SO CALLED LANGUAGE RISKS AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

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Abstrakt v rodném jazyce
Jazyková rizika“ nelze zobecňovat, od „rozumné osoby“ lze obecně stěží očekávat, že bude ignorovat právně významné oznámení, které nebylo sepsáno v jednacím jazyku. Obecně také nelze od obchodníka požadovat znalost angličtiny či povinnost opatřit si překlad. Pokud však dojde smluvní straně právně významné oznámení, které není v jazyce smlouvy, lze od „rozumné osoby“ v mezinárodním obchodě podle zvyklostí a praktik očekávat, že se odesílatele oznámení zeptá na obsah či požádá odesílatele o přeposlání oznámení v jazyce smlouvy

Klíčová slova v rodném jazyce
Jazyková rizika, užití angličtiny v mezinárodním obchodním styku, zvyklosti a praktiky podle Úmluvy OSN o smlouvách o mezinárodní koupi zboží, rozumná osoba.

Abstract
Language risks can not be generalised, generally, there is hardly to await by the “reasonable person” that he or she will ignore a legally relevant announcement having not been written in the negotiation language. Generally, the knowing of English as well as the duty to secure the translation can not be requested by the businessman. If a contracting party receives a legally relevant announcement not being in the negotiation language, the reasonable person is awaited according to usages and practices that he or she will ask the sender of the announcement for its content or he or she will ask the sender for resending in the language of the particular contract.

Key words
Language risks, using English in the international trade, usages and practices according to the United Nations Convention on Contracts for the International Sale of Goods, reasonable person criterion.

1. INTRODUCTION

The knowledge of English is often taken for granted. This statement is present in international trade as well, because of the fact that English is labelled as the language of business.

As we see below by introducing the German decision of the Oberlandesgericht Hamm No. 11 U 206/93 dated as of 8 February 1995[1] (hereinafter referred to as „decision“), this question could be very interesting from the point of law view, because no legal provision regulating international trade contains any obligation for a businessman to speak English.

[1] See the decision available on http://www.cisg-online.ch/cisg/urteile/141.htm [cited on 27 October 2008].

2. FACTUAL CONTENT OF THE DECISION

The defendant with his place of business in Germany bought more pairs of socks from an Italian producer. The agreements were concluded orally in Italy, whereas the defendant was represented by an Italian agent. The producer announced to the defendant by the letters dated on 2 September 1991, 6 September 1991, 10 September 1991 and 9 October 1991 that, on 2 September 1991, 5 September 1991, 10 September 1991 and 9 October 1991, he has assigned the – undeniable – claims based upon the purchase price to a bank, branch of a plaintiff; he used the standard form texts[2] written by a plaintiff both in English and French. These texts were delivered to the defendant through registered letters dated on 11 September 1991, 17 September 1991, 20 September 1991 and 18 October 1991.

After receiving respective announcements the defendant paid the claims by cheques before respective maturity dates. However, the payments were not carried out on behalf of the plaintiff, but on behalf of the producer, whose property went to the bankruptcy proceedings.

The plaintiff dunned for payment of the claims by the letter dated on 8 January 1992; the letter was written in English, whereas the defendant responded in German on 21 January 1992 having paid the claims by cheques. To the other dunning letter of the plaintiff dated as of 12 February 1992 written in English again the defendant responded in German on 20 February 1992 referring that he had paid the claims and the plaintiff should contact the producer.

The plaintiff demanded the payment from the defendant reasoning that he became the owner of the claims based upon the purchase price due to their assignment.

3. LEGAL ANALYSIS

Referring to the reasoning of the decision it can be said[3]:

The announcements about the assignment of claims were written both in English and French, therefore in the language not being language of the contract and which was – considering the examination of the managing director of the defendant – not reasonably understood by the defendant. Furthermore, it is cited in the reasoning that under the experts report of the unnamed professor the Italian judicature and literature did not deal with the language risks[4] problem. According to the report the so called Umfeldrecht could be used (substantially the law of other state, which dealt with this issue, in this case the German law) or at least its basic ideas to this problem. After reviewing the language risks the council considered this idea as clear and convincing and agreed with the experts report.

