

USE OF UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS TO INTERPRET OR SUPPLEMENT CZECH CONTRACT LAW

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Abstract: The article analyses the extent to which the UNIDROIT Principles of International Commercial Contracts (UPICC) are used to interpret and supplement Czech contract law. Under Czech legal doctrine the UPICC are part of *lex mercatoria* and not considered as a generally binding set of legal rules. However, contracting parties are free to make them part of their contract. The authors carry out a comparative analysis of selected UPICC rules and their counterparts in the Czech national law (Czech Civil Code) relating to negotiations in bad faith, surprising terms, currency of payment, right to terminate the contract and interest for failure to pay money.

Keywords: UNIDROIT Principles of International Commercial Contracts, private international law, *lex mercatoria*, Czech contract law, interpretation

THE UNIDROIT PRINCIPLES AND LEGAL SOURCES IN THE CZECH REPUBLIC

To date, the UNIDROIT Principles (“UPICC”) have not been very well-known in the Czech legal environment and have only been used to a very limited extent. They can be understood as soft law, modern *ius commune* and a source of inspiration for the codification of law of contracts. In the Czech doctrine of private international law and international trade law the UPICC and other principles of soft law forming a part of *lex mercatoria* are strictly separated from the international codification of law of contracts, i.e. from the regulation contained in international treaties and EU regulations.² *Lex mercatoria* can be applied only within the normative framework of the law that is applicable to a particular contract. From the perspective of the Czech Republic the Rome I Regulation on the law applicable to contractual obligations³ constitutes the basis for determining the law applicable to international commercial contracts.

In this respect, the Czech legal theory does not differentiate substantially from traditional theories of private international law in Europe. *Lex mercatoria* is a fuzzy term, and

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² This part is based on PAUKNEROVÁ M. The UNIDROIT Principles and Czech Laws. In: *Eppur si muove: The Age of Uniform Law Essays in honour of Michael Joachim Bonell to celebrate his 70th birthday*. Rome: UNIDROIT, 2016, p. 1583–1592. See also Pauknerová, M. The “Contrat Sans Loi” in Czech and European Private International Law. In: *Vers nouveaux équilibres entre ordres juridiques, Mélanges Hélène Gaudemet-Tallon*. Paris: Dalloz, 2008, p. 775–787 with further references. See also ROZEHNALOVÁ, N. Nestátní právo před českými soudy [Non-State Law in Czech Courts]. In: *Právnická fakulta MU* [online]. [2017-09-26]. Available at: <<http://www.law.muni.cz/sborniky/dp08/files/pdf/mezinaro/rozehnalova.pdf>>.

³ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (OJ L 177/6, 4.7.2008), (hereinafter “Rome I Regulation”).

it is in our opinion impossible to accept that the rules arising from *lex mercatoria* could be regarded as having the nature of generally binding legal norms. As sometimes mentioned in literature, *lex mercatoria* is not a “*lex*”. Only states adopt generally binding legal norms. However, nothing prevents contracting parties from making *lex mercatoria* a part of their contract. Such contract is based on a certain law; as matter of fact, practically every law of contracts is based on extensive freedom to contract. The boundaries of freedom to contract are defined by mandatory norms of the applicable law. Within such boundaries the parties may stipulate a specific regulation of their rights and obligations which deviates from non-mandatory norms that apply only if the parties do not agree otherwise.⁴ In other words, the applicable law is the law relevant for defining the framework for *lex mercatoria* in general, including the UPICC. The applicable law is determined according to the conflict rules over which unification of substantive law in an international treaty may take precedence as *lex specialis*. The Czech Private International Law Act (“PIL Act”)⁵ expressly stipulates precedence of the provisions of promulgated international treaties by which the Czech Republic is bound and of directly applicable provisions of the European Union law (Section 2 PIL Act).

Thus, it is in particular the Rome I Regulation or, when appropriate, the provisions of the PIL Act⁶ supplementing Rome I that apply in judicial proceedings in relation to the question of law applicable to contracts. It is set out in Recital 13 of the Rome I Regulation that the regulation does not preclude parties from incorporating by reference into their contract a non-state body of law or an international convention. This wording is in line with the inherent position of the Czech doctrine that a provision incorporated into a contract by the parties may not go beyond the framework defined by mandatory provisions of the law otherwise applicable under the provisions of the regulation.⁷

The term “trade usages” or “business usages” is known within the context of Czech substantive law. Till 2014 business usages were regulated under the Commercial Code,⁸ today they are defined in the Civil Code (“CC”)⁹ in a somewhat modified form. Pursuant to Section 558(2) CC, “in legal transactions among entrepreneurs, account is taken of business usages maintained in general or in a given industry, unless excluded by an agreement between the parties or by a statute. Unless otherwise agreed, a business usage is conclusively presumed to take precedence over non-mandatory provisions of a statute; otherwise, an entrepreneur may invoke a usage if he proves that the other party must have known a given usage and was aware that it would be followed.” To our knowl-

⁴ KUČERA, Z., PAUKNEROVÁ, M. RŮŽIČKA, K. *Mezinárodní právo soukromé* [Private International Law]. 8th edition. Plzeň-Brno: Aleš Čeněk- Doplněk, 2015, p. 214.

⁵ Act No. 91/2012 Coll. on Private International Law (PIL Act).

⁶ These provisions (Sections 84–101 PIL Act on Law of Obligations, including specific procedural provisions and both contractual and certain non-contractual obligations) apply provided the matter does not fall into the scope of the directly applicable provisions of the European Union law and international treaties, unless an EU law or a treaty allows the application of this Act.

⁷ KUČERA, Z., PAUKNEROVÁ, M. RŮŽIČKA, K. *Mezinárodní právo soukromé* [Private International Law]. 8th edition. Plzeň-Brno: Aleš Čeněk- Doplněk, 2015, p. 215–216.

⁸ Act No. 513/1991 Coll., Commercial Code, repealed by the new CC.

⁹ Act No. 89/2012 Coll., Civil Code (CC).

edge the Czech case-law has not dealt yet with this concept pursuant to Section 558(2) CC and no decision has been issued in this respect by the Supreme Court of the Czech Republic. We are of the opinion that in light of the indicated approach to usages, it cannot be assumed that in the future Czech courts would use this provision to apply the UPICC. Such scenario is not likely to take place. For further reflections on Section 558(2) CC see also below.

