



CZECH REPUBLIC

JUDGEMENT**IN THE NAME OF THE REPUBLIC**

The Municipal Court in Prague, as the appellate court, decided in a panel composed of the presiding judge JUDr. Irena Saralievová and judges JUDr. Renata Hertlová and JUDr. Andrea Borovičková, Ph.D., in the legal matter of

Plaintiff: **Tomáš Zach**, born March 2, 1978,
residing at Kolín V, Raisova 57,
represented by Attorney JUDr. Dan Dvořáček,
with a registered address at AK Prague 1, Opletalova 37,
against

Defendant: **The Czech Republic - Ministry of Justice**, ID No. 00025429,
registered address at Prague 2, Vyšehradská 16,
acting through the Office for Representation of the State in Property Matters,
registered address at Prague 2, Rašínovo nábřeží 390/42,

regarding the amount of CZK 2,533,390.68 with accessories,
regarding the appeal of the defendant against the judgment of the District Court for Prague 2 dated May 6, 2022, file No. 20 C 72/2019-358

hereby decides:

I. The judgment of the first instance court is upheld in the favorable provisions regarding the substantive matter.

II. The ruling on the reimbursement of costs of the proceedings is amended such that the defendant is obliged to pay the plaintiff the amount of 160,897.20 CZK in reimbursement of costs of the proceedings within three days from the date of legal force of the judgment, to the account of the attorney JUDr. Dan Dvořáček.

III. The defendant is obliged to pay the plaintiff the amount of 45,399.20 CZK in reimbursement of costs of the appellate proceedings within three days from the date of legal force of the judgment, to the account of the attorney JUDr. Dan Dvořáček.

The accuracy of the original text is confirmed by Monika Vrzalová.

Reasoning:

1. In the contested judgment, the first instance court ruled that the defendant is obliged to pay the plaintiff 2,489,547.70 CZK along with accompanying amounts, rejected the claim for 43,842.90 CZK, and awarded the plaintiff reimbursement of costs of the proceedings in the amount of 514,072 CZK. Following a partial withdrawal of the claim in the amount of 4,465,223.62 CZK, the plaintiff sought payment of 2,533,390.68 CZK from the defendant on the grounds of damages pursuant to Act No. 82/1998 Coll., on liability for damage caused by the exercise of public authority through decisions or incorrect official procedures (the compensation law). The plaintiff inferred the defendant's liability for the incurred property damage from the decision of the Regional Court in Prague in the insolvency proceedings under file No. KSPH 39 INS 15271/2011 regarding the debtor Vitamína-družstvo ovocnářů Kutná Hora, ID No. 47048247, dated March 12, 2013, file No. KSPH 39 INS 15271/2011-B-70, which mandated this newly appointed insolvency administrator, JUDr. Michal Krejčí, to continue monetizing the debtor's assets through an auction as originally arranged by the previous administrator with the auction house RAK CZ a.s. In this auction held on March 13, 2013, the plaintiff acquired a collection of real estate and movable property from the debtor for the price of 3,860,000 CZK; however, this auction was subsequently declared invalid by the judgment of the District Court for Prague 1 on October 17, 2016, file No. 21 C 20/2014-177. To cover the auction price, the plaintiff entered into a loan agreement with Dioptra, a.s. Turnov on April 9, 2013, for the amount of 4,000,000 CZK with an interest rate of 1.5% per month, which he committed to repay by January 31, 2014, intending to do so from the proceeds from the sale of the auctioned items based on a future purchase agreement concluded on March 6, 2013, with Obila a.s. The damage incurred derived from the stated decision of the Regional Court in Prague consists of interest on the loan, voluntarily paid to the creditor from February 1, 2014, in the amount of 1,500,000 CZK, collected in enforcement proceedings in the amount of 826,444.38 CZK, and enforcement costs amounting to 206,946.30 CZK. The defendant did not dispute the factual basis of the plaintiff's claim or its preliminary examination based on the request submitted on April 23, 2019; however, the plaintiff's claim was rejected due to the non-existence of an unlawful decision or incorrect official procedure under the compensation law.
2. By the judgment dated November 30, 2020, file No. 20 C 72/2019-262, the first instance court discontinued the proceedings regarding the amount of 4,465,223.62 CZK due to the withdrawal of the claim, rejected the claim for the obligation of the defendant to pay the plaintiff the amount of 2,533,390.68 CZK, and imposed on the plaintiff the obligation to reimburse the defendant for the costs of the proceedings. The court stated that the aforementioned decision of the Regional Court in Prague had not been annulled due to its unlawfulness pursuant to Section 8(1) of the compensation law, and therefore there is no legal basis for granting compensation to the plaintiff (cf. decision of the Supreme Court of the Czech Republic, file No. 28 Cdo 2025/2009). The court rejected the analogy drawn by the plaintiff between the present situation and the claim for damages based on a decision to initiate criminal prosecution that did not conclude with a final conviction, pointing out that such a claim is specific and its decisive factor is the outcome of the criminal proceedings, where the legality of the actions of the authorities involved is not assessed. The court added that in the proceedings concerning the invalidity of the auction, the court did not examine the legality of the decision rendered on March 12, 2013, in the insolvency proceedings, and it cannot be inferred that this decision was annulled due to the declaration of the auction's invalidity. The procedure of the insolvency court, as alleged by the plaintiff, does not constitute an incorrect official procedure within the meaning of Section 13(1) of the compensation law, as it led to the issuance of a decision and any potential negative consequence (alleged damage) thus arose based on this decision (cf. decision of the Supreme Court of the Czech Republic, file No. 28 Cdo 966/2008), which was not found to be unlawful. The

