

NEWSLETTER

November 2015

The scope of the ban on doing business

Please be informed about the latest Supreme Court decision of the 24th of September 2015, file no V CSK 689/14, in which the process of formulating the prohibition on conduct of business has been subjected to consideration (Art. 373 Bankruptcy and Reorganization Law, hereinafter as 'p.u.n.'), namely, whether the court ruling ban on business activity deprives the total of all these allowances, or may determine the narrower scope and limit it to only those the exercise of which is related to a breach of statutory duty?

It would seem that the provision of the Act clearly indicates the objective and subjective conditions for the decision of such a prohibition, as well as defines its scope.

This prohibition may be ordered against a person who fault of their own, being obliged, by law, does not submit within two weeks 'from the date on which grounds for the declaration of bankruptcy' petition in bankruptcy, or already in the course of bankruptcy proceedings, does not fulfill the obligations incumbent on it or acts contrary to the obligations imposed on it, eg. not release the company's assets or trading books or hide assets, forming part of the bankruptcy estate. While ruling the ban, the court takes into account the degree of guilt and the consequences of action.

In the event if one of the above reasons occurs, the ban judgment is possible for a period of three to ten years and involves the deprivation of the right to conduct business on their own account and to act as a supervisory board member, representative or procurator in a commercial company, state enterprise, cooperative, foundation or association.

The Supreme Court relied his reflections on the basis of the presented issues on recognizing a cassation complaint brought by a former Chairman of the Board of the company with limited liability against which, because of the failure to notify within the prescribed period a petition to declare bankruptcy, the bankruptcy court ruled a three-year ban from undertaking any activity provided for in Art. 373 p.n.u. The Complainant submitted that the ordered ban is too broad, and the Supreme Court upheld his claims.

In the justification, the Court pointed out that the function of, among others, protection of business transactions that fulfs provision of art. 373 p.n.u., does not mean that you should resign to individualize rule on the ban in relation to the parties subscribed to that prohibition. On the one hand, there is the individualization in the temporal sense (from three to ten years), but also subject meaning (eg. banning only managerial activities or only economic activity of the self-employed). **According to the Court, this individualization is clear from the wording of Art. 373 section 2 p.u.n., if during the rule of prohibition, the court shall take into consideration 'the degree of culpability and the implications of the actions', it should (culpability and effects) affect both the individualization of time to adjudicate the ban, but also its scope.** For these

reasons, the Supreme Court considered pertinent the complainant's allegation, challenging the only total ban rule-making activities referred to in that provision.

Presented judgment has already attracted different comments of practitioners. Critics point out that the primary task of adjudication ban is to protect the market and not to sanction entrepreneurs. However, his supporters believe that this is a good and justified judgment, which will allow the use of legal prohibitions, not 'blindly', and in proportion to the fault.
