

Limits to the autonomy of the will in contracts of adhesion

Abstract

Adhesion contracts are a key business tool that enables efficient contracting through standardised terms and conditions and transaction cost savings. These contracts, characterised by the absence of individual negotiation of basic terms, are widely used in many industries. On the other hand, adhesion contracting entails a significant risk in the form of limited autonomy of the will of the adhering party, which is forced to accept the terms presented without the possibility of modification. This can lead to an imbalance of rights and obligations between the parties, with contracts often favouring the submitting party.

This paper aims to analyse whether adhesion contracts in practice show an imbalance in favour of the submitting party. The theoretical part focuses on the historical development, the legal framework and the main advantages and pitfalls of adhesion contracts. The legal framework, included in the provisions of § 1798-1801 of the Civil Code, is critically assessed, including a discussion of key concepts such as the 'essential terms' of the contract. The practical part focuses on the analysis of the commercial terms of four selected companies. The individual provisions of the commercial terms and conditions have been divided into three categories: provisions complying with the law, provisions deviating from the statutory regulation and provisions addressing issues not covered by the law. This approach made it possible to identify which provisions increase the imbalance between the contracting parties.

The analysis showed that the commercial terms and conditions of all the companies surveyed contain a significant number of provisions that are formulated in favour of the submitting party. The most frequent are clauses that grant the submitting party rights beyond the statutory framework, while disadvantaging the adhering party, for example by extending the limitation period or limiting unilateral set-off.

In conclusion, although the results of the analysis cannot be generalised to all adhesion contracts, they suggest that these contracts often show an imbalance in favour of the submitting party. This highlights the need for adequate legal regulation to protect the adhering party from abusing the position of the submitting party and to ensure a fair arrangement of rights and obligations.

Klíčová slova: contract of adhesion, commercial terms and conditions, freedom of contract