

82/1998 Coll. version effective from 1 April 2020

changed	with effect from	Note
Act No. 118/2020 Coll.	1.4.2020	
Act No. 178/2018 Coll.	16.8.2018	
Act No. 303/2013 Coll.	1.1.2014	

[More...](#)

82

LAW

of 17 March 1998

**on liability for damage caused in the exercise of public authority by a decision
or improper official procedure and amending the Act of the Czech National Council**

No. 358/1992 Coll. , on notaries and their activities (Notarial Code)

Parliament has agreed on this law of the Czech Republic:

Part One

Liability of the State and local self-government units for damage (§ 1-36)

Title One

Introductory provisions (§ 1-2)

§ 1

[Definition of liability]

- (1)** The State shall be liable under the conditions set out in this Act for damage caused in the exercise of State authority.
- (2)** Territorial self-government units shall be liable under the conditions set out in this Act for damage caused in the exercise of public authority conferred on them by law within the scope of their independent competence (hereinafter referred to as "territorial units within independent competence").

- (3) The State and territorial units in independent competence shall also pay for non-pecuniary damage under the conditions laid down in this Act.

§ 2

[Inevitability]

Liability for damages under this Act cannot be exempted.

Title Two

Conditions of liability (§ 3-25)

Volume One

Responsibility of the State (§ 3-18)

Section One

General provisions (§ 3-6a)

§ 3

[Entities responsible]

- (1) The state is liable for the damage caused by
- a) state authorities,
 - b) legal and natural persons in the exercise of the state administration entrusted to them by law or by virtue of the law (hereinafter referred to as "official persons"),¹
 - c) authorities of territorial self-government units if the damage occurred during the exercise of state administration delegated to them by law or by virtue of law (hereinafter referred to as "territorial units in delegated competence").
- (2) For the purposes of this Act, an official person shall also be deemed to be an official person of another Member State of the European Union who fulfils the conditions set out in **Section 127 of the Criminal Code**, for the period during which such person acts in a joint investigation team in the territory of the Czech Republic or carries out a legal assistance act in the territory of the Czech Republic on the basis of a European Investigation Order or is present during its

execution.

§ 4

[Activities of notaries and bailiffs]

- (1) For the exercise of state administration pursuant to **Section 3(1)(a)(1)(b)** of the Act. (b) shall also be deemed to include the drawing up of public documents on legal acts², entries of facts in the public register made by a notary pursuant to the law regulating public registers of legal and natural persons, acts of a notary as a court commissioner³ and acts of a bailiff, or his/her representative, if the bailiff's office of bailiff has ceased to exist and if this representative is a candidate for bailiff, in the performance of enforcement activities, in the drawing up of bailiff's records and in activities carried out under the authority of the court pursuant to a special legal regulation^{3a}.
- (2) The action of the notary and the bailiff, or his deputy if the bailiff's office has ceased to be exercised and if the deputy is a candidate for bailiff, pursuant to paragraph 1 shall be deemed to be an official procedure.

§ 5

[Scope of liability]

The State shall be liable under the conditions set out in this Act for damage caused by

- a) a decision rendered in civil proceedings, administrative proceedings, proceedings under the Administrative **Procedure Code** or criminal proceedings,
- b) maladministration.

§ 6

[Acting on behalf of the State]

- (1) Ministries and other central administrative authorities (hereinafter referred to as "the Authority") act on behalf of the State in matters of compensation for damage caused by a decision or an incorrect official procedure and in matters of recourse payments.
- (2) The authority referred to in paragraph 1 shall be
 - a) The Ministry of Justice, if the damage occurred in civil or criminal proceedings, and in cases where an unlawful decision was issued by an administrative court, by which the

