

CZECH REPUBLIC



Law and Practice

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ATTORNEYS AT LAW

1. Policy Development of Collective Redress/Class Action Mechanisms

1.1 History and Policy Drivers of the Legislative Regime

Traditionally, there was no uniform and comprehensive regulation of collective redress in the Czech Republic. The Czech legal system contained only very limited representative action mechanisms, which did not allow collectively asserting individual rights in a manner other than through regular court proceedings and were applicable only to a limited range of claimants or to relatively specific matters. These included proceedings concerning copyright or protection against unfair competition, consumer protection claims or claims for damages or for adequate consideration arising in connection with mandatory takeover bids or squeeze-outs.

With effect from 1 July 2024, a new legal framework of collective redress was adopted as a transposition of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (the RAD). Collective action proceedings in the Czech Republic are now primarily regulated by Act No. 179/2024 Coll. on Collective Civil Court Proceeding (the Collective Proceedings Act). The RAD transposition also included the adoption of Act No. 180/2024 Coll. on the Amendment of Certain Laws in Relation to the Adoption of the Collective Proceedings Act (the Ancillary Act), containing amendments to Act No. 99/1963 Coll, the Code of Civil Procedure (the Code of Civil Procedure), Act No. 549/1991 on Court Fees (the Court Fee Act) and Act No. 634/1992 Coll. on Consumer Protection (the Consumer Protection Act).

Prior to the Collective Proceedings Act, there had been some legislative attempts to introduce a comprehensive regulation of collective redress in the Czech Republic since 2017, leading to the draft legislation that was presented by the former government in 2020. In this draft, a more comprehensive approach to the issue of collective actions was taken, as it provided the possibility of filing collective actions for a relatively unlimited range of claims and provided for the possibility of both opt-in and opt-out mechanisms depending on the size of the group and the amounts claimed per group member. Similarly, the parties having standing to bring collective actions were not significantly limited under this proposal.

As a consequence of the parliamentary elections in 2021 and the subsequent change in the government, this draft was withdrawn and the current government presented a new draft, eventually resulting in the Collective Proceedings Act. The Collective Proceedings Act takes a slightly more conservative approach to the introduction of collective redress mechanisms into the Czech legal system compared to the previous draft and in many aspects only mirrors the minimum requirements set out by the RAD.

The general policy driver presented to justify the introduction of collective redress mechanisms into the Czech legal system was to create a better balance between large corporations and consumers in matters where pursuing their rights individually would create a disproportionate burden on the consumers, often causing so-called rational apathy on the consumers' side. Cases of large-scale corporate fraud that went unpunished on the civil law front were often referred to as well.

Another driver behind the introduction of collective action proceedings in the Czech Republic was the more frequent discussion of the issue at the European level, which resulted in the adoption of the RAD requiring member states to introduce laws allowing individual rights to be exercised collectively.

1.2 Basis for the Legislative Regime, Including Analogous International Laws

The current Czech regulation of collective redress was adopted on the basis of the RAD.

1.3 Implementation of the EU Collective Redress Regime

As already outlined in the previous sections, the RAD was implemented by both the Collective Proceedings Act and the Ancillary Act.

The Czech legislature took a relatively minimalist approach and mostly followed the essential requirements set out by the RAD. The scope of collective redress regulation is therefore relatively limited in the Czech Republic.

However, there are certain aspects where the Czech legislature went beyond the RAD requirements, such as extending the definition of consumers who can become group members also to small businesses with less than ten employees and annual turnover not exceeding CZK50,000,000 (EUR2,000,000). The application scope of the Collective Proceedings Act is also not limited to claims from infringements of the Union law provisions referred to in Annex I of the RAD, as it applies to claims from infringements of any consumer-related laws.

2. Current Legal Framework and Mechanisms Applicable

2.1 Collective Redress and Class Action Legislation

Collective redress under the new legislation implementing the RAD can be divided into two main types of proceedings – collective action proceedings regulated by the Collective Proceedings Act and proceedings on the protection of consumers' collective interests regulated by the Code of Civil Procedure.

3. Scope and Definitional Aspects of the Legal Framework

3.1 Scope of Areas of Law to Which the Legislation Applies

Collective redress in the Czech Republic is only available to consumer claims and claims of small businesses under the Collective Proceedings Act. However, the scope of applicable areas of law is relatively broad. Collective actions under the Collective Proceedings Act may be brought under a breach of any consumer-related laws concerning various types of relationships, including contractual and quasi-contractual relationships, and relationships based purely on delicts.

The new legislation is applicable to claims that have arisen after 24 November 2020. However, the provisions of Collective Proceedings Act and amendments to the Code of Civil Procedure only apply to newly filed actions, and ongoing individual proceedings initiated after 25 June 2023 will be completed under the existing laws and regulations.

3.2 Definition of Collective Redress/Class Actions

The Collective Proceedings Act defines collective action proceedings as civil proceedings concerning the rights or legitimate interests of multiple persons, arising from legal relations between natural persons who act outside the scope of their business or profession or small businesses, and a natural person or legal entity that either directly or indirectly acts within the scope of their commercial activity, business, or independent exercise of their profession.

Collective action proceedings under the Czech legislation diverge in many respects from class actions familiar to common law jurisdictions. For example, the group of consumers whose rights will be exercised in collective action proceedings shall be represented by a third party (a certified non-profit organisation – qualified entity) rather than by one of its members.

