

Legal News

An overview of important legislative changes in the Czech Republic and Slovakia, and the legalisation of gambling in Ukraine

July 2021



To report and protect: what the Whistleblower Protection Act brings

In mid-December, the EU Whistleblower Directive that protects people who report suspicious activity to their employer should be transposed.

The aim of the directive is to protect the whistleblower and facilitate the detection of wrongdoing. Unfortunately, like any other law, this law will be limited by several factors, namely human morality, fear and positive motivation.

However, unlike Josef Vyskočil, the paid informant of Jaroslav Hašek's novel *The Good Soldier Švejk*, our whistleblower will not get paid. Therefore, morality must prevail for the aim of the law to be fulfilled.

Our firm is preparing a service for its clients, which will include comprehensive advice, from the preparation (modification) of internal documents, training and investigations to the provision of an anonymous hotline. We will send you more information about this service in the following month.

I wish you a summer that we can all enjoy just like in 2019.



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Withdrawal from non-compete clauses without a reason is possible



A recent decision by the Constitutional Court on the withdrawal of employers from non-compete clauses has caused considerable uproar.

Facts of the case

In the case in question, the employer and the CEO had a non-compete clause in the employment contract in which it was agreed that the employer is entitled to withdraw from the non-compete clause in writing at any time during the employment relationship, even without providing a reason.

Some time later, the CEO decided to terminate his employment and gave notice to the employer. At the end of the notice period, five days before the termination of the employment, the employer delivered a written notice of withdrawal from the non-compete clause to the employee, without stating a reason for it. The employee challenged the employer's action with reference to the constant case law of the Supreme Court, according to which the employer's withdrawal from the non-compete clause without providing a reason is absolutely invalid, as it constitutes an abuse of rights by the employer. The case went all the way to the Constitutional Court.

The Constitutional Court responds

The Constitutional Court did not support the constant case law of the Supreme Court.

It pointed out that the non-compete clause serves mainly to protect the employer. On the contrary, it is in the employee's interest not to be bound by a non-compete clause that significantly restricts his ability to find gainful employment, limits him in applying his knowledge and skills and thereby reduces his price on the labour market, and puts him at risk of the obligation to pay a contractual penalty.

The Constitutional Court stated that the absolute invalidity of a withdrawal from a non-compete clause can only be assessed based on detailed evidence in each specific case.

Under what conditions can the clause be waived?

The Constitutional Court allowed the employer to withdraw from the **non-compete clause even without giving a reason just before the termination of the employee's employment if the employer sufficiently explains why it could not have done so earlier**. This may be the case, for example, where the employer discovers just before the termination of the employment that the employee has disclosed know-how protected by the non-compete clause during the employment and the non-compete clause therefore has no further significance.

However, situations where the withdrawal from the non-compete clause occurred on the last day of the employment relationship without the employer having a justified reason, or where the employee found a job in a different sector with the express purpose of complying with the non-compete clause, and the employer learned of this and withdrew from the non-compete clause to avoid its obligation to pay the employee for complying with it, will continue to be indefensible.

The decision of the Constitutional Court strengthens the position of employers and restores practical applicability to the non-compete clause.



From 1 July, the rules for debt recovery for minor debtors will fundamentally change. This should give them an easier start to adult life, unburdened by executions they did not cause.

What does the amendment bring?

