
CHAMBERS GLOBAL PRACTICE GUIDES

Collective Redress & Class Actions 2023

Definitive global law guides offering
comparative analysis from top-ranked lawyers

**Czech Republic: Law & Practice
and Trends & Developments**

Robert Němec, Michal Sylla, Viktor Glatz
and Adéla Šmahelová
PRK Partners



CZECH REPUBLIC



Law and Practice

Contributed by:

Robert Němec, Michal Sylla, Viktor Glatz and Adéla Šmahelová
PRK Partners

Contents

1. Policy Development of Collective Redress/Class Action Mechanisms p.5

- 1.1 History and Policy Drivers of the Legislative Regime p.5
- 1.2 Basis for the Legislative Regime, Including Analogous International Laws p.5
- 1.3 Implementation of the EU Collective Redress Regime p.5

2. Current Legal Framework and Mechanisms Applicable p.6

- 2.1 Collective Redress and Class Action Legislation p.6

3. Scope and Definitional Aspects of the Legal Framework p.7

- 3.1 Scope of Areas of Law to Which the Legislation Applies p.7
- 3.2 Definition of Collective Redress/Class Actions p.7

4. Procedure for Bringing Collective Redress/Class Actions p.8

- 4.1 Mechanisms for Bringing Collective Redress/Class Actions p.8
- 4.2 Overview of Procedure p.8
- 4.3 Standing p.9
- 4.4 Class Members, Size and Mechanism (Opt In/Out) p.9
- 4.5 Joinder p.9
- 4.6 Case Management Powers of Courts p.10
- 4.7 Length and Timetable for Proceedings p.10
- 4.8 Mechanisms for Changes to Length/Timetable/Disposal of Proceedings p.10
- 4.9 Funding and Costs p.11
- 4.10 Disclosure and Privilege p.11
- 4.11 Remedies p.11
- 4.12 Settlement and ADR Mechanisms p.12
- 4.13 Judgments and Enforcement of Judgments p.12

5. Legislative Reform p.12

- 5.1 Policy Development p.12
- 5.2 Legislative Reform p.12
- 5.3 Impact of Brexit p.13
- 5.4 Impact of Environmental, Social and Governance (ESG) Issues p.13

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 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 team of lawyers specialising in litigation and dispute resolution who cooperate closely with the firm's other attorneys and tax advisers. This teamwork, combined with an interdisciplinary approach, enables 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.

Authors



Robert Němec is a partner at PRK Partners specialising in commercial litigation and arbitration, banking, M&A, and insolvency and restructuring.

Robert is an arbitrator of the Exchange Court of Arbitration at the Prague Stock Exchange and the Arbitration Court attached to the Economic Chamber and Agricultural Chamber of the Czech Republic. He has also been named an arbitrator of the Vienna International Arbitral Centre (VIAC) and is a member of the International Bar Association. Robert currently serves as President of the Czech Bar Association. He is fluent in Czech and English.



Michal Sylla is an attorney specialising in dispute resolution, general corporate law, banking and finance. Michal joined PRK Partners as an associate in 2009. He was

admitted to the Czech Bar Association as an attorney at law in 2012. He is the bar association's representative in the Collegium of Experts for the execution of judgments of the European Court for Human Rights. He is fluent in Czech, German and English.



Viktor Glatz is an attorney specialising in litigation, arbitration, execution and insolvency proceedings. He is also experienced in corporate law, consumer finance law, and contract and obligation law. He gained international experience as an intern at a leading law firm in London. Viktor joined PRK Partners as a legal student in 2014, and was admitted to the Czech Bar Association as an attorney at law in 2021. Since January 2023, Viktor has been the secretary of the ICC Czech Republic Commission on International Arbitration. Viktor is fluent in Czech and English.



Adéla Šmahelová is an associate specialising in dispute resolution, execution and insolvency proceedings. She obtained an MA from the Faculty of Law of Charles University in Prague in 2023. As part of her studies, she completed a year-long internship at University College Dublin. Adéla joined PRK Partners as a legal student in 2019, and started working as an associate in 2023. She is fluent in Czech and English.

PRK Partners

Jáchymova 26/2
110 00 Prague 1
Czech Republic

Tel: +420 221 430 111
Email: prague@prkpartners.com
Web: www.prkpartners.com

P / R / K

ATTORNEYS AT LAW

1. Policy Development of Collective Redress/Class Action Mechanisms

1.1 History and Policy Drivers of the Legislative Regime

As set out in more detail in other sections, Czech legislators are currently discussing introducing the concept of collective redress into the Czech legal system following, and on the basis of, European 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 RAD). There is currently no uniform and comprehensive regulation of collective redress in the Czech Republic.

