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Impact of legislation and law enforcement on the content of contracts with particular regard to the time of World War I and the Treaty of Trianon

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Impact of legislation and law enforcement on the content of contracts with particular regard to the time of World War I and the Treaty of Trianon
Scientific monograph

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Introduction

This monograph examines when the state has the right to intervene in the legal relationship between contracting parties, and if it is possible, when it can act as a legislator and/or a law applier and what the nature of the intervention may be. In this study, the limits related to the rights and obligations of the parties are scrutinized.

The first two chapters delineate the theoretical frameworks of state intervention. The author distinguishes the forms of intervention concerning future contracts and those already concluded. The state intervenes in the future contracts mainly as legislator, to a lesser extent by the means of mandatory and to a greater extent by the means of optional rules. The reasons for the use of different legislative instruments will also be explained herein.

Chapter III begins to overview the circumstances grounding the mandatory norms concerning future contracts with the presentation of Roman law and, later, it delineates the Hungarian legislation related to World War I and the impact of Treaty of Trianon affecting the content of the contracts.

In the context of state influence on the content of contracts already concluded, judicial decisions play a stronger role than legislation and government measures also appear. Chapter V of the monograph presents the legislative measures affecting the contracts already concluded and the reasons thereof in a differentiated way, divided into different periods. In the author's view, World War I and especially the subsequent Treaty of Trianon brought a significant change in the assessment of state intervention, and therefore, he devotes special attention to the examination of this period in the extensive Chapter VI.

Chapter VII provides an outline of overview of the international tendencies of the period from the peace treaty to the present day. Chapter VIII presents the era of Hungarian legislation being prone to make mandatory rules. Chapter IX delineates the relevant provisions of the applicable Hungarian law and Chapter X contains the author’s evaluative comments.

While acknowledging the positive aspects of state involvement, attention should also be paid to the dangers of excessive state intervention in Eastern Europe.

I. Organizational tools of state intervention

There are basically two tools of state intervention regarding contracts.

1. Legislation

The legal regulations made by the state partly help parties to conclude contracts and partly restrict them. There are only few objections to the provisions facilitating the formation of the contracts but strong reservations against restrictions.

2. Law enforcement

2.1 *Coercive, controlling and corrective activity*

Traditionally, the courts have been limited to enforcing the terms of a contract in the event of a dispute between the parties. The courts have no inherent power to form the content of the contract, except to strike out provisions that are contrary to mandatory norms and thereby remedy a contract that would otherwise be declared void. With regard to contracts already concluded, the state's primary task is to control whether the parties have complied with the restrictions that the state has included exceptionally in mandatory norms.

2.2 Post-contractual change management

Regarding long-term contracts, the question arises whether the state can intervene in the relationship between the parties when the balance of rights and obligations is upset by circumstances arising after the conclusion of the contract.

Most contracts must be performed at the time of the conclusion thereof. In such cases, the problem of modification does not arise. However, the conclusion and performance of a contract can be separated in time and many things can happen until the performance which can affect the rights and obligations of the parties. In this situation, as at the time of the conclusion of the contract, the legislator gives priority to the intent of the contracting parties. In the fortunate case where the change was foreseeable and the parties have settled the situation in advance in the contract at the time of its conclusion, the contract must be performed accordingly. If the parties

have not previously settled the matter, they modify the original provisions by mutual agreement after the change has occurred. Therefore, the parties' freedom to modify the contract prevails. Therefore, the permissibility of state intervention may arise only in case if the parties did not settle their legal relationship either at the time of conclusion of the contract or after the circumstances occurred.

However, the legislator assigns an increasing role to courts to interpret and, in certain cases, to „re-interpret" the provisions of the contracts. As a new development, courts also have a role when the changes occurring between the time of the conclusion and the performance of the contract require the judging of individual circumstances.

II. Overview of the possible role of legislation concerning contracts

Within the state activities, a distinction must be made between legislation on future contracts and legislation on contracts already concluded. Regarding future contracts, the state exercises preventive control, while regarding the contracts already concluded, it amends subsequently the relations of contractual rights and obligations. Restrictions in case of future contracts may be known and overviewed in advance by the parties. State intervention in contracts already concluded is not predetermined, and contracting parties often do not know in advance whether or not they can or have to expect legislative or enforcement action, and if so, what kind and to what extent.

1. Future contracts

The content of future contracts is formed by state via mandatory and optional norms.

1.1 Mandatory norms

In every era, there are rules the following of which the state insists on. These must be respected by the contracting parties.

1.2. Optional norms

An island in a sea of mandatory rules are the rules on contracts, where the legislative approach is more differentiated than for the rest of the legal system. There is a specific division of work between the state as legislator and the contracting parties. State makes rules regarding contracts in general and regarding certain types of contracts. These rules respect the interests of all contractors equally, so there is a strong chance that the parties will accept these optional rules as their own. By not shutting themselves off from the optional rules, the parties make the contracting process cheaper because they do not have to discuss the issues set out in legal regulations and do not have to agree on a solution other than the law. The function of optional rules is precisely to facilitate and speed up the contracting process.

The state accepts the contracts including optional norms but, typically[1], it also respects if the parties consider that a solution other than the optional rule is ideal for their relationship. The contract is concluded with the content decided by the parties, not only when they themselves draft the certain provisions, but also when they accept the optional norm. This is what the law calls freedom of contract, including the freedom of the parties to formulate the content.

Several circumstances justify the state's acceptance, as a general rule, of the parties' agreement on the content of the contract other than the optional rule, i.e. that the legal relationship is established by the consensus of the contracting parties. The reason for the acceptance by the state of the common will of the parties is based on respect for private autonomy. The state leaves it to the parties to determine their contractual rights and obligations, intervening only in exceptional cases[2]. There are also economic policy reasons for the state to accept the parties' agreement. The self-regulating mechanism of supply and demand keeps the economy functioning properly and the state recognises that it is not usually necessary to disturb this market regularity. Finally, there is a practical reason why the state accepts the parties' agreement as a general rule, as it is cheaper and quicker to conclude a contract in this way. However, there are situations in contracts in which other interests also have to be taken into account beside the ones by the contracting parties. A contract may have an impact on a third party or even on the community as a whole. The rights and obligations to be set out in a contract may affect the interests of a third person and/or may affect the public interest. This involvement may be so great that, in some cases, it overrides the common will of the contracting parties.

2. Contracts already concluded

„The state, the legal system can relate to the parties' agreement in three ways: with hostility, indifferently or supportively. The law either denies the legal effect of the contract (perhaps recognises it with modified content), or does not intervene (natural obligation), or fully supports it and enforces performance, or punishes the breach of contract with damages. This attitude depends on the social system and its specific political, social and economic conditions at the

[1] Sometimes, the state has to cut off the wildings of private autonomy, above all by taking action against behaviour that is contrary to fundamental principles.

[2] The parties have the case under control as long as the agreement only affects them. However, in cases where the contract may be contrary to the public interest, or where others may be affected by the agreement, the mandatory rules override the parties' agreement. This is particularly the case where the contract would conflict with a fundamental principle (e.g. the prohibition of abuse of rights or the requirements of good faith and fair dealing) or would be detrimental to the weaker party.

time."[3] „Under liberal capitalism, the free play and spontaneous dynamic balance of supply and demand were expected to ensure the smooth functioning of the economy. Consequently, the main principle of contracts became the freedom of contract. ... The requirement of unconditional performance of contracts (pacta sunt servanda) came together with the principle of freedom of contract came, and, on the one hand, became a major moral requirement in commercial circles and, on the other hand, increased the vulnerability of the economically weak ones"[4]

[3] EÖRSI, Gyula: Kötelmi jog Általános rész [Law of obligations General part], Tankönyvkiadó Budapest (1983) p. 27
[4] Ibid. p. 31

III. Historical overview of circumstances grounding the mandatory norms concerning future contracts

1. Reasons for mandatory norms in Roman law

Among the typical optional contractual rules on contracts, there were some from which the parties could not deviate even by mutual consent. „Roman law, which was essentially the law of private autonomy, the law of free contracts, imposed mandatory rules on the private sphere only when it was absolutely necessary"[5] However, mandatory rules could be applied for several reasons. The religious, moral norms were typically rules not allowing derogation[6], and the same is true for public law rules[7]. The following circumstances can be identified as the reasons for the mandatory nature of contract rules in Roman private law, which also prevailed in later periods of history.

1.1 Formality requirements for proof

In comparison with today, the Romans had much less evidence available. On the other hand, members of society were much more likely to believe in the sanctity of the oath. The formalities for the conclusion of a contract were partly intended to ensure that its creation and its content could be proved afterwards. „The formality of the statement (e.g. oral or written statements, signatures, seals which are not merely subject to substantive requirements but to strictly defined formalities such as the use of certain words) has primarily practical reasons, as it warns the parties to exercise more caution and consideration and ease the subsequent proof and interpretation of the intention to transact."[8]

[5] FÖLDI, András: Kereskedelmi jogintézmények a római jogban [Commercial law institutions in Roman law] Akadémia Kiadó, Budapest 1997. p. 114.
[6] Some of the religious and moral rules later took on legal form. Such norms with religious and moral roots were often formulated in law as principles. The requirement of good morals must be met. The norms with religious and moral roots have retained their original mandatory character even in their legislative capacity.
[7] The mandatory nature of a norm often was reasoned by references to public interest. If the matter to be regulated had effect only on the two contracting parties, it was usually left to their agreement to draw up the contract governing their legal relationship. But there were situations regarding contracts where the public interest was also affected in addition to the parties' interest.
[8] FÖLDI, András – HAMZA, Gábor. A Római jog története és institúciói [History and institutions of Roman law] 1996. p. 470

1.2. Legal certainty

The law tries to avoid uncertain situations. Time lapse makes it difficult to prove and everyday experience also suggests that people who care about something do not usually delay in taking action. The law, therefore, lays down time limits and support the pursuit of claims until they expire. Once the time limit has expired, the right either ceases (preclusive time limit) or the claimant is otherwise disadvantaged (e.g. after the limitation period has expired, the claim can only be used as an objection). The rules setting time limits in substantive and procedural law were mandatory also in Roman law.

1.3. Preference for claims of fiscus

The public interest appears in a more ordinary sense, in the form of certain measures aimed at ensuring state treasury revenues. Among the rules of lien, the privileged nature of the lien securing the claim of the fiscus can be considered as such. The lien in favour of the fiscus secured satisfaction in priority to all other liens, irrespective of the date on which it was created.[9]

1.4. Legal support to achieve specific economic goals

By mandatory rules, the power could intervene directly in economic processes, e.g. it could eliminate or mitigate the risks.

1.4.1. Supporting certain activities

For example, in order to promote food production, creditors were prohibited from taking possession of essential items, especially those related to agriculture.[10]

1.4.2. The mitigation of impact of inflation

To reduce inflation, the price of certain goods and services, and the interest charged on the amount of the loan were capped.

[9] Ant. C. 4. 46. 1.
[10] Constant. C. 8. 16.7. idézi cited by FÖLDI, András – HAMZA, Gábor. A Római jog története és institúciói [History and institutions of Roman law] 1996. p. 444

1.5. Other circumstances

In Roman law, several further circumstances (legal correction, recognition by the praetor that pacta were binding, completion of the unequal rules on representation by the praetor, ensuring enforceability,[11] etc.[12]) required mandatory rules.

2. Mandatory legal provisions effecting future contracts in relation with World War I

In this section, the Hungarian legislation is delineated from the perspective how legislation restricts the freedom of contracts. From a legislative perspective, the following periods can be distinguished: 1913-1914, 1915-1918 and 1919-1921.

2.1. Legislation in Hungary between 1913 and 1914

In the period immediately before the World War I and in the first year thereof, the vast majority of acts do not present the image of a country preparing for war or being at war. Many acts were made[13] and the content thereof was merely different from the ones being usual in the years of peace.[14] Acts on the number of recruits for the maintenance of the common force[15] and the recommendation of recruits[16] may be related to preparing for war. At the end of 1914, the previous legal regulation on assistance to soldiers' family members was amended[17], financial

[11] The requirement that the subject matter of the contract has to be capable of being expressed in money can be traced back to the need that the state and the legal system could ensure legal force to have the contracts performed in accordance with expectations, in case of lack of voluntary performance.
[12] The further circumstances are delineated in MISKOLCZI BODNÁR, Péter: Eltérést nem engedő normák a Római jog szerződésekre vonatkozó szabályaiban [Norms not allowing derogation in rules of Roman law on contracts] in Studia in honorem Éva Jakab (BOÓC, Ádám – PÓKECZ KOVÁCS, Attila ed.) Károli Gáspár Református Egyetem Állam és Jogtudományi Kar [Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law] Budapest 2023. 203-218.
[13] The number of acts was 60 in 1913 and 52 in 1914.
[14] The new acts regulate the licensing of railways of local interest, launching of international boat services, ratification of international conventions, flood relief, supplementary taxes on the county for non-war purposes, the salaries of certain public professions, and granting of hereditary membership of the House of Lords.
[15] Act VIII of 1914 on determination of a new number of recruits for the maintenance of the common force and a new recruit commission for the maintenance of the army.
16 Act IX of 1914
[17] Act XLV of 1914 on completing and amending some of the provisions of Act XI of 1882 regulating assistance to unaccompanied family members of conscripts in the event of mobilisation.

acts related to ones involved in war were adopted,[18] and previous acts on exceptional measures in case of war and on military services were completed.[19]

Hardly any acts were adopted that affected the economy from a military perspective. In this regard, the act of 1913 on establishing a cannon factory[20] and the one on obtaining a mining licence in order to ensure the supply of iron ore to state ironworks[21] can only be mentioned. Rules temporarily empowering the government in certain areas (e.g. custom tariffs) were published[22]. Among the very few acts affecting the freedom of contract examined in this study, the introduction of the bound managing of cereals and flour, with the establishment of the Haditermény Rt. [War Produce Corporation] as the central body, and the introduction of a price cap for certain products may be mentioned.[23] The Hungarian legislature – just like Franz Joseph - was not preparing for a prolonged war, and initially did not see the need to intervene in economic processes by acts.

