

Real Estate 1 | 2020



CZ | Necessary road to land designated for development in the zoning plan

You have a plot of land on which you plan to build. You are also very lucky, because according to the zoning plan it is land designated for development. But you have one big problem: there is no public access road to the land. What do you do now?

The Civil Code has a solution for such cases – the so-called right of necessary road, which the court will establish for compensation to neighbouring land for the benefit of the owner of the property that cannot be properly managed or otherwise properly used because it is not sufficiently connected to the public road.

And now the question: would you first build a building and then seek to establish the right of necessary road to it? Quite a lot of uncertainty, wouldn't you say? What if the court doesn't play ball... Wouldn't you prefer to have access ensured first and only then start building?

The Supreme Court recently confirmed that the **necessary road can be authorised for the future use of land designated for construction under the zoning plan and only to be built in the future (i.e. after the court has decided on the necessary road) to the extent necessary for the proper use of the future building.**

However, the mere identification of the land in the zoning plan as land for development is insufficient to permit the necessary road. As the owner of the future building, you must **prove that the preparation of the construction has reached a certain level**. Basically, you have to prove you're serious. In particular, it is necessary to define the basic parameters of the planned construction, including the purpose for which it is to be used. At the same time, it is **necessary to prove** whether such a **construction on the land can be established in terms of the zoning plan**.

Even if you've met all of the above criteria, the battle still isn't won. The court must ensure that the neighbour is not disturbed by the permit or use of the necessary road and that his land is as little affected as possible. The court will therefore consider the damage suffered by the neighbour by allowing the necessary road and compare it to the benefit enjoyed by the owner of the future construction.

The necessary road may not be permitted separately in cases where, as a result of the permit of the necessary road to the extent necessary for the use of the building, the neighbouring land would be significantly degraded or its further use significantly reduced.

Although the Supreme Court's decision provides greater legal certainty for owners who plan to build on land not yet connected to a public road, we do not recommend relying on the possibility of establishing the necessary road. It is always better to deal with access to the land well in advance, ideally by setting up an accommodation road in agreement with the owners of the land concerned. We will be happy to assist you in preparing the necessary contractual documentation.

[Dominika Veselá](#) | Principal Associate | Prague

SK | Lack of building approval does not necessarily mean a lease agreement is invalid

Since 1990, a tenant has lived in an apartment in a residential building in the Old Town of Bratislava and paid rent the whole time. The new owner took over the management of the building in 2008 and expressed an interest in concluding new lease agreements with all tenants except one, who was subsequently forced to move out.

The Constitutional Court of the Slovak Republic therefore dealt with the question of **whether the tenant is entitled to duly use the apartment for which they concluded a lease agreement, even though the space was not approved for use as an apartment**. The District Court Bratislava I and the Regional Court in Bratislava based their decisions on earlier case law and thus on the absolute nullity of this lease agreement.

Pursuant to the decision of the Constitutional Court, the purpose of the legal fixation of the apartment is to approve its construction-technical qualities. **It is not necessary to protect such a purpose by a penalty of invalidity in the lease agreement, as it is not a value that renders the agreement meaningless or socially harmful.** A damaged car can also be rented. If the real estate is used without building approval, the owner can be penalised to correct these mistakes. **If the landlord has leased something, it is obliged to allow the tenant to use it for the agreed purpose.** If it has rented an apartment, it is obliged to ensure that the apartment is and remains suitable for use as housing. If the leased space is not an apartment, the landlord has not fulfilled its obligations, but this does not result in the nullity of the agreement.

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CZ | Drafting a proper notice of termination of a lease agreement can be a challenge

Are you a landlord who has concluded a lease agreement for an apartment or business premises with a tenant who does not duly pay the rent or otherwise violates the contract? I will simply terminate the contract, most think. Recently, however, the Supreme Court has reminded us that a properly written notice of termination of a lease agreement is not an easy matter and that a seemingly insignificant omission may invalidate the notice.

The Supreme Court resolved two disputes concerning the legitimacy of the termination of a lease agreement recently. The first case was the termination of the lease of an apartment (the decision can be found under file no. 26 Cdo 2199/2018 of 18 March 2019). The matter in dispute was whether the landlord is obliged to inform the tenant in the notice of termination (apart from the possibility of requesting a court review of the legitimacy of the notice) of its right to object to the notice of termination.

The Supreme Court concluded that notifying the tenant of its right to request a court review of the legitimacy of the termination of the lease is an essential element of the termination, one whose absence causes the termination to be absolutely invalid. On the other hand, the filing (or non-filing) of objections or the notification of the tenant of its right to file an objection is insignificant in the case of the lease of an apartment, as **the Civil Code does not in any way regulate objections in relation to the lease of an apartment. Therefore, the absence of notification to the tenant of its right to object to the termination does not invalidate the notice of termination.**

The Supreme Court also dealt with the content of the notice of termination in a dispute over the legitimacy of the termination of a lease agreement for business premises (see judgment file no. 26 Cdo 2217/2019 of 24 July 2019). In this case, the landlord terminated the lease because the tenant defaulted on its payment of the rent. But it did not state in the notice of termination the specific period of the default and what amount the tenant owes. It merely referred to the previous notice for payment of the rent due, which preceded the termination.

In this case, the Supreme Court stated that to be valid the notice of termination must indicate the reason for the notice, which must be clearly defined in fact (e.g. must specify what the amount owed consists of, i.e. which months the tenant did not pay). **However, the amount owed does not have to be specified directly in the notice**

itself, but may simply refer to another document from which the amount owed is objectively identifiable (here, for example, from a previous notice for payment).

It follows that the notice of termination of the lease must contain certain particulars required by law, otherwise it is invalid. In many cases invalidity may be caused only by an improperly chosen wording. Therefore, if you have any doubts as to whether you have terminated a contract correctly, you can contact us. We will advise you how to safely do it.

[Jiří Koubek](#) | Associate | Prague

CZ | Granting of tenant's consent to rent increase by its payment

The amount of rent a tenant pays to use an apartment or house is determined by the parties in the lease agreement. Unless they agree otherwise, it is primarily up to the landlord and tenant to adjust the rent during the lease term. However, the Civil Code has a special procedure where **under certain circumstances the landlord may change the rent unilaterally to bring it more in line with the market.**

In practice, if the statutory conditions are met (the parties do not agree on rental increases in the contract or, on the contrary, do not explicitly exclude them), the landlord may propose an increase to the tenant in writing. If the tenant disagrees with the increase, he must notify the landlord or simply do nothing at all and continue to pay the original rent. If the landlord so proposes, the court will decide on the amount of the rent.

But what if the tenant agrees with the increase? In a recent ruling, the Supreme Court of the Czech Republic interpreted an unclear provision of the new Civil Code and concluded that either (i) the tenant must give written consent to an increase to the landlord in writing within two months of the proposal to increase the rent, or (ii) the tenant pays the increased rent, no later than the third calendar month after the proposal for the increase is received.

Therefore, **even the payment of the increased rent** (while it may be through gritted teeth) **is considered sufficient consent** and there is no further confusion when, for example, the tenant paid the increased rent but did not inform the landlord in writing that he agreed to the increased rent. Tenants thus can be advised not to pay increased rent in the event of disagreement; landlords, on the other hand, can rest easy if the tenant despite apparent resistance pays the increased rent. However, it is best to clearly regulate everything in the lease agreement so that no ambiguities can arise in the first place.

Finally, be advised that the above rules apply only when renting a residential property. For other types of leases (e.g. business), everything has to be carefully negotiated in the contract.

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We cordially invite you to a legal breakfast on the subject

New Building Act

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