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Austria

Short-term letting of a condominium via Airbnb or similar platforms represents an administrative offence under the Austrian Trade Act

Following the ruling of the Austrian Supreme Court that the short-term letting of a condominium to tourists via the internet (e.g. Airbnb, booking.com or similar platforms) does not fall within the zoning category “housing” and that it also impairs the interests of other condominium owners, the Austrian Administrative Court recently ruled that under certain circumstances the short-term letting of a condominium may constitute a commercial activity permitted under Austrian trade law provided that the lessor obtains the requisite trade licence (*Gewerbeberechtigung*).

Whether or not it is necessary to qualify the short-term letting of a condominium as a commercial activity providing accommodation to guests within the meaning of the Austrian Trade Act or as a mere provision of living space under the Austrian Rental Act has to be determined on a case-by-case basis.

In the recent case to come before the Austrian Administrative Court, an owner offered his condominium – with the express intention of making a profit or gaining some other economic advantage – on websites advertising it as "holiday apartment W" and describing it as tourist accommodation, available from EUR 85.00 per night. The price included services usually only provided by hotels, such as the provision of bed linen, Wi-Fi and television facilities as well as cleaning services at the end of the stay.

In its assessment, the Austrian Administrative Court stated that in addition to criteria such as (i) the subject matter, (ii) the duration of the contract, (iii) and agreement on termination and notice periods, consideration must also be given to the services offered as well as public perception.

After assessing all the facts of the case, the Austrian Administrative Court ruled that in the specific case, the external appearance, in particular the internet presence, was decisive: the condominium was offered to tourists via specific internet platforms (such as Airbnb and the like) by highlighting its good location in relation to tourist destinations and sights. Furthermore, the condominium was only offered for short-time rent (two to 30 days), whereby the price of EUR 85 per night is far in excess of what is typically charged as rent.

Consequently, the question whether the short-term letting of a condominium is to be qualified as accommodation within the meaning of the Austrian Trade Act or as rent within the meaning of the Austrian Rental Act is rather difficult to answer, depends on multiple factors, and must always be decided on the basis of the particular circumstances of the individual case.

Nevertheless, offering a condominium on specific websites as tourist accommodation, enabling tourists to book the room for a short period of time (mostly for a few days), is a strong indicator for the provision of accommodation to guests on a commercial basis within the meaning of the Austrian Trade Act, for which a trade license is required. Renting out one's own condominium via Airbnb or similar platforms to tourists for a few days without a trade licence represents an

administrative offence under the Austrian Trade Act, subject to a fine of up to EUR 3,600.

The most recent court decisions on the subject of short-term letting were therefore not in favour of those who have advertised their condominiums as short-term lets via Airbnb and similar websites.

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Belarus

Changes in Labour Law

Introduction

After long discussions, the Belarusian parliament adopted amendments to the Labour Code of the Republic of Belarus (the "**Amendments**") on 18 July 2019. The new version of the Labour Code will come into force on 28 January 2020. The Amendments incorporate a number of labour regulations, which were previously adopted by the decrees and edicts of the President of the Republic of Belarus, and also reflect some modern trends in the Belarusian labour market.

Key novelties

Remote employment

The Amendments introduce the possibility of remote employment. This is a response to the demands of IT companies. Remote employment implies communication between an employer and employee by means of IT technologies. The main formal difference between remote employment and outwork, which is possible under the current version of the Labour Code, is that outworkers may perform their work at home only. By contrast, remote workers may work at any place at their discretion (e.g. at a co-working office).

Besides the standard terms, employment agreements with remote workers must envisage the procedure for the giving of assignments by an employer and delivery of work products by an employee via electronic means of communication, the methods and frequency of working contacts between an employer and an employee, the procedure of reporting by an employee, the software and hardware to be used by an employee, the ways of providing such software and hardware by an employer, etc.

Rent of employees

The Amendments introduce the possibility of the temporary transfer of employees to another employer. It is possible with the consent of an employee and for a term of up to six months. Relations between two employers must be regulated by a civil contract.

Prolongation of labour contracts

The Amendments also introduce an obligation on an employer for the mandatory extension of the limited-term employment contract up to the maximum 5-year term provided that during the initial term of an employment contract an employee complies with the internal regulations on labour discipline. Upon the expiry of a 5-year term, an employer will have to conclude a new contract for a 3-year minimum term. Entering into an employment contract for a shorter term will only be permissible with the written consent of an employee.

Formerly, it was possible to dismiss any employee upon the expiry of the limited-term contract. Many employers took advantage of this situation to put pressure on employees if required. The Amendments improve the legal standing of employees acting in good faith, granting them more employment stability.

Summary

The Amendments significantly update employment regulations. In fact, they satisfy some long-felt needs of both employers and employees. Nevertheless, in the business community and trade unions there is no uniform approach to the novelties. There is as much positive feedback as there is criticism.