first instance court further pointed out that the plaintiff may seek the return of the auction price from the insolvency administrator, who has it in custody. The court emphasized that a claim for damages against the state can only be successfully asserted when the injured party cannot satisfy their claim against the debtor who is obliged to perform (cf. decisions of the Supreme Court of the Czech Republic, file No. 25 Cdo 1404/2004, file No. 25 Cdo 720/2007, file No. 25 Cdo 319/2002, file No. 33 Odo 971/2004).

3. The Municipal Court in Prague, acting as the appellate court, ruled by order dated May 20, 2021, file No. 20 Co 146/2021-291, in the wording of the corrective order dated May 20, 2021, file No. 20 Co 146/2021-292, that it revoked the judgment, except for the ruling on the discontinuance of the proceedings, and expressed a binding legal opinion for the first instance court that the plaintiff's claim is substantively justified. It stated that "assessed through the prism of the fulfillment of formal prerequisites for the establishment of state liability for damage caused by the exercise of public authority, according to Sections 8(1) and 13(1) of the compensation law, the conclusions of the first instance court correspond to the positive legal regulation. However, the Constitutional Court has repeatedly declared in its jurisprudence that it does not tolerate overly formalistic procedures by public authorities, particularly by ordinary courts, using essentially sophisticated reasoning to justify evident injustice. It emphasized that an ordinary court is not absolutely bound by the literal wording of the law, but may and must deviate from it when the purpose of the law, the history of its creation, the systemic context, or any of the principles grounded in a constitutionally conforming legal order as a meaningful whole require it. The court also emphasized that the duty of the courts to find the law does not only imply seeking explicit and direct instructions in legal texts, but also the duty to ascertain and formulate what constitutes specific legal rules, including the interpretation of abstract norms and constitutional principles. In interpreting and applying legal regulations, their purpose and meaning cannot be overlooked, which cannot be sought solely in the words and sentences of individual provisions, and it is essential to always identify principles recognized by democratic legal states (cf. judgments file No. Pl. ÚS 21/96, Pl. ÚS 19/98, II. ÚS 1648/10, IV. ÚS 3377/2012). In finding file No. II. ÚS 2159/11, the Constitutional Court of the Czech Republic inferred the unacceptability of the demand to annul a decision against which there is no remedy and concluded that, in such cases, the law on state liability must be interpreted in a constitutionally conforming manner, and it follows from Article 36(3) of the Charter of Fundamental Rights and Freedoms that the claim for damages caused by the actions of the state arises directly from this article. In finding file No. II. ÚS 1774/08, the Constitutional Court of the Czech Republic inferred the fulfillment of the conditions for the state's liability in a material sense in cases where a building permit was issued by the building authority and subsequently, under unchanged factual circumstances, de facto banned by the Ministry of the Environment (by not granting an exemption), while the insistence of ordinary courts on the formal annulment of the claimed unlawful decision (the building permit) as a condition for the state's liability for the resulting damage was characterized as an instance of unacceptable formalism. The Supreme Court of the Czech Republic has also emphasized in its jurisprudence that, to fulfill the conditions for state liability in a material sense, one must avoid such formalistic interpretative approaches to Section 8(1) of Act No. 82/1998 Coll. that would effectively (and unjustly) exclude state liability. In its decision file No. 28 Cdo 4158/2009, the Supreme Court of the Czech Republic concluded that the requirement for the annulment of an unlawful decision under Section 8(1) of the compensation law can be deemed fulfilled if the unlawfulness of the formally unannulled decision of the prosecutor is declared by a judgment of the Supreme Court of the Czech Republic issued on the basis of a complaint for a violation of the law. It further noted that insisting on the formal annulment (modification) of an unlawful decision in this case overlooks the purpose of the legal regulation concerning state liability found in Act No. 82/1998 Coll., which aims to remedy property damage caused by incorrect actions of the state. In its decision file No. 30 Cdo 2407/2017, the Supreme