There have been some legislative attempts to introduce complex regulation of collective redress in the Czech Republic since 2017, leading to the draft Act on Collective Redress that was presented to Parliament by the Ministry of Justice in 2020. As a consequence of the parliamentary elections in 2021 and the subsequent change in the government, this draft was withdrawn and the current government has presented a new regulation of collective redress – Act on Mass Civil Court Proceeding together with amendments to the Code of Civil Procedure (the “Draft Legislation”). The Draft Legislation takes a slightly more conservative and limited approach to the introduction of this concept into the Czech legal system as opposed to the previously proposed text. According to the Draft Legislation, mass claims will be limited to consumer disputes only and the opt-out system will not be included. However, the proposal has only recently been submitted to the Parliament, and may therefore be subject to numerous amendments during the legislative process.

The general policy driver presented to justify the introduction of collective redress into the Czech legal system is to create a better balance between large corporations on the one hand and consumers on the other 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 proposed introduction of mass claim proceedings in the Czech Republic is the more frequent discussion of the issue on the European level, which ultimately concluded with the adoption of the RAD.

1.2 Basis for the Legislative Regime, Including Analogous International Laws

The Czech Republic currently does not have comprehensive regulation of collective redress; the current regulation consists of fragments of collective action principles dispersed throughout the legal system and is largely based on EU law. Certain elements of collective redress can be seen in the areas of insolvency, unfair competition and copyright law.

1.3 Implementation of the EU Collective Redress Regime

The specific manner of implementation of the EU collective redress regime is currently under discussion by Czech legislators and the final decision on the specific approach has not yet been adopted. However, based on the Draft Legislation, it seems that the Czech Republic will opt for a relatively minimalistic approach to collective redress regulation.

As is apparent from the Draft Legislation, the legislators will adopt a separate new act regu-

lating collective redress and also an amendment to the existing procedural rules. However, it is anticipated that Czech law will primarily incorporate only those provisions from the RAD that are obligatory for implementation. The scope of collective redress regulation is therefore likely to be relatively limited in the Czech Republic.

As already stated above, collective redress shall be limited to disputes between businesses and consumers. With respect to eligible claimants, this will mean that the group seeking collective redress may only consist of consumers. Such claimants (consumers) should only be allowed to be represented by a vetted non-profit organisation, which will be required to demonstrate certain public activity in the area of consumers' protection for at least one year. The source of the funds used to finance mass claim proceedings may be subject to verification by the court. The aim of these restrictions is to prevent speculative and abusive mass claims from being filed.

The Draft Legislation is yet to be discussed by both chambers of the Czech Parliament and may still undergo significant changes before adoption. Since the deadline for implementing the RAD expired on 25 June 2023, it is anticipated that the new act should be adopted no later than the end of 2023. If adopted, the Draft Legislation shall enter into force on the first day of the calendar month following the day of its publication in the Collection of Laws of the Czech Republic.

2. Current Legal Framework and Mechanisms Applicable

2.1 Collective Redress and Class Action Legislation

As already mentioned, the Czech Republic currently does not have a comprehensive legal

framework that would regulate collective redress or class action proceedings as such. Elements and instruments that at least remotely resemble the concept of representative or class action proceedings can, however, be found in Czech law. These include, for example, the possibility of having multiple parties on either side of a dispute (see **4.1 Mechanisms for Bringing Collective Redress/Class Actions**) or in 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.

In the event of unfair competition practices, the Czech Civil Code allows for organisations authorised to defend the interests of competitors or customers to apply to the court for an infringer to be ordered to refrain from behaviour constituting unfair competition or to remedy the defective condition. To note, under Czech law, the term customer includes not only consumers but also entities or individuals who have purchased goods from competitors in connection with their business activities. Such claims (applications) are filed on behalf of all the competitors or customers affected by the infringer's actions; however, they are themselves not parties to the proceedings. Most importantly, this type of representative action cannot be used to claim damages or unjust enrichment. This principle also applies to claims filed by consumer protection organisations under the Czech Consumer Protection Act where the only remedy available is for the court to order the infringer to refrain from illegal activities.

The Czech Copyright Act allows collective administrators of authors' rights (private entities with relatively significant powers resembling those of public authorities) to seek collective

redress against copyright infringers. While the scope of relief sought is not limited like in the above case of unfair competition, the range of persons protected by this regulation is relatively narrow.

