PRIVATE LAW ISSUES IN CONNECTION WITH THE COVID-19 PANDEMIC

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Abstract

In this paper I would like to discuss what changes and problems the Covid-19 epidemic has caused in private law, particularly in the field of contract law. The most important questions are, on one hand, how the state may have intervened in private law. There is a historical precedent for this practice within each European legal system. On the other hand, how the contracting parties respond to the challenges posed by the epidemic. The third question is, for example, what solutions can be found in Hungarian private law to solve contractual problems. In examining these issues, I use certain provisions of European private law, as well as review the established case law. As a result of my paper, parties to a contract can gain insight into some of the legal issues surrounding the case and learn about possible solutions in Hungarian contract law.

Key Words*: Covid-19, contract, Hungarian Civil Code.*
JEL Classification: [K12, K15]

1. Introduction

Since 2020, Europe and the whole world has been going through one of the most serious crises in our modern history. An epidemic that broke out in China in December 2019 spread out slowly to the whole world and brought about profound changes. The pandemic does not only have health-related, political, social and economic aspects, but significant legal issues have also arisen, which concern international law, constitutional law, administrative law, and private law.

Questions related to the pandemic arise in many areas of private law. These include, in the domain of property rights, various issues related to the use of real estate (Airbnb, business leases). An essential element of labor law is affected by Covid-19. The relevant issues are related to the termination of employment, the possibility of distance working. A further domain of private law is family law, where the increase in the number of divorces, and questions concerning child custody are relevant. In connection with contracts and consumer law, increased use of online shopping and services must be mentioned on the one hand, which also generate copyright issues. The execution and performance of contracts has come also into focus: is there a way to terminate them, and how does the epidemic change the attitude of the parties to the contract?

2. State measures (special legal order)

To overcome the difficulties of the pandemic, the European states have mainly turned to two options: they issued aid packages to help the economy and

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they introduced special legal measures in different domains, including the field of private law. It always leads to many complications when the law tries to regulate existing contracts. Regulation in private law is generally only appropriate in exceptional cases and to a limited extent. To introduce the regulative matters of the European governments, I will give examples of private law regulation from different countries to show how they shaped private law and contract law relations to deal with the pandemic.

Germany has accepted the Gesetz zur Abmilderung der Folgen der COVID-19-Pandemie im Zivil-, Insolvenz- und Strafverfahrensrecht (Act to Mitigate the Consequences of the COVID-19 Pandemic under Civil, Insolvency and Criminal Procedure Law- on 27 March 2020). This act contains six articles about the most important issues of Covid-19 (not all target of private legal regulation). The first section deals with the rules of insolvency, and the second one regulates norms related to cooperative societies and tenancy in the fight against Covid-19.

In Article 5 - Amendment to the Introductory Act to the Civil Code (Änderung des Einführungsgesetzes zum Bürgerlichen Gesetzbuche) -, there are special regulations for consumers, rental and lease contracts and consumer loan agreements that are introduced for a limited period of time. For example, the debtors who are unable to meet their contractual obligations for payment due to the Covid-19 pandemic are entitled to temporarily suspend other performance of the contract without any adverse legal consequences. The regulation also concerns rent and lease payments, which remain to be due. However, the right to terminate the contract by the lessor does not apply if the failure to pay by the other party is due to the effects of the pandemic (Art. 240 § 2 EGBGB).

France also introduced special rules with respect to Covid-19. Probably the most important *ordonnance* (from the perspective of contract law) is n° 2020-306 of 25 March 2020 on the extension of deadlines during the health emergency period and the adaptation of procedures during this same period (Ordonnance n° 2020-306 du 25 mars 2020 relative à la prorogation des délais échus pendant la période d'urgence sanitaire et à l'adaptation des procédures pendant cette même période), which regulates certain aspects of the performance of contracts. One important issue of this *ordonnance* is the moratorium on time limits. For example, a party cannot be released from his contractual obligations, but the deadline for the performance can be extended according to the law. Articles 4 and 5 contain rules on contractual obligations. They say that clauses regarding penalty payments cannot be applied due to the time moratorium in Article 1.

The most notable English law on the Covid-19 is the *Coronavirus: Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 effective from 13.00 on 26 March 2020 – 3 July 2020*. According to Pédamon & Vassileva (2020:1), the UK has tried to avoid interfering in commercial contracts. It means that the parties are advised to rely on the doctrines and principles of the English contract law in case a dispute arises regarding the pandemic.