2.2. Legislation relating to freedom of contract between 1915 and 1918

From 1915, there was a significant reduction in the number of acts adopted in a year [24], with more war-related provisions[25] and measures to increase public revenue to finance increased expenditure [26] than previously, but only exceptionally provisions on contracts can be found. It

[18] Act XLVI of 1914 on the temporary and partial introduction of income tax for military aid, and Act XLVII of 1914 on setting up the Hungarian royal war loan fund.

[19] Act L of 1914 on completing Act LXIII of 1912 on exceptional measures in case of war, and Act LXVIII of 1912 on military services.

[20] Act XXII of 1913 on establishing a cannon factory

[21] Act XII of 1914 on certain measures to ensure the supply of iron ore to Hungarian royal state ironworks (act adopted in 1913 and promulgated on 1 January 1914)

[22] Several authorizing laws like this were made.

- Act II of 1914 on the temporary regulation of foreign trade and foreign traffic. The authorisation, originally for one year, was extended for another year by Act XLVIII of 1914, stating that "Considering the exceptional economic conditions caused by the war, the Ministry is authorised to amend certain provisions on tariff in order to better meet the needs of production and public consumption ..." (Article 2). Act II of 1916, Act XLI of 1916 and Act XX of 1917 also regulated a new extension.
- Pursuant to reasons for Act XIII of 1915, "The exceptional power given to the government by the provisions of Act LXIII of 1912 and the supplementary Act I of 1914 was necessary to achieve the objective of enabling the authorities to operate in accordance with the exceptional conditions caused by the war. However, since it was not possible, when these laws were adopted, to foresee all the attendant requirements of events such as the present and the needs which they would create, the provisions of the said laws which delimited the scope of the exceptional power with anxious care did not in certain respects provide sufficient means to enable the measures required by the circumstances to be taken. Some extension of the exceptional power of government has therefore become necessary."

[23] E.g. the price of cereal and flour was capped.

[24] The number of new acts was 23 in 1915, 41 in 1916, 20 in 1917, and 23 in 1918.

[25] Act II of 1915 on amendment of previous act on popular uprising, Act XVIII of 1915 on financial liability of traitors

[26] New taxes and levies are introduced and the level of services provided under previous ones is increased

can be observed that there was a more extensive use of criminal law to discourage certain undesirable behaviour in economic life. Criminal sanctions[27] were imposed for deliberate non-performance or deliberate improper performance of an obligation under a contract for the supply of goods for war [28], and for price raising.[29]

The government was authorised to restrict the freedom of contracting in respect of the holders of necessities of life and other primary public necessities[30] and the holders of carriages and animals suitable for the transport of persons or goods, who could be obliged to provide certain services under Act XIII of 1915. The legislator had taken away by law the freedom of contract from cemetery keepers by obliging them to allow military burials necessary due to the war.[31]

The legislative processes during the war years increasingly indicate the economic intervention of the state, but this mainly concerns property relations rather than obligations. The state tried to raise the war expenditure mainly through taxes on property. Financial withdrawals also had a negative indirect impact on the economic relations of productive enterprises, but the legislature refrained from drastic interventions in contracts, at least at the legislative level. The very limited number of examples mentioned in this study had a negligible impact on existing contractual relationships. Therefore, the Hungarian legislation does not strengthen the hypothesis that the World War represents a radical change in the approach to freedom of contract. However, it has to be emphasised that in Hungary, due to the lack of a Civil Code, restrictions on certain types of contracts did not have to be laid down in an act but could be adopted at a lower level. Later researches on legislation at regulatory level may shade the image. However, it has to be taken into consideration that, regarding commercial contracts, there had been regulation by acts in Hungary since 1875, but the most significant contracts in the economy as a whole were not restricted by acts during the war period.

[27] The conduct was considered as misdemeanour and as a felony in qualified case.

[28] Contract concluded with an authority or an agent of an authority for services to be rendered to the armed forces of the Austro-Hungarian Monarchy or its allies or to an armed force acting together with it (Act XIX of 1915 on the punishment of offences against the interests of war, in particular abuses committed in connection with military transport, Article 1)

[29] Act IX of 1916 on price raising abuses

[30] The rule required the holders of necessities of life and other primary public necessities to declare their stocks and prohibited the withdrawal of such stocks from public use, endangering their use for public use, or using them in a manner that would raise their prices. Article 3 of Act XIII of 1915

[31] Act VII of 1917 on completing exceptional measures in case of war, Article 6.

2.3. Legislation between 1919 and 1921

It could be assumed that after the end of the war, the state would use less legislative means to restrict freedom of contract, but a closer examination reveals that the phenomena observed in the period 1915-1918 remained unchanged.

Revenue is needed to reduce the budget deficit, so new taxes and levies are imposed. Using criminal sanctions for undesirable behaviour continue, e.g. evasion of export duties[32] and price-raising abuses are declared to be misdemeanours.[33] Among the many types of criminal offences, there are ones where the legislator orders to punish the breach of a provision restricting freedom of contract, such as exporting a public necessity despite the restrictions,[34] or refusing to sell a public necessity.[35]

The state strongly intervened in the trade of certain securities, through legislation.[36]

3. Impact of Treaty of Trianon on future contracts

The Treaty of Trianon, the act promulgating it[37] and further related acts have several provisions which restrict the freedom of contract.

3.1. Provisions in the Treaty of Trianon and in the acts transposing it which restrict freedom of contract in certain areas of economic life

The Treaty of Trianon contained a number of prohibitive and restrictive provisions aimed at limiting Hungary's military capabilities and preventing the country from re-arming. In the following, the provisions in the Trianon peace treaty and in the acts transposing it being relevant to this research are presented in thematic order.

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[32] Act XIII of 1920

[33] Act XVI of 1920

[34] „Exporting public necessities abroad or into the occupied territories of the country despite the restrictions (smuggling of goods)."

[35] „Refuse to sell a public necessity article ordered for placing on the market to a person on the grounds that he or a relative made an impeachment against him or another person."

[36] „Financial institutions may not claim the repayment of the pledge loan by legal action from the holders of certificates whose marked war loan certificates are burdened by loan granted before 1 January 1921 in accordance with Article 11 of Decree No. 9390/1920 M.E., until the end of 1925; and until that date, the certificates serving as pledge may not be sold at an auction or in any other manner provided for in Articles 365 and 366 of Act XXXVII of 1875, but the interest of the certificates serving as pledge loan may be used to repay the contractual loan capital and to pay interest at a rate of not more than 5% per annum." (Article 2 of Act XXVI of 1921). "The servicing of state debts, the repayment of which, whether by reason of termination or otherwise, has become due or will become due by the end of 1925, may not be claimed before the end of 1925." (Article 5 of Act XXVI of 1921)

[37] Act XXXIII of 1921

3.1.1. Limitation of the manufacture of war material

Pursuant to Article 115 of the peace treaty, the manufacture of arms, munitions and war material shall only be carried on in one single factory, which shall be controlled and owned by the state. The output shall be strictly limited to the manufacture which is necessary for the military forces and armaments referred to in Articles 104, 107, 113 and 114.

Article 1 of Act XI of 1922 lists the organisations for which weapons can be produced, repeats the quantitative limits set out in the peace treaty and stipulates that they "shall under no circumstances be exceeded"[38]. This article stipulates the gradual, step-by-step setting-up of a state war material factory.[39] It can be seen that the cited provision limits the future capacity and sales possibilities of the state war material factory to be set up.

3.1.2. Limitation of trade in arms, munitions and war materials

Article 5 of Act XI of 1921 repeats that, according to Article 117 of the peace treaty, it is prohibited for any association, organisation, institution or private person to purchase or deal in the sale of arms, munitions or any other war material. The prohibition on buying and selling drastically restricts freedom of contract and practically eliminates the trade in war material in Hungary.

3.2. Rules concerning Hungary that impose indirect restrictions on future contracts

The peace treaty significantly limited Hungary's freedom to establish and terminate international treaties, its foreign, financial and customs autonomy and its economic policy options. While Hungary is primarily subject to the obligations contained in the main economic provisions of the peace treaty, the restrictions also apply indirectly to certain companies - manufacturers of products qualifying as war material, foreign trade operators, public service providers, and holders of concessions - and thus also affect the contractual relations of such companies. The situation of all domestic producers has been adversely affected by the fact that, with the removal of protective duties, they no longer enjoy a price advantage over foreign goods, unlike before.

Overall, it seems that the provisions of the peace treaty affected the freedom of contract of companies more than the Hungarian acts adopted during the war.

[38] Article 1 of Act XI of 1921
[39] Article 2 of Act XI of 1921

IV. Possible tools of state intervention regarding contracts already concluded but being subject to the influence of circumstances

In Chapters II and III, the state activity related to the future contracts was delineated within which the legislation was emphasized. Regarding the contracts already concluded, the state may use the tools of legislation, law enforcement and the governmental measures in order to manage the changes occurring between the time of the conclusion of the contract and the performance thereof.

1. Legislation

The state can constitute legislation to mitigate the impact of changes that affect many in very similar ways. In the bourgeois era, state intervention in the economy is inherently subject to serious concerns on the basis of principle of laissez faire, laissez passe. A further familiar barrier has to be crossed, because dealing with problems requires a retroactive norm, while it is generally accepted that a new act can only apply to contracts concluded after its entry into force.

2. Law enforcement – court judgements

The assessment of how changes between the time of the conclusion of the contract and the performance thereof affect the contracting parties often requires consideration of the individual circumstances. In such cases, the proper way of state intervention is judicial proceedings. The main question is whether the courts have the power to regulate the content of the contract differently from what is agreed by the parties.

3. Government measures

The problems caused by crises can be helped by centrally funded subsidies and benefits for people in difficulty. We do not include these government measures in the narrower sense of state intervention in the contract, because the help given to one contracting party affected by the crisis is not to the detriment of the other party.

V. Historical overview of circumstances grounding the legislative measures concerning contracts already concluded

The change of economic conditions affects the contracting parties differently. Many times, it becomes disproportionately burdensome for one of the contracting parties to perform the obligations previously undertaken in the changed circumstances.

1. Mandatory norms of Roman law intending to offset the impact of external circumstances

Roman law occasionally provided protection for a person in difficulty. In the age of emperors, many norms became mandatory to improve the situation of the vulnerable contracting party – the holder of a pledge, the debtor, the creditor, the landlord. In the time of Diocletian, the fall in demand for agricultural products led to a fall in the price of land. The emperor prescribed the fair price (iustum [rei] pretium) regarding the sale and purchase of real estates. According to his order, the purchase price of real estate had to be at least half of the value thereof. If the seller did not receive even half of the value of the property, he could ask for the sale to be cancelled and the property to be returned, with the purchase price being returned at the same time. This was the laesio ultra dimidium, laesio enormis.[40]

2. Period from the beginning of the 18th century to the last third of the 19th century

At the beginning of bourgeois era, the state refrained from intervene in contractual relationships, except principle level mandatory norms, so there was no question whether it is the task of legislator or the courts, and the problem of amending or terminating the contract did not arise either.

Article 1134 of French Code Civil declared that the contract has the role of an act in the relationship of the contracting parties. The French law enforcement drew the conclusion from this that even the court may not amend the agreement of the parties.[41]

[40] Diocl. C. 4. 44. 2 itp) cited in FÖLDI, András – HAMZA, Gábor: A Római jog története és institúciói [History and institutions of Roman law] 1996. p. 513

[41] A judgment in a case of 1876 is typical, which was brought to court because the prices fixed in a contract signed in 1567 did not cover the cost of watering 300 years later. The Cour de cassation, which ruled on the case, did not modify the original price. In its reasoning, the court stated that "the law did not give the court the right to alter the terms of the contract".