Court of the Czech Republic concluded that a final decision ordering enforcement does not necessarily have to be explicitly annulled for unlawfulness, but for the determination of its unlawfulness, it suffices if this is established by another, later decision of the court, which cannot coexist with the original enforcement order (for example, a decision to suspend the enforcement).¹ The Plaintiff originally sought from the Defendant the payment of CZK 6,998,614.30, which is intended to represent damages pursuant to Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Power by Decision or Incorrect Administrative Procedure and on the Amendment of Act No. 358/1992 Coll., on Notaries and Their Activities (Notarial Code) (hereinafter referred to as "the Act"), in connection with the proceedings of the Regional Court in the insolvency case registered under file number KSPH 39 INS 15271/2011 (hereinafter referred to as "the assessed proceedings") concerning the debtor Vitamín - Cooperative of Fruit Growers, Kutná Hora, with its registered office at Kutná Hora, Seifertovy sady 38, Company ID No. 47048247. In the context of this insolvency proceeding, the original insolvency trustee, JUDr. Přemysl Kraus, initiated steps to liquidate the debtor's assets through the auction office RAK CZ a.s. in a public auction. On February 21, 2013, the insolvency trustee passed away, and on March 12, 2013, the Regional Court issued resolution No. KSPH 39 INS 15271/2011-B-70, which in part I appointed a new insolvency trustee, JUDr. Michal Krejčí, located at Praha 5, K Cementárně 1427/1a, and in part III instructed the new insolvency trustee to continue the liquidation of the debtor's assets through auction as had been arranged by the original trustee with RAK CZ a.s. The new insolvency trustee acted in accordance with the court's directive. On March 13, 2013, a public voluntary auction was held at the restaurant at U Závaje located at Prague 1, Havelská 500/25, during which the following items were liquidated from the debtor's assets: a) a collection of real estate, b) a collection of movable items, c) rights from trademarks, d) a part of the enterprise – rights and obligations arising from lease agreements, as specified in the contractual relations set forth in the agreement. The Plaintiff became the buyer at a price of CZK 3,860,000, which he paid in full. However, this auction later turned out to be invalid, as its invalidity was determined by a judgment dated October 17, 2016, No. 21 C 20/2014-177, which became effective on July 20, 2017, with the reason for invalidity being the absence of approval of the auction execution contract by the creditor's committee of the debtor. The Plaintiff believes that the actions of the Regional Court in Prague, which was aware of the state of affairs and subsequently ordered the new insolvency trustee to continue the auction as arranged, constitute an unlawful procedure. The Regional Court, as the insolvency court, was evidently aware that its directive was unlawful, as it had been alerted – at least by a proposal from the creditor, Česká inkasní bureau.cz, s.r.o., to desist from the auction dated March 6, 2013 – to the fact that the necessary approval from the creditor's committee was absent. Therefore, the Regional Court acted unlawfully in the assessed proceedings when it instructed the insolvency trustee to continue the auction under such circumstances, thereby causing the auction to take place, which was subsequently deemed invalid due to its unlawfulness. As a result of this unlawful conduct, the Plaintiff incurred damages in the form of costs for financing the price that he had to pay at the auction, as he entered into a loan agreement with Dioptra, a.s. Turnov, located at Turnov, Sobotecká 1660, Company ID No. 48171191, on April 9, 2013, for financing the auctioned item, with an interest rate of 1.5% per month on the borrowed amount. The Plaintiff intended to sell part of the auctioned property based on a future contract concluded with Pivovar Dačický s.r.o., however, due to the invalidity of the auction, the Plaintiff did not acquire the relevant property and could not liquidate it further and thus failed to repay the loan. The paid auction price has not yet been refunded to the Plaintiff by the insolvency trustee. Consequently, the Plaintiff neither has the auctioned property nor the paid money and is only compelled to pay interest on the outstanding loan, which as of April 20, 2014, amounts to CZK 6,998,614.30.

