Legal Alert

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The Constitutional Court has crucially ruled on the concurrent exercise of functions

On 22 September 2016 the Constitutional Court of the Czech Republic published an essential view on the so-called concurrent exercise of functions of a member of the statutory body of a business corporation and a leading management position, typically as the CEO (ruling no. I. ÚS 190/15, on the OLMA, a.s. case).

The Supreme Court and the general courts have continuously decided that a statutory body member cannot perform his/her activity under an employment contract. A concurrent employment contract is invalid, with negative financial implications, especially for the manager.

The prohibition of the concurrent exercise of functions was set up by case-law, not by the law. The current Constitutional Court ruling therefore focuses on the existing argumentation on the reasons for the invalidity and raises questions that have to be solved by the general courts.

From the employment law point of view, there does not exist a legitimate reason why the parties could not agree on the use of the Labour Code for the performance of the statutory body member's activities. The existing argumentation of the courts ignores the purpose of the regulation and is contradictory. If the statutory body member's activities are not governed by the Labour Code, it cannot cause contracts on the exercise of the functions to be invalid.

Neither of the commercial law arguments for the existing court decisions according to which the nature of business corporations prevents the subordination of the activity performance to the Labour Code will succeed. Such a general reference is insufficient and unconvincing and affects legal certainty and predictability.

According to the Constitutional Court, the prohibition of the concurrency removes or reduces a standard of protection of the statutory body members compared to the one that employees have (i.e. termination of the contract without giving a reason or dismissal during the protection period is possible, the statutory employer's liability insurance does not apply). Women are not entitled to maternity leave and the return after its end is not guaranteed and there are other impacts that negatively affect their job in top management positions.

Existing decision-making practice thus violates the constitutional principle according to which everybody may do what is not explicitly prohibited by law and no one should be forced to do what the law does not require, does not respect the parties' freedom of choice and does not prefer the assumption that the invalidity of the contract should be an exception, not a principle.

This ruling is an important and fully-fledged contribution to the productive dialogue between the Constitutional and Supreme Courts and through it the general courts as well.

The attention of the professional and general public will certainly be drawn to further developments in this matter. We will monitor for you if the Supreme Court will pick up the gauntlet and will significantly complement its current argumentation or whether this is the end of the concurrent exercise on prohibiting functions.

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