Finally, the Hungarian law-makers also worked out rules for Covid-19. In the

2020./CVII. act on transitional measures to stabilize certain groups in society and enterprises in financial difficulties (Törvény az egyes kiemelt társadalmi csoportok, valamint pénzügyi nehézséggel küzdő vállalkozások helyzetének stabilizálását szolgáló átmeneti intézkedésekről) the most important rule is to give a temporary extension for repaying various loans, and a prohibition on the termination of loan agreements.

3. Problems related to contracts

3.1. General questions

There can be several problems with the execution of contracts. For example, a contracting party may want to terminate its activity and the contract because of the Covid-19. Therefore, an important question is for how long the contract was made, for a limited or an unlimited period of time? Obviously, in most cases the simplest solution is if the parties can agree to terminate the contract. In various legal systems (e.g. in English law), many longer-term contracts include hardship, or force majeure, or act of God terms (where the name refers to the fact that human intervention did not play a role). Continental legal systems, however, are much more flexible to respond to cases when external changes in circumstances necessitate an amendment to the contracts (Lehmann and Zetzsche, 2016:1007-1008). Lehmann and D'Souza (2017:103) explain that the contract can be terminated, in which case the parties bear the consequences together. It is possible that the parties agree that the contract will be renegotiated in the future. It is questionable, however, to what extent the future of the contract can be determined under English law, since the latter considers it too uncertain (Danny Lions Ltd v Bristol Cars Ltd, 2014).

The law should not offer an escape route if a business has become a bad deal (Lord Roskill in The Nema, 1982). Rather, the parties should work out solutions in their contract to solve such problems (Beale and Twigg-Flesner, 2020:2). It is a question whether the government will help private persons or businesses to continue their contractual relationships. So, if a business (or private persons) gets money to pay for its operating costs, it can no longer claim that Covid-19 had a material effect on its businesses (agreements) (Dagan and Somech, 2020:32).

It is also a question what kind of contract we have in mind. For example, contracts of a commercial nature should be maintained during the pandemic. The pandemic can also have the effect that the parties no longer feel they would benefit from the contract, and seek to be relieved of their contractual obligations. Contractual regulations may be different in this respect. It is possible that a particular contract allows such an 'escape', e.g., through the inclusion of 'terminate on notice'. If there is no such term, one can examine whether there is possible to find regulations for force majeure or material adverse change.

It is clear that many long-term contracts were established by the parties before the outbreak, when they had not yet thought that there would be a global pandemic or that the countries would take action. The extent to which the parties are still able

to meet their contractual obligations may vary from contract to contract, according to Dagan and Somech. For example, in home-rental agreements, renters, especially if they lose their jobs due to the crisis, try to find an exemption from paying the rent (Dagan and Somech, 2020:28).

More interesting are those contracts that were concluded at the time of Covid-19 and in the case of which the parties could already expect to run into difficulties. One option for them is to terminate the contract using a suspension condition. The contract may contain provisions for the case of Covid-19.

The contracting parties can also agree to renegotiate the contract if new facts arise. This is the aim of the hardship clause. The vis maior (force majeure) clause serves the purpose of suspending the performance of the contract whenever enforcement becomes impossible. This can also lead to renegotiation if the obstacle persists. Cabrillac (2014:111) points out that reference to hardship is typical of international contracts, and aims to handle economic difficulties that arise in the course of performing the contract.

In the case of the *facultas alternativa*, there are at least two things or two services to choose from in the contract. It is also possible that the parties may discuss how compliance should be resolved in the event of an epidemic. We may also need to talk about price increases, which can be due, for example, to epidemic control or various administrative barriers. For example, various catering, food services have not stopped, but they continue their work in the form of home delivery.

It is a question to what extent the parties are aware of the uncertainty of a particular transaction. If the parties are aware of the uncertainty of the agreement, they can expressly declare their intention to enter into a contract. This solution is expressed in various terms: 'as if' and 'force majeure' clauses, which courts naturally validate as a matter of course (Dagan and Somech, 2020:29). For this reason, it is not surprising that force majeure and its clauses are widely used as well. Such provisions are interpreted in a strict manner, and also in the context of each contract. Their use in the case of Covid-19 also depends on what events were given as triggers, and what consequences were attached to these events (Beale and Twigg-Flesner, 2020:12).

