Univesity Doctoral (PhD) Dissertation Abstract

THE SURVIVAL OF THE PRINCIPLE CLAUSULA REBUS SIC STANTIBUS, ESPECIALLY IN 20th CENTURY HUNGARIAN LAW DEVELOPMENT

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„The law does not exist for itself only, it is essentially human life itself in one of its specific respects."
(Friedrich Carl von Savigny)

I. The antecedents, subject and objectives of the doctoral dissertation

„The peace has to saved, the contracts must to be kept."− One of the decrees of Pope Gregory IX illustrates well the perception of European private law in middle age context of promises and obligations. The principle *clausula rebus sic stantibus*, which meshes the *pacta sunt servanda* belongs to one of the most controversial legal institutions of European private law. My topic selection justifies at first the different judgement in periods and law areas. It is not negligible either that the principle had a very important role in our private law system in the 20th century, after World War I. The principle − which appeared at first in economical impossibility, then in our Civil Code the juridical contract modification in my point of view os one of the crisis law solutions, which appeared in 19th century in Hungary, the marks however can be found in European private law in the ancient Rome and by Frederick the Great too. In the first century B.C. in Rome after the civil wars caused an economical and loan crisis, which Caesar tried to eliminate by a lex in 49 B.C. Of course there were lots of another lexes and two senate consultums too.[1] One of the most frequent devices of crisis law, the „valorisation" or revaluation appeared very early in the economical and legal life of states. Of course, we can find lots of ambivalent measures as well, because Napoleon forbade all forms of valorisation in Code Napoleon and in 20th century in Europe, so in France the claim to the law institute was revived because of the world wars.

The second argument for researching the subject is that the economical and credit crisis occurring after World War I demanded immediate solutions in private law in Hungary too. Next to valorisation we can find other solutions, like affectivity clauses, contract forms or value stability clauses, moratories, measures protecting owners, but their efficiency was temporary. The real solution for the judicial practice − which was mistrustful with the valorisation − was the „call of economic impossibility." The judgment of the legal institution was not simple, because without codification the practice had to judge the legal situations

[1] See: PÓKECZ KOVÁCS Attila*, A gazdasági-és hitelválság megoldásának jogi eszközei és közjogi következményei a római köztársaság végén (Kr.e. 49-47,)* In: P. SZABÓ Béla- ÚJVÁRI Emese (szerk.),"*Univeritas Unius Rei" - Tanulmányok a római jog és továbbélése köréből*, DE Marton Géza Állam és Jogtudományi Doktori Iskola, Debrecen, 2014, 201-202.

individually. The Private Bill (Mtj., Magánjogi Törvényjavaslat) in 1928 wanted to solve the dispute in one paragraph, yet its effect was questionable for the courts despite its excellence and pioneering nature. They did this calmly, because this contested legal institution was contested in German jurisprudence too, and although our codification was based on the BGB regulation, it became targeted by the Hungarian academia. In some places we can still find its application in laws too, for example in Law 1876. XIII. 68. §, and Law 1898. II. 44. §, which contain instructions for conctracts for engaging servants and labourers. The use of the principle was first deemed correct and desirable by Péter Ágoston, but his opinion was accepted only by a few jurists.

The most known jurists were in Hungary in this period Károly Szladits and Béni Grosschmid. Their resolutions were supported by different arguments or they tried to prevent the integration of *clausula rebus sic stantibus* to Hungarian legal life. Contrary them, Antal Almási supported the institution of economic impossibility, but Károly Szladits in a new approach called it an „illness" of the legal system and saw it as one of the biggest dangers leading to legal instability, because it would mean a break-through of the principle *pacta sunt servanda.* In my dissertation it will be clear though, that because of the instability of our economic life, its presence and efficiency could not be ignored. In these circumstances it is not surprising that juries called for the help of 1150 paragraph of the Mtj. because of a lack of valid regulations.

The object of my study in view of the above, is firstly the emergence in Hungarian private law during the years of World War I of the call of economic impossibility and judicial contract amendment in civil, economic and in little view in credit and foreign currency law from the principle *clausula rebus sic stantibus*. The study reviews the middle age law and natural law *clausula* perceptions, emphasizing the activity of Hugo Grotius. With respect to German law, it examines the theories of Bernhard Windscheid and Paul Oertmann and the results of 20th century German legal practice and regulations, to the last modification of the BGB. The French legal system appears only tangentially in my dissertation, in comparison with the different continental solutions.