There were other reasons, in addition to the statutory provision, for the strict refusal to modify the contract by the courts:

- the requirement to keep a contractual promise as a moral aspect,
- favouring the predictable behaviour as an economic reason,
- and the historical reason for keeping the courts away from contracts was that there were many bad experiences from the feudal era of the interference of corrupt courts.

The general perception of the function of law also reinforced the traditional position of the state being passive, since it was considered that the function of law was to enforce obligations undertaken, not to review the content of contracts. Thus, the legislation was neither considered to be authorized to supersede the content of contracts previously concluded.

However, state intervention was not considered to be excluded in specific circumstances or in certain types of contracts. Also in this period, the institution of force majeure, rooted in Roman law, to terminate contracts and discharge from liability was generally recognised. For some types of contract, where there is likely to be a change in the relationship between the parties sooner or later, the legislation reacts to this in advance. The death of the contracting party is generally considered by law to have a terminating effect, or in German law the alienation of the leased property by the landlord terminates the lease (kauf bricht miete).

3. Period between 1870/1880 and Word War I

In the last decades of the 19th century, there was a minor change in the understanding of state interference in contracts in the area of public administration contracts. Regarding Germany, which was becoming united, and France, the phenomenon can be observed that contracts concluded by two private parties are managed differently from contracts where one of the parties is the state or a public body. Also the content of a public administration contract differs from classic civil law and commercial law contracts since the state does not necessarily seek to make a profit, but is often driven by developmental, public interest objectives.[42]

In Germany, the trend of state intervention intensified from the end of the 1870s. This process was mainly observed in the field of public law, as it was considered that public law served the

[42] See in HARMATHY, Attila: Szerződés, közigazgatás, gazdaságirányítás [Contract, public administration, economic management], Akadémia Kiadó Budapest, 1983. p. 201

economic purposes of the state, while civil law was considered to be apolitical. The world of public administration contracts was less and less free from state interference.
In France, administrative courts with a separate organisational structure had jurisdiction in legal disputes relating to public administration contracts, and their practice was in many respects different from that of civil courts. An illustrative example of this is the treatment of value balance in the contracts which ceased due to the crisis. In 1916, Conseil d'Etat made a decision in a case related to public service. The city of Bordeaux did not want to pay increased fee for gas lighting, although, the price, which had been stipulated in a contract signed years earlier, did not cover current costs which had risen significantly, partly because of the war and partly because of the substantial change in price conditions. Conseil d'Etat ordered the payment of the fee higher than the one stipulated in the contract. Judicial contract modification has become accepted especially in the area of concession contracts, while the practice of the Cour de cassation of non-intervention was maintained in civil cases until the amendment of the Civil Code in 2016.

We have seen that in legal practice, at least in the area of public administration contracts, the French courts no longer refuse to reconsider the content of contracts. They do so mainly on the grounds that the principles laid down by acts have been infringed, justifying, for example, the modification of the contract on the grounds that the change in the consideration due to hyperinflation is unfair or that the exploitation of the situation is contrary to the principle of good faith.
The state intervention is aimed at modifying the content of the contract, except the situation when the termination of the contract is declared due to impossibility of performance.

4. Mandatory restrictions in Hungarian law regarding contracts concluded in relation with World War I

4.1. 1915-1918

The Hungarian legislator limited the quantity of public necessities that could be held. Moreover, the purchase[43], retention[44], or destruction[45] without due cause of public necessities in quantities disproportionately exceeding the needs of the household, farm or business qualified as a misdemeanour.

The freedom of enterprise was affected by the provision that an establishment for the production, manufacture or marketing of a public necessity could not be closed down or its turnover restricted despite an order from the authority.[46]

Businesses' resources for development were reduced by the obligation to pay military profit tax [47] and military allowances.[48]

4.2. 1919-1921

The newly introduced tax and levy obligations have reduced the profitability of many activities and contractual relationships. For example the luxury turnover tax payable by retailers[49], the state excise duty for dispensing drinks[50], the lighter material tax[51], the military ransom paid by persons who did not perform military or personal service to help war orphans and widowers[52], the coal tax related to area which was payable after lands reserved for the purpose of exploration

[43] The restriction on purchases did not apply to persons who were engaged in the trade in such products by profession or for a professional purpose and to those who were licensed to do so. However, according to the reasoning of the law, such persons could also be requisitioned for quantities in excess of the quantitative limit.
[44] Article 1 of Act IX of 1916 on price raising abuses The prohibition of retention also applied to those who were engaged in the trade in such products by profession or for a professional purpose and to those who were licensed to do so.
[45] Article 2 of Act IX of 1916 on price raising abuses
[46] Article 1 of Act IX of 1916 on price raising abuses
[47] According o the reasoning of Act XXIX of 1916: „At a time when provision must be made to meet the extraordinary expenses of war, it is natural, both from the point of view of the principles to be followed in taxation and from that of moral justice, that the burden should be shifted at least in part to those who have benefited directly or indirectly from the war. ... those whose income or property conditions have improved during the war should be made to bear a greater share of the public burden in proportion to their wealth."
[48] Act IX of 1918 extended the obligation to pay military profit tax and introduced the 60% military allowance payable for certain types of tax.
[49] Article 5 of Act XVI of 1920 listed in 34 points the products after which the new tax has to be paid.
[50] Act IV of 1921
[51] Act XI of 1921
[52] Act XIII of 1921

of coal and mining[53]. The income from mining[54], the cigarillo tubes and the cigarillo papers[55] were taxed. Taxes on grinding and livestock were introduced.[56] The minister of finance was authorised to introduce new export levies and to change the rates thereof.[57] A wealth levy was payable on deposits, current account claims, cash deposits, shares and business shares in cooperatives.[58] 15-20% of the "Hungarian state debt certificates" issued to finance state debt was withdrawn.[59] The mining taxes[60], wine production tax[61], liquor tax[62], weapon tax and hunting tax[63] were increased. The obligation to pay a wealth levy was extended.[64]

[53] Act XVII of 1921
[54] Act XVIII of 1921
[55] Act XIX of 1921
[56] Act XXXIX of 1921
[57] Act XIII of 1920
[58] Act XV of 1921
[59] Act XXVI of 1921
[60] Act XII of 1920
[61] Act VI of 1921
[62] Act VIII of 1921
[63] Act X of 1921
[64] Act XLVI of 1921

VI. Impact of Treaty of Trianon on the contracts already concluded

This chapter reviews the provisions of the Treaty of Trianon that directly or indirectly affect the contractual relations of citizens and companies.

The peace treaty provides examples of both legislative and executive forms of state intervention.

Previously, it was uncommon for the state to restrict the freedom of contract of the contracting parties by mandatory rules,[65] and it was particularly rare for the state to alter the obligations of the parties to a contract or the rights they were contractually entitled to in respect of the contract. The public authorities expected the parties to behave in accordance with the terms of the contract, and this was taken to the level of a principle in the pacta sunt servanda. The state has not seen any justification to intervene in the legal relations of private parties, either through legislation or enforcement. Even in Roman law, there were only exceptional examples of such intervention, and later only in a limited number of cases - public utility contracts, outbreaks of war.

A not negligible part of the provisions of the Treaty of Trianon are the norms affecting private law contracts (hereinafter "contracts").[66] These include provisions which are specific to the contracts[67] and provisions which primarily affect Hungary and only indirectly affect the contracts.[68] Even more indirectly affect contracts the norms which have a procedural dimension,[69] establish a forum for the administration of justice or concern the jurisdiction of the courts.

1. Purposes

The peace treaty aims to achieve several objectives by establishing rules that also affect private contracts. We present the provisions relevant to our topic, grouped according to the most typical

[65] By freedom of contract we mean, on the one hand, the freedom to conclude a contract and, on the other hand, the freedom to choose a partner, the freedom to determine the content of the contract, i.e. the possibility for the parties to determine their rights and obligations and the right to choose the type of contract they wish to conclude.
[66] Parts VIII-XII contain such norms in Articles 161 to 314.
[67] See points 2 to 5
[68] See e.g. point 6 on the adverse effect of the provisions of the peace treaty restricting Hungary and point 7 on the adverse effect on contracts of the economic environment created by the peace treaty
[69] Of the procedural provisions of the peace treaty, the provisions establishing law enforcement forums, affecting the jurisdiction of the courts, the rules on the enforceability of judgments and the rules overruling judgments, as well as the rules ordering the suspension of war measures, which are described in point 8 of the study, concern private contracts.

objectives. First of all, the provisions of the peace treaty having a military purpose and also affect private treaties are mentioned (point 2). In many cases, the provisions preventing possible discrimination against companies and corporations of the victorious countries explicitly refer to contractual relations (point 3). Through the development of the state of war, many contracts - cross-border contracts in our modern terms - became concluded between the parties of the hostile states, and the peace treaty also contains provisions on contracts between enemies, in order to take account of the impact of this change (point 4). A well-defined group of provisions in the peace treaty also provides the possibility to treat certain contracts in a war situation (point 5). Some of the measures of the peace treaty striking Hungary also have an indirect negative impact on certain contractual relations (point 6).
The economic environment created by the peace treaty also had a negative impact on some of the contracts (point 7). Even certain procedural provisions had a substantive legal value (point 8).

In the following, we will present the provisions of the peace treaty that are relevant to our research, one by one, according to the objectives outlined. A separate subpoint at the end of each topic summarises the impact of the provisions presented on the contracts.

2. Provisions of the peace treaty that have a military purpose but also affect private contracts

This chapter reviews the provisions of the peace treaty that were aimed at limiting Hungary's military capabilities and preventing the country from the possible rearming, and which affected existing contractual relations or applied thereto. The peace treaty contained a number of prohibitive and restrictive provisions, the common feature of which was that they applied to the production or trading of a product which could be used in war.

2.1. Restrictions on equipment suitable for military purposes

Pursuant to Article 115 of the peace treaty: „Manufacture of arms, munitions and war material shall only be carried on in one single factory, which shall be controlled by and belong to the State, and whose output shall be strictly limited to the manufacture of such arms, munitions and war material as is necessary for the military forces and armaments referred to in Articles 104, 107, I13 and 114. The Principal Allied and Associated Powers may, however, authorise such

manufacture, for such a period as they may think fit, in one or more other factories to be approved by the Commission of Control referred to in Article 137. The manufacture of sporting weapons is not forbidden, provided that sporting weapons manufactured in Hungary taking ball cartridge are not of the same calibre as that of military weapons used in any European army. Within three months from the coming into force of the present Treaty, all other establishments for the manufacture, preparation, storage or design of arms, munitions or any other war material shall be closed down or converted to purely commercial uses. Within the same length of time, all arsenals shall also be closed down, except those to be used as depots for the authorised stocks of munitions, and their staffs discharged.[70]

According to Article 117 of the peace treaty, it is prohibited for any association, organisation, institution or private person to possess, purchase or deal in arms, munitions or any other war material. Under Article 118 of the peace treaty, the importation into or the exportation from Hungary of arms, munitions and war material of all kinds[71] is forbidden. Article 123 of the peace treaty extended the export ban even to certain used products.[72]

2.2. Evaluation of rules from the perspective of contracts already concluded

The ban on the domestic production of military equipment[73] removed the opportunity for external suppliers who, as manufacturers of components that could also be used in the military industry, could have achieved a higher production volume and increased the economic viability of their activities. A further disadvantage was that military innovations could have been transferred over time to 'peaceful' production.

Among the provisions of the peace treaty that had military purposes but restricted freedom of contract in certain areas of economic life, we have also mentioned prohibitions and restrictions

[70] According to Article 8 of the peace treaty, "the manufacture of munitions and war material by private companies is a matter of serious objection." A more severe restriction was the limitation of quantity, e.g. the production of munitions must be strictly limited to the amount necessary for the numbers and armaments specified in Articles 104, 107, 113, and 114 (Article 115). Article 104 limited the number of Hungarian troops to 35,000. Article 107 capped the number of gendarmes, treasury guards, forest guards, municipal and town police and other similar forces at the 1913 level. Article 113 dealt with the armament of the Hungarian army, Article 114 with the ammunition of the Hungarian army.

[71] By listing in 37 points, Article 4 of Act XI of 1921 defines broadly - almost extensively - what constitutes war material for the purposes of the prohibition, including mobile kitchens and clothing of a military nature. It can be seen that the Hungarian legislator has acted as expected, recognising that export restrictions will reduce the potential markets for Hungarian industry and put domestic production at a disadvantage in terms of economies of scale.

[72] Pursuant to Article 123 of the peace treaty „Articles, machinery and material arising from the breaking up of Austro-Hungarian warships of all kinds, whether surface vessels or submarines, may not be used except for purely industrial or commercial purposes. They may not be sold or disposed of to foreign countries."

[73] According to Article 119 of the peace treaty, e.g. armoured cars, tanks or other similar machines serving military purposes may not be produced.

which - going beyond the purposes that could still be justified from a military point of view - affected not only the extent but also the manner of the production and trade in war materials, thus affecting the position of the contracting parties and restricting their rights. The provision allowing only state-owned factories to produce munitions adversely affected private companies also engaged in the production of munitions, because they could not perform their existing contracts. Such enterprises were forced to cease their activities or to limit them to peaceful activities.