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4. It is evident from the cited judicial jurisprudence that the condition for the annulment (modification) of an unlawful decision within the meaning of Section 8(1) of the compensation law may also be satisfied if its unlawfulness is established (comes to light) in another proceeding without the need for its explicit annulment. Such a situation also arose in the current case. The insolvency court, by its decision dated March 12, 2013, pursuant to Section 11(1) of Act No. 182/2006 on Bankruptcy and the Methods of its Resolution (the Insolvency Act), imposed a duty on the newly appointed insolvency administrator to continue the monetization of the debtor's assets by auction, as agreed upon by the previous administrator with the auction house RAK CZ a.s. No remedy was permissible against this decision according to Section 91 of the Insolvency Act. However, the relevant auction agreement (entered into by the previous insolvency administrator with the aforementioned auction house) did not take effect in the sense of Section 287(2) of the Insolvency Act, as it had not been approved by the creditors' committee. This was established in the proceedings held at the District Court for Prague 1 under file No. 21 C 20/2014, resulting in a determination of the invalidity of the public auction conducted on March 13, 2013, by the judgment of the District Court for Prague 1 dated October 17, 2016, file No. 21 C 20/2014-177, in conjunction with the judgment of the Municipal Court in Prague dated May 24, 2017, file No. 69 Co 61/2017-235, which became legally effective on July 20, 2017. From the conclusions of these judgments, the unlawfulness of the insolvency court's decision dated February 12, 2013, arises in the part where it imposed on the insolvency administrator the obligation described above. It is not decisive that the mentioned judgments do not explicitly refer to this decision; what is essential is that the unlawfulness of the instruction to conduct the relevant auction, which contradicts Section 287(2) of the Insolvency Act, is evident from them. The consequence of the incorrect (unlawful) decision of the insolvency court dated February 12, 2013, was the invalidity of the auction in which the plaintiff participated as the successful bidder, and from his claims, a causal link between the described property damage and this decision is apparent. The plaintiff asserts and offers evidence that he financed the auction price with a loan, which he would have repaid within the agreed time (by January 31, 2014), had the auction not taken place or had he validly acquired the auctioned item and subsequently sold it under the concluded purchase agreement, thus avoiding the obligation to pay interest on the loan from February 1, 2014. The appellate court therefore concluded that the material conditions for establishing state liability for damages caused by the unlawful decision according to Section 8(1) of the compensation law are met in this case. The liability of the insolvency administrator under Section 37 of the Insolvency Act does not apply here, as he was bound to carry out the auction according to the ineffective auction agreement by the decision of the insolvency court within the framework of his supervisory function under Section 11(1) of the Insolvency Act.
5. In the further course of the proceedings, the first instance court, based on the evidentiary findings outlined in paragraphs 13-22 of the contested judgment and with reference to Sections 1, 2, 5, 7(1), 8(1) and (2), 14(1), and 15(2) of the compensation law, stated that the resolution of the insolvency court dated March 12, 2013 (file No. KSPH 39 INS 15271/2011-B-70) must be considered an unlawful decision within the meaning of Section 8(1) of the law, thus fulfilling the prerequisite for the existence of a liability title. The plaintiff preliminarily asserted his claim against the defendant, thus satisfying the requirement for its consideration by the court. On March 13, 2013, the plaintiff successfully bid on property in an auction, for which he paid the auction price. The auction was deemed invalid by the judgment of the District Court for Prague 1 dated October 17, 2016, file No. 21 C 20/2014, in conjunction with the judgment of the Municipal Court in Prague dated May 24, 2017, which became legally effective on July 20, 2017. The plaintiff financed the auction price with a loan amounting to 4,000,000 CZK, claiming that he would have duly repaid this loan by the maturity date of January 31, 2014, had the auction not taken place or had the auction been valid and he subsequently sold the auctioned property under a concluded future purchase agreement. The