The study, as indicated in the title, concentrates in the 20th century crisis solutions, especially on the call of economic impossibility and judicial amendments of contracts as reflected in Hungarian legal practice and dogmatics. Due to the length limitations, the national practice concentrates only on important, revolutionaty cases. My study is based on original research conducted at Hungarian National Archives of Hajdú- Bihar County, where I

investigated the documents of the local Hungarian (Royal) district courts to the (Royal) Tribunal and (Royal) High Court in Debrecen between the years of1915 and 1946.

During my researching, I was looking for answers for these questions: *From where does the principle clausula rebus sic stantibus arise? When was the clausula rebus sic stantibus formed and how can it be interpreted today? How was the clausula formed in German law? In French law, what kind of differences can be established in the modifying and liquidation of contracts? What is the call of the economic impossibility and which were the contemporary conditions of its establishment in the judicial practice and Mtj.? How can we definite the call of economic impossibility in Hungarian private law? How can we define the call of the economic impossibility through the practice of law? How can we interpret the relationship of vis maior and the call of economic impossibility? How can we characterize the relationship of valorisation and the call of the economic impossibility? How has the application of the call of economic impossibility changed and what changes in approach can be found? Was it legal or economic solution? Was it really an unnecessary hazard for the Hungarian private law, or was it a helpful expedient for the Hungarian law? How does the amendment of contracts by jury differ from the call of economic impossibility? Of the regulations of the two Civil Codes which one is more exact?*

Historical, comparative and dogmatic methods appear in my dissertation too. The comparative method appears by showing the Hungarian, German and French legal systems and by analyzing the Hungarian legal institutions from the principle *clausula rebus sic stantibus.* It is mportant that my study contains comparisons of the call of economic impossibility to valorisation and to the amendments of contracts by jury too. Seeing the call of economic impossibility came to life because of World War I and the subsequent economic crisis, my study would not be complete without a comparison of financial and economic parallels. Analyzing of valorisation, deflation, moratories and other crisis law institutions are also integral part of my study.

The dogmatic statement of principle *clausula rebus sic stantibus*, the call of economic impossibility and the amendment of contracts by jury were indispensable too, just like discussing thedefinition of amendment of contracts by jury in constitutional law and the constitutional law resolutions.

With respect to the sources, the essay contains primary and secondary resources in large numbers. The Hungarian and, to a smaller extent, German national legal materials were based on case compilations and summaries, the regional practice was based on the archives of the Hungarian National Archives of Hajdú-Bihar County, where I investigated the documents

of the local Hungarian (Royal) district courts to the (Royal) Tribunal and (Royal) High Court in Debrecen between the years 1915 and 1946. Unfortunately − as I indicated it in the relevant subchapter − most of the documents have been destroyed because of the war and during the communist era, so I could use merely about 20 boxes.

With respect to foreign literature, the summary works of Bernhard Windscheid, Paul Oertmann, Leopold Pfaff, Franz Wieacker, Simon Whittaker, Georg Gieg, Ralf Köbler, Klaus Luig, Reinhard Zimmermann, Pascal Pichonnaz and John P. Dawson must be mentioned.

With respect to ancient and middle age law, the relevant numbers of Digesta, the Hungarian translations of works of Seneca and Cicero and the original works of Ulrich Zasius, Andreas Alciatus, Augustin Leyser, Hugo Grotius, Bernhard Windscheid, and Paul Oertmann form a significant part of the dissertation.

Because a longer summary work on this topic has not been written in Hungarian, I took into consideration several contemporary newspapers and magazines, especially numbers of Jogtudományi Közlöny, Jogállam and Magyar Jogi Szemle, and relevant numbers of Kereskedelmi Jog, Polgári Jog, Állam-és Jogtudomány, Ügyvédek Lapja. I also need to highlight the use of issues of Magyar Jogászegyleti Értekezések in my researching.

