

THE RUSSIAN-UKRAINIAN CONFLICT FROM THE PERSPECTIVE OF HUNGARIAN PRIVATE LAW

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Abstract

In the present study, I wish to investigate what consequences the conflict between Ukraine and Russia, which began on February 24, 2022 has had so far and may have in the future on Hungarian private legal relations. The conflict itself is primarily related to international law, but its consequences have gradually extended to many areas of life. The war presents significant difficulties to the neighbouring countries, there is a shortage of certain goods or they can only be delivered with significant delay, which puts a strain on the production chains. In addition, there are certain financial issues, including the emerging inflationary pressure, which influence the national economies. In the first part of the study, I will examine general issues and possible developments in selected areas of private law. Then, I consider the options provided by Hungarian contract law as well as other national laws for contracting parties whose contracts have been affected by the conflict. Finally, I look at how the Ukrainian conflict has influenced Hungarian court practice so far.

Keywords: *Russian-Ukrainian war, private law, Hungarian Civil Code*

JEL Classification: *[K12, K15]*

1. Legal challenges of the Russian-Ukrainian war

The negative effects of the war in Ukraine reached the domains of both private and business law. The conflict disrupted the markets, the supply of raw materials, and production chains. These have an influence on the economy, the functioning of companies and the everyday lives of individuals. Although it was not possible to prepare for the effects of war, which will in the future mean significant costs to private individuals, with certain organization and foresight, the interested parties can reduce the possible damages. It is obvious that among the domains of private law, areas having to do with the economy will be affected first, but it is to be expected that personal law and family law will also be relevant. In addition, for example, the law of civil procedure may also be affected, taking into account that in certain civil lawsuits, clients might find it difficult to represent themselves. At the same time, it is possible that it will be difficult to find, summon, and keep in touch with witnesses and litigants.

Regarding the internal legal norms, it is obvious that refugees are trying to find a safe place, so their situation is influenced by the various asylum regulations. For the trip, they take valuables, money and jewellery with them, which they intend to finance the journey from, they want to find a place to stay and a job, from which they can cover their living expenses. Furthermore, the country at war tries to acquire

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various useful things with the help of which it can continue the war: medicine, food, weapons and technical equipment. This process is also regulated by private law.

It is interesting that the consequences of the Ukrainian conflict show many similarities to what happened at the beginning of the corona epidemic. The real economy is exposed to significant risks due to problems affecting supply chains (and also sales markets, banks, computer networks, and lending). The war has a serious impact on the financial sector as a whole (value of investments in the real economy, inflation) (IDW, 2022:3). Hungarian companies were also affected by the need to withdraw from the Russian market. Hungary introduced a state of emergency in relation to the Ukrainian war, which means that the Hungarian government has special authority¹.

Private law, due to the private autonomy of legal entities, generally less often has a role in direct political situations, and often certain expectations can come through public policy into private law. Interestingly, in previous war periods, great efforts were made to maintain the specificity and independence of private law, as well as its freedom from conflict. For example, during the First World War, there was a lot of litigation in England because of the war. The judges tried to maintain the idea of 'private law as normal' as long as it was possible (Lobban, 2014:177). This idea is fundamentally good, but in some cases, it can no longer function, for example, if the war has a significant impact on the legal relations of private parties. State intervention, however, can only be exceptional and its purpose must be explained.

The Hungarian government tries to support the Ukrainian refugees in several ways. For example, according to government decree 96/2022. (III. 10.)², the Hungarian government provides support for the employment of Ukrainian citizens in Hungary who arrived from Ukraine on or after February 24, 2022. The support can be used upon application, which must be submitted to the government office digitally, using the appropriate form. The support can be provided during the period of employment, but only for a maximum of 12 months, which can be extended once by 12 months. Another important government decree is 87/2022. (III. 7.)³ on the different application of the rules on tourism tax of Act C of 1990 on local taxes