Given the distinct characteristics of a “class action” in common law jurisdictions, such as a group of claimants being represented by one of its members rather than a qualified entity, the term “class action” is not apt with respect to the Collective Proceedings Act. As such, an action under the Collective Proceedings Act is referred to herein as a “collective action”. Collective actions and actions for the protection of collective interests of consumers are jointly referred to as “representative actions”.

Proceedings for the protection of collective interests of consumers available under the Code of Civil Procedure as a transposition of Article 8 of the RAD may be defined, albeit with some specifics, as proceedings governed by general rules of Czech civil procedure whereby a qualified entity, acting on behalf of all potentially concerned consumers, may seek that a trader be

ordered to cease a certain practice or for the court to declare that an infringement of a legal obligation occurred. Individual consumers are not required to express their wish to be represented by the qualified entity. The qualified entity is neither required to prove actual loss or damage on the part of the individual consumers nor intent or negligence on the part of the trader. In contrast to the collective proceedings, this protection is limited only to consumers as natural persons and does not extend to small business.

4. Procedure for Bringing Collective Redress/Class Actions

4.1 Mechanisms for Bringing Collective Redress/Class Actions

Actions under the Collective Proceedings Act
According to the Collective Proceedings Act, it is only possible to seek collective redress through qualified entities – authorised non-profit organisations registered in a list of qualified entities maintained by the Ministry of Industry and Trade, or a list of qualified entities enabled to bring domestic representative actions at national level maintained by the European Commission.

Claimants must be represented by a legal counsel throughout the course of the proceedings.

A collective action is admissible if:

- the claimant is a qualified registered entity;
- the claimant acts in the interest of the group and is not in a conflict of interest;
- the group has at least ten members (although the court shall be able to rule on the admissibility of a collective action even before ten members have registered their claims);

- the asserted rights or legitimate interests of the group members are based on a similar factual and legal basis;
- it was not filed with an abusive intent; and
- it is not financed by a third party who is a competitor of the defendant, is dependent on the defendant, or who unduly influences the claimant in a way that would harm the interests of the group.

Since the collective action mechanism is new to Czech law, it remains to be seen what approach Czech courts will take in relation to the assessment of similarity. According to the definition contained in Section 2 of the Collective Proceedings Act, “similar factual and legal basis means decisive facts that are either identical or sufficiently similar to make it practical for the rights or legitimate interests based on these decisive facts to be heard and decided in collective proceedings”. Such a definition gives judges relative freedom in assessing and deciding whether or not certain claims are sufficiently similar. Nevertheless, when interpreting similarity, the judgment of the Court of Justice of the European Union in case C 450/22 must be taken into account, as it states that it is not necessary for the claims to be identical. For instance, similarity cannot be excluded merely because the contracts were concluded at different times or under different rules. Therefore, collective actions concerning claims with a lower degree of homogeneity or only a certain level of similarity may still be found admissible.

Collective actions may be brought in order to enforce an obligation or to determine whether a legal relationship or right exists or not. Actions to enforce an obligation can seek both injunctive and redress measures – ie, measures to provide any remedies such as compensation, replacement, price reduction or reimbursement. Actions

to determine whether a legal relationship or right exists are actions for declaratory relief allowing claims leading, for example, to contract termination or annulment.

Claimants filing collective actions under the Collective Proceedings Act may also seek provisional injunctive measures both before and after the action has been filed. Preliminary injunctions may be sought by the claimant, for example, in order to prevent further damage being caused by the defendant (eg, by ordering the defendant to cease a practice until the final judgment) or in order to secure enforceability of the final judgment (eg, by prohibiting the defendant from disposing of its assets).

Actions under the Code of Civil Procedure

An action for the protection of collective interests of consumers may also be filed only by a qualified entity fulfilling the same requirements as claimants in collective proceedings.

However, as opposed to collective proceedings, the qualified entity acts on behalf of an indefinite group of consumers, who are not parties to the proceedings and do not have any procedural rights. The Code of Civil Procedure does not require the claimants to be legally represented.

Redress measures are not available in the proceedings on claims for the protection of collective interests of consumers. The claimant may only seek provisional or definitive injunctive measures to cease a practice or measures establishing that the practice constitutes an infringement of a legal obligation.

4.2 Overview of Procedure

Actions under the Collective Proceedings Act

The Collective Proceedings Act establishes exclusive jurisdiction of the Municipal Court in

Prague, which resolves all collective actions. The collective proceedings consist of two phases.

Certification proceedings

In the first stage of the proceedings, the court shall assess the admissibility of the collective action (qualification of the claimant, size of the group, similar basis of the claims, acting in the interests of the group, absence of conflict of interest and abusive intentions, appropriate sources of funding).

A decision in the certification phase shall be issued as soon as possible and the proceedings shall be prioritised by the court.

If the collective action meets the required conditions, the court shall declare its admissibility.

If the court finds that any admissibility requirement is not satisfied, it shall, if possible, allow the claimant to remedy any shortcoming in order to meet the requirements within a reasonable period. If that is not possible or if the claimant fails to meet the admissibility requirements even in an additional period granted by the court, the court will terminate the proceedings.

The defendant is entitled to file a statement concerning admissibility before a decision is issued and the court may even order a hearing to assess admissibility of a collective action. The Collective Proceedings Act also makes it possible for the claimant to contest the fulfilment of admissibility requirements at any point during the proceedings. The proceedings may therefore be terminated for the claimant's failure to meet the admissibility requirements even after the action has been declared admissible.

