Abstract

Formation of a contract is nowadays more sophisticated than it formerly used to be due to major progress in communication technologies and technical development, and therefore, looking on negotiation process only through the notions of offer and acceptance alone appears to be somewhat insufficient. It is not unusual and infrequent that long term and complicated dealings take place prior to the conclusion of a contract, especially in more or less complex business matters. During various negotiation stages, many parties may incur different kinds of significant expenses in order to prepare well for the next phase of the negotiations and, eventually, for the targeted contractual performance. For the conclusion of a contract it may also be necessary to inform the other party about the terms and conditions which are essential for the first party's final decision about the contract, while some of this information might be considered as strictly confidential.

Although the fundamental principle of contractual freedom allows the parties to act freely in negotiations and the contractual process is generally regarded as a non-binding relationship, there are some restrictions set up with the aim to protect good faith of the parties and support their fair dealings. According to the abovementioned, a situation might occur when certain costs would be spent in vain in case of an unexpected breaking off negotiations without a justifiable reason therefor or when a party would suffer loss in consequence of a breach of information and/or confidentiality duties. Precontractual liability concept may then bring answers to some questions of the aggrieved party, which reasonably expected the conclusion of a contract, receiving proper information or confidential information not to be disclosed to third parties, as to whether or not it is entitled to claim damages and, if so, to what extent.

The aim of this thesis is to analyse the elements of precontractual liability and its possible application in aforementioned situations on the basis of current Czech legislation and in the light of the proposal of new Czech Civil Code, both of them examined in comparison with foreign legal regulations and the current European context as well. The purpose of this paper is to attempt to identify and analyse the weaker points in the present and future Czech legislation and legal practice relevant to the issues of precontractual liability and to suggest their possible modification and improvement.

The thesis is composed of five chapters, the first two deal with theoretical matters relating to the notion of precontractual liability, such as the basic terminology and key

elements of liability in general, the conflict of the principles of contractual freedom and good faith and, finally, the delimitation of contractual process.

Chapter Three investigates the ways of recognition and application of precontractual liability in foreign legal systems and it is further subdivided into several subchapters, each of those being devoted to a single (national) legal system. The approaches of particular law orders differ widely, e. g. in Germany, precontractual liability is considered to be contractual, whereas in some other countries they see its core in the concept of a tort. The Dutch system is opened to award damages to the extent of positive interest, whereas other countries are more reserved and mainly award negative interest compensation. However, the conclusions to which they finally come appear to be very similar, i. e. seriously negotiating parties should always act with respect to the other party's individual rights and interests and try to avoid unnecessary losses. Subsequently, chapter Four describes the development of the understanding of the concept of precontractual liability on the European level, where especially the question of precontractual information duties is presently widely discussed and emphasized.

The main part of the thesis is embodied into chapter Five which focuses on the current and future Czech legislation. Although precontractual liability is recognised by the doctrine, its comprehensive legal statutory basis is missing, and therefore, the Supreme Court of the Czech Republic fills the gaps imposing precontractual liability mainly through a general prevention clause in connection with general liability provisions. Absence of explicit regulation is exactly the reason why the authors of the proposal of the new Civil Code included the questions of precontractual liability to their project. Unfortunately, after examination of relevant provisions, it could be deemed that the proposed regulation may in many respects turn out to be insufficient. If in the end the new Civil Code enters into force in the wording in which it is expected to be approved by the Czech government in May 2011, it will be upon the courts again to clarify some of its problematic provision through careful judicial application and interpretation, especially with respect to the notion of legal certainty.