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SELECTED CHANGES IN CONSUMER CREDIT AFTER THE RE-CODIFICATION OF PRIVATE LAW IN THE CZECH REPUBLIC[1]

I. LEGAL REGULATION OF CONSUMER CREDIT CONTRACTS IN THE CZECH REPUBLIC

The legal regulation of the consumer credit contracts in the Czech Republic has undergone dynamic changes in the last few years. The first law that regulates these specific problems was introduced only in 2001. It was the very short and very flawed Act No 321/2001 Coll., which was in force for ten years and which dealt with certain conditions of concluding consumer credit contracts. As late as 2011, the more advanced Act No 145/2010 Coll. on consumer credit and amending certain other acts became effective. Since 1 January 2014, the New Civil Code (hereinafter also referred to as the "NCC") has been effective. This article will therefore deal logically only with modification under private law, not with the regulation of the consumer credit market under public law.

As the legal basis in the sphere of consumer credit in the Czech legal order there was Council Directive 87/102/EEC of 22 December 1986, for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. After the Czech Republic acceded into the relevant European institutions, that directive was reflected in Act No 321/2001 Coll. That law basically repeated the wording of Council Directive 87/102/EEC and determined the terms of a consumer credit contract in accordance with the law of the European Community at that time.

Even at that time, the first flaws in the harmonisation of the Czech legal regulations with the European law were being revealed. Unlike the Civil Code in force at that time (Act No 40/1964 Coll., hereinafter only the OZ1964), in Act No 321/2001 Coll., the consumer was defined as a natural person who does not act when concluding and performing contracts within his / her business or other entrepreneurial activity, and in whose benefit a consumer credit contract is concluded.

In the OZ1964, valid at that time, a consumer was defined as a person who did not act within his / her business or other entrepreneurial activity when concluding and performing contracts. The Civil Code correctly defined a consumer *solely as a natural*

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person only tardily, in its subsequent amendments.[2] The consumer was already newly defined only as a natural person, and so protection did not, hence, apply to legal persons, as was the case previously.

In 2001, therefore, new obligations of creditors were added to the Consumer-credit market. These included giving the Annual Percentage Rate charged on consumer credit, determining the conditions under which the annual percentage rate charged on consumer credit can be modified, and determining the maximum amount of consumer credit, or the amount of individual instalments, their number and the correct timing.

The term "annual percentage rate of charge" was, of course, nothing new in the world. The same term substantially appears also in foreign jurisdictions, such as the "percentage of the annual rate of charge", which is an expression of the "truth in lending", consequently, a fair lending, where the consumer has a right to be provided with all relevant pre-contractual information on fees, interest, costs of brokers, as well as on all circumstances and factors that may affect the total amount of his/her credit and respective payments.[3] In the Czech Republic, however, it was a significant breakthrough.

Problems, and the real circumvention of the law, began to emerge essentially after Act No 321/2001 Coll. "On certain conditions of stipulating consumer credit" became effective. Although it stipulated, for example, that creditors must inform consumers in the course of performing the contract about any changes in the annual percentage rate charged on consumer credit, these changes were of course implemented by creditors with reference to their Terms & Conditions on their website. In my opinion, this was an unjust observance the law, if not downright a circumvention, that was forbidden by the former § 39 of OZ1964.[4]

Further to the problems of the original regulations,[5] lawgivers approved the Consumer Credit Act with effect from 2011. Great hopes were pinned on that new version of the Consumer Credit Act by professionals and by consumers. Right at the beginning, however, it must be mentioned that the law did not live up to the expectations in the early years of it coming into force. The new text of a regulation of consumer credit was, in fact, only the transposition of the Directive of the European Parliament and of the Council 2008/48/EC of 23 April 2008 on consumer credit contracts.

II. THE POSITIVES AND NEGATIVES OF THE NEW ACT ON CONSUMER CREDIT

The New Consumer Credit Act again shows scant regard for limitations of a particular value of interest rate, EAR limitations, a failure to pay taxes, disproportionately large guarantees when lending a relatively small amount, etc.[6] In spite of the fact that

[2] Act No 155/2010 Coll. amending some laws to improve their application and to reduce the administrative burden on businesses, as amended.