As to logical viewpoints, my study the examines emergence of *clausula* starting from impossibility laws in Roman law and the theories of not keeping promises (particularly Cicero and Seneca the Younger.) through works of glossators and commentators. After analyzing the theories of important canon jurists (such as Ludovicus Pontanus, Philippe Decius, Thomas Aquinas), the dissertation details the Northern natural law school, especially the significance of Hugo Grotius who approached the recently created *clausula rebus sic stantibus* principle from the viewpoint of will theory. In the 17th and 18th centuries the use of principle can be found in German, so the doctrines of Heinrich von Cocceji, Samuel Pufendorf, Karl Philipp Kopp and Adolf Dietrich Weber are in the subsection chapter. The next subchapter deals with the German legal system, jurisprudence, especially the doctrines of Bernhard Windscheid and Paul Oertmann and some important German cases. With respect to case law, I tried to sum up and show modifications of jury approaches.

French law found another solution to the disrupted balance of contracts different from continental law, which granted it a place in my study too. Although in France the possibility of modifying agreements is no longer acknowledge because of the changed circumstances, in contracts the previously defined possibilities of change are taken into consideration and legislature can reduce the unforeseen, significant charges because of this.

The next section reviews the solutions of 20th century Hungarian law in connection with the disrupted balance of contracts, so in this part with historical, so in view of logical and economical competencies the effectivity clause, clause of value permanence, deflation, inflation, moratories, measures for the protection of property owners and national interventions will be described. The real subject of the investigation, as I have previously mentioned, is the comparison of valorisation and the call of the economic impossibility, which were used very often in period 1921-1945 and was introduced as a new version of *clausula* to the Hungarian legal system.

The fifth chapter deals with the call of the economic impossibility, more specifically with the theories of the late 19th and early 20th centuries jurisprudence, the doctrines regarding the institution of the law, the appearances of the call of economic impossibility in laws, the national and local practice and their connection. The most important objectives of my study are connected to this, so I emphatically dealt with addressing these issues, the changes in juridical deliberation and negative opinions around these. Chapter six discusses the Hungarian legal system after 1945, briefly discusses valorisation, and on more details the amendment of contracts by jury, which is based on the Civil Code, on the New Civil Code, legal literature and the practice of constitutional law. In line with the title of my study, the current European private law regulations were not deemed important. Summaries can be found at the end of each chapter – except the last one −, and an appendix can be found at the end of my dissertation with a table which contains the comparison of different principles.

2. New scientific results of the dissertation

1. Where does the principle clausula rebus sic stantibus arise from? When was it formed, how has it changed and how can the clausula rebus sic stantibus be interpreted today?

The *clausula* notion can be originated from Roman law; Cicero and Seneca in particular situations admitted the possibility of not keeping promises, but Roman law followed the principle of *pacta sunt servanda*. In civil law we meet mentions of changed circumstances at first in Digesta. The accepted meaning of the *clausula rebus sic stantibus* principle: „a close regarding things as they currently are." In ancient law and in the early middle ages we meet the *„rebus sic habentibus,"* which through the centuries became *„rebus sic stantibus,"* owing to works of Ludovicus Pontanus (1409 – 1439) and Philippe Decius

(1454 – 1535). In the 16th century Andreas Alciatus changed the application of *clausula*, then Hugo Grotius has formed a radically new interpretation, in which natural law is not originated fully from God, but from the nature and cohabitation of people and thus completely changed the former doctrine. Grotius's theory was based on objective basis not originating from the theory of will, and that guided some jurists, like Bernhard Windscheid too.

2. How has the clausula fared in German law?

Windscheid's doctrine of presupposition pronounced that if circumstances will change in future because of uncertain happenings, fulfilment fails through. In his wording the *clausula* is an imperfect condition, which will be invalid, if the intention of the parties at the time of making of contract, which was the reason of their will-statement, is not available anymore. Despite his efforts, the *clausula* did not get a place in the German private law codification developed at the time, however his son-in-law, Paul Oertmann in his theory *„Wegfall der Geschäftsgrundlage"* created a new legal institution based on his father-in-law's doctrines. The rule of *„changing of the transaction basis"* says that the circumstances of uncontrollable change cause a basic imbalance in the contract, and as such they put an unequal onus on the party and justify the liquidation of contract. A newer modification of the BGB in 2002 adapted the notion of the *clausula* with the thesis of *„Störung der Geschäftsgrundlage"* to German law.

