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SLOVAKIA

NON-COMPLIANCE WITH SIGNING AUTHORIZATIONS OF THE COMPANY IN RESPECT TO PROCEDURAL ACTS

In a recent judgment, the Constitutional Court of the Slovak Republic held that procedural acts executed by only one managing director (although pursuant to the signing authorizations of the respective company published in the Commercial Register, two managing directors should act jointly in respect to third parties) shall not be automatically considered as invalid.

In the case at hand, the general courts refused the procedural act of the defendant (i.e., an appeal against a payment order) on the grounds that it has been undersigned by only one managing director, whereas according to the Commercial Register, two managing directors should sign jointly. This led to a situation where the defendant was unsuccessful in the dispute on procedural grounds (the appeal has been rejected as filled by an unauthorized person). The Constitutional Court held that such interpretation is unreasonably strict and that the general courts should have called the defendant to remedy the issue similarly as they would if the procedural motion had been filled by a proxy with imperfect authorization.

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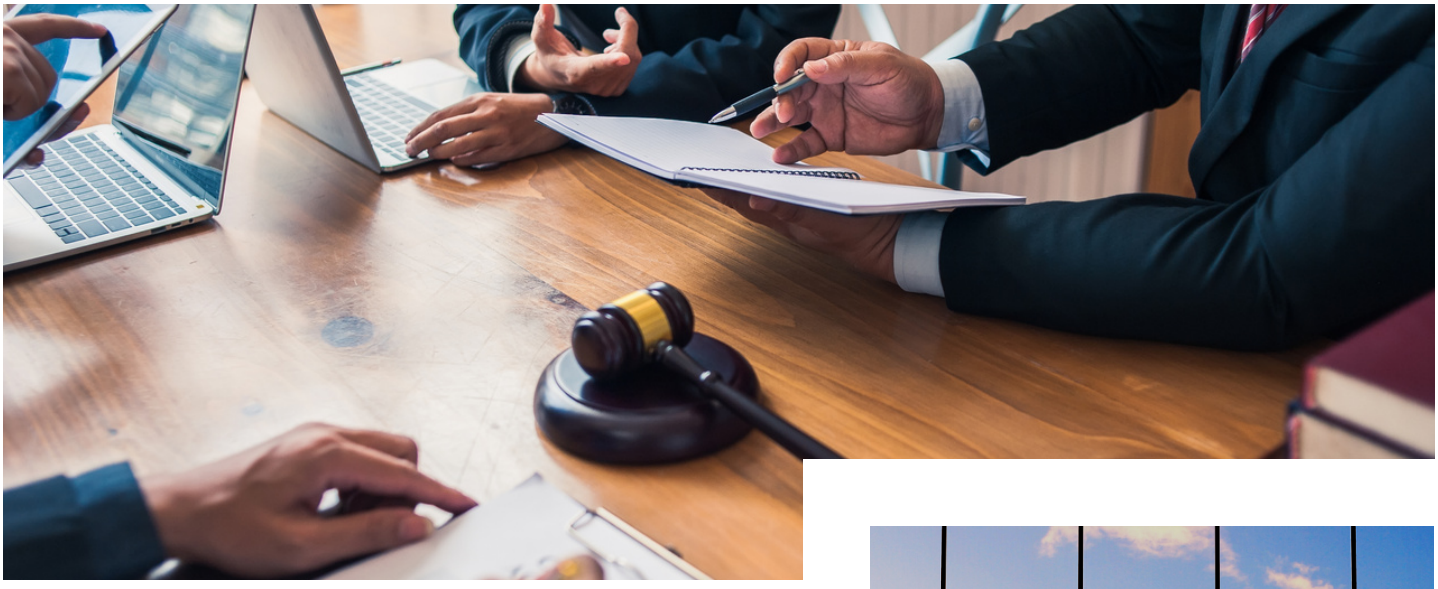
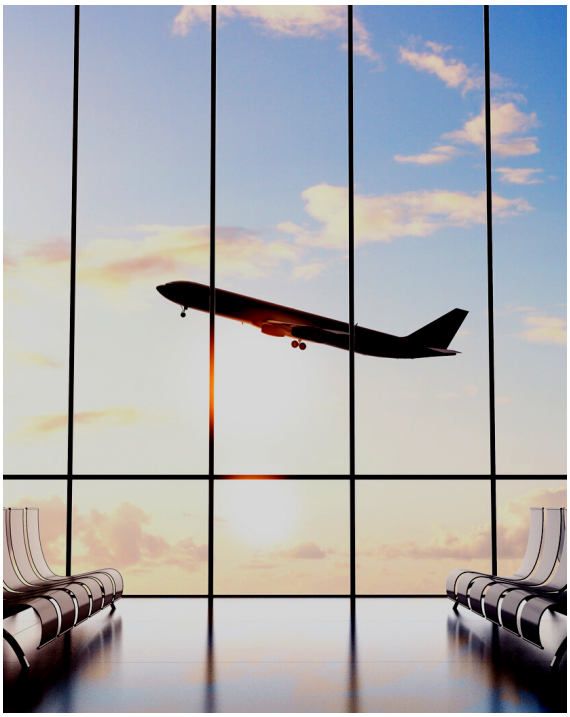