The initiation of proceedings in relation to claims for compensation of damage or for adequate consideration in connection with takeover bids or squeeze-outs establishes a *lis pendens* obstacle with respect to claims brought by other claimants against the same defendant concerning the same matter – multiple proceedings initiated by multiple claimants in relation to the same matter cannot run simultaneously. The final decision in the matter is therefore binding on the defendant (the majority shareholder) with respect to all other persons or entities involved (former minority shareholders). Consequently, if, for example, the defendant in such claim is ordered to pay a higher price to the claimant for their shares transferred during a takeover bid or squeeze-out, that defendant will be obliged to pay the same price to every other shareholder that transferred their shares to the defendant.

After the implementation of the RAD, collective redress shall be comprehensively regulated by the Act on Mass Civil Court Proceedings, in conjunction with the existing procedural rules set out in the Code of Civil Procedure. Additional instruments of collective redress shall also be incorporated in the amendment to the Code of Civil Procedure, introducing the mechanism of actions to protect consumers' collective interests. Such instruments will include an action for injunctive relief or declaration of infringement of a legal obligation, and an application for interim measures.

3. Scope and Definitional Aspects of the Legal Framework

3.1 Scope of Areas of Law to Which the Legislation Applies

Currently there is no comprehensive regulation of collective redress or class action proceedings in the Czech Republic.

The limited areas where quasi-collective redress is available under Czech law have been described in other sections and include certain aspects of unfair competition, copyright law or disputes arising in connection with takeover bids or squeeze-outs.

After the RAD is implemented into the Czech legal system, it appears likely that collective redress will be available to consumer claims only.

3.2 Definition of Collective Redress/ Class Actions

There is currently no specific legal regulation of mass claims proceedings or collective redress in the Czech Republic which would provide a definition of the concept under Czech law.

The Draft Legislation defines the mass claim 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, 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.

Mass claim proceedings envisaged by the Draft 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 mass claim proceedings shall be represented by a third party (a certified non-profit organisation) rather than by one of its members.

4. Procedure for Bringing Collective Redress/Class Actions

4.1 Mechanisms for Bringing Collective Redress/Class Actions

Since there is currently no comprehensive regulation of collective redress or class actions in the Czech Republic, it is necessary to proceed through ordinary civil proceedings even in cases where there are multiple claimants. In such proceedings, each of the claimants has the status of a party to the proceedings and has all associated rights and obligations; most importantly, they have the right to make their own decision on each procedural step and the obligations to pay the court fee and to pay the defendant's costs of proceedings should the lawsuit fail. It is, of course, also possible for the group of claimants to appoint a joint legal representative.

A possible alternative to the standard approach to collective redress is for persons who have identical (or very similar) claims against the same defendant to assign their claims to one individual or (the more likely option) to one entity that will then collectively enforce all the assigned claims in court. Such person or entity would pay claimants an agreed portion of the amount awarded (and actually paid) by the defendant in the event of a successful claim. All procedural rights and obligations lie with the single person or entity that files the claim with the court.

The enforcement of assigned claims may, however, be relatively challenging and uncertain as the validity of the assignment may be contested

on various grounds, including the failure to sufficiently and appropriately specify the claims being assigned in the assignment agreement, which may ultimately result in the dismissal of the entire claim by the court. Moreover, not all types of claims may be enforced this way because not all types of rights are assignable (eg, personality rights).

Should the RAD be implemented in line with the Draft Legislation, it will only be possible to seek collective redress through authorised non-profit organisations represented by legal counsel.

4.2 Overview of Procedure

As there is no special regulation under Czech law, it is generally necessary to follow standard civil procedure where either each claimant has the status of an individual party to the proceedings or, if the claimants decide to assign their receivables, the assignee acts as the sole claimant in the proceedings.

In the first case (ie, when all claimants are parties to the proceedings) the action may either be brought jointly, with the possibility of appointing a joint legal representative for all the claimants, or, if there are multiple individual proceedings pending regarding identical or similar claims against the same defendant, the court may, if deemed appropriate, decide to consolidate the multiple proceedings into one.

After the implementation of the RAD, it is expected that the procedure will consist of two phases. In the first phase, the court will assess the admissibility of the mass claim. If the mass claim is found to be admissible, the proceedings will continue into the second phase where the merits of the case will be assessed and ruled upon. If the mass claim is found to be inadmissible (in the first phase of the proceedings), the consumers

concerned will retain the right to exercise their claims in court individually.