According to Pédamon and Vassileva (2020:4), "messy and limited" government intervention, or narrowly tailored doctrines do not establish a strong basis for meeting the needs of the parties. It can also be concluded that the parties do better if they design their own responses to challenges like Covid-19 and they only look for the help of the courts as a last resort. Dagan and Somech (2020:28) think that the state should help people, but at the same time other contractual doctrines could be evoked.

According to Terré and Lequette (2015:7), the parties can defend themselves against the consequences of economic or monetary instability with the help of particular terms. For example, it is possible to add a so-called monetary clause, which indexes the price of the value of a product or service, applying the condition

most favourable to the customer (François, 2016), a competitor offer clause, which allows a party to force the terms of a more favourable offer received from a third party on his/her partner, or, for example, a clause regarding the suspension or termination of the contract.

3.2. Particular contracts

One issue relates to real estates, and concerns the legal fate of leases during the epidemic. In this respect, it makes a difference for what purpose the property is rented. As far as residential rents are concerned, people have to live somewhere. The outbreak of the epidemic did not change people's need for housing. Covid-19 thus does not undermine the essence of apartment lease. In the case of a commercial lease (e.g. restaurants), the issue is different. It is important to note that in connection with leases (commercial or residential) the lessor normally does not inquire into the financial background of the lessee (Dagan and Somech, 2020:28-29). But, if the epidemic makes it necessary to shut down restaurants, Covid-19 will cause a failure of a basic assumption (Dagan and Somech, 2020:32). Obviously, there has to be some regulation of sharing the risks of damage resulting from the contract.

There are two interesting cases from German judicial practice. Both dealt with the impact of the reduction in trade turnover due to the Covid-19 pandemic. A Bavarian bakery[1] wanted to achieve a rent reduction because of income loss. The rent had a baking room with a commercial room (café). On March 16, 2020, Bavaria declared an emergency due to the spread of the Covid-19 virus. Among the measures, the opening of all types of restaurants and all retail outlets, with the exception of grocery stores, were prohibited. The bakery remained open, but the café, which was also operated by the tenant, had to be closed. The defendant announced cutting the rent fee by 50% in April in response to a drop in sales due to the pandemic. After that, from April to June, he did not pay the rent. The defendant claimed that he could not use the rented premises due to the mandatory closure of the restaurants. The court referred to the case law that government measures against the Covid-19 epidemic do not trigger a *rent reduction for material and legal defects* (Mangel der Mietsache § 536 Abs. 1). The court referred to the lease contract, which specified that it was a complex of a baking room and a café: the leased property was provided as agreed. The defendant is not entitled to a rent reduction under Paragraph 313 (1) of the BGB. The court added that there were no restrictions governing public access to grocery stores and even extended opening hours. The court also referred to the fact that the tenant has an entrepreneurial risk that he must bear himself.

The other German case[2] also concerned a lease, which was also about the payment of a rent at a time is limited by the epidemic. The rent between the

[1] LG München II, Endurteil v. 28.01.2021 – 1 O 2773/20.
[2] LG Kempten, Endurteil v. 07.12.2020 – 23 O 753/20.

defendant and the plaintiff included the retail shop of clothing and textiles. The defendant did not pay the rent between April and May 2020, when it had to close its business due to a state order. According to the court, since the State had ordered the closure of the defendant's retail business, this constituted a defect in the rental property under Paragraph 536 (1) of the BGB. Under Paragraph 536 (1) of the BGB, a *defect* exists where the suitability of the leased property for a contract is terminated or reduced. Public law restrictions and consumption difficulties are also conceivable as a defect (Mangel), even if they relate to the leased property and are not caused by personal circumstances. The lease was for the sale of clothing and textile, but this purpose could have not be done because of the restrictions against the coronavirus. Due to the risk distribution, the rent should be halved in the given period. Under Paragraph 537 of the BGB, the lessee bears the risk of using the property. According to the second sentence of Section 535 (1) BGB, the lessor must hand over the property to the lessee in a condition that as specified in the contract. The court also stated that the lessee had the right to request an amendment to the contract due to § 313 (1) BGB.

In the case of Brexit, people and companies could not have been prepared. However, the move has seriously affected the fulfilment of contracts. The positive side of Brexit is that the process took longer, and the parties had time to prepare for it. The process required some foresight and there was uncertainty involved, but the outcome was certain, so it was possible to adapt. In contrast, the epidemic broke out suddenly. Some consequences were visible, but it was not at all clear what the outcome was going to be. The state of emergency and the epidemic itself have induced significant changes. The performance of contracts regarding certain products and services might be hindered.