Parties may file an appeal against the decision regarding admissibility of a collective action.

Extraordinary appeals to the Supreme Court are inadmissible against decisions of the court of appeal whereby admissibility of a collective action is granted.

In the decision on admissibility, the Collective Proceedings Act requires the court to specify the subject matter of the proceedings, the factual basis of the collective action, the amount of the claimant's remuneration (if any) and method of publishing information, to define the group and membership criteria, and set a deadline in which group members may opt in (between two and four months).

Proceedings on the merits

After the collective action is declared admissible, the claimant will be obliged to publish a notice without undue delay. In the notice, group members shall be informed about the pending collective action proceedings and their procedural rights, including a deadline in which they shall register their claims. The claimant will then be required to create a list of registered group members. According to the Collective Proceedings Act, the list must include at least ten registered group members at the end of the deadline for registration and throughout the entire duration of the proceedings on the merits; otherwise, the court will terminate the proceedings.

Should the collective action proceedings be terminated without a decision on the merits, the participating members concerned may automatically become participating group members in another collective action proceedings on the same matter or they can opt out and retain the right to exercise their claims in court individually.

The collective action proceedings under the Collective Proceedings Act may be concluded in several ways. In the event that the action has

defects (ie, incomprehensibility, lack of clarity or failure to meet formal requirements), which were not removed by the claimant even after the court instructed the claimant to do so, the court will reject the claim. Should the collective action fail to meet the conditions of admissibility, or should the claimant lose its legal capacity (and not have a legal successor) or withdraw the collective action, the court will terminate the proceedings by a resolution. Otherwise, the court will decide on the merits by a judgment either awarding the relief sought or dismissing the action. Provisions of the Code of Civil Procedure concerning a default judgment “for recognition” do not apply.

The judgment must, in addition to the requirements set out in the Code of Civil Procedure, include identification of the registered group members by reference to the list of registered group members attached to the judgment and deemed to be part of the judgment, a quantification of the awarded amount to each group member, the deadline for performance (if any), and the claimant’s remuneration (if any).

Appeal as well as extraordinary appeal against a decision on the merits is admissible and follows the standard procedural rules set out in the Code of Civil Procedure. The only notable distinction is the extension of the appeal deadline from 15 days to 30 days if the appeal is filed by the claimant; this is because the claimant must allow the registered group members to comment on the question of submitting an appeal within 15 days after the judgment has been published.

Publicity of proceedings

Representative action proceedings are required to be more transparent than regular civil court proceedings. Therefore, the Ministry of Justice of the Czech Republic set up a register of collective proceedings where all relevant information

on collective proceedings shall be published. The register is administered by the court and details basic information about all pending representative proceedings.

Actions under the Code of Civil Procedure

Proceedings on actions for the protection of collective interests of consumers are governed by the Code of Civil Procedure as amended by the Ancillary Act. When seeking protection of collective interests of consumers, it is thus necessary to proceed through regular civil proceedings. This means, as previously mentioned, that the claimant acts on behalf of an indefinite group of consumers, who are not parties to the proceedings and do not have any procedural rights.

However, some elements of the proceedings are similar to those in collective action proceedings. This includes qualification requirements concerning the claimant, exclusive jurisdiction of the Municipal Court in Prague, information duties, transparency of the proceedings and the potential fines for failure to comply with the rules. The action for the protection of collective interests of consumers must be identified as such and contain a sufficient description of the consumers concerned to make it recognisable that they are affected by the claim.

The current wording of the Code of Civil Procedure also indicates that the claimant shall have a pressing legal interest in bringing the action for a declaration to establish an infringement of a legal obligation. This means that such a claim would only be successful if it was proven that the consumers’ right or legal position would become uncertain without the determination being sought. The requirement of a pressing legal interest would significantly reduce the chances of a successful action for a declaration to establish the infringement of a legal obliga-

tion. However, it remains uncertain whether this requirement applies to the actions for the protection of collective interests of consumers and the issue of pressing legal interest will need to be clarified by the courts.

4.3 Standing

As mentioned in **4.1 Mechanisms for Bringing Collective Redress/Class Actions**, only organisations registered in the list of qualified entities may have standing to bring a representative action (both the collective actions and claims for protection of the collective interests of consumers). Requirements which the claimants need to meet in order to be registered in the list of qualified entities and in order for the collective action to be admissible, are based on Article 4 of the RAD, generally aiming to reduce the risk that collective action proceedings will be abused.

In order to meet the requirements, the qualified entity must demonstrate at least 12 months of actual public activity in the area of consumer protection, avoid being declared insolvent, and have a legitimate interest in bringing a representative action. Further requirements include that the claimant should act in the interests of the group, file the representative action without abusive intentions (regarding eg, competition matters) and avoid conflicts of interest. The consumers must be informed of fulfilling the requirements on the claimant's website.

Finally, the claimant must also have appropriate sources of funding (see **4.9 Funding and Costs**).

4.4 Class Members, Size and Mechanism – Opting In or Out

Opt-in Mechanism

Only an opt-in mechanism was adopted under the Collective Proceedings Act. Therefore, each individual consumer wanting to participate in the

proceedings must proactively join the claimant group, which has been negatively received by consumer protection organisations that advocated the opt-out mechanism during the legislative process. During the legislative process, there were proposals to include an opt-out regime – eg, for the smallest claims under CZK10,000 per group member, but these proposals ultimately failed to gain approval.