- court decided on an action against a decision of a territorial unit in independent jurisdiction, and in cases where the damage was caused by a notary or bailiff,
- b)** the competent authority where damage has occurred in a branch of government falling within its competence, and in cases where an unlawful decision has been rendered by an administrative court in which the court has decided on an action against a decision taken in a branch of government falling within the competence of that authority.
- (3)** Where damage has been caused by an incorrect official procedure pursuant to the second and third sentences of Section 13(1) and where the related administrative and judicial proceedings are considered as a whole for the purposes of compensation for such damage, the competent authority within whose competence the branch of the public administration in which the administrative proceedings took place acts for the State.
- (4)** If the competent authority cannot be determined pursuant to paragraph 2 or 3, the Ministry of Finance shall act for the State.
- (5)** If an unlawful decision was issued by the Czech National Bank or by a financial market supervisory authority of another Member State of the European Union¹³ on the basis of an international treaty, or if there was maladministration on the part of the Czech National Bank or this supervisory authority, the Czech National Bank shall act for the State.
- (6)** If an unlawful decision has been issued by the Supreme Audit Office or if there has been maladministration by the Supreme Audit Office, that body shall act for the State.
- (7)** The Office designated under paragraphs 1 to 6 shall act for the State as an organisational unit of the State also in proceedings before the court, unless a special legal regulation provides otherwise.

§ 6a

Violation of the right to personal liberty

Liability of the State and territorial units in independent competence for violation of the right to personal liberty^{3b} shall be assessed in accordance with the provisions of this Act governing liability for unlawful decisions or maladministration.

Section Two

Decision (§ 7-12)

Illegal decision

§ 7**[Authorised entities]**

- (1) The right to compensation for damage caused by an unlawful decision shall be vested in the parties to the proceedings in which the decision was issued from which they suffered damage.
- (2) The right to compensation is also available to those who were not treated as a party to the proceedings, although they should have been treated as a party to the proceedings.

§ 8**[Conditions of entitlement]**

- (1) A claim for compensation for damage caused by an unlawful decision may, unless otherwise provided below, be brought only if the final decision has been annulled or reversed by the competent authority on the ground of illegality. The court deciding on compensation shall be bound by the decision of that authority.
- (2) If the damage was caused by an unlawful decision enforceable regardless of its legal force, the claim may be brought even if the decision has been annulled or reversed on the basis of a proper appeal.
- (3) Unless there are cases of special merit, a claim for compensation for damages caused by an unlawful decision may be awarded only if the injured party has exhausted, within the time limits prescribed by law, all procedural means which the law provides to the injured party for the protection of his or her rights; such means include an ordinary appeal, an extraordinary appeal, except for a motion for a retrial, and any other procedural means for the protection of a right, the exercise of which is connected with the commencement of judicial, administrative or other legal proceedings, or a motion to stay execution.

Decision on detention, sentence or protective measure**§ 9****[Binding]**

- (1) The right to compensation for the damage caused by the decision on detention is also available to the person against whom the detention has been carried out if the criminal prosecution against him or her has been discontinued, if he or she has been acquitted or if the case has

been transferred to another authority.

- (2) No compensation shall be granted for detention ordered in extradition or surrender proceedings; this shall not apply if the damage in such proceedings was caused by an unlawful decision or an incorrect official procedure of the authorities of the Czech Republic.

§ 10

[Execution of sentence]

- (1) The right to compensation for the damage caused by the decision on the sentence shall be vested in the person on whom the sentence has been executed in whole or in part, if he has been acquitted in subsequent proceedings or if the criminal prosecution against him has been discontinued for the same reasons as those for which the court in the main trial decided in the acquittal. This shall not apply if the President of the Republic, exercising his right to grant pardon or amnesty, orders the prosecution to be discontinued.
- (2) The right to compensation is also available to a person who has been sentenced to a lighter sentence in subsequent proceedings than the one imposed on him on the basis of the annulled judgment. Compensation is payable only in respect of the difference between the sentence imposed by the original judgment and the sentence imposed by the new judgment.

§ 11

[Enforcement of a protective measure]

The right to compensation for damage caused by a decision on a protective measure shall be vested in the person on whom the protective measure has been executed in whole or in part, if the decision has been annulled as unlawful in subsequent proceedings.

§ 12

[Exclusion of the right to compensation]

- (1) The right to compensation is not the one,
- a) who has caused his or her own detention, conviction or imposition of a protection measure, or
 - b) who has been acquitted or the prosecution against him has been discontinued only because he is not criminally responsible for the offence committed or because he has

been pardoned or the offence has been amnestied.

