WOLF THEISS

TO OUR READERS

DECEMBER 2015

We are happy to announce the first issue of the WOLF THEISS Dispute Resolution Practice Group newsletter, the *DR INSIDER*. The purpose of the newsletter is to share the teams specialized expertise and to keep our clients and colleagues up-to-date with recent developments in the law and business practices throughout the CEE/SEE Region. Our intention is not to generate additional email in your inbox but to provide you with useful insights that may help you in your specific businsess sector or law practice.

To this end, the first issue addresses current trends and hot topics such as the upcoming criminal law reforms in Austria, the new mediation and conciliation rules of the VIAC, highlights from recent rulings of the Austrian Supreme Court and a very interesting persepctive regarding new developments in Czech civil proceedings.

Allegedly, one has 51 seconds to impress newsletter readers, so we won't waste any more of your time with lengthy editorials. The *DR Insider* will be issued on a quarterly basis. We hope that you enjoy it.

Best Regards,

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CRIMINAL LAW

NEW AMENDMENT TO THE AUSTRIAN CRIMINAL CODE

On 1 January 2016, an amendment to the Austrian Criminal Code will come into force.

Whereas the penal reform of 2014 focused on procedural law, the current amendment is the most significant reform of substantive law since the commencement of the Austrian Criminal Code ("**StGB**") in 1975.

The amendment will have an impact on several sections to the StGB and will bring changes to numerous provisions. This article focuses on specific amendments to the StGB which correspond to white collar crimes.

Increase of Value Limits

The provisions of the StGB which protect criminal offences against foreign property often refer to the actual damage caused by the criminal offence. The threat of punishment depends on whether the damage caused by the crime exceeds certain value limits. Most business crime offences have two value limits. These value limits will increase from (i) EUR 3.000,00 to EUR 5.000,00 and (ii) EUR 50.000,00 to EUR 300.000,00.

This leads to the following significant changes: For a person who faces charges of

breach of trust (Section 153 StGB), the threat of punishment will be up to three years of imprisonment with potential damages of EUR 5.000,00 – EUR 300.000,00. Only if the damage exceeds EUR 300.000,00, the penalty will be one to a maximum of ten years of imprisonment. Before 1 January 2016, the maximum penalty of one to ten years of imprisonment was already applicable in cases with a damage exceeding EUR 50.000,00. The six fold increase of the second value limit for criminal offences such as breach of trust or fraud constitutes a major change for Austrian white collar criminal law.

However, this does not affect all business related criminal offences. For example, the value limits for the criminal offences of money laundering (Section 164 StGB) and corruption will not be changed.

Statutory Implementation of Gross Negligence in Austrian Criminal Law

To date, Austrian criminal law only had certain criminal offences which referred to gross negligence. The general provisions of the StGB only differentiated between intent and negligence. The term "gross negligence" was not legally defined.

The newly introduced Section 6 paragraph 3 StGB provides such a definition for gross negligence. Consistent with Austrian case law, gross negligence will be assumed when a person acts in an unusual and noticeable non-diligent way so that the occurrence of circumstances which correspond to the criminal offence are likely to be predicted.

Implementation of Falsification of Balance Sheets in StGB

So far, offences regarding balance sheets and financial statements were not governed by the StGB but by provisions of several different acts, such as the Austrian Stock Cooperation Act ("AktG") or Limited Liability Companies Act ("GmbHG"). This led to different definitions and penalties depending on the applicable act.

The unification of criminal offences regarding the presentation of balance sheets and financial statements is a core area of the amendments to the StGB. The reforms implement two new provisions to the StGB:

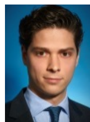
- **Unjustifiable presentation of essential information about certain associations (Section 163a StGB)**
- **Unjustifiable reports of auditors of certain associations (Section 163b StGB)**

This leads to a differentiation of the potential perpetrators into decisions-makers of the association (Section 163a StGB) and external auditors (Section 163b StGB). The terms decision-maker (*Entscheidungsträger*) and association (*Verband*) in this context follow the definition of the Austrian Corporate Criminal Liability Act ("VbVG"). However, the newly implemented Section 163c StGB contains a conclusive enumeration of the associations to which the Section 163a and Section 163b shall apply.

