

IMMIGRATION with regard to the current COVID-19 crisis

In connection with the COVID-19 pandemic, the Czech Government declared a state of emergency on 12 March 2020, which lasted until 17 May 2020. In this period a lot of measures that significantly affected entry and residence of foreign nationals in the Czech Republic and the related agenda were adopted.

After the end of the state of emergency, a 60-day period was determined (18 May 2020 to 16 July 2020) to mitigate negative impacts of it. In this period public authorities that deal with matters of residency of foreign nationals proceeded in a transitional regime. The usual regime of residency of foreign nationals in the Czech Republic and the related matters was restored on Friday 17 July 2020 (with exceptions).

Entry of foreign nationals in the Czech Republic

Despite the end of the state of emergency and the cancellation of adopted measures, the entry of foreign nationals in the Czech Republic remains, based on a protective measure of the Ministry of Health, restricted. After 17 July 2020 only the following persons may enter the Czech Republic:

- a) all EU and EEA citizens and citizens of other states whose right of free movement is identical to that of EU citizens (Switzerland and United Kingdom);
- b) third-country nationals from countries with low risk of COVID –19, as specified in a notice of the Ministry of Health; and
- c) foreign nationals who have temporary or permanent residence permit in the countries mentioned above.

The list of countries with low risk of COVID –19 specified in the notice of the Ministry of Health currently includes all EU and EEA countries and other states whose citizens have a right of free movement identical to that of EU citizens, with exception of Romania, and following third countries: Australia, Japan, Canada, Korea, New Zealand, Thailand and Tunisia.

Other foreign nationals are allowed to enter the Czech Republic only in exceptional cases (in line with the protective measure of the Ministry of Health). In all cases, however, foreign nationals must have the right to enter and to stay in the Czech Republic – it means, they must hold a visa or a residence permit or they must be the national of a state whose citizens are entitled to enter the Czech Republic without visa. Exceptions are granted in particular to:

- a) foreign nationals who have a long-term or permanent residency permit in EU, EEA citizens and nationals of other states whose citizens have a right of free movement identical to that of EU citizens and who pass through the Czech Republic within 12 hours;
- b) family members of EU and EEA citizens and citizens of other states whose right of free movement is identical to that of EU citizens;
- c) foreign nationals whose entry is in the interest of the Czech Republic and the purpose of entry is sufficiently proved;
- d) persons working in international transport who are able to prove the purpose of entry;

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- e) diplomats and officials of international organizations registered with the Ministry of Foreign Affairs; and
- f) persons who enter the country due to emergency if the purpose of entry is sufficiently proved.

Foreign nationals entitled to enter the Czech Republic who stayed in a country other than the country with low risk of COVID-19 for more than 12 hours within 14 days before entering the Czech Republic are obliged to notify this fact to the competent regional public health office and immediately undergo the coronavirus SARS-CoV-2 test (RT-PCR test) unless the regional public health office orders quarantine. Free movement of these foreign nationals in the Czech Republic is restricted until they submit the RT-PCR test or the lapse of quarantine. The RT-PCR test and quarantine do not apply to:

- a) persons working in international transport who are able to prove the purpose of entry;
- b) EU, EEA citizens and citizens of other states who have a right of free movement identical to that of EU citizens and foreign nationals who have a long-term or permanent residency permit in these countries and pass through the Czech Republic within 12 hours; and
- c) diplomats and officials of international organizations registered with the Ministry of Foreign Affairs.

Moreover, a special regime applies to employees from countries other than those with low risk of COVID-19 and Bulgaria, Luxembourg, Portugal, Spain and Sweden who stayed in a country other than that with low risk of COVID-19 for more than 12 hours within 14 days before entering the Czech Republic. These employees are obliged to undergo RT-PCR testing after arrival to the Czech Republic. If they fail to do so, they will not be allowed to enter the workplace.