- (2) Furthermore, the right to compensation shall not arise if
- a) the proceedings could not be continued for the reasons set out in a special regulation,⁵
 - b) the criminal prosecution was suspended and the effects of the suspension of the criminal prosecution have taken effect,⁶
 - c) the decision not to prosecute was part of the settlement decision,⁷
 - d) the prosecution has been discontinued for reasons specified in a special regulation.⁸

Section Three

Maladministration (§ 13)

§ 13

[Scope of liability]

- (1) The State is liable for damage caused by an incorrect official procedure. A breach of the obligation to perform an act or to issue a decision within the time limit prescribed by law is also an improper official procedure. Where no time limit is laid down by law for the performance of an act or the issue of a decision, a breach of the obligation to perform an act or issue a decision within a reasonable time limit shall also be regarded as maladministration.
- (2) The right to compensation is vested in the person to whom the damage was caused by the incorrect official procedure.

Section Four

Exercise of the claim (§ 14-15)

§ 14

[Jurisdiction]

- (1) The claim for compensation shall be lodged with the authority referred to in [Section 6](#).
- (2) If the claim has been lodged with an authority which is not competent, that authority shall refer the claim of the injured party to the competent authority. The effects of the provisional application shall be preserved in this case.

- (3) The assertion of a claim for damages under this Act is a condition precedent to any claim for damages in court.
- (4) Where, in order to assess a claim for compensation, it is necessary to take into account circumstances to which an authority or other public authority which is not competent to hear the claim has access in the course of its activities, that authority or other public authority shall provide the necessary cooperation to the competent authority; this shall apply mutatis mutandis to proceedings before a court.

§ 15

[Refund period]

- (1) If the competent authority awards compensation, the damage must be repaid within six months of the claim.
- (2) The injured party can only claim compensation in court if his claim has not been fully satisfied within six months of the date of claim.

Section Five

Recourse payment (§ 16-18)

§ 16

[State authorisation]

- (1) Where the State has compensated for damage caused by an unlawful decision or an incorrect official procedure or has provided compensation for non-pecuniary damage for the same reason, it may seek recourse against official persons and territorial units in delegated competence if they caused the damage.
- (2) If the decision of a local government unit has been reviewed by a competent authority and subsequently the decision of that authority and the local government unit has been annulled for illegality, the State may seek recourse against the county, if the competent authority is a county authority, or against the local government unit.
- (3) If an unlawful decision was issued because the decision-maker followed an incorrect legal opinion of the competent authority which overturned the original lawful decision in the proceedings, the State is not entitled to recourse.

- (4) The State may only seek recourse in an amount corresponding to the participation of a territorial unit in independent competence, a territorial unit in delegated competence or an official person in causing the damage.

§ 17

[Circle of Obligation]

- (1) If the State has compensated for damage caused by the activity of a State authority or has provided compensation for non-pecuniary damage for the same reason, it may claim recourse from those who participated in the issuance of the unlawful decision or in the improper official procedure, if they were entitled to issue the decision or to carry out the official procedure.
- (2) If the State has compensated for damage resulting from an unlawful decision or an incorrect official procedure in which a judge or public prosecutor was involved, or if it has provided compensation for non-pecuniary damage for the same reason, it may claim recourse only if the judge or public prosecutor has been found guilty in disciplinary or criminal proceedings.
- (3) If the officials or territorial units have paid the State a recourse payment in their delegated competence, they may claim recourse payment from those who participated in the unlawful decision or in the incorrect official procedure.
- (4) Where a claim for recourse is made under this provision against a person whose participation in the exercise of public authority was part of the obligations arising from an employment relationship or a relationship equivalent to an employment relationship or from a service relationship, the amount of the recourse payment shall be governed by special provisions.⁹
- (5) The right of recourse excludes the right to compensation under the general rules.
- (6) A claim for recourse may not be asserted against a person who has participated in the making of an unlawful decision or in an incorrect official procedure at the behest of a superior, unless he has committed a criminal offence by disobeying the order.

§ 18

Common recourse provisions

- (1) The right of recourse arises only if the damage has been caused by a culpable breach of a legal obligation.
- (2) The burden of proving fault is on the person claiming recourse.

