

Agreements related to employment relationships: the courts' case-law on the interpretation of the labour law provisions on non-competition agreements and study contracts

Chapter XVIII, entitled “Agreements related to employment relationships” of Act no. I of 2012 on the Labour Code (hereinafter referred to as the Labour Code) contains the relevant legal provisions on non-competition agreements (section 228 of the Labour Code) and study contracts (section 229 of the Labour Code). The jurisprudence-analysing working group aims at primarily examining the following issues:

1. Non-competition agreements

It has to be assessed whether a non-competition agreement that uniquely serves the purposes of confidentiality should be considered invalid with regard to section 8, section 43, subsection (1) and section 228 of the Labour Code.

According to the courts' case-law, the area of business indicated in the company register in respect of a business should be taken into account in the definition of the latter's competitors. It has to be examined whether this practice should be modified, particularly due to changes in the economy.

Based on the judgements available to them, the working group members have to take a position on the definition of the term “appropriate consideration” and whether the lack thereof leads to invalidity (nullity) or to an additional pecuniary compensation to be awarded to the employee.

It is appropriate to examine what kind of evidential difficulties may arise in case of the exercise of the right of withdrawal in respect of the oral conclusion or the termination of a non-competition agreement and how the parties can comply with their duty to provide evidence.

It has also to be analysed whether the employees seek to deviate from the relevant statutory provisions by concluding a collective agreement in that regard, in the affirmative, what form they use and how the courts assess these agreements.

2. Study contracts

It should be decided whether the parties are entitled to conclude a study contract on payments for periods of absence due to the employee's participation at trainings or continuous trainings based on the parties' previous agreement [section 46, subsection (3) and section 55, subsection (1), point g) of the Labour Code].

Although the declaration of the breach of a study contract is based on objective criteria, the courts have to examine the individual circumstances of such breach, as well as the grounds of exemption from liability referred to by the parties and they have to assess them in an appropriate manner.

The termination of the employment relationship between the parties does not of itself affect the validity of the study contract concluded between them. A position has to be taken on the courts' case-law in that regard.

Chapter XVIII of the Labour Code contains no rules on the parties' deviating agreements, therefore the employment contract may deviate from the provisions of section 229 of the Labour Code in favour of the employee [section 43, subsection (1) of the Labour Code]. It has to be examined how the courts assess if the requirement of proportionality is not complied with in favour of the plaintiff.

The jurisprudence-analysing working group wishes to extend the scope of its investigation beyond the aforementioned fields, if it detects other significant issues during the examination of the judgements concerned and deems it necessary to take a position on them as well.

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