[3] S. Finlay, *Consumer credit fundamentals.* 2nd edition, Palgrave Macmillan Ltd., Hampshire 2008, p. 13.

[4] A juridical act is invalid if the person who performed it did not have the legal capacity to perform juridical acts.

[5] And of course: with regard to the obligation to implement the new Directive on Consumer Credit Contracts No 2008/48/ECA.

[6] It should be noted that some legislative proposals in this area were in the Chamber of Deputies in 2014, though it is unlikely that they will be adopted.

these are contractual arrangements crucial for a basic assessment of whether or not it is a matter of inadmissible usury.[7]

The new Consumer Credit Act has not yet solved the problem of abuse of arbitration clauses in consumer credit contracts.[7] In addition, before the New Civil Code became effective, there were procedures for changing Consumer Credit Contracts that remained not unambiguously resolved, specifically changing business conditions, and in particular changes to account numbers, or changes in repayment amounts and their disclosure. Because of increasingly frequent abuses of regulations in this sphere, the law had to be upgraded by other subsequent legislative changes.

On such change involved § 18–18b, which after the amendment of Act No 43/2013 Coll. from 25 February 2013, prohibited securing consumer credit by a bill of exchange or a cheque. These provisions also determined that security on consumer credit may not be obviously disproportionate to the real value of the claims being secured. Here it may be noted that the Polish law on consumer credit is more benevolent concerning the prohibition of bills of exchange. The provisions of § 18 of the Consumer Credit Law prohibit using bills of exchange to secure any contractual relations. The Polish legal regulation, in §41 Item 1)[8] only directs giving a clause "not to order" on the bill of exchange. This is because the creditor could not render the bill of exchange to a third party.

To cut a long story short, the current legal regulation of consumer credit contracts is insufficient. So, as the modification of consumer credit contracts could help them to truly serve their primary purpose, ergo the protection of consumers, the legal regulation should, in my opinion, be modified to cover a wider field of action and a greater force. It has become apparent that the special legal regulation on consumer credit contracts lacks effectiveness because non-compliance does not lead to any serious consequences for creditors.

In the Consumer Credit Act, for example, there is a formulation stating that the creditor is obliged to assess the creditworthiness of the debtor with due professional care on the basis of sufficient information obtained from the consumer. This is, in my opinion, very general and insufficient wording. Nowadays, in our legal system, there is no space for such vague terms that, if they are not defined precisely, may distort the principle of legal certainty. The above terms offer a wide range of meanings and explanations, which is not appropriate. In any event, an illustrative enumeration of that "due professional care" would be a better solution. The same can be said about the vague concept of "sufficient information".

To be fair, I must add that, during the implementation of the Consumer Credit Directive, only two Member States (Belgium and the United Kingdom) have specified or clarified what should be regarded as "sufficient information". Clarification of the concept, however, had a positive impact – the concerned parties in Belgium, for example, argue that the obligation of creditors to register certain financial products and keep the results of the consultations relative to the creditworthiness of consumers have brought

[7] Even after many interventions of the Supreme Court and the Constitutional Court, the Arbitration Act had to be amended with effect from 1 April 2012 by Act No 19/2012 of 20 December 2011.

[8] Ustawa z dnia 12 maja 2011 r. o kredycie konsumenckim Dz.U. 2011, Nr 126, poz. 715.

benefits to consumers.[8] In the Czech legal order, there is still enough room for a more precise interpretation of rules of law.

The interpretation (explanation) of legal norms is a cognitive (intellectual) process focused on finding content, purpose and meaning in legal norms. In the process of interpretation, the content (meaning) of a legal norm (a normative provision) is determined, as well as the position of that legal norm in the system of legal regulation.[9] The interpretation may, of course, have significantly different forms, such as a purposeful interpretation that deals with the way in which laws and regulations are interpreted according to their purpose, and the law is therefore viewed from the legal standpoint of what the law is like and what it should be like.[10]

In the field of credit contracts, in my opinion, it is convenient to choose the contemporary, recent objective goal or interpretation by which we examine the objective meaning of a statutory text for its addressee. It is, therefore, the meaning that can be expected to be assigned to the given legal regulation by its addressee who is well knowledgeable about this legal regulation.[11]

III. THE NEW CIVIL CODE AND ITS INFLUENCE ON CONSUMER CREDIT

Very radical changes in the discussed area occurred in 2014. They were caused by Act No 89/2012 Coll., The New Civil Code coming into force. Both the original Civil Code (OZ1964), which had been valid for almost fifty years, as well as the original Business Code[12] were repealed in full. However, in some cases the Civil Code can be used in a supporting role, and it is therefore very important for consumer credit contracts.

