

Abstract

Delay in commercial commitments and its consequences

The purpose of the thesis is to describe all the aspects of delay in commercial commitments in the law system of the Czech Republic with focus on the consequences a delay may cause. Even though the history of the respective legislation is long and uninterrupted (it basically dates back to the Austrian General Civil Code from 1811), certain cases of indistinct interpretation in every-day use of the rules may still arise and that is the reason for elaborating the research.

Legislation, expert interpretation of the legislation, papers from professional journals and a number of judicatures, mostly decisions of the Supreme Court of the Czech Republic, are used to thoroughly analyse the topic.

The Czech Commercial Code recognises two general kinds of delay - debtor's delay, which occurs if the debtor does not fulfil their (usually contractual) duties in time and/or properly and creditor's delay, that is initiated by the creditor if they do not accept proper fulfilment from the debtor and that supersedes the debtor's delay, if it may be in place.

In case of the debtor's delay the law automatically guarantees the creditor several rights. They have the right to insist on the proper fulfilment to be delivered or they are entitled to cancel the contract, if other conditions are met. If the delay leads to major breach of the contract, the prerequisite for immediate cancellation of the contract is met. If, however, the delay caused only minor breach of the contract, the creditor has to provide the debtor adequate additional time and it is only after the fulfilment is not delivered in this additional term that the creditor is allowed to cancel the contract. In either case, the creditor is entitled to a compensation for damages caused by the delay.

If the delay concerned delivery of an item, the debtor in delay takes all risks of damage of the item for the duration of the delay. That means they are liable for any random damage that may occur to the item to be delivered.

If the delay concerned monetary payment, the debtor is obliged to pay late payment interest, which rate may be negotiated in the contract or otherwise it is determined by the decree of the Czech government (which is in compliance with the Directive 2000/35/EC of the European Parliament and of the Council).

In any case the contracting parties are allowed to negotiate a contractual penalty for the event of possible delay on either side. Nevertheless, should the negotiated contractual penalty be excessively high, a court is allowed to mitigate it accordingly.

Creditor's delay causes similar consequences as the debtor's delay, notably the right to insist on the proper fulfilment of the duty, the right to cancel the contract, the transition of liability for any random damage of the item and the duty to pay contractual penalty if it was arranged beforehand. Naturally, there is no late payment interest for case of creditor's delay.