Petra Joanna Pipková*

Risk of Loss and its Passing to the Buyer under the New Civil Code in Comparison with CISG

I Introduction

My paper deals with an important legal institution of the law of obligations, and especially of sales law – the risk of loss and its passage. When regulating this topic, the new Czech Civil Code, as well as the former Czech Commercial Code, drew inspiration from the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG). This is probably a little extraordinary, at least for this region of Europe. This is probably due to the socialist history of Czech Republic and the fact that we had specific provisions regarding international trade (the International Trade Code – inspired by the CISG predecessor) that were a sort of an inspiration for the Commercial Code after the Velvet Revolution. Looking merely at the wording of the Czech Civil Code, we can state that the 'transposition' is not exact and was not always really successful. Therefore, I compare its regulation in CISG and in the Czech Civil Code in my paper in order to determine whether they differ also in practice and if the deviation of the Czech Civil Code from CISG represents a disadvantage for the parties. In order to do that, in my paper, I first try to define the notion of the risk of loss and its consequences in both systems (II), and then I analyse the process of passing risk in different situations (III). Finally, I address the influence of fundamental breach of contract by the seller on the passage of the risk to the buyer.

II Notion of the Risk of Loss

The Czech Civil Code, as well as CISG, does not define the notion of the risk of loss. As such, in both systems, we have to rely on interpretation which is, however, similar throughout many different legal systems.

* Petra Joanna Pipková (JUDr., Ph.D., LL.M.eur.) is a scientific researcher at the Centre for Comparative Law of the Law Faculty, Charles University Prague (pipkova@prf.cuni.cz). Her research was supported by the Charles University Research Development Scheme (PRVOUK 05).

1 Components of the Notion

The crucial point of the concept of risk of loss is fortuity, i.e. the question of when the materialisation of the risk is accidental. This is not defined in either of the regulations under review. Fortuity presupposes that the source of loss or damage is imputable neither to the buyer nor to the seller. This can be either actions of a third party or natural phenomena (e.g. storms, earthquakes, droughts), or accidents, wars, revolutions, thefts or acts of vandalism and further some state interventions.

The materialisation of the risk consists, in principle, in actual loss or damage to the purchased item. Loss means physical destruction of the item, either complete or at least to such a degree that it excludes its future usage, while damage means objectively a physical impairment of the item.[1]

While CISG speaks of loss or damage, the Czech Civil Code speaks – traditionally – only of damage (the German BGB speaks of accidental perishing and accidental deterioration). However, it is commonly – around the world – understood that the risk of loss covers not only damage to or loss of the purchased item but also other forms of some kind of diminution of value of the purchased items.[2] This can be, for example, theft, embezzlement, emergency unloading, erroneous actions of the carrier (e.g. delivery to the wrong buyer), reduction of quantity on the way or state interventions such as confiscations or unpredictable export or import bans. Existing import or export bans lie in the sphere of responsibility of each of the parties.[3] The harm caused by market development (e.g. diminution of the market value of the purchased item) or other economic risks are not covered – this lies, in principle, in the sphere of responsibility of each of the parties. There is one significant exception to this principle and that is the case when the transported goods need to be redirected, which may inflict significant extra costs.[4] This has to be borne by the buyer unless the seller is liable for choosing an inappropriate transport route.

Art. 66 CISG is interpreted in such a manner that the risk does not only concern the purchased item but also the documents regarding the goods, i.e. the documents with the function of tradition.[5] Neither the Czech commentary literature nor case law provides any guidance on this as yet. However, in my opinion, the wording of the Czech Civil Code does not oppose this interpretation.

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[1] Mankowski in Franco Ferrari, Eva-Maria Kieninger, Peter Mankowski, *Internationales Vertragsrecht* (CH Beck 2012, München) art. 66 CISG, no. 10.

[2] Hachem in Peter Schlechtriem, Ingeborg Schwenzer, *Kommentar zum Einheitlichen UN-Kaufrecht* (6th edn, CH Beck 2013, München) art. 66 CISG, no. 5.

[3] Hachem (n 2) art. 66 CISG, no. 10.

[4] Hachem (n 2) art. 66 CISG, no. 12.

[5] Mankowski (n 1) art. 66 CISG, no. 11.