Investigating German practice, we can say that similar to Hungarian, after the years of World War I it became gradually more permissible with the principle *clausula rebus sic stantibus* and the call of economy impossibility based on it. Juries stated in their interpretation that although the *pacta sunt servanda* is the most important principle, but such a change in the basis of contracts which could result in such disadvantage, for a party that would cause unbearable property deterioration would be incompatible with law and justice, and such a contract does not have to be fulfilled. Early full economic deterioration and requirement of disproportionate aggrandizement by another part was substituted from 1919 with a practice which in harmony with *Treu und Glauben* demanded the debtor's lighter economic declension.

3. In French law, what kind of differences can be established in the modifying and liquidation of contracts?

Looking at French private law it could be concluded that the *clausula* was not generally acknowledged, but juries took into consideration in contracts the previously defined changing possibilities and at the time of the legislative crisis, it reduced the unforeseen, significant onuses. The Code Civil incorporated the good faith doctrine into private law, which shows a some degree of a relationship with *clausula*.[2] Besides this, French law adapted only the *"force majeure" (vis maior)*, a similar legal institution, which is contained in paragraphs 1147. and 1148. of the code. For public law, we can only see the unlimited utilization the institute of *imprévision*. The need for the *clausula* appeared after the World Wars I and II in France too, so at first it was used in the apperances of special claims under the law *"Loi Failliot"* (21st January 1918.) which disposed that contracts made before the war can dissolved but not modified. After a comprehensive reform in 2009, the modification of clearly Code Civil contains the possibility of juridical revision of contracts in case of changing circumstances.

4. What is the call of the economic impossibility and which were the contemporary conditions of its establishment in the judicial practice and Mtj.? How can we definite the call of economic impossibility in Hungarian private law?

The definition of call of economic impossibility in my study is based on several sources. The dissertation discusses at length and in detail the different approaches of our greatest jurists and their debates on this topic. One of the biggest jurists of the era, Károly Szladits considered it overweighing and dealt with it in connection with the overturn of the balance of interests and their disproportion. His former teacher, Béni Grosschmid did not list it among the facts of impossibility. An important pillar of my dissertation both with respect to the definition and to the determining conditions is the Mtj. in 1928 and the judicial practice in the period of 1920-1930-1940.

[2] Art. 1134: *„Agreements lawfully entered into take the place of the law for those who have made them.*
They may be revoked only by mutual consent, or for causes authorized by law.
They must be performed in good faith."
In:http://www.google.hu/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDEQFjAB&url=http%3A%2F%2Fphalthy.files.wordpress.com%2F2006%2F11%2Fcivil-code-france.doc&ei=4KMZU9qNBOPnygO_4YGoBw&usg=AFQjCNGvP7Uj67rA1bLi7KfRQfvjmq3b0w&sig2=6XphwYalKjU8Od0d1pIlWA&bvm=bv.62578216,d.bGQ (2014. március 10-i letöltés).

The Private Law Bill (Mtj.) could be used by the judges only as a beacon. Without private law in force courts necessarily had to solve problems with their deliberation and based on measures of the bill. In connection with this, I can claim that 1150. § of Mtj. gave the framework for the designation of call of economic impossibility's conditions and definition, in my dissertation those contradictions can also be seen, which existed in Hungarian private law until 1959, the integration into law ofthe amendment of contracts by jury. The six conditions by law are in the appendix at the end of my study.

5. How can we interpret the relationship of vis maior and the call of economic impossibility?

It can be stated that the comparison the of call of economic impossibility, the amendment of contracts by jury, *vis maior* and the valorisation and to a lesser degree the other crisis solutions are one of the most significant parts of the dissertation. Comparing the *vis maior* and the call of the economic impossibility, we can claim that *vis maior* is the broader definition, because it contains all unforeseen and not averted happenings, to which category could also belong to. The definition of *vis maior* demands changes affecting all of society and economy , and with this makes fulfilment objectively impossible.

6. How can we characterize the relationship of valorisation and the call of the economic impossibility?
9. Was it legal or economic solution?

