

## 11. Summary

### **The Influence of a Change of Circumstances on the Duration of an Obligation**

The intention of this thesis is to present an insight into the issues concerning the influence of changes in circumstances on the duration of an obligation. The fundamental principle dealing with this issue is *rebus sic stantibus*.

In cases of amendments of civil law, the Czech Republic – in accordance with the majority of European states – follows the rule of *pacta sunt servanda*, i.e. pacts must be respected. There are however situations in which this rule of *pacta sunt servanda* comes into conflict with the judicial process or may be the cause of injustice.

This thesis deals with the historic context of the entrenchment of *rebus sic stantibus* in present-day amendments and outlines the prospects concerning the Czech legal order *de lege ferenda*.

From the very formation of the Czechoslovak State, legal science dealt with the possibility of incorporating the issue of the influence of changes of circumstance into the law of treaties. Explicit entrenchment was not however achieved. Between the two World Wars, legal practice observed the rule of *rebus sic stantibus* in law of treaty cases. After the communist regime came to power in 1948, the above mentioned practice – common for legal science of the so-called “First Republic” period – was rejected. Civil law codex accepted later on, did not incorporate general legal acts concerning the influence of changes of circumstance and thus *rebus sic stantibus* principle was acceptable only in specifically named causes. Present-day Czech civil law continues with similar intent. This is based on the primary principle of *pacta sunt servanda* with bylaws recognizing the significant influence of changes of circumstance.

This thesis further focuses on the issue of acknowledging the influence of changes of circumstance on the duration of a treaty within the development of civil law. It deals with this issue both on an international level and within the EU. The Principles of European Contract Law (PECL); a draft on a Code of European Contract Law; and one of the latest acts in this area, a draft on a Common Frame of Reference (DCFR) all come under close observation in this work. Interpretations of the Vienna Convention on the Law of Treaties and of the principle of the intergovernmental organization

UNIDROIT are also afforded space in a section dedicated to international law. The results and observations concerning these attempts at legal unification are also subject to investigation in regard to the present re-codification of Civil Law in the Czech Republic.

It is evident that the new Czech Civil Code has been inspired not only by the principles of UNIDROIT, but also by the Principles of European Contract Law (PECL) because, as one of the first codices in the history of Czech Civil Law, it includes a general act concerning the influence of changes of circumstance on the duration of a treaty. We believe that this step, taken by the prospective civil codex, is indeed a step in the right direction. The explicit entrenchment of the *rebus sic stantibus* clause, following on from the present-day basic principle of *pacta sunt servanda*, increases assurance in legal affairs. The rules concerning eventual changes of treaty are thus clearly and irrefutably defined for the respective parties in anticipation. Such explicit articulation reflects contemporary trends within the field of contract law, and results in greater concord between the Czech legal codex and that of the EU.