¹ 2022. évi XLII. törvény szomszédos országban fennálló fegyveres konfliktus, illetve humanitárius katasztrófa magyarországi következményeinek elhárításáról és kezeléséről (Act XLII of 2022 on preventing and managing the consequences of an armed conflict in a neighboring country or a humanitarian disaster in Hungary)

² 96/2022. (III. 10.) Korm. rendelet az Ukrajna területéről érkezett, ukrán állampolgársággal rendelkező személyek munkavállalásának támogatásáról (Government Decree 96/2022. (III. 10.) on supporting the employment of persons with Ukrainian citizenship who arrive from the territory of Ukraine)

³ 87/2022. (III. 7.) Korm. rendelet a veszélyhelyzet ideje alatt a helyi adókról szóló 1990. évi C. törvény idegenforgalmi adóra vonatkozó szabályainak eltérő alkalmazásáról (Government Decree 87/2022. (III. 7.) on changes on the application of the rules on tourism tax of Act C of 1990 on local taxes during the state of emergency)

during the state of emergency, according to which tourism tax does not have to be paid by persons arriving from the territory of Ukraine.

2. European Union regulations related to the conflict

The EU has introduced several sanctions⁴ (see the paper for more details) against the aggressor Russia so far, in the form of regulations, which include the following (as examples):

- 2022/260 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

- 2022/261 of 23 February 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

- 2022/330 of 25 February 2022 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

- 2022/353 of 2 March 2022 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

- 2022/576 of 8 April 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

- 2022/2474 of 16 December 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

A common characteristic of these norms (Council Regulations) is that they absolutely forbid to make business or to have connection to natural or legal persons or any kind of organizations. The list of these persons is added to the list in Annex I of Regulation (EU) No 269/2014 (below). The sanctions by the EU have different aims, such as freezing funds, obtaining funds, securing economic resources, or preventing the import and/or export of certain assets or goods.

These lists of sanctions⁵ might be related to specific Russian companies and prohibit business activities with these companies. The list also includes a ban on the import of certain products, including Russian iron and steel products. But the sanctions affect aviation, maritime transport and the energy sector (oil refineries). They specify with whom contracts can be made, so certain companies or persons are prohibited (cf. the category of the so-called "alien enemy" in the First World War) (Lobban, 2015: 180). The sanctions lists also specify which products cannot

⁴<https://www.sanctionsmap.eu/api/v1/pdf/regime?id%5B%5D=26&include%5B%5D=lists&lang=en>

⁵https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en

be sold or bought. This narrows down the list of available goods or services considerably.

It is important to mention that the EU has already established a control system for the sale of certain technologies (*The Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast)*, to be referred to as „dual-use regulation”). In terms of jurisdiction, the dual-use regulation follows the Article 207 TFEU, as interpreted by the ECJ in the *Werner and Leifer* cases, according to which, in recognition of the dynamic nature of joint trade, political, foreign and security policy export controls fall under the exclusive competence of the EU (Tietje and Nowrot, 2022:996).

The main aim of the dual-use regulation rule is to adapt norms in the EU to control the exports, brokering (negotiating with and arranging transactions between non-EU countries for the purpose of selling or buying dual-use items), technical assistance, transit and transfer of dual-use items. According to this regulation dual-use items are „[i]tems, including software and technology, that can be used for both civil and military purposes”⁶. The regulation affects the technical support, the control of commercial and intermediary transactions, and the emergence of a new category of goods in relation to surveillance and cyber technology. It also contains restrictions against international terrorism and prescribes measures for the most serious human rights violations.

The regulation indicates which goods require a license for export, among the ones listed in Annex I. According to Article 3 (1), the export of these items is always subject to license. Annex II determines the range of goods and services for which export authorisations is needed in the EU. Article 4 describes the cases where there is a need for authorisation of goods not listed in Annex I. According to Article 9, it is possible to prohibit the export of goods or make them subject to a license with regard to reasons having to do with public safety or human rights. The actual export permit should be issued by the member state, but in this regard the regulation only contains general requirements: it defines what aspects must be taken into account in the decision on approval (Article 9). It should be noted that this regulation was modified as a result of the Russian invasion⁷. Annex II was changed, and the previous possibility for exporting certain items to Russia had been eliminated. Russia ceased to belong among “privileged destinations”.

