

## [CZ] Decision of the Supreme Court on copyright in spa facilities

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On 14 October 2015, the Grand Chamber of the Civil and Commercial Division of the Supreme Court concluded that the copyright exception for health facilities, according to § 23 of the Copyright Act, does not apply to patients staying in spa facilities. According to the exception, no remuneration has to be paid for the broadcast of works protected by copyright in healthcare facilities.

The collective management society OSA demanded payments totalling CZK 553,935 (approximately EUR 20.500) from the spa facility Léčebné lázně Mariánské lázně, for the unauthorised use of works protected by copyright in the period from 1 June 2007 to 18 May 2008. The collective management society argued that the exception in the Copyright Act does not apply to spa facilities. The spa facility refused to make any payment, invoking the exception of the Copyright Act. The Court of First Instance granted the application, but the Court of Appeal dismissed the action.

The Supreme Court upheld the appeal brought by OSA and decided that the exception in the Copyright Act does not apply to patients in spa facilities. For the purpose of assessing the question of whether the exception applies, it is necessary to distinguish carefully between the "patients" within the meaning of § 33 of the Act on public health insurance, § 19 of the Act on public health care, and other guests of the spa facilities accommodated only on a commercial basis. However, patients undergoing a comprehensive spa treatment prescribed by a doctor, in terms of a holistic healing process that is not regularly provided in the form of outpatient care, are considered patients within the meaning of § 33 of the Act on public health insurance and § 19 of the Act on public health care. The Court stated that accommodation of patients in a spa facility accelerates the healing process and results in reconstruction of the health status of treated patients.

It is thus necessary, for the purposes of interpretation of the last sentence of § 23 of the Copyright Act, to distinguish between patients in accordance with § 33 of the Act on public health insurance, § 19 of the Act on public health care and the other guests of spa facilities accommodated only on a commercial basis. The ratio of guests which exclusively use health care treatments to guests which use the spa facilities on a commercial basis is verifiable and can be used to determine the amount of remuneration.

***Rozsudek velkého senátu občanskoprávníh a obchodního kolegia  
Nejvyššího soudu České republiky č.j. 30 Cdo 3093/2013***

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*Decison of the Grand Chamber of Civil and Commercial Division of the Supreme  
Court Nr. 30 Cdo 3093/2012 of 14 October 2015*