APPLICATION OF THE UPICC TO CONTRACTS

In general, the Czech legal theory takes a critical stance towards the possibility of directly applying *lex mercatoria* with one exception – arbitration proceedings in cases where both parties expressly agreed that the case would be decided in accordance with the principles of justice. However, this hardly ever occurs in practice. In other cases, when the parties refer to international rules, the UPICC etc. in their contract, such rules or principles will only be taken into account within the framework of the applicable law and its mandatory provisions. Provided the parties do not perform choice of law, conflict rules which are applicable in the absence of choice of law apply, namely either the conflict rules pursuant to Rome I Regulation, or the conflict rules based on the secondary application of Section 87 PIL Act.

There is a special provision that applies to arbitration proceedings in the Czech PIL Act. Its Section 119 sets out that the law governing the substance of a dispute is the law chosen by the parties. Provided the parties do not choose any law, the applicable law is determined by arbitrators on the basis of the provisions of the PIL Act, i.e. on the basis of the conflict rules of *lex arbitri*. Where expressly authorised by the parties, the arbitrators may decide a dispute in accordance with the principles of justice [...]. Therefore, disputes have to be decided in accordance with a “law”, unless the parties expressly agree that disputes shall be decided in accordance with the principles of justice.¹⁰ Besides that, in the specific context of arbitration proceedings the European Convention on International Commercial Arbitration of 1961 should not be neglected.¹¹ It is binding for Czech Republic and when applicable its provisions take precedence over national law. Pursuant to Article VII (1) of the Convention “the parties shall be free to determine, by agreement, the law to be applied by the arbitrators to the substance of the dispute. Failing any indication by the parties as to the applicable law, the arbitrators shall apply the proper law under the rule of conflict that the arbitrators deem applicable. In both cases the arbitrators shall take account of the terms of the contract and trade usages.” It is precisely this formulation from which the possibility of arbitrators to freely determine the applicable law is inferred in cases when the parties failed to determine applicable law. This possibility has been accepted, although not unani-

¹⁰ KUČERA, Z., PAUKNEROVÁ, M. RŮŽIČKA, K. *Mezinárodní právo soukromé* [Private International Law]. 8th edition. Plzeň-Brno: Aleš Čeněk- Doplněk, 2015, p. 215.

¹¹ European Convention on International Commercial Arbitration. In: *United Nations Treaty Collection* [online]. [2018-05-04]. Available at: <https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&clang=_en>.

mously, by the Czech legal literature.¹² There is to our knowledge no direct reference to the UPICC in the case-law of the Czech Supreme Court: it seems that the courts in the Czech Republic have not dealt yet with the application of this instrument.¹³ Of course, this does not mean that in the future the courts will not apply the UPICC as a means of interpreting and supplementing the applicable law, either domestic, or foreign (see Model Clause for the use of the UPICC No. 4).¹⁴

The judgment of the Constitutional Court of the Czech Republic of 20 April 2005 can undoubtedly be regarded as a sort of a basis for interpretation by Czech courts¹⁵ (in details *infra* 3.3.).

The mentioned judgment allows judges to take into account unified rules of soft law which include both the Principles of European Contract Law and the UPICC. Thus, the judges have the possibility to consider and interpret legal relations from a wider perspective of general rules which may influence their decision-making. This decision is relevant not only for judicial but also for arbitration proceedings. In arbitration proceedings in the Czech Republic, namely in proceedings before the Arbitration Court attached to the Chamber of Commerce of the Czech Republic and the Agricultural Chamber of the Czech Republic in Prague, practically no awards that have been published, involve the UPICC. In the UNILEX database there is only one reported case at this arbitration court that refers to the UPPIC (Rsp 88/94).¹⁶ In this case the arbitration court referred to the Polish law supported by the UPICC to uphold the solution found under the applicable domestic law.¹⁷ The authors of this paper are aware of only two unpublished awards of the Arbitration Court attached to the Chamber of Commerce of the Czech Republic and the Agricultural Chamber of the Czech Republic in Prague, that involve the UPICC. In one of them (Rsp 235/03)¹⁸ the claim was based on a Contract on Exclusive Import, Sales and Distribution (a framework contract), concluded between a Czech exporter (Claimant) and a Polish importer (Defendant). During the proceedings the Polish Defendant invoked the UPICC

¹² KUČERA, Z., PAUKNEROVÁ, M. RŮŽIČKA, K. *Mezinárodní právo soukromé* [Private International Law]. 8th edition. Plzeň-Brno: Aleš Čeněk- Doplněk, 2015, p. 215, and, with reservations, KUČERA, Z. *Mezinárodní právo soukromé* [Private International Law]. 7th edition. Brno-Plzeň: Doplněk - Aleš Čeněk, 2009, p. 171.

¹³ In the Czech Republic, published are only the decisions of the Supreme Court and upper courts, the Supreme Administrative Court and the Constitutional Court.

¹⁴ See BONELL, M. J. Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts. *Uniform Law Review*. 2013, Vol. 18, No. 3-4, p. 473–489 with further references.

¹⁵ Judgment of the Constitutional Court of the Czech Republic No. 625/03 of 20.4.2005, see also <http://www.concourt.cz/>.

¹⁶ See UNILEX. In: *UNILEX* [online]. [2017-10-17]. Available at: <<http://www.unilex.info/dynasite.cfm?dssid=2377&dsmid=14311>>.

