

Report from a Conference ‘Collective court proceedings’ on the Faculty of Law in Prague

On 12 January 2023, the Department of Civil Law of the Faculty of Law of Charles University held a conference dedicated to the topic of Collective Dispute Resolution. The conference took place at the Law Faculty in Prague with financial support from the Czech law firm ROWAN LEGAL.

The conference was organized just time, as the Czech Ministry of Justice submitted the draft Act on Collective Proceedings into legislative process in December 2022 (hereinafter referred to as ‘the Proposal’). The Proposal should implement the requirements stemming from the 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 (hereinafter referred to as ‘the Representative Actions Directive’). The ideal timing of the conference was further strengthened by the fact that the transposition deadline for the implementation of the above-mentioned Directive expired at the end of Year 2022.

The conference was balanced both in terms of selected topics, as well as in terms of choice of speakers. The conference featured 16 speakers from various legal professions, ranging from academics to attorneys-at-law or judges, and one speaker represented also the Czech Ministry of Justice. The conference was intense and aimed at a thorough discussion of the collective actions. This may be illustrated by the fact, that the conference started in the early morning and ended around 6 o’clock in the afternoon.

The conference was divided into two main parts – a theoretical part in the morning and a practical part in the afternoon. The conference was closed by very interesting panel discussion with representatives of stakeholders, including the business and consumer community.

Pavel Kolesár, external lecturer of the Department of Civil Law of the Faculty of Law of the Charles University, moderated the opening session. Nevertheless, he was not the first one to take the floor. The opening speech at the conference was given by David Elischer, Head of the Department of Civil Law of the Faculty of Law of Charles University.

The first contribution was presented by Michal Franěk, the Chief Director of the Legislative Section of the Ministry of Justice. In his speech, M. Franěk summarized the legislative developments, including two previous unsuccessful attempts to introduce class actions into the legal system of the Czech Republic, and further elaborated on the basic elements of the current Proposal. The next speech was given by Petr Smolík from the hosting Faculty of Law. He dedicated his paper to the topic ‘Collective actions: minimalism vs. maximalism in legislation’. Mr. Smolík compared the current proposal with its previous versions, also taking into account the requirements of the Representative Actions Directive. The last speaker of the opening panel was Miroslav Sedláček, colleague of Mr. Smolík from the Department of Civil Law of the Faculty of Law of Charles University. M. Sedláček presented a paper on ‘Procedural specifics of collective proceedings’ where he focused his attention on the procedure in collective proceedings and in particular on the differences between the collective procedure and standard procedure pursuant to Act No. 99/1963 Coll., the Code of Civil Procedure.

The opening session was followed by the second morning session which was moderated by Dita Frintová from the Faculty of Law, Charles University. Klára Hamuláková from the Faculty of Law of Palacky University was the first to take the floor. She raised many interesting questions related to the rights and obligations of class members during the collective proceedings. Consequently, she gave the floor to Anežka Janoušková from the Department of Civil Law at the Faculty of Law of Charles University, who followed her with a very close topic of consumer involvement in the collective proceedings. In particular, A. Janoušková focused on the opt-in or opt-out models of collective action and which of them is better placed to provide for an efficient solution. The last speech was delivered by Tomáš Štreleček who presented his findings on the rather polarizing topic ‘Financing of collective actions’. Štreleček emphasized that the question of adequate funding is very important to ensure the future effectiveness of the Czech legal solution.

After the lunchbreak, the floor was reserved for legal practitioners. At the outset, lawyers were given the opportunity to express their opinion. Firstly, moderator Renáta Šínová from the Olomouc Faculty of Law gave the floor to attorney-at-law Lukáš Duffek from ROWAN LEGAL who focused his contribution on the issue of the plaintiff and defendant in collective proceedings. He discussed the topic not only in terms of the development of the Czech Proposal, but also briefly from a comparative perspective. In a follow-up presentation, Petr Záborský (ROWAN LEGAL) focused on the topic of abuse of class actions. He elaborated on the potential risks of collective proceedings and assessed the measures contained in the Proposal to prevent such risks. He concluded that the Proposal contains sufficient safeguards against potential misuse of class actions. Last to speak was Jan Balarin, attorney-at-law and associate of the Centre for Comparative Law at the Faculty of Law, Charles University. Balarin dedicated his paper to the comparison of the Proposal with the European Model Rules of Civil Procedure by ELI/UNIDROIT.

After a short break, the moderator of the next session, Petr Smolík, gave the floor to attorney-at-law Kateřina Šveřepová who tried to analyse certain aspects of collective proceedings in European context. She provided for interesting information on the transposition of the Representative Actions Directive in selected EU countries. Her speech was followed by a presentation by Miroslav Kalný, the Czech judge, who named his paper 'On managing the multiplicity of subjects and the effectiveness of collective proceedings'. Judge Kalný is specialized in insolvency proceedings which was evident from his assessment of the submitted Proposal since he suggested that the legislator should get more inspiration from the Czech Insolvency Act (Law No. 182/2006 Coll.).

The last part of the conference moderated by Michal Nulíček was devoted to a panel discussion between the relevant stakeholders, i.e., business representatives and consumer organizations. The business sphere was represented by Jan Matoušek, the Executive Director of the Czech Association of Insurance Companies, and Filip Hanzlík, the Deputy Executive Director of the Czech Banking Association. Both of them warned against the impact of the Proposal on entrepreneurs and called for the legislation to contain sufficient safeguards against abuse of collective actions. Petr Šmelhaus, the Head of the Legal Department of the consumer non-profit organisation dTest, o. p. s., spoke on behalf of consumer associations. Šmelhaus stressed out that for a functional collective mechanism it is necessary to ensure adequate funding of non-profit entities. Subsequently, he expressed doubts whether the current form of the submitted proposal is sufficient in this respect. The discussion also included the opinion of representative of the Czech Parliament, Member of the Chamber of Deputies, Patrik Nacher, who criticised that the legislative process is slow. In his point of view, the executive branch should speed it up.

This final panel provided a unique platform for exchange of views among the concerned stakeholders and it was interesting how it also provoked a very intense discussion. This final debate only proved that the topic of collective actions is very attractive, but at the same time, that it divides academics as well as legal practitioners and stakeholders.

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