The restriction on the manufacture of hunting weapons by calibre has limited the activities of hunting weapons manufacturers and has also reduced their sales opportunities compared to foreign manufacturers authorised to produce the full range of weapons.

The prohibition on buying and selling by all entities has drastically limited freedom of contract. The peace treaty explicitly prohibited Hungary and Hungarian businesses from foreign trade in munitions and war material.

2.3. General restrictions which affected certain contracts depending on the choice of the Reparation Commission

In Part VIII of the peace treaty, Hungary acknowledged its responsibility for war damages[74] and undertook to make reparation for them for a period of thirty years from 1 May 1921.[75] It was a particular interpretation of the legal relationship between debtor and creditor, since the method of settlement of the debt could be determined by the Reparation Commission[76], and the costs incurred by the occupying army after the armistice of 3 November 1918 were made an obligation[77] , and Hungary was obliged to agree to the „direct use of its economic resources for reparation."[78] The freedom of contract of some companies could be affected in an unpredictable way by the fact that, in the context of war reparations, their products could be included by the Reparation Committee in the assets to be used to settle debts.

Hungary also had to provide economic data.[79]

[74] Article 161
[75] Article 163
[76] „…whether in gold, commodities, ships, securities or otherwise" Article 165
[77] Article 165
[78] Article 166
[79] Article 170

3. Provisions preventing and/or favouring to the greatest extent the possible discrimination against companies and firms from the winning countries and their impact on the contracts

The peace treaty mapped out situations, with a high degree of pessimism mixed with foresight, in which it was considered to be possible that, in the future, a defeated Hungary might wish to discriminate natural persons or companies resident in the victorious states.

3.1 Prohibition of discrimination

In many areas of business life, Hungary was prohibited from adopting legislation that discriminated against the mentioned individuals. Although Hungary was the direct addressee of the ban, the prohibition of discrimination benefited the economies of the victorious powers, while companies based in Hungary were adversely affected, and there was no prohibition on possible discrimination against them abroad.

The obligation also applied to specific companies:

- insurance companies, which was established during the time of the former Austro-Hungarian Monarchy but which had their registered seat in a successor state after the war, could carry on their activities in Hungary,[80]
- the aircrafts of the Allied and Associated Powers could use the domestic airports of Hungary.[81]

3.2 Preferences

In a remarkable number of cases, the peace treaty deals with the protection of the interests of citizens of the Allied and Associated Powers, often including their companies. In this context, the victorious powers sought to avoid discrimination against their citizens compared to those of other countries, but sometimes they granted themselves, often their companies, the most-favoured-nation treatment. Sometimes, they required the application of the most favourable duty rates that existed before the war, and which may not have been in force at the time of the peace treaty, and occasionally provided for benefits that were difficult to justify.

[80] Article 255
[81] Article 262

The peace treaty also contains provisions which compare the provisions applicable to citizens and enterprises of the Allied and Associated Powers at the time of entry into force of the peace treaty and thereafter with those applicable to others at an earlier date, and require Hungary to apply no more adverse measures to citizens and enterprises of the Allied and Associated Powers in the future than the ones it has applied to others in the past[82]. The dates indicated in the provisions are those of the beginning of the war.

a) In the first six months after the entry into force of the peace treaty, and for thirty months in case of certain products, the rates of duty applicable to articles of importation of the Allied and Associated Powers could not be higher than those applicable to articles of importation of the Austro-Hungarian Monarchy on 28 July 1914.[83]
b) Hungary had to undertake not to subject the citizens of the Allied and Associated Powers to any restriction which was not applicable on 1 July 1914, to the citizens of such Powers unless such restriction is likewise imposed on its own citizens.[84]
c) Hungary undertook to secure to the Allied and Associated Powers, and to the officials and citizens thereof, the enjoyment of all the rights and advantages of any kind which the former Austro-Hungarian Monarchy granted to Germany, Austria, Bulgaria or Turkey.[85]

3.3 Evaluation

The prohibition of discrimination is an acceptable solution in today's eyes. It should be noted, however, that this requirement was far from general at the beginning of the 20th century. The principle of most-favoured-nation treatment is usually the subject of international treaties. The peace treaty deprived Hungary, to a certain extent, from the possibility of deciding with which states to conclude a most-favoured-nation treaty. It is reasonable to expect Hungary to guarantee the freedom of enterprise. Providing additional benefits to the citizens of the victorious states over and above this seems rather an excessive demand of the victorious powers. Since the benefits were not laid down in bilateral international treaties but in the peace treaty, reciprocity did not apply. Hungarian companies in the victorious states did not receive the same favourable

[82] The phrase used refers to all companies in which citizens of the Allied and Associated Powers hold shares.
[83] See impact of the provision on the companies in point 6.1.a)
[84]'Hungary undertakes:
(d) Not to subject the nationals of any one of the Allied and Associated Powers to any restriction which was not applicable on July 1, I9I4, to the nationals of such Powers unless such restriction is likefwise imposed on her own nationals.' [Article 211 d)]
[85] Article 226

treatment as companies of the victorious states in Hungary. This lack of reciprocity reduced the profitability of Hungarian companies (also) engaged in foreign trade, and thus their competitiveness in comparison with companies of the victorious states.

It is unjustifiable to expect Hungary to grant to the companies of the Allied and Associated Powers the rights, advantages and benefits which Hungary or the Austro-Hungarian Monarchy granted before the war. The peace treaty made no distinction as to whether the rights and advantages were still in force at the time of the peace treaty or not. Companies based in Hungary were disadvantaged by these provisions because they had to compete with companies from the victorious powers for which their state had won the benefits declared during the peace years, in an era very different from the "happy peacetime".

4. Provisions on contracts between enemies

The peace treaty pays attention to the fact that the war between any one of the Allied and Associated Powers and the Austro-Hungarian Monarchy[86] is a specific period regarding contracts. The state of war between the countries may have an impact on the performance of contracts. Articles 234-236 of the peace treaty provide for a wide range of situations and envisage several consequences.

4.1. Dissolution of contracts

The peace treaty declares that contracts become invalid from the moment that any two parties have become enemies. Invalidity is only a general rule, it does not govern pecuniary obligations or the acts stipulated in the treaty. The two categories of treaties cannot be considered invalid either.[87]

- The contracts[88] listed in the annex of the peace treaty and contracts described in Article 234(c) to (e) or the acts performed under a contract are not rendered invalid by the formation of a hostile relationship between the parties.

[86] Article 238 of the peace treaty considers the period between the commencement of the state of war and the coming into force of the peace treaty as a war.
[87] Article 234(a)
[88] Based on the annex on the one hand contracts regarding the fulfilment of the transfer of movable and immovable property, leases and agreements for leases, contracts of mortgage, pledge or lien, concessions concerning mines, administrative contracts – among the others – are an exception and thus remain valid, on the other hand there are special rules applying for stock exchange transactions, securities and negotiable instruments, insurance contracts.

- Contracts to which one of the contracting parties is a national of an Allied and Associated Power shall be deemed to be in force even outside this scope if the Government of an Allied and Associated Power requires the performance of the contract.[89] The performance of a contract may be required only in the public interest and only within six months of the entry into force of the peace treaty.

4.2. Considering the state of war

The peace treaty takes into account that the state of war strongly affects deadlines, making it difficult, sometimes impossible, for any party to fulfil its treaty obligations on time. The peace treaty provides for two types of legal consequence if the time limit applicable to one or other of the parties passed ineffectively. In some cases, the interruption of time limit is declared, with the legal consequence that the time limit cannot be regarded as having expired. In the second case, the peace treaty does not call into question the expiry of the time-limit, but allows for claiming an extension of the time-limit for the conduct which has not been performed.

4.2.1 Interruption of time limits

In relations between enemies, the duration of the war shall be deemed that the time limits have been interrupted by the provision of the peace treaty. The peace treaty refers to prescription, 'time-barred'[90] limits and limitation of right of action, and includes time limits for the presentation of interest and dividend coupons and repayable securities. The interruption of a time limit occurs irrespectively of whether the starting date of the time limit falls before or after the beginning.

4.2.2. Grace period for performing certain acts in relation to securities

As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment or to give notice of non-acceptance or nonpayment. A period of not less

[89] 'Any contract of which the execution shall be required in the general interest, within six months from the date of the coming into force of the present Treaty, by the Government of the Allied or Associated Power of which one of the parties is a national, shall be excepted from dissolution under this Article. When the execution of the contract thus kept alive would, owing to the alteration of trade conditions, cause one of the parties substantial prejudice the Mixed Arbitral Tribunal provided for by Section VI shall be empowered to grant to the prejudiced party equitable compensation.' [Article 234(b)]

[90] Presumably, the deadlines referred to today as preclusive time limits are to be understood by the concept of an time-barred limit.

than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment or protest may be made.[91]

4.3. Restoration of the rights which have been prejudiced or compensation

a) Certain provisions of the peace treaty refer to citizens of the the Allied and Associated Powers who failed to perform any act or comply with any formality during the war and as a result measures of execution have been taken in the territory of the former Kingdom of Hungary to their prejudice. The peace treaty provides them legal remedy. To do this, they could submit an application to the Mixed Arbitral Tribunal.[92] The peace treaty does not refrain from prejudice when it states that in cases where having regard to the particular circumstances of the case, such restoration is equitable and possible, the restoration of the right of the victim shall be ordered, in other cases the Mixed Arbitral Tribunal may grant compensation to be paid by the Hungarian Government.[93] Where a contract has been dissolved, the Mixed Arbitral Tribunal may also grant compensation.[94]

b) With regard to the contracts which remain in force, the peace treaty has made it possible to grant compensation as a consequence.[95] Under the peace treaty, an law enforcing body may order a contracting party to grant compensation to correct the imbalance between the contracted service and the consideration due to external circumstances.

[91] 'As between enemies no negotiable instrument made before the war shall be deemed to have become invalid by reason only of failure within the required time to present the instrument for acceptance or payment or to give notice of non-acceptance or nonpayment to drawers or indorsers or to protest the instrument, nor by reason of failure to complete any formality during the war. Where the period within which a negotiable instrument should have been presented for acceptance or for payment, or within which notice of non-acceptance or non-payment should have been given to the drawer or indorser, or within which the instrument should have been protested, has elapsed during the war, and the party who should have presented or protested the instrument or have given notice of non-acceptance or non-payment has failed to do so during the war, a period of not less than three months from the coming into force of the present Treaty shall be allowed within which presentation, notice of non-acceptance or non-payment or protest may be made.' (Article 236.)

[92] See point 8.1.

[93] Article 235 (b) and (c)

[94] 'Where a contract between enemies has been dissolved by reason either of failure on the part of either party to carry out its provisions or of the exercise of a right stipulated in the contract itself the party prejudiced may apply to the Mixed Arbitral Tribunal for relief. The Tribunal will have the powers provided for in paragraph (c).' [Article 235 (d)]

[95] „When the execution of the contract thus kept alive would, owing to the alteration of trade conditions, cause one of the parties substantial prejudice the Mixed Arbitral Tribunal provided for by Section VI shall be empowered to grant to the prejudiced party equitable compensation." [Article 234(b), second paragraph]

4.4. Evaluation from the perspective of contracts already concluded

Given the circumstances of the war, declaring certain treaties invalid is a rational legal consequence. Article 234(a) of the peace treaty reflects, in my view, progressive legal thinking. The peace treaty recognises that the development of hostilities between the parties in the context of war constitutes a change from the situation at the time of the conclusion of the contract, namely that the performance of contracts may, as a result of a change in commercial relations, cause a significant difficulty for one of the contracting parties and thus a prejudice. The mere fact that the Government of the Allied and Associated Power demands performance of the contract is not a circumstance which may serve as a basis for handling the contract differently, ignoring the invalidity applicable as a general rule. This category of exceptions is supported only by the victory in war.

The interruption of the time limits and the granting of a grace period are justified by the circumstances of the war. Compensation is not a suitable legal instrument for dealing with the change in property relationships caused by war-related circumstances, given the absence of the conditions mentioned above.

Provisions of the peace treaty described in points 4.1.-4.3. – apart from the rule[96] with regard to insurance companies – cannot be characterised with reciprocity, granting benefits only to citizens of the Allied and Associated Powers. Therefore, these provisions can only partly be considered as a legislator's intervention providing remedy for problems arising from aggravating contractual obligations due to the war. Rather, in the rules cases of reparation for the losing state can be seen, with particularly strong links to the treaties. Nonetheless, the provisions presented here suggest that a process has been set in motion which recognises that, in wartime conditions, the principle of pacta sunt servanda cannot be maintained. Certain conducts cannot be expected in wartime and, therefore, the same consequences cannot be attached their failure to be realized as in the time of peace.