In this context, not only members of the managing board or managing directors of corporations are to be seen as decision-makers, but also authorized officers and persons who exercise significant influence on the company. Therefore the new provision might, in certain cases, also apply to members of the management level below the management board. The provision will also apply to persons who are assigned with the duty of presenting the information prepared by a decision maker. This might also apply to tax advisors.

Furthermore, the circle of potential addressees of these criminal offences will be extended, as it will apply to foreign corporations as well. From 1 January 2016, it is explicitly decided that Section 163a and Section 163b will apply in all cases in which the association has its headquarters in Austria, irrespective of where the criminal action was actually taken.

The implementation of these articles centralizes most potential offences regarding balance sheets and financial statements in the StGB. It will be interesting to see the impact of these new provisions on the daily business of corporations headquartered in Austria.



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HIGHLIGHTS FROM THE AUSTRIAN SUPREME COURT

NOISE POLLUTION IN VIENNA

The inner city of Vienna is a very busy place and the noise pollution is certainly higher than in the outskirts of the city. People who live in the inner city have to put up with noise caused by traffic, restaurants and shops – those combined noises can be defined as "customary noise pollution". But what about a rehearsal room for heavy metal and hard rock bands? Luckily for all of those who have decided to live in the inner city and put up with the customary noise pollution, the Austrian Supreme Court held that heavy metal and hard rock music can be very annoying indeed (2Ob166/14x). Therefore, daily band rehearsals can't be considered part of customary noise pollution in the inner city. However, the Court emphasized that the apartment of the plaintiff who asked for the injunction is situated in a quiet inner courtyard. The Supreme Court also specifically said that heavy metal and hard rock music is very annoying – would the Supreme Court maybe prefer a jazz orchestra?

REFORMS TO CRIMINAL OFFENCE BREACH OF TRUST AND THE BUSINESS JUDGEMENT RULE IN AUSTRIA

In recent years, executive misconduct led to various proceedings in Austrian criminal and civil courts. Effective on 1 January 2016, the Criminal Law Amendment Act brings some changes to a vital business crime of the Austrian Criminal Code ("StGB"), namely breach of trust ("Untreue"). In addition, this modification generates some legal changes to Austrian corporate law. The future will show how these amendments may trigger potential litigation for a company's management.

The criminal offence of breach of trust (Section 153 of the StGB) states: "*Whoever knowingly misuses the authority delegated to him by statute, law, official order or contract to dispose of property not belonging to him or to oblige another person and causes damage to another person in this way, shall be criminally liable […]*". The principle of this provision consists of the misuse of authorization/power (e.g. board member) to dispose of another's property or to obligate another to the detriment of the other person's property. It is not an element of breach of trust that the offender derives personal gain from this.

In line with the Austrian parliamentary initiative to provide for legal certainty by amending business crime related offences, the meaning of the term "misuse" (*Missbrauch*) has been defined more precisely. According to a newly inserted paragraph 2 of Section 153 StGB, an abuse exists only if those rules are unreasonably violated which are particularly established for the protection of the beneficial owner's property. Liability for violation of simple internal guidelines or rules concerning third parties (e.g. creditors, general public) is not covered by this new provision. The authorized representative exceeds the line defining a misuse if a specific decision goes beyond the proper use of his delegated discretion.

The intention of this amendment is to prevent poor economic decisions from being a *priori* criminalized. Board members and directors should make their decisions without fear of being prosecuted the next day.

In addition to this criminal law amendment, the "**Business Judgement Rule**" which has been established in Austrian case law for many years, has been explicitly incorporated into the relevant corporate liability provisions (Section 84 of the Stock Corporation Act and Section 25 of the Limited Liability Companies Act): A board member or managing director "*by all means acts with the diligence of a prudent and careful manager when he is not guided by unobjective interests in his business decisions and may assume on the basis of reasonable information that he is acting in the interest of the company.*"

In a nutshell, risky decisions by directors when conducting their business are now excluded from the scope of Section 153 StGB. as long as they are in line with the Business Judgement Rule.