The New Civil Code modified customer credit contracts in the following ways in particular:

A) the elimination of contract dichotomy in the Civil and Commercial Codes;
B) the modification of business conditions and contracts of adhesion;
C) the reintroduction of the concept of usurious interest rates;
D) the specification of consumer protection rules.

A) THE ELIMINATION OF CONTRACT DICHOTOMY

For the sphere of consumer credit contracts, the acceptance of the New Civil Code in 2014 meant the elimination of an undesirable dichotomy. Until this year, Consumer Credit Contracts were in fact initially governed by the Commercial Code, and Consumer Protection by the Civil Code. That fact caused serious problems in the Czech ju-

[8] The Commission report to the European Parliament and the Council on the implementation of Directive 2008/48/EC on Consumer Credit Contracts,(COM 2014; 259 final) p. 9, quoted on 22 June 2014, available at: http://ec.europa.eu/consumers/rights/docs/ccd_implementation_report_cs.pdf

[9] L. Kubů, P. Hungr, P. Osina, *Teorie práva (The Law Theory)*, Linde, Prague 2007, p. 16.

[10] B. Leiter, *American legal realism,* [in:] P. Martin Golding, A. William Edmundson (eds.), *The Blackwell guide to the philosophy of Law and legal theory*, Blackwell Publishing Ltd., Malden 2005, p. 50.

[11] F. Melzer, *Metodologie nalézání práva: úvod do právní argumentace (Methodology of law findings: Introduction to law arguments),* C.H. Beck, Prague 2009, p. 83.

[12] Act No 40/1964 Coll., The Civil Code, Act No 513/1991 Coll., the Commercial Code.

diciary because those two provisions had different rules. One of the problems that remained unsolved for a long time, and which has continued to be difficult for some of the courts of the first instance, is the determination of the contractual rate of interest on overdue payments by mutual agreement. In simple terms, in the Commercial Code (dealing with credit) that agreement was allowed, whereas in the Civil Code (dealing with consumers) such an agreement was banned by the courts.

The Supreme Court of the Czech Republic, in its decision of 30 October 2008, ref. 32 Odo 873/2006, decided that the determination of contractual interest on overdue payment between parties who are not business entities is illegal, and therefore impossible. That Supreme Court decision has often been criticised. That is to say, the Supreme Court stated that a regulation and the determination of the legal rate of interest on overdue payment is a cogent provision, however, the current social situation was not taken into account. "To absurdity", it also meant that even if two natural persons not engaged in business concluded a credit contract, they were not allowed to set a contractual interest on overdue payment by agreement.

The Supreme Court came under fire from critics due its interpretation of cogency. The regulation on quoting interest on overdue payments was changed four times within the last decade. It is simpler and clearer for contracting parties to find an agreement on contractual interest on overdue payment. Complex calculation of interest on overdue payment with the aid of a repo rate that was even changed several times over the years is complicated. And taking all this into account, if it could be possible to fix contractual interest on overdue payment between contracting parties by agreement, it would surely be easier for consumers to calculate how much they will pay for interest on credit.

At that time, the Supreme Court evidently did not quite understand that the reason for cogency is to protect the protection-worthy public interests, the protection-worthy interests of one of the contracting parties, the protection of third parties and the like. The reason for cogency is therefore necessary to find, even with regard to the purpose of the legal norms.[13] Dispositive legal norms allow the addressees of a legal regulation to choose a different solution than that set in these norms. They only represent supportive legislation for that event when the addressees of legal regulations cannot solve their interrelationship themselves autonomously.[14]

The New Civil Code therefore had to intervene by the law in a sphere where the decision-making practice had failed through the interpretation of legislation. Not only was the dichotomy of the obligation law of the Civil and Commercial Codes removed, but also contractual agreements on interest on overdue payments (§ 1970) was allowed within the B2C relationship. Even here, however, it is ordered to observe basic safeguards ("cautela" circumspections) to protect the weaker contracting party. According to the New Civil Code (§ 1813), it is taken for granted that such agreements that are based on a significant imbalance in the rights or obligations of the contracting parties to the

[13] More about the cogency of Czech legal norms can be found e.g. in: K. Csach, *Zmluvná sloboda a kogentné právné normy (nielen v obchodnom práve)* (*Contractual freedom and coercive rules of law (not only in commercial law)*), [in:] V. Knoll, V. Bednář (ed.), *Naděje právní vědy (Hopes for legal science),* Pilsen 2006.