Applying the phrase „substantial prejudice owing to the alteration of trade conditions" prescribed as a condition for compensation describes a forward-looking situation where the circumstances of war require state intervention, but the manner of intervention seems to be a matter of concern. In such situations, there is no unlawful conduct on the part of the undertaking liable to pay compensation and no causal relationship between the conduct and the damage can

[96] Article 255.

be established. The prospect of applying a compensation sanction is not an adequate response to the real problems.

On the one hand, the peace treaty intervenes through legislation in the contractual relations of the parties (declaring the invalidity of the treaty and the interruption of time limits, authorisation for remedying acts omitted during the war), and on the other hand, it authorises a body – the Mixed Arbitral Tribunal – to examine the circumstances and, on the basis of an analysis of the situation, to amend the rights and obligations of the parties (restoration of the right of the prejudiced party) or to grant compensation. The peace treaty thus includes both instruments of intervention of the modern state – the legislator's and law enforcer's intervention. The drafters of the peace treaty did not endow the state courts, but newly created decision making bodies with the power to amend treaties. In the light of the precedents outlined above, it would have been difficult to made the courts accept the powers to be given to them, and the victorious powers did not trust the Hungarian courts to enforce the provisions of the treaty against Hungarian-based companies. It is an appreciable idea even today that fora established by the peace treaty were endowed with powers to amend contractual provisions in order to adjudicate legal disputes arising from contracts due to state of war, and certainly contributed to the fact that legislators later would consider giving the courts a similar power in peacetime. The solution therefore had some forward-looking elements.

It is unfortunate that all this only applied in the context of treaties in hostile relations, and only citizens and companies of the Allied and Associated Powers benefited from it.

5. Managing certain existing contracts due to the war situation

5.1. Circumstances adversely affecting the performance of obligations

In the peace treaty there are also provisions which make the same legal consequences, or the legal consequences very similar to the those applied to contracts between enemies more widely applicable than the contracts between enemies presented in the previous in response to the effect of war on contracts.

5.1.1. Annulling contracts

Based on the peace treaty, contracts for the sale of goods for delivery by sea between persons and companies of certain nationality are annulled.[97]

5.1.2 Nullity of contracts

The consideration of the impact of war on industrial property is particularly strong. Each of the Allied and Associated Powers reserved the right to

- treat as void and of no effect all the transfer dealing with rights of or in respect of industrial, literary or artistic property effected after July 28, 1914,[98]
- during 1 year after coming into force of the peace treaty
  - = all omissions can be made good free of charge, not only for the purpose of acquiring rights but also for opposing the acquisition of rights[99]
  - = the people concerned to acquire all the rights they would have had if the war had not broken out[100]

5.1.3 Contracts considered cancelled

Licences shall be considered as cancelled as from the date of the existence of a state of war.[101]

5.1.4 Calculating time limits

The period of war is excluded from time within which patents should be worked or a trade-mark or design used.[102]

5.1.5 Transfer of shares in companies

Hungary undertakes not to impede in any way the transfer of property, rights or interests belonging to a company incorporated in accordance with the laws of the former Austro-Hungarian Monarchy, in which Allied or Associated citizens are interested.[103]

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[97] 'All contracts for the sale of goods for delivery by sea concluded before January 1, 1917, between nationals of the former Kingdom of Hungary of the one part and the administrations of the former Austro-Hungarian Monarchy, Hungary, or Bosnia-Herzegovina, or Hungarian nationals of the other part shall be annulled, except in respect of any debt or other pecuniary obligation arising out of any act done or money paid thereunder. All other contracts between such parties which were made before November 1, 1918, and were in force at that date shall be maintained.' (Article 251.)

[98] Article 241.

[99] Article 242.

[100] Article 242.

[101] Article 245.

[102] Article 242.

[103] 'Hungary undertakes not to impede in any way the transfer of property, rights or interests belonging to a company incorporated in accordance with the laws of the former Austro-Hungarian Monarchy, in which Allied or Associated nationals are interested, to a company incorporated in accordance with the laws of any other Power, to

5.2. Default remedies

The peace treaty declared that during the war citizens of the Allied or Associated Powers cannot be prejudiced on account of failure to perform any act or comply with any formality which were imposed by Hungarian law generated after the armistice and before the entry into force of the peace treaty. The provision protected not only the citizens of the Allied and Associated Powers, but also the companies and associations in which these citizens had an interest.[104] The provision unilaterally granted an advantage which was exempted from the consequences of a failure and – exceeding the generally acceptable expectation of non-discrimination – was difficult to justify.

5.3. Evaluating the potential for intervention in contract types from a business perspective

The peace treaty heavily interfered in the contractual relations of the parties in view of the war situation. This interference was manifested in ignoring the contracts (declaring certain contracts dissolved or void and of no effect) and in the flexible treatment of time limits. The circumstances of war are essential and make performance difficult. In view of this, even the termination of the contractual relationship does not appear to be an unjustified legal consequence and the declaration of the interruption of time limits or granting of a grace period were also justified. It is another matter that the legal consequences provided for by the peace treaty do not affect equally all the contracting parties, who were equally affected by the difficulties of the state of war. The peace treaty protects the interests of the citizens and companies of the Allied and Associated States and contains provisions favourable to them. The peace treaty is silent on the prejudices suffered by Hungarian citizens and companies based in Hungary as a result of the war.

In some cases, the peace treaty contains a provision obliging Hungary to compensate Hungarian citizens and companies based in Hungary for losses caused by benefits granted to citizens and companies of the Allied and Associated States. As regards compensation, it must also be stated that there was no causal link between the previous conduct of the Hungarian State and the obligation to compensate, and that compensation was in fact a provision which was applied –

facilitate all measures necessary for giving effect to such transfer, and to render any assistance which may be required for effecting the restoration to Allied or Associated nationals, or to companies in which they are interested, of their property, rights or interests whether in Hungary or in transferred territory.' (Article 253.)

[104]Article 232.

incorrectly – instead of reparation, and which was imposed on the losing party in the war. The Hungarian State was not in a financial position to compensate its citizens and companies for the damage caused to them by the provisions of the peace treaty.
The complicated, manyfolded regulation caused uncertainty for the companies regarding the existence, the effect, validity of their contracts.

6. Cascading effects of the provisions in peace treaty restricting Hungary on companies' private contracts

Contrary to the provisions described in points 2 to 5 of the study, the rules presented in this section do not directly affect the contracts. Despite the lack of a direct link, some of the measures of the peace treaty affecting Hungary also have an adverse effect on certain treaty relations by way of leverage effect.

6.1. Restriction of autonomy in customs

Part X of the peace treaty contained several articles on the rates of duties and charges.[105]

a) They provided, among other things, that the favours granted to one country must be granted to the Allied and Associated States[106], and that Hungary must grant the most favourable tariffs applied before the war to the countries victorious in the war for a period of six months, or thirty months for certain commodities, without reciprocity. These provisions affected the profits of the activities of foreign trade companies and caused discrimination between businesses specialising in foreign trade with certain countries, irrespective of the standards of their activities.
b) The peace treaty, together with the Monarchy, also abolished the customs union within the Monarchy. The customs union resulted in exemption from customs duties on goods circulating within the Austro-Hungarian Monarchy and high duties on goods from outside the Monarchy. Duties imposed on imports benefited the Monarchy's producers. For Hungary, the customs union promoted the development of agriculture and the food industry. As a result of the peace treaty, Hungarian businesses had to compete with imported products without imposed customs duties, and Hungarian businesses dealing

[105] Articles 200 and 201.
[106] Article 203.

with agricultural products were in a particularly unfavorable situation. As a result of the abolition of the customs union, Hungarian-based companies did not enjoy a price advantage over imported products, while other countries were not barred from subsidising their exports to Hungary and from protecting themselves against imports of Hungarian products by imposing high customs duties.

6.2. Reparation

In Part VIII of the peace treaty, Hungary acknowledged its responsibility for loss and damage[107] caused in the war and undertook to make reparation for them for a period of thirty years from 1 May 1921.[108] A specific interpretation of the legal relationship between debtor and creditor was meant by that the method of settlement of the debt[109] could be determined by the Reparation Commission[110], but also that the reimbursement[111] of the costs incurred by the occupying army after the armistice of 3 November 1918 was made obligatory and Hungary was forced to agree to „the direct application of her economic resources to reparation.[112]

For Hungarian companies, the reparation to be paid by Hungary under the provisions of the peace treaty referred to was a double risk. On the one hand, the Reparation Commission might have included their products in the scope of reparations, thus making it more difficult for them to fulfil the contractual obligations they had previously undertaken. On the other hand, the Reparation Commission may have included in the scope of reparation coal, other raw materials and components necessary for the production process, thus halting or delaying the continuous production. The reparation was therefore an external circumstance potentially hindering the performance of the contract which the businesses were not able to foresee. The withdrawal of raw materials and/or finished products into the scope of reparation may have resulted in the economic impossibility for the business concerned to perform its contracts already concluded. As regards reparation, it can also be observed that the aftermath of the war following the peace treaty was by no means more predictable than the state of war.

6.3. Discharging debts and security

[107] Article 161.
[108] Article 163.
[109] „… in gold, commodities, ships, securities or otherwise" Article 165.
[110] Articles 163-164 and 173(c) of the peace treaty and the related annexes refer to the Reparations Committee.
[111] Article 165.
[112] Article 166.

Hungary had to repay its debts from before and accrued during the war and the portion of the common debt burden of the Austro-Hungarian Monarchy that Hungary was obliged to pay.[113] „[T]he first charge upon all the assets and revenues of Hungary shall be the cost of reparation and all other costs."[114] This provision of the peace treaty presented primarily a threat to state-owned enterprises and introduced significant uncertainty to the fulfilment of the contracts they had undertaken. Declaring the revenues as collateral reduced the possibility for the Hungarian State to centrally support the economic recovery and revitalisation, which would have been particularly needed by the companies.

7. The negative impact of the economic environment created by the peace treaty on contracts

7.1. Shortage of raw materials and overcapacity

As a result to the peace treaty Hungary lost most of its raw material resources,[115] which has caused serious difficulties in the performance of contracts. On the one hand, the shortage of raw materials made it more difficult for companies to obtain supplies and, on the other hand, the obligation to offer foreign currency meant that even companies producing for export did not automatically have foreign currency, possessing which they could easily conclude contracts for the purchase of raw materials abroad.[116]

Hungary has also lost a large part of its markets. „In many industries, such as milling, sugar, beer, leather, agricultural machinery industry, the capacity of plants in truncated Hungary were far greater than the remaining sales potential."[117] Around 70% of the Hungarian milling

[113] The two claims of the victorious powers amounted to 15.7 billion Crowns.
[114] Article 180.
[115] „Due to territorial changes, the mining of a number of raw materials (rock salt, petroleum, bauxite, gold, silver, copper, zinc, antimony and manganese) has been completely or temporarily ceased." (János HONVÁRI, XX. századi magyar gazdaságtörténet (20th century Hungarian economic history), AULA, Budapest, pp. 21-22) "Salt mines without exception, most of the stone mines, and iron ore mining remained almost entirely in the annexed territories." (RAFFAY, Ernő: Trianon titkai avagy Hogyan bántak el országunkkal (Trianon's Secrets or How our country was treated) Tornado Dannenija, Budapest 1996. p. 158)
[116] See more detail MISKOLCZI BODNÁR, Péter: A háború és a béke közvetlen és közvetett hatása (The direct and indirect impact of war and peace) in A közép-európai országok együttműködése: 1920-2020 (Cooperation between Central European countries: 1920-2020) Miklósné Zakar Andrea – Manzinger Krisztián – Becsey Zsolt László (ed.) Károli Gáspár Református Egyetem Állam- és Jogtudományi Kar, Budapest (Károli Gáspár University of the Reformed Church in Hungary, Faculty of Law and Political Sciences, Budapest) 2021. p. 13-42.
[117] VARGA, István: Csonka-Magyarország gazdasági fejlődése (The Economic Development of Truncated Hungary) Budapest 1932. p. 3-10. in Hungarian Economic History Collection XVIII-XX. century FARAGÓ, Tamás – KÖVÉR, György (ed.) Aula, Budapest 2003. p. 348.

capacity, which was even globally significant before the First World War, became unused.[118] As a result of losing markets, overcapacity in businesses processing agricultural products made production more expensive and put them at a competitive disadvantage with regard to businesses in the successor states, whose capacity was not tailored to the needs of the Austro-Hungarian Monarchy but to the needs of the successor state.

7.2. International treaties

Treaties concluded between Hungary or the Austro-Hungarian Monarchy on the one hand, and Germany, Austria, Bulgaria or Turkey[119] on the other hand, and with Russia and Romania on the other hand, were considered invalid.[120]

The peace treaty listed exhaustively which treaties concluded by the Austro-Hungarian Monarchy were applicable to Hungary,[121] which were re-applicable,[122] and which treaties Hungary had to accede to.[123] The provisions of the peace treaty relating to international treaties indirectly adversely affected those companies, which, during the war, acquired property which, before the war, had belonged to citizens or companies of the Allied and Associated Powers. These holdings were not to be retained even if realistic considerations had been paid for them.

