The effectiveness of consumer protection in private law

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Consumer protection from the perspective of substantive law, conflict of laws (private international law) and procedural law is a topic that currently belongs among priority issues of the Directorate?General for Justice, Consumers and Equality in the EU. The research focuses on both general trends (reinforcement of legal certainty – substantive law, governing law, jurisdiction) and specific features of consumer protection in Czech law in terms of the implementation of directives (substantive law, dispute resolution – litigation, arbitration, etc.).

The project aspires to analyse the current concept of consumers and their position in law of obligations. From the point of view of civil law a consumer is undoubtedly just one of possible weaker parties to an obligation; however, it is necessary that the term be redefined and its contours newly outlined with regard to both the recent recodification of private law and further development of the Union legislation. The proposal for a Common European Sales Law (CESL) has been withdrawn, however, at the same time the creation of a new concept of a Digital Contract is being contemplated, which raises questions regarding further impact on domestic regulation of consumer affairs, its stratification and overlapping. It is necessary to open a debate regarding the extent of desirable consumer protection anew. Ambivalence of the term 'consumer' is also reflected in relevant professional literature (in this regard differentiation between an active consumer and a passive consumer is made). A negative – and undesirable – consequence of exaggerated consumer protection is that it might happen that protection is given to consumer's recklessness or irresponsibility. This observation is based on knowledge that when creating regulations concerning consumer protection, and more so when applying and interpreting them, it is necessary to have in view not only the protective purpose of relevant legal regulations, but at the same time seek that rights and obligations in a particular case are just (fair), i.e. reasonable, balanced and in particular proportionate, not one?sidedly favouring, pro?consumer approach. What is problematic is the assessment in cases when acts of a particular entity have mixed characteristics, i.e. they have the features of both consumer and entrepreneurial acts. Another disputable issue is whether a professional entering into a contract with another professional may be, under certain circumstances, protected as a consumer. The aim of this project is to analyse the indicated issues, as well as other issues connected therewith.

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