[14] F. Melzer, *Základní východiska úpravy neplatnosti právního jednání v návrhu nového občanského zákoníku* (*Bases for the modification of a legal act non-validity in a Draft of the New Civil Code*). In: Ján Husár (ed.), *Súčasnosť a perspektívy právnej regulácie obchodných zmlúv II* (*Present status and perspectives of legal regulations of commercial contracts*), UPJŠ, Košice 2009, pp. 120–130.

detriment of consumers, contrary to the requirement of appropriateness, are banned and outlawed. This does not apply to agreements related to fulfilment or price of a contract, or to contractual stipulations, however, not reached within an adhesion procedure.

In accordance with the aforesaid, under the New Civil Code it is possible to depart from the statutory regulation of contractual interest on overdue payments, if it is in accordance with the rules protecting the weaker party on which the New Civil Code has been based. And thereto, in § 1802 of the New Civil Code there are special additional rules limiting rates of interests to the level established by convention.

B) THE MODIFICATION OF BUSINESS CONDITIONS AND CONTRACTS OF ADHESION

Significant changes were also introduced in a new legal framework of business conditions. The New Civil Code, in § 1751, Article 1, sets out that a part of the contract contents can be determined by reference to the terms and conditions that the proposer attaches to the offer, or with which the contracting parties were duly acquainted. The stipulations given directly in a contract have priority over the wording of the business conditions enclosed.

Reference made to general terms and conditions was of course known in the Czech Republic long before the recodification. This provision essentially follows the previous approach to consumer protection in the sphere of consumer credit contracts, where the consumer's full acquaintance is considered as substantive. Therefore there is the phrase "attached to the offer or which are known to the parties." It should be noted that, according to the Czech Justice, filling in a form and ticking off the consent of "conditions" can not be regarded as an expression of the intent to conclude a contract, if the information that a contract whose substantial requisites can only be found in the "conditions"[15] has been concluded like that.

At the same time, the UNIDROIT rule in Article 2.20 from the Principles of International Commercial Contracts was taken over and included in § 1753, specifying that such provisions of the business conditions that the other party could not reasonably expected have no legal effects unless expressly accepted.[16] Such provisions may be, for example, those excluding the liability of the contracting party for performing certain obligations under the contract, although the contract itself evokes a reasonable expectation that the responsibility for the performance of the contract will not be affected. However, this concerns not only those provisions with unexpected contents, but also provisions destined for the other party that are formulated in vague and equivocal terms, or using unusually small, poorly legible typefaces when amending or completing the contents of the contract is in a way that the other party could not have reasonably expected.

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[15] The Czech justice system has often dealt with this question, where, for example, a decision of the Regional Court in Pilsner 25 Co 99/2013 published in the Collection of Courts Decisions No 1/2014 page 18 can be mentioned.

[16] Compare Article 2.20 UNIDROIT: Article 2.20 – (Surprising terms) (1) No term contained in standard terms that is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party. (2) In determining whether a term is of such a character, regard shall be had to its content, language and presentation.

The purpose of this provision is, of course, to ensure that the contracting party submitting any general or special terms and conditions do not disproportionately benefit from any possible unethical practices.[17] Of course, appraisal must be objective to the intent that the "predictability" is reviewed from the point of view of an unbiased and impartial observer.

As another novelty, there is a possibility of "unilateral change" of terms and conditions inThe provision of § 1752 of the New Civil Code. If any of the contracting parties would like to change any given business conditions, such a reasonable necessity should emerge from the character of commitment already while negotiating the contract. At the opportunity of concluding a contract, the parties can also negotiate the possibility of changing business conditions to a reasonable extent. However, there are other strict conditions. For the validity of such an agreement, it is also necessary to pre-agree to notifying the other contracting party about any change, and the other party has the right to reject the change and to terminate the commitment with a notice period sufficient for a similar performance to be procured from another supplier.