8. Procedural provisions

It was obvious that the victorious powers were not confident that the Hungarian courts would apply the provisions of the peace treaty properly, so they removed many cases from the jurisdiction of the courts and instead left the decision to newly established bodies, which

[118] On the overcapacity of the Hungarian milling industry, see MISKOLCZI BODNÁR, Péter: A magyar malomipar Trianon előtt és után (The Hungarian milling industry before and after Trianon) pp.134-160 (electronic conference volume) 100 rokov Trianonskej zmluvy - diplomacia, stat a pravo na prelome JUDr. Erik Stenpien, Ivan Svatuske (eds.) Kosice 2021.
MISKOLCZI BODNÁR, Péter: A műszaki haladás, a jogi környezet és az állami intézkedések kapcsolata a 19. századi magyar malomipar példáján (The relationship between technical progress, the legal environment and state measures in the example of the 19th century Hungarian milling industry) in: Andó Éva – Csillik Péter - Kovács Róbert (eds.) Egymillió karakter a fenntarthatóságról II. (One million characters on sustainability II) Károli Gáspár Református Egyetem Gazdaságtudományi, Egészségtudományi és Szociális Kar, Budapest (Károli Gáspár University of the Reformed Church in Hungary, Faculty of Economics, Health Sciences and Social Sciences, Budapest) 2023. pp. 117-134.
[119] Article 225 of the peace treaty applies to treaties concluded after 1 August 1914.
[120] Article 226 of the peace treaty applies equally to treaties concluded before or after 28 July 1914.
[121] Article 217.
[122] Articles 218-221.
[123] Articles 222-223.

included representatives of the Allied and Associated Powers. In many cases, the new bodies were also empowered to overrule the judgments of the Hungarian courts.

8.1. Establishment of judicial forums and determination of their powers

a) In many places, the peace treaty empowers the Mixed Arbitral Tribunal, or an arbitrator appointed by it, to adjudicate certain disputes, including, where appropriate, the right to overrule judgments. The main provisions concerning the Joint Arbitral Tribunal are contained in Section VI of the peace treaty. The three-member tribunal are composed of one member appointed by each of the Governments concerned and its president chosen jointly by the two Governments. In the absence of agreement, the President shall be a national of a country neutral in the war, appointed by the Council of the League of Nations. The peace treaty transferred to the jurisdiction of the Mixed Arbitral Tribunal the disputes listed in Sections III, IV, V and VII of Part X of the Peace Treaty, thus significantly reducing the role of the courts that would otherwise have competence.
b) The debts between nationals[124], the capital and interest claims arising from securities[125] had to be settled through the mediation of Clearing Offices. All direct contact or payment by circumventing the Clearing Offices were prohibited.

8.2. Empowerment of the Mixed Arbitral Tribunal to overrule judgments and determine the legal consequence - compensation, restitution

8.2.1. Reconsidering judgments delivered during the war

There is a provision in the peace treaty for cases where a party to a proceeding has failed to defend itself during the war and has suffered prejudice as a result. This situation is also a consequence of the war after the conclusion of the treaty, unforeseeable by the parties. In such a case, the Mixed Arbitral Tribunal may grant compensation, a legal consequence which may be appropriate to deal with a situation where a national or company of a hostile country may face real difficulties in a lawsuit during the war. Unfortunately, reciprocity was lacking here as well, the rule presented was applicable only where a judgment was given by a court of the Kingdom of Hungary against a person who was unable to defend himself in the proceedings

[124] As regards debts, the rule applied to debts that were payable both before and during the war.
[125] Article 231.

during the war, and who was a national of the Allied and Associated Powers or against a company or association in which such a national had an interest.[126]

The peace treaty – interestingly enough – had regard only for the difficulties of defence in proceedings, i.e. it referred only to persons being in the position of defendants, although war circumstances may have influenced the position of both parties – both that of the plaintiff, and the defendant – in the proceedings in a negative way.

8.2.2. Judgments conflicting with the provisions of the peace treaty

If a judgment is contrary to the provisions set out in Section III (Debts), Section IV (Property, Rights and Interests), Section V (Contracts, Prescriptions, Judgments) or Section VII (Industrial Property) of the peace treaty, the aggrieved party shall be entitled to reparation, which is determined by the Mixed Arbitral Tribunal under Article 240 of the peace treaty, by restoring the applicant to the status he had before the judgment of the court of the Kingdom of Hungary, as far as possible.

9. Summary of the effects of the peace treaty on treaties

The peace treaty significantly restricted Hungary's freedom to enter into and terminate international treaties, its foreign, financial and customs autonomy, and its economic policy possibilities. Although Hungary is the primary subject of the obligations included in the main economic-related provisions, the restrictions also apply indirectly to certain companies – manufacturers of goods considered to be war material, foreign trade operators, public service providers, concessionaires – and thus also affect the contractual relations of such companies.

The situation of all domestic producers has been adversely affected by the fact that, with the removal of protective duties, they no longer enjoy a price advantage over foreign goods, unlike

[126] 'Judgments given by the Courts of an Allied or Associated Power in all cases which, under the present Treaty, they are competent to decide, shall be recognised in Hungary as final, and shall be enforced without it being necessary to have them declared executory. If a judgment or measure of execution in respect of any dispute which may have arisen has been given during the war by a judicial authority of the former Kingdom of Hungary against a national of an Allied or Associated Power, or a company or association in which one of such nationals was interested, in a case in which either such national or such company or association was not able to make their defence, the Allied and Associated national who has suffered prejudice thereby shall be entitled to recover compensation to be fixed by the Mixed Arbitral Tribunal provided for in Section VI. At the instance of the national of the Allied or Associated Power the compensation above-mentioned may, upon order to that effect of the Mixed Arbitral Tribunal, be effected where it is possible by replacing the parties in the situation which they occupied before the judgment was given by the Hungarian Court. The above compensation may likewise be obtained before the Mixed Arbitral Tribunal by the nationals of Allied or Associated Powers who have suffered prejudice by judicial measures taken in invaded or occupied territories, if they have not been otherwise compensated.' (Article 237)

before. The freedom of contract of some companies may have been adversely affected by the fact that, in the context of war reparations, their products could be included by the Reparation Commission in the assets for settling debts. The peace treaty deals with the protection of the interests of citizens of the Allied and Associated Powers in a striking number of cases, often including their companies. In this scope, the victorious Powers wished to avoid discrimination against their citizens in relation to those of other countries, but sometimes also secured for themselves the most-favored-nation treatment principle.

Many of the provisions of the peace treaty also directly regulate certain contractual relations in addition to the provisions that indirectly affect the contractual relations of companies. It can be concluded that the provisions of the peace treaty affected the contractual freedom of the companies more strongly than the Hungarian laws enacted during the war, and the Reparation Commission was given a wider authorisation to use certain products for reparation purposes[127] than the Government had been entitled to during the war years for war purposes.

The provisions allowing intervention in the contractual relations of the parties in view of the war situation are partly positive and partly negative. On the positive side, I consider that the peace treaty, in its part relating to private contracts, breaks with the passivity of the State, based on the principle of pacta sunt servanda, and with the neutrality towards the parties. The provisions of the peace treaty have highlighted the fact that external circumstances unforeseeable and unavoidable by the contracting parties can have a significant impact on the contractual relationship. In the context of war, many situations were described which the parties to an agreement in peacetime had been hardly thinking of. Since the parties did not foresee events that could not be foreseen in peacetime, they did not provide in their contracts for the conduct to be followed in such a situation, nor did they specify who was to be entitled to what rights, nor did they provide for how the consideration would be changed by hyperinflation, nor did they provide for what would be considered a breach of contract in a situation of war that made performance difficult or frustrated, nor what the consequences of default would be in the new situation. The peace treaty reflects the fact that the legislator does not turn a blind eye, does not ignore the changes, but sees their importance. It is hardly an exaggeration to say that the peace treaty has changed the perception of private contracts and reinforced the view that the state can interfere in the private contracts of the parties because of the war. According to our hypothesis the relevant provisions of the Peace Treaty have had a beneficial effect on subsequent private law legislation by underlining the fact that legal action to influence the

[127] The Reparation Commission could demand the transfer of ownership of Hungarian public utility companies.

contractual relations of the parties is possible and justifiable in the light of changing external circumstances.

I appreciate as another positive change the recognition that the damage caused by changes unforeseen by the parties can be dampened by legislation and law enforcement, and that the unfair situation that arises can be made fairer through state intervention. In several places in the text of the peace treaty, it can be seen that it was not only possible, but also explicitly necessary to intervene in the private legal relations of the contracting parties by creating a legal rule or by establishing and instructing arbitral forums. The essence of this new approach is that the authorities feel called upon to 'redress the upside down proportions'.

A change in external circumstances typically affects the contracting parties in opposite directions, with one party being in a better position and the other party being unaffected or explicitly disadvantaged. This situation has previously been an obstacle to the recognition of state intervention, since the re-regulation of the rights and obligations of the parties is in any event disadvantageous to one of them. After the World War, however, it was easier to reach such a decision. On the one hand, it was clear that the change in circumstances had put the legal entities of the victorious countries in a difficult situation through no fault of their own. It also became apparent that this situation could be changed, on the one hand, by creating legislation and, on the other, by establishing and empowering law enforcement forums to adjudicate the situation. The intervention, which was seen as just, could be carried out at the expense of the countries that had lost the war and of the citizens and businesses of the countries that had lost, which certainly did not seem inequitable in the light of the war damage. I believe that for the lawyers of the victorious powers, the change of attitude was made easier by the fact that their own citizens and businesses were disadvantaged in relations where the other contracting party was a national or business of a defeated country.

In addition to the change in attitude that had a positive effect on subsequent legislation, attention should also be drawn to some shortcomings.

It may be appropriate to take account of changes in circumstances and, if necessary, to justify intervention in the legal relationship of the parties by legislation or by the law enforcement. Most of the situations described in the study can indeed justify an intervention of authoritative nature, and many of the modalities set out in the peace treaty are acceptable. However, it is difficult to ignore the fact that the majority of the provisions of the peace treaty in question serves only for the benefit of the victorious states, their citizens and their businesses. In many of these situations, the war and the state of war also affected the losing countries, their citizens

and their companies, but in such situations the drafters of the peace treaty only exceptionally provided similar remedies and benefits. This lack of reciprocity can be observed even in such rare cases where the obligation laid down in the peace treaty served for the benefit of the country, such as the imposition of unfair competition rules[128] or the protection of copyright, industrial property and trademarks. The citizens and companies of the victorious and losing countries were equally affected by the war in terms of the contracts they had concluded, but the legal consequences were selective. The fact that the possibility of remedy was not given equally to the contracting parties suggests that the purpose of the provisions of the peace treaty as presented was not essentially to re-arrange the situation of the parties, taking into account the war as a circumstance hindering the performance of contracts, but to extend the obligation of reparation of the losing countries to situations in which the winners were disadvantaged in terms of contractual relationships. Due to the lack of reciprocity in the part of dealing with private contracts and the failure to treat the contracting parties equally, the peace treaty did not become the starting point for a new approach generally guiding in the event of external changes in circumstances, but remained a well-intentioned initiative in many respects which came to a dead end.

Due to the state of war, the use of certain goods and services by the army, or labour shortages caused by procurement difficulties or even conscriptions, performance of some contractual obligations was difficult or even impossible. Previous legislation and jurisprudence did not take into account changes that adversely affected the ability to perform obligations. It would be logical in today's perspective if the peace treaty had made provision for these circumstances, but it did not. There are no provisions in the Peace Treaty for all the situations that typically arise in wartime. One of the reasons for this – which is perhaps the most important – is that it was not possible to lay the blame on another state, even indirectly, for these measures taken by the country of the company suffering the disadvantage.

Today’s observer might have a feeling of want not only in terms of situations allowing intervention, but also regarding the arsenal of legal instruments. While there are many cases of disregard of contracts (dissolution, invalidity, termination of contracts) and the instruments of reparation, the restoration of the original situation is applied, and damages is allowed, – unjustifiably – often, the amendment of contracts is rarely included in the toolbox of

[128] The peace treaty stipulated that Hungary was obliged to take every necessary legislative and public administration measure in order to protect the goods of the Allied and Associated Powers against all forms of unfair competition and to take action against passing off.

instruments of state intervention in the context of the world war, and is only used in relation to time limits.

VII. International trends in state intervention in contracts

At the end of this chapter, the changes having taken place in the period from the Treaty of Trianon to the present day are outlined briefly. Our aim is not to give an accurate account of events, but to depict trends. Attention is drawn mainly to the typical processes.

