

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2008

A practical insight to cross-border Litigation & Dispute Resolution



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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has the Czech Republic got? Are there any rules that govern civil procedure in the Czech Republic?

The Czech Republic has a continental legal system, i.e. codified law, the so-called *lex scripta*. All other legal resources (such as common law - e.g. commercial practices in commercial law) are merely subsidiary resources. Judge-abstracted law is not applied, since judges apply the law but never abstract it in continental law. However, the case law issued in particular by courts of higher justice provides significant support for the reasoning of parties involved in litigation.

The fundamental code applicable to the procedure followed by courts and parties to civil proceedings is Act No. 99/1963 Coll., the Code of Civil Procedure, as amended (hereinafter referred to as the “CCP”).

1.2 How is the civil court system in the Czech Republic structured? What are the various levels of appeal and are there any specialist courts?

The Czech Republic has a system of general courts that exercise all types of the judiciary, save for the constitutional judiciary. The system of general courts comprises four levels: district courts; regional courts; courts of higher justice (or higher courts); and, at the top of the hierarchy, the Supreme Court and the Supreme Administrative Court.

District courts hear a majority of cases as courts of first instance. The regional courts function as courts of first instance for specific, primarily commercial cases and also hear appeals against decisions by the district courts. Courts of higher justice are the appellate courts for cases heard in the first instance by the regional courts. The Supreme Court decides primarily on special appeals against decisions by regional courts and courts of higher justice having legal force and effect on the appellate level.

The administrative judiciary is a special type of judiciary where general courts deal with lawsuits brought up against decisions by administrative authorities. These lawsuits are filed with the regional courts as the courts of first instance. Remedies against decisions by the regional courts can be sought for before the Supreme Administrative Court.

The Constitutional Court stands outside the system of the general

courts and is in charge of deciding on constitutional complaints vis-à-vis civil proceedings.

1.3 What are the main stages in civil proceedings in the Czech Republic? What is their underlying timeframe?

Three stages of civil proceedings are distinguished in the Czech Republic: proceedings before a court of first instance; appellate proceedings; and proceedings on special remedies. Appeals can be filed against decisions by courts of first instance that have yet to take legal force and effect. Special remedies serve to challenge decisions by appellate courts that have taken legal force and effect, but these are permissible only if statutory requirements have been complied with.

There are no statutory deadlines for courts to issue decisions in a case. First instance litigation usually takes 2 years and appellate litigation ranges between 12 to 18 months. Complex cases may take much longer.

1.4 What is your local judiciary’s approach to exclusive jurisdiction clauses?

Czech entities may choose any arbitration tribunal, either Czech or foreign, to resolve their disputes, but they are not allowed to choose a foreign general court. Exclusive jurisdiction clauses may be applied only in case of the relations comprising an international element.

If the Czech court discovers during proceedings (regardless of a result of its own activity or upon initiative from the parties) that a foreign country’s court is to decide on the matter, it shall stay the proceedings.

1.5 What are the costs of civil court proceedings in the Czech Republic? Who bears these costs?

The CCP imposes a fundamental cost-allocation rule that the losing party shall bear the costs for the proceedings. If a party wins only a part of a lawsuit, the court shall split the costs on a pro rata basis, but exemptions to this rule may exist.

The costs for the proceedings include a court fee (a percentage of the amount in lawsuits involving cash amounts), legal fees and cash expenses incurred by parties to the proceedings and their legal counsels. The court orders legal fees to be reimbursed only in the amount calculated in accordance with applicable law - Decree No. 484/2000 Coll. and Decree No. 177/1996 Coll., the attorneys’ tariff.

1.6 Are there any particular rules about funding litigation in the Czech Republic? Are there any contingency/conditional fee arrangements? Are there rules on security for costs?

Attorneys may agree with their clients on any manner of fee calculation. Hourly fees based on time actually spent on the case and fees based on a percentage of the disputed amount are both used. Unless the client and their legal counsel enter into an agreement on fees, the attorney shall charge fees pursuant to Decree No. 177/1996 Coll., the attorneys' tariff.