No specific duties that would burden the Party terminating the contract may be imposed. Such special obligations may include, for example, assessing a fine that would give sanctions for the termination of the contract. From the provisions, it appears that all the stringent conditions must be met, otherwise no unilateral change can be made. It should be noted that this is not a change in business conditions in the strict sense, but the introduction of the fiction of acceptance of the new terms of the contract in the event that disagreement has not been expressed.

Since 2013, the Consumer Credit Act has required certain data to be provided on a form to the consumer solely. In this context, since 2014, the Civil Code has developed this further by the modification of adhesion contracts. These adhesion contracts are not a special type of contract.

The adjective "adhesion" refers to a method of concluding contracts, not to the contracts themselves. Therefore, the proposed provisions use the term "contracts concluded in an adhesion manner." The principle is that the contract does not result from stipulating its content by both contracting parties, but in a way that one party submits the complete text of the contract to other party, and the other party has the option of either accepting or rejecting the proposal.

The legal regulation was inspired both by foreign civil codes and by transnational projects, in particular drafts of the European Code of Contracts (Code Europeen des Contrats. Avant-project), and a draft of general reference framework for the European Civil Code (Draft Common Frame of Reference). The Act sets out that, in a contract concluded in an adhesion manner, a clause that refers to conditions set outside the text of the contract is valid as long as the weaker party was acquainted with the clause and its significance, or if it is proven that the weaker party was aware of the importance of the clause.

In this context, there is a certain similarity between § 1800 and § 1753 of the New Civil Code, where in both of these cases the emphasis is placed on the comprehension

[17] And further, e.g. J. Furstom, G.J. Tolhurst, *Contract Formation: Law and Practice,* Oxford University Press, Oxford 2010, p. 15, or in detail M.J. Bonel, *The UNIDROIT Principles in Practice: Caselaw and Bibliography on the UNIDROIT Principles of International Commercial Contracts*, Martinus Nijhoff Publishers, 2006, p. 151.

of the contractual provisions. This is a positive step for Czech rule of law. According to Article 5, paragraph 6 of the Consumer Credit Directive, creditors and credit agents will provide adequate explanations to the consumer, enabling an assessment of whether the proposed credit contract meets the consumer's needs and financial situation. The EU Member States may modify the manner and extent to which such assistance is provided, as well as who provides it. The term "appropriate explanation" has been explained or clarified by eight Member States (Austria, Hungary, Italy, the Netherlands, Poland, Slovenia, Sweden and the United Kingdom).[18] The Czech Republic is still lagging behind in this respect, delegating responsibility for the clarification of this concept on to judicial practice.

The basic principle of the consumer law is a well-informed consumer. Therefore, it is possible to agree with the opinion that the decision on a credit contract conclusion is up to the customer. To make a free resolution the consumer should have possibility of weighing all negatives and risks.[19] Therefore, it is necessary to apply understandable business terms.

C) THE REINTRODUCTION OF THE CONCEPT OF USURIOUS INTEREST RATES AND LAESIO ENORMIS

For contractual relations of the B2C type concerning consumer credit contracts, the year 2014 was significant for the comeback of the old-new institution of Czech private law, namely usury. A provision of the New Civil Code, § 1796, states the invalidity of a contract through which someone misuses the distress, inexperience, intellectual weakness, agitation or carelessness of the other party, and who, either himself or through others, promise or provide fulfilment with a value in gross disproportion in relation to the mutual benefit.

A prohibition on usury contracts can be found in a number of civil codes in Europe (e.g. Germany, the Netherlands, Austria, etc.). The proposed modification takes into account these foreign models, but is mainly based on the government's draft of the Czechoslovakian Civil Code of 1937, and also takes into account the concept of usury in § 218 of the Criminal Code.