Legislation influencing the content of contracts to be concluded in the future by means of mandatory rules shows an uneven pattern, in some periods (particularly in the socialist era) the state demands that the will of the state be asserted on a number of issues, while the number of moral and, in particular, religious-based mandatory rules tends to decrease.
For contracts already concluded, the role of enforcement is increased. The impact of judgments amending contracts can be observed in two areas, with varying weight. The courts are allowed in a narrow scope to reduce certain contractual obligations – disproportionately onerous contractual penalty, earnest money, forfeit. There is also an intensifying role for judgments in cases where the contracting parties are unable to manage the impact of changing external circumstances. Also, the latter situation is addressed by legislation on an increasingly wide scale.
Despite the many differences in the solutions adopted by the various European countries, we consider that there is a trend towards the spread of state intervention, with the depiction of which we intend to indicate that the state intervention, which became definite during the First World War and in the peace treaty, has subsequently gained much strength and has now become largely accepted, even if the possibility of judicial amendment of contracts is still restricted by law.

1. The period between the World Wars

We cannot but agree while quoting Gyula Eörsi's lines describing the tendencies, even if we consider the ideological overtones highly exaggerated. “In monopoly capitalism, both the principle of freedom of contract and the principle of pacta sunt servanda have considerably weakened. “The free market mechanism has failed to ensure equilibrium in an era of economic crises, a certain degree of protection of the economically weaker party has become an interest of the capitalist system: the state is forced to intervene more and more in the world of free contracts. Mass production led to technical and then legal standardisation: pre-printed identical

contracts, so-called standard-form contracts or adhesion contracts were created, characterised by the fact that, in relation to a draft contract drawn up by the economically stronger party, the weaker party – usually the consumer – can only choose whether or not to conclude a contract, but has little say in the terms of the contract. With such contracts, the stronger one, abusing its economic power, often imposes conditions so severe that recently the capitalist state has also taken action against serious abuses in the name of consumer protection. ... The general crisis of capitalism, with its wars, economic crises and inflation, has led to a situation in which the result of the unconditional performance of contracts has been undermined in order to protect the capitalist system: unforeseen extraordinary events can give rise to the amendment or even termination of the contract."[129]

The impact of the First World War and the subsequent global economic crisis further diminished earlier concerns about state interference in contractual relationships. State involvement, often in various ways in different countries, but increased everywhere.

In England the way of acting through acts was preferred; the content of certain contracts was modified by legislation. In the period of extremely high inflation, regarding employment contracts, the workers, regarding lease contracts, the tenants were protected. Legislation played a major role in making it generally accepted by 1943 that the termination of contracts was recognised due to frustration of performance occurring after the conclusion of the contract. In addition to the frustration of performance, jurisprudence also urged the recognition of hardship.

In Germany, they took steps even further on several issues. First, the idea of economic frustration was accepted. Economic frustration was defined as a situation in which the contract could be physically performed, but performance had become significantly more difficult than under the circumstances prevailing at the time the contract was concluded. In such situations, two solutions were used: first, the contract could be terminated by exempting the contracting party in difficulty from the obligation to perform the contract, and second, the solution was not excluded that the adverse consequences of the change in external circumstances were shared between the parties (Wegfall der Geschäftsgrundlage). This was not authorised by the German Civil Code (BGB), which retained the deduction of the legal consequences of violating the basic principles. In Germany, court judgments were given a greater role, in line with the tendency for

[129] EÖRSI, 1983. 31-32.

the judge to become more and more the implementer of the socio-political objectives of the law.

In French case law, the view was more and more widespread according to which due to hardship of the contract (imprévision) the courts were allowed to mitigate the difficulties of one of the parties.

The term “law of war” or “crisis law” has often been used in the wake of developments in the three countries cited as examples. According to Károly Szladits, the change cannot be regarded as an episode, because “in the wake of the crises that shook the world, the individualistic civil law system was substantially transformed and permeated by the public law formations ensuring the influence of the state.”[130]

2. World War II and the period thereafter

2.1 Courts' statutory power to intervene in long-term contractual relationships

2.1.1 Authorisation by the law

In this era, it became common to take into account the hardship of performance on a legislative level. It was started by the Italian legislature during World War II, in 1942. In 2002, sections 313-314 on economic frustration were added to the German BGB. The French Code civil was amended in 2016 to include Article 1195, which allows the court to amend a contract due to unforeseeable circumstances if the parties cannot agree on it. The court's statutory power extends to changing the terms of a contract that have become too onerous for one of the parties.

[130] SZLADITS, Károly: A magánjog fogalma, fejlődése és tudománya (The Concept, Development and Science of Private Law) in: SZLADITS, Károly (ed.) Magyar magánjog Általános rész Személyi jog (Hungarian Private Law General Part Personal Law), Budapest, Grill, 1941. I. 109.

2.1.2 Solution used in international treaties

Both the Unidroit Principles and the PECL provide that the court may amend the contract due to unforeseen circumstances.[131] It is an entirely different matter, that there is no such provision in the Vienna Convention on the International Sale of Goods.[132]

2.2 Increase of reasons serving as a ground for state intervention

A tendency can be observed that there is an increasing variety of circumstances that create opportunities for the state to influence contractual relations through legislation, judicial action or government measures. Whereas earlier, even in the aftermath of war, state interference in contractual relations was considered a matter of concern, more recently it has been used in the wake of natural disasters, or in the event of exceptionally high inflation, global economic crises or even the covid epidemic.

[131] Article 6.2.2 of the Unidroit Principles also opens the way to a judicial amendment of the contract on the basis of events that occurred before the conclusion of the contract but only became known subsequently. By contrast, Article 6.110 of the PECL provides for the possibility of amending the contract on the grounds of hardship in the contract only due to events occurring after the conclusion of the contract.

[132] According to the majority interpretation of Article 79 CISG of the Convention, this solution is excluded. See e.g. HONNOLD, J.: Uniform Law for International Sales under the 1980 UN Convention 2nd ed., 1994, Deventer&Boston, §423 ff,, TALLON, Denis in: Bianca&Bonell, Commentary of CISG, Milan, 1987, p. 572.

VIII. Developments in Hungary

1. Differentiated periodization

The tendency-like increase of state intervention in contractual relationships which can be observed internationally also applies for Hungary. It is also part of the country's history of never-ending series of struggles that there are periods when we witness state activity in relation to contracts that exceeds the usual European level.

1.1. 1922-1928

The most significant economic task of the era was the transition from war economy to market economy. War economy had to be wound up and economy had to be adapted to the needs of peacetime. The economy was badly affected by the decline of war industry production boosted disproportionately during the years of war, and this effect on the economy – in the way presented above – was only increased by the requirements of the Trianon peace treaty. Transition from war economy to market economy took place in Hungary with delay. "The wartime emergency measures were abolished in the Western European states around 1919-1920, but in Hungary the compulsory regulations remained in force essentially until 1924, until the stabilisation."[133] The two institutions of the war economy were abolished in January 1920, and the circulation of foreign currency was made possible once again, since "on 19 January 1920 the so-called Deviza ('Foreign Currency Exchange') Centre, which had become one of the symbols of war economy, was abolished, and the other one ... was the so-called Haditermény ('War Produce') Limited Company abolished on 1 January, so that the free circulation of agricultural products could also be resumed.[134] Unfortunately, due to the growing inflation the trend could not continue, even the foreign currency offering obligation was reintroduced, and the foreign currency received as consideration for the export product had to be offered to the Foreign Currency Exchange Centre. Exports and imports were still subject to licensing obligation in 1923-1924.

In Hungary it was not the war or leastwise not the acts of war that can be considered the main reasons for state restrictions on contractual freedom. It seems that – interestingly – the Trianon

[133] HONVÁRI, János p. 42.

[134] KORÁNYI, G. Tamás: Sztellázs ügylet ultimóra – A Budapesti Áru- és Értéktőzsde története 1864 – 1948. (Straddle transaction on ultimo – History of the Budapest Commodities and Stock Exchange 1864 - 1948.) p. 71.

Treaty and even more so the economic difficulties that escalated in the wake of the peace treaty are behind the obligations to conclude contracts and, in particular, restrictions on the parties' freedom to set out the content of the contract.

At the end of the period, in 1928, laws and drafts were passed which had a very significant impact on the content of contracts. “In many cases, the war and then the economic crisis made it necessary to use legal regulation in order to resolve the serious situations that had arisen. Situations requiring such resolution have arisen in particular in the area of debt securities. An important legislative resolution (valorisation) was made in connection with the introduction of the pengo.”[135]

In the private law bill of 1928, the economic frustration appeared. According to Section 1150, economic frustration could be deemed to exist if several conditions were simultaneously met. The prerequisite was a profound change in general economic conditions after the conclusion of the contract which significantly exceeded the normal risks of a contract and which the parties could not reasonably have foreseen. A further condition – an alternative condition – in the proposal was that, as a result of that change, the balance of the services and consideration envisaged by the parties would be upset or the other assumptions on which the contract was based would fail. As a result of any one of the alternative conditions, the third condition is that one party will make a large profit incompatible with good faith and equity and the other party will suffer a large loss. For the court, the existing conditions offered either of the two possibilities below: it could amend the parties’ obligations or empower one of the parties to withdraw from the contract.

1.2. The Great Depression

Hungary suffered a lot from the effects of the economic crisis, partly because of the delayed transition to peaceful production and partly because predominantly there were agricultural products in the economy, and the effects were also delayed. During the Great Depression, the state intervened in contractual relations mainly through government measures.

[135] HARMATHY, Attila: Szerződésmódosítás – devizaalapú kölcsönszerződés (Amendment of contract – foreign exchange based loan contract) Jogtudományi Közlöny (Gazette of Legal Science) 2016. No. 11, pp. 537-547.

1.3. World War II

During the Second World War, restrictions similar to those of the First World War were imposed, except that state intervention in the world of contracts had already begun and was more intense long before the declaration of war was sent.

1.4. The Socialist era

During the forty years of socialism, the state has interfered with the relations between the contracting parties more strongly than the civil state did during the world wars or the global economic crisis.

The socialist era favoured a system of mandatory rules, with a strong emphasis on the regulation of prohibited contracts. It was common for contracts to be subject to licensing and the approval of authorities. In many cases, there was an obligation to conclude contracts. In the socialist era, due to extensive state ownership, contracts between state-owned enterprises were characterised by mandatory rules. "Certain types of contracts (delivery contract, Section 385 (1) of the Civil Code, business contracts of economic entities Section 401 of the Civil Code), the rule was reversed, namely that the general rule was mandatoriness and that only those provisions from which the law expressly provided for derogation were dispositive."[136]
Unilateral mandatoriness has also been used as a tool to support a preferred group of people (tenants of state-owned flats, the insured persons and beneficiaries).
„The issue of changes after the conclusion of the contract appeared in many places in the provisions of the 1959 Civil Code. In some cases it was only as a consequence resulting from other rules (e.g. at the changes of prices by decision of the authority), at the design contracts as a signal of an essentially separate system of rules, elsewhere as part of a particular system (e.g. tenancy contract). On the ground of the general ministerial justification of the bill it can be concluded that the drafters of the proposal anticipated rapid economic, political, and social changes, furthermore they relied on the autonomy of the judicial practice." [137]
According to our hypothesis, the widely accepted mandatory regulation of the socialist era – to some extent – still has an effect today, partly on legislators who are more willing to apply mandatory rules and partly on those who more readily accept rules that do not allow derogation.

[136] EÖRSI, 1983, 41.
[137] HARMATHY, Attila 2016. p. 544.

1.5. The will of state regarding contracts' content after transition to a market economy

When creating contracts, the State does not, as a general rule, want to limit private autonomy, i.e. it seeks to maximise the possibility that the parties' concordant will be reflected in contractual rights and obligations.

1.6. The impact of the European Union's legislation

The legislation of the European Union has a major impact on the content of the contracts, partly directly through regulations and partly indirectly through national laws, the content of which is influenced.[138]

Private autonomy is mostly limited by the legislation of the European Union in the following three areas:

- by declaring principles
- by expecting the implementation of consumer protection standards by Member States, and
- by imposing competition law requirements.

1.6.1. Principles

Freedom of contract is part of the principle of freedom to conduct a business declared in the European Charter and is the basis for the freedom to determine content that is the subject of the present study.

1.6.2. The expectation of the implementation of consumer protection standards in the Member States

European private consumer law covers partly the rules governing business-to-consumer (B2C) contracts in general, regardless of their type (e.g. standard contract clauses), and rules on specific consumer contracts, governed typically by directives, exceptionally regulations.[139]

[138] Community rules in the form of regulations are directly applicable to national legislators and subjects of law. Directive-based Community law leaves room for national legislation, as it entrusts it to the national legislator to decide how to achieve the objectives of Community law.

[139] Regulations on the status of air passengers have been adopted, e.g. Council Regulation (EEC) No 2407/92, Council Regulation (EEC) No 2408/92, Council Regulation (EEC) No 240/92, Regulation (EC) No 261/2004 of the European Parliament and of the Council.

There is also a third set of rules, which includes specific liability rules, rules prohibiting unfair practices and provisions on comparative advertising.

