

RANDA HAVEL ■ LEGAL

Update on state liability for damages in connection with emergency measures

In attempt to slow down the spread of a disease COVID-19 the legislative activity of the government and respective ministries has become quite hasty and even confusing. Significant changes in emergency measures are being adopted on daily basis and every day brings new bans, precautions and exceptions from already existing exemptions.

On 23 March the government adopted resolutions Nos 279 and 280 to repeal certain measures adopted in order to slow down the spread of COVID-19, which were in effect since 6 March. The repealed measures include restrictions on the free movement in the Czech Republic, closing most of retail stores, services and catering facilities and closing of gambling ventures, casinos and other facilities, including indoor and outdoor sporting facilities.

With effect from 24 March the above-mentioned government measures were replaced with almost identical emergency measures adopted by the Ministry of Health under the Public Health Protection Act (previous government measures were adopted under the Crisis Management Act).

The public statements of government officials suggest that the different legislative procedure was chosen in order to avoid the state's obligation to compensate entrepreneurs for damages occurred in connection with the prohibitions and restrictive measures that have been imposed.

Are the injured persons entitled to claim compensation from the state?

We believe that they clearly are, regardless of the legislative framework of adopted emergency measures. There are several arguments supporting this conclusion. The main argument arises out of one of the key constitutional principles of a democratic rule of law:

- **The right to own property can be limited only for compensation**

We would like to mention the previous court decisions regarding the state of emergency. In connection with the measures adopted after the 2002 floods, Czech courts declared that:

- **If the measures are adopted during and related to the state of emergency, the state liability for damages remains unaffected, notwithstanding which authority adopted such measures.**

Concerning the state's liability for the damages caused under the Crisis Act, the courts have concluded that the state is liable for the damages in case that the following conditions are met:

- 1. emergency measure was adopted and executed;**
- 2. damage occurred; and**
- 3. there is a causal link between adopted emergency measure and the occurrence of damage.**

Which entities are directly affected?

Mainly the entities which - due to the emergency measures - cannot fully operate and suffer significant losses, such as:

- **Organizers of sport, cultural and similar events;**
- **Operators of fitness and wellness facilities;**
- **Operators of indoor and outdoor sporting facilities;**
- **Store owners;**
- **Providers of catering and dining services.**

Scope of compensations

In general, damage includes both actual damage (damnum emergens) and lost profit (lucrum cessans). The actual damage comprises not only of a loss or damage to a property (e.g. expired food or unusable goods), but also the costs incurred as a result of the emergency measures or the costs of avoiding damage, costs of damages calculation or remedying them. This applies providing that the expenses incurred necessarily and effectively. The state can only be exempted from its responsibility if it is proved, that the damage was inflicted by the injured party itself. In order to claim damages incurred in connection with the emergency measures the casual link has to be proved by the injured party as well as the amount of suffered damage.

In our opinion an efficient solution of state liability for damages should include compensation for loss of income suffered by the entrepreneurs as a result of the measures adopted.

What to do next?

We advise to gather and maintain detailed evidence and documentation to support possible future claims against the state.

At the moment government officials are declaring that the state is not supposed to pay any compensation for damages resulting from the adopted emergency measures.

Regardless whether the government policy remains unchanged, the claim for damages against the state has to be raised within 6 months after becoming aware of the damages. Should the state fail to pay the damages, the claim must be brought before the court. It is quite possible that the issue of state liability for the damages will by ultimately decided by the Constitutional Court.

We believe that the compensatory measures recently adopted by the government are not sufficient. More often than not they don't aid the subjects who suffered the most from the adopted measures. And if these subjects will be forced to cease their business activities, it will constitute a major economic burden for the entire society recovering of which will last considerably longer than the consequences of COVID-19 epidemic itself.

Our law firm keeps monitoring newly adopted measures connected to the COVID-19 epidemic and continuously evaluates their impact on rights and obligations of the clients.

We are available to provide details about the current situation and answer any questions you may have.

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