Both classic Czech[20] and foreign[21] professional legal doctrines distinguish between usury characteristics of an objective nature (i.e. the fulfilment whose value is grossly disproportionate to the mutual benefit) and characteristics of a subjective nature (i.e. distress, inexperience, intellectual weakness, agitation or carelessness of one legal entity,

[18] The Commission report to the European Parliament and the Council on the implementation of Directive 2008/48/EC on Consumer Credit Contracts, (COM 2014; 259 final) p. 11, quoted on 22 June 2014) available at: http://ec.europa.eu/consumers/rights/docs/ccd_implementation_report_cs.pdf

[19] Congruently: A. Kopeć, in: M. Chruściak, M. Kłoda, A. Kopeć, *Ustawa o kredycie konsumenckim, Rekomendacje interpretacyjne podstawowych regulacji*, C.H. Beck, Warszawa 2012 p. 84.

[20] F. Rouček, J. Sedláček a kol., *Komentář k československému obecnému zákoníku občanskému a občanské právo platné na Slovensku a v Podkarpatské Rusi* (*Commentray to the Czechoslovak general civil code valid in Slovakia and in Sub-Carpathian Russia*), vol. IV (§§ 859 to 1089), V Linhart, Prague 1936, p. 131 *et seq*.

[21] From German e.g.: T. Soergel a kol. *Bürgerliches Gesetzbuch mit Einführungsgesetz und Nebengesetzen*. Band I (§§ 1–240). 12th edition, Kohlhammer, Stuttgart 1988, pp. 943–948. From Austrian then e.g.: P. Rummel and coll. *Kommentar zum Allgemeinen bürgerlichen Gesetzbuch*, 1. Band. §§ 1–1174, Manzsche Verlags- und Universitätsbuchhandlung, Wien 1990, pp. 1159–1161.

and the abuse of such a state by another legal entity). This covers just the conceptual character of an objective nature, which constitutes the gross disproportion between mutual benefit and vice versa, the conceptual characters of a subjective nature characterise the predatory nature of usury.[22]

As a similar institute there is "laesio enormis" (disproportionate reduction), included in § 1793 of the New Civil Code. Strictly speaking, the substance of the case is concluding a contract and the possibility of it being avoided by a court if one party obtains a performance that is grossly and unfairly disproportionate to what the other party obtained.

If the contract is concluded, the primary prerequisite for challenge it under § 1793 is the existence (objectively assessed) of conspicuous disproportion between mutually granted or stipulated performances, as well as the absence of negative reasons for excluding usableness.[23] If the positive condition (striking disparity) is met and the negative conditions are eliminated, the party entrenched upon its rights may request that the contract be cancelled through legal proceedings. In this context, we cannot talk about the withdrawal of the contract, but only about its cancellation. The provision of § 1793 of the New Civil Code concerns the possibility to "*request the cancellation of the contract,*" not the possibility to withdraw.

However, in case of withdrawing from a contract (for this reason), the fact is that the unilateral legal proceedings will not affect the validity of the contract in any way. The cancellation of the contract can only be reached on the basis of a final judgment of the Court of First Instance, or possibly of the Court of Appeals. The Austrian OGH (the Supreme Court)[24] emphasised repeatedly that the contract should not be abolished on the basis of the mere declaration of a party entrenched upon its rights, but solely by a court on the basis of the final judgement. This rule conforms with § 18a of the Consumer Credit Act. It states that securing the consumer credit may not be obviously disproportionate to the value of the claim that should be secured.

D) PARTICULARISATION OF CONSUMER PROTECTION RULES IN THE NEW CIVIL CODE

Within the recodification process that started in 2001, many professional bodies, academics, practitioners, judges, nongovernmental organisations and the public were asked to make comments on the proposal of the NOZ. The proposal represents an entirely new legal regulation highlighting the social values of modern society. The basic principle is the protection of human beings, not of the state; at the same time, central to the proposal is the freedom of the individual that it expresses, which plays the most important role. The proposal includes an improved regulation of consumer law, addressing and resolving the practical, real-world problems. Apart from other positives, it returns Czech private law to the standards of European legal culture and national le-

[22] M. Janoušek, *Návrat laesio enormis do občanského práva (Reinstatement of laesio enormis to the civil law),* Právní rozhledy 5/2014, p. 165.

[23] Statute of limitation of one year and the inability to use, in some cases, established in § 1793, Clause 2 (Commodity Exchange, etc.).