¹⁷ Rsp 88/94 of 17.12.1996. *Unif. L. Rev.*, 1997, 604 – 605. A Polish and a Russian company entered a number of contracts which contained a reference to the Polish law. Requested by the Polish Claimant to pay the price of the repairs, the Russian Defendant objected that it had delegated one of its own customers, which owed it a corresponding sum of money, to make the payment on its behalf. The Arbitral Tribunal rejected this defence on the ground that, because a delegation of payment does not amount to the substitution of the original obligor by a new obligor, the original obligor is discharged only when the third person actually pays the obligee. In support of its conclusion, the Arbitral Tribunal referred not only to Art. 921(5) of the Polish Civil Code, but also to Art. 6.1.7(2) of the UPICC. See UNILEX, *loc. cit.*

¹⁸ Award dated 17.5.2005.

which the Defendant found appropriate for the interpretation of problematic provisions of the contract which were probably translated into Czech and subsequently into Polish from another language version as a consequence of which the meaning of some provisions was not clear. The parties chose Czech law as the applicable law and there was no reference to the UPICC in the contract. One of the issues was whether a duty of the seller to deliver particular goods can be derived directly from the framework contract, as asserted by the Defendant. The seller (Claimant) objected that it was not obliged to deliver the goods (based on the framework contract) and to confirm the purchase orders of the Defendant, as in the seller's opinion separate purchase contracts had to be concluded for this purpose. The Defendant argued with reference to Article 4.5. UPICC and Art. 4.6. UPICC (*contra proferentem* rule). The arbitrators did not accept such arguments and concluded that the applicable law which was expressly chosen did not permit such interpretation, i.e. that the specific duty to supply goods was implied directly by the framework contract and that on this basis the Claimant was obliged to confirm the purchase orders of the Defendant.

Rsp 1913/12¹⁹ involved an importation agreement concluded between a Czech company (Claimant) and a Slovak entrepreneur (Defendant), the parties chose Czech law as the applicable law. The dispute related to the formal requirements of an Annex to the importation agreement certifying a delivery of returnable pallets. The core of the dispute was the question whether the form and the signature of the document were in conformity with the contractual stipulations. There was a dispute between the arbitrators. Two of them claimed that the form should have been assessed informally as sufficient if corresponding to the practice established between the parties. One arbitrator claimed that such assessment did not correspond to the contract and would not have been acceptable in court proceedings. In the end he suggested the application of the Article 2.18 / 2.1.18 UPICC on modification in a particular form: "A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has acted in reliance on that conduct." The arbitrators, in majority, however concluded that the contract and the applicable Czech law were sufficient and pertinent, they did not accept such UPICC-conforming argumentation.

Thus, to summarize in none of these two cases the UPICC were eventually applied, the arbitrators found norms of the law chosen by the parties sufficient. To our knowledge neither have the UPICC been applied by courts, nor arbitrators to interpret the UN Convention on Contracts for the International Sale of Goods ("CISG") or any other international instrument of uniform law.

¹⁹ Award dated 25.4.2014.

SELECTED UPICC RULES AND THEIR COUNTERPARTS IN CZECH NATIONAL CONTRACT LAW

ARTICLE 2.1.15 (Negotiations in bad faith)

Art. 2.1.15 UPICC relates to pre-contractual liability, the *culpa in contrahendo*. Before 2014, Czech law did not provide for pre-contractual liability as a separate legal concept at all. The only exception was liability for misuse of confidential information disclosed during contract negotiations in business dealings. Protection of such information was expressly stipulated in Section 271 of the Commercial Code. However, in practice, Czech courts²⁰ kept inferring pre-contractual liability on the basis of extensive interpretation of the general duty to prevent imminent damage²¹ and general liability for causing damage²² or, when appropriate, liability for damage caused by intentional acting violating good morals.²³

In 2012 the Czech Republic saw extensive recodification of private law resulting in the adoption of a new civil code which came into effect on 1 January 2014.²⁴ In the new CC pre-contractual liability is expressly regulated under Sections 1728–1729. According to the Explanatory Report on the CC the drafters were inspired by the regulation of pre-contractual liability in Art. 6–8 Code Européen des Contrats²⁵ rather than by the regulation contained in the UPICC.²⁶

The provision of Section 1728(1) CC lays down a general principle of freedom to contract pursuant to which nobody can be forced to conclude a contract against their will. However, liability for a failure to conclude a contract may arise if a party to negotiations commences or continues negotiations of a contract without intending to conclude it. This provision corresponds to the regulation contained in Art. 2.1.15 UPICC. However, unlike the UPICC, Czech law does not use the term good or bad faith, but the term fair or unfair acting. Section 6(1) CC enshrines the general duty to act fairly in legal transactions.²⁷ Thus, the autonomy of will of contracting parties is limited by the duty to act fairly.²⁸ Fair acting pursuant to Section 6 CC should be understood as a certain standard of acting in legal transactions requiring fairness, openness and respect to interests of the other party. It is an objective measure and can be referred to as “objective good will”.²⁹ The above-mentioned provision of Section 1728(1) CC refers to a specific case of a general duty of fair act-

²⁰ Decision of the Supreme Court of the Czech Republic of 11. 10. 2006 (Ref. No. 1166/2004); Decision of the Supreme Court of the Czech Republic of 2. 9. 2008 (Ref. No. 25 Cdo 127/2007); Decision of the Supreme Court of the Czech Republic of 22. 2. 2011 (Ref. No. 25 Cdo 4147/2008).

²¹ Section 415 Act. 40/1964 Coll., Civil Code (repealed).

²² Section 420 Act. 40/1964 Coll., Civil Code (repealed).

²³ Section 424 Act. 40/1964 Coll., Civil Code (repealed).

²⁴ Act. No. 89/2012 Coll., Civil Code.

²⁵ Code Européen des Contrats. In: *Eurcontracts.eu* [online]. [2018-05-04]. Available at: <http://www.eurcontrats.eu/site2/newdoc/Norme%20Libro%20I-%20francese_.pdf>.

²⁶ Explanatory Report on the Civil Code: Sections 1728 to 1730.

²⁷ Section 6(1) CC: *Everyone is obliged to act fairly in legal transactions.*

²⁸ HULMÁK, M. Commentary on Section 1728. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 – § 2054): komentář*. Praha: C.H. Beck, 2014, p. 60.

²⁹ *Ibid.*, p. 73 and following.

ing. Negotiations of a contract without any intention of concluding it represent one of the examples of a party's unfair acting and as such contradict the duty to act fairly as stipulated in Section 6 CC. Pre-contractual liability under Czech law constitutes non-contractual liability, pursuant to Section 2910 CC it is considered a breach of a statutory duty.

