

Summary

The Impact of a Change of Circumstances on the Existence of Obligation

This thesis strives to offer a brief outline of the *de lege ferenda* possibilities regarding the *rebus sic stantibus* principle as applied on contracts in general by confronting different approaches emerging through diachronic, synchronic and comparative analyses.

The *rebus sic stantibus* principle is contrary to the principle of sanctity of a contract *pacta sunt servanda* on which most European legal systems are based, including that of the Czech Republic. The principle as such usually applies only in extreme circumstances where adherence to the general principal would cause injustice.

The question whether to allow for the impact of a change of circumstances on contracts in general has a tradition in the Czech legal history. Between the World Wars Czech courts were inclined to allow for the general application of the *rebus sic stantibus* principle. However, no explicit provision was included in the Civil Code at that time. After the communist *coup d'état* in 1948, the generally held opinion was that no provision for a change of circumstances was needed as there would be no major changes any more.

At present, the Czech legal system lacks a provision allowing for the impact of a change of circumstances on contracts in general. Nevertheless, there are several specific provisions allowing for such an impact in particular circumstances and for certain types of contracts or groups of contracts. Of course, the *contra bonos mores* clause can always be applied if a change of circumstances makes contractual performance extremely disproportionate.

The current wording of the proposal for re-codification broadens the range of specific provisions. However, it still lacks a general provision that would apply to all contracts regardless of their particularities.

As far as the comparison with other European legal systems is concerned, there are countries which deny any impact of a change of circumstances upon obligation, e.g. France. Others allow for the impact to take place through the practice of the courts. In addition, several EU member states have included this principle in their legal systems by means of an explicit provision in the Civil Code, e.g. Italy.

At present, the Czech Republic has to pay attention to the development of contract law at the international and EU level. Principles adopted by UNIDROIT or the Lando's Commission allow for the impact of a change of circumstances in situations where contractual performance becomes excessively onerous.

The proposal for re-codification does not reflect the current trends in the application of *rebus sic stantibus* principle. We believe that a provision allowing for the impact of a change of circumstances which results in extreme onerosity should be included in the proposal for the sake of providing contractual parties with a solid ground to demand the termination of the contract.