

## CZ: Homeowners' associations can receive up to 10% of the proceeds from the sale of a debtor's apartment. A benefit or a risk?

CZ: Comments on the annulment of the second restitution period

*As at 1 July of this year, an amendment to Act No. 229/1991 Coll., on the Regulation of Ownership Relations to Land and Other Agricultural Property (the "Land Act") was to introduce a so-called second restitution period.*

This would terminate the dispensation of substitute plots of land for plots that were nationalised during the totalitarian period. According to the explanatory report, it came about, among other reasons, due to concerns about the increase in state budget expenditures due to the need for later purchases of land at market prices (so that the dispensation of substitute plots to recipients of restitution could continue).

At the suggestion of a group of senators, however, on 19 June 2018, the Constitutional Court annulled the relevant provisions by a unanimous plenary finding. Judges cannot, without a legitimate reason, establish inequality in an otherwise comparable group of eligible persons, even if there were only one restitutionary administrative procedure left. Inequality would arise between those who received land compensation and those who would be forced to settle for monetary compensation.

The judges were not convinced that the state was no longer able to provide substitute land as restitution and found that it had failed to prove the legitimate aim of the contested legislation. At the same time, however, they emphasised that they do not intend to rule out the possibility of a restitution period "once and for all".

In the future, it will be shown at the political level whether we will also see a third attempt to improve the restitution period, which will eventually become effective.

Tomáš Mls

### **Benefit:**

Last year's amendment to the Code of Civil Procedure, the Insolvency Act, and the Act on Public Auctions introduced the rule that the **receivables of a homeowners' association related to the administration of the building and land from the unit owners are preferentially paid out of the proceeds from the sale of a unit in execution or insolvency, at a rate of up to one tenth of the proceeds.** "Preferentially" means that claims of homeowners' associations exercised duly and on time are satisfied **before the claims of secured creditors.** These are, as a rule, the banks that funded the purchase of the unit, after whose satisfaction not much was left over from the proceeds of its sale.

Thanks to the amendment to the aforementioned laws, the position of homeowners' associations and their members has actually improved. In the past, duly paying unit owners generally bore all house-related debts (water, sewerage, heat, common space lighting and payments to the repair fund etc.) on behalf of non-paying unit owners, because there was not enough money left over after homeowners' associations satisfied creditors due to the preferential position of secured creditors.

### **Risk:**

The preferential system, however, only applies to **receivables filed for execution and insolvency proceedings on time.** This must be ensured by the board of the homeowners' association.

**If the board of the homeowners' association does not file for execution or insolvency proceedings on time, it shall bear full liability towards the members of the homeowners' association for damage** which the homeowners' association incurs as a result. It would constitute a breach of the duty of due care which the board of the homeowners' association is obliged to uphold.

The boards of homeowners' associations should either themselves regularly and actively monitor the places where auction announcements are published (in particular the official board of the executor, the online auction portal ([www.portaldrazeb.cz](http://www.portaldrazeb.cz)) and the Central Register of Executions), and the Insolvency Register, or secure an external public register monitoring service.

Dominika Veselá



CZ: On the completion of work handed over with defects that do not prevent its use

*The Supreme Court of the Czech Republic confirmed the previously expressed opinion that taking over the subject of the work and fulfilling the obligation to perform the work does not always occur at the same time, but if the work has a defect (even one that does not prevent its use), it is not properly completed, even if the client takes it over.*

In such a case, the contractor's obligation to perform the work does not cease upon its handover to the client, but will be transformed into an obligation corresponding to the rights of the client resulting from defective performance. In other words, **the contractor is no longer obliged to perform the work, but to remove the defects or otherwise satisfy the rights of the client who has taken over the unfinished and defective work.**

In the aforementioned decision, the Supreme Court expressed its views on the case, to which the today no longer valid Commercial Code applied. According to the court, the contractor fulfilled its obligation to perform the work by duly completing it and handing it over to the client. The new Civil Code, however, sees it differently. **The work is completed if its ability to serve its purpose is demonstrated.**

The consequence of the different formulation is that while the contractor previously faced ongoing sanctions (as a rule contractual penalties) for not completing the work until the removal of defects and unfinished works, according to the new Civil Code, if the work is completed with defects that do not prevent its use, the penalties shall cease to run. Therefore, in order to strengthen its position, it is advisable for the client **to negotiate a special contractual penalty for the failure to remove all defects and unfinished works in the event of the completion of the work with defects that do not prevent its use.**

(See the decision of the Supreme Court of the Czech Republic no. 32 Cdo 3458/2016, of 22 May 2018)

David Fabián

## SK: Amendment to the Cadastral Act

***On 1 October 2018, a comprehensive amendment to the Cadastral Act came into effect, which should shorten deadlines, increase transparency and remove practical problems.***

In addition to the already existing electronic services, the Cadastral Authority will offer additional services, such as submission of an application for deposit, objection to registrations, requests for information from the Land Register and for correction of data, as well as monitoring of changes in the Land Register. The ability to register and be informed of any change in respect of one's property should prevent the illegal manipulation of property that has so far been registered without the owner's knowledge. It will also be easier to make copies of cadastral documentation. The Land Register will also newly contain an inventory of real estate owned or managed by one person, within the entire territory of the Slovak Republic. To date, it has been necessary to request that multiple statements of ownership be produced for this purpose.

In the future, the prices of real estate will be listed in the information system, which will be available to selected institutions, such as the National Bank of Slovakia and the courts.

At the same time, the process of registration and making changes should be faster. The deadline for the cancellation of pledges (to date 60 days) has fallen away and, if the Cadastral Authority receives more than one application at the same time, it is no longer necessary to conduct separate proceedings for each application – instead the Office can merge the applications into one procedure.

It has also been clarified that only technical constructions bounded by perimeter walls and a roof structure will be registered in the Land Register. It is unclear whether buildings that are not eligible for registration can always be considered movables and thus registered as a subject of a pledge, for example, in the Central Notarial Register of Pledges. Otherwise, there may be difficulties in this regard when transferring ownership and establishing a pledge.

In addition, the amendment includes a number of changes that regulate the details of applications for registration, correction of mistakes, and so on.

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