2 Risk to the Price – Risk to the Performance

The risk itself can be subdivided into two categories: risk to the price *(Preisgefahr)* and risk to the performance *(Leistungsgefahr).* Risk to the price determines who will have to bear the financial consequences of the potential materialisation of the risk; while risk to the performance means who ultimately suffers from the loss or damage to the purchased item. While the risk to the price changes in time (as I elaborate below), the risk to the performance in fact ultimately always stays with the buyer, regardless of whether he has to pay the price or not. It is him who will either receive a damaged item or not receive anything. In law, the bearing of risk to the performance decides whether the seller will have to pay damages for not performing or for not duly performing.

There is, of course, a difference between individual things and fungible things. The risk to the performance concerns primarily only individual things and fungible things that were individualised [i.e. clearly identified to the contract – see also below (Chapter III.5.)]. If the individualisation has not yet occurred, the risk to the performance is generally borne by the seller, unless the loss/destruction concerns the whole category of items.

3 Significance of the Passing of the Risk

a) Bearing the consequences of accidental loss or damage

As already stated above, the allocation of risk of loss determines who will have to bear the materialisation of the risk as defined above, i.e. who will suffer the financial consequences of the damage or loss of the purchased item. Both art. 66 CISG and Sec. 2125 (1) of the new Czech Civil Code stipulate, with different words, that if the risk materialised after the passage of the risk to the buyer and the purchased item has perished or was damaged, the buyer is not discharged from his obligation to pay the full price. He is also, though not stated expressly in either of the norms, obliged to take over the purchased item, even if it is damaged.[6]

As already stated above, the obligation to pay the full price persists also when the quantity of the purchased item is reduced after the passing of the risk. The buyer will also be burdened with the fortuitously incurred extraordinary transport costs if they occur after the passage of the risk and if not stipulated otherwise, e.g. through the application of Incoterms.

A difference, at least in wording, concerns the exception to this rule, i.e. situations when this effect of passing of the risk does not apply.

The CISG states that the buyer is discharged of his obligation to pay if the loss or damage is due to an act or omission of the seller, while the Czech Civil Code discharges the buyer if the seller caused the materialisation of the risk through a breach of his obligation. These two different wordings may lead to the conclusion that the exemption under CISG is broader than the

[6] Mankowski (n 1) art. 66 CISG, no. 9.

exemption under the Czech Civil Code. However, if we look at the interpretation of art. 66 CISG and the possible interpretation of Sec. 2125 (1) of the Czech Civil Code (under the influence of the previous regulation in the old Commercial Code), we may conclude that the content of the regulation itself does not differ. After all, art. 66 was the model for the provision in the old Commercial Code,[7] and the provision of Sec. 2125 (1) is a word-for-word copy. However, there is neither case law nor commentary literature that would provide more information on how to interpret the exemption.

The question, thus, is how to interpret 'act or omission' and 'breach of his obligation'. The crux of the matter is whether the behaviour encompasses only violations of the contractual obligations or whether it also encompasses other acts or omissions of the seller. The Czech provision might lead to a restrictive conclusion, reducing the seller's obligations to those stipulated in the contract; however, the term 'obligation' needs to be interpreted broadly, not as only a contractual obligation but as a legal obligation covering, of course, contractual obligations but also other connected obligations.

On the other hand, the notion of 'act or omission' in CISG is interpreted rather restrictively. The older scholars interpreted it very narrowly as meaning only violations of contractual obligations, while modern scholars view it as also covering other modes of behaviour.[8] Nevertheless, this controversy is of low significance. In practice, the vast majority of situations will be violations of contractual obligations.[9] The reason why CISG has a broader wording is the fact that CISG does not cover all of the post-contractual accessory obligations and there was a fear these might be excluded from the rule.[10] In any case, the exemption is narrowed down by further requirements: (i) it is not any causative behaviour by the seller that triggers the exemption; it must be behaviour that is in breach of his obligations [be it a contractual obligation, post-contractual obligation (esp. not to endanger the goal of the contract) or another obligation to exercise due care];[11] and (ii) the conduct of the seller cannot be justified (e.g. the seller commissions an inspection of the already dispatched goods because of a suspicion of damage to the goods and the goods are impaired through the inspection[12]).[13]

Due to the purpose of the norm and the history of its codification, Sec. 2125 (1) of the Czech Civil Code should, in my opinion, be interpreted similarly.

b) Liability for lack of conformity with the contract

Passing of risk, or better said the moment when the risk is passed, has a further function. It determines when the purchased item shall conform to the contract or have other properties it should exhibit. If it does not conform at this particular moment, it triggers the rights of the buyer