HUNGARY

JUDGMENT REGARDING COMPENSATION FROM AIRLINES TO PASSENGERS



The court stated that the consumer protection authority has general competence to deal with complaints about breaches of the EU Regulation regarding compensation (e.g., it could impose a fine on the airlines for not paying compensation) but ordering the compensation itself is not included among the powers of the consumer protection authority in the applicable Hungarian laws. The court emphasized that the compensation is considered a civil law claim so it should be decided by a court.

This decision came after the regional court submitted the question to the European Court of Justice (ECJ) for a preliminary ruling and where the ECJ ruled that government authorities should be able to decide on compensation (if they are specifically authorized to do so in the local laws), which has not yet happened in Hungary according to the regional court. Earlier, the Supreme Court of Hungary declared that consumer protection authorities do have the power to decide on compensation so there is a serious controversy in judicial case-law right now which needs to be resolved in the near future.

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CZECH REPUBLIC

NEW LAW ON CLASS ACTIONS

A draft law on class actions will enter the legislative process, which aims to enrich the Czech legal system with the institution of class actions, which has its roots in Anglo-Saxon legal culture. The draft law transposes **Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of consumers' collective interests**, the deadline for implementation of which expired on 25 December 2022.

This is the second legislative proposal for a law on collective proceedings; the previous government came up with a draft law that reached the first reading in the Chamber of Deputies, but its consideration was suspended due to the end of the term of office of the previous cabinet.

The principle of class actions is that if **a large number of persons are affected by an unlawful act or condition, all of the persons so affected can apply to a court by means of a class action, and the claims of all the victims will be decided in one proceeding**, thus avoiding a situation where the courts have to deal with countless factually and legally similar cases. The proposal also stipulates that only disputes arising out of the legal relationship between a business and a consumer are to be heard in collective proceedings. The main feature is thus to group weaker individuals together in order to reduce the information and financial asymmetry that is typical of disputes between consumers and large businesses. The law can help, in particular, in cases where separate litigation is not worthwhile for consumers because of the minor amounts involved and the fact that they would not pursue their claims on their own.

There have been calls for the introduction of class actions into the Czech legal system more and more frequently in recent years, and it is worth mentioning the case of the clients of the bankrupt Bohemia Energy, who found themselves as a supplier of last resort, from which they suffered damages.

The current version of the proposal is more concise than the previous one and does not attempt to go beyond the Directive. The main change from the previous proposal is **the pure opt-in principle.** The opt-in principle gives **all victims who wish to pursue the same claim against one defendant the opportunity to actively opt-in to protect their rights.**

The previous proposal included, in addition to the opt-in version, an opt-out version, which was based on the fact that it replaced the autonomy of the individual will, and all of the persons concerned were automatically considered as claimants unless they opted out. This has been criticized for denying fundamental private law principles such as the autonomy of the individual will, the principle of vigilantibus iura or Article 36(1) of the Charter of Fundamental Rights and Freedoms, which bases the possibility of claiming a right on the active action of the individual concerned.

A group will have to consist of at least 20 persons and will have to be represented in the proceedings by a non-profit entity. A non-profit entity is a legal entity, registered on a list maintained by the European Commission, which is entitled to bring class actions, including in other EU Member States. The non-profit entity will thus act as a plaintiff in the collective proceedings and represent individual claims on its own behalf.

Non-profit entities will also assume the entire liability of the legal proceedings. In the event of unsuccessful proceedings, they will pay all the costs of the opposing party. In the event of success, they will be awarded a fee from the amount awarded. Here the proposal faces some criticism for not sufficiently valuing non-profit-making persons who take all the risk, cannot generate a profit themselves and thus operate with limited resources. . In addition, the proposal contains two options for capping the percentage of the non-profit person's remuneration, namely 5% and 25%. In the case of a 5% cap on the 2 remuneration awarded, the non-profit entity will in many cases be barely able to cover the management costs and risk involved.

The funding of non-profit entities will also be subject to review. The entity that provided the funding should not be dependent on the defendant, nor be a competitor of the defendant. If the funds are provided by a legal entity, its beneficial owner is also verified.

Class actions will be a novelty in the Czech legal system, dealing with situations that until now could only be dealt with through individual actions. The roots of class actions go back to Anglo-Saxon law, so it is also a novelty in terms of its gradual introduction into Continental law. The adoption of the draft law is expected this year.