The provision of Section 1728(2) CC lays down the liability for breach of the duty to inform parties participating in contractual negotiations. This is a more specific rule to the general rule to act fairly. When negotiating a contract, the contracting parties should notify each other of all the factual and legal circumstances of which they know or must know, so that each of the parties can assess the probability of concluding a valid contract and so that the interest of each party in concluding the contract is evident to the other party. It primarily implies a duty to inform the other party of any circumstance which might question the possibility of concluding a valid contract without delay.³⁰ The purpose of this provision is to enable each party to responsibly assess the probability of concluding a valid contract.³¹

Unlike in the UPICC, the provision of Section 1729(1) CC defines an additional specific case of pre-contractual liability, namely liability for interrupting negotiations when a point is reached where the conclusion of the contract seems highly probable. Provided the parties in the contract-making process reach such point, the party which terminates the negotiations without a just cause despite reasonable expectations of the other party to conclude the contract acts unfairly. According to commentaries, just cause shall be understood as a reason which the other party could have anticipated provided the party acted with due prudence, or as a reason of which it was informed.³² If damage is caused due to a failure to conclude a contract in contradiction with the expectations of one party, the other contracting party is obliged to compensate the counterpart for damage as a consequence of a breach of such duty.

Under Czech law the damage caused as a consequence of unfair acting in cases where contract was not concluded is limited. In accordance with Section 1729(2) CC a party which acts unfairly shall compensate the other party for the damage, but only to an extent not exceeding the loss from contracts not being concluded in similar cases. According to commentaries on this provision the damage is not limited when caused by unfair acting under Section 1729(1) CC or as a consequence of negotiations of a contract without a party's intention of concluding it pursuant to Section 1728(1) CC. The purpose of this provision is to prevent speculative increase in the costs of contract negotiations. The aggrieved party should not be in a better position than a position that it would have enjoyed if the contract were concluded.³³ However, this provision is regarded as a provision

³⁰ PELIKÁNOVÁ, I., PELIKÁN, R. Commentary on Section 1728. In: J. Švestka – J. Dvořák – J. Fiala a kol. *Občanský zákoník. Komentář. Svazek V*. Praha: Wolters Kluwer, 2014, p. 23.

³¹ KOZÁREK, T. In: N. Rozehnalová a kol. *Nový občanský zákoník pohledem mezinárodních obchodních transakcí* [New Civil Code under the viewpoint of international commercial transactions]. Brno: Masarykova univerzita, Právnická fakulta. 2014, p. 87.

³² PELIKÁNOVÁ, I., PELIKÁN, R. Commentary on Section 1729. In: J. Švestka – J. Dvořák – J. Fiala a kol. *Občanský zákoník. Komentář. Svazek V*. Praha: Wolters Kluwer, 2014, p. 25.

³³ HULMÁK, M. Commentary on Section 1728. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 62.

causing interpretation difficulties. The concept of “loss from contract not being concluded” is a vague concept, its only purpose is to define the upper limit of compensation irrespective of how and on what basis incurred loss is quantified.³⁴ According to literature, other indeterminate concepts causing interpretation problems are “loss from contracts not being concluded in similar cases” and “a just cause of failing to conclude a contract”.³⁵ With regard to the relatively short period for which this regulation has been in effect, to the knowledge of the authors Czech courts have not dealt with the interpretation of these concepts yet.

It follows from the foregoing that Section 1728(1) CC can be regarded as the Czech counterpart of the principle set out in 2.1.15 UPICC. The basic regulation of this concept is similar despite the fact that the Czech provision is based on the term unfair acting rather than acting in bad faith. Both regulations enshrine liability for damage caused in connection with acting in bad faith in the sense of acting without the intention to conclude a contract. In addition to that in the Czech law there is a special provision regarding liability for damage caused by terminating negotiations which reached a point where the conclusion of the contract seems highly probable except for cases in which the party has a just reason therefore. Unlike the general formulation in Art. 2.1.15 UPICC under Czech law the amount of damage incurred as a consequence of unfair acting is limited.

ARTICLE 2.1.20 (Surprising terms)

An express regulation of the concept of “surprising terms” was also absent in the Czech contract law until 2014. In the current CC Section 1753 is the Czech counterpart to Art. 2.1.20 UPICC. According to the Explanatory Report on the CC this provision is based on Art. 2.20 UPICC,³⁶ although the drafters most probably had Art. 2.1.20 UPICC in mind. Anyway, it is evident from the wording that the new Czech provision has been inspired by the UPICC. Except for some minor deviations the wording is identical to the wording of Art. 2.1.20 UPICC. In accordance with the first sentence of Section 1753 CC including standard commercial terms which the other party could not have reasonably expected is ineffective, unless expressly accepted by that party. This is a mandatory statutory provision from which no deviation is possible upon an agreement between the parties. Provided parties stipulate to the contrary in a contract, such stipulation will be disregarded. Protection against surprising terms in commercial terms under Section 1753 CC applies, regardless of the nature of the parties, in both B2B and B2C contracts. Under none of these legal regulations a surprising term has legal effects with the exception of cases in which the other party expressly adopted such term.

The second sentence of Section 1753 CC, similarly as the second sentence of Art. 2.1.20 UPICC, specifies criteria for assessing whether or not such term can be regarded as sur-

³⁴ PELIKÁNOVÁ, I., PELIKÁN, R. Commentary on Section 1729. In: J. Švestka – J. Dvořák – J. Fiala a kol. *Občanský zákoník. Komentář. Svazek V*. Praha: Wolters Kluwer, 2014, p. 26.

³⁵ PELIKÁN, M. K některým otázkám předmluvní odpovědnosti v praxi [On some issues of pre-contractual liability in practice]. *Obchodněprávní revue*. 2017, No. 5, p. 129 and following.