Commencing of the proceedings by the court is subject to payment of the court fee as per court fee rates. Further the court may request advance payment for performance of evidence or performance of exercise of a resolution.

2 Before Commencing Proceedings

2.1 Are there any pre-action procedures in place in the Czech Republic? What is their scope?

The CCP does not impose any requirements on parties to a dispute before filing a lawsuit with a relevant court.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The limitation periods differ depending on whether parties involved are subject to the Commercial Code (i.e. a relationship between entrepreneurs) where the general limitation period is four years, or the Civil Code where the general limitation period is three years. A special regulation concerning statute of limitations periods is applicable, for example, to claims of compensation for damage.

The limitation period is an institution of substantive law and commencement thereof differs depending on the type of obligation the debtor is obliged to perform. The typical commencement date is the date on which the right could have been first exercised, i.e. the date (deadline) on/by which the obligation should have been performed. As far as concerns the right to damages, the limitation period commences on the date on which the damaged party learned of the damage and liable party.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in the Czech Republic? What various means of service are there? What is the deemed date of service? How is service effected outside the Czech Republic? Is there a preferred method of service of foreign proceedings in the Czech Republic?

Civil proceedings in the Czech Republic commence on the date when the action is delivered to the court. Actions can be delivered as follows:

- in person;
- by mail;
- via electronic means;
- by telegraph; or
- by fax.

If the action is delivered by telegraph, fax or via electronic means,

it must be followed by the original hardcopy, delivered to the court within three days thereafter. If the hardcopy original is not delivered, the action is deemed not to have been received by the court. These delivery rules also apply to all other written filings addressed to the court.

Service of documents in lawsuits before courts in foreign countries is usually subject to service rules applicable in the particular jurisdiction. Detailed service rules applicable to EU Member States are set forth in Council Regulation (EC) No. 1348/2000 on the service of judicial and extrajudicial documents in civil or commercial matters. No special method of service is preferred for delivery of documents to foreign countries.

3.2 Are any pre-action interim remedies available in the Czech Republic? How do you apply for them? What are the main criteria for obtaining these?

The CCP allows courts to order the so-called injunction (an interim remedy). The injunction can be ordered:

- if the relationships between the parties to the proceedings require interim adjustment; or
- if the judgment enforcement is jeopardised.

An injunction may be petitioned for prior to the commencement of, and throughout the proceedings.

The only parties who may petition the court to issue an injunction are parties to the proceedings. To secure damage that may result from the injunction, the petitioner is required to pay the court a deposit. The deposit amounts to CZK 100,000 if a commercial matter is involved or CZK 50,000 if any other matter is involved.

Another type of a measure that can be taken prior to the commencement of litigation is the securing of evidence. The court shall secure evidence upon petition filed by a concerned party if there is a concern that it would be impossible or extremely difficult to obtain the evidence later on in the course of the proceedings.

3.3 What are the main elements of the claimant's pleadings?

There is no special form required for a pleading (action), provided that the pleading contains the following particulars:

- the name, last name and residential address (domicile) of the plaintiff and the defendant (name, registered office and identification number for legal entities) and, if any, their representatives;
- a description of decisive facts;
- identification of evidence requested by the plaintiff; and
- the outcome claimed by the plaintiff.

The action (pleading), as well as any other filing with the court, must indicate to which court it is being addressed, who is making it, the matter involved and its aim thereof. It must be signed and dated. If the filing fails to have all statutory particulars or is incomprehensible or vague, the court must instruct the party to duly supplement the filing.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Czech dispute civil proceedings are subject to the so-called disposition principle, meaning that the parties are in full control of the course and subject matter of the proceedings. The disposition principle allows the plaintiff to alter the pleading anytime throughout the proceedings, subject to court approval. However, the court may not approve of any alteration if the hitherto results of

the proceedings cannot be used for such alteration.