4.3 Standing

As the concept of collective redress or class actions is still not generally recognised under Czech law, the standing to bring such actions is very limited.

As regards the concepts remotely resembling class action proceedings mentioned in **2.1 Collective Redress and Class Action Legislation**, the following persons or entities may have standing to bring a claim:

- organisations authorised to defend the rights of customers or competitors in unfair competition claims;
- collective administrators of authors' rights in copyright claims; and
- the assignee of any number of individual claims against the same defendant with the same factual and legal basis.

As part of the implementation of the RAD into Czech law, only independent non-profit organisations shall be able to file mass claims on behalf of consumers.

4.4 Class Members, Size and Mechanism (Opt In/Out)

According to the Draft Legislation, only the opt-in mechanism shall be included. Each individual consumer wanting to participate in the proceedings would therefore have to proactively join the claimant group. This has been negatively received by consumer protection organisations who generally have a preference for the opt-out mechanism and will likely try to persuade the legislators to consider and ultimately include this option in the relevant regulation as well.

The Draft Legislation currently requires the group of customers represented by the claimant to have at least 20 members.

4.5 Joinder

Under currently applicable law, joinder of proceedings pending before the same court is possible if the proceedings concern the same factual basis or the same parties and consent of both claimants. Otherwise, additional claimants may only join proceedings upon the request of the original claimant; this may be granted or rejected by the court depending on the specific circumstances of the case.

In cases where the rights of a group are exercised in court by one person (eg, the assignee of the individual claims), it is possible to extend the claimant pool by adding more individual assigned claims until the end of the first hearing – ie, until the point in the proceedings after which claimants are generally (with certain exceptions) not allowed to submit new facts or evidence. The claimant also needs to make sure that the claims added during the course of the proceedings are not time-barred as the limitation period for each individual claim is suspended only once that particular claim is exercised in court. In other words, filing an action regarding certain identical or similar claims has no effect on the running of the limitation period of other identical or similar claims that may exist that have not yet been filed with the court.

According to the Draft Legislation, joining further group members will only be possible within a period determined by the court. If multiple mass claim proceedings are conducted against the same defendant, the court may potentially consolidate the proceedings.

4.6 Case Management Powers of Courts

The other sections have discussed the option, under currently applicable legislation, to have multiple claims heard individually by a court or together with other identical or similar claims. The determination of whether to allow the consolidation of similar claims or to decide that each (or any) individual claim should be heard and decided in separate proceedings (even though they were originally brought together) is ultimately at the court's discretion. The court's decision on this aspect of the proceedings will usually depend on the similarity of the factual and legal bases of the individual claims – ie, on the likelihood that the same decision on the merits can be reached with respect to all (or most) of the claims. Depending on the outcome of such assessment, the court may also decide to isolate specific claims for separate proceedings while continuing to hear the remaining ones in a single consolidated proceeding.

The Draft Legislation envisages certain elements not typically found in Czech civil proceedings. These include assessments by the court of the admissibility of mass claim proceedings, the preparation by the court of plans for such proceedings, 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 should not significantly differ from those already recognised by the Code of Civil Procedure.

4.7 Length and Timetable for Proceedings

It is impossible to provide a meaningful estimate of the length or a standard timetable of court

proceedings as these can vary greatly depending on the specific circumstances of the case. Generally, the average length of 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. However, considering the possibility of appeals in a generally three-instance court system, some cases can take more than ten years to reach final judgment.

At this stage, it is not possible to provide even an educated guess as to the expected length of mass claim proceedings once the RAD is implemented into Czech law. According to the Draft Legislation, a decision on admissibility shall be issued within two months from the initiation of the proceedings and the deadline for opt-in shall not be longer than four months. This means that six months may pass before the court proceeds to assess the merits of a mass claim.

Considering that the Draft Legislation envisages exclusive jurisdiction of a single court (the Municipal Court in Prague), the actual length of mass claim proceedings may also largely depend on the number of pending proceedings and the workload of judges assigned to decide on mass claims. It was established that only two judges at this particular court would be assigned to conduct mass claim proceedings.

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

At the moment, no legal framework governing any procedural mechanisms allowing for changes to the length, timetabling or disposal of proceedings is available for collective redress proceedings or mass claim proceedings.

The Draft Legislation requires the court to prepare a plan of mass claim proceedings, which will contain times of the upcoming court hearings and may also provide for a basic timeframe of the proceedings. 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.

