigation, but if a court doesn't do so, then there has to at least be some form of ex-post judicial review of the investigation's legality and necessity.

In the case of the baking companies, the Office informed the companies of administrative proceedings being commenced

right before starting its on-site investigation, citing a possible breach of Section 3 (1) of the Act on the Protection of the Competition. The Office, however, didn't state any facts or give any evidence indicating any anticompetitive activities. The only written document stating the purpose of and grounds for the investigation that the Office produced was a brief protocol drawn up at the end of the investigation.

As a result, the ECHR ruled in the favor of the baking company, stating that the Czech courts never properly addressed the appropriateness of the investigation and that the company had no legal recourse by which it could have challenged the investigation. Specifically, the ECHR stated that the Czech courts didn't deal with the circumstances that led the Office to conduct the investigation, meaning that the appropriateness, duration and scope of the investigation weren't subject to judicial review. According to the ECHR, if (among others) an investigation isn't authorized by a court and there is no subsequent judicial review of the necessity of the investigation and no legal regulations exist to prevent possible destruction of copies of documents obtained during the investigation, then there are no procedural guarantees against the Office's misuse of its powers.

Following the ECHR's judgment, the Constitutional Court annulled two judgments handed down by the Supreme Administrative Court and one handed down by the Regional Court in Brno and referred the case back to the Supreme Administrative Court to evaluate the appropriateness, duration and scope of the Office's on-site investigations. Should the court conclude that the Office didn't properly exercise its powers, then all evidence obtained in the course of the investigations will be inadmissible.

Legal professionals will be looking closely at the Supreme Administrative Court's decision, as it may become a measure for the legality of on-site investigations conducted by the Office. It is possible that the Office will be forced to considerably extend written authorizations for its investigations and to better inform companies about the reasons for being investigated.

Mgr. Matyáš Kužela, Senior Associate
Mgr. Eva Bajáková, Junior Associate

[Back](#) <