The list of countries with low risk of COVID-19 and the rules of entry into the Czech Republic are changing very dynamically. Therefore, reviewing up-to-date information is strongly recommended before travelling to the Czech Republic.

Residence and work of foreign nationals in the Czech Republic

If the residence permit of a foreign national (i.e. third-country national) ceased to be valid during the state of emergency or within subsequent 60 days, the foreign national was entitled to stay in the Czech Republic until 16 July 2020. Though unauthorized, this residence was tolerated due to extraordinary measures and the foreign national was not punished.

If this foreign national failed to leave the Czech Republic on 16 July 2020 at the latest, their further residence in the Czech Republic is illegal and subject to punishment by public authorities. Consequently, it is recommended that these foreign nationals immediately leave the Czech Republic. This recommendation also applies to foreign nationals whose stay in the Czech Republic was illegal upon declaration of the state of emergency (i.e. 13 March 2020).

An exception is granted to foreign nationals who were prevented from submitting the application for the residence permit or the extension of it due to reasons beyond their control. In this case they must submit the application within five days after these reasons have ceased to exist, and must specify the reasons in the application (and prove them upon request).

Another exception is granted to foreign nationals who resided in the Czech Republic between 12 March 2020 and 16 July 2020 based on 90-day visa or long-term visa for the purpose of (seasonal) work or visa

for extraordinary work. These foreign nationals may stay in the Czech Republic until 16 September 2020 if their employer extends their employment at least to 16 September 2020. In such a case, the validity of their work permit is automatically extended to 16 September 2020.

COMPENSATION CLAIMS **for damage caused by emergency measures**

The Czech Government declared a state of emergency under Czech Act No. 240/2000 Sb. on Crisis Management (Crisis Management Act) on 12 March 2020 and decided to restrict free movement of persons. By resolution of 23 March 2020, the Government explicitly cancelled the previous decision on the crisis measure and took, at the same time, note of emergency measures of the Ministry of Health of 23 March 2020. The measures of the Ministry of Health were subsequently cancelled by the Metropolitan Court in Prague.

Claims under the Crisis Management Act

The Crisis Management Act sets forth compensation for the restriction of the ownership right, provision of material means and performance of work duties (section 35) and stipulates that the state is obliged to compensate legal entities and individuals for damage sustained in causal link with emergency measures.

The claimant must prove the following to successfully claim damages: existence of crisis measures, damage and the causal link between the measures and the damage. The claimant may not claim damage caused by own acts.

Compensation is to cover actual damage, such as decrease of assets and loss of profits (profits not recorded due to the obligatory closure of a shop). The calculation of the actual damage should not pose major difficulties. On the other hand, the calculation of loss of profits may be difficult and some kind of business modelling may be required.

The injured party must submit the claim for compensation for damage within six months after the injured party learned of the damage, and not later than five years after the damage occurred. In majority of cases affected persons learned of the damage immediately after the emergency measures were adopted. The claim must be filed with the relevant crisis-management body. The body is determined based on particulars of the case. The claim may, however, be submitted to several bodies, the Ministry and/or the Government. If the respective body rejects the claim in its entirety or in part, the claimant must seek compensation from the state in court. The court fee is five percent from the claimed amount.

Although the wording of section 26 of the Crisis Management Act seems to be clear, the decision-making practice of courts may not be foreseen as this situation is extraordinary. In case of numerous claims the consequences of this situation for the state budget will be substantial.

Claims under Act No. 82/1998

Aside from claims under the Crises Management Act, claims may also be filed under Act No. 82/1998 Sb., on Liability for Damage Caused by the Exercise of Public Authority through an Unlawful Decision or

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Incorrect Official Procedure, as the measure of the Ministry of Health was cancelled by the Metropolitan Court.

Claims must be filed within six months. The court fee is CZK 2,000 for every claim.

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*The document reflects the situation on 31 August 2020.
This document is for informational purposes only and may not be considered a legal opinion or advice on how to proceed in a particular case.*