4.9 Funding and Costs

The possibility of external funding for mass claim proceedings is generally accepted by the Draft Legislation with certain restrictions to prevent conflicts of interest. The court should also be able to examine and verify the origin of funds used to finance mass claim proceedings.

Under the Draft Legislation, the claimants shall be completely exempted from the obligation to pay court fees which will significantly reduce costs required to bring a mass claim. As regards the compensation of the costs of proceedings, the current rules set out in the Code of Civil Procedure – generally based on the “winner takes all” principle – should also apply to mass claim proceedings.

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.

However, the relatively recently adopted Act on Compensation of Damage in the Area of Competition, which implemented Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provi-

sions of the member states and of the European Union, has introduced the concept of pre-trial discovery into Czech law, though again in limited circumstances. Prior to the commencement of proceedings concerning damage caused by the restriction of competition, the court will, upon the claimant’s request, impose an obligation on the defendant (or a third party) to make documents which may help ascertain the true state of affairs available to the claimant, provided the claimant has established with certainty, on the basis of available facts and information, the plausibility of the existence of a right to compensation of loss caused by the restriction of competition.

The Code of Civil Procedure also 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 present such evidence to the court. If the defendant refuses to do so or fails to prove to the court that such evidence is in fact not in their 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, though such cases are less common.

The procedure of evidence disclosure in mass claim proceedings shall essentially be governed by the abovementioned procedural rules.

4.11 Remedies

As mentioned in **2.1 Collective Redress and Class Action Legislation**, the current legislation regulating the limited instances of collective redress under Czech law only provides for lim-

ited remedies, including injunctive relief in unfair competition or consumer protection actions. However, the Draft Legislation shall bring new remedies, most importantly damages claims.

4.12 Settlement and ADR Mechanisms

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 shall also apply to mass proceedings under the Draft Legislation if adopted.

Under the currently applicable legislation, 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. However, this option may be limited in respect of collective redress in order to protect members of the claimant group. The Draft Legislation envisages that any settlement reached after the initiation of mass claim proceedings will need to be approved by the court, and that the court will not admit the withdrawal of the mass claim if it is unfair to the interests of the registered group members.

4.13 Judgments and Enforcement of Judgments

The nature of judgments to be issued in the envisaged collective redress legislation should be 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. Considering the current proposal to only adopt the opt-in regime, judgments are not expected to be binding on parties who did not join the claimant group. At the same time, a judgment issued in mass claim

proceedings may be of relevance for the assessment of similar claims raised individually.

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. The Draft Legislation also envisages fines that may be imposed on a defendant who fails to comply with the verdict of a judgment issued in mass claim proceedings (ie, if a non-financial obligation is imposed by the judgment).

Judgments issued in cases of collective protection against unfair competition (see **2.1 Collective Redress and Class Action Legislation**) 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.

5. Legislative Reform

5.1 Policy Development

Currently, the legislative process leading up to the implementation of the RAD and the introduction of collective redress into the Czech legal system is edging closer to its final stages as it should be discussed and approved by the Parliament during Q4 2023.

5.2 Legislative Reform

The reform currently being considered consists of a separate act and additional amendments to the current procedural rules that will implement the RAD and consequently introduce compre-

hensive regulation of collective redress in consumer disputes in the Czech Republic.

5.3 Impact of Brexit

Brexit has had no impact on collective redress or on the implementation of the RAD into Czech legislation.

5.4 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:

Robert Němec, Michal Sylla, Viktor Glatz and Adéla Šmahelová

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 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 team of lawyers specialising in litigation and dispute resolution who cooperate closely with the firm's other attorneys and tax advisers. This teamwork, combined with an interdisciplinary approach, enables 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 AFI, LMA, CVCA, ITECHLAW, INTA and Energy Law Group.

Authors



Robert Němec is a partner at PRK Partners specialising in commercial litigation and arbitration, banking, M&A, and insolvency and restructuring.

Robert is an arbitrator of the

Exchange Court of Arbitration at the Prague Stock Exchange and the Arbitration Court attached to the Economic Chamber and Agricultural Chamber of the Czech Republic. He has also been named an arbitrator of the Vienna International Arbitral Centre (VIAC) and is a member of the International Bar Association. Robert currently serves as President of the Czech Bar Association. He is fluent in Czech and English.