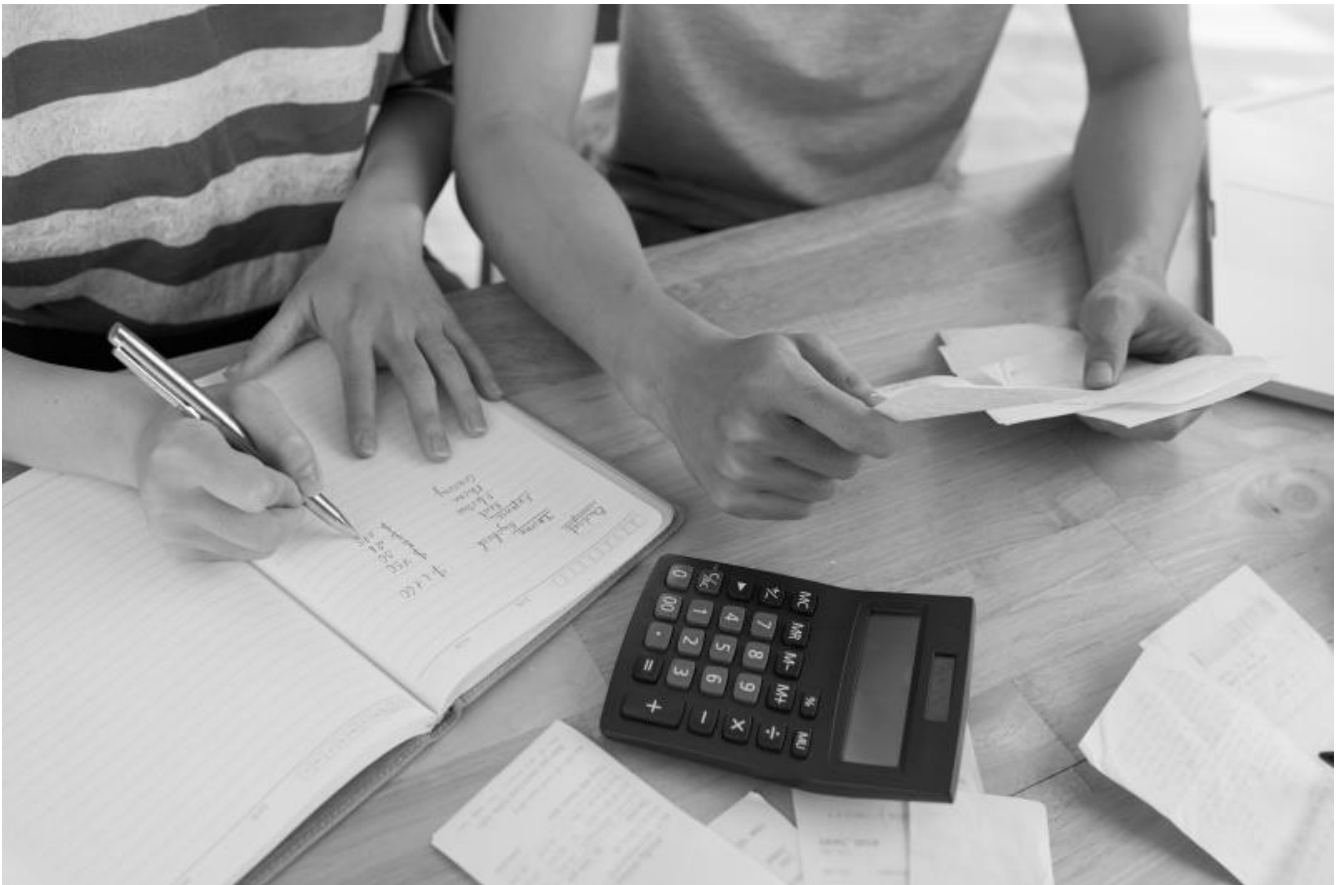
The following points are crucial:

- It will be possible to recover the monetary debts of minors only up to the amount of property they acquired before gaining full legal capacity. What they earn or acquire after their 18th birthday cannot be affected. An exception is the debts of minors related to their business, which are not protected
- The parent is liable for the monetary debts of minors where the parent acted on behalf of the minor or gave their consent to such conduct. If the parent pays the debt for the minor, they cannot subsequently recover the debt themselves, as in the case of ordinary liability
- Minors under the age of 15 cannot be bound by a contractual penalty
- Modification of the rules for compensation for damage caused by minors under the age of 13 and greater liability of parents

What to watch out for

If you are a parent, be more careful when representing a minor. If you are entering into a contract with a minor, keep in mind that you cannot recover all debts from them. Under the transitional provision, some rules even apply to the debts of minors incurred before 1 July.

Ondřej Šudoma | Senior Associate | Prague



In brief

More complex access to the Land Register

From 13 June, it has become more difficult to obtain some data through a free inspection of the Land Register. To obtain information on owners, liens, encumbrances or, for example, ongoing proceedings, it is necessary to register or enter a special code. Other data are publicly available as before.

Ondřej Šudoma

Senior Associate
Prague

Repeated petition for a preliminary injunction and obligation to make a security deposit

If your petition for the issuance of a preliminary injunction fails, when re-filing the petition, under certain conditions you do not have to make another security deposit for damages, which can amount up to CZK 50,000. The Constitutional Court has ruled on this issue.

Vojtěch Faltus

Principal
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Creditor's liability for registered claim in the event of a settlement

Under certain conditions, the court may oblige the creditor to pay part of its "bad" claim filed in insolvency proceedings or to reject the claim as a whole. Is there a risk of the same occurring when a court settlement is concluded in an incidental dispute?

