

Legal News

The most important legal changes in the Czech and Slovak Republics

17 June 2020



In good times and bad

In one of our editorials, we once compared our profession to the work of a mountain guide who safely steers his clients through all the dangers they encounter on their journey. This comparison was apt then and is even more so now. But to overcome a real crisis, it is not enough just to follow a guide. You need a real partnership.

The past months have been unique. Unprecedented. Inconceivable. If anyone had told us at this time last year that shops and borders would be closed overnight in 2020, we would have thought they were crazy. But the boundaries of the possible have once again shifted and we are thus richer in experience.

The experience that every crisis will pass, that every crisis can be overcome. Overcome with a partner you know well and with whom you have more than just a prosperous business relationship. You are united by a common past, mutual trust, and a vision of a common future. We realised that for our clients we have long been not just a guide through the mountains, but a partner. In good times and bad.



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In connection with the relaxation of restrictive measures and the return of employees to work, many employers are wondering whether they can measure the body temperature of employees (or other persons) when entering the workplace in terms of GDPR and protection of privacy.

The Office for Personal Data Protection (the "Office") also commented on this issue on its website on 12 May 2020, with the following conclusions:

1. According to the Office, even during the coronavirus pandemic it is not possible to regard temperature measurement (and related processing of personal data, including temperature data) as the employer's explicit legal obligation.
2. However, taking into account the necessary health measures and the employer's general preventive obligation to create a safe work environment under the Labour Code, according to the Office such processing can be considered a legitimate interest of the employer within the meaning of Art. 6 (1) (f) in conjunction with Art. 9 (2) (b) of the GDPR, which enables the necessary processing of sensitive health data to comply with labour law obligations.

At the same time, the Office pointed out that it **considers temperature measurement to be an extraordinary and temporary measure**, whose justification the employer should regularly assess with regard to specific conditions (the nature of the workplace, the number and concentration of employees, etc.) and especially the further development of the epidemiological situation.

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On 1 July 2020, an extensive amendment to the Civil Code will take effect, based on which particularly the provisions concerning real estate will be changed. The most important changes introduced by the amendment are:

Restriction of pre-emption right – The legal pre-emption right between co-owners will be maintained only in cases where the co-ownership was created by acquisition in the event of death (e.g. a will) or in another way that the co-owners **could not** influence. The pre-emption right of the co-owners will be maintained if the co-owner transfers his share free of charge (e.g. donates it) and to the co-owners of an agricultural plant. The amendment will particularly simplify the transfer of flats, which include a co-ownership share in the garage. The obligation of the seller of such flat to offer the co-ownership share first to the other co-owners in the house will cease to exist.

Contractual penalty permitted for apartment leases – It will now be possible to validly negotiate a contractual penalty in the lease agreement for an apartment or house



in the event of a breach of the tenant's obligations. However, the sum of the contractual penalty and any security (deposit) may not exceed three times the monthly rent.

Short-term accommodation – Homeowners will be obliged to notify the building manager in advance of any business or other activities carried out in the apartment that could lead to a disturbance of the usual peace and order in the house lasting for a long period of time. The new rule targets mainly short-term accommodation operators (e.g. Airbnb).

Transfer of debts when transferring a housing unit – Debts associated with an apartment will automatically pass to the buyer, i.e. new owner of the apartment if this new owner could and should have learned about these debts.

Obligation to notify building alterations of the apartment – Owners will be obliged to notify the building manager of any planned building alterations in the apartment, even those for which the Building Act does not require a permit or notification.

If you are interested in further details or what other novelties the amendment to the Civil Code will bring, please read the next issue of our **Real Estate Newsletter**.

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Monitoring employees with hidden cameras is not necessarily illegal

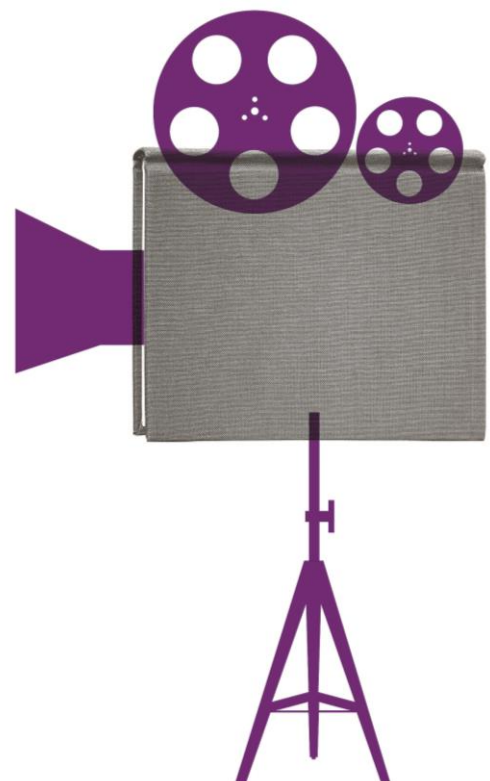
SK

The European Court of Human Rights (the "Court") in its decision in *López Ribalda et al. v. Spain* said that monitoring supermarket employees with hidden cameras was not a violation of the right to respect their private and family life. The Court thus amended its previous decision, in which it came to the opposite conclusion, and also significantly modified the application of certain principles formulated by the Court in the *Bărbulescu v. Romania* decision.

