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

The summary report of the Curia's jurisprudence-analysing working group and Departmental Opinion number 1/2019 KMK (of 20 May 2019) of the Administrative and Labour Department of the Curia of Hungary based thereon concluded the followings:

Non-competition agreements

1) It is still the area of business indicated in the company register in respect of an employer that has to serve as a basis for determining whether the employee's former and new employers are to be qualified as competitors. Nevertheless, it may be proved that the new employer cannot be regarded as a competitor who jeopardizes the former employer's legitimate economic interests. The content of the parties' agreement has to be assessed on the basis of their intention at the time of the conclusion thereof. The agreement should specify the scope of activities, the field of expertise and the geographical area which would be covered by the employee's non-competition obligations [section 228, subsection (1) of the Labour Code].

2) The appropriate consideration for the employee's non-competition obligations has to be of pecuniary nature and it cannot be replaced by any consideration in kind.

3) If there is no consent between the parties as to the essential terms of their agreement, then the latter is to be considered as a non-existent one. In the field of civil law, a non-existent contract leads to the application of the provisions on unjust enrichment (section 6:579 of the Civil Code), but the implementation of the aforementioned provisions is excluded in labour law matters by virtue of section 31 of the Labour Code. Hence, labour lawsuits based on the above legal ground may entail only liability for damage.

4) In the event that the amount of the consideration laid down in the parties' non-competition agreement for a specific period of time is lower than one-third of the employee's base salary to be paid for the same period of time, then the rules on partial invalidity are to be applied. In determining the "appropriateness" of a consideration meeting the statutory minimum and in case of a reference to the agreement's partial invalidity, the degree of impediment the agreement has on the employee's ability to find employment elsewhere shall be taken into consideration [section 228, subsection (2) of the Labour Code].

Study contracts

1) The time period between the conclusion of a study contract and the completion of studies cannot be taken into account towards the period of time during which the employee has to remain in his employer's service [section 229, subsection (1) of the Labour Code].

2) The contractual clause according to which the duration of incapacity to work and the duration of suspension of employment without entitlement to vacation time cannot be included in the length of time spent in employment shall be valid [section 115, subsection (2) and section 229, subsection (1) of the Labour Code].

3) A study contract may be terminated by either of the parties with immediate effect in the event of subsequent major changes in the party's circumstances whereby carrying out the commitment is no longer possible or it would result in unreasonable hardship. The lawfulness of the termination is to be examined by taking the disadvantage suffered by the terminating party into consideration and not by assessing the extent and nature of the harm suffered by the other party [section 229, subsection (7) of the Labour Code].