

Business contracts concluded with consumers

Abstract

The thesis focuses on the issue of two instruments of control over the content of the contract, which protect consumers from abuse of autonomy of will by the entrepreneur - the protection against unfair contract terms in consumer contracts and the protection against surprising clauses in consumer terms and conditions.

The first part of the thesis deals with the issue of unfair terms in consumer contracts, the regulation of which is a transposition of Directive 93/13 EEC. In this part, the form of transposition into the Civil Code is discussed, including their shortcomings, and a comparison of the Czech regulation with the Directive is made. Attention is also paid to the forthcoming amendment to the Civil Code, which aims to remedy the shortcomings of the regulation. Firstly, the purpose of protection, the main principles underlying the protection and the scope of the regulation are presented. The issue of exceptions to the assessment of fairness as a guarantee of the preservation of the principle of autonomy of the will, is then analysed. Following this, the criteria of the fairness test, the procedure by which courts assess the unfair nature of contractual terms, are presented. This is followed by an analysis of the issue of lists of unfair terms. In the conclusion of this part of the thesis, the concept of the consequence of the assessment of the term as unfair is discussed, the nature of which is not agreed upon in the doctrine and the case law of the Supreme Court on this topic has been undergoing recent development.

The second part of the thesis deals with the issue of surprising clauses in consumer terms and conditions. Firstly, the purpose of the regulation, the source of inspiration and its scope are explained. The problem of the concept of standard commercial terms in Czech law is discussed, which predetermines the applicability of the protection. The question whether the protection constitutes a control of incorporation or a control over the content of the contract is also addressed. The „surprising clauses test“, its parameters and criteria to be taken into account when assessing surprisingness are presented. The latter are suggested by theory but recently lower court jurisprudence has also begun to emerge on this topic. The paper also presents ways in which an entrepreneur can avoid surprisingness of a contractual clause. The nature of the consequence of surprising clauses is also discussed. The section concludes by examining the interrelationship between unfairness test and the surprising clauses test.

The third part of the thesis deals with the issue of contractual penalties in consumer terms and conditions, where the two analysed topics are intertwined. It presents the doctrinal and

case law development of this issue, which was influenced by the Constitutional Court's ruling on the interpretation of which there is no consensus and which has significantly predetermined the understanding of which provisions and under what conditions can be part of consumer terms and conditions.