- (3) If the damage has been caused by the culpable breach of a legal obligation of several persons, they are obliged to pay the recourse compensation according to their participation in causing the damage. In justified cases, the court may decide that they are jointly and severally liable.
- (4) Whoever is obliged to pay the recourse payment jointly and severally with others shall settle with them according to their participation in the causing of the damage.
- (5) The court may reasonably reduce the recourse compensation, taking into account in particular how the damage occurred and the personal and financial circumstances of the natural person who caused it. No reduction may be made where the damage was caused intentionally.
- (6) The person against whom the claim for recourse has been asserted shall have the right to assert against the entity claiming recourse all objections which that entity could have asserted against the injured party in the proceedings for compensation.
- (7) The obligation to provide the necessary cooperation pursuant to Section 14(4) applies mutatis mutandis to the assessment of the right to recourse.

Volume Two

Responsibility of territorial units in separate

liability for damage (§ 19-25)

Section One

General provisions (§ 19)

§ 19

[Scope of liability]

Territorial units with independent competence are liable for damage caused by them in the exercise of public administration

- a) illegal decision,
- b) maladministration.

Section Two

Unlawful decision (§ 20-21)

§ 20**[Authorised entities]**

- (1) If an unlawful decision has been issued by a local authority in an autonomous jurisdiction in a procedure covered by the provisions on administrative procedure, the parties to the procedure are entitled to compensation for the damage caused by that decision. The right to compensation is also available to those who were not treated as a party to the proceedings, although they should have been treated as a party to the proceedings.
- (2) If an unlawful decision has been issued by a territorial unit in an autonomous jurisdiction in a procedure not provided for in the regulations on administrative procedure, the person who has suffered damage by the decision has the right to compensation.

§ 21**[Reference to § 8]**

- (1) The provisions of Section 8 shall apply mutatis mutandis to a claim for compensation for damage caused by an unlawful decision of a territorial unit in an autonomous jurisdiction issued in a proceeding to which the provisions on administrative proceedings apply.
- (2) A claim for compensation for damage caused by an unlawful decision of a territorial unit in an independent jurisdiction issued in accordance with a procedure not provided for in the regulations on administrative procedure may be asserted if the enforceable decision has been annulled for illegality by the competent authority.

Section Three***Maladministration (§ 22)*****§ 22****[Scope of liability]**

- (1) Territorial units with independent competence are liable for damage caused by an incorrect official procedure. A breach of the obligation to perform an act or to issue a decision within the time limit laid down by law is also an irregular official procedure. Where no time limit is laid

down by law for the performance of an act or the issue of a decision, a breach of the obligation to perform an act or issue a decision within a reasonable time limit shall also be regarded as maladministration.

- (2) The right to compensation is vested in the person to whom the damage was caused by the incorrect official procedure.

Section Four

Recourse payment (§ 23-25)

§ 23

[Entitlements of the territorial unit]

If a territorial unit in an autonomous jurisdiction has compensated for damage caused by an unlawful decision, in the issuance of which it followed an incorrect legal opinion of the competent authority which reversed the original lawful decision of the territorial unit in an autonomous jurisdiction in proceedings, or if it has provided compensation for non-pecuniary damage for the same reason, it may claim recourse from the county, if the competent authority is a county authority, or from the state, if the competent authority is a state authority.

§ 24

[Circle of Obligation]

Where a territorial unit has compensated for damage in its independent competence, provided compensation for non-pecuniary damage or paid a recourse payment, it may claim recourse from those who participated in the unlawful decision or in the maladministration.

§ 25

[Per analogiam]

Sections 16(4), 17 and 18 shall apply mutatis mutandis.

Title Three

Common and transitional provisions (§ 26-36)

§ 26**Relationship to the Civil Code**

Unless otherwise provided, the legal relations regulated by this Act shall be governed by the Civil Code.

Method and extent of compensation**§ 27****[Authorised entities]**

Survivors¹⁰ of an injured person who has died as a result of the exercise of state authority or the exercise of powers of territorial units in an independent capacity have the right to compensation for maintenance costs. Those who have incurred the costs of his or her treatment and funeral expenses are entitled to compensation for those costs.¹¹

§ 28**[Enabling Clause]**

The method of calculating average earnings for determining lost profits for the purposes of this Act shall be determined by the Government by regulation.

§ 29**[Calculation method]**

At the request of the injured party, the average earnings at the time before the prosecution was initiated may be used as the average earnings before the injury when calculating damages if this is more advantageous to the injured party.

