English abstract

Material change of circumstances and the impossibility of performance within the Czech and English legal system

Civil law in the Czech Republic is based on a so-called principle *pacta sunt servanda* which means that parties are bound by the contract and should perform in accordance with it. It may happen, however, that unexpected supervening event substantially change the circumstances after the formation of a contract to the extent that it become impossible to perform the contract or it makes performance for affected party so burdensome that it will lead the party to the economical destruction. Such a change may lead to situations that to hold the affected party to fulfil its promise would be unjust and contrary to morality. Therefore, Czech Civil Code contains few provisions based on which court may terminate the contract or adjust the contract to restore equilibrium of the performance.

Thesis focuses on two of those provisions, namely impossibility of performance and impracticability of performance. Thesis describes relevant legal institutes and doctrines, development of case law, analyze past and current Czech Civil Code and compare it with English case law and international and European *soft law*.

After introductory chapter, chapter two describes relevant principles of civil law and particularly focus on clausula *rebus sic stantibus*. Chapter three describes a change of circumstances in general and point out that mere change of circumstances is not legally relevant, relevant is only when reaches certain quality. Each particular provision requires different quality threshold in order to be legally relevant.

Chapter four explains different types of impossibility of performance, such as initial impossibility (i.e. the subject matter of the contract is impossible to perform before the contract has been even concluded), legal impossibility and impossibility of performance itself.

New Czech Civil Code which came into force on 1 January 2014 acknowledges the clausula *rebus sic stantibus* as a general principle applicable to all type contracts. Therefore in case that due to the substantial change of circumstances performance of one party become excessively onerous, court have a power to adjust the conditions of the contract or terminate
the contract. Chapter five thus deal with the legal requirements upon which you can invoke the clausula *rebus sic stantibus*.

Chapter six describes and compare the doctrine of frustration which is similar one to Czech impossibility of performance, but the scope of the doctrine of frustration is broader than the Czech one.

Chapter seven focuses on recent development in international and European law in regard to change of circumstances. Principles of UNIDROIT, Principles of European Contract Law and Draft Common Frame of Reference contain provisions dealing with issues of change of circumstances and acknowledge them as a matter of general principle. Legal provisions of Czech Civil Code in this manner had been inspired by the provisions of Principles of UNIDROIT, therefore, it is not irrelevant to focus on them in more depth.

Chapter eight summarises partial conclusion, compare Czech, English and international or European regulations and development in regard to impossibility of performance and impracticability of performance caused by substantial change of circumstances and point out possible interpretation problems in this field.