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Bulgaria

Protection of Trade Secrets Act

The Bulgarian Parliament recently enacted the Protection of Trade Secrets Act (**Act**) which transposes *Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure* (**Directive**) into Bulgarian law. The Act aims to further protect sensitive business information and to finally create a unilateral legal framework, as trade secrets were insufficiently protected in the past under the Protection of Competition Act and the Commerce Act.

Below we outline certain important rules introduced by the Act.

Scope of the Act

A trade secret is understood to be any business information, know-how or technological information which is a secret (that is, not generally known or readily accessible), has commercial value because it is secret, and in respect of which the trade secret holder has taken reasonable steps to keep it secret. Goods whose design, characteristics, functioning, manufacturing process or marketing benefits from a trade secret, which is unlawfully obtained, used or disclosed are considered infringing goods under the Act. Any legal entity or an individual who unlawfully acquires, uses and/or discloses trade secrets can be liable under the Act.

Distinction between lawful and unlawful activity

A trade secret is considered unlawfully acquired when it is obtained without the consent of the trade secret holder (e.g. via unauthorised access to or copying of documents, materials or electronic files, which are lawfully under the control of the trade secret holder) or through any other means which, under the circumstances, are considered contrary to fair commercial practices (such as the violation of a contractual duty or confidentially agreement). The Act also defines when the acquisition of a trade secret is considered lawful, e.g. where it is the result of independent discovery or creation. It is worth noting that the so-called *reverse engineering* of a lawfully acquired product (or a product that has been made available to the public) is considered lawful unless contractually agreed otherwise or where other legally valid obligations exist to limit the acquisition of the trade secret.

Remedies

Victims of trade secret infringements can seek protection by initiating court proceedings and request various measures, such as: the cessation of the unlawful use and further disclosure of misappropriated trade secrets; prohibition of the production, offering, placing on the market or use of infringing goods; destruction of documents, materials or files containing trade secrets; recall of the infringing goods from the market; destruction of the infringing goods.

Damages

Trade secret holders are also entitled to compensation for damage suffered as a result of the unlawful acquisition, use or disclosure of the trade secret (including for lost profits). The compensation is defined by taking into account the specific damage (negative economic consequences) which the injured party has suffered, any profits made by the infringer as a result of the unlawful acquisition, use or disclosure of the trade secret and, to the extent applicable, any

moral prejudice caused to the trade secret holder. Where the exact amount of the compensation cannot be defined, the damages are set as a lump sum on the basis of the amount of royalties or fees which would have been due had the infringer requested authorisation to use the trade secret, as well as the costs incurred by the trade secret holder.

The liability for damage caused by employees towards their employers for the unlawful acquisition, use or disclosure of trade secrets of the employer is limited to three times the amount of their salary. However, there is no such limitation where employees act intentionally.

Limitation period

Under the Directive, Member States are required to establish limitation periods not exceeding six years, applicable to substantive claims and procedures provided for in the implementing law. The duration of the limitation period under the Act is five years as of the date of the infringement. No special rules are provided in relation to the circumstances under which the limitation period is interrupted or suspended, therefore the general provisions of the Obligations and Contracts Act apply.

Further guidelines on certain trade secret protection matters are expected with the development of the new legislation and the relevant case law.

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Czech Republic

Residential co-ownership changes

Several provisions concerning property law in the Czech Civil Code are about to change soon. The relevant amendment is now being discussed in the Czech Chambers of Deputies and it is expected to come into effect in 2020. The main aim of the amendment is to amend provisions on residential co-ownership to eliminate some interpretative problems that have risen in practice. The purpose of the proposed amendment is also to improve the clarity of the legislation on residential co-ownership, while respecting the concept established by the Civil Code. Below we present a brief summary of the most important changes introduced by this amendment.

Pre-emption right regarding the non-residential unit (garage parking lot)

One of the most significant changes is that the pre-emption right ceases to exist regarding the part of a non-residential unit, particularly garage parking lots. The current complications started in 2018 when the pre-emptive right was reintroduced for co-owners. It is common that a garage parking lot used together with a residential unit comprises one non-residential unit and the unit owner only owns a share of it. The unit owner could not transfer his share of a non-residential unit (parking lot) together with the residential unit to the new acquirer without first obtaining the consent of all of the co-owners of non-residential units. The seller of the residential unit is obligated to offer its share of a non-residential unit (parking lot) to all other co-owners. Such a procedure substantially prolongs the sale of a property. Thanks to the upcoming legislation, the pre-emption right will cease to exist, which will help developers in particular when selling new apartments.