Group Members

The Collective Proceedings Act distinguishes between group members and registered group members, with the former being anyone with the same or sufficiently similar claim against the defendant, and the latter being a group member who has chosen to opt in by registering their claim with the claimant in the collective action proceedings using a form published by the Ministry of Justice.

As already outlined in **4.1 Mechanisms for Bringing Collective Redress/Class Actions**, the number of group members during the certification phase must be at least ten. After the collective action is found admissible and upon the expiration of the registration deadline, the number of registered group members must be at least ten. After the deadline for registration expires, a registered group member cannot withdraw their registration. However, the claimant may contest the group membership within one month of the list of registered members being submitted, and propose to the court that any member be excluded from the list. If the number of registered group members drops below ten at any stage of the proceedings on the merits, the collective action proceedings shall be terminated.

Procedural Rights

The Collective Proceedings Act restricts the procedural rights of registered group members.

Registered group members are formally not parties to the proceedings and can, with some exceptions, only make statements in the proceedings through the claimant. However, the court may allow registered group members to make oral statements during a hearing predetermined by the court.

Other registered group members' rights include the right to be informed about the course of the proceedings, to comment on the filing of an appeal and to contest certain procedural steps, such as a settlement proposal or withdrawal of the collective action.

Registered group members have a limited ability to withdraw their registration to the collective action proceedings. The aim is to prevent registered group members from withdrawing from proceedings for tactical reasons – ie, based on how the proceedings are progressing, and possibly suing the defendant individually.

4.5 Joinder

Joinder under the Collective Proceedings Act

Pending collective action proceedings do not constitute a *lis pendens* obstacle, which means other claimants are not prevented from filing a parallel collective action against the same defendant regarding the same matter.

Similarly, a group member who does not opt in will be able to initiate individual proceedings against the same defendant as well. In the event that a group member has already initiated individual proceedings before the collective action proceedings were initiated, and then decided to opt in to the collective action proceedings, the individual proceedings will be suspended for the duration of the collective action proceedings. The further course of the individual proceedings depends on the outcome of the collective

action proceedings. Should the collective action proceedings be decided on the merits or the collective action be settled, the court will terminate the individual proceedings; should the collective action be rejected or the collective action proceedings terminated, the court will continue the individual proceedings.

If multiple collective action proceedings are conducted against the same defendant, the court may potentially consolidate the proceedings.

The collective action may also be brought against multiple defendants. Additional defendants may join the collective action proceedings if granted by the court of first instance upon the claimant's request.

Limitation periods pertaining to claims of individual group members shall be suspended upon their registration in the collective action proceedings, with retroactive effect from the date when the collective action was filed. This offers a safeguard to those registered group members whose limitation periods might have expired between the collective action's filing date and their own registration date. If a registered group member withdraws their registration in accordance with the conditions set out in the Collective Proceedings Act, or is excluded from the list of group members and the proceedings by the court, the limitation period concerning their claim will not expire earlier than six months from the withdrawal or from the date when the relevant court decision became final. The same applies in relation to claims of all registered group members in the event that the proceedings are terminated or the collective action is rejected without a decision on the merits.

Joinder under the Ancillary Act

Initiating proceedings for the protection of consumers' collective interests represents a *lis pendens* obstacle in relation to any collective action or individual proceedings concerning the same claims initiated later. As a result, the judgment will be binding on all consumers concerned except for those who filed individual claims earlier or opted in to collective action proceedings that were initiated earlier.

Additional claimants and defendants may only join proceedings upon the request of the original claimant; this may be granted or rejected by the court depending on the circumstances of the case.

During the proceedings, the limitation period is suspended in relation to consumers' rights arising from the unlawful conduct or situation. Should the limitation period continue to run after the proceedings are terminated, it does not expire earlier than six months from the day it started running again. This effectively means that claimants can wait for the outcome of a representative action seeking to determine an infringement of a legal obligation before filing a collective action under the Collective Proceedings Act seeking redress measures without concerns about the expiration of the limitation period.

4.6 Case Management Powers of Courts

The Collective Proceedings Act introduced a plan of collective action proceedings to be prepared by the court. The plan shall, among other things, include an overview of contested and uncontested facts, and determine the time and agenda of upcoming court hearings or evidence to be taken. As a result, collective action proceedings are expected to be more predictable

and organised compared to standard civil court proceedings.

Other case management powers of courts not typically found in Czech civil proceedings that were introduced by the Collective Proceedings Act include the determination of a deadline for group member registration, the possibility of excluding registered group members upon the claimant's request as well as the possibility of rejecting certain procedural steps made by the claimant (eg, change or withdrawal of the claim) or rejecting a settlement proposal if it is not considered fair to the group's interests.

Otherwise, the court's case management powers do not significantly differ from those already recognised by the Code of Civil Procedure.

4.7 Length and Timetable for Proceedings

It is difficult to provide an estimate of the length or a standard timetable of collective action proceedings as these can vary greatly depending on the specific circumstances of the case. As of October 2024, no collective actions have been filed under the new legislation, which has only been in force for three months.

