

Information duty in pre-contractual negotiations

Act no. 89/2012 Sb., the Civil Code, has brought many changes into the private law. The new Civil Code within the frame of pre-contractual liability among other things explicitly embedded in the provision of Section 1728 Subsection 2 the so called general information duty, i. e. a duty of the contracting parties to notify each other of certain circumstances prior to the conclusion of the contract.

The paper aspires to define the term and the scope of general information duty with the help of the comparison of approaches toward this duty in other states and with the help of existing judicial (both Czech and foreign) decision making. In certain aspects, documents of European Contract Law were also taken into account owing to the fact that the European Contract Law was used in the process of drafting the valid and effective Civil Code. Even though many sources were used while writing the paper, the scope of general information duty could not be definitely determined. With respect to the fact that no explicit and distinct limits of this duty are set, the main source of knowledge will be judicial decision making which should take a consistent attitude toward a complex issue of general information duty which is inseparably related to the Economic Analysis of Law.

The paper also focuses on other institutes connected with general information duty. The author of the paper draws the conclusion that in certain cases the failure to comply with general information duty might be accompanied with the creation of the right under Section 1793 of the Civil Code (Lesion) or it may cause the invalidity of the contract on the grounds of usury. The application of the provisions regulating the error as a result of trickery should also in certain cases be considered as a legal consequence of the failure to comply with general information duty. Moreover, the paper deals with the duty to provide compensation for damage caused by the failure to comply with general information duty, namely it concentrates on the extent of compensation for damage and on the possibility to exclude or limit the duty to provide such compensation. In the last chapter of the paper the author draws a conclusion that provisions regulating defective performance applied when the debtor is not notified of the defects of the subject of the performance cannot be considered as a consequence of the failure to comply with general information duty.