

CZ: More on the regulation of apartment rents

The Supreme Court of the Czech Republic recently issued a fairly substantial ruling on the regulation of apartment rents. It concerns, firstly, objections based on the statute of limitations on the right to compensation for related restrictions on the right to property and, secondly, the amount of that compensation.

In the case under consideration, the State (as the defendant) raised an objection based on the statute of limitations, which the plaintiff considered to be in violation of good morals. The Supreme Court, which decided the case through the Grand Chamber of the Civil and Commercial College, applied the previously formulated views of the Constitutional Court to the case. According to the judgment, it is essential to consider the application of objections based on the statute of limitations as contrary to good morals in all proceedings in which compensation is sought for the forced restriction of property rights caused by unconstitutional rent regulation, in which the court will assess such an objection.

Regarding the amount of compensation for related restrictions on property rights, the Supreme Court proceeded from the conclusions of the ruling of the European Court of Human Rights. It stated that the amount of compensation should be essentially the same as the difference between the normal (market) and regulated rents to which the lessor was entitled under the then unconstitutional regulation.

(For details, see the judgment of the Supreme Court of the Czech Republic file no. 31 Cdo 1042/2017.)

Tomáš Mls

CZ: Judicial protection of minority co-owners against "outvoting"

The Civil Code ("CC") provides minority co-owners with a fairly wide range of judicial protections against the "unfair" decision-making of majority owners, and depending on the importance of the decision, whether the minority owner was completely excluded (omitted) or outvoted.

Under Section 1129 (1) of the CC, a decision on significant matters relating to a common matter (a so-called extraordinary matter), in particular on its material improvement or deterioration, a change in its purpose or its processing, requires at least a two-thirds majority of the co-owners' votes. A co-owner who has been outvoted when deciding on an extraordinary matter may propose that the matter be decided by the court.

Under Section 1130 of the CC, an outvoted co-owner whom the majority's decision has put at imminent risk of serious damage (in particular a disproportionate restriction on the use of joint property or a burden that is apparently disproportionate to the value of its share) may ask the court to annul the decision.

The text of Section 1130 of the CC does not distinguish between ordinary and extraordinary matters and until the recent decision of the Supreme Court of the Czech Republic (No. 22 Cdo 192/2017) it was not clear in which cases a minority owner can use this type of judicial protection. The Supreme Court recently stated that **the possibility for a minority co-owner to seek the annulment of a majority decision is reserved to the minority co-owner only in extraordinary matters**, but added that **it cannot be ruled out that, depending on the particular circumstances of the case** (in particular where the imminent risk of serious damage is obvious), **judicial protection will also be available if a decision is to be made on ordinary matters.**

Ordinary matters, where the above procedure can be used in practice, will be few and far between, **and the court will always have to carefully consider the specific circumstances of each case.** A typical example, which is usually considered an ordinary matter, is rent. Depending on the specific rental parameters (e.g. non-standard rental periods, extremely low rents or non-standard options for premature termination of rent), however, the decision of the co-owner on rent can be considered a decision on an extraordinary matter, which deserves protection under Section 1130 of the CC.

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EU: Strengthening public standing

In Case C-664/15, Protect of 20 December 2017, the European Court of Justice acknowledged the position of the participant as well as the possibility to conduct a judicial review of administrative decisions for an organisation established for the purpose of environmental protection in the context of the Austrian Water Act. The principles of this decision apply to all proper authorisation procedures – in all EU member states.

In the above case, a ski lift operator submitted an application for an extension of its permit for a snowmaking machine. In the proceedings, the environmental protection organisation requested that the participant's status be attributed and objected to the issuance of that authorisation, with reference to Article 9 (3) of the Aarhus Convention and Article 6 (3) of the Habitats Directive.

The European Court of Justice has stated that under Article 9 (2) and (3) of the Aarhus Convention, in conjunction with Article 47 of the EU Charter of Fundamental Rights, the environmental protection organisation must have the possibility of challenging the decision to authorise a project which may be contrary to the obligation under the Water Framework Directive in court.

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The second condition for the decision of the court to annul the decision of the majority co-owners pursuant to Section 1130 of the CC is that the outvoted co-owner **threatens to cause serious damage as a result of the decision**. If this condition is not met, the court cannot proceed according to Section 1130 of the CC. This does not mean, however, that the court can immediately dismiss the minority co-owner's claim. **The court must always determine whether this is an extraordinary matter, and if it determines that it is, it should provide the outvoted co-owner with protection** under Section 1129 (2) of the CC. In such a case, **the court may decide both to annul the decision of the co-owners and to replace it with their own decision in the matter**, according to its own "fair" judgment. The fair judgment of the court is a criterion for the reasonable arrangement of the co-owners' legal relationships.

Dominika Veselá

CZ: Indirect immissions

The Civil Code forbids the owner to seriously interfere with the rights of others beyond a reasonable degree as well as to carry out activities whose main purpose is to harass or harm another person.

Immissions are any infiltratory effects of one owner's land on another owner's land (e.g. water or sewerage discharges, dust or ash, strong illumination or shade, heat from hot water, smells from a cesspool, soil pollution, dog barking, noise, etc.).

Direct immissions, i.e. those that penetrate directly into a neighbouring plot (e.g. gutter outlets), are explicitly prohibited by law. Indirect immissions (such as shading, noise, etc.), however, must reach certain intensities beyond what is reasonable in order to be successfully challenged in court in a so-called immissions suit.

If the level of annoyance exceeds the limit laid down by the administrative regulation (e.g. hygiene limits for noise), it also as a rule exceeds a reasonable degree. But this does not have to be the case the other way around. It is necessary to heed the fact that an administrative body may grant exemptions from hygiene limits.

If the immissions in a particular case do not exceed the public law limits, there must be a special reason for which a higher standard of protection than that laid down in the public law rules is required on the land that is the subject of an immissions complaint.

Therefore, in the proceedings on the immissions suit, the plaintiff must claim that the interference caused by the immissions goes beyond a reasonable local degree or at least the usual standards in similar localities (so-called generic degree). In the second case, the defendant can defend itself by arguing that the conditions in the local area do not correspond to the generic degree (i.e. do not correspond to the usual standard in similar localities) and there is no reason why the local site should be specially protected. At the same time, however, the defendant must specify similar sites representing the average where the condition is different; it is not enough to generally assert that the local area does not correspond to the generic degree.

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