

# **SUMMARY**

## **Protection of Weaker Contractual Party**

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The thesis “*Ochrana slabšího ve smluvních závazkových vztazích*” (“Protection of Weaker Contractual Party”) is devoted to the issue of legal protection of weaker contractual parties in private law. Emphasis on the protection of the weaker contractual parties represents one of the most significant trends in modern private law. Despite this fact, the issue of protection of weaker contractual parties as such has not been analyzed by authors of Czech legal literature sufficiently so far and even foreign literature focusing on the issue is not too prevalent.

The issue of legal protection of weaker contractual parties is not an exclusive domain of consumer law. Problems resulting from positions of different strength (bargaining power, inequality) of contractual parties occur not only in connection with contracts entered into between business entities and consumers (non-business entities), but also mutually between business entities and, last but not least, in connection with contracts entered into between consumers (non-business entities).

Protection of weaker contractual parties is contained in various legal institutions, some of which can be described as traditional, other are almost exclusively achievement of modern contract law. Recently, the protection of weaker contractual parties has been developing (more or less) in the direction of a general principle of contract law.

As regards Czech law, recent developments have led to renaissance of protection of weaker contractual parties, mainly because of upcoming recodification of Czech private law. The draft of the new Czech Civil Code emphasizes the principle of contract freedom balanced with principle of protection of weaker contractual parties in lieu of principle of equality which was emphasized by “socialistic” Civil Code of 1964 (which is still in force in amended form in the Czech Republic). Therefore, a substantial part of the thesis focuses on analysis of this (for the future development of Czech private law crucial) legislative work from the point of view of protection of weaker contractual parties. The author

identifies (where necessary or appropriate) amendments to the draft of the new Civil Code which would be, under his opinion, recommended to make.

The aims of the thesis are as follows:

- a) to define the term “weaker contractual party” and the general prerequisites of its legal protection;
- b) to define the status of the protection of weaker contractual parties within the system of principles of contract law;
- c) to define main means of protection of weaker contractual parties;
- d) to specify the main legal institutions of substantive private law addressing the legal protection of weaker contractual parties and analyze such legal institutions from the point of view of whether the respective legal regulation fulfills its purpose of protecting the weaker contractual parties and whether the regulation interferes unreasonably with other values protected by law (other legal principles, such as principle of contractual freedom or *pacta sunt servanda*) and make legislative proposals *de lege ferenda* (where necessary or appropriate).
- e) to analyze the protection provided to weaker contractual parties in the draft of the new Czech Civil Code and to make (where necessary or appropriate) legislative proposals *de lege ferenda* (to contribute to current discussions about the content of the proposed new Civil Code as regards the issue how the protection of weaker contractual parties should be addressed in the Civil Code.
- f) to assess the possibilities of protecting weaker contractual parties in contractual relations between business entities.

The working hypotheses formulated by the author in connection with the above aims of the thesis are as follows:

- a) The current Czech law does not define the “weaker contractual party” and does not contain any general provision, according to which it would be possible to deduce what prerequisites must be met so that the weaker contractual party may be granted legal protection. The term “weaker contractual party” as well as the prerequisites of its legal protection can be determined only approximately.

- b) The protection of weaker contractual parties can be regarded as principle of private law, which, however, is not general in nature but has relevancy only where the legislature grants the weaker contractual party specific legal protection.
- c) There can be found examples in current private law, where the protection of weaker contractual parties is granted in a way that is not optimal in terms of the purpose pursued by the legislation or in terms of degree of interference with other values protected by law (other legal principles) and should be therefore amended *de lege ferenda*.
- d) The draft of the new Civil Code provides for number of new legal institutions protecting the weaker contractual parties which, on one hand, represent a positive change compared to the existing legislation, however, on the other hand, also include several interpretative ambiguities which could cause problems in practice. Therefore, the system of protection of weaker contractual parties proposed in the draft of the new Civil Code should be subjected to more thorough analysis yet and (where necessary or appropriate) amendments to the draft of the new Civil Code should be made.
- e) Protection of weaker contractual parties in connection with contracts entered into between business entities is applied only to a very limited extent in existing Czech private law.

The thesis is composed of nine chapters:

After the introduction, the second chapter attempts to define the term “weaker contractual party” and the general prerequisites of its legal protection.

The third chapter concerns the issue of legal principles. Firstly, the issue of legal principles is addressed in general. Secondly, the chapter analyzes whether the protection of weaker contractual parties may be regarded as a principle of private (contractual) law, defines the status of the protection of weaker contractual parties within the system of principles of contract law and suggests possible approach to solution of mutual conflicts between such legal principles and the (principle of) protection of weaker contractual parties.

The fourth chapter analyzes firstly the issue, whether the legal protection of weaker

contractual parties should primarily be subject to private, or public law. Secondly, the chapter defines main means of protection of weaker contractual parties in private law.

The fifth chapter deals with traditional legal institutions of current substantive private law addressing the legal protection of weaker contractual parties (protection of minors, persons suffering from mental disease, persons acting in distress), including also their comparison with the draft of the new Civil Code.

The sixth chapter focuses on protection of tenants and the following seventh chapter on protection of consumers as weaker contractual parties. Both chapters analyze protection granted under current law as well as protection provided by the draft of the new Civil Code.

The eighth chapter provides analysis of new legal institutions protecting the weaker contractual parties proposed in the draft of the new Civil Code (general protection of the weaker contractual parties, *laesio enormis*, usury, standard form contracts, etc.). The last chapter is concerned with protection of weaker contractual parties in contractual relations between business entities.

In the conclusion, the author summarizes its views and recommendations and evaluates whether the aims of the thesis were attained and whether the working hypotheses formulated in connection with the aims of the thesis, turned out to be correct.