

English summary

1. This rigorous thesis was written as a revised and extended version of primary diploma thesis defended in June 2008. Although there are substantially elaborated passages in this thesis, the conception of the diploma thesis was kept.

2. Main theme of the thesis is especially the regulation of preliminary agreement, otherwise *pactum de contrahendo*, in the recent Czech Commercial Code (Act No 513/1991 Sb.). This theme is set in a larger theoretical, historical, and also (in a rather smaller extent) in a comparative framework as structure of this thesis shows. It is divided, besides the prologue and epilogue, into four chapters; it also includes an enclosure.

The prologue presents the theme and its structure.

Chapter I focus on general questions of the preliminary agreement, *i.e.* on its concept, function, and position in the private law system, and on its terminology. This chapter gives a special attention to the usage of preliminary agreements in the commercial context.

Chapter II deals with three problems connected together: with the history of a preliminary agreement as a juridical institute, with theoretical, practical, and legislative reflection of this institute in the contemporary Czech legal context and in the comparative context, and with the last two centuries history of inland legislative reflection of a preliminary agreement.

Chapter III is dedicated to the regulation of a preliminary agreement in the recent Czech Commercial Code (§ 289-292). In the first section (§ 1) there is a view on two existing regulations of a preliminary agreement [the general one in the Civil Code (§ 50a) and the special one in the Commercial Code]. In the following sections (§ 2-9) the special commercial regulation is gradually watched from two perspectives. From the first, "static" perspective, the main elements of preliminary agreement (parties, object, contains, form) are analysed (§ 2-5). From the second, "dynamic" perspective, the procedure from conclusion of the preliminary agreement towards the conclusion of the definitive contract is described, including cases of breaking the obligation to conclude the definitive contract and of death of that obligation (§ 6-9). This chapter attempts at a most complex approach to its subject. Therefore account of the recent commercial

regulation of a preliminary agreement as the basic structural element of the chapter is combined with confrontation with conclusions of juridical interpretation, comparison with civil law regulation of a preliminary agreement, and possibilities and limits flowing from preponderant dispositive character of the relevant commercial regulation as elaborative structural elements of the chapter.

Chapter IV watches towards the future regulation of a preliminary agreement which is going to be unified in the new Czech civil code.

The epilogue plays two roles. The first is a usual role of a brief summary. The second expresses a rather complicated intention to describe a general trend of last two century history of regulation of preliminary agreement in the territory on which the Czech Republic enlarge nowadays.

The enclosure contains a collection of historical drafts of civil codes (parts concerned to preliminary agreement only), a comparative table related to the recent Czech dualistic regulation of a preliminary agreement, and a digest of relevant judicature.

3. As regards justifying the theme and the approach to it, there are a few particular reasons for an extensive dealing with the inland concept of a preliminary agreement. The first reason is represented by interesting history of the legislative reflection of *pactum de contrahendo* from the Austrian *Allgemeines Bürgerliches Gesetzbuch* (1811) till the current draft of new Czech civil code. The second reason flows from the dualism of the valid Czech legal regulation of a preliminary agreement [this dualism as mentioned is one of many consequences coming from the recent (*de lege ferenda* perceptibly fading, but *de lege lata* still ruling) Czech concept of the extensive speciality of the Commercial Code on the law of obligations area]. The third reason is connected with the contemporarily culminating process of re-codification the Czech private law; the draft of new Czech civil code is going to reduce recent massive special regulation of commercial obligations; this applies also to *pactum de contrahendo*.