4. Possible reactions of the Covid-19 as specified in the Hungarian Civil code

4.1. Contract modification

The first option available for contracting parties is to modify the contract. According to Hungarian law, it is possible by all means, but in a manner and under the conditions the previous contract was created (Vékás, 2016:187). Section 6 paragraph 191 (1) of the Ptk. (Act V of 2013 on the Civil Code - 2013. évi V. törvény a Polgári Törvénykönyvről, abbreviation: Ptk.) states that the parties may amend the content of the contract by mutual agreement [Amendment of contract by the parties]. In a Covid-19 emergency, it might appear an attractive solution to reschedule the fulfilment of the obligations, or change the financial conditions, with reference to the increase of the price of other goods that the fulfilment depends on. It is also possible to modify only certain parts of the contract. Thus, a change of circumstances, which may happen during the current pandemic, does not automatically make the latter option applicable. Vékás and Gárdos (2014:1576) add that one can only refer to the change of circumstances in the case of certain types of contracts, which include gratuitous contracts, loan agreements or deposit

agreements. Vékás and Gárdos (2014:1586) also note that the change of prices alone cannot be considered a sufficient reason, even in the case of agricultural products, for unilateral amendment of the contract. It should be noted that the modification may involve a relatively minor change, for example the time or place of performance may have to be determined differently by the parties (Vékás, 2016:199) in view of the obstacles created by Covid-19.

Hungarian law also offers a solution according to which both parties in a dispute make mutual concessions from their original contractual agreement and thus succeed in continuing the agreement instead of terminating the contract (egyezség/composition – special modification of contract Ptk. Section 6:27) (Vékás, 2016:190; Wellmann, 2013:343).

The parties may agree to unilateral contract amendment previously (Ptk. Section 6:191 (4) - Amendment of contract by the parties), and legislation may also make such an amendment possible, for example, in the case of public utility contracts or agreements between credit institutions. The Hungarian legislator did not wish to make use of the possibility of private legal regulation during the Covid-19 pandemic.

According to the Ptk. Section 6:140 (Withdrawal, termination), the obligee has the right of withdrawal (due to breach of contract) if his/her economic interest for the performance of the contract no longer exists. This will be retroactive to the time of the conclusion of the contract (Wellmann, 2013:225). The loss of interest is not based on the fault of the defendant, but on an objective circumstance (Wellmann, 2013:276). An example of an *interest cease* (érdekmúlás) may be the failure of the debtor to correct the error or missed a deadline (Vékás, 2016:231).

It is possible to terminate the contract by a unilateral legal declaration if the law or an agreement gives a party the right to do so. (Ptk. Section 6:213 Termination of a contract by unilateral act). In this case, the party may terminate the contract by a unilateral declaration of rights addressed to the other party. The right of withdrawal is a unilateral legal declaration of the addressee (Benke and Nochta, 2017:170). It is also possible to include provisions for *retention money* (Vékás, 2016: 358). According to paragraph of this Section, each party may terminate a contract made for an unspecified duration, setting up a long-term relationship, by giving the other party a reasonable period of notice.

4.2. Exemptions from non-performance

In Hungarian law, all types of improper performances count as breach of the contract (Benke and Nochta, 2017:164). The conditions for exemption from breach of contract are strict, as they are not based on culpability (as opposed to the previous Hungarian Civil Code) but are objective, with the relevant cases specified by law. At the same time, the legislator has restricted the value of consequential damages and lost profits (Ptk. Section 6: 143) to be reimbursed by the party in breach to the value of damage foreseeable at the time of conclusion of the contract. The two conditions above help the healthy sharing of risks between contracting parties. One

of the most important issues is to what extent there is room for exception in the Civil Code.