The petitioners were employed in a Spanish supermarket. The employer found a shortfall of approximately EUR 80,000 and therefore installed visible and hidden cameras in the store. The plaintiffs were subsequently caught in the act of stealing goods and were dismissed for breach of work discipline.

In an earlier decision in *Bărbulescu v. Romania*, the Court established the criteria based on which the legality of the employer's monitoring mechanism must be assessed. One of the most important criteria is that the employees must be informed in advance about the introduction of the monitoring mechanism and provided with accurate information on its nature.

The court has now surprisingly ruled that the right to privacy has not been violated by the installation of hidden cameras. It stated that the introduction of covert monitoring was necessary given the extent of the property damage found, and that if the employer had provided full information on the measures being put in place, their purpose could be frustrated.



By this decision, the Court made available to employers the means to investigate suspected criminal activity of employees in ways that infringe the privacy of employees in the workplace. Insofar as the Court did not find the employer to be in breach of Article 8 of the Convention, despite the failure to comply with the condition of transparency, that decision is a step towards reducing the protection of the right to privacy in the workplace.

Helga Maďarová | Senior Associate | Bratislava



Temporary protection for businesses is already available

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On 12 May 2020, a new institute of temporary protection of businesses came into effect. The aim of the temporary protection is to protect businesses adversely affected by the current pandemic from bankruptcies, executions and creditors. It represents a temporary moratorium on the protection of businesses, especially to prevent the mass initiation of bankruptcy proceedings, which would probably trigger a domino effect in relation to other businesses and endanger the Slovak economy.

The temporary protection of businesses is based on an opt-in approach, i.e. it is not provided to all businesses. Only those businesses will be protected to which the court will provide this protection at their request, provided that the business did not have financial problems before 12 March 2020.

Almost every business can apply for temporary protection, regardless of the legal form of the business, so long as it has its registered office or place of business in Slovakia. Precisely defined entities operating mainly in the field of financial and capital markets, such as banks, insurance companies, stock exchanges, stockbrokers and the like are excluded from this protection.

If protection is provided, the business will be protected from bankruptcies and execution proceedings initiated after 12 March 2020 and will not be obliged to file for bankruptcy, even if it is insolvent.

Temporary protection, if granted, is valid until 1 October 2020, while the government may extend its validity until the end of 2020.

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In brief

CZ	If the parties agree on a form for amending the contract, they may later deviate from this agreement and change the contract in another form, if they indicate their intention to abandon the agreed form. (NS 26 Cdo 3501/2019).	<u>Eliška Miklíková</u> Senior Associate Prague
CZ	News in the "Antivirus" employer support programme Schemes A and B were extended to 31 August 2020. The Parliament approved a new Scheme C, which will start to run after signing by President, under which employers with a maximum of 50 employees can request remission of social security contributions for period June – August 2020. The condition is that the employer did not dismiss more than 10% of employees or pay out less than 90% of wages, both compared to March 2020. Scheme C cannot be combined with Schemes A or B.	<u>Peter Perniš</u> Senior Associate Prague
SK	The mandatory return of PET bottles and cans has been postponed. As part of the COVID-19 crisis measures, the postponement of the mandatory return deadline to 2023 was adopted.	<u>Petra Štrbová Marková</u> Senior Associate Bratislava

We have expanded our client services with HR consulting

Many of you, our clients, are currently going through a difficult period, and we are finding that the problems with which You turn to us have several dimensions, not just purely legal ones.

What we can help You with, among other things:

- how to approach the dismissal of employees so that it does not negatively affect the ability to deliver contracts, but also the atmosphere in the company and credibility towards the public and clients
- how to motivate employees at a time when the company cannot pay bonuses
- how to set up work from home to ensure employee performance
- how to deal with the large number of resumés that are now coming in and how to pick out the right ones

We will be happy to offer You consultation, useful tips or practical help.

You can turn directly to **Jana Longauer**, who has experience in the HR field from consulting companies and the corporate sphere.

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