Generally, the average length of standard civil proceedings in the Czech Republic is around one year for a case to reach a first instance decision, though this also includes simple cases or cases where the defendant does not actively participate in the proceedings. The average length of first instance proceedings where both parties are active is between one and two years. However, considering the possibility of filing appeals in a generally three-instance court system and relatively frequent cancellations of first instance judgments, leading to repeated first instance proceedings and repeated appeals, some cases

can take more than ten years to reach a final judgment.

According to the Collective Proceedings Act, a decision on admissibility shall be issued as soon as possible after the initiation of the proceedings and the deadline for group member registration shall not be longer than four months. Given the necessity to enable the defendant to make a statement regarding admissibility and the possibility of scheduling a hearing to assess admissibility, it will likely take approximately six months before the court proceeds to assess the merits of a collective action.

The duration of the proceedings on merits will depend on numerous factors, such as the complexity of the matter, effective case management by the judge, room for a potential settlement or any appeals. Since collective action proceedings will always concern claims of a larger number of individuals, the average duration will likely exceed that of regular civil proceedings.

Considering that both the Collective Proceedings Act and the Code of Civil Proceedings stipulate exclusive jurisdiction of a single court (the Municipal Court in Prague), the actual length of collective action proceedings may also largely depend on the number of pending proceedings and the workload of judges assigned to decide on collective actions. So far, only two judges at the Municipal Court in Prague have been assigned to conduct collective action proceedings.

4.8 Mechanisms for Changes to Length/ Timetable/Disposal of Proceedings

The Collective Proceedings Act requires the court to prepare a plan of collective action proceedings, which provides for a basic timeframe of the proceedings and shall bring more pre-

dictability and organisation. However, the plan should not in any way limit the length of the proceedings and may be changed by the court if the circumstances so require.

Beyond this, there is currently no legal framework governing procedural mechanisms allowing for changes to the length, timetabling or disposal of proceedings. Nonetheless, the court should generally proceed economically and avoid unnecessary delays.

4.9 Funding and Costs Funding

The possibility of third-party funding for collective action proceedings is generally accepted by the Collective Proceedings Act, with certain restrictions to prevent conflicts of interest or abusive collective actions.

The person providing the funds must not be dependent on the defendant, must not be the defendant's competitor and must not exercise any undue influence over the claimant that could harm the group's interests. The court is also able to examine and verify the origin of funds used to finance collective action proceedings.

Upon the defendant's request, the court shall order the claimant to provide an overview of sources of funds (ie, particular account, loan or particular person/entity) used to cover the costs of initiating and conducting the collective proceedings, and review the sources. In case of doubt, the court may also review the sources on its own initiative. If the funds come from a legal entity or a trust fund, the court also examines details about the beneficial owners.

Should the claimant fail to provide the overview of the sources of funds, the conditions for admissibility of collective proceedings will not be met

and the court will terminate the proceedings. If the overview shows any inconsistency with the above criteria, the court will request the claimant to reject the funds or change the sources funds within a reasonable period of time.

Third-party funding for the actions to protect consumers' collective interests is not regulated by the Code of Civil Procedure. The claimant must only inform the public of its general sources of funding on its website.

Adverse Party Costs

Under the amendment of the Court Fee Act introduced by the Ancillary Act, claimants in collective action proceedings and in proceedings for the protection of the collective interests of consumers are completely exempted from the obligation to pay court fees, which significantly reduces their costs.

Compensation of the adverse party's costs of proceedings remains governed by the standard rules of Czech civil proceedings, including in collective action proceedings. These rules are generally based on the "winner takes all" principle, which should apply to representative action proceedings as well. If a party succeeds only partially, the court may either divide the costs proportionally between the parties, decide that no party is entitled to reimbursement, or award full reimbursement to the winning party (if it was unsuccessful in only a minor part of the dispute). Adverse party costs are calculated in accordance with Ministry of Justice Decree No. 177/1996 Coll. on attorney's fees and generally depend on the amount in dispute and the number of acts of legal service (eg, submissions, hearings, etc) carried out by the adverse party counsel. In most cases, the awarded costs are nowhere near the costs actually incurred.

The Collective Proceedings Act contains a few specific rules providing, for example, that a group member may be ordered to pay particular costs of collective action proceedings which were caused by that group member's fault and which would not have otherwise arisen.

Claimant's Remuneration

Under the Collective Proceedings Act, the claimant and the registered group members may agree on the claimant's remuneration to be granted in the event of success. The claimant's remuneration must be specified in the action and the claimant may choose in which form the remuneration will be sought. The remuneration can either be a percentage up to a maximum of 16% of the claimed amount, or, if the relief sought is other than a payment obligation, a flat rate not exceeding CZK2,500,000; the amount awarded by a judgment to registered group members will be reduced accordingly. However, without prejudice to the group members' right to the awarded amount, the claimant and the defendant may agree on the claimant's remuneration differently from the Collective Proceedings Act.

The percentage or amount of the claimant's proposed remuneration will be determined by the court in the decision on admissibility of the collective action. The court is allowed to adjust the remuneration if needed.

4.10 Disclosure and Privilege

Generally, with certain limited exceptions, Czech law does not recognise or apply the concept of discovery or compulsory disclosure in civil proceedings as it is against the general principle that no one can be "forced" to incriminate themselves.