According to the Hungarian Civil Code, if someone does not act in accordance with the contract, the other party has the possibility to ask for compensation for damages. (Contractual commitment is voluntary and therefore if a party does not perform properly, it must take responsibility for it) (Vékás and Gárdos, 2014:1465-1466). It should be noted that the idea above has already appeared in judicial practice in Hungary. Exemption requires the coexistence of three conditions, which agrees in spirit with many model regulations from abroad (Ptk. Section 6:142. - Liability for any loss caused by non-performance). The *first condition* is that the damaging circumstance should be outside the control of the party that breaks the contract. This holds for Covid-19, since it is beyond the control of both parties. The relation between the pandemic and the fulfilment of the contracts can be of three types. In the first case, the pandemic has a direct impact on the contract. As a result, it is not possible to fulfil it, and this may even apply to both parties. In the second case, the Covid-19 epidemic itself does not constitute a special problem: if both parties are able to perform and accept the performance from the other, the contract can be executed without any difficulties. In the third case, the need for the contract is generated by Covid-19, so Covid-19 is the reason for fulfilment. Another issue is what the situation of third parties is in this regard. It is possible that someone cannot perform because the pandemic makes it difficult to get hold of supplies, or there are certain goods or services that the production of the goods or services in the contract depends on and which are unavailable. It is also possible that the contract involves several parties, only one of whom the impossibility of fulfilment applies to. The Hungarian Civil Code refers to the scope of control, which means that the event happens independently of one or both of the parties (because they can't influence it). Reference may be made to traditional cases of force majeure (vis maior) are: a. i.e.: natural disasters, earthquakes, fire, epidemic, drought, frost damage, b. political-social events, c. governmental measures, d. serious breakdowns, e. radical market changes (Wellmann, 2013:233).

The *second condition* is that the event in question should not be foreseeable: in the relevant case, it is obvious that an outbreak of the panemic could not have been foreseen. However, it is worth examining the nature of the contract and the possibility of performing after all, as well as the type of measures that were taken after the outbreak of the pandemic by the parties to avoid the worst-case scenarios. Furthermore, it is possible that although the parties have recognized the dangers the pandemic presents for the performance, but they have been forced by facts beyond their control to terminate the contract or otherwise negotiate about the consequences. If the parties may have known about the pandemic and entered into the contract under these circumstances, the situation is different. It is possible that they have provided alternative solutions in the contract for the case they fail to fulfil their original commitments.

The *third conjunctive condition* for exemption is that it was not to be expected

that the party can avoid the circumstance preventing the performance of the contract, or eliminate the resulting damage. This counts as application of the culpability criterion in the Hungarian Civil Code. In the case of the previous condition, the obstacle must be examined at the time of concluding the contract, the applicability of this third condition must be examined at the time of the breach. The Civil Code works with an exculpation exemption system, the party in breach of the contract must bear the burden of proving all three conditions.

A contract may only be terminated if the parties jointly request it, or if the services that have already been performed can be refunded in kind (Ptk. Section 6:212. - Termination of a contract by agreement of the parties). (The parties are also obliged to settle accounts with each other.) According to Vékás and Gárdos (2014:1635), the criterion of a refund arises because if there was need for a retroactive effect (restoration of the original state - in integrum restitutio) this must involve restoration (refund in kind). If restoration to the original state is impossible, the contract should be terminated with respect to the future.

4.3. The cases of Impossibility in the Hungarian Civil Code

As far as impossibility of performance is concerned, if it is apparent at the time of the conclusion of the contract that performance will be impossible due to the pandemic or to government measures, the contract is null and void (Benke and Nochta, 2017:238). If one of the parties is hindered in the course of contractual performance, he or she must notify the other party (Vékás, 2016:196). As long as a party is performing, the other one has the right of retention regarding his/her duties (Vékás, 2016:230).

A contract that is impossible to perform is also null and void. (Ptk. Section 6:107. §. (1) – Impossible performance). For example, during the current pandemic, one cannot undertake a service that cannot be fulfilled, such as booking a restaurant for a banquet dinner or renting a hotel room. At the same time, according to the second turn of the section the service is not automatically impossible if the party obliged does not possess it at the time of the conclusion of the contract. This means that the parties could potentially undertake the provision of goods or services for after the pandemic or when the subject matter of the contract becomes available, by using a suspension condition in the contract.

It is possible that performance become impossible (Ptk. Section 6:179.§ - Impossibility of performance), in which case the contract terminates. According to paragraph (2) the other party has to be informed of this fact without delay. In this case, the pandemic is considered an objective circumstance, and neither of the parties is responsible for impossibility (Ptk. 6:180 – Responsibility for impossibility). In this case, the contracting parties must compensate to each other for the service that has already been provided. It needs to be note that in the case of a service that can be divided into parts, it is possible to provide only a part of the service (Benke and Nochta, 2017:189). A party is obliged to notify the other party of the performance becoming impossible (Benke and

Nochta, 2017:239). Objective impossibility means that neither of the parties are responsible for the impossibility of the performance (Benke and Nochta, 2017:240).

