

Abstract

The aim of this (diploma) thesis is to compare the withdrawal from a contract according to the Civil Code on one hand and the Commercial Code on the other hand. In addition to this aim the thesis compares the withdrawal from a contract and the dismissal of a contract and critically deals with contemporary valid legislation. This thesis reminds a judicial development of this institute. Mentioning all the above aspects it evaluates legislation of withdrawal from a contract in the new Civil Code. Providing of all these aspects this thesis tries to help to map the developing statement at the final stage of transformation of Czech civil law and to collect crucial issues to evaluate the given thesis.

The thesis analyses several aspects of the withdrawal from a contract – conditions of its application, reasons and consequences of this withdrawal and a limitation of actions. In addition it examines a cancellation fee as a special consequence of the withdrawal from contract.

After a detailed investigation of legislation in the Civil Code and in the Commercial Code it emerged that the legislation in the Commercial Code is more precise and closer to a modern conception of contractual law. Considering modern contractual law legislation in the new Civil Code could also be positively evaluated. It has been inspired by both Commercial Codes on one hand and a part of the Civil Code regulating the consequence of withdrawal from a contract on the other hand - a termination of contract *ex tunc*. In addition to this the thesis explicitly mentions the protection of rights of third persons acquired in a good faith as a reaction to the repeating disputes arising while considering consequence of the withdrawal from contract for the third party. The thesis also critically deals with an improper use of the institute withdrawal from a contract considering making a contract under distressed and under conspicuously inexpedient conditions (§ 49 CC 40/64) and considering tenancy agreement (§ 679 CC 40/64).

Further the thesis compares the withdrawal from a contract and the dismissal of a contract as these are very similar institutes but differing in effect and a mode of their application. The withdrawal from a contract is characterized as a punitive tool which

may occur in a case of a violation of contractual obligation by adverse party. The dismissal of a contract on the contrary occurs that the will of one contractual party to continue an obligation is no longer exists.

The thesis offers a complex view on the withdrawal from a contract as one of the most common ways of extinction of obligations.