first instance court found it proven that the plaintiff had a business intention to acquire the specifically designated property at the auction, which he would then sell at a certain markup to a specific buyer (Obila a.s.) who had expressed interest in this particular property under the terms of the future purchase agreement dated March 6, 2013. The plaintiff did not conclude the purchase agreement by the end of 2013 due to an ongoing court dispute regarding the invalidity of the auction, the outcome of which the plaintiff had to await, and the auction was subsequently declared invalid as of July 20, 2017. The court did not find disproportionate risk in the plaintiff's actions; he had secured, in advance, the opportunity to sell the specific property, subsequently acquired it in the auction, and only then obtained the funds to pay the auction price from the loan. However, due to the unlawful decision, the auction was not valid, and the plaintiff could not proceed with the sale. At the same time, throughout the duration of the proceedings concerning the determination of the auction's invalidity, the plaintiff did not have access to the funds, as these were held by the insolvency administrator. As a result of the unlawful decision, the plaintiff was unable to meet his obligations and thus could not repay the loan properly and on time. That the plaintiff's actions were not imprudent, and it cannot be concluded that he violated his general duty of precaution when entering into the loan agreement. The plaintiff could not have anticipated that he might incur damages or face sanctions for failing to meet the stipulated obligations due to the unlawful decision. Therefore, the first instance court found no contributory negligence on the part of the plaintiff concerning the occurrence of the damages. It concluded that the plaintiff would not have suffered damages had the unlawful decision not been issued, as he would have properly acquired the property and could have sold it according to his intentions, thus obtaining the purchase price to repay the loan. Alternatively, he would have had access to the funds received from the loan, which he could have repaid. Therefore, there would have been no delay in repaying the loan or interest on the loan. The primary cause of the plaintiff's damages was identified by the first instance court as the unlawful decision of the court, as the damages could not have arisen independently merely from the plaintiff entering into a loan agreement. Instead, they were an inevitable consequence of that decision during the period from February 1, 2014 (the beginning of the delay in loan repayment) to January 31, 2017 (when the proceedings regarding the determination of the auction's invalidity were still ongoing). The plaintiff had no means to mitigate the adverse consequences of the delay, in the form of accruing interest on the loan and statutory default interest, and he was obligated to pay them. Initially, the plaintiff paid the due interest on the loan himself; subsequently, the creditor assigned part of the loan receivable to a new creditor, who decided to pursue its fulfillment through enforcement proceedings against the property of the Zach family. It was the creditor's right to choose which of the co-debtors to seek fulfillment of the receivable from. Given the internal circumstances of the co-debtors (Ting Zach, Dr. Renata Zachová), where the funds from the loan were exclusively used by the plaintiff to realize his intention to acquire the property at the auction, the plaintiff had no right to claim contribution from the others. While the plaintiff became a participant in the enforcement proceedings due to his failure to fulfill his obligations under the loan agreement, the reason for his failure must be seen in the unlawful decision that prevented him from meeting his obligations.