The Code of Civil Procedure sets out an exception to the general rule in situations where the

claimant is not in possession of evidence supporting their claim but they are able to specifically identify such evidence and demonstrate that such evidence is under the defendant's control. Upon the claimant's justified request, the court may order the defendant to disclose such evidence. If the defendant refuses to do so or fails to prove to the court that such evidence is in fact not in the defendant's possession, the contested facts shall be assessed to the defendant's detriment – ie, the facts alleged by the claimant will thereby be considered proven for the purposes of the proceedings. This can, of course, also work the other way around, with defendants seeking that the claimants be ordered to disclose evidence, though such cases are less common.

The Collective Proceedings Act essentially follows the procedure already recognised by the Code of Civil Procedure and limits the disclosure of evidence to the duty to submit specific evidence (documents or items), which must be precisely specified by the party making the request. It should therefore not be possible for the court to order the defendant (or anyone else) to disclose a broader range of evidence that is only specified on a general basis. If the party who has been ordered to disclose particular evidence fails to do so without a justifiable reason, the disputed facts alleged by the other party will be deemed proven. Fines of up to CZK5,000,000 (EUR200,000) may be imposed by the court for an unjustified breach of the duty to disclose evidence.

The duty to disclose evidence shall not apply if the disclosure is incompatible with a statutory obligation of confidentiality.

4.11 Remedies

As mentioned in **4.1 Mechanisms for Bringing Collective Redress/Class Actions**, claimants may seek both injunctive and redress measures under the current legislation governing collective and representative action proceedings.

Remedies available under the Collective Proceedings Act include claims seeking payment as well as for the fulfilment of any other obligation that may be ordered by a court and enforced or the declaration of the existence of a legal relationship or right. The Collective Proceedings Act also provides for the possibility to apply for interim injunctive measures.

Remedies available in proceedings for the protection of the collective interests of consumers include provisional or definitive injunctive measures to cease a practice or to establish that the practice constitutes an infringement of a legal obligation.

4.12 Settlement and ADR Mechanisms

As a general principle of Czech civil proceedings, every judge should, at least formally, attempt to assist and encourage the parties to reach a settlement. Where the judges see fit, they may even order the parties to attend a mediation session. These general rules also apply to collective proceedings.

According to the Code of Civil Procedure, any dispute may be resolved by an out-of-court settlement resulting in a withdrawal of the claim by the claimant and the acceptance thereof by the defendant, without the option of the court to intervene in any way.

Similarly, the Collective Proceedings Act allows for an amicable resolution in the form of a settlement agreement, although this option is limited

in order to protect the registered group members' interests. Any settlement reached after the initiation of collective action proceedings needs to be approved by the court. The court will also not admit the withdrawal of the collective action if the withdrawal is unfair with respect to the registered group members' interests.

Prior to the assessment of the proposed settlement and its approval, registered group members shall be allowed to raise objections against a settlement proposal within 15 days after it was published in the collective proceedings register or after they received the settlement proposal from the claimant (as confidentiality of the settlement may be arranged by the parties). However, if the court approves the settlement despite any registered group members' objections, the settlement shall have the effect of a final judgment and all registered group members, including those who objected, will be bound by that settlement.

There are no specific rules governing settlements in proceedings for the protection of collective interests of consumers. Standard rules under the Code of Civil Procedure shall apply here.

4.13 Judgments and Enforcement of Judgments

The nature of judgments issued in the collective proceedings is the same as for any other judgment issued in regular civil proceedings; in most cases, this will be a judgment imposing a payment obligation on one of the parties and having a binding effect on the parties to the dispute only. As the Collective Proceedings Act only adopted the opt-in regime, judgments will not be binding on parties who did not join the claimant group. At the same time, a judgment issued in collective action proceedings may be

of relevance for the assessment of similar claims raised individually.

Judgments issued in cases regarding actions for the protection of consumers' collective interests are binding only on the defendant with respect to all customers and/or competitors. Judgments concerning claims for damages or adequate consideration in takeover bids or squeeze-outs are binding on the defendant with respect to all the minority shareholders who were involved in the transaction, despite not being parties to the proceedings in question.

Similarly, standard means of post-trial enforcement should be available against parties who fail to comply with the obligations imposed on them by a final and enforceable judgment.

Both the Collective Proceedings Act and the Code of Civil Procedure also set out fines that may be imposed on defendants who fail to comply with a verdict of a judgment issued in collective or representative proceedings (ie, if a non-financial obligation is imposed by the judgment). The fines imposed in enforcement of judgments issued in collective or representative proceedings may be higher than the standard fines issued in enforcement of judgments issued in regular civil proceedings, and may reach up to CZK5,000,000 (EUR200,000).

5. Legislative Reform

5.1 Policy Development

The current Czech regulation of collective redress was introduced in 2024. Therefore, the implementation of new policies is not currently being discussed in the Czech Republic.

5.2 Legislative Reform

As mentioned in 5.1 Policy Development, no additional amendments to the current rules are currently being considered by the Czech legislature. Further legislative changes may be expected once there is some practical experience with the newly introduced collective redress mechanisms.

5.3 Impact of Environmental, Social and Governance (ESG) Issues

ESG-related issues have had no impact on the regulation of collective redress in the Czech Republic.