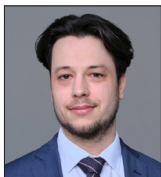


Michal Sylla is an attorney specialising in dispute resolution, general corporate law, banking and finance. Michal joined PRK Partners as an associate in 2009. He was

admitted to the Czech Bar Association as an attorney at law in 2012. He is the bar association's representative in the Collegium of Experts for the execution of judgments of the European Court for Human Rights. He is fluent in Czech, German and English.

CZECH REPUBLIC TRENDS AND DEVELOPMENTS

Contributed by: Robert Němec, Michal Sylla, Viktor Glatz and Adéla Šmahelová, **PRK Partners**



Viktor Glatz is an attorney specialising in litigation, arbitration, execution and insolvency proceedings. He is also experienced in corporate law, consumer finance law, and contract and obligation law. He gained international experience as an intern at a leading law firm in London. Viktor joined PRK Partners as a legal student in 2014, and was admitted to the Czech Bar Association as an attorney at law in 2021. Since January 2023, Viktor has been the secretary of the ICC Czech Republic Commission on International Arbitration. Viktor is fluent in Czech and English.



Adéla Šmahelová is an associate specialising in dispute resolution, execution and insolvency proceedings. She obtained an MA from the Faculty of Law of Charles University in Prague in 2023. As part of her studies, she completed a year-long internship at University College Dublin. Adéla joined PRK Partners as a legal student in 2019, and started working as an associate in 2023. She is fluent in Czech and English.

PRK Partners

Jáchymova 26/2
110 00 Prague 1
Czech Republic

Tel: +420 221 430 111
Email: prague@prkpartners.com
Web: www.prkpartners.com

P / R / K

ATTORNEYS AT LAW

Implementation of the Representative Actions Directive in the Czech Republic

Although Czech law does not currently provide for the general possibility to assert a collective claim in a manner other than through standard court proceedings, it is still possible to find certain elements of collective protection of rights in the Czech legal system. However, these are only applicable to a limited range of claimants or to relatively specific matters.

In the case of a joint claim for payment made by a group of claimants, the only option formally recognised by Czech law is for the group to file the claim jointly. Each of the claimants has the status of an individual party to the dispute and therefore also has all the rights and obligations that come with that role. Alternatively, the court has the discretion to consolidate multiple proceedings into one, primarily for procedural efficiency. However, this approach does not resolve the fundamental issue that each claimant remains an individual party to the case. This can complicate procedural arrangements and may even jeopardise the effective enforcement of the claim.

Implementation Status

Past and current Czech governments have explored introducing class or representative actions into the Czech legal system, together with relevant comprehensive and complex legislation. The former government presented a proposal for a separate new act on class actions. In this draft, a more comprehensive approach to the issue of class actions was taken, as it provided the possibility of filing a class action 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

class actions were not significantly limited under this proposal. However, the proposal failed to gain support from both the professional community and the lower chamber of the Czech Parliament, and was sent back to the government for redrafting. Due to the change in governments at the end of 2021, this legislative proposal was no longer pursued.

The current government, appointed in December 2021, initially took a different approach to the issue of collective redress, proposing only to amend the current Code of Civil Procedure to include certain class action instruments and elements of collective redress as required by the European 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 RAD). However, in 2022, a shift occurred, and the government put forward a new proposal: a draft Act on Mass Proceedings. Under the current proposal, mass claim proceedings shall be governed by a separate act – the Act on Mass Civil Court Proceedings – in conjunction with existing procedural rules set out in the Code of Civil Procedure, which shall also be slightly amended (the “Draft Legislation”).

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 an authorised non-profit entity, the term “class action” is not apt with respect to the Czech Draft Legislation. As such, an action under the proposed Act on Mass Civil Court Proceedings is referred to herein as a “mass claim”.

Scope of the Mass Claim Proceedings

According to the Draft Legislation, mass claim proceedings should only be available in con-

sumer disputes. A group member – ie, a consumer whose individual claim has a similar basis as the claims of other concerned consumers, could either claim payment (or other performance) or the declaration of the existence of a legal relationship or right. The Draft Legislation also provides for the possibility to apply for an interim measure, which would be governed by the Code of Civil Procedure. The government currently foresees the introduction of an opt-in regime only, meaning that in order to participate in the proceedings, every individual consumer will have to actively register their claim.

The Draft Legislation establishes exclusive jurisdiction of the Municipal Court in Prague, where all mass claims should be resolved. The mass claim proceedings shall consist of two stages, and the claimant will need to be legally represented throughout the entire procedure.