[7] Irena Pelikánová, *Komentář k obchodnímu zákoníku* (4th edn, Linde 1997, Praha) sec. 461, 220.
[8] Huber in *Münchener Kommentar zum BGB* (6th edn, CH Beck 2012, München) (MüKo) art. 66 CISG, no. 12.
[9] See, for example, Mankowski (n 1) art. 66 CISG, no. 16; Huber (n 8) art. 66 CISG, no. 12.
[10] Huber (n 8) art. 66, no. 12.
[11] Benicke in *Münchener Kommentar zum HGB* (3rd edn, CH Beck 2013, München) (MüKoHGB) art. 66 CISG, no. 6.
[12] Hachem (n 2) art. 66 CISG, no. 26.
[13] Huber (n 8) art. 66, no. 13.

connected with material and legal defects. If the defect occurs earlier and is rectified by the seller before the risk passes to the buyer, this defect does not trigger any such rights. The same applies to defects that occur after the passage of the risk. However, the difference between the occurrence of a new defect and an already existing defect becoming apparent has to be distinguished. The latter, of course, leads to the right of the buyer to claim his rights from defective performance.

Both Sec. 2100 (1) of the Czech Civil Code and art. 36 (1) CISG regulate this matter in the same manner. The Czech Civil Code only adds another instance of formation of buyer's rights regarding defective products, i.e. when the defect occurs after the passing of the risk but is caused by the seller's breach of his obligation – contractual, post-contractual accessory or statutory obligation.

The special rules on consumer sales contracts in the new Czech Civil Code do not connect the formation of the seller's liability for defects with the passage of the risk, but with the moment when the consumer takes over the purchased item.

III Passage of the Risk of Loss in the New Czech Civil Code and in the CISG

The regulation of the passage of risk in the sales contract under the new Czech Civil Code cannot deny its inspiration from the CISG. However, it follows its own order and suffers, as many parts in the new Czech Civil Code do, from inaccuracies and erroneous formulations taken over from the old regulations.

1 General or Subsidiary Rule

The general rules on the passage of the risk in the Czech sales law differ slightly from the regulations in CISG, as CISG is designed for the sale of goods, i.e. movables among professionals, while the Czech sales law deals with all kinds of sales contracts. It therefore has a general rule in Sec. 2082 (1), under which the risk of loss passes to the buyer with the acquisition of ownership, and a general rule for movable property in Sec. 2121 (1), under which the risk of loss passes with taking over the purchased item by the buyer and which corresponds to the CISG rule in art. 69 (1).

If I am not mistaken in my interpretation of the law, the general rule of Sec. 2082 (1) of the Czech Civil Code applies only with regard to consumer sales contracts. In all other cases, the general rule of Sec. 2121 (1) applies, either because it is part of the provisions concerning movables or by express reference (in cases of immovables) or because of reference by logic (in instances of asset deals). The provisions on consumer sales law pretend to be exhaustive (which is, in my opinion, not the case), but they tend to exclude, at least in part, the application of the provisions regarding the sales of movables. Although the general idea of exclusion of these provisions is, in my opinion, untenable, in this case the application of the general rule of Sec. 2082 (1) is clearly more advantageous for the consumer with regard to the special rules of passing

of the risk that I will deal with below.[14] This is because it applies regardless of how the purchased item is transmitted to the buyer and they do not have to bear the risk before they actually have the purchased item in his remit.

Still, the general rule applicable to the consumer does not say anything on the consequences of the passage of the risk of loss, i.e. on the continuance of the obligation to pay the price. As such, although consumer sales law is a special norm *(lex specialis)* and law on the sales of movables is generally not applicable, here Sec. 2125 has to be applied.

A special rule for immovables in Sec. 2130 of the Czech Civil Code, stating that, if the parties establish a time when the buyer shall take over the immovable thing, the risk of damage passes on the buyer at this time may seem unnecessary. However, the time of acquisition of the ownership right depends not on the parties themselves but on the cadastre, whose registration of the rights to the property is the constitutive act. Thus, the parties will usually arrange a different time for taking over of the property. If they do not arrange such a time, the risk of loss passes in line with the general rule in Sec. 2121 (1), as Sec. 2131 refers to the application of provisions concerning movable property. However, if they arrange a time, the risk of loss passes regardless of whether the buyer took over the immovable or not, or the reason for not taking it over.

