

Abstract

Extent of liability for damage in the Commercial Code

The aim of my thesis is to describe the liability for damage according to the Commercial Code with emphasis on the extent of liability for damage and particularly on the possibility of contractual limitation of liability for damage under Czech law.

The thesis is composed of five chapters. Chapter One is introductory and defines the basic terms regarding the liability for damage. The general provisions regarding the liability for damage are set out in the Civil Code. The Commercial Code also consists of some provisions regulating damages for the area of commercial contractual relationships. The following preconditions shall be met in order to claim damages: (i) occurrence of damage; (ii) breach of legal obligation; (iii) causal relation between occurrence of damage and breach of legal obligation; and (iv) no circumstances excluding liability for breach of obligation may occur. The liability according to the Commercial Code is no-fault liability. Damages can not be reduced by court decision. The Commercial Code defines a circumstance excluding liability as a barrier occurring independently on a will of a liable party and preventing such party from its obligation, unless such barrier can be reasonable assumed.

Chapter Two examines the definition of damage according to Czech law, which means actual damage and lost profit. Actual damage means damage to property in the form of reduction of property of an injured party as a result of an event causing damage. In addition to this, lost profit means lost property benefit as a result of missed increase in property of an injured party that could be, if not an event causing damage occurred, reasonably expected with regard to standard course of events. Damages are primarily paid in cash, but the alternative methods of damages can be used in the case that rightful party requests the restitution and such restitution is possible and usual at the same time. According to the Commercial Code only the objectively predictable damages can be compensate.

Further, chapter Three concentrates on another way of limitation of the extent of damages arising from statutory obligation, for example obligation of injured party to avoid occurrence of damage or to reduce its extent and obligation of the injured party to enter into a new contract. Additional, this chapter includes the description of special

provisions of the Commercial Code stipulating in some cases the extent of damages differently from the general regulation.

Chapter Four focuses on the main topic of this thesis, which is the possibility of contractual limitation for damage pursuant to the Commercial Code. This chapter is subdivided into ten parts, which contain the centre of the argumentation (§ 386 (1) and §379), relevant case law, forms of limitation, limitation in practice, international comparison, new legislation etc. Section 386 (1) of the Commercial Code states that the right to damages may not be waived prior to the breach of an obligation from which damage may arise. However, there are certain views which proclaim that such waiver refers to the waiver of damages in their entirety, rather than the limitation of damages to a reasoned decree. This interpretation is not uniform however and it cannot be certain that it would be accepted by all courts. On the other side section 379 of the Commercial Code is not mandatory and from this provision follows that contractual parties may, in effect, establish a cap on potential damages by means of such estimation of likely damages. For the reasons given above, it is, in my view, generally possible to contractually limit the liability for damage under Czech commercial law, although there are some boundaries regarding the extent in which this may be done.

Chapter Five examines different ways how to limit the liability for damages. One way in which liability can be effectively limited in practice is the usage of a contractual penalty. Pursuant to section 545 (1) of the Civil Code, unless the parties agree otherwise, an injured party may not seek compensation for damages which is otherwise covered by a stipulated contractual penalty. However, even if a contractual breach has not caused damage, a penalty may nevertheless be applied. The situation may be different in case of an intentional breach of the contract.

Last chapter deals with the conclusion. The conclusion includes the brief summary of the topics of the thesis and also maintains the results following from my analysis.