³⁶ Explanatory Report on the CC: Sections 1751 to 1754.

prising. Under the second sentence of Section 1753 CC, whether a provision is of such a nature is assessed with regard to its content and the manner in which it is expressed. Thus, surprising terms may include provisions of unexpected content as well as provisions of unexpected form. As an example of provisions which should be assessed as surprising due to their content the Explanatory Report on the CC mentions provisions excluding liability of a party for the fulfilment of certain obligations under a contract despite that the contract alone leads to a reasonable expectation that liability for the performance of the contract will not be affected. As an example of terms which should be regarded as surprising due to their form the Explanatory Report on the CC mentions provisions which are expressed in a manner that is unclear to the other party, with a poorly legible font, or terms which change or amend the content of the contract in a manner which could not have been reasonably expected by the other party.³⁷ Under Czech law a term cannot be regarded as a surprising term provided it is proven that the other party knew or must have known of such term.³⁸

In case of a dispute, assessing whether a term is a term which the other party could or could have not reasonably expected shall be up to the court which should take into consideration specific facts of the case. In assessing the aforementioned the court should take into account, among other things, whether it is a B2B or B2C contract. In particular, the court should assess what terms the other party expected or must have expected while at the same time an average human intellect and average experience of the other party under given circumstances are presumed.³⁹ The content of the pre-contractual communication should also be considered including advertisements which could have given rise to certain expectations in case of the accessing party and thus turn a clause which would not be surprising otherwise into a surprising one.⁴⁰

The provision of Section 1753 CC provides protection against surprising terms in commercial terms under the condition that the commercial terms became part of the contract.⁴¹ The manner in which commercial terms can be validly made part of the contract is set out in Section 1751 CC.

ARTICLES 4.1 – 4.7 (Interpretation of contracts)

All UPICC Articles stated in the title of this subchapter deal with the interpretation of contracts or unilateral acts. There are no counterparts in Czech law on contracts inspired by these UPICC Articles. The CC only deals with the interpretation of legal acts in its general part, namely in Sections 555 to 558. The provisions on interpretation of the content

³⁷ Explanatory Report on the CC: Sections 1751 to 1754. Důvodová zpráva. In: *Justice.cz* [online]. [2018-05-04]. <<http://obcanskyzakonik.justice.cz/images/pdf/Duvodova-zprava-NOZ-konsolidovana-verze.pdf>>.

³⁸ HULMÁK, M. Commentary on Section 1753. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 171.

³⁹ *Ibid.*, p. 170.

⁴⁰ PELIKÁNOVÁ, I., PELIKÁN, R. Commentary on Section 1753. In: J. Švestka – J. Dvořák – J. Fiala a kol. *Občanský zákoník. Komentář. Svazek V*. Praha: Wolters Kluwer, 2014, p. 75.

⁴¹ HULMÁK, M. Commentary on Section 1753. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 170.

of legal acts are based on the regulation in the Civil Code and in the Commercial Code effective till 2014 including the desirable special regulation of specific characteristics of business transactions between entrepreneurs that acknowledges the significance of business usages.⁴² Given their general nature, these interpretation rules are applied also to contracts. The basic interpretation principle is embodied in Section 555(1) CC; under this provision legal acting is assessed by its content. The content of legal acting is the genuine will, i.e. the intent or purpose the parties have to cause legal consequences.⁴³ The basic provision of Section 555(1) CC is further elaborated on in another interpretation norm in Section 556 CC that sets out interpretation methods in accordance with which it is necessary to interpret legal acts irrespective of the entities taking them and irrespective of the rights they relate to.⁴⁴ Pursuant to Section 556(1) CC when interpreting an expression of will (whether expressed in words or otherwise) the acting person's intent must be taken into account. Thus, even under Czech law legal acts (including those performed in contract law) are interpreted primarily on the basis of the acting person's intent which corresponds to Art. 4.2(1) UPICC. Pursuant to Section 556(1) CC what is expressed by words or otherwise is interpreted according to the intention of the acting person, provided the other party knew or must have known of such an intention. Although Czech law uses the phrase "must have known of" rather than the phrase "could not have been unaware of" used in Art. 4.2 UPICC, we can deem this wording to set the same standard.⁴⁵ Ascertaining the acting party's intent has its objective limits given by the use of interpretation rules. Provided the acting party's intent cannot be ascertained despite of applying these rules, the objective interpretation method pursuant to the second sentence of Section 556(1) CC applies.⁴⁶ If the intention of the acting person cannot be ascertained, the expression of will is attributed the same meaning which would be typically attributed by a person in the position of the person towards whom the will was expressed. Similarly, to the UPICC, Czech law is not based on a general and abstract concept of a third person,

Section 556(2) CC contains a regulation similar to that contained in Art. 4.3 UPICC which indicates relevant circumstances that are to be considered when applying Art. 4.1 and 4.2 UPICC. This general provision specifies circumstances to which regard must be given when interpreting an expression of will. The following must be taken into account: a) the practices established between parties in legal transactions; b) what preceded the legal act and c) how the parties subsequently expressed what content and significance they attribute to such legal act. The content of the circumstances stipulated in this provision corresponds to the content of the circumstances specified in Art. 4.3 UPICC under letter a): preliminary negotiations between the parties; letter b): practices which the par-

⁴² Explanatory Report on the CC: Sections 555 to 558.

⁴³ TICHÝ, L. Commentary on Section 555. In: Švestka, J.; Dvořák, J.; Fiala, J. a kol. *Občanský zákoník. Komentář. Svazek I*. Praha: Wolters Kluwer, 2014, p. 1362.

⁴⁴ HANDLAR, J. Commentary on Section 555. In: Lavický a spol. *Občanský zákoník I: obecná část (§ 1 - § 654): komentář*. Praha: C.H. Beck, 2013, p. 1986 et seq.

⁴⁵ ROZEHNALOVÁ, N. et al. *Nový občanský zákoník pohledem mezinárodních obchodních transakcí* [New Civil Code under the viewpoint of international commercial transactions]. Brno: Masarykova univerzita, 2014, p. 58.

⁴⁶ HANDLAR, J. Commentary on Section 556. In: Lavický a spol. *Občanský zákoník I: obecná část (§ 1 - § 654): komentář*. Praha: C.H. Beck, 2013, p. 1994

ties have established between themselves, and letter c): the conduct of the parties subsequent to the conclusion of the contract. Section 556(2) CC as a general provision applies also to interpretation of legal acts between an entrepreneur and a consumer is therefore complemented by a special interpretation rule in Section 558 CC relevant in transactions between entrepreneurs. In accordance with the first sentence of Section 558(1) CC in legal transactions between entrepreneurs if a term can be interpreted in different ways, it is interpreted according to its usual meaning in such transactions. This provision is almost analogous to the circumstance set out in Art. 4.3 UPICC under letter e): the meaning commonly given to terms and expressions in the trade concerned. Provided the other party is not an entrepreneur, the party which invokes a certain meaning must prove that the other party must have been aware of such meaning. Another special interpretation rule applied in legal transactions between entrepreneurs is laid down in Section 558(2) CC. In accordance with this provision account is taken of business usages, unless excluded by agreement between the parties or by statute. Account shall be taken of business usages established both in general and in a given sector. The content of this provision is analogous to the circumstance set out in Art. 4.3 UPICC under letter f) in connection with Art. 1.9 UPICC: usages.

