



CZECH REPUBLIC DEVELOPMENTS 1999/2000

FOREIGN RESIDENTS

Effective from January 1, 2000 a new Act regulating the stay of foreigners on the territory of the Czech Republic was adopted. This Act abolishes the previously used regime of “long term residence permits” and replaced this by a “visa for stay for a period of more than 90 days”(Visa). The Act introduces a number of new conditions when applying for obtaining this Visa and has generally caused a more than a bit of confusion among the relevant authorities due to its’ rather unclear wording.

We see the fact that an application for the Visa for stay for a period of more than 90 days in the Czech Republic must be now filed with the appropriate Embassy of the Czech Republic abroad as an important point. It is no longer possible to file an application for residence with the Foreign Police in the Czech Republic. Other requirements for this kind of Visa are, for example, valid health insurance covering the period of stay in the Czech Republic, proof of financial resources for the period of stay in the amount of CZK 110.000, - (approximately 3.000, -USD).

Presently, the government is considering amendment of this Act due to numerous complaints of other nations as to the “Kafkaesque” requirements imposed by the Act.

TRADE RELATED LEGISLATION

This area of law is traditionally regulated by the Trade Licensing Act that determines the conditions for carrying on a trade in this country by Czech citizens, legal entities and foreigners. This law covers most of business activities, but does not cover certain specific professional activities such as surgeons, lawyers, auditors, etc. These are not regarded as trades. The Trade Licensing Act has been substantially changed in 1999 by the Act no. 356/1999 Coll. The main changes affect the following areas.

- A number of trades which were originally included among so-called „notifiable trades“ i.e., trades that can be carried out simply on the basis of a notification filed the appropriate Trade Licensing Office provided that the stipulated conditions have been met, have now been included among so-called „licensed trades“ which can be engaged in only after the relevant trade license has been acquired. The main difference between a licensed trade and a notifiable trade is that in case of a licensed trade it is much more time consuming and administratively complicated to obtain a license. Also in case of a „licensed“ trade there is no legal entitlement to acquire a license from the state even if all conditions required by the law are met by the applicant. This will result in wider state

control over trades in the Czech Republic, but also will result in administrative difficulties during the time consuming procedure of obtaining the license.

- Another important amendment will also affect carrying out of business of foreigners in the Czech Republic. It is related to the so-called „responsible person“ for the trade license i.e., a Czech speaking individual that every company, branch office or foreign individual must appoint in order to obtain a trade license. Under the latest amendment, the company, branch office or foreign individual must now employ such person. Considering the very rigid labour law in the Czech Republic, this will lead to additional burdens on the trade license holder, such as the necessity to pay such person at least a minimum wage, social security and health benefits.

LEGISLATION CONCERNING IMPORT, EXPORT AND RE-EXPORT OF GOODS INFRINGING CERTAIN INTELLECTUAL PROPERTY RIGHTS

It is still the case that the majority of counterfeit products are imported to the Czech Republic from abroad. Therefore, they are, in the most cases, declared by the importers at one of the Czech Customs Offices. Unfortunately, under the old laws, the Customs Authorities had not been provided with a strong position to act in this area.

This situation is expected to change for the better due to the recent implementation of Act No. 191/1999 Coll., on Measures Concerning Entry, Export and Re-export of Goods Infringing Certain Intellectual property Rights. This new Customs law, in particular, more specifically regulates the issue of seizure of counterfeits by Customs Authorities in the Czech Republic. The law is effective starting December 1, 1999 and authorises the Customs authorities to order destruction of goods which have been declared by a court as counterfeits, as well as to deal with offences and torts arising from violation of this Act and to impose sanctions for such offences and torts.

On the basis of this new law, any owner of a trademark who suspects that its rights may be infringed in the Czech Republic may request the Customs Authorities to take measures preventing infringement if its trademark rights. These measures consist mainly of monitoring by the individual Customs Offices of the appearance of counterfeit products involving the applicants' trademark and on the basis of this monitoring subsequent preliminary seizure of counterfeits found by the Customs Authorities.

FREE ACCESS TO INFORMATION ACT

For the first time after the change of the political environment in 1989, the Czech Republic has adopted a law providing a guarantee of access to governmental information for its citizens. All state organs and other decision-making bodies in the sphere of state administration are covered by the mentioned Act. These entities are bound by the duty to reveal or to enable access to all information requested by any citizen within a reasonable time period (15 – 30 days), subject to conditions and restrictions of the Act.

Restrictions mainly apply to state, business and other secrets and also to the protection of individual constitutional rights.

An important point is the inclusion of the possibility to seek a court order in case of refusal of the provision of requested information. Such refusal must be issued in the form of an administrative decision and, as such, could be appealed to a civil court.

Implementation of this Act has resulted in an enormous amount of enquiries within the weeks following its' enactment, which state bodies have not been able to cope with from a technical point of view.

OMBUDSMAN ACT

The Office of Ombudsman has been created in order to protect citizens against certain acts of authorities and other institutions named in the Act in the event such activity is in conflict with the law; if it does not correspond with principles of a democratic state and a good government; or in case of inactivity.

The activities of the Ombudsman are somewhat restricted and do not cover, among others, the Parliament, the President and government, the supreme supervisory authority, the Czech intelligence service, Czech police investigators, public prosecutors or courts.

The Ombudsman acts on the basis of a request of a physical or legal person addressed to him; on the basis of a request addressed to a member of Parliament or to a Senator which would be passed on the Ombudsman; on the basis of a request addressed to any chamber of Parliament which would be passed on the Ombudsman; or ex officio.

On request of the Ombudsman, state authorities are obliged provide information and explanation; provide files and other documents; advise in writing of their standpoint regarding factual and legal questions; execute suggested evidence; and to supervise that the relevant state authorities are executing the suggestions of the Ombudsman.

The Ombudsman is entitled to propose reopening of proceedings in order to revise decisions; to execute measures to abolish inactivity of state organs; to initiate disciplinary or similar proceedings; to initiate criminal prosecution for crimes, or other administrative delinquency. The first Czech Ombudsman will be elected by the end of this year.