Both the Czech regulation as well as CISG put the delay of the buyer in taking over the purchased item on a par with actually taking it over, on condition that the seller placed the item duly at the disposal of the buyer [see art. 69 (1) CISG and Sec. 2121 (2) or Sec. 1976 (if the general rule of Sec. 2082 applies) of the Czech Civil Code].

2 Goods to be Placed at the Buyer's Disposal at a Place other than the Seller's Premises

A further possible situation is that the parties agree that the buyer will take over the purchased item at a place other than the seller's premises. There is a significant difference in formulation between art. 69 (2) CISG and Sec. 2122 of the Czech Civil Code. These provisions are *leges speciales* to the general rule contained in art. 69 (1) CISG and Sec. 2121 of the Czech Civil Code. As the purchased item is transmitted outside of the sphere of the seller, the rule is modified and builds up on specific prerequisites.[15]

CISG states that 'if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that

[14] This provision is of course (as many other provisions on consumers) not entirely in line with the provisions in Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011, on consumer rights, which in art. 20 stipulates: '*In contracts where the trader dispatches the goods to the consumer, the risk of loss of or damage to the goods shall pass to the consumer when he or a third party indicated by the consumer and other than the carrier has acquired the physical possession of the goods. However, the risk shall pass to the consumer upon delivery to the carrier if the carrier was commissioned by the consumer to carry the goods and that choice was not offered by the trader, without prejudice to the rights of the consumer against the carrier.*' This will of course have to be dealt with, if to the disadvantage of the consumer, with an EU-conform interpretation of the norm.

[15] Mankowski (n 1) art. 69 CISG, no. 18.

the goods are placed at his disposal at that place.' CISG, thus, presupposes that (i) the parties agreed that the buyer will take over the purchased item at a place other than the seller's premises, (ii) the purchased item is placed at his disposal, (iii) the buyer is aware of this fact, and (iv) the performance is due.

On the other hand, the Czech Civil Code states that 'if the buyer shall take over the thing from a third party, the risk of damage passes on him at the moment when he could dispose of the thing, but not earlier than the time of performance.' The prerequisites of the Czech Civil Code are the following: (i) the parties agreed that the buyer shall take over the purchased item from a third party, (ii) the buyer can dispose of the item, and (iii) the performance is due.

The difference in formulation concerns, thus, the location where the buyer shall take over the purchased item and knowledge of the possibility to dispose of it.

If we consider the question of place other than the place of business of the seller (CISG), this will of course be usually the premises of a third party, usually the warehouse keeper (Czech Civil Code). Thus, insofar, the rules accord. However, the CISG rule has in fact a broader application spectrum. It was actually drafted in order to deal especially with cases where the buyer shall take over the purchased item from a third party.[16] Yet, it also covers sales contracts stipulating the seller's obligation to bring the purchased item to the buyer *(Bringschuld)* and distance purchasing *(Fernkauf)*.[17] It definitely excludes any premises of the seller.[18] The *Bringschuld* case under Czech law will, thus, in my opinion not be covered by this special rule but by the general rule of Sec. 2121 (1) (the buyer takes over the purchased item) and (2) (the buyer does not take over the purchased item but it is placed at their disposal), though the second paragraph will have to be further developed by the courts in order to suit the needs.

It may seem that, under this general rule, the prerequisite of the due date is missing. However, the general rules of the law of obligations (Sec. 1910 and 1962) stipulate that the creditor (here the buyer) cannot be forced to accept performance before the due date.

If we consider the question of the possibility of the buyer to dispose of the item (Czech Civil Code), this of course presupposes placing it at their disposal and their knowledge of it (CISG). It is not enough that the buyer had a possibility of knowing, i.e. negligence is not enough. The buyer has to know positively.[19] Positive knowledge does not necessarily mean that the seller has an obligation to inform the buyer. The buyer can obtain such information from another source, e.g. from the warehouse keeper or carrier.[20] However, in case of doubt, it will be for the seller to prove that the buyer had such knowledge.[21] The buyer should, however, not have the possibility to abuse this rule and delay the passage of the risk of loss unduly. As such, it is enough

[16] Benicke (n 11) art. 69, no. 5.
[17] Hachem (n 2) art. 69 CISG, no. 13.
[18] Huber (n 8) art. 69, no. 8.
[19] Hachem (n 2) art. 69 CISG, no. 21.
[20] Huber (n 8) art. 69, no. 13.
[21] Luboš Tichý, Petra Joanna Pipková, Jan Balarin, *Kupní smlouva v novém občanském zákoníku. Komentář* (CH Beck 2014, Praha) Sec. 2122, 240, no. 9.

if the notice has reached the sphere of the buyer, so that they could under normal circumstances become aware of the fact and, thus, the seller could have a legitimate expectation.[22]

The legal consequence of all this is that the risk of loss passes to the buyer if all these prerequisites are fulfilled, regardless of whether the buyer actually took over the purchased item or not.