§ 30**[Lost profits]**

Compensation for lost profits shall be provided in the amount proven; if this is not possible, the victim shall be entitled to compensation for lost profits in the amount of CZK 170 for each day of detention, imprisonment, protective education, protective custody or protective treatment.

§ 31**[Scope of compensation]**

- (1)** Compensation for damages shall include such costs of the proceedings as were reasonably incurred by the injured party in order to annul or reverse the unlawful decision or to remedy the maladministration.
- (2)** The victim may only claim compensation for costs if he or she was not able to do so during the proceedings on the basis of the procedural rules or if he or she has not already been awarded compensation for costs.
- (3)** The costs of representation are part of the costs of the proceedings. They include reasonable out-of-pocket expenses and fees for representation. The amount of that remuneration shall be determined in accordance with the provisions of a special legal provision¹² on non-contractual remuneration.
- (4)** The injured party is not entitled to compensation for the costs of representation incurred in connection with the hearing of the claim before the competent authority.

§ 31a**Compensation for non-pecuniary damage**

- (1)** Irrespective of whether damage has been caused by an unlawful decision or an incorrect official procedure, adequate compensation for non-pecuniary damage shall also be provided under this Act.
- (2)** Compensation shall be awarded in money if the non-pecuniary damage could not be compensated in any other way and the mere finding of a violation of the right would not be sufficient. In determining the amount of appropriate compensation, account shall be taken of the gravity of the damage suffered and the circumstances in which the non-material damage occurred.
- (3)** In cases where non-pecuniary damage has been caused by an incorrect official procedure pursuant to the second and third sentences of Section 13(1) or the second and third sentences of Section 22(1), the specific circumstances of the case shall also be taken into account in determining the amount of appropriate compensation, in particular
 - a)** the overall length of the proceedings,

- b) the complexity of the proceedings,
- c) the conduct of the victim which contributed to the delay in the proceedings and whether the victim made use of the available means capable of eliminating the delay in the proceedings,
- d) the actions of public authorities during the proceedings and
- e) the importance of the subject matter of the proceedings to the victim.

Limitation periods

§ 32

[Deadlines]

- (1) A claim for compensation under this Act shall be time-barred three years from the date on which the injured party became aware of the damage and who is liable for it. If the right to compensation is subject to the revocation of a decision, the limitation period shall run from the date of delivery (notification) of the revocation decision.
- (2) At the latest, the claim is time-barred ten years after the date on which the unlawful decision causing the damage was notified to the injured party; this does not apply in the case of damage to health.
- (3) A claim for compensation for non-pecuniary damage under this Act shall be time-barred 6 months after the date on which the injured party became aware of the non-pecuniary damage, but no later than 10 years after the date on which the legal fact to which the non-pecuniary damage is related occurred. Where the non-pecuniary damage was caused by an incorrect official procedure pursuant to the second and third sentences of Section 13(1) or the second and third sentences of Section 22(1), the limitation period shall not expire earlier than six months after the end of the proceedings in which the incorrect official procedure was committed.

§ 33

[Special deadlines]

A claim for compensation for damage caused by a decision on detention, punishment or protective measure shall be time-barred two years after the date on which the decision acquitting, the decision by which the criminal proceedings were discontinued, the decision annulling, the decision by which

the case was referred to another authority or the decision sentencing to a lighter punishment became final.

§ 34

[Deadlines for regression]

- (1)** The State's claim under Sections 16 and 17(1) and the claim of a territorial unit under independent jurisdiction under Sections 23 and 24 for recourse compensation shall be time-barred one year from the date on which the compensation was paid.
- (2)** The claim of a territorial unit under delegated competence and of an official person under section 17(2) for recourse reimbursement shall be time-barred one year from the date on which the recourse reimbursement was paid.

§ 35

[Interruption of time limit]

- (1)** The limitation period does not run from the date of the claim for compensation until the end of the preliminary hearing, but for a maximum of 6 months.
- (2)** The limitation period does not run during the disciplinary or criminal proceedings of a judge or prosecutor (Section 17(2)).

§ 36

Transitional provisions

Liability under this Act shall apply to damage caused by decisions issued from the date of the Act's entry into force and to damage caused by an incorrect official procedure from the date of the Act's entry into force. Liability for damage caused by decisions taken before the date of entry into force of the Act and for damage caused by an incorrect official procedure before the date of entry into force of the Act shall be governed by the existing provisions.