The plaintiff is also authorised to withdraw his/her action entirely or in part before the decision of the court takes legal force and effect.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

After the defendant receives the action from the court, he/she is obliged to provide comments on it within the deadline imposed by the court. There are no special requirements for the defendant's statement to the action, other than general particulars required for every court filing. To ensure a successful defence, the defendant needs to include in the statement all reasoning and argumentation available to rebut the claims presented by the plaintiff and, at the same time, provide the court with all evidence to support his/her defence. If the defendant fails to respond to the action, the court may decide to the detriment of the defendant.

The defendant may exercise his/her rights against the plaintiff by a mutual petition. The court may order separate proceedings for the defendant's petition, unless the conditions for single proceedings in the subject matter have been complied with.

4.2 What is the time-limit within which the statement of defence has to be served?

The CCP does not impose any general deadline by which the defendant has to comment upon the action (serve the statement). The deadline is therefore generally up to the court.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

The CCP does not recognise any mechanism by which a defendant may file a lawsuit within single proceedings against a third party whom the defendant believes to be liable in that particular event. However, the plaintiff may propose to the court on grounds of the defendant's statement of defence to replace the defendant by another person. The original defendant must agree with such replacement.

4.4 What happens if the defendant does not defend the claim?

If the defendant fails to comment in writing upon a lawsuit within the deadline imposed by the court, this does not mean the plaintiff automatically wins the claim. Without being aware of the defendant's position, the court holds a hearing in most cases where the defendant still has an opportunity to present their statements against the plaintiff's action and propose evidence to be taken. However, where the defendant does not provide a statement to a qualified call by the court carried out by a resolution (see question 9.1), it is deemed that the defendant recognises the plaintiff's claim.

The CCP provides courts with the opportunity to decide in absence of the defendant and issue the so-called judgment by default. The court may issue a judgment by default only after the defendant fails to attend the first hearing without a due apology, if so proposed by the plaintiff. The plaintiff's claims regarding factual circumstances shall then be considered as undisputable.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant has the right to challenge the court's jurisdiction as part of his/her defence. The defendant is obliged to set forth the grounds for his/her belief why another authority has jurisdiction - be it a court in a foreign country, arbitration court or another general court. The court shall settle the defendant's objections.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Anytime throughout the course of the proceedings, the plaintiff may propose to the court that another party join the proceedings. It is up to the court whether or not to allow the other party to join the proceedings. If the new party to the proceedings joins the plaintiff, it must agree to the joinder.

The so-called subsidiary party may join both the plaintiff and the defendant subject to the court's approval. Whoever can document legal interest in the results of the proceedings may be a subsidiary party. The subsidiary party may join either upon its own initiative or upon incentive by either party to the proceedings; such incentive shall be exercised through the court.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The court may at its own discretion consolidate several pending proceedings into single proceedings, provided that:

- all proceedings have been initiated before the same court and the court has the jurisdiction to decide in such proceedings; and, at the same time,
- the subject matters are related by merit or apply to the same parties.

5.3 Do you have split trials/bifurcation of proceedings?

The court may decide to bifurcate proceedings if the plaintiff proposes subject matters that cannot be dealt with on a joint basis.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in the Czech Republic? How are cases allocated?

The proceedings take place at the court with local jurisdiction. If there is more than one of these courts, the plaintiff may file an action at any of these courts. A court with local jurisdiction - unless set forth otherwise by the CCP - is the plaintiff's general court, i.e. the court in the district where the plaintiff's domicile is located or, in commercial matters, where the plaintiff's place of business is located. For factual jurisdiction, see question 1.2.

Distribution of cases among judges at courts having factual and local jurisdiction is subject to internal court rules and fixed schedules that are available to the public.