3 Goods to be Handed over to a Carrier

If the parties arrange that the purchased item shall be transported to the buyer by an independent carrier, the risk of loss passes to the buyer before he actually takes over the purchased item. The regulations, both in the Czech Civil Code [Sec. 2123 (1)] and in CISG [art. 67 (1)], mean the same although the formulations differ. This is because the Czech provision follows the previous regulation in the old Commercial Code which was already inspired by CISG. The only thing that differs from the previous Czech regulations and from CISG is the omission of the provision that the fact that the seller retains (Czech Commercial Code) or is authorised to retain (CISG) documents controlling the disposition of the goods (e.g. a bill of lading) does not affect the passage of the risk. The seller may retain these documents for different reasons, e.g. because he wants to dispose of the item until the buyer pays the price.[23] However, this shall not have an influence on the passage of the risk. This is the consequence of the fact that the CISG does not connect the passage of the risk to the acquisition of ownership but to the actual physical authority over the purchased item.[24] As Sec. 2121 ff. follows the same principle, it is only logical to interpret Sec. 2123 (1) too as meaning that retaining the aforementioned documents by the buyer does not have an effect on the passage of the risk either.

The rule on goods to be handed over to a carrier knows two different situations. Either the parties do not agree on a place where the purchased item should be handed over to a carrier and then the risk of loss passes to the buyer upon handing it over to the first carrier or the parties arrange that the purchased item shall be handed over to the carrier at a certain place and then the risk of loss passes over to the buyer when it is handed over to the carrier at this certain place, even if he is not the first carrier. This rule applies both under the Czech Civil Code and under CISG.

4 Goods in Transit

The purchased item may already be transported when the sales contract is concluded. In these cases, the Czech Civil Code [Sec. 2123 (2)] and CISG (art. 68) chose different solutions. The Czech Civil Code follows a solution that the Czech law has known since the International Trade Code of 1963. If the sales contract concerns goods in transit then the risk of loss passes

[22] Hachem (n 2) art. 69 CISG, no. 22.
[23] Benicke (n 11) art. 67, no. 14.
[24] Hachem (n 2) art. 67 CISG, no. 27.

retroactively to the moment when they were handed over to the first carrier. The Czech legislator chose this solution because the moment of handing over to the first carrier is the last moment when it was possible for the parties (especially for the seller) to ascertain the state of the goods.[25] This, certainly, seems to be unfair towards the buyer; therefore, the Czech legislator provides for a safeguard: the seller bears the risk of loss or damage that occurred before the conclusion of the contract and of which the seller knew or, with respect to the circumstances, ought to have known. The formulation 'ought to have known' is interpreted in such a manner that not knowing is caused by the seller's negligence.[26] In other words, if the seller had applied the average standard of care he would have known. For the possibility of knowing, it is enough that the information was available from the media.[27]

By contrast, CISG fixes, in principle, the conclusion of the contract as the decisive moment. Art. 68 also provides for a similar solution as in the Czech Civil Code, i.e. that the risk of loss passes retroactively with the handover to the carrier. However, this applies only 'if the circumstances so indicate', i.e. not only in cases where the parties agree upon such a solution but also in other specific situations. There are not many leads on how to interpret these 'circumstances'. There is one situation which is undisputed, i.e. in cases where transport insurance for the time from handing over to the carrier exists, and which can be invoked by the buyer.[28] The decisive circumstances are, generally speaking, determined by the significance of the cash flow risk to the buyer.[29] If the cash flow risk is insured or otherwise covered then the passage of the risk is retroactive. However, in case of doubt, the first rule, i.e. passage of the risk upon the conclusion of the contract, applies. Art. 68 CISG knows the same safeguards relating to the knowledge of the seller as the Czech Civil Code.