Another important EU norm is the Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. According to Article 2 (1) of the regulation, all funds and economic resources

⁶ <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=celex:32021R0821>

⁷ 2022/699 of 3 May 2022 amending Regulation (EU) 2021/821 of the European Parliament and of the Council by removing Russia as a destination from the scope of Union general export authorisations

“belonging to, owned, held or controlled” by those natural or legal persons, organizations and bodies (listed Annex I) are being frozen. The funds can be, for example (Article 1, g) all kinds of financial instruments and benefits, especially cash. According to the second paragraph of Article 2, these funds or economic resources cannot „be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I.” This regulation also shows that already in 2014, the EU took significant steps against the Russian state in order to deprive it of its financial resources. I would like to note here that it is advisable for a supplier or contractual partner to consider whether, even if delivery is possible, the other party will have enough money or the ability to pay (IDW, 2022:21,77). In addition, there is a generally binding ban on services in all EU member states (Regulation 269/2014/EU Article 2 (2) (IDW, 2022:75, 77).

I would mention another important law: the (EU) No 833/2014 regulation concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. According to Article 2 of the norm, it is prohibited to sell, supply, transfer or export, directly or indirectly, dual-use goods and technology, to any natural or legal person in Russia (or to use in Russia), if this item has partly or entirely military use. Article 4 of the regulation contains a requirement for prior authorisation for the sale, supply, transfer or export of technologies listed in Annex II to any natural or legal person in Russia or in any other country, if this kind of equipment or technology would be used in Russia.

3. Areas of business law affected by the conflict

Although the military conflict in general has resulted in shortages in many domains, but there are certain areas where overproduction in Ukraine leads to difficulties. In 2022, there was an agreement between Ukraine, Russia, Turkey and the United Nations to ensure the transport of the Ukrainian grain to Africa (Black Sea Grain initiative)⁸. The EU also made a legal norm⁹ which enabled wheat (other goods) from the latter to enter the European markets (as a form of humanitarian aid). As a result, agricultural goods flooded the markets close to Ukraine. The “dumping” of goods poses serious threat to the surrounding agricultural markets, causing a drop in prices, adding to the necessary storage and handling capacity deficits, and problems with financing. Several neighbouring states (van Elsuwege, 2023) have attempted to restrict the free import of the Ukrainian agricultural products, which the European Commission opposed, since it was against to the EU

⁸ <https://reliefweb.int/report/turkiye/joint-coordination-centre-opens-istanbul-facilitate-safe-export-commercial-foodstuffs-and-fertilizers-ukrainian-ports>

⁹ Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

single market (common trade policy, TFEU 207). The problem concerning the fate of grains from Ukraine has not been resolved yet, but negotiations are in progress¹⁰.

The war can also have the consequence that the need for different products or services increases. Therefore, it might be necessary to increase production.

In labour law there are two contrary effects. On the one hand, it can be expected that fewer workers will be needed than before due to the upheaval caused by the war and the disrupted transport chains (Schrade und Partner, 2022). On the other hand, it is to be expected that high number of refugees from Ukraine appear on the labour markets of EU member states. In recent years, the number of Ukrainian employees working for Hungarian companies has been on the increase. The problem might arise that men of military age are not even allowed to return to their jobs in Hungary, in which case they might also lose their positions. Due to the embargo, obtaining goods from Russia or Ukraine would be more difficult or even impossible. It means, in certain cases, that a Hungarian contractual party cannot provide deliveries either to Ukraine or through Ukraine, or the cost of deliveries could be higher. If there is a shortage of goods, this can influence the economic performance of companies. Therefore, the companies have to find a solution in terms of various labour measures, such as shortened working hours, forced leave, reassignment or withholding a certain amount of salary (Schrade und Partner, 2022).

