

COMPETITION CLAUSE in Czech and Dutch legal system

Resume

The competition clause is an instrument of legal protection for an employer against the abuse of the company's confidential information and know-how from the side of an employee to whom this information was introduced in his labour relation. The competition clause presents a contract agreed in writing between the employer and employee, which aims to protect such information, where the employee agrees not to initiate any activities in a competitive field of business for a certain period of time, not exceeding one year, after the labour relation is over. The employee may not engage in activities for another employer or his own account.

The thesis deals with the concept of the competition clause in general, it presents its history in the Czech legal system from the beginning of 20th century to the present date. I focused on the position of the concept after each amendment related with the Labour Code after the Velvet Revolution in 1989. I tried to determine four different basic stages after each relevant amendment in the development of the legal institute of the competition clause after 1989:

- a. Absence of the concept in the Labour code due to political and economic situation in the Czech republic /Czechoslovakia/ until amendment No. 155/2000 Coll.,
- b. Labour Code after the amendment No. 155/2000 Coll. which eventually presented the concept of the competition clause highly demanded by new social, political and economic order,
- c. Labour Code after the amendment. No. 46/2004 Coll. which absented the term "competition clause" but specified the concept by giving legal determination to unclear expressions in the related provisions,
- d. And finally, the new Labour Code, introduced as act No. 262/2006 Coll. which came into effect on 1st January 2007, takes over the former provisions but reflects the new relation between labour and civil law: general rules of civil code now do regulate industrial relations while the previous labour code maintained to be a separate legal regulation and did not allow analogical use of the civil rights norms.

My thesis further analyses particular problems of contemporary legal regulation of the competition clause:

- conflict between freedom of choice of occupation and limitation of this freedom by signing the competition clause,

- description of earning activities,
- the essence of the fine for the breach of the competition clause,
- the methods of termination of the competition clause.

In October 2008 the Ministry of Labour and Social Affairs introduced a proposal of amendment to Labour Code based on a long-term cooperation with labour-law specialists which offers a new perspective for the competition clause in the labour code. The proposal comes with the missing specifications regarding the duration of the competition clause, requires geographical, personal and real determination, lowers the minimal compensation amount paid by the employer to the employee etc. Presenting the complete wording of the provision regarding competition clause seems relevant.

The conception of legal institute of the competition clause is also vested in other branches of law rather than only in the labour law. I have tried to make a brief summary of the position of this institute in business law, act. No. 513/1999 Coll. and in economic competition act. No. 143/2001 Coll. I also devoted marginal attention to other related subject-matters: unfair competition and so-called “insider trading”.

In my intention to create a guide for both the employer and the employee regarding complete information on the competition clause, I also needed to mention alternatives of protection of the employer’s know-how:

- business law provisions for protecting the business secret,
- contractus innominatus based on provisions of Civil Code,
- and Labour Code qualification agreement.

In my final chapter I studied the general aspects of the labour law of the Kingdom of the Netherlands. I spent time surveying historical development of labour law provisions in The Netherlands and its connection to civil law regulation. I paid attention to the late and contemporary labour law provisions regarding individual labour relations, regulation of the employment, obligation of the contractual parties from the employment contracts, remuneration, working time, health and security issues, termination of the contract of employment.

Further I studied the institute of the competition clause in the Dutch legal system. The legal regulation regarding competition appeared in both countries in about the same time