In practice, when representing a corporation's board of directors in court proceedings, it needs to be prooven that the client(s) acted reasonably in a particular situation considering their rules of conduct. If one succeeds at this stage, the courts will most likely not review or question the directors' decisions or dealings. From the executive's point of view, this amendment to the criminal code is definitely a welcomed change. However, critics point out that no one really knows the meaning of the newly inserted paragraph 2, e.g. the exact definition of the beneficial owner. Only time will tell, whether the practical application of the reform will have any impact on Austrian Supreme Court rulings.

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CYBERBULLYING

With a new law (Section 107c StGB), Austria has introduced an offence to its criminal code which explicitly penalizes cyberbullying (although the legislature consciously decided not to use the vague term "cyberbullying").

The reason for this new offence is that cyberbullying is a rather new phenomenon and the Austrian penal code currently does not provide sufficient protection against cyberbullying.

HIGHLIGHTS FROM THE AUSTRIAN SUPREME COURT

FALLING OFF THE LADDER WHILE TRYING TO ENTER YOUR HOME THROUGH THE WINDOW IS NOT A TYPICAL "WAY TO WORK" RISK

According to settled case law, the way home from work ends as soon as one has reached the outside of the front door. But what happens if you can't open the front door because the door handle broke? It is certainly not the best idea to grab a ladder and try to enter through a window on the first floor. In a recent judgement (10 ObS 86/15t), the Austrian Supreme Court held that this problem constitutes a domestic problem rather than a typical "way to work" risk. The plaintiff should be aware of such domestic problems as he is the only one who can influence this source of danger, the Court said. Therefore, the claim for a disability pension is denied.

In particular, the new law covers cases which involve social media issues that often lead to an increased public perception of which the effects can last for an indefinite period because of search engines, links etc.

In addition, there is no place to retreat for the victim and the offender may even remain anonymous. Emails, text messages and phone calls can also constitute cyber-bullying. However, Section 107c StGB requires that the bullying is perceptible for at least ten people.

Furthermore, the bullying must last for a long time period and this criterion is usually fulfilled if someone publishes something on the internet and doesn't delete it.

The bullying is only punishable under Section 107c StGB if it may have the effect of unreasonably impairing the lifestyle of the victim. An actual impairment is not necessary. The offender shall be punished with imprisonment up to 1 year or receive a corresponding fine. If the bullying leads to suicide or a suicide attempt, the offender shall be punished with imprisonment up to 3 years.

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PROCEDURAL LAW

SECURING YOUR CIVIL CLAIMS IN CRIMINAL PROCEEDINGS

With the interim injunction, the Austrian Enforcement Act provides an effective tool for preliminarily securing funds or assets in order to avoid difficulties with the enforcement of a future court decision because the opponent might have transferred or "secured" all his assets. An endangered party may apply for an interim injunction either in the course of pending civil proceedings or even before filing a claim.

In addition to pursuing civil claims in the course of respective civil proceedings, the Austrian Criminal Procedure Code ("StPO") also provides powerful tools to recover and/or secure any kind of assets within criminal proceedings.

But who is entitled to this and how do they achieve it?

Any individual person or legal entity that is affected by a criminal offence may join criminal proceedings as a so-called "private party" ("**Privatbeteiligter**"). Since Austrian criminal courts are also competent to hear and decide upon civil claims deriving out of the commission of criminal acts, the private party is – among other things – entitled to present its civil claims against the accused and request that the criminal court decide upon its civil claims

In order to secure these civil claims in the course of criminal proceedings, the StPO provides two tools in particular:

- **temporary securing (see Section 110 et seq StPO)**
- **seizure (see Section 115 et seq StPO)**

The scope of these two tools has been significantly enlarged with the Criminal Procedure Amending Law 2014 (published in Austrian Federal Law Gazette I No 71/2014 and entered into force on 1st January 2015). Before that amendment, only civil claims in terms of Section 367 StPO could be subject to those tools (e.g. temporary securing and/or seizure of stolen assets). This distinction has been removed. In accordance with the amended provisions of the StPO, all civil claims which are deriving out of the commission of criminal acts could be secured by these tools.

However, the private party has no right to file a respective application. The only possibility for a private party to achieve a temporary securing and/or seizure is to suggest to the public prosecutor the procedure and, if possible, to provide him or her with the necessary documents, information and evidence to identify and justify the temporary securing and/or seizure of assets.