6. The first instance court took into account that the defendant could not influence the terms under which the plaintiff took out the loan, yet it considered the concluded agreement to be a valid legal act, the conditions of which are not unconventional. The loan agreement was concluded between non-banking entities, and the loan amounting to 4,000,000 CZK was to be repaid within 9 months from the disbursement along with an interest rate of 1.5% per month (i.e., 18% per annum). Given that the interest rate at the time of the loan disbursement by banking institutions was 14.63% per annum, the agreed rate from the non-banking entity does not contravene good morals; only a rate reaching up to three times the average interest rate at which banks offer loans during that period and locality could be considered excessive (Supreme Court of

the Czech Republic, file No. 21 Cdo 1484/2004, file No. 33 Odo 234/2005). Additionally, the agreed short-term contractual penalty of 0.3% per day from February 1, 2014, to December 31, 2014, is deemed acceptable and reasonable (Supreme Court of the Czech Republic, file No. 33 Cdo 772/2010, 33 Cdo 1682/2007); however, the plaintiff did not claim it. The non-banking sector and the short-term nature of the loan may justify the provision of financial resources under different conditions compared to the banking sector.

7. The plaintiff demonstrated that he paid the creditor all capitalized interest on the loan of 1.5% per month (60,000 CZK) on the amount of 4,000,000 CZK for the period from February 1, 2014, to January 31, 2017, which he would not have had to pay had it not been for the unlawful decision, thus causing him damages amounting to a total of 2,160,000 CZK. The plaintiff seeks reimbursement of only a portion of this amount, specifically 1,500,000 CZK, and his claim for reimbursement is justified; therefore, the court granted the claim to this extent in its Order I. Regarding the claim for 826,444.38 CZK for capitalized interest on arrears for the period from February 1, 2014, to October 20, 2016, it was established that in the enforcement proceedings conducted by the judicial enforcement officer Mgr. Martina Havlová under file No. 183 EX 526/17, the amount of 875,307.79 CZK was recovered for the benefit of the entitled party as capitalized interest on arrears for the specified period, which would not have had to be paid had it not been for the unlawful decision, thereby causing the plaintiff damages to this extent. The plaintiff claims only a portion of this amount, specifically 826,444.38 CZK calculated as of June 15, 2020, and his claim for reimbursement is justified; therefore, the court granted the claim to this extent. Regarding the claim for 206,946.30 CZK relating to incurred enforcement costs, it was established that the enforcement was ordered not only for the recovery of interest on arrears but also for the recovery of the principal amount of the loan, contractual penalties, and contractual interest up to January 31, 2014, and that it concluded with full recovery. The first instance court inferred that the defendant cannot be held responsible for the retention of the loan principal by the insolvency administrator, and claims related to this issue are being addressed by the plaintiff in another court proceeding. Therefore, the plaintiff can only be awarded that part of the reimbursement for enforcement costs that arose in causal connection with the recovery of the amount of 875,307.79 CZK in capitalized interest on arrears for the period from February 1, 2014, to October 20, 2016, which could have been pursued separately in enforcement proceedings and would have been satisfied prior to the execution of the sales of real estate (by March 3, 2020). From this amount, the fee for the judicial enforcement officer is 131,296.20 CZK, the flat-rate reimbursement of expenses is 3,500 CZK, and the 21% value-added tax amounts to 28,307.20 CZK under Section 6(1) and Section 13(1) of Decree No. 330/2001 Coll., the executor's tariff. Consequently, the first instance court found the last-mentioned claim of the plaintiff justified in the amount of 163,103.40 CZK and dismissed the remaining part of the claim. The first instance court decided on the reimbursement of the costs of the proceedings in favor of the plaintiff, citing Section 142(3) of Act No. 99/1963 Coll., the Civil Procedure Code, concluding that the plaintiff was unsuccessful only to the extent of 1.7%, and therefore awarded him full reimbursement of the costs of the proceedings, which included the court fee of 2,000 CZK and the attorney's fee calculated for 9 acts of legal services based on a tariff value of 6,998,614.30 CZK and subsequently for 5 acts of legal services based on a tariff value of 2,533,390.68 CZK.
8. The defendant timely appealed the favorable provisions of the judgment and the related ruling, contending that there is no causal connection between the decision to annul the auction and the plaintiff's inability to repay the bank loan, as it stemmed from an unreasonable business risk on the plaintiff's part, arising from his own decision. The defendant proposed that the appellate court modify the contested provisions of the judgment and dismiss the claim. Furthermore, the defendant added that the plaintiff was not a participant