Regarding travel law, it might happen that the flight time is extended, because it is not possible to fly over Ukraine or Russia. These countries cannot be the final destinations of vacations either because of the war or the sanctions.

4. Effects on Contracts

Regarding contracts, an important question is how they can be kept balanced. In contracts, the occurrence of reasonably unforeseeable economic (as well as legal, political, international) events disrupts the balance between the parties, to the extent that it may lead to a disproportionate, unfulfillable additional burden for one party. Examples of economic events include a significant increase in inflation in a short period of time, a significant rise in prices, a decrease in the purchasing power of wages, a radical transformation of supply and demand, the collapse of commodity and product markets, and the insolvency of economic actors. (It is worth noting that the latter leads to particular problems if it is a mass phenomenon, or it concerns a significant player on the market), During the crisis market and financial conditions would change adversely, or production and liquidity problems in economic sectors (Papp, 2016: 200, 214).

The parties to the contract - who are masters of their own contract - have the opportunity to enter into a contract freely, determine the contract clauses, change the contract conditions, and can also terminate the contract. In accordance with the Civil Code. 6: Section 191 (1), the parties can modify the content of the contract by

¹⁰ https://ec.europa.eu/commission/presscorner/detail/en/statement_23_2370

mutual consent. The amendment can affect many contractual conditions. Typically, they modify the deadline for the performance of the contract or change the price. The Romanian Civil Code contains similar provisions: the parties can freely make an agreement, and can determine its terms within the limits determined by law, public order and good morals) (1169. article - Art. 1169. Libertatea de a contracta).

The problem with altering the deadlines may be that the parties cannot know exactly when the entire conflict will end. It may also be that only a certain element of the contract needs to be changed, and it is not the time of performance or the price. For example, a different delivery location may need to be specified.

In a long-term contract the parties can use an automatism (e.g. increasing the price of the service or goods monthly) to keep up with the increasing inflation. But when the increase is disproportionate, it will help only one party, but not the other. Another solution is when, for example, in the case of Hungary, the contract is concluded in a foreign currency, most likely in euros. In this case, an appropriate price arrangement can be established for both parties, and neither party can criticize the other one for abusing its contractual position, or for the lack of proportion between the values of the services. Additionally, it is possible to renegotiate the contract under the new conditions (Ptk: Polgári törvénykönyv - Civil Code¹¹, 6:191. §).

It is clear that the delay and the inadequate quantity of goods will induce a price increase (and an inflation, as a result). Vékás mentions that, for example, long-term contracts for the sale of agricultural products are to be considered framework or preliminary contracts, since the parties commit for several years to concluding a sales contract for the particular agricultural product at specific times each year, the purchase price also being determined at that particular time (Vékás, 2016: 241).

A further problem is that neither the parties nor contract law can foresee every single challenge and the risks arising from the contract. There will always be need to react to changes. Reactions should observe legal certainty on the one hand, which is related to stability, and legal flexibility, on the other hand, which embodies the ability to change. Finally, this process can lead to private law becoming more and more similar to public law, which also plays an increasing role in legal regulations (Papp, 2016: 200).

The legal consequences related to contracts concern their type, how long they were signed for, what services and goods must be provided (to whom), is it a one-time, continuous or recurring service? All these elements can determine the legal fate of a contract. The question is, whether the contracting party is ready to terminate/pause its activity in view of the war situation? Contract law offers the parties quite a lot of space: they can agree on the specific law and forum, and they can also create their own rules to decide certain issues. A question regarding the legal aspects of contracts is to what extent they contain special contractual

¹¹ Hungarian Civil Code in English:

http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=96512&p_country=HUN&p_count=937&p_classification=01.03&p_classcount=4

provisions, for example force majeure clauses (*vis maior*), or whether they include rules regarding contractual difficulties, and whether these norms contain legal sanctions or not (IDW, 2022:75-77). There is a problem, however, when there is no *vis maior* clause in the given contract (or the parties did not think about it), the parties cannot react properly, and the governing law of the contract does not specify any solution. It is also possible that the contractual goal fails due to loss of interest, or simply as a result of the fights (a shipment is destroyed). In the war situation in Ukraine, as well as in relationships this conflict has an impact on, the parties should prepare for various difficulties. For example, a suspensive condition may be used in a contract that lasts until the end of the war or until a certain outcome is reached. We must also note that the parties are obliged to cooperate in good faith! This already includes the obligation to provide information, help, and that both parties must be ready to bear certain risks.

