

Right from a defective performance and right to compensation for damage

Abstract

This thesis deals with the interrelation of the institutes of the right from a defective performance and the right to compensation for damage. The institutes of rights from defective performance and the right to compensate for damage caused by the provision of defective performance are both commonly perceived as breaches of obligation, and the literature consistently classifies them under the concept of breach of contract.

The aim of this thesis is to analyse the defective performance as a necessary prerequisite for both claims arising from the right from defective performance and the right to compensation for damage. The thesis deals with the relationship of the above-mentioned institutes, which are in the Czech legal environment in the relationship of exclusivity of the right from defective performance to the right to compensation for damage on the basis of the provisions of Section 1925 of the Civil Code, according to which the acquirer of a performance that is defective must claim these defects only through the legal provisions of the right from a defective performance. The thesis then uses analytical, critical, comparative and descriptive research methods.

In the first chapter of the thesis, the descriptive method is applied in relation to the legal regulation of defective performance as a common pre-requisite of both the right from defective performance and the right to compensation for damage. Subsequently, on the basis of a historical comparison, the historical development of the regulation of the relationship between the right from defective performance and the right to compensation for damage is analysed, as this analysis is essential for further work with the provision of Section 1925 of the Civil Code. The analytical part of the thesis is then devoted to the provision of Section 1925 of the Civil Code, which establishes the relationship between the right from defective performance and the right to compensation for damage, with an obvious preference for the right from defective performance. A systematic analysis then deals with the question of interrelation between the right to compensation for damage and the right from defective performance, and more specifically with the question of solution adopted in the provisions of Section 1925 of the Civil Code, based on the background of this legal regulation found in the preceding historical analysis and at the same time on the basis of case law of the Supreme Court. The analytical and comparative method is used. Separately, the thesis deals with the specific issue of potentially irrecoverable costs associated with the exercise of the right of defective performance in the light of the provisions laid down in Section 1924 of the Civil Code. Furthermore, the thesis, on the basis of *de lege*

ferenda considerations, deals with proposals for a possible modification of the provision in question to ensure a balance between the acquirer and the transferor of the performance in question. The last part of the thesis deals with the question of the legal regulation of the relationship between the right from defective performance and the right to compensation adopted by other continental legal systems, in particular the legal systems of the Republic of Austria and the Federal Republic of Germany, where the comparative method is used in particular.

Key words: Right from a defective performance, right to compensation for damage, defective performance