

# 1. Summary

## The Influence of a Change of Circumstances on the Existence of an Obligation

The purpose of my thesis is to present a brief outline of the problems concerning the impact of the change of circumstances on the existence of an obligation. The leading principle looking into this issue is the *rebus sic stantibus* principle. This principle can be considered as the opposite of the contemporary major contract rule worshipped by most of the European states and thus legal systems, the *pacta sunt servanda* principle. This principle, meaning the necessity of putting emphasis on the performance, is at present the fundamental principle of contract law of the Czech republic too. However, day-to-day life creates situations, in which the strict compliance with this principle can be in contradiction with justice and the contractor's expectations of the fairness of the law.

The *rebus sic stantibus* principle is presently applied usually only to rare specific cases, the question, whether it should be allowed to terminate the contract under a essential change of the circumstances to all contracts in general, is an object of long-term discussions among many legal experts and legislators.

This thesis is composed of five chapters, each of them dealing with different aspects of the essentially changed circumstances (also known as "hardship"). Chapter One is introductory and defines basic principles, which affect the perspective and interpretation of legal provisions today.

Chapter two analyzes Czech legal history and the development of an attitude of the law to the hardship through the last several decades. The chapter consists of three parts. Part One focuses on the time period beginning with the very formation of the Czechoslovak State till the communist putsch in 1948. Although at that time there were no such provision in Civil Code allowing the courts a general application of the *rebus sic stantibus* principle, the courts actually did so. Part Two investigates the approach of the totalitarian regime and the changes made in the name of socialism. After the communist coup d'état, the above mentioned practise was rejected as bourgeois and it was stated that no provisions for a change of circumstances was needed as there would be no major changes anymore. However the third part of this Chapter shows, that for international business relations with other countries existed in czech socialistic law possibility of termination of the contract due to hardship.

Chapter Three is subdivided in several parts and provides an outline of current adjustment of czech civil law. At present, the adjustment basically continues in the situation created before 1989 and lacks a provision allowing the impact of a change of circumstances on contracts in general.

Charter Four concentrates on problems resulting from the draft of the new Civil Code and illustrates the reasons, that lead to the decision of its creation. It also compares the suggested adjustment with the contemporary one and remark upon its defects.

Finally Chapter Five explores the latest and most important acts concerning the hardship on an international level. That covers the international treaties (The Vienna Convention on the Law of Treaties) and organizations (UNIDROIT) as well as the EU attempts of unification and harmonization of the contract law.

In conclusion we can say, that the steps recently taken in the field of the impact of changed circumstances had been steps in the right direction. Observing explicit entrenchment of the *rebus sic stantibus* clause in important and influential international documents and also in the draft of new czech Civil Code promises an increasing assurance in legal affairs.