

Abstract in English

Legal consequences of breach of contract in civil law

Contract is the binding agreement by two or more parties that had enforced by the law. When a party breaks a contract, society (law) gives the injured party a remedy against the defaulter. It is because contract law is a set of rules that support the fulfillment of party's obligation by providing specific rights to party which did not breach the obligation. Mutual performance under the contract (discharge of contract) is one of the fundamental objectives of private law. This work presents the tools by which law corrects these illegal situations and which cultivate respect for the principle *pacta sunt servanda* (contract to be followed or complied).

Private law in a liberal state should be limited to emergency treatment moments and everything else has to maintain the contractual freedom of parties. It should not burden private relationships by rules which restrict the possibility to independently decide. But in cases where it takes action against an undesirable condition, it must deliver an effective remedy. It does so through secondary rights and obligations arising directly from the law (act) or some other types of consequences (reinsurance contract institutes) can be negotiated in advance between the parties. Secondary punitive legal consequences of infringement are generally called liability or legal responsibility of someone for something.

Character of the legal consequences depends on form of the breach and other individual circumstances. The most common cases involve delay and defective performance. Debtor's duty is to perform according to agreement while his debt is payable (or mature). In case of delay in performance of monetary debt he is hit by liability penalties in the form of legal obligation to pay interest arrears and creditor is given the right to withdrawal. When party fails to perform some thing (not money) in time, he is liable for all damages suffered at the time. Liability for defects of performance provides wide range of rights depending on how serious that defect was. Competent person can demand either repair, addition, reasonable discount or in the case of severity of defect even replacement or withdrawal. All these are the creditor's rights and their corresponding

obligation of the debtor because liability operates on both sides. Third and probably most important area of liability is a damages liability. Substance of this legislation is in the obligation of everybody to compensate a material damage by his/her fault and sometimes even law does not require fault. For so-called strict liability it is enough when some damage was caused due to infringement. There is not purpose to punish wrongdoer nor enrich the damaged one, it is all about fixing disturbed interests and allowing to meet economic purpose of the contract.

Klíčová slova:

- porušení smlouvy / breach of contract
- odpovědnost / liability
- náprava / remedy