Establishing an association of unit owners by the developer

Furthermore, the amendment changes the possibilities for establishing an association of unit owners, which manages the common parts of the building and related land. The upcoming change makes it possible for an association of unit owners to be established by only one owner of all units, which means it will be easier for developers to establish an association of unit owners before each unit is transferred to their customers. It will make managing and administering residential buildings much easier.

Requirements of declaration of unit owners

A declaration of unit owners is a document under which the building is legally divided into individual residential/non-residential units. A declaration of unit owners will no longer contain statutes. This makes it easier to divide the building into apartments while a statute can be adopted separately.

Changing of statutes of an association of unit owners

Changing the statutes (i.e. the document governing the operation of an association of unit owners) is a very complicated process under the current legislation. The upcoming change could lead to an overall simplification of the process. The new legislation should simplify the process of accepting a change of the statutes by making a more consistent distinction between what exactly affects individual unit owners.

Managing and maintaining the apartment and common areas

Other changes affect the management and maintenance of the apartment and common parts of the property. Under the current legislation, it is unclear whether an obligation is imposed on the unit owner to manage and also maintain common parts reserved for the exclusive use of a unit owner, i.e. windows, outside doors. Therefore, it is not clear whether the unit owner is obliged to pay for major repairs (e.g. replacing windows) to common parts exclusively used by him. The amendment of the Civil Code should clearly state that the unit owner is only obliged to maintain and carry out minor repairs to the common parts.

Transfer of debt relating to the residential/non-residential unit

The current legislation has brought interpretative problems leading to uncertainty over whether the debts concerning management contributions for services related to the unit are transferred with the transfer of the unit to the new acquirer or whether they remain with the original owner of the unit. The amendment addresses this situation and explicitly states that when transferring ownership of a unit, the debt is transferred to the new acquirer together with the unit.

Contractual penalty in lease agreements for apartments

The current legislation prohibits contractual penalties in lease agreement for apartments. Such contractual penalties are deemed null and void. The proposed new legislation makes it possible for contractual penalties to be effectively included in the lease agreement; however, the amount of the contractual penalty together with security may not exceed three months' rent.

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Hungary

How to calculate the amount of contractual delay penalty for late performance

In its recent judgement, the Curia (the Supreme Court of Hungary) interpreted and analysed in detail the method of calculating the contractual delay penalty, which serves as a valuable guide for contractual parties regarding the management of risks and prepares employers and contractors alike for the possible legal disputes that may arise in connection with late performance.

Although late performance is one of the most common causes of legal action, in most cases the parties are unable to clearly identify who is responsible for the delay and to what extent. This uncertainty usually leads either to unnecessary litigation being initiated or to the non-enforcement of rightful claims. Often, misunderstandings relating to the legal and factual situation surrounding the delay are also the reason why claims or defences are rejected which actually could have stood up to legal scrutiny in court had they been argued in line with judicial practice.

The main principle underlying the decision is that the amount of the contractual penalty must be calculated on the basis of the real (objective) delay. However, the contractor is only required to pay a delay penalty for the extent of the delay attributable to it (subjective delay). Consequently, the objective delay first has to be calculated and then the number of days by which the construction time was prolonged due to circumstances not attributable to the contractor is deducted. The objective delay is equal to the number of days that have elapsed after the deadline until actual completion of the contractual works.

Accordingly, employers need only prove the date of (late) performance in order to lodge a claim for payment of a delay penalty, whereas the burden of proof for showing that the delay was not attributable rests on the contractor. Pursuant to previous judicial practice, there are three main categories of circumstances under which a contractor can be released from liability for any delay: (i) impediment to construction works, (ii) omissions made by an employer, and (iii) changes.

The contractor is not liable for the delay caused by impediments that arose outside the control of the parties. As per judicial practice, it has to be considered whether the impediments that hindered construction were foreseeable and calculable at the time of the conclusion of the contract and whether the contractor has shown reasonable diligence in order to avoid them. It is irrelevant in this regard whether the relevant circumstances were attributable to the employer. It is enough to prove that the delay was the necessary consequence of these impediments.

Contractors are also not liable for a delay caused by omissions made by the employer. Pursuant to local case law, if the employer fails to fulfil its obligations that would have been necessary to ensure performance by the contractor, the delay caused by the employer is regarded as being sufficient to exclude the contractor's liability.

The contractor is not liable for the delay arising from changes proposed by the employer. The contractor is released from liability for the delay if the construction period is prolonged due to extra works ordered by the employer.

Based on the above, employers need only prove the existence of an objective delay, whereas contractors bear the burden of proof in connection with the circumstances based on which they can be released from liability. The contractor has to prove that the stated circumstances (impediment, omissions made by the employer, extra works) unavoidably hindered construction and that the period of obstruction was directly caused by this. The days of construction time hindered by the impediments, omissions or extra works can be added up cumulatively only if they prolonged the construction time subsequently and not in a simultaneous manner.