6.2 Do the courts in the Czech Republic have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

The courts have certain case management powers to ensure the prompt and undisturbed course of the proceedings. The court may:

- impose fines if the parties to the proceedings or any other parties disturb the course of the proceedings or make it difficult (see question 6.3);
- impose procedural deadlines for certain actions to be made by individual parties to the proceedings;
- attempt to make the parties settle the dispute amicably;
- instruct the parties to the proceedings on their procedural rights and obligations; this does not apply if the party is represented by an attorney-at-law;
- call upon the parties to the proceedings to supplement their filings if they are vague or incomplete; and/or
- endeavour to ensure that the matter be decided at a single hearing, etc.

The CCP does not provide the parties with many interim options. Either party may propose in the course of the proceedings that the court issue an injunction (interim measure) if the relationships between the parties need adjustment or if the enforcement of the judgment may be jeopardised (see question 3.2).

6.3 What sanctions are the courts in the Czech Republic empowered to impose on a party that disobeys the court's orders or directions?

The courts are empowered to impose a fine up to CZK 50,000 on any party that fails to attend a court hearing without serious grounds or fails to obey a court order. The court may remove from the courtroom anyone who disturbs order, including a party to the proceedings.

6.4 Do the courts in the Czech Republic have the power to strike out part of a statement of case? If so, in what circumstances?

The court is obliged to decide on the entire pleading, i.e. on everything the plaintiff claims in the lawsuit. It is possible that the court may award more than what the plaintiff seeks, but only in cases where it is possible to commence proceedings without a proposal or where the manner of settlement is set forth by law.

6.5 Can the civil courts in the Czech Republic enter summary judgment?

The court may, without having to order a hearing and without the plaintiff's suggesting so, issue the so-called payment order, provided that the following conditions are met on a cumulative basis:

- a cash amount is claimed in the lawsuit;
- the claimed right ensues directly from the facts claimed by the plaintiff; and
- the residential address of the defendant is in the Czech Republic and is known to the court.

By delivering the payment order, the court orders the defendant to pay the receivable to the plaintiff within 15 days following the delivery or to file an appeal (the same 15-day deadline applies). The appeal cancels the payment order and the court shall hold a hearing to hear the matter. Payment orders against which no appeal is filed shall take legal force and effect of a judgment. The same

applies to orders to pay by a promissory note (cheque), except the period for filing objections is three days.

6.6 Do the courts in the Czech Republic have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The Court shall discontinue the proceedings if there is any obstacle preventing the court from further decision-making in the matter. Such situations typically include either party's loss of capacity to be a party to the proceedings or the existence of an issue crucial for the decision that the court is not authorised to deal with in the proceedings. Under other, less substantial circumstances, the CCP provides the courts with the power to decide at their own discretion whether to continue or discontinue the proceedings temporarily. Permanent obstacles result in stay of the proceedings.

The court shall also discontinue the proceedings if both parties request so in concert. The court shall stay the proceedings on the basis of the plaintiff's proposal.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in the Czech Republic? Are there any classes of documents that do not require disclosure?

The duty to provide testimony on facts that are substantial for the decision on the subject matter applies to any individual or legal entity, not only the parties to the proceedings. Similarly, the court may demand any person to present a document that may serve as evidence.

On the other hand, it is impossible in the Czech civil procedure for the court to impose a duty on the parties to the proceedings or any other party to present all documents that may be relevant for the matter being heard and that have not been specified in detail. The court must specify the particular document that it requests.

7.2 What are the rules on privilege in civil proceedings in the Czech Republic?

The CCP imposes no specific rules of privilege. However, if a party to the proceedings presents information containing business secrets, the court is obliged to adopt measures to keep them confidential. A witness or a party to the proceedings may refuse to testify if the testimony may result in criminal prosecution against such party or related persons.

7.3 What are the rules in the Czech Republic with respect to disclosure by third parties?

See the answer under question 7.1.