in the insolvency proceedings in which the unlawful decision was issued and asserted that the annulment of the auction was not the reason for the plaintiff's inability to repay the loan, as the taking of the loan was his own decision. The plaintiff could have abandoned his business intention for another reason, and by agreeing to the immediate enforceability of his obligation, he assumed an unreasonable risk; thus, his claimed entitlements are not causally linked to the contested decision of the insolvency court.

9. The plaintiff proposed that the contested judgment be upheld and, in his response to the appeal, emphasized that he incurred damages from the additional costs related to financing the auction item, as he had neither the properties nor the funds due to its invalidity. The plaintiff secured the sale of the auctioned properties through a future purchase agreement and reasonably expected that he would either not win the auction and promptly repay the loan or win the auction and sell the properties at a reasonable profit, from which he would repay the loan. Due to the invalidity of the auction, he was unable to repay the loan, fell into arrears with its repayment, and faced enforcement action; thus, the causal connection between the unlawful decision and the damage he claimed is clearly established. The fact that the auction was conducted unlawfully is attributable to the insolvency court that issued its resolution, even though it had been warned about the possible invalidity of the auction by two different entities in advance. The plaintiff regarded the defendant's assertion about his business risk as absurd and emphasized that he suffered damages due to the unlawful decision of the court, which he could not have anticipated. Regarding the additional arguments presented in the appeal, the plaintiff stated that he was a direct participant in the relevant insolvency proceedings because he was a registered creditor of the insolvent debtor, and even if this were not the case, the provisions of the compensation law must be interpreted in a constitutionally conforming manner to preserve the injured party's ability to obtain compensation for damages caused by the actions of a public authority. The agreement on the immediate enforceability of his obligation to repay the loan debt resulted from a longer repayment period and is not unusual in business relations. His business intention was logical and reasonable, and there can be no accusations of imprudent behavior.
10. In response to the defendant's appeal, from which a ground for appeal can be inferred according to Section 205(2)(g) of the Civil Procedure Code, the appellate court reviewed the contested provisions of the judgment of the first instance court within the framework of Sections 212 and 212a of the Civil Procedure Code, including the proceedings that led to the contested judgment. The appellate court found the appeal concerning the substantive matter to be unfounded, as it fully agreed with the well-reasoned conclusions of the first instance court, which were not significantly challenged by the appeal arguments, and to which it can therefore refer for brevity. The appellate court did not accept the defendant's new argument regarding the lack of the plaintiff's participation in the insolvency proceedings, as it overlooks the specifics of this type of proceeding. The plaintiff was at least a participant in the auction conducted as part of the ongoing insolvency proceedings concerning the assets of the debtor, Vitamína-družstvo ovocnářů Kutná Hora. The incorrect decision of the insolvency court (the Regional Court in Prague dated March 12, 2013, file No. KSPH 39 INS 15271/2011-B-70) concerning the auction, which led to its invalidity (as determined by the judgment of the District Court for Prague 1 dated October 17, 2016, file No. 21 C 20/2014-177), had a direct impact on the plaintiff's financial situation. Additionally, in response to the defendant's argument, the plaintiff noted that he was a registered creditor in the relevant insolvency proceedings, which the appellate court has no reason to doubt. The appellate court may reaffirm its previously expressed legal opinion by summarizing that the plaintiff sufficiently proved the existence of property damage in causal connection with the unlawful decision related to part of the insolvency proceedings in which he certainly participated, to the extent granted by the first instance court. As stated by both the first instance court and