The total amount of such days of obstruction has to be deducted from the objective delay. The remaining days after the deduction qualify as a subjective delay for which the contractor is liable. In accordance with the recent decision of the Curia, a delay penalty can only be calculated on the basis of the number of days of subjective delay.

In light of the above, it is highly recommended that both employers and contractors take note of the facts on an ongoing basis and collect evidence concerning the delay in the course of the construction works in line with the categories laid down by judicial practice. It must also be taken into account that in most cases the circumstances under which the contractor can be released from liability must also be supported by an expert opinion.

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Slovakia

Slovak Act (No. 91/2019 Coll.) on Unfair Terms in Food Trade

The issue of business relationships between food suppliers and food retailers in Slovakia has recently been subject to a considerable evolution due to legislative changes, in the framework of which Act No. 362/2012 Coll. on unfair terms in business relationships regarding foodstuffs has been repealed and replaced by Act No. 91/2019 Coll. on unfair terms in the food trade (hereinafter referred to as "**UTFT Act**"), which is stricter. Pursuing the protection of the legitimate economic interests of food suppliers, which in this context are considered to be the weaker side, the previous legislation was often criticized for being too benevolent and mainly because its enforcement was ineffective. To overcome these shortcomings, the new legislation establishes a framework for legal relationships between suppliers and food retailers by defining what behaviour is considered unfair, prohibiting such behaviour and determining the sanctions that can be imposed by the competent administrative authority for any breach of this prohibition. The UTFT Act, which came into force on 1 May 2019, applies automatically to all contracts concluded since that date, while all contracts concluded before that date must be brought into line with the provisions of the UTFT Act by 30 September 2019. As to its territorial scope, it should be noted that the UTFT Act also applies to relationships that would otherwise be governed by the law of another country, in case they have an impact in Slovakia.

Most important changes:

To fulfil the aim of its adoption, the UTFT Act extended the existing list of unfair terms, changed the wording of some provisions taken over from the previous law which were regularly circumvented and, finally, tightened the conditions for inspections conducted by the competent authority and the sanctions that can be imposed.

In respect of the definition of what is considered unfair, the most significant changes vis-à-vis the previous legislation are as follows:

- Introduction of a general clause, by which even practices other than those expressly listed in the UTFT Act might be considered unfair terms if they deviate from fair behaviour in business. What is considered "fair behaviour in business", and deviations therefrom, is not defined in the law and should be established by practice.
- Reduction of the maximum maturity period for the obligation to pay the price of the delivered food, from the original 45 days following the date of delivery to 30 days. This period may not be longer than the maturity period for the supplier's obligations to the retailer.

- Introduction of a specific maximum maturity period for the price of perishable food, established as 15 days following the date of delivery.
- Change in the minimum purchase price, which may not be lower than the economically justified costs of the food supplier, as well as a change of the maximum guaranteed price duration from the original 3 months to 60 days.
- Introduction of the unfair term of imposing a contractual penalty or other contractual sanction for non-delivery by the supplier if the supplier has receivables overdue vis-à-vis the food retailer or if there is no agreement on the purchase price within two months following the date of delivery of the written proposal to the food retailer for the change of the purchase price.
- Extending the range of procedures that are regarded a failure to fulfil a contractual obligation by the food retailer.
- Tightening the prohibition to make the supply of food conditional on the production of a foodstuff under the trademark of the food retailer. This is considered unfair even if the food retailer is involved in the development of the foodstuff.

The new legislative framework also affects marketing issues, since it establishes that when the food trader is promoting or marketing agricultural products and foodstuffs through a leaflet (in paper or electronic format), it is compulsory to ensure that at least half of the agricultural products and foodstuffs of the total quantity being promoted or marketed are agricultural products and foodstuffs labelled as having been produced in the Slovak Republic. However, this provision is heavily discussed and it is expected that it will be challenged at the European level.

The instrument provided by law for monitoring compliance with its provisions is the inspection, which is carried out by the Ministry of Agriculture and Rural Development of the Slovak Republic on its own initiative, on the initiative of a business relationship participant or on the initiative of another person. Unlike the previous legislation, the UTFT Act has introduced the possibility to submit anonymous complaints, since in the past food suppliers were often discouraged from filing a complaint in their own name against their retailer, fearing possible reprisals.

According to the UTFT Act, an administrative offence is committed by the party of the business relationship that requires, agrees or applies an unfair term that puts the other party at a disadvantage. In this regard, it is important to note that despite the main purpose of the UTFT Act being to protect suppliers, even a food supplier can commit an administrative offence by using an unfair term and be sanctioned for it.

Last but not least, believing that the severity of the adopted measures can have a deterrent effect on potential wrongdoers, the legislator has also increased the maximum amount of the fine that can be imposed to EUR 500,000 and has eliminated the suspensive effect of appeal against the decision to impose the fine.

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