7.4 What is the court's role in disclosure in civil proceedings in the Czech Republic?

The court is the only authority that may request documents or information from parties to the proceedings or third parties that it believes to be substantial for the decision. A party to the proceedings cannot directly request the other party to present documents that it believes to be relevant for the proceedings. The requesting party must propose to the court to call upon the other party to present the specified document. However, the court is not obliged to meet the proposed a request.

7.5 Are there any restrictions on the use of documents obtained by disclosure in the Czech Republic?

All documents to be presented throughout the course of the proceedings shall be deposited in a file kept by the court for the dispute in question. The following parties may inspect the file:

- the parties to the proceedings; and/or
- any third party that manages to prove legal interest, if the court approves of such party inspecting the file.

Copies or extracts can be made of the documents deposited in the file, including any schedules thereto. The court must ensure confidentiality of classified information pursuant to special law.

8 Evidence

8.1 What are the basic rules of evidence in the Czech Republic?

The only evidence the court may use for its decision is the evidence obtained in the trial in a due procedural manner. It is primarily the parties who propose the evidence to be taken to the court (for details see question 8.4). The parties to the proceedings have the right to attend the hearing where evidence-taking takes place. They also have the right to comment upon all evidence.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

Anything that provides a true picture of the matter may serve as evidence. As examples, the CCP lists the interrogation of witnesses, expert opinions, statements by authorities, individuals and legal entities, notarial records and other documents, examination and interrogation of the parties to the proceedings. No type of evidence is prohibited beforehand.

Expert opinions are used in circumstances where the decision requires professional expertise. In such case, the appointment of a particular expert is up to the court. The parties to the proceedings may also support their allegations by expert opinions.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

There is mandatory witness duty in the Czech Republic. This means that anyone who perceived with their senses a certain event decisive for the proceedings must obey a subpoena, attend a hearing and testify. A witness must testify orally at a hearing; it is not permissible for a witness to give a written testimony. The court shall first call upon a witness to describe coherently everything he/she may be aware of in connection with the subject matter of the testimony. The witness is then asked questions, subject to court approval, by the parties to the proceedings.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in the Czech Republic?

The court is not obliged to seek evidence actively, since it is the parties who shall provide the court with evidence to prove their allegations. Cooperation by the parties to the proceedings is therefore required. The court assesses the evidence presented at its own discretion, each piece independently and all pieces together, taking into account any mutual relationships.

The court has the right to decide which evidence proposed by the parties to the proceedings shall be taken into consideration or not. If the court disapproves of certain evidence, it is required to justify its decision.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in the Czech Republic empowered to issue and in what circumstances?

The Court may issue meritory decisions (regarding the subject matter) and procedural decisions regulating the course of the proceedings. The meritory decisions are judgments whereas the other decisions are resolutions. The court decisions must contain mandatory particulars such as the statement, justification and instruction on remedies available. The payment order referred to above (see question 6.5) constitutes a special form of the decision.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Within a judgment, the court also decides on:

- the amounts due under the claim, i.e. on the default interest if the subject of the dispute is an amount of money; and
- the costs for the proceedings (see question 1.5).

However, in both instances it shall do so only upon the plaintiff's request.

On compensation for damage, the court can only decide in a separate set of proceedings. Therefore if the plaintiff suffers damage and wishes to claim compensation from the other party to the proceedings, it must file an independent damages lawsuit.

9.3 How can a domestic/foreign judgment be enforced?

If the obliged party to the proceedings fails to perform voluntarily what the court's judgment orders the obliged party to perform, the entitled party has the following options:

- petition for enforcement of the decision; the decision is to be enforced by the court; or
- petition for distraint over the obliged party's assets; the distraint is to be carried out by court-appointed distrainers.

After Act No. 120/2001 Coll., the Distraint Rules, came into force, the court-appointed distrainers are the preferred way due to higher efficiency and speed. Distraint can only be carried out in manners stipulated by law. Payment of an amount can be enforced by (i) payroll deduction, (ii) receivable order, (iii) sale of movable and immovable property and (iv) sale of a business.

