

## **Pacta Sunt Servanda in Recent Civil Law**

### **Abstract**

The thesis deals with the brocard of *pacta sunt servanda* and its application in the current Czech civil law. After a brief explanation of the historical circumstances and a concise description of the historical development of private law in Czechia, the first chapter outlines the establishment and the practical confirmation of the *pacta sunt servanda* principle in the judicial rulings of the Czech Constitutional Court after year 1990.

The second chapter analyzes the natural law doctrines that have informed the authors of the Civil Code in drafting the law, including the principle of *pacta sunt servanda*.

The third chapter of the thesis reviews the practical expression of the principle that agreements must be kept, and promises are binding in the applicable provisions of the Civil Code. The freedom of contract is one of the essential tenets of the private law, which gives parties freedom to decide whether to enter into a contract, with whom and the freedom to decide (acting in mutual respect of the equal autonomy of the persons involved) about the contents of the contract. But the freedom is also accompanied by responsibility. One of the possible consequences of the *pacta sunt servanda* principle is a party's duty to negotiate with care and not to lead a negotiating partner to act to his detriment before a firm contract is concluded (*culpa in contrahendo*), which makes a party potentially liable for the harm caused by the pre-contractual negotiation and bound by a solemn expression of his will to enter into the contract through an offer. Even unilateral offers may be binding, though, such as a promise of a reward or a promise of an indemnification, or a financial guaranty (unlike the suretyship). The *pacta sunt servanda* principle is reflected also in the actual process of contract formation, which is predicated on the express consent of both parties, including the instances of novation (replacing a party to an agreement with a new party, unless in assignment of debt) and the instances of changes in the content of the contract. Under the doctrine of *pacta sunt servanda*, obligations

are principally discharged by performance, although this may on occasion collide with the principle *rebus sic stantibus*, which allows for the extinction of an undischarged obligation in the event of change of circumstances. The third chapter also reviews the concept of promise in inheritance law, particularly as framed in the context of an inheritance agreement (an agreement as to succession in *acquis communautaire*) and presents an explanation of the legal maxim *neminem leadere*, which lays down some other limitations to the freedom of contract. The third chapter concludes by a review of the taxation of financial compensation paid as part of the property settlement with churches and religious societies, particularly with a view to the criticism that the State has violated the doctrine of legitimate expectations and the doctrine of *pacta sunt servanda* in enacting the recent controversial law.

Chapter four compares the statutory expression of the *pacta sunt servanda* principle in the German (civil law) system and in the English common law.

Chapter five ruminates on the *de legal ferenda* applications of the potential reinforcement of the *pacta sunt servanda* doctrine to counterbalance the legal position of dishonest debtors as proposed in the most recent amending bill to the Insolvency Act.

The last chapter outlines the overall conclusions and lays an argument for upholding and bolstering the doctrine of *pacta sunt servanda* in Czech private law.

**Key words:** (3 key words)

Substantive civil law

Obligations

Contracts