Although it does not follow from the Explanatory Report on the CC that the drafters when formulating these interpretation rules were inspired by the UPICC, the above analysis shows that the interpretation rules enshrined in the Czech Civil Code correspond in principle to the UPICC rules for interpretation of contracts. No counterpart to Art. 4.4 or Art. 4.5 UPICC under which contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect can be found in the CC, nor does Czech law address potential discrepancies among different language versions, when contracts are concluded in multiple language versions. There is no provision corresponding to Art. 4.7 UPICC in Czech law. Nevertheless, according to commentaries, the list of interpretation criteria under Section 556(2) CC is non-exhaustive and does not exclude other generally accepted interpretation rules to be taken account of, such as the rule that a legal act must be interpreted as a whole or the rule governing interpretation of a legal act in the case of discrepancies among its language versions. In this case, the commentary on the CC expressly mentions the rule under Art. 4.7 UPICC.⁴⁷

In relation to the interpretation of legal acts there is a relevant judgment of the Constitutional Court of the Czech Republic from 2005 in which the court did not deal with the application of the UPICC, but admitted that in interpretation it is necessary to respect general legal principles such as, in this particular case, the principle that invalidity of a contract should be an exception rather than a principle.⁴⁸ In the aforementioned judgment the Constitutional Court does not expressly refer to the UPICC, but it expressly mentions Art. 5:106 PECL. In the opinion of the Constitutional Court the general courts' practice of preferring a completely opposing interpretation thesis leading to invalidity of a contract to an inter-

⁴⁷ HANDLAR, J. Commentary on Section 556. In: Lavický a spol. *Občanský zákoník I: obecná část (§ 1 - § 654): komentář*. Praha: C.H. Beck, 2013, p. 1997.

⁴⁸ Judgment of the Constitutional Court of the Czech Republic No. 625/03 of April 20, 2005.

pretation in favour of its validity, was not consistent with the Czech Constitution and contradicted the principles of rule of law. The *in favorem validitatis* principle whereby juridical acts are preferably considered as valid rather than invalid is now explicitly provided for in Section 574 CC. However, the above-cited judgment enabled judges to take into consideration soft law rules, including not only PECL but also the UPICC. Judges have thus been given an opportunity to assess and interpret legal relationships and situations from a broader perspective of general rules, which influenced their decision-making.⁴⁹

ARTICLE 6.1.9 (Currency of payment)

Czech law does not contain any provision based on the rules laid down in Art. 6.1.9 UPICC. There is no general regulation in the CC stipulating in which currency a monetary obligation (the principal) is to be paid. An express regulation relating to the currency is enshrined only in provisions on certain types of contracts: an agreement on loan for consumption⁵⁰ and a loan agreement.⁵¹ Where a pecuniary loan for consumption is to be returned in a currency other than that in which it was provided, the loan beneficiary shall repay the loan for consumption so that the value of what he returns equals to what was provided. A loan for consumption is to be repaid in the currency of the place of performance. In the provisions on a loan agreement it is expressly stated that the credit recipient shall repay the funds to the credit provider in the currency in which they were provided. In general, parties may agree on the currency in which the payment is to be made. Unless stipulated otherwise, in intrastate transactions the principal is to be repaid in Czech currency.

Czech law, however, contains an express provision relating to the currency of interest. Pursuant to Section 1804 CC interest is payable in the same currency as the principal debt (principal). This general rule is reiterated in special provisions concerning loan agreement under which in the second sentence of Section 2396 CC it is set out that interest is paid in the same currency in which the loaned funds were provided to the loan recipient.

Before 2014 the Commercial Code contained an express provision regulating the currency of a monetary obligation in international relations. In accordance with the then-applicable Section 732 of the Commercial Code the debtor was obliged to fulfil his monetary obligation in a currency in which the monetary obligation was agreed upon. Provided the law of the state on the territory of which the debtor had a registered office or a place of business, or other applicable legal regulations prevented payment in a currency in which the monetary obligation was agreed to be paid, the debtor was obliged to compensate the creditor for damage the creditor incurred due to payment in other currency.

ARTICLE 7.3.1 (Right to terminate the contract)

Art. 7.3.1 UPICC relates to the right to terminate a contract. Pursuant to Art. 7.3.1(1) UPICC a party may terminate the contract where the failure of the other party to perform

⁴⁹ In detail PAUKNEROVÁ M. The UNIDROIT Principles and Czech Laws. In: *Eppur si muove: The Age of Uniform Law Essays in honour of Michael Joachim Bonell to celebrate his 70th birthday*. Rome: UNIDROIT, 2016, p. 1586 and following.

⁵⁰ Section 2391(1) CC.

⁵¹ Section 2396 CC.

an obligation under the contract amounts to a fundamental non-performance. The Czech counterpart to this rule is the first sentence of Section 2002(1) CC. Pursuant to this provision, if a party breaches a contract in a fundamental manner, the other party may withdraw from it without undue delay. This provision applies in conjunction with the general provision of Section 2001 CC, under which a party may withdraw from a contract if so stipulated by the parties or provided by a statute. Similarly to Art. 7.3.1(1) UPICC, under the first sentence of Section 2002(1) CC a fundamental breach of the contract is associated with specific entitlement – withdrawal from the contract. However, unlike the UPICC, Czech law stipulates that withdrawal from the contract as a consequence of its fundamental breach should be exercised without undue delay. The fuzzy term “without undue delay” was commented on by the Constitutional Court of the Czech Republic which concluded that the phrase “without undue delay” is vague and needs to be always interpreted with regard to the circumstances of a particular case.⁵²

Section 2002(1) CC and Art. 7.3.1(2) UPICC define differently the term fundamental breach of a contract. Pursuant to Section 2002(1), second sentence, a fundamental breach means such a breach of which the breaching party, at the conclusion of the contract, knew or should have known that the other party would not have concluded the contract had it foreseen such a breach. In other cases, a breach is presumed not to be fundamental. Thus, unlike under Art. 7.3.1(2) UPICC, under the CC the term is not defined by referring to a non-exhaustive list of circumstances which are relevant in considering whether a breach of a contract is fundamental.