According to the predominant view in Germany the declarations made in the foreign language are considered as problem of acceptance.[5] The attention is mostly focused on whether the acceptor could, under the usual circumstances, have provided himself with the content of the

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[2] See Rozehnalová, N. Právo mezinárodního obchodu. Brno : Masarykova univerzita, 2004, p. 153.

[3] See the decision available on http://www.cisg-online.ch/cisg/urteile/141.htm [cited on 27 October 2008].

[4] In German called Sprachrisikos.

[5] See as cited in the decision available on http://www.cisg-online.ch/cisg/urteile/141.htm [cited on 27 October 2008]: Caemmerer E.v., Schlechtriem, P. Kommentar zum Einheitlichen UN-Kaufrecht and commented Art. 24; Petzold, E. Das Sprachrisiko im deutsch-italienischen Rechtsverkehr, in: Jahrbuch für italienisches Recht 2, p. 96.

declaration and whether he was to be expected to do it under the practices in the international business. The "reasonable person" criterion is then in the centre of the attention, whereas the usages and practices in international trade are taken into account – these are the principles stated both in the Art. 8 section 2 and 3 and in the Art. 9[6] of the United Nations Convention on contracts for international sale of goods (hereinafter referred to as "Vienna Convention"). The council considered this solution correct provided that the circumstances of particular case are taken into account.

The following conclusions were cited in the decision[7]:

There is no doubt about the acceptance of the announcement, if it is executed in a language agreed by the parties or used upon the usage and practice, according to the Art. 9 of the Vienna Convention. There are Italian as the language of the contract but German, as well, in our case.

Concerning using English as a world inter-communication language two contradictory opinions were cited:

1. The acceptor of the announcement if – as in this case – there are both a long-term business relationship as well as a language of negotiation then there is no obligation to accept the announcement in a different language.[8]

2. According to the counter-opinion[9] the businessman in the cross-border business is expected to speak English or at least to secure a translation.

The court announced that the language risks could not be generalised. Furthermore, it claims that it is generally difficult to expect that a reasonable person will ignore a legally relevant announcement having not been written in the negotiation language. On the other hand, the businessman is not legally obliged to speak English or to have the translation provided with.

According to the courts opinion, the defendant did not use all the instruments given to find out the content of the announcement as a reasonable person under the given conditions would. Following possibilities were to be taken into account: asking the producer as a sender of the announcement or the plaintiff or asking for resending the announcement with a possible request for a new sending in German or in Italian – such a behaviour is expected from a "reasonable person" in international trade according to usages and practices when receiving the legally relevant announcement in a foreign language.

4. CONCLUSION

The opinion that the businessman in a cross-border business should speak English could be considered as justifiable, however, according to our pieces of knowledge no legal provisions

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[6] See including the comparative part to the usages problem Rozehnalová, N. Právo mezinárodního obchodu. Brno : Masarykova univerzita, 2004, p. 194 et sqq.

[7] See the decision available on http://www.cisg-online.ch/cisg/urteile/141.htm [cited on 27 October 2008].

[8] See as cited in the decision available on http://www.cisg-online.ch/cisg/urteile/141.htm [cited on 27 October 2008]: the decision Oberlandesgericht Düsseldorf as commented in IPRaX in 1971, p. 388.

[9] See as cited in the decision available on http://www.cisg-online.ch/cisg/urteile/141.htm [cited on 27 October 2008]: Reithmann Ch., Martiny, D. Internationales Vertragsrecht, Köln, 1988, p. 146.

regulating the international legal relationships impose the obligation to speak English. Furthermore, it would be problematic to expect the businessman to provide himself with translation, because of supplementary costs.

The opinion that the businessman is not obliged to accept announcement in other language than the language of the contract has no reliance in law.

We suggest that both the opinions do not come from law, we think that they are rather subjective convictions about the way the matters should be.

As we saw the court dealt with the problem pursuant to Art. 8 a 9 of the Vienna Convention, i.e. in accordance with the usages and practices as well as with the "reasonable person" criterion.

We suggest that the court coped with the problem in a quite interesting way moving a rather "laic" problem in the view of law. We consider its conclusions as convincing.

Knowledge of English has been growing in the Czech Republic since 1990s. Therefore, it can be added, that this decision, considering the above mentioned, could be relevant for the Czech legal practice too.

Literatura:

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