If a court settlement is concluded (and approved) and the ascertained amount of the claim is less than 50% of its originally registered amount, **it will not apply that the claim in the original total registered amount is not taken into account** (the claim is recognised up to the amount specified in the concluded settlement) and **no obligation arises** on the part of the creditor to pay the unrecognised part of the claim to the insolvency estate.

Tomáš Jelínek

Senior Associate
Prague





Land or buildings cannot be acquired based on an invalid contract



Is it possible to acquire land or a building based on an invalid contract? The courts have tackled this issue in different ways. Earlier court decisions protected the original owner and argued this was not possible. They were based on the principle that no one can transfer more rights than they have. Thus, even a buyer who bought land from a person registered in the Land Register as the owner could not acquire it.

Recent court decisions have begun to consider the buyer and to protect his goodwill. The buyer could therefore become the owner of the land or building, even based on an invalid contract from the non-owner. The important thing was whether the buyer proceeded with due care in verifying whether the seller was the owner.

This difference of opinion also prevailed in the Supreme Court and Constitutional Court and created legal uncertainty. In recent decision¹, the Grand Chamber of the Supreme Court of the Slovak Republic provided an answer to this question. It leaned towards older decisions, stating that **ownership could not be acquired under an invalid contract**, even if it is subsequently proven that the contract is invalid because the previous owner of the property was not its owner. However, the right to acquire ownership by holding such land after 10 years is not affected.

Grand Chamber decisions must be respected by the other chambers of the Supreme Court. The question remains whether this decision will also be respected by the Constitutional Court, which in some decisions took the opposite view.

Ján Macej | Senior Associate | Bratislava



¹ Decision File 1VObdo/2/2020

In brief

Advertising constructions will need to be removed within three years

All advertising constructions for which a building permit is required are referred to as temporary constructions from 1 May 2021 and their duration may not exceed three years. However, this period may be extended by applying to the relevant building authority. Building permits for advertising constructions issued for an indefinite period before 1 May 2021 are deemed to be building permits with a maximum duration of three years, while this three-year period begins to run from 1 May 2021.

Filip Kozoň

Associate
Bratislava

The operation of small securities dealers will be simplified

On 26 June, an amendment will enter into force that will simplify the operation of small securities dealers and lay down rules for the largest investment firms to become subject to the same regime as European banks. This transposes Directive 2019/2034.

Katarína Brath Liebscherová

Senior Associate
Bratislava

The addition of mandatory data to the Commercial Register will be automated

In its legislative intention, the Ministry undertook to amend the current obligation to add mandatory data to the Commercial Register so that the state will automatically ensure the addition of data where possible. **Details will be revealed after the draft amendment to the Commercial Register Act is published.**

Petra Marková

Senior Associate
Bratislava

Charity event - Run and Help 2021

For the seventh time, our office was part of the Run And Help charity event together with the Konto Bariéry. This time, with the help of our employees, their families, friends and clients, we raised a total amount of CZK 24,671. Our office doubled this amount!

In total, we contributing **CZK 49,342**. We hope that this will help Terezka, who has not had an easy life from the beginning, and put a smile on her face and faces of her parents.

Thank you all the participants, whether they sports with us at a distance or simply "just" sent money and contributed to a good cause!





Gambling in Ukraine legalized



Ukraine's parliament legalised gambling last summer, ending a 10-year long ban and thereby fulfilling a campaign promise by president Zelenskiy.

Since then a flurry of regulatory activity has taken place to set up a licensing system and regulatory framework, and the first licences were granted recently by the new regulator.

The Ukrainian market is proving extremely attractive for foreign gambling operators, both because of Ukraine's sizeable population and popular demand by local users. The black market for gambling has in recent years been estimated to EUR 1.8 billion per year, giving an indication of the potential revenue after legalisation. This is the largest market opening in Europe in recent years and represents an unparalleled growth opportunity for foreign operators and their suppliers.

Asters has taken the lead in representing foreign operators wishing to enter the market, lobbying the government in the still-ongoing regulatory overhaul, and assisting with obtaining licences. Asters has a dedicated practice group for gambling and is the leading law firm in Ukraine.

About our law firm

Asters, founded in 1995 as Shevchenko Didkovskiy and Partners and rebranded in 2008, has consistently remained at the top of the Ukrainian legal market throughout its history.

We are unique in Ukraine in our combination of established world-class quality, international recognition, strong local roots, and deep expertise.

Damien Magrou

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