Section 2002(2) CC further stipulates the possibility to withdraw from a contract provided the other party acts in such a manner that it becomes apparent that it is about to commit a fundamental breach of the contract and fails to provide a reasonable security upon request by the obligee. Thus, differently from the UPICC, Czech law expressly permits withdrawal from a contract under certain circumstances even on the grounds of a future fundamental breach of the contract.

Czech law embodies the principle stipulated in Art. 7.3.1(3) UPICC in Section 1978 CC. If a default of one of the parties constitutes a non-fundamental breach of its contractual duty, the other party may withdraw from the contract after the defaulting party fails to fulfil its duty within a reasonable additional time limit expressly or implicitly provided by the other party. This is a special regulation whereby withdrawing from a contract is permitted in case of a non-fundamental breach of the contract, however, the breach must involve an event of default. Unlike in cases of fundamental breaches, in this case the right to withdraw is conditional on the expiry of an additional time limit for performance provided by the entitled party to the defaulting party. Pursuant to Section 1978(2) CC if a creditor notifies the debtor that he grants him an additional time limit to perform and that there is no further extension thereof, he is deemed to have withdrawn from the contract upon the expiry of the additional time limit within which the debtor fails to perform.

As stated in the Explanatory Report on the CC, this provision is a general regulation which relates to a default of both the debtor and the creditor.⁵³ Therefore, despite men-

⁵² Judgment of the Constitutional Court of the Czech Republic of 15. 8. 2005 (IV. ÚS 314/05).

⁵³ Explanatory Report on the CC: Sections 1968 and 1979.

tioning the debtor only, Section 1978(2) CC can be applied by analogy also to the creditor's default.⁵⁴ Although the UPICC are not expressly mentioned in the Explanatory Report on the CC as a source by which the drafters of the CC were inspired when formulating the concept of withdrawal, it follows from the above comparison that except for the concept of a fundamental or non-fundamental breach the relevant Czech provisions correspond to Art. 7.3.1 UPICC.

ARTICLE 7.4.9 (Interest for failure to pay money)

Art. 7.4.9 UPICC lays down a rule which is applied in cases when a debtor defaults on the payment of a pecuniary debt. In such a case the creditor is entitled to receive an interest on a late payment from the debtor. Czech law also contains this widely accepted rule. A general regulation of interest on a debtor's late payment of a pecuniary debt is embodied in Section 1970 CC. In accordance with the first sentence of this provision a creditor who has properly fulfilled his contractual and statutory duties may require that a debtor who is in default of payments of a pecuniary debt pays default interest, unless the debtor is not liable for the default. This provision can be regarded as the Czech counterpart to Art. 7.4.9(1) UPICC. The creditor is not entitled to require the payment of default interest, provided the debtor is not liable for the default. It is not possible to require the payment of default interest, if non-payment is caused by the creditor. Pursuant to the second sentence of Section 1968 CC a debtor is not liable for the default if he cannot perform due to the creditor's default. As regards other cases excluding liability for default, to our knowledge there is no Czech case-law available on the relevant provision. A question remains of whether the creditor would be entitled to default interest in the case of force majeure. According to the interpretation of the principle laid down in Art. 7.4.9 (1) UPICC, interest is due if the delay is the consequence of force majeure. Such interpretation is consistent also with the current Czech legal doctrine under which default is understood as a strictly objective category, the creditor's default being the only exculpatory cause.⁵⁵

Pursuant to the second sentence of Section 1970 CC the rate of default interest is determined upon an agreement between the parties. If the parties fail to agree thereupon, the default interest rate set out by Government Decree No. 351/2013 Coll.⁵⁶ applies. Pursuant to Section 2 of the said decree the annual rate of such interest is consistent with the repo rate valid on the first day of the calendar half-year term in which the default started, increased by eight percentage points. The amount of default interest is governed by the said government decree, provided the default on payment of a pecuniary debt first occurred on or after 1 January 2014.

⁵⁴ ŠILHÁN, J. Commentary on Section 1978. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 1102 and following.

⁵⁵ ŠILHÁN, J. Commentary on Section 1970. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 1056. Decision of the Supreme Court of the Czech Republic of 24. 6. 2013 (Ref. No. 32 Cdo 1861/2012).

⁵⁶ Government's Decree No. 351/2013 Coll., on setting of default interest rates and default charges connected with the assertion of claims, on setting the fees of liquidators, liquidation administrators and court-appointed members of bodies of legal entities, an on regulation of certain matters of the Commercial Bulletin and public registered of legal entities and individuals, as amended.

A creditor is entitled to default interest for the period from the first day of debtor's default, i.e. from the date following immediately after the due date. The CC does not explicitly address the question of whether default interest accrues only until the date preceding the date of debt repayment or until the repayment date inclusive. The Supreme Court of the Czech Republic has already dealt with the issue and decided that the debtor is obliged to pay the creditor default interest including the day on which the pecuniary debt ceased to exist upon its discharge. Czech law regulating the amount of interest which is primarily intended for intrastate legal transactions differs from the regulation under Art. 7.4.9(2) UPICC. Nevertheless, given the fact that Czech law does not prevent parties to agree on payment in another than the national currency, Section 1804 CC provides for a currency regime for interest which, in compliance with this provision, must be paid in the same currency as the principal debt (principal). This provision is of a general nature and therefore also applicable to default interest.