I determined with the help of the sources consulted that private law could not handle in early years with the great changes of economical conjuncture. Antal Almási realized that the fulfilment of legal obligations after the war became social phenomenon and affected the whole of society. The call of economic impossibility and the valorisation are proof of this.[3]

In connection with valorisation I referred those opinions concerning the crisis institution and mainly the bill negotiated in 1925. Until the preparation of the law of 1928 inflation and valorisation were simultaneously attacked by jurists of the era, because in their opinion those were based on wrong theories. I think that after dogmatic and other investigations it can be said that the government made the biggest mistake with issuing

[3] ALMÁSI Antal, *Gazdaságos joggyakorlás,* Jogállam, 1925, 1-2, 15.

banknotes in large quantities, and became trapped in a labyrinth of credits and loans. György Blau, the most cited expert on the topic correctly noted that it would be impossible to reduce the value of money to its 1/16.000 from 1914 to the spring of 1924 without state manipulation. Both the valorisation and the call of the economic impossibility proved to be appropriate help for those parties in distress, fand or little problems the value permanence and the effectivity clauses were perfect. I shall not go into deeper economical discussions because of the nature of the dissertation, I would only state that loans only provided a temporary solution, holding, restoring and preventing the stability of values and satisfying state lenders should have come first before everything else. The long-standing, stubborn attitude finally pushed Hungarian economy into such a deep crisis by the end of the 1920s, which which was never seen before. The totally deficiency at of the end of the 1910s and the above-mentioned taking out of loans and credits created such a maze, which in my opinion could only be solved by the moderate valorisation and the call of economic impossibility. So that is how the call of the economic impossibility became a legal, while valorisation became a more economical crisis solution. I especially emphasize the niche nature of the chapter, since beyond answering the proposed questions regarding valorisation and war-time finances, my researching has utilized such works which have never been used before.

I briefly discuss the critique of the institution of valorisation and the relevant law on 1928. According to many, the valorisation law was not and could not have been perfect. Based on my investigations, I do not consider ot to have such a destructive effect on Hungarian private law, which was born in the years of the deepest crisis as a solution to private law financial debts. Naturally I have stated my own opinion in which I explain that legislature made big a mistake when debentures, overdraft debts, military loans and state tickets were left out the possibility of valorisation, because this also resulted in the above illustrated problem. I do not subscribe to that view which was represented by Ödön Kuncz, that is valorisation law was nothing else but protection against valorisation itself.[4] It is certainly true that during and after World War I the use of many fictitious and general clauses was rather common, but these were done in the interest of a higher purpose, to protect transactions and the interest of parties involved. In my investigations I did not meet such decisions either on the local or on the national level which did not have an emphatic reason. As Ödön Kuncz also emphasized, the Hungarian judicial practice *„did not give up disciplined jurist thinking for a single moment."* My opinion is supported by a statement of Béla Frigyes

[4] KUNCZ Ödön, *Háboru utáni kereskedelmi jogunk vezető eszméi,* In: *Emlékkönyv Kolosváry Bálint jogtanári működésének 40. évfordulójára*, Grill Károly Könyvkiadóvállalata, Budapest, 1939, 282.

made in 1923 too, who claimed that German, Polish and Hungarian valorisation practices were not entirely perfect. In connection with valorisation, the law of 1928 was still effective despite its smaller defects. The call of the economic impossibility was more of a legal matter, while valorisation is more of an economical institution, and it provided aid for those in trouble as much as it was made possible by the circumstances of the times.

7. How can we define the call of the economic impossibility through the practice of law?

In my researching I have found that many jurists simply designated the call of economic impossibility as an excuse, but my investigations proved that this institution is more than that. Several jurists, like László Kelemen considered it only as extraordinary legal assistance applied only when it was unavoidably necessary to avoid some grave financial legal mistake. I have finally come to the conclusion that the law institution is such a title or plea, which makes it possibily to become exempt from fulfilling a contract or it may ease its fulfillment.

8., 10. How changed the circle of application call of economic impossibility and what aprroach-shitfings can be found?
8., 10. How has the application of the call of economic impossibility changed and what changes in approach can be found?

Besides specifying the definition, one of the most important targets of my dissertation was the mapping of the changes and limits of Hungarian judicial law and the field of application of the call of the economic impossibility. My examined cases, publications and articles showed that in the early years the fear of a total economil collapse was the facilitating condition for the possibility the call of economic impossibility, which was a leading theory in all of the losing countries. In German law, as well as in Hungary, this changed gradually and its place was taken over at the end of the 1920s by the call of the economic impossibility saturated by *Treu und Glauben*. In Hungarian law the call of the economic impossibility began to spread in the years of World War I, which was generally accepted by Hungarian courts in cases where at least a 30-40 % rise in prices occurred.