Although it seems a more unfair solution for the buyer, the Czech solution in Sec. 2123 (2) circumvents the difficulties of determining whether the loss or damage occurred before or after the conclusion of the sales contract. As such, it seems to me to be a more efficient solution. The buyer knows the risks and concludes the contract while knowing the risks. The buyers in these circumstances will usually be businessmen or similar entities and, hence, we can expect from them a certain responsibility for their actions. If the buyer wishes to protect himself he can insist on buying only goods covered by transport insurance.

5 Specific Provisions Concerning Fungible Things

The specific provisions on fungible things concern cases where the risk of loss passes to the buyer without them actually taking over the purchased item. This can happen in several cases: the goods are to be transported by a carrier in bulk; the goods are in transit in bulk, or the goods are to be placed at the disposal of the buyer, either by the seller himself or by a third party. If, in

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[25] Ludvík Kopáč, *Komentář k zákoníku mezinárodního obchodu* (Panorama 1984, Praha) sec. 382, 215.

[26] Ludvík Kopáč, *Obchodní kontrakty: obecná úprava obchodních smluv*, II. díl. (Prospektrum 1993, Praha) 441.

[27] Kopáč (n 26) 441.

[28] See, for example, Huber (n 8) art. 68, no. 8; Mankowski (n 1) art. 68 CISG, no. 14; Hachem (n 2) art. 68 CISG, no. 9.

[29] Benicke (n 11) art. 68, no. 5.

these cases, only a part of the stock or bulk would perish or be damaged and the seller could arbitrarily decide that exactly this part belonged to the buyer then it would be unfair to let the buyer bear the consequences. Therefore, both CISG and the Czech Civil Code provide for a rule to deal with this problem. If the risk of loss shall pass to a buyer who did not take over the purchased item that is a fungible thing, it passes only if the purchased item was individualised.

The norms under scrutiny use different terms [sufficiently separated and distinguished from other things (Sec. 2124 of the Czech Civil Code), clearly identified to the contract (arts. 67 (2) and 69 (3) CISG)] but in both cases it amounts to individualisation. The individualisation can be performed in different manners: e.g. by markings on the goods, by shipping documents, by notice given to the buyer [art. 67 (2) CISG].

IV Fundamental Breach of Contract

There is a special regulation for cases where the seller has committed a fundamental breach of the sales contract. In such an event, the passage of the risk of loss de facto does not occur.

The Czech Civil Code states this rule in a very enigmatic fashion, which can only be understood if we look at its history, especially at Sec. 461 of the old Commercial Code, after which it is modelled, and Sec. 380 (2) of the International Trade Code, which was its predecessor and was a lot clearer. Sec. 2125 (2) of the Czech Civil Code states that 'paragraph 1 is not applied if the buyer asserts his right to a delivery of a spare thing, or if he withdrew from the contract.' Paragraph 1 of the same provision states that a loss that occurred after the passage of the risk has no bearing on the buyer's obligation to pay the price. Translated into simple language, this provision means that if there is a defect attached to the purchased item for which the seller is liable (according to sales law) and the defect (or other violation of the sales contract) is of such an intensity that the buyer has a right to revoke the contract or claim a substitute and they do so then the risk of loss did not pass to the buyer.

The corresponding rule in CISG, art. 70, differs. It states that 'if the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.' This provision has two functions: (i) the buyer does not lose his claims relating to the fundamental breach of contract if the risk materialises (as he cannot lose rights they acquired before the loss or damage occurred),[30] and (ii) if the buyer uses these claims then, in certain cases, the risk passes back to the seller.[31] The fundamental breach of contract is understood to be a breach that causes the right of the buyer to ask for a delivery of a substitute according to art. 46 (2) or to declare the contract avoided according to art. 49 (1) lit. *b)* (non-delivery) or (2) (qualified late delivery).[32]

[30] Hachem (n 2) art. 70 CISG, no. 5.
[31] Huber (n 8) art. 70 CISG, no. 3.
[32] Hachem (n 2) art. 70 CISG, no. 6.

As such, the two provisions say the same, albeit with different words, though CISG is much more comprehensible.

V Conclusions

In my opinion, my analysis shows that though the regulations under scrutiny (excluding the specific rules governing consumer sales contracts) differ in wording (mostly to the disadvantage of the Czech Civil Code), they contain similar rules with similar results in practice, though sometimes these are reached through different ways, sometimes more complicated ones in the Czech Civil Code. There are, thus, only few deviations, predominantly concerning the type of purchased items they concern or the person of the buyer. Where it differs in the same situation (goods in transit), the Czech solution, in my opinion, seems to be better practicable.