To a certain extent, Section 1971 CC can be regarded as the Czech counterpart of Art. 7.4.9(3) UPICC, according to which the aggrieved party is entitled to recover damages for additional harm sustained as a consequence of delay in payment. Pursuant to this provision a creditor is entitled to compensation for damage incurred as a result of the failure to discharge a pecuniary debt only if it is not covered by default interest. Hence, the creditor can only seek damages, if the damage exceeds default interest. Under Czech law default interest in the case of default on the payment of a pecuniary debt is set off against the damage incurred; if the damage incurred does not exceed the default interest, the creditor is not entitled to compensation for such damage. Pursuant to Section 1971 CC a debtor is only obliged to pay damage exceeding the amount of default interest. This regulation is prevailingly non-mandatory. Thus, it is possible to contractually agree on either exclusion of compensation for damage (within the limits implied by Section 2898 CC) or, as opposed to that, full compensation for damage in addition to default interest.⁵⁷

In relation to Section 1970 CC the limiting effect of Directive 2011/7/EU on combating late payment in commercial transactions has to be taken into account.⁵⁸ This Directive which regulates default interest and conditions under which the creditor's right to default interest must be anchored in the body of law, contains also a partial regulation of compensation for damage consisting of costs incurred as a consequence of a late payment and/or a payment which is not made in a timely manner. It is set out under Art. 3(3) of the Directive that the creditor shall, in addition to the fixed sum referred to in paragraph 1, be entitled to obtain reasonable compensation from the debtor for any recovery costs exceeding that fixed sum and incurred due to the debtor's late payment. According to the wording in the Directive, these costs could include "in particular, those incurred by creditors in instructing a lawyer or employing a debt collection agency." It can be assumed that in transactions to which the Directive applies (i.e. transactions between economic operators and transactions between an economic operator and a public authority), it is

⁵⁷ ŠILHÁN, J. Commentary on Section 1971. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 1082.

⁵⁸ Directive 2011/7/EU of the European parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (recast).

possible to stipulate that default interest will compensate also damage incurred and, thus preclude any excess of compensation for damage (within the limits of Section 2898 CC), but, as a matter of principle, not in relation to that particular part of damage which consists of recovery costs, as conceived by the quoted provision of the said Directive.⁵⁹

UPICC AS A SOURCE FOR INTERPRETATION OF CONTRACT LAW IN FORCE OR AS A SOURCE FOR FILLING GAPS IN CZECH CONTRACT LAW

There is no doubt that the UPICC are an interpretation tool with regard to the provisions of the CC, as the UPICC served, together with other sources, as a model for a number of provisions. It is expressly stated in the Explanatory Report on Book Four, Relative Property Rights, Title One, General Provisions on Obligations of the CC, that the draft bill is inspired by the UPICC, Principles of European Contract Law, the Code Européen de Contrats project (Avant-projet) and that it takes into account the current national law as well as a number of foreign laws.⁶⁰ It is necessary to emphasise that the UPICC are mentioned there as the first source which indicates its relevance for the interpretation of provisions of the CC in judicial and arbitration proceedings.

The articles analysed above, in particular Article 2.1.20 UPICC on surprising terms, or Article 2.1.22 UPICC resolving the battle of forms, even if their transposition is not verbatim, are a good example. To a certain extent, the UPICC are reflected also in the general part, i.e. in the interpretation of legal acts (Sections 555 to 558 CC). It is necessary to point out that the CC unifies the regulation of contract law contained in the Civil and the Commercial Codes effective till 2014. According to the Explanatory Report on the CC, the CC is based on the current legal regulation including the desirable special regulation of the specific features of transactions between entrepreneurs in which the significance of business usage needs to be acknowledged. The formal aspect of an expression of will bears no longer such a relevance; in contrast, the aspect of genuine will of the acting persons is accented.⁶¹ Also the above-mentioned principle under which “juridical acts are to be preferably considered valid rather than invalid” embodied in the first provision opening the respective part of the CC which regulates invalidity of legal acts (Section 574 CC) is a new rule which is of a substantial importance for the assessment of legal acts.⁶²

The Explanatory Report on the CC states that the inclusion of a provision granting courts the authority to add a missing but apparently necessary provision to an expression of will was considered during the preparatory works. In the opinion of the drafters, the CC gives contracting parties sufficient space to stipulate the possibility of an expression of will being added by a third party or a court, as there is no reason to give courts (as public authorities) too much space for intervening in persons’ private expressions of will by virtue

⁵⁹ ŠILHÁN, J. Commentary on Section 1970. In: Lavický a spol. *Občanský zákoník V: závazkové právo: obecná část (§ 1721 - § 2054): komentář*. Praha: C.H. Beck, 2014, p. 1057.

⁶⁰ See ELIÁŠ, K. *Nový občanský zákoník s aktualizovanou důvodovou zprávou a rejstříkem* [New Civil Code with updated Explanatory Report and Index]. Ostrava: Sagit, 2012, p. 704.

⁶¹ *Ibid.*, p. 252–253.

⁶² *Ibid.*, p. 258–259.

of authority without any motion and for supplementing or amending the content of such persons' legal acts.⁶³ The parties could stipulate such possibility for example by reference to the application of the UPICC.⁶⁴

In general Book One of the CC, General Provisions, Title I, Scope of regulation and its basic principles (Sections 1-14) shall be highlighted. It is apparent that these general provisions anchoring such principles as persons' autonomy of will in stipulating rights and obligations [Section 1(2)], the principle of interpretation and application of private law provisions (Section 2), the principle that contracts are to be executed, and no one may be denied what he is rightfully entitled to (see Section 3), or the principle that everyone is obliged to act fairly in legal transactions and no one may benefit from acting unfairly or unlawfully and no one may benefit from an unlawful situation which the person caused or over which he has control (Section 6), or that evident abuse of a right does not enjoy legal protection (Section 8) and others are fully consistent with the basic ideas governing the UPICC. In general, the General Provisions of the CC being regarded as the most important provisions of the whole CC have a decisive impact on the interpretation of legal acts in private law. It is to be expected in the future that the Czech judges will more and more make use of the UPICC and their interpretation.

⁶³ Ibid., p. 252–253.

⁶⁴ DRLÍČKOVÁ, K. In: ROZEHNALOVÁ, N. et al. *Nový občanský zákoník pohledem mezinárodních obchodních transakcí* [New Civil Code under the viewpoint of international commercial transactions]. Brno: Masarykova univerzita, 2014, p. 60–62.