Trends and Developments

Contributed by:

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PRK Partners

PRK Partners is a leading full-service law firm with over 100 legal and tax professionals and a presence in both the Czech Republic and Slovakia. In its over 30 years of outstanding service, PRK has worked on many of the region's largest and most complex transactions, combining local law expertise with an international perspective. PRK has a reputable litigation and dispute resolution team of experienced lawyers who co-operate closely with the firm's other attorneys and tax advisers. This teamwork, combined with an interdisciplinary approach, ena-

bles PRK to represent clients in a wide range of matters and proceedings. In recent years, PRK has successfully represented its clients in defence against collective actions filed by claimants on behalf of thousands of customers. The team is also participating in a landmark Online Dispute Resolution (ODR) project in the Czech Republic. PRK Partners is the only Czech member firm of Lex Mundi, the world's leading network of independent law firms; the firm is also a member of the AFI, LMA, CVCA, ITECHLAW, INTA and Energy Law Group.

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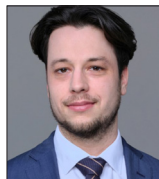
CZECH REPUBLIC TRENDS AND DEVELOPMENTS

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ATTORNEYS AT LAW

Current List of the Qualified Entities

The Czech regulation of collective redress – Act No. 179/2024 Coll. on Collective Civil Court Proceeding (the Collective Proceedings Act), together with the Act No. 180/2024 Coll. on the Amendment of Certain Laws in Relation to the Adoption of the Collective Proceedings Act (the Ancillary Act), came into force on 1 July 2024 as a slightly delayed transposition of Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers (the Representative Actions Directive). Currently, there is an ongoing registration process for entities qualified to file representative actions, and so far, the Czech courts have no practical experience with claims filed under the Collective Proceedings Act or the Ancillary Act.

In order to bring a representative action, claimants must be registered in a list of qualified entities. The list can either be maintained by the European Commission for the purpose of bringing cross-border representative actions or by the Czech Ministry of Industry and Trade. As of now, only two entities are registered on the Czech list, which is slightly below the EU average (three entities per country). An “old list” of qualified entities already existed before the new

legislation came into effect and was based on Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests. This list contains seven entities.

No entity from the Czech Republic is currently registered on the European list as the Czech Republic has not yet designated a list of qualified entities for the purpose of bringing cross-border representative actions, as required by Article 5 of the Representative Actions Directive.

After the new legislation came into effect, two methods were available in order to become a qualified entity. It was expected that entities already registered on the “old list” would meet the conditions required to be on the “new list”. Therefore, these entities had 30 days from the entry into effect of the new legislation to apply to the Ministry of Industry and Trade, which would automatically include them on the new list. However, only one entity used this opportunity. The second method, still remaining available, involves submitting a new application, which will be assessed by the Ministry based on compliance with the mandatory requirements following from the new legislation, corresponding to those set out in Article 4(3) of the Representative Actions Directive. So far, four entities have

applied; one application was rejected and one remains pending.

Obstacles to Bringing a Collective Action

With the Collective Proceedings Act introducing the concept of collective redress proceedings into the Czech legal system for the first time, a question that is often being asked is whether this new legislation will in fact bring an effective tool for consumers to collectively enforce their claims or whether it is merely a formal compliance with the requirements set out by the EU in the Representative Actions Directive. Since the new legislation has only been in force for a few months, it is too early to answer this question with certainty.

What we have been able to observe so far is that no collective actions have been filed yet under the new legislation and there does not seem to be much of an interest in registration among potential qualified entities. While this could simply be due to the short time since the legislation came into effect, there may also be other causes. During the legislative process, as well as in the ongoing public debates, it has been suggested that most consumer organisations, despite some of them already being registered in the “old list”, have no plans to file collective actions in the near future. The primary reasons presented by them were the unsatisfactory conditions and financial burdens following from the Collective Proceedings Act, particularly regarding the maximum amount of the claimants’ remuneration and costs of the proceedings.

In collective action proceedings, qualified entities shall proceed at their own costs, which include the expenses related to publishing information in the collective proceedings register, administering group member registrations, and maintaining the list of participating group members. If

the collective action is unsuccessful, the claimant shall also be ordered to pay the defendant’s costs of proceedings. Consumer organisations argued that such financial burden could drive them to bankruptcy. At the same time, consumer protection organisations were not satisfied with the proposals, and eventually accepted the maximum amount of the qualified entities’ remuneration that can be agreed between the qualified entities and consumers represented by them, namely 16% of the awarded amount or CZK2,500,000 (approximately EUR100,000) if agreed as a flat rate.

Therefore, Czech consumer protection organisations argued that unless the above issues were addressed differently in the Collective Proceedings Act, claimants would be forced to rely solely on third-party funding. On the other hand, such sources of fundings could raise concerns about the impartiality and independence of consumer organisations and are subject to statutory conditions and court review under the Collective Proceedings Act. Attracting third-party funding may also be challenging with the relatively low limits of maximum remuneration that the claimant may receive from the awarded amount. Consumer organisations in the Czech Republic also criticise the requirement for claimants to be represented by an attorney in the collective claim proceedings, as many of these organisations already employ lawyers specialising in consumer law.

Moreover, all of the above-mentioned issues were extensively debated in the Parliament. One reason for the Collective Proceedings Act’s current form is to prevent claimants from viewing collective claim proceedings as potential investment opportunities and to protect the defendants from frivolous lawsuits. The current system, though limited in some respects, is designated

to ensure that claimants pursue only cases with a reasonable chance of success and conduct the collective proceedings properly. If consumer organisations were not liable for the costs of the proceedings in the event of losing the case, the number of potentially abusive actions filed would likely increase.