Admissibility of a Mass Claim

In the first stage of the proceedings, the court is expected to assess the admissibility of the mass claim. In order to be found admissible, the mass claim must be filed by a non-profit organisation registered in the list of qualified entities administered by the Ministry of Industry and Trade, which meets the requirements based on Article 4 of the RAD aiming to reduce the risk that mass claim proceedings will be abused. One of these requirements provides that the qualified entity has demonstrated at least 12 months of actual public activity in the area of consumer protection. While preparing the Draft Legislation, the government also considered extending the required duration of such activity to five years. The required duration of public activity could thus still be subject to further discussions in the Parliament. It is debatable whether the currently contemplated preventive measures against potential abuse of mass claim proceedings will

be sufficient. For example, the Draft Legislation proposes to completely exempt the claimant from the obligation to pay court fees in order to make mass claim proceedings more accessible. At the same time, the Draft Legislation does not in any way ensure that the claimant will be able to pay the costs of the proceedings awarded to the defendant should the claim be dismissed.

There are further proposed requirements; for example, that the claimant should have a legitimate interest in bringing a mass claim, act in the interests of the group and avoid conflicts of interest. Under the Draft Legislation, the court will have the authority to review the claimant's sources of fundings at any time during the proceedings. The person providing the funds must, in particular, be independent of the defendant and not compete with the defendant in the same market.

Another condition of admissibility of a mass claim will be for the group of consumers to consist of at least 20 members whose claims share a common factual basis. Nevertheless, the court shall be able to rule on the admissibility of mass claim proceedings even before 20 members will have registered their claims (opted in).

Under the Draft Legislation, the claimant's proposed remuneration in the event of success shall be set out in the action. The amount shall be reasonable and not exceed 5% of the awarded amount. This is also likely to be a subject of further discussion, as the government also initially considered setting the upper limit of the claimant's remuneration at 25% of the awarded amount, allowing the court the latitude to adjust if needed.

If the mass claim meets the aforementioned conditions, the court shall declare its admissibility

no later than two months from the initiation of proceedings. If the claimant fails to meet any of these conditions, the proceedings will be terminated. The defendant shall be entitled to file a statement concerning admissibility before this decision is issued. However, the Draft Legislation makes it possible to contest conditions of admissibility at any point during the proceedings. The proceedings may therefore be terminated for failure to meet the conditions of admissibility even after the action has been declared admissible. It shall be possible to file an appeal against the decision on admissibility of the mass claim proceedings.

In the decision on admissibility, the Draft Legislation requires the court to specify the subject matter of the proceedings, the factual basis of the mass claim, the amount of the claimant's remuneration (if any) and method of publishing information, as well as to define the group and membership criteria, and set a deadline in which group members may opt in (two to four months).

Effects of Declaring a Mass Claim Admissible

Under the Draft Legislation, pending mass claim proceedings should not constitute a *lis pendens* obstacle, which means other claimants will not be prevented from filing a parallel mass claim against the same defendant. This issue will likely be intensely discussed during the upcoming stages of the legislative process, as the possibility of simultaneously conducting multiple class proceedings was only added to the legislative proposal shortly before the final Draft Legislation was published by the government.

Similarly, a group member who does not opt in will be able to initiate a parallel individual proceeding against the same defendant as well. In the event that a group member already initiated individual proceedings before the mass claim

proceedings were initiated, and then decided to opt in to the mass claim proceedings, the individual proceedings shall be suspended for the duration of the mass claim proceedings.

Initiation of the Mass Claim Proceedings on the Merits

The second stage should involve the mass claim proceedings on the merits. After the mass claim is declared admissible, the claimant will be obliged to publish a notice. In the notice, group members should be informed about the pending mass claim, and a deadline for registration of group members should be set. The claimant will then be required to create a list of registered group members. According to the Draft Legislation, the list must include at least 20 registered group members; otherwise, the court will terminate the proceedings.

Rights of the Registered Group Members

For efficiency purposes, the Draft Legislation restricts the procedural rights of registered group members. Strictly speaking, registered group members will not be parties to the proceedings and they will only be able to make statements in the proceedings through the claimant. However, the court may also grant them the possibility to make oral statements during a hearing predetermined by the court. At the same time, as the registration may be withdrawn only within the deadline for submitting the registration, registered group members will have limited ability to withdraw their registration to the mass claim 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 then suing the defendant individually. Registered group members should have the right to be informed about the course of the proceedings and to contest certain procedural

acts made by the parties, such as a settlement proposal or withdrawal of the mass claim.