European Union consumer protection law had a significant impact on consumer protection regulation in Hungary even before accession, and has a decisive influence on consumer protection legislation in member-state Hungary.

- The development of consumer protection in Hungary has been accelerated by the so-called "Europe Agreement", which Hungary signed in 1991 and promulgated by Act I of 1994. This explicitly obliged Hungary to make future legislation compatible with European rules and the acquis [cumulative body of European Community laws] as far as possible, explicitly specifying consumer protection. The document[140] adopted in Cannes in 1995 detailed the tasks of the associated Central and Eastern European countries.[141]

  In the period leading up to the accession, Hungarian legislation was very active with regard to adopting both the general rules of contract law, and the specific part of contract law, and the other European requirements.[142]
- The adoption of rapidly evolving EU consumer protection law poses a major challenge for Member States' private law legislation. "In the past quarter century, legislation protecting the consumers in private law contracts became subject to the jurisdiction of the European Union bodies. For the Member States, the increasingly intensive consumer protection legislation gives some autonomy in the transposition of guidelines only."[143] The list of European directives[144] defines the legislation tasks for the Member States. Compared with other areas of law, the codifiers had considerably less room for manoeuvre.

From the point of view of the Member States, EU consumer protection rules are very similar to the mandatory provisions. Member States are obliged to transpose them into national law. The fact that national consumer protection rules are mandatory or, as will be explained in more detail later, one-sidedly mandatory ("limping contract") is not only due to the circumstances

[140] White Paper on Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union, Cannes, 1995.

[141] The actions that are considered desirable from a consumer protection point of view – ensuring fundamental consumer rights, building an appropriate institutional framework, developing consultative mechanisms, introducing information and education programmes, developing effective consumer redress mechanisms and supporting consumer NGOs.

[142] MISKOLCZI BODNÁR, Péter: Az Európai Unióhoz történő csatlakozást követő magyar jogfejlődés általános kérdései [Development of the Hungarian law after joining to the EU – General questions] in Miskolczi Bodnár Péter (szerk.) Az Európai Unióhoz történő csatlakozást követő hazai és európai jogfejlődés [Development of the Hungarian and EU law after Hungary's joining to the EU] Wolters Kluver 2020., pp. 61-97.

[143] The Ministry of Public Administration and Justice submitted the draft text of the new Civil Code to the Government in March 2012. See detailed submission, point 6.

[144] The Civil Code. 8:6 [Compliance with the law of the European Union].

described earlier in this study, but also to the fact that the national legislator must account for its legal harmonisation activities, and the failure to do so or inadequate performance of which leads to infringement proceedings.

1.6.3. Imposition of competition law requirements

Among the EU's competition law requirements, the prohibition of cartels and the prohibition to abuse dominant position constitute obstacles to the conclusion of contracts with certain content and influence the contracting parties to avoid prohibited content, otherwise their contract will be null and void. The merger rules have a less direct effect on merger contracts, because they do not impose a prohibition, but a notification obligation and/or competition licencing in certain situations. However, the contracting parties are forced to take these requirements into account if they wish to avoid an inspection and the loss of time due to that.

These rules of competition law are not rules of private law, but they are rules of public law that restrict the parties' freedom to determine the content of their contracts in the interests of broad competition, consumer welfare and the public good.

2. Increase of reasons serving as grounds for state intervention

2.1. Natural disasters

In Hungary, in the aftermath of the Szeged floods, state intervention in contractual relations was observed, mainly to promote reconstruction.

2.2 Hyperinflation

Due to high inflation, the original balance between the values of service and consideration is upset, which has led to the introduction of valorisation measures in almost all the countries concerned.[145]

[145] HARMATHY, Attila: Az árak változása és a polgári jog [Changes in prices and civil law] Jogtudományi Közlöny (Gazette of Legal Science) 1982, No. 2, pp. 73-83.

2.3 The Great Depression

In the 1930s the fall of the price of wheat in the global market justified the introduction of benefits to farmer-debtors.

2.4 Extreme weather

Due to the extremely unfavourable weather conditions for agricultural production in 2010, the rules on supply contracts for agricultural products have been modified.

2.5. The financial crisis starting in 2008

The financial crisis justified a series of bank resolution measures.

2.6 Currency depreciation and interest rate increase between 2008-2011

The instalments to be paid by the debtors taking out a foreign exchange based loan making up 60% of the bank loans became in a short time 80% higher than at the time of concluding the contract. The burdens of debtors were partly alleviated by the new rule regarding the unfairness of the standard contract clauses of the bank and by putting a cap on the exchange rate of the Swiss franc.

2.7. Covid epidemic

By state measure a prohibition was ordered on the export of all medicines and raw materials that have helped to control the outbreak.

2.8. Russian-Ukrainian War

The import prohibition of Ukrainian wheat and the export prohibition of the energy carriers have significantly restricted the commerce of these products.

IX. Overview of state intervention in contracts pursuant to applicable Hungarian law

1. Classification of regulatory restrictions on future contracts

Due to space limitations, instead of the detailed description of the rules, we provide information on where the mandatory rules can be found.

1.1. Mandatory rules in codex

Regulatory restrictions can be found in the Civil Code itself,[146] here among the principles, among the common rules referring to all contracts, among rules applicable to a group of contracts, or even among the rules applicable to a type of contract.

1.2. Mandatory rules in other legislation

There are regulatory restrictions in other legislation as well. Among the rules restricting the parties' freedom to determine the content of contracts outside the Civil Code, there are private law rules and rules belonging to other branches of law.

a) Following the authorization of the code, private law rules may restrict the rights of the contracting parties; without such authorisation the restriction would conflict with the provision of the higher level rule on the contractual freedom. The rules on consumer contracts mainly restrict the freedom of the consumer's partner. The majority of consumer contracts are governed by rules other than the Civil Code, where restrictions on the content of the contract are essentially authorised by European Union directives.

[146] Restrictions go back a long way in history. As early as 1804, the French Civil Code stipulated that, although a contract is concluded by the parties' free concordant declaration of intent, their agreement must not be contrary to public order (l'ordre public) or good morals (bonnes moers) ("On ne peut déroger, par des conventions particulières, aux lois qui interessent l'ordre public et les bonnes moeurs" – a contract cannot be contrary to public order and good morals).

b) Rules in other branches of law may also contain restrictions on specific aspects without a private law or European authorisation. Labour law[147], health regulation[148], competition law[149], civil procedure law and insolvency law contain a significant number of provisions, which restrict the parties' freedom to determine the content of certain contracts or even a wide range of contracts in certain respects.

The present study does not deal with restrictions in legislation in areas other than private law that affect the parties' intentions in determining the content of the contract.[150] As regards European Union legislation, only the private law areas are dealt with.

2. State intervention through law enforcement

In some cases, the Hungarian Civil Code gives the courts the possibility, on the one hand, to rectify the rights and obligations established by the parties in the contract, on the other hand, to mitigate the adverse effects of the legislation and, thirdly, to amend the content of long-term contracts in the light of changing circumstances.

2.1. Judicial formation of contracts due to reprehensible contractual content

According to Hungarian codex an invalid contract may be declared valid by the court with retroactive effect to the date of conclusion of the contract. The court may mitigate the disproportionately onerous contractual security (earnest money, contractual penalty, forfeit money) and the adverse legal consequence that would result from an excessively onerous forfeiture stipulation. With regard to usurious contracts, the court may fully or partially waive

[147] The obligation to work under an employment contract may exceptionally be refused if the conditions for a strike are met or if the working conditions are hazardous.

[148]Preventing and limiting the spread of epidemics may justify restrictions on travel and animal transport, and exceptionally even the destruction of livestock, which – implicitly – prevents or frustrates the performance of contractual obligations.

[149] The Hungarian Competition Act lays down both a generic clause and typical facts of the case in the part prohibiting unfair competition. The generic clause, tailored to the relationship between competitors and potential competitors, specifies the content of the requirement of fair competition and prescribes the requirement of fair competition. The Competition Act considers certain activities unfair not on the basis of the nature of undertaken activities but on the basis of their consequences. The legislator approaches the matter from the point of view of the interests protected and considers those the activities of an undertaking unfair, which infringes or jeopardises the legitimate interests of its customers, buyers, recipients or users, or those of its competitors. Through the specifying the typical facts of the case of standard terms, the Competition Act prohibits, for example, denigration, passing-off, boycotts, unfair comparative advertising, certain practices considered unfair and deception of trading parties. Hungarian competition law also contains rules on cartels, abuse of dominant position and mergers, which have already been referred to in the context of the European Union.

[150] Consumer protection is an overarching branch of law. Within this scope, our study only deals with expressly private law issues, and does not address e.g. public health restrictions, product hazard labelling requirements.

reimbursement if that would bring the aggrieved party into a difficult situation, even if payment in instalments would be permitted.[151]

2.2. Judicial power to mitigate the adverse effects of legislation

If a legal provision alters the content of a contract that was concluded prior to the entry into force of that provision, and the altered content of the contract harms the substantial legal interest of one of the parties, this party may request the court to amend the contract or may cancel the contract.

2.3. Judicial formation of contracts due to the change of circumstances

Already Section 241 of the Civil Code of 1959 authorised the court in Hungary to amend a contract if three conditions are met at the same time. This was possible in a permanent legal relationship between the parties if, due to a circumstance that occurred after the conclusion of the contract, the performance of the contract with unchanged conditions would harm substantial legal interest. Hungarian legislation therefore adopted the idea of clausula rebus sic stantibus earlier than many countries with a long tradition, including Germany and France.
Section 6:192 of the Civil Code of 2013 sets out three additional conditions for a change of circumstances:

- the possibility of a change in the circumstances was not foreseeable at the time when the contract was concluded;
- the change in circumstances was not caused by the person who asks the court for amendment; and
- the change in circumstances falls outside of normal business risk.

[151] MISKOLCZI BODNÁR, Péter: A szerződő felek tartalomalakító szabadságát korlátozó bírói gyakorlat (Judicial Practice Limiting the Freedom of the Contracting Parties to Determine the Content of a Contract) in: Benke József (ed.) H TEXNH MAKPH Festive Studies in honour of the 70th Birthday of László Kecskés, Pécs 2023. pp. 233-250.

X. Summary - Evaluative comments

To conclude our study, the diversity of legal solutions has to be emphasized. The periodisation described above does not mean that what is considered in the study to be novel solutions in a given period are widespread in all European countries. It must also be pointed out that, in a broader or narrower scope, different forms of state intervention coexist.

The mandatory regulation potential of the legislative state regarding contracts to be created in the future is well established and highlights relatively few problems. In this context, the protection of the party targeted for protection – typically the weaker contracting party – is a positive new feature.

The possibility of amending the content of contracts already concluded by law is ambiguous. It is an opportunity for the state to address problems through legislation that affect many people. On the other hand, the legislator may, in the context of a crisis, sometimes without reflecting on the matter or acting in the interests of a narrow group, form contractual obligations in such a way as to make it impossible for businesses (e.g. petrol stations with introduction of administrative pricing) to operate or to deprive them of some of the resources necessary for their development. The right instrument can therefore be put to the wrong use and/or be misused.

There is a tendency for the state to intervene more in contracts already concluded. Within the entire process, it is noticeable that changes are affecting not only certain types of contracts, and then administrative contracts, but also an ever wider range of long-term contractual relationships. The Trianon Treaty contributed to the legislator's subsequent recognition that changes in external circumstances must be taken into account and that the state may intervene in the relationship between the parties in the event of substantial harm. Alongside the legislative path of state intervention, which is continuously gaining strength, there is a growing statutory power of the courts, for which recent legislation also provides a clear authorisation. In addition to the termination of a contract, it is becoming more and more acceptable to amend the rights and obligations. However, there is no uniform set of conditions for state intervention, or even a common name for it, and jurisprudence offers different explanations for the phenomenon. However, despite the differences between countries, it can be observed that legislation and judicial practice are responding to crises and it even leads to the rethinking of the classical view on the prohibition of state interference in the private sphere.

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Act IX of 1914

Act XLV of 1914 on completing and amending some of the provisions of Act XI of 1882 regulating assistance to unaccompanied family members of conscripts in the event of mobilisation.

Act XLVI of 1914 on the temporary and partial introduction of income tax for military aid.

Act XLVII of 1914 on setting up the Hungarian royal war loan fund.

Act L of 1914 on completing Act LXIII of 1912 on exceptional measures in case of war.

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Act XIII of 1915 on the exceptional power given to the government.

Act II of 1915 on amendment of previous act on popular uprising.

Act XVIII of 1915 on financial liability of traitors.

Act XIX of 1915 on the punishment of offences against the interests of war, in particular abuses committed in connection with military transport.

Act IX of 1916 on price raising abuses.

Act XXIX of 1916 on war tax.

Act VII of 1917 on completing exceptional measures in case of war

Act IX of 1918 extended the obligation to pay military profit tax and introduced the 60% military allowance payable for certain types of tax.

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