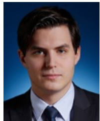
According to Austrian law, securing assets can be achieved by either:

- **Placing the respective assets under direct custody.**
- **Restraining the suspect's ability to dispose of the respective assets, namely by ordering the suspect to refrain from giving away, selling or pawning objects and/or any other kind of assets.**

Upon the request of the public prosecutor, the court may also allow the seizure of temporarily secured objects and/or assets for the sole purpose of securing the civil claims of injured parties.

Notwithstanding that, only the competent court for hearing the criminal case will finally decide on civil claims whereby it can decide in two ways: (i) civil claims will be approved or (ii) it refers a party to bring its claims before the civil courts. However, since criminal courts tend to approve civil claims only in clear-cut cases, it is more likely that a criminal court will refer a private party to the civil courts.

One major advantage of participating as a private party in the course of criminal proceedings is that the participation does not trigger any court fees. For that reason, cooperating with the criminal authorities could be an economical and efficient alternative to pursuing civil claims. On the other hand and contrary to civil proceedings, you cannot actively influence the approach of the criminal authorities. In other words: instead of being the driver, you are just a passenger.



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THE NEW EUROPEAN INSOLVENCY REGULATION

On 26 June 2015, the revised European Insolvency Regulation (2015/848) entered into force and will be applicable to all insolvency proceedings that will be opened after 25 June 2017.

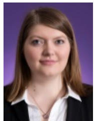
One main aim of the revision of the Regulation is to extend its scope to proceedings that facilitate the financial recovery of distressed businesses. Therefore, it will apply not only to the currently covered common liquidation proceedings but also to proceedings for the restructuring of a debtor at a stage where there is only a likelihood of insolvency, as well as to so-called "hybrid proceedings" that leave the debtor fully or partially in control of his assets and affairs and to proceedings providing for a debt discharge or a debt adjustment of consumers and self-employed persons. Annex A of the Regulation provides an exhaustive list of proceedings that shall be covered by this Regulation for each Member State.

The deciding factor for assessing the competent international jurisdiction for opening the main insolvency proceedings, namely the "centre of [the debtor's] main interests" (COMI), has been newly defined and includes now a special link for individuals exercising an independent business or professional activity. For these independent business people or professional providers, the COMI will presumptively be in their "principal place of business". For all other individuals, it will be in their habitual residence. Companies and legal persons are still presumed to have the COMI in the place of their registered office. In order to avoid fraudulent or abusive forum shopping practices, these presumptions will only apply if the registered office or principal place of business has not been transferred to another Member State within a 3-month period prior to the request for opening the insolvency proceedings, or within a 6-month period regarding the habitual residence. The court requested to open the insolvency proceedings will have to actively examine whether the prerequisites for COMI have been met and via its own motion will rule on its jurisdiction.

Chapter V of the revised Regulation (Art 56 ff) provides special rules for the management of insolvency proceedings regarding members of a group of companies. These provisions strive to ensure the efficiency of the insolvency administration, while respecting each group member's separate legal personality. Therefore, insolvency practitioners of (and courts involved with) group companies will be obliged to cooperate and communicate. The group of companies to which this Section applies is defined as any parent company undertaking together with all its subsidiaries. In order to facilitate the coordination of the insolvency proceedings, it is possible to appoint a single insolvency practitioner (in Austria called insolvency administrator) for several companies of the group, as long as all local qualification and licensing issues are complied with. Such an insolvency practitioner will be allowed to request the opening of a "group coordination proceeding" at any court having jurisdiction over the insolvency

proceedings of any group company. The purpose of these proceedings is to facilitate the effective administration of the insolvency proceedings relating to different group members. This includes the preparation of a group coordination plan that identifies, describes and recommends a comprehensive set of measures in order to re-establish the economic performance and the financial soundness of the entire group or parts of it.

The last innovation of the new regulation is that in order to safeguard the foreign creditors' right to lodge claims and prevent the opening of parallel proceedings, all Member States are required to establish publicly accessible electronic registers that contain information on cross-border cases. All national registers will be interconnected with each other through the European e-Justice portal.