Disclosure of Evidence

One of the widely discussed issues of the Draft Legislation has been the extent of implementation concerning the requirement set out in Article 18 of the RAD, which allows the court to order the party to the proceedings to disclose evidence indicated by a claimant in the proceedings. The original proposal adopted more comprehensive principles of disclosure, closer to the concept of discovery as recognised by common law jurisdictions. The Draft Legislation essentially follows the procedure already recognised by Czech law 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 present a broader range of evidence that is only specified on a general basis. If the party who has been ordered to present particular evidence fails to do so without a justifiable reason, the disputed facts alleged by the other party will be deemed proven. The duty to disclose evidence shall apply both to the defendant and the claimant, though it will likely concern mostly defendants. The duty to disclose evidence shall not apply if the disclosure is incompatible with a statutory obligation of confidentiality.

Plan of Mass Claim Proceedings

Another specific aspect of the Draft Legislation is the introduction of the plan of mass claim proceedings which shall 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, mass claim proceedings are expected to

be more predictable and organised compared to standard civil court proceedings.

Limitation Periods

Under the Draft Legislation, limitation periods pertaining to claims of individual group members shall be suspended upon their registration in the mass claim proceedings, with retroactive effect from the date when the mass claim was filed. This provision offers a safeguard to those registered group members whose limitation periods might have expired between the mass claim'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 Draft Legislation, 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 the date when the relevant court decision became final. The same will apply in relation to claims of all registered group members in the event that the proceedings are terminated or the mass claim is rejected without a decision on the merits of the claim.

Conclusion of Mass Claim Proceedings

The Draft Legislation provides several ways to conclude the mass claim proceedings. In the event that the action has defects, 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 mass claim fail to meet the conditions of admissibility, or should the claimant lose its legal capacity (and not have a legal successor) or withdraw the mass claim, the court will terminate the proceedings. Otherwise, the court will decide on the merits by a judgment either awarding the relief sought or dismissing the claim. The Draft Legislation also stipulates an amicable resolution in the form of a settlement agreement approved by the court.

Prior to the assessment of the proposed settlement and its potential approval, registered group members shall be allowed to file objections against the proposed settlement. If a registered group objected to the proposed agreement and the court approved it anyway, the Draft Legislation proposes to allow that group member to withdraw their registration and pursue their claims individually. This is the only proposed exception to the general rule that a registered group member cannot withdraw their registration after the deadline for registration expires.

Publishing Information About Mass Claim Proceedings

The Draft Legislation proposes that mass claim proceedings should be more transparent than typical civil court proceedings. As part of this push for transparency, the Draft Legislation proposes the creation of a class proceedings register, detailing basic information about all pending mass claim proceedings. The Draft Legislation also imposes information duties on the parties to the proceedings, especially the claimant. The claimant should, for instance, publish information about the initiation and course of the proceedings, both on its website as well as 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 mass claim is at least partially successful or if a settlement is approved by the court.

Fines for Failure to Comply with Draft Legislation

Should the parties fail to fulfil certain duties laid down in the Draft Legislation (eg, information duties or the duty to present particular evidence), the court shall impose fines of up to CZK5,000,000 (EUR200,000).

Additional Legislative Amendments

The Draft Legislation also proposes to amend the Code of Civil Procedure by incorporating the mechanism of actions to protect consumers' collective interests. Such actions will include an action for injunctive relief or declaration of infringement of a legal obligation, as set out in Article 8 of the RAD. Some elements of the proceedings will be the same as those in mass claim proceedings (eg, the qualified entity, information duties, fines or a public register of proceedings). However, unlike mass claim proceedings, the claimant should act on behalf of an indefinite group of consumers, who are not parties to the proceedings and do not have any procedural rights. At the same time, initiating proceedings for the protection of consumers' collective interests will represent a *lis pendens* obstacle in relation to any mass claim 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 mass claim proceedings that were initiated earlier. This type of action does not represent a completely new concept, as representative actions for injunctive relief prohibiting further infringement in matters of consumer rights protection are already recognised by Czech law.

Application of Draft Legislation

The provisions of the Draft Legislation will only apply to newly filed actions, while ongoing proceedings will be completed under the existing laws and regulations.

It should be borne in mind that the Draft Legislation is still to be discussed in the Parliament. Therefore, it cannot be ruled out that the version adopted by the Parliament after additional amendments will significantly differ from the Draft Legislation. Information available at this stage is therefore still limited and, to an extent, uncertain.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com