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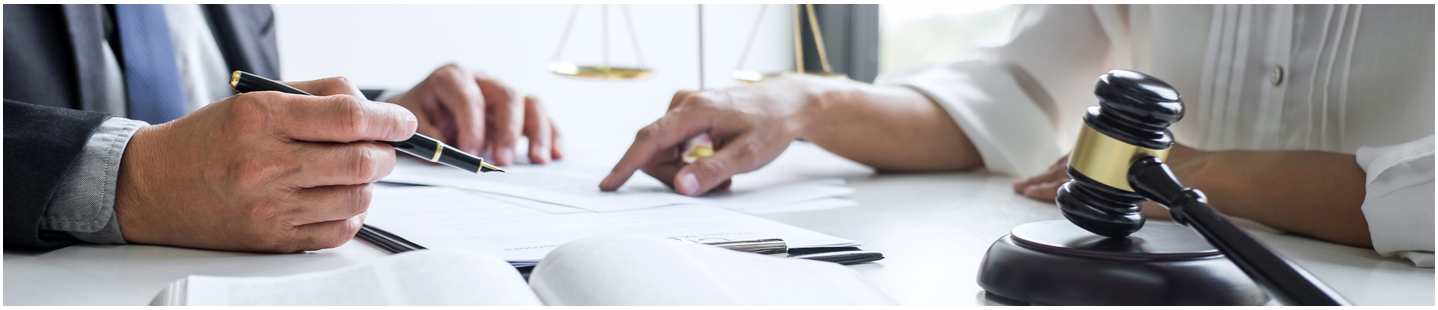


ROMANIA

CONSIDERATION ON STATUTE OF LIMITATIONS IN CRIMINAL FILES FOLLOWING

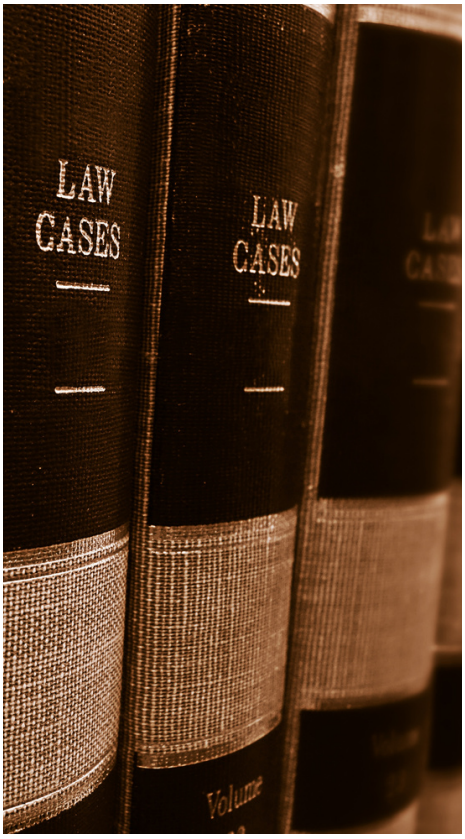
DECISION NO. 358/26.05.2022 OF THE ROMANIAN CONSTITUTIONAL COURT

According to Article 155 of the Romanian Criminal Code, the statute of limitations for criminal liability is interrupted by any procedural action taken in a case.

On **26 April 2018**, the Romanian Constitutional Court passed Decision no. 297, deciding that the text of Article 155 of the Romanian Criminal Code is not compliant with the Romanian Constitution, as it is not predictable. Consequently, the Romanian Constitutional Court recommended that such text would be predictable if it stated that the statute of limitations is interrupted by any procedural action taken in a case that is communicated to the defendant. The provisions of Article 155 became incomplete, having the following text: "the statute of limitations is interrupted by".

Thus, Romanian legislators had the obligation to amend Article 155 of the Romanian Criminal Code before the aforementioned decision became effective by being published in the Official Gazette (i.e., **25 June 2018**). However, no law was passed in this sense and the courts continued to apply the provisions of Article 155, although it had been declared unconstitutional.

On **26 May 2022**, the Romanian Constitutional Court passed Decision no. 358, stating that the article is not constitutional in its entirety, taking into consideration (i) the legislators' failure to amend the law and (i)) the fact that Article 155 had become incomplete (and therefore not predictable). Only on 30 May 2022, was an Emergency Government Ordinance passed, amending Article 155.



According to Article 5 of the Romanian Criminal Code, **if multiple material (not procedural) laws are passed before the final judgment in a criminal case, the most lenient one is applicable**. Following Decision no. 358, two opinions were presented by the courts, one stating that the course of the statute of limitations is a material matter and the second one that the course of the statute of limitations is a procedural matter.

On **25 October 2022**, the Romanian Supreme Court passed Decision no. 67 in order to unify the practice of the courts, stating that the course of the statute of limitations is a material matter, thus being subject to the application of the most lenient law.

In conclusion, a legislative void existed between 25 June 2018 and 30 May 2022, which affects all criminal cases in which the incomplete version of Article 155 of the Romanian Criminal Code is applicable, as the statute of limitations for criminal liability is not interrupted by any actions.

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