

## CZ: What to do when ivy poisons neighbourly relations?

**CZ: Immediate termination of apartment lease: when is it possible and under what conditions?**

*If the tenant violates his obligations in an especially serious manner, the landlord has the right to terminate the lease without notice and to require the tenant to surrender the apartment to him within one month of the end of the lease at the latest.*

**Especially serious violations by the tenant include** failure to pay the rent and service fees for at least three months, serious or irreparable damage to the apartment or house, other serious damage or difficulties caused to the landlord or to persons who reside in the building, or use of the property in a manner other than that agreed.

If the landlord believes that the tenant has breached his obligations in an especially serious manner, he may terminate the lease agreement without notice. **However, prior to terminating the agreement, the landlord must ask the tenant to cease his harmful behaviour.**

The **notification**, which does not need to be in writing (although a letter is recommended), must include a **specification** (description) of the harmful behaviour, and the landlord must set a **reasonable time** for the tenant to remedy.

**If the nature of the breach rules out the possibility of the tenant to remedy (remove) his harmful actions, there is no reason to give him a reasonable time to "remedy". In such a case, termination of lease without a notice period is not appropriate, but rather termination with a three-month notice period.**

Peter Perniš

*Proprietary rights give owners the right to use their property within the limits of the law and to exclude other persons from such use. What are the options for an owner who is bothered by plant growth crossing onto his property from a neighbouring plot?*

In the case at hand, which was heard by the Supreme Court of the Czech Republic, the object of the dispute was a climbing plant (we'll call it ivy) which the owner planted on his plot and let grow over the neighbouring wall in order to improve its appearance. The neighbour tried to prevent it by filing an action for protection against so-called imissions.

Generally, **owners must refrain from doing anything that causes waste, water, smoke, dust, gas, odours, light, shadow, noise, shaking and other similar effects (so-called imissions) to enter a neighbour's land** to an extent disproportionate to local conditions and considerably limiting the normal use of the land.

According to the Supreme Court, however, the planting of plants at the boundary of the plot and their potential subsequent growth onto the neighbouring land is not in and of itself an imission, because there is no physical overlap onto the adjacent land. This does not mean, however, that a neighbour cannot **claim protection of his property rights affected by plants growing from neighbouring land.**

On the one hand, owners have the right to **protect their rights by sanctioned self-help** under Section 1016 (2) and (3) of the Civil Code (i.e. the overgrown part of the plants can be carefully removed), and can **defend themselves by means of a so-called negatory action** under Section 1042 of the Civil Code. When so doing, it **can be claimed that the owner of a neighbouring plot should remove the parts of the plant that interfere with the proprietary rights of the affected owner, or that he (in the future) should refrain from such interventions.**

Negatory actions can be applied to plants whenever there is direct use of someone else's property. In the case in question, it means that if the ivy climbs on the wall of a neighbouring house, even if its purpose is to improve the appearance of an otherwise unsightly wall, it constitutes the use of someone else's thing (the wall of the neighbouring house), and a negatory action serves to defend against such interference in proprietary rights. **The landowner cannot, without a legal reason, interfere with the neighbour's property by letting the ivy climb up the neighbouring wall.**

Finally, in certain situations the Civil Code regulates special rules concerning plants on adjacent plots – but perhaps more about that next time.

Dominika Veselá



**CZ: Road defects**

*Potholes both big and small are an everyday reality on the roads. While sometimes they are simply annoying, at other times they can be a cause of considerable damage. What legislation covers these road defects and what is the liability for them?*

The Roads Act defines the concept of a "road defect" as a change in the usability of the road that the driver cannot foresee even when operating the vehicle in accordance with the structural status of the road, its traffic and technical conditions, and weather conditions. In such cases, liability is directly defined by law: the owner of the motorway, road, local road or pavement is liable to the users of these roads for the damage caused by a road defect. Liability is waived if it proves that it was not able to remedy this defect (or to alleviate it in the case of defects due to weather conditions) or to provide written warning of it.

In the opinion of the Supreme Court, however, not every deficiency on the road can be labelled a "road defect". In a recent decision, the court assessed liability for damage to the health of a cyclist caused by his fall into an unmarked and unsecured excavation connected with construction work on a bicycle path. The court concluded that this did not constitute a road defect, but that liability nevertheless arises under the Civil Code. According to the specific circumstances, the builder and the contractor commissioned to perform the construction work (if the damage was caused by its activities or omission) are liable for the damage. For details, see the judgment of the Supreme Court of the Czech Republic file 25 Cdo 832/2016, of 28 June 2017.

Tomáš Mls

**SK/CZ: Amendments to the EIA Act in Slovakia and the Czech Republic and their impact on real estate projects****Amendments to the EIA Act in Slovakia**

There were two amendments to the Environmental Impact Assessment Act in 2017, aimed in particular at eliminating transposition deficits with European regulations.

The change, effective from January 2017, was primarily to specify the conditions for granting contributions, with an emphasis on demonstrating the proposed activity's compliance with the environmental impact assessment requirements, which includes cases where the project was changed.

The second amendment, effective from June 2017, relates to the need to improve the quality of the environmental impact assessment procedures themselves, and to align them with the principles of regulation and coherence with other EU rules and policies. An important change is the extension of the information obligation of competent authorities to the public on the entire EIA process. Developers will then have to count upon a longer period of time to obtain the relevant permits.

**Amendments to the EIA Act in the Czech Republic**

The Czech Senate has approved a major amendment to the Environmental Impact Assessment Act, which significantly simplifies and accelerates the EIA process and provides investors with greater certainty when planning their projects. The main changes include follow-up proceedings through the appointment of specific administrative procedures directly in the law and the narrowing of so-called subthreshold plans subject to EIA. The whole process will also be accelerated by new financial sanctions for unnecessary delays in the process. The amendment came into effect on 1 November 2017.

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