

Liability of the state for damages in connection with the measures adopted in crisis

In order to slow down the spread of the COVID-19 virus, the government has decided to introduce the state of emergency in the Czech Republic. Subsequently, it has adopted a number of crisis measures the list of which is being extended every day. The most important measures include restrictions of the free movement of persons, closing of most shops (except groceries, pharmacies and other vital stores) and catering facilities, prohibiting of sale of accommodation services, restrictions on travel and transport and prohibiting of social, cultural and sporting events.

These measures bring significant economic consequences. There is no doubt that many entrepreneurs will suffer economic losses.

What can be claimed as damages?

According to the Crisis Management Act the state is liable for any damages incurred in connection with the emergency measures. The law stipulates that the state is obliged to compensate the injured natural and juristic persons for the damages. In general, damages include both actual damages (*damnum emergens*) and loss of profit (*lucrum cessans*). The actual damages comprises not only of a loss or damage to property (e.g. expired food or unusable goods), but also the costs incurred as a result of crisis measures or the costs of avoiding damages, costs of damages calculation or remedying them, including the costs of related legal assistance. This applies provided 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 the damages the injured party needs to provide sufficient evidence (a) about the amount of damages incurred and that (b) suffered damages are result of adopted crisis measures. This can be difficult in many cases, especially when proving loss of profit.

Currently it is unclear how the state will handle damage claims resulting from the measures adopted under the Crisis Management Act and what will be the actual amount of compensation granted to entrepreneurs. An effective (across-the-board) solution could be compensating for the loss of income suffered by entrepreneurs as a result of the measures adopted, considering the most affected industries.

Any injured party is entitled to file a claim at court if it considers the compensation awarded by the state as inadequate.

What to do Next?

The claim for damages must be raised within 6 months after becoming aware of damages. Given the unusual nature of the situation and the extent thereof, there is no relevant previous experience or precedent in claiming damages. Historically, the courts dealt with a number of cases related to floods happening back in 2002, but the case facts are going to be very different in current situation.

We could reasonably expect that the government will take economic measures that will aim to mitigate the impacts on the most affected industries. The aforementioned provisions of the Crisis Management Act will constitute one of the possible measures to compensate suffered damages.

Currently the clear priority is to protect the health and safety of all persons. However, given the expected economic impact of the crisis, it is strongly recommended to commence immediately with gathering evidence and underlying documents to prove the cause as well as amount of the damages resulting from the crisis measures.

In summary, we would like to note that the measures undoubtedly impact certain industries and services significantly more than other industries. In our opinion, the state should aim to make sure that economic losses are borne by the whole society as the measures adopted in times of a crisis aim to protect the health and lives of all individuals.