The requirement for legal representation also serves as a safeguard against the misuse of collective action proceedings. The Czech legislator assumed that attorneys would discourage their clients from pursuing unfounded or unjustified claims with no chance of success. At the same time, collective claim proceedings are relatively complex and require not only knowledge of consumer law but also an understanding of procedural law and experience with representation before the courts.

Finally, the new legislation also introduced incentives which make collective action proceedings more accessible – ie, the exemption of qualified entities from the payment of any court fees for bringing an action under the collective proceedings act. Without this exemption, claimants would have to pay court fees generally ranging from 1% to 5% of the claimed amount and capped at CZK4,100,000 (approximately EUR165,000).

Risks of Bringing Abusive Collective Actions

Despite some of the safeguards established in the Collective Proceedings Act, the risk of claimants bringing abusive claims still remains. For instance, legal entities seeking registration on the list of qualified entities only need to exist for 12 months, during which they must engage in consumer protection activities, such as educational events, publishing, or conducting consumer goods tests. Although this requirement is based on the availability of the collective pro-

ceedings, such a short time frame was viewed by some as insufficient to prevent claimants from bringing frivolous actions.

Under the new legislation, anyone can relatively easily establish an entity solely for the purpose of enforcing a particular claim, conducting only minimum activities in the field of consumer protection for 12 months in order to become a qualified entity. This issue may already be demonstrated by the fact that some consumer organisations registered or applying for registration in the Czech Republic previously operated in completely different fields. For example, one such organisation had functioned as a nursery and changed its scope of activity in 2023, just a year before submitting the registration.

The potential for abusive actions brought by qualified entities that have only existed for a short time raises concerns that collective actions could be filed by them without the risk of significant costs on the claimants' side or responsibility for the defendants' costs. This is because there is currently no provision in the collective proceedings legislation aiming to secure that claimants will have sufficient funds to cover the defendants' costs of the proceedings in case they do not succeed. Qualified entities are not required to prove having sufficient funds at any stage of the collective proceedings. Therefore, the defendant's claim for costs of the proceedings may not be recoverable. For this reason, it was suggested during the legislative process that consumer organisations should be required to operate for several years (corresponding to the general limitation period).

Another related and long-discussed issue is the claimant's obligation to pay court fees. As already mentioned above, qualified entities are exempt from court fees in both collective action

proceedings and proceedings for the protection of customers' collective interests. While this increases the availability of collective actions for consumer organisations, it also raises the potential for abuse, as the only remaining limitations are the claimant's costs related to conducting the proceedings and the risk of paying the defendant's costs (provided that the claimant has funds or assets at the end of the proceedings). Furthermore, this exemption means that only the defendant (if the collective action is successful) may be ordered to pay court fees at the end of the proceedings.

Finally, a last-minute change to the Collective Proceedings Act extended the definition of consumers (ie, persons whose claims may be exercised in collective action proceedings) to include small businesses with less than ten employees and annual turnover not exceeding CZK50,000,000 (approximately EUR2,000,000). This amendment, contradicting the earlier minimalist transposition approach, may also lead to the abuse of collective action proceedings, as these "consumers" could purchase receivables from larger businesses and then opt into the proceedings. As a result, claims of all kinds of businesses could potentially be registered in the collective action proceedings.

Register of Collective Proceedings

Both the Collective Proceedings Act and the Ancillary Act envisage that all relevant information on collective action proceedings and proceedings on the protection of consumer interests shall be published in a register of representative proceedings. The detailed form of the register, the method of its administration and the scope of publication shall be determined by a decree of the Ministry of Justice.

The register shall be similar to the insolvency register that has existed in the Czech Republic since 2008. However, the relevant decree has not been passed yet, and the register still does not exist in the form anticipated by the new legislation. If a representative action is filed, the information will be published on the Ministry of Justice's website. According to the Ministry, this procedure is outlined in Section 83 of the Collective Proceedings Act, which states that if it is not possible to publish information in the register, the Ministry will provide an alternative platform allowing remote access to the information and documents.

At least the following information about collective action proceedings shall be published in the register:

- case number of the collective proceedings;
- designation of the court competent to hear the collective proceedings;
- identification details of the parties, and, where applicable, of their legal representatives too;
- subject matter of the collective proceedings and the factual basis of the collective action;
- criteria for membership in the group;
- date on which the collective action was filed;
- date on which the collective proceedings on the merits were initiated, – ie, when the collective claim was admitted; and
- other documents that are required to be published in the register of collective proceedings either by law or by a court decision.

After the collective action is declared admissible, the court must publish, inter alia, the collective action, decision on admissibility of the collective action, decision on the merits, as well as termination of the proceedings, or settlement proposal. Parties to the proceedings, especially the claimant, also have information duties. The

claimant is obligated to publish information about the initiation and course of the proceedings, both on its website and by other means determined by the court. The defendant should only be obliged to inform registered group members about the outcome of the proceedings in the event that the representative action is at least partially successful; otherwise, the obligation lies with the claimant. The method, scope, and form of publication shall be determined by the court in such a way that the highest possible level of awareness is ensured for all members of the group, including potential members who do not

reside in the Czech Republic, while also respecting the rights of the defendant – this may include publication in national or local media, radio and television broadcasts, other websites, etc. If possible, the court may require the claimants to notify the members of the group individually.

The Municipal Court in Prague, the High Court in Prague and the Supreme Court will have access to the register of collective proceedings. Other courts (especially district courts) and administrative authorities will be allowed to access the register for consultation purposes only.