Since the Czech Republic is an EU Member State, enforcement of judgments from other Member States is subject to Council Regulation (EC) No. 44/2001 on jurisdiction and enforcement of judgments in civil and commercial matters.

9.4 What are the rules of appeal against a judgment of a civil court of the Czech Republic?

Appeals to a higher instance court can be filed against nearly any court decisions, no matter whether they are a judgment (meritory decision) or a resolution (procedural decision). The CCP explicitly lists situations in which appeals cannot be filed. The following general rules apply to appeals:

- the deadline for filing is 15 days following delivery of a written decision against which the appeal is aimed;
- in addition to general particulars (see question 3.3), the appealing party must state in the appeal what it believes to be the incorrectness of the challenged decision and justify the appeal according to the CCP; and
- the appeal has a suspensory effect, i.e. the challenged decision is not enforceable before the court of appeals decides on the appeal.

II. DISPUTE RESOLUTION

1 Preliminaries

- 1.1 What methods of dispute resolution are available and frequently used in the Czech Republic? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

The most common alternative to litigation in the Czech Republic is arbitration. This applies in particular to commercial matters. The parties may choose a permanent arbitration court (including a foreign arbitration court) or an *ad hoc* arbitrator for resolution of the existing dispute as well as for future disputes.

Mediation is a less formal and cheaper method of dispute resolution that provides the parties with full control over the course of the dispute settlement. For these reasons, mediation is becoming a more popular, although not prevailing, method of dispute resolution.

Civil disputes in the Czech Republic are not resolved through tribunals other than arbitration tribunals or through an ombudsman.

- 1.2 What are the laws or rules governing the different methods of dispute resolution?

The laws of the Czech Republic governing arbitration proceedings are Act No. 216/1994 Coll., on arbitration proceedings, which sets forth the conditions for execution of arbitration agreements and arbitration clauses, requirements for arbitrators, the course of arbitration proceedings and situations in which a court may cancel an arbitration award. Rules applicable to arbitration procedures are also included in the rules of individual permanent arbitration bodies.

So far, there are no laws applicable to mediation or other methods of civil dispute resolution.

- 1.3 Are there any areas of law in the Czech Republic that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Execution of an arbitration agreement is possible for nearly all property related disputes. This does not apply to disputes resulting from decision enforcement and disputes resulting from bankruptcy or composition.

2 Dispute Resolution Institutions

- 2.1 What are the major dispute resolution institutions in the Czech Republic?

There are currently three permanent arbitration courts in the Czech Republic:

- the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic (the principal arbitration authority);
- the Arbitration Court attached to the Stock Exchange Prague; and
- the Arbitration Court attached to the Czech-Moravian Commodity Exchange Kladno.

- 2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

Yes, arbitration awards constitute grounds for enforcement similar to an enforceable court decision.

3 Trends & Developments

- 3.1 Are there any trends in the use of the different dispute resolution methods?

Parties to commercial agreements often prefer arbitration tribunals for resolution of disputes resulting from such agreements; such tribunals are less formal and faster than general courts. Where the subject of dispute depends on an expert opinion, the parties choose an independent expert and undertake to subject themselves to his/her opinion. Other alternative methods of dispute resolution are not used in practice in cases of larger disputes, although mediation is being mentioned as another possible scenario.

- 3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in the Czech Republic?

At present, there are no new legal regulations being prepared with regard to alternative dispute resolution or significant amendments to existing regulations.



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Kocián Šolc Balaščík (KSB) is a leading law firm in the Czech Republic. Founded in 1990, KSB has evolved into a modern firm providing law and tax advice to domestic and foreign clients on all important areas for business. With more than fifty lawyers, tax advisors and patent agents, KSB is one of the largest law firms in the Czech Republic, with branches in Karlovy Vary, Western Bohemia and Brussels. In 2006 and 2007 it was voted Law Firm of the Year in the Czech Republic by *Who's Who Legal*.

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