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ARBITRATION

VIAC LAUNCHES THE NEW VIENNA MEDIATION RULES

Following the highly successful revision of the new Vienna Arbitration Rules in July 2013, the Vienna International Arbitral Centre (VIAC) has now revised and renamed its Rules of Conciliation. The new Vienna Mediation Rules will enter into force on 1 January 2016 and are designed to govern amicable dispute resolution supported by a third neutral party and administered by VIAC.

The concept of the Vienna Mediation Rules is to allow parties a maximum of freedom regarding the type of amicable dispute resolution, while at the same time offering the comfort and security of VIAC administered proceedings. In particular, the Vienna Mediation Rules make amicable dispute resolution as **flexible** as possible by not limiting the type of procedure to mediation; instead, the parties may define the type of amicable dispute resolution method that they wish to submit their dispute to.

Moreover, the Vienna Mediation Rules make amicable dispute resolution easily **accessible** as it is not necessary that an agreement to submit a dispute to VIAC is already in place between the parties prior to a party's request to initiate proceedings. Last but not least, the Vienna Mediation Rules provide a **sound procedural framework** that, for example, ensures confidentiality of the amicable dispute resolution process and full compatibility with possible subsequent arbitration proceedings.

The introduction of the Vienna Mediation Rules means that VIAC is now a one-stop-shop offering state-of-the-art administered amicable dispute resolution and/or arbitration proceedings for parties that wish to keep their disputes out of state courts and prefer an effective tailor-made solution.

The new Vienna Mediation Rules can be downloaded at http://www.viac.eu/en/mediation-en. A Practitioners' Handbook on the new Vienna Mediation Rules is due be published by VIAC in the first quarter of 2016.

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FOCUS: LIFE SCIENCES & HEALTH CARE

NEW CASE LAW

Duty to Provide Information about the Surgeon (Austrian Supreme Court, 8 Ob 120/14a)

Before a surgery takes place, the patient has to be informed properly and timely about the concrete medical treatment. Based on this information, the patient has to expressly agree with the specific medical act. Otherwise, a medical treatment performed "lege artis" is considered to be unlawful and the respective hospital operator could be held liable for violating the patient's physical integrity.

In general, the hospital operator does not need to inform the patient about the actual surgeon. However, if the patient gives only

his consent to the medical treatment because he expects that the surgery will be performed by a particular doctor and the hospital operator is aware of that expectation, this limited consent has to be considered accordingly.

In the particular case, the claimant informed the defendant (the hospital operator) that her operation of the thyroid gland shall be performed by a particular expert for those kinds of surgeries.

Awareness Campaign on Vaccinations – Restricted Advertising?
(Austrian Supreme Court, 4 Ob 96/14t)

This proceeding dealt with the legal question of whether an awareness campaign on vaccinations could be qualified as direct-to-customer advertising of prescription medicine which is forbidden in accordance with Section 51 of the Austrian Medicines Act ("*AMG*").

Since it is not always easy to identify the significant differentiation between a mere health information and advertising of prescription medicines, there is plenty of Austrian case law regarding this legal issue, especially when the health information/awareness campaign is supported by pharmaceutical companies.

In deciding these cases, the Austrian Supreme Court regularly considers (i) the intended audience, (ii) the product-related information contained in the information/campaign and (iii) the intention to promote sales as determining factors.

The concrete awareness campaign, however, neither contained any references to a specific vaccine nor provided any information about the substances and the vaccine's mode of action. Therefore, the Austrian Supreme Court concluded that the particular awareness campaign did not come within the prohibition of Section 51 para 1 number 1 AMG.

Liability for Damage Caused by Defective Medical Device
(ECJ, C-503/13 and C-504/13)

In the actual decision, the ECJ defined more broadly the scope of defective products in terms of Article 6 (1) of the Directive 85/374 (which corresponds with Section 5 para 1 of the Austrian Federal Law on Product Liability – "*PHG*").

Pursuant to Article 6 (1) of the Directive 85/374 "[a] a product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account", whereas the reasonable expectations of the public at large have to be assessed (see also the sixth recital in the preamble). The specific group of users for whom the product is intended is the respective public at large.

In particular, the circumstances according to Article 6 (1) of the Directive 85/374 are (i) the presentation of the product and (ii) the use to which it could reasonably be expected that the product would be put.