the plaintiff, without this decision, the plaintiff would not have acquired the properties at auction or would have properly acquired them and sold them for profit based on the pre-negotiated purchase agreement, thus repaying the loan within the agreed timeframe. The disputed additional costs incurred from the overdue interest on the loan and the costs of enforcing his loan obligation would not have been incurred by the plaintiff had it not been for the invalidity of the auction due to the erroneous court decision. The plaintiff rationally considered his business intention and secured it through a future purchase agreement, assuming no unreasonable risk, while the invalidity of the auction due to the insolvency court's error was an unpredictable fact that he could not account for in his calculations. The financial loss from the interest on the unpaid loan and from the costs of enforcement of his obligation would have occurred regardless of the agreement on the immediate enforceability of his obligation (notarized on October 20, 2016, file No. NZ 531/2016), which is a standard method of securing such obligations. On the contrary, had the plaintiff pursued judicial enforcement of the obligation in the relevant court proceedings, he would have incurred additional costs related to the expenses of such disputes. The first instance court therefore correctly concluded that the defendant is liable to the plaintiff for the damage caused in terms of the paid interest on the loan and associated enforcement costs under Sections 7(1) and 8(1) of the compensation law, and the appellate court had no other option but to affirm its rulings regarding the substantive matter in accordance with Section 219 of the Civil Procedure Code.

11. The appellate court had to correct the decision of the first instance court regarding the amount of costs of the proceedings. The first instance court overlooked that the plaintiff did not have predominant success in the initial phase of the proceedings leading up to the judgment of the first instance court dated November 30, 2020, file No. 20 C 72/2019-262, which, among other things, discontinued the proceedings originally filed for the amount of 6,998,614.30 CZK due to the withdrawal of the claim regarding the amount of 4,465,223.62 CZK. The plaintiff withdrew the claim regarding the amount of 4,465,223.62 CZK during the oral hearing at the first instance court held on November 30, 2020, without being paid this amount by the defendant. According to Section 146(2), first sentence of the Civil Procedure Code, it caused the discontinuation of the proceedings concerning this amount, and thus the plaintiff was not successful in this respect. Therefore, he cannot be awarded reimbursement of attorney's fees for legal services rendered (calculated based on the amount of 6,998,614.30 CZK) prior to the partial withdrawal of the claim and the discontinuation of the proceedings. In the subsequent proceedings, the amount in question was 2,533,390.68 CZK, and regarding this claim, the plaintiff had predominant success. He is therefore entitled to reimbursement of the costs of the proceedings, consisting of a court fee of 2,000 CZK and the attorney's fee for 7 acts of legal service (appeal, attendance at the appellate court hearing, four oral hearings at the first instance court, response to the defendant's appeal) calculated at 18,460 CZK each, according to Section 7 of Decree No. 177/1996 Coll., the attorney's tariff, along with a flat-rate reimbursement of expenses of 300 CZK according to Section 13(4) of the Civil Procedure Code and 21% VAT on that amount. Therefore, the appellate court, using Section 221a of the Civil Procedure Code, amended the ruling of the contested judgment regarding the amount of costs of the proceedings. According to Section 142(1) of the Civil Procedure Code in conjunction with Section 224(1) of the Civil Procedure Code, the processually successful plaintiff is entitled to reimbursement of the costs of the appellate proceedings, which include the attorney's fee for 2 acts of legal service (response to the appeal and attendance at the appellate court hearing) at 18,460 CZK each, along with a flat-rate reimbursement of expenses of 300 CZK each, and 21% VAT on that amount.

The accuracy of the original text is confirmed by Monika Vrzalová.

Instruction:

An appeal against this judgment may be filed within 15 days from the date of delivery of a copy of its written version to the Municipal Court in Prague, through the local court. If the obliged party fails to voluntarily comply with the enforceable decision, the entitled party may submit a proposal for judicial enforcement of the decision or a proposal for execution.

Prague, May 6, 2022

Mgr. Irena Městecká, sign.
Judge