

Breaking-off contract negotiations without justifiable grounds

Abstract

The thesis at hand deals with Sec. 1729 of the Civil Code which governs the liability for breaking-off contract negotiations without justifiable grounds. Its aim is to interpret the afore-said provision that forms an inherent part of the newly introduced regulation of pre-contractual liability. The thesis discusses both the conditions for establishing the liability for breaking-off contract negotiations and concurrently the legal consequences thereof. The difficulties in terms of interpretation, incidental to the introduction of this provision, are attempted to be solved by use of theological interpretative method and inspiration drawn from the comparative study of German and Austrian state of law. Finally, the thesis strives for analysing the case-law of the Czech Supreme Court related to the previous legislation and answering a question to which extent the conclusions previously arrived at by this court may be upheld following the recodification process. The thesis is divided into four main chapters. The first chapter emphasizes the importance and role of the principles of freedom of contract and good faith which are crucial for better understanding of *culpa in contrahendo*. It also elaborates, albeit in general terms, on the matter of pre-contractual liability and its role within the whole system of contract law. The second chapter is further dedicated to the way how the concept of pre-contractual liability has been construed in context of the new Civil Code. The emphasis is put on a rather fragmented arrangement from the systemic perspective, questionable perception of the pre-contractual liability somewhere on borderline between the notions of contract and tort, and lastly the unclear distinctions of breaking-off negotiations from the preliminary agreement. Nevertheless, the cornerstone of the thesis lies in its third and fourth part. The third chapter tackles the various conditions for establishing the liability when one breaks off negotiations without justifiable grounds. Above all, the attention is given to the two principal questions – what is meant by the legitimate expectations of one party to the negotiations and the definition of justifiable grounds as a prerequisite on the other party's side. Notwithstanding that, the legal concepts such as fault, causal link and damage are not disregarded. Likewise, the notions of reliance and expectation interest are being defined and probed here as well. In its final chapter, the most problematic provision, setting out the legal implications of breaching Sec. 1729, is

eventually being examined. Referring to the principles such as freedom of contract and economic risk, it is being derived that the provision's literal interpretation is hardly tenable. By using the theological interpretation, it must be concluded that solely the loss in the form of reliance interest should be compensated. By contrast, the total amount of compensation to be awarded should, in principle, not exceed the expectation interest the damaged party would have gained if the contract had been concluded.