With regard to medical devices, potential patients are the specific group of use. The safety requirements, especially for medical devices such as pacemakers and implantable cardioverter defibrillators, have to be very high because those products might cause "significantly higher damages".

For these reasons, a product – specifically pacemakers and implantable cardioverter defibrillators – may also be considered as defective products in terms of Article 6 (1) of the Directive 85/374 when it is found that other products which belong to the same group or form part of the same production series, have a potential defect. It is not necessary to determine whether the specific product has such a defect as well.

The practical consequence of this decision is a simplification of the damaged party's burden of proof regarding the claimed defects.

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DEVELOPMENTS IN CEE/SEE

EXTRAORDINARY APPEAL AND THE UNIQUE POSITION OF THE SUPREME COURT IN THE CZECH REPUBLIC

As of 1 January 2013, a significant change was made to the regulation of the extraordinary appeal in the Czech

Republic. The main purpose of the change was to ease the burden of the Supreme Court by limiting the access to the extraordinary appeal. The dissenting voices argued that such limitation would in fact lead to a denial of justice. The two year practice has shown that the change led in fact to an increased number of filings.

The judicial system in the Czech Republic has two instances. To challenge a decision of the court of the first instance, an appeal is permitted. The extraordinary appeal (in Czech "*dovolání*") then serves as a special measure under specific conditions/requirements to challenge decisions of the appeal courts. The Supreme Court, however, does not constitute a third instance of the judicial system and its primary aim is to form legal opinions and unite the decision practice of the lower courts.

Originally and until the end of 2012, the extraordinary appeal could be filed to challenge a decision of the appeals court where the appealed decision was of a so called "significant legal importance". The element of significant legal importance was used especially in cases where the decision of the legal issue could have had an impact on a broader circle of legal relationships. However, this requirement was often misinterpreted and resulted in many more parties reaching the Supreme Court – making it *de facto* a third instance of the judicial system. The majority of such extraordinary appeals were then rejected because the Supreme Court refused the argumentation regarding the significant legal importance of a case. The workload at the Supreme Court was, nevertheless, increasing.

At the end of 2012, the Czech Constitutional Court decided that the regulation of the extraordinary appeal is in fact unconstitutional. The main reason was the fact that the decision of the Supreme Court, whether the case is of significant legal importance, is dependent solely on the consideration of the Supreme Court and the petitioner could not assess in advance, whether the extraordinary appeal is permitted in each individual case or not. The Czech Civil Procedure Code had to be therefore amended.

The new regulation restricted the extraordinary appeal proceedings to a limited number of cases. The extraordinary appeal is now admissible against any appeal court's decision in which it (i) deviated from a settled opinion of the Supreme Court, (ii) settled opinion that has not been given yet or (iii) the court's settled decision practice should be assessed in a different way. The new legislation also limited review of the decision of the appeal court strictly to the legal assessment of the case.

According to the facts mentioned above, it can be said that the new regulation provides more precise criteria for admissibility of the extraordinary appeal, and thus tries to alleviate the pressure on the Supreme Court's workload. These procedural hurdles are intended to prevent unpredictable court decisions and at the same time allow petitioners to assess in advance whether the extraordinary appeal is permitted in each individual case or not, thus preventing unqualified filings.

The new regulation aims to achieve a compromise between the sustainable workload of the Supreme Court and the accessibility of justice. However, the final decision remains in the court's hands. We consider this approach to be correct as it enables the Supreme Court to fulfil its primary task. In the end, it is always the duty of the courts to apply the procedural rules in accordance with constitutional requirements.

The official numbers of the Supreme Court, however, show that the workload of the Supreme Court after the legislative change is actually rising. The number of newly filed extraordinary appeals has risen by 50% between 2012 and 2014. The mere fact that the number of filed extraordinary appeals has not declined instantly does not necessarily mean that the change was bad; however, the percentage of the resolved cases has declined during the same period. That means that the legislative change made the situation even worse than before.

It may still be too early to judge whether the legislative change regarding the extraordinary appeal in the Czech Republic is a successful one or not. However, at least in the first two years after the change, the desired effect has not been achieved and

the Supreme Court has to deal with an even larger workload. The trend is quite apparent and we do not think that the number of extraordinary appeals will dramatically decline in the coming years. The Supreme Court's primary task for the future will have to be increasing the percentage of resolved cases.