[24] Judgement of the OGH of 26/09/1990, File 2 Ob 575/90.

gal traditions, which were rejected after the revolution in 1948 when the Communist Party came into power."[25]

Although the appropriateness of the selected solution has been disputed, consumer protection has been incorporated into the New Civil Code. But not to the fullest extent, because some regulations have retained independence and were not codified – including the Consumer Credit Act and the Consumer Protection Act.[26]

The Civil Code defines the consumer in § 419 (Part one, Section 4, Definitions of concepts), where the consumer is anyone who, not in connection with business activities, or outside of the independent practice of his/her profession, enters into a contract with a business entity, or deals with it in any other way. The legal protection of consumers is therefore granted only to natural persons.

The modification of consumer contracts has been evolved in the part concerning relative property rights. Part Four, Heading 1, Section four of the New Civil Code modifies contracts concluded with a consumer (§ 1810 of the New Civil Code). Strictly speaking, these legal regulations follow the existing concept of consumer protection in the Civil Code, with minor differences, and agreement on these was reached much sooner. There have not been any radical changes concerning consumer credit yet. In addition to the Consumer Credit Act, the Civil Code is also based on the principle of consumer awareness.[27] Logically, there is still a prohibition on any arrangements that, contrary to the requirement of appropriateness, establish a significant imbalance in the rights or obligations of the parties to the detriment of consumers.

Legal regulations on consumer protection in the New Civil Code are quite extensive, and will be looked at in more detail in a subsequent article. For the purpose of this publication, only a genuinely marginal description of these legal regulations was chosen. Naturally, in the context of consumer credit contracts.

IV. INSTEAD OF CONCLUSION

The legal regulations of consumer credit contracts in 2014 saw an important shift for the Czech Republic. The New Civil Code brought in important amendments and let us hope it will be directed towards improving contractual relationships. As is typical for the private law, there are again examples of 'vague concepts' – it is not determined how to identify "unforeseeable provisions" in business conditions, or what is "mutual fulfilment grossly disproportionate". To the Rule of Law there have been introduced some legislative novelties, but only time will tell their real content. The use of vague and ambiguous legal concepts requires extra attention to the protection of the rights of the participants, and reduces their legal certainty. Their interpretation is again a matter of future judicial practices.

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[25] B. Tomančáková, *Consumer law regulation in the Czech Republic in the context of EU law: theory and practice*, [in:] J. Deveney, M. Kenny, *European Consumer Protection*, Cambridge University Press, Cambridge 2012, p. 411.

[26] Act No 634/1992 Coll., Customer Protection Act.

[27] § 1811 Clause 1 of the New Civil Code: the business entity has to make all notifications to the consumer in an understandable and comprehensible manner, in the language in which the contract is concluded; similarly § 1820 of the New Civil Code on pre-contractual information, or § 1821 which charges business entities with quoting all prices, including all taxes and fees.

It would be very easy to say that the lawgivers should have used precise terms in the New Civil Code. On the contrary, however, it is necessary to appreciate the fact that the Czech legal regulations have avoided other legislative mistakes. In Slovakia, in 2014 a legislative draft appeared in the following version: Under the proposed amendments to § 53c of the Civil Code, "Consumer contract provisions and provisions contained in general conditions or any other contract documents relating to a consumer contract cannot be placed in other letters and smaller letters, as laid down by the implementing regulation." This is a follow-up of the proposed provision § 2b of the Decree of the Government No 87/1995 Coll. whereby: "The provisions of consumer contracts and the provisions contained in general terms and conditions or in any other contract documents relating to a consumer contract; they must be given by the contractor in the font type Times New Roman…".

I do hope it will not be necessary for the courts to adopt radical attitudes towards these new terms given in the New Civil Code. The judges have been trained in the New Civil Code in the long term by the Judicial Academy, and they have been prepared for the issue of the New Civil Code. This means they should understand the meaning of the new institutions. As for consumer protection, judges should use common sense, not useless formalism. The New Civil Code is not simply a change in the law, it should evoke a complete change in legal thinking, and every judge should assess and review from case to case whether it is a legal matter of protection of the weaker party, or whether it is simply abuse.

In the field of consumer credit this is doubly true. Most legal disputes arising from them logically arise at the moment when the debtor ceases to repay the credit, and the protection of the weaker party can not be built over the principle "*pacta sunt servanda*".