Part Two

Revocation provisions (§ 37)

§ 37

[Repeal of the 1969 Acts]

Act No 58/1969 Coll. , on liability for damage caused by a decision of a State authority or by its incorrect official procedure, is repealed.

Part Three**Amendment to the Notarial Code (§ 38)****§ 38****[Amendment to the DG]**

Act of the Czech National Council No. 358/1992 Coll. , on Notaries and their activities (**Notarial Code**), is amended as follows:

In Section 57, the words "The notary shall be liable to the applicant" shall be replaced by the words "Unless a special law provides otherwise, the notary shall be liable to the applicant".

Part Four**Final provisions (§ 39)****§ 39****Efficiency**

This Act shall enter into force on the thirtieth day after the date of its promulgation.

Zeman v. r.

Havel v. r.

Tosovsky v. r.

Transitional provisions of the amendments:**effective****from**

Article II of Act No
118/2020 Coll.

1.4.2020

Article II of Act No.
160/2006 Coll.

27.4.2006

Footnotes:

For example, **Section 39** of Act No. 289/1995 Coll., on forests and on amendments and supplements to certain acts (**Forest Act**), **Section 3** of Act No. 564/1990 Coll., on state administration and self-government in education, as amended by Act No. **139/1995 Coll.**

§ 2 358/1992 Coll., on notaries and their activities (**Notarial Code**).

§ 38 občanského soudního řádu.

Act No. **120/2001 Coll.** , on bailiffs and enforcement activities (the **Enforcement Code**) and on amendments to other acts.

§ 26c 21/1992 Coll., on Banks, as amended by Act No. **41/2011 Coll.**

For example, **Article 8** of the Charter of Fundamental Rights and Freedoms, **Article 5** of the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by later protocols, promulgated under No. **209/1992 Coll.** , as amended by Communication No. **41/1996 Coll.** and Communication No. **243/1998 Coll.**

§ 163a trestního řádu.

§ 307 et seq. of the Code of Criminal Procedure.

§ 309 et seq. of the Code of Criminal Procedure.

§ 172 paragraph 2 of the Criminal Procedure Code.

For example, **Articles 5** and **6** of the Convention for the Protection of Human Rights and Fundamental Freedoms.

§ 179 zákoníku práce.

For example, **Articles 5** and **6** of the Convention for the Protection of Human Rights and Fundamental Freedoms.

§ 448 občanského zákoníku.

§ 449 občanského zákoníku.

For example, Decree No. **177/1996 Coll.** , on lawyers' fees and attorneys' fees for the provision of legal services (**Advocates' Tariff**), as amended.

Footnotes:

- 1 For example, **Section 39** of Act No. 289/1995 Coll., on forests and on amendments and

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- supplements to certain acts (**Forest Act**), **Section 3** of Act No. 564/1990 Coll., on state administration and self-government in education, as amended by Act No. 139/1995 Coll.
- 2 **§ 2** 358/1992 Coll., on notaries and their activities (**Notarial Code**).
- 3 **§ 38 občanského soudního řádu**.
- 3a Act No. 120/2001 Coll. , on bailiffs and enforcement activities (the **Enforcement Code**) and on amendments to other acts.
- 3b For example, **Article 8 of the Charter of Fundamental Rights and Freedoms**, **Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms**, as amended by later protocols, promulgated under No. 209/1992 Coll. , as amended by Communication No. 41/1996 Coll. and Communication No. 243/1998 Coll.
- 5 **§ 163a trestního řádu**.
- 6 **§ 307** et seq. of the Code of Criminal Procedure.
- 7 **§ 309** et seq. of the Code of Criminal Procedure.
- 8 **§ 172** paragraph 2 of the Criminal Procedure Code.
- 8a For example, **Articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms**.
- 9 **§ 179** zákoníku práce.
- 10 **§ 448 občanského zákoníku**.
- 11 **§ 449 občanského zákoníku**.
- 12 For example, Decree No. 177/1996 Coll. , on lawyers' fees and attorneys' fees for the provision of legal services (**Advocates' Tariff**), as amended.
- 13 **§ 26c** 21/1992 Coll., on Banks, as amended by Act No. 41/2011 Coll.