At first we can observe its use in contracts regarding delivery, then purchase, rental and other contracts. For service contracts the Curia stated relatively early that if the materials necessary for the production of electricity became so expensive that the obligation could not

be performed with the origin conditions and it would lead to the material ruin of the entrepreneur, the contract could be terminated by the call of economical impossibility.[5] Among rental contracts leases have a special place, because these are especially hard to terminate by the call of the economic impossibility. To the 1930s, with the differentiation of leases *„agricultural," „industrial"* and *„other corporate"* leases appeared too.[6]

The call of the economic impossibility originally was not validated for specific services, and for money liabilities, but the ó famine and vulnerability caused by the war opened up the way to these too. Besides the contracts made before the war made the call of the economic impossibility was gradually expanded to in contracts made during the war. The courts wanted to hold up contracts to the end, so in favour of this they permitted primarily modifications, and cancellation as a last resort.

The view that the call of the economic impossibility could not be used in cases of such risk, which is innate to the nature of contract or when it could have been foreseen in the course of due diligence was long held.[7] For money debtors valorisation was primary, for object debtors the call of the economic impossibility, but of course there were exceptions. The call of the economic impossibility could be used next to valorisation too. To the 1920-1930s, the practice utilized the call of the economic impossibility so efficiently that Szladits − who was not a supporter of the clause − called it a *„law accepted by judicial practice."*

In the 1940s and 1950s we can also meet civil law proceedings related to the call of the economic impossibility, which were discussed in chapter six of my dissertation. Because of the hyperinflation in 1945-46 the legal institution became useful in newer cases too, although in most cases the primary target was the modification of contracts, similar to earlier trends. As there was no relevant law, the Curia ruling nr. 1945/1921. was accepted as a guideline which highlighted that the call of economic impossibility could be used not only when the service should lead to a significant property ruin of the debtor, but also when there was a conspicuous disproportion between service and reward and one party would get into a more favourable situation than the other, and as such demanding service would constitute an abuse of the law.

Summarizing conditions and the nature of the legal institution were developed and formed by the national judicial practice, and as a result lots of jurists accepted the call of the economic impossibility with some conditions by the 1920s and 1930s. Jurisprudence then

[5] *Magánjogi Döntvénytár*, 1917, X. kötet, P.II.10.495/1915. számú eset, 155.
[6] *Jogi Hírlap Döntvénytára Magánjog,* Budapest, 1933.IX.1.-1936.IX.1.-ig, III. kötet, 59. IX. 947.
[7] LŐW Lóránt, *A tőzsdebíróság állásfoglalása a gazdasági lehetetlenülés kérdésében*, Jogtudományi Közlöny, 1923, 15, 115.

followed the way of paved by the legal practice in the preparation of Mtj. in 1928. After investigation the national and local practice it can be said that on the local level, and similarly on the national cancellation was not favoured, instead we can rather see modifications of contracts. Judgments reveals that on the local level, similarly to the national trend, the call of the economic impossibility could only be applied on strict conditions.

11. Was it really an unnecessary hazard for the Hungarian private law, or it was a helpful expedient for the Hungarian law?

After these statements I can claim that the moderation of conditions of the call of the economic impossibility was not connected to the loosening of judicial deliberation. It is little wonder, though, that the initial strictly requirements further decreased in the last years of World War I, because the Curia admitted in its decision nr. 7207/16. that in 1914 it was hoped nation-wide that war should end by 1915, and its continuation and ruining of the economical life was foreseen by nobody.[8] Therefore I do not agree with the statements uttered by many jurists, such as Imre Deák, that the application of the new formations of *clausula rebus sic stantibus* in Hungarian law practice would be harmful and would crash the belief in legal certainty. Deák, similarly to lots of jurists, blamed legal institution for ruining the trust in *bona fides*, and especially awakened doubts about the measurement of compensation.[9] I do not agree with László Kelemen's assertion either, that the call of the economic impossibility was a harmful and morbid product of crisis phenomena.[10] In the same way, I cannot accept those views of contemporary jurists either, who complained that crisis phenomena deformed and distorted the original contents of obligations, the call of the economic impossibility being the first among them. I deeply empathize with the quote by Savigny, which I have chosen as my dissertations's motto and Bernhard Windscheid's similar approach, therefore I ask the question: Is the protection of immaculacy of the legal system more important than satisfying human needs than providing assistance in difficulties? I think that answer seems perfectly clear in my dissertation.