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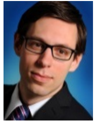

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WOLF THEISS PRAGUE HOSTS CONFERENCE WITH NEWLY APPOINTED CONSTITUTIONAL COURT JUDGE JAROMÍR JIRSA

On 20 November 2015 under the leadership of partners Tomáš Rychlý and Jan Myška, Wolf Theiss Prague hosted a conference for clients with newly appointed Constitutional Court Judge Jaromír Jirsa.

Mr. Jirsa has made a successful career becoming a deputy head of the Prague 1 District Court. Before becoming a judge at the Czech Constitutional Court, he was acting as a deputy head of Prague's Municipal Court. Mr. Jirsa also acted as the head of the Czech Judiciary Union (professional organization in which each Czech judge is a member). The main area of Mr. Jirsa's expertise is Czech civil law and this corresponds to his academic credentials as he is the leading author of the highly praised commentary to the Czech Civil Procedure Code.

Those of you familiar with Czech civil law practice may know some of Mr. Jiras's opinions. His most recent opinion is about debtors and compliance with the law. Mr. Jirsa believes that recently debtors in the Czech Republic are given more rights than creditors and that breaking a law is actually paying off in today's Czech legal environment.

Named to the Constitutional Court as one of a few practicing judges (most of the judges practicing at the Constitutional Court are academics), Mr. Jirsa brings a fresh practical insight into Constitutional Court decision making. He believes that a certain amount of management skills are required to perform as a judge. Therefore, the experience he gained as a deputy head of the Prague Municipal Court will be very valuable in his current role.

Taking into account Mr. Jirsa's expertise, the topics of the conference focused on Czech civil proceedings. The conference started with a panel discussion on the following five themes:

1. **The prevention of law abuse by the defendant in civil proceedings.**
2. **The right to fair trial.**
3. **The role of experts and expert opinions in civil proceedings.**
4. **The acceleration of court proceedings.**
5. **The simplification of proceedings for the parties.**

The audience highly appreciated having Mr. Jirsa's insight into these issues as sometimes the view of a judge may be completely different from that of a lawyer, yet a comparison of both approaches is useful for both sides.

In relation to the topic of the **prevention of law abuse by an opposing party** in a civil trial, Mr. Jirsa believes that having a more simple Code of Proceedings is far more practical than a casuistic one. The more legal tools parties have available, the easier it is to abuse them. During the proceedings, the judge has the necessary legal options to end an abusive behaviour. For example, a judge can impose a penalty payment. Encouraging concentration and demanding procedural compliance during court proceedings by a judge is also particularly helpful for the prevention of abuse by the parties.

The **right to a fair trial** as a crucial right of civil proceedings must be supervised by courts of all instances, not only by the Constitutional Court. Mr. Jirsa says, it is a fact that most of the civil proceedings are unfortunately affected by minor or even more serious procedural mistakes, mainly due to the work overload at the courts.

According to Mr. Jirsa, **expert opinions** in civil proceedings are very often misused. That causes the experts to make unnecessary, mostly unintentional and avoidable, mistakes. For example, calling the expert who should be appointed to

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draw up the expert opinion to a preliminary hearing would help him collect more as well as significant evidence on the researched matter. This might also help the experts to better concentrate on the relevant aspects of the case.

Czech civil proceedings are not the slowest in Europe according to Mr. Jirsa, but there is still room for improvement and **acceleration of the process**, which he believes can be achieved with the proper employment of assistants for judges. Sometimes there are highly qualified and college educated clerks being used for a job that could be done by regular employees of the court without a law school degree. The assistants could then work on administrative matters instead of working on cases to help the judge, at least in procedural matters.

Certain **simplification of civil process** was supposed to be made by the division of contradictory proceedings and other proceedings, but the exact opposite happened. In Mr. Jirsa's opinion, having two or more different codes of proceedings is excessive, especially when they are used on a subsidiary basis. Unfortunately, work on a new Civil Proceedings Code has been put on hold under the current Minister of Justice.

The conference was a very beneficial session for all the guests who gained more knowledge about the most recent trends and thoughts within the judiciary about civil proceedings and well as potential future developments.

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