4.4. Amendment by the court

The contracting parties have the opportunity to have the contract amended by the court. According to Section 6:192 of the Ptk., this option can be made use of if the parties have a long-standing legal relationship and due to a circumstance, which came about after the conclusion of the contract, the contract under unchanged conditions would infringe on an essential legal interest of the performance. This can only be initiated at the request of one of the parties, in the case of a long-term legal relationship. It is required, by law, that the change in conditions was not yet foreseeable at the time of the conclusion of the contract, it was not created by the party, and such a change in circumstances does not constitute a normal business risk. If we consider these requirements, it is obvious that they apply in the case of Covid-19.

Neither could anyone foresee the pandemic, nor was it created by one of the contracting parties. In addition, this is not a normal business risk, because so far one did not have to count on it. At this point, it is worth noting that the contracting parties should be well aware of certain relevant circumstances. For example, if a contract is signed in another country, during an emerging economic instability or epidemic one has to count with difficulties or state restrictions. If, however, a civil war broke out there, there might be a delay or the performance might become impossible.

It should also be noted that these conditions apply to contracts concluded before the outbreak of the Covid-19 pandemic. If the parties intended to conclude a contract now, they would have to count on the pandemic. According to the case law related to the previous version of the Civil Code, changes in supply and demand are within the scope of business risk and neither party has the right to request an amendment to the contract (Court Decision BH 1988.80). The court only has the right to amend the contract from the time of claim enforcement (i.e., when the action is brought). An *ex nunc* effect is possible: a contract may also be terminated for the future, as a result of judicial consideration.

Vékás and Gárdos (2014:1585) point out that the law also flexibly marks the limits of the amendment. The court should share the disadvantages and advantages flexibly between the parties, so that neither party's legal interest is harmed. Civil Law Uniformity Decision (Polgári Jogegységi Határozat) 6/2013 states that the aim of a judicial amendment of a contract is to remedy the consequences of a change of circumstances in relation to a specific long-term contract if it affects a substantial legitimate interest of one of the parties. However, it should not be used to remedy a large number of contracts that adversely affect only one of the parties, due to economic changes on a societal level. This is the domain of the law. The 2011.2577 Report on Judicial Decisions (Hungarian abbreviation: BDT) also states that changes in market competition conditions and supply-demand relationships are

within the scope of business risk, and therefore, neither party has the right to request an amendment on that basis.

Section 6: 153 of the Ptk. deals with the debtor's delay: this is the case when the debtor does not perform the service when it is due. Hungarian law recognizes the concept of double delay, which means that after a *delay occurred* (kétszeres késedelem), a new deadline is set for performance, and it also expires without performance. In this case, failure to meet the second deadline automatically terminates the contract (the claimant does not have to prove that he has lost her interest as according to the general rule) (Vékás and Gárdos, 2014:1495). It needs to be noted, however, that the claimant may also be in delay, if, for example, she or he fails to take delivery of the goods, due to Covid-19 (Vékás, 2016:265).

If performance is delayed, the creditor may claim damages for the debtor's delay. Respectively, if the contracting parties agree, it is possible to stipulate a penalty for delay in their contract. In disputes concerning delay, the fact of the objective delay must be proved by the claimant, and the burden of proving the excuse for the delay lies with the debtor (Vékás and Gárdos, 2014:1494).

Conclusions

Covid-19 has had a significant impact on people's everyday lives. It presented many challenges to which the state had to respond. One of the important tasks was to try to help people cope with the economic downturn. An important move was that the states tried to suspend loan contracts that would have expired in the meantime, and aimed to prevent the termination other contracts, for example, those involving housing. There are a number of questions about the performance of contracts during the pandemic. In general, if a contract becomes more expensive or impossible to perform, the parties try to find solutions to modify or terminate it. At the same time parties to a contract have a considerable degree of freedom to to modify their agreement. If we look at specific contracts there is obviously a difference in the purpose for which they are used. In general, renting by individuals continues, but the question is whether the tenant will have the money to finance it. And for commercial rentals, there is the question of how much the pandemic and government measures will interfere with commercial use. In the case of Hungarian law, I have examined different options: amending the contract, the contract becoming impossible to perform, exemptions from non-performance and modification by the court. All three can provide a reasonable solution, but, obviously, the parties can best judge how to settle their own legal relationship.

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