12. How does the amendment of contracts by jury differ from the call of economic impossibility?

[8] SZLADITS Károly, *Magánjogi bírói gyakorlatunk az 1917. évben*, Jogállam, 1918, 3-4, 266.
[9] DEÁK Imre, *A gazdasági lehetetlenülésről,* Jogtudományi Közlöny,1924, 9-10, 78.
[10] KELEMEN László, *A szerződésen alapuló kötelmek áldozati határa*, In: *Emlékkönyv Kolosváry Bálint jogtanári működésének 40. évfodulójára*, Grill Károly Könyvkiadóvállalata, Budapest, 1939, 268-269.

13. Of the regulations of the two Civil Codes which one is more exact?

After 1945 in practice to call of the economic impossibility could only be taken into consideration in those circumstances when the changes in the aspects of durable partnerships which were connected to specific contract conditions. It became a general principal in judicial practice that that party could not ask for the amendment of contracts by jury who could foresee the change of circumstances.[11] The Supreme Court in one decision of special importance showed that in a case when party asking for modification found out that the mode establishing payment disadvantaged him/her only after the contract, the court would not modify the contract.[12]

The call of the economic impossibility by the 1950s was mostly limited to amendment of contracts, so it was not surprising that § 241 of the Civil Code in 1959 detailed the possibilities of contract amendment by jury. According to the ministerial justification attached to § 241. of the Civil Code, the amendment of contracts by jury as an extraordinary measure could only be used only for durable and recurring contracts. In wider interpretation, the judicial practice accepted durable relationships as such contract connections which defined the relationships of the parties for a longer time, that meant contracts running for several years. Later on only a change of circumstances that happened after signing the contract could serve as a basis of modification, so not only circumstances known at the time of signing the contract made modification by jury impossible, but also so when the parties calculated in future factors of uncertainly when establishing service and reward, or when they should have calculated them within reason. The conflict of interest necessary to trigger the exceptional juridical intervention under the law reaches the significant measure, if it bears such a weight which could indicate that under the changed circumstances the parties woule not have entered into contract.

Based on the relevant legal practice, literature and Civil Code it could be said that the amendment of contract by jury was not and by the New Civil Code is not possible if changes are caused by foreseeable inflation, exchange rate fluctuations, changing relationships of demand and supply and by changes to the whole economic life or all parties of a single contracts. So the effects of worldwide financial and economic crisis couldn't connect the concrete contract. The 2013 Civil Code, Book 6, Part II, title XI, Chapter XVII. § 6:192. calls *„judicial amendment”* modification possibilities originating from *clausula*, and from the two

[11] BH 2005. 347. nr. case.
[12] LB Pfv. VIII. 20072/1999. vö. BH 2001/4. sz. 169. nr. case.

previous institutions. Regarding what has been discussed previously, the call of the economic impossibility and the amendment of contract by jury can be easily compared. The common point in the wordings of the three institutions − which can be seen in the table in the appendix of my dissertation − is the demand that changes should occur after making the contract, the similarity is the demand that the impossibility should be independent from the parties, which can be attributable to none of them. While the call of the economic impossibility had an option leading to the often-mentioned cancellation an modification too, the old Civil Code accepted only modification and liquidation, while the new Civil Code adopts only the possibility of modification. It is also an important change too that the call of the economic impossibility demands a graver upheaval of economic balance which goes beyond risks generally implied in contracts, § 241. of the Civil Code mentions such circumstances, which offends the legitimate interests of one of the essential parties, while the new law talks about *„legal interest"* in the same wording. In my opinion, the new Civil Code defines the scope of risk more specifically for the courts, when it points towards a hazard factor that is *„outside of risks born by new normal business,"* so it fends off a decades-old legal uncertainty. The law gives space to the judicial practice, but also provides a framework for it, thus evading the dilemma of leaving the examination of subjective elements to the judicial practice. The conditions are exactly enumerated the above-mentioned table too.

3. Publications related to the topic of the dissertation andotherpublications

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List of publications related to the dissertation

Articles, studies (20)

1. **Talabos Dávidné Lukács Nikolett**: A Hajdú - Bihar Megyei Levéltár polgári peres iratai a valorizáció és a gazdasági lehetetlenülés tükrében 1915 és 1946 között.
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