

PRE-CONTRACT LIABILITY (CULPA IN CONTRAHENDO)

The doctrine of precontractual liability or culpa in contrahendo has gained acceptance in most continental civil law jurisdictions and a number of them has adopted legislation with regard to precontractual liability, for example Germany, France, Poland, Netherlands.

There are disputes about the nature of the liability: is it a contractual liability, liability of its own or form of the tort liability? These questions are necessary to answer also for Czech jurisdiction.

The following thesis, as the chosen title already indicates, deals with the issue of precontractual liability in Czech private law.

It starts with the historical analyses of culpa in contrahendo in European countries and compares foreign legislation especially German laws related to this issue. In doing so, it tries to demonstrate that there exists strong European tradition interrupted in Czechoslovakia during a communist regime established in Czechoslovakia from 1948 to 1989, which forced us to look back on the ancient Civil Code of Austria enacted in 1811, which was the basic Czechoslovak Code of private law until 1950.

The second part focuses primarily on definition of culpa in contrahendo and on the analyses of foreign legislation in Germany, Austria and Switzerland because of the strong tradition of the pre-contractual legislation and principles in these jurisdictions. This part also examines case-law of European Court of Justice and Principles of European Private Law.

Then on the basis of the results obtained it will carefully examine the new Czech legislation concerning pre-contractual liability, nature of this liability and will focus on the analysis of the possible forms of this institute in national law.

At the end it will examine the new proposal of Czech Civil Code, which adopted the doctrine of culpa in contrahendo.