Regarding the contractual relationship between the parties, it is worth paying attention to whether it was concluded before or after the outbreak of war. Also, it is important to examine the nature of the agreement itself, whether there is a risk that the war in Ukraine will have a negative impact on it. Furthermore, an important question is which among the two parties will have to bear the greater risk, and does the other party need to compensate for this? It is also necessary to pay attention to how the conflict develops and, for example, to what extent it helps or hinders the fulfilment of the contractual obligations, whether it is possible that only a part of the contract can be fulfilled, or only one of the obligations is fulfilled.

Different types of contracts might be affected in different ways in connection with the conflict. One group is constituted by commercial-economic contracts, which are typically concluded by economic organizations, the second one by contracts (possibly of an economic nature) created by individuals, which mostly satisfy personal needs. The parties to the contract have to face the problem that the goods or services might not be available and usable. The contractual relationship between any two countries can be hindered to the same extent, since on the one hand, the Ukrainian party might not be able to acquire the necessary goods and deliver them to the other party, and the delivery on the other party may also be interrupted due to the difficulties caused by the war. There may also be problems related to the settlement of the price of the goods or services: the war may also affect the computer networks, so the transfers may be delayed or even fail. It is also a relevant question whether the contract is a one-time individual one or one that applies to multiple, regularly repeated services or goods delivery. The contract may concern one particular type of goods or services, goods in bulk or an individually defined service.

It is an interesting question whether contracts can be concluded that violate EU sanctions, and of course whether these can be enforced. If the service does not violate EU sanctions, there is still a service and payment obligation despite the exclusion of some Russian banks from the SWIFT payment service system (IDW, 2022: 21, 76). In the Hungarian Civil Code (Section 6:95) the following provisions

apply to illegal contracts: „Any contract which is incompatible with the law or was concluded by circumventing the law shall be null and void...”. The second part of the article specifies the possible consequences: „ [a contract] shall be null and void nonetheless where this is specifically declared by law, or if the purpose of the law is to prohibit the legal effect pursued by the contract”. Existing contracts remain valid, as EU sanctions are in principle not applicable retrospectively. Retroactive effect only applies in exceptional cases (IDW, 2022:17).

An important contractual question is how it is possible to deliver the goods and whether the manufacturer or supplier of the goods can meet this requirement. In some cases, this can be a serious obstacle to the proper performance of the contract. A further problem with regard to goods is that in the case of longer distances, it is worth considering whether it would be possible to take out insurance at all in a war situation.

5. The contractual conditions

One of the questions is to what extent the war in Ukraine causes problems in the fulfilment of the contract. If so, did the parties prepare for this in the contract or not? One common solution is for the parties to enter a force majeure clause for such situations. If the contract does not contain a "force majeure" clause or specifications as to how one party opt out, then one has to find the applicable law for the relevant situations. The issue of which law applies to the contract depends either on regulations within the contract itself ("choice of law clause") or on the international private law of the given state. (Note that the international private law of member states is based on EU rules: Rome I and Rome II). It is possible, for example, that the parties apply the UN sales rule, according to which, under certain conditions, the supplier does not have to take responsibility for non-performance (Article 79 CISG). If it is not possible to get rid of the obligation to perform, then the question arises as to whether there is an obligation to compensate is valid, and the culpability (Schrade und Partner, 2022). It is possible to include different legal solutions in the contract, which can help increase performance or, if someone does not perform properly, help the aggrieved party to satisfy himself.

According to Hungarian law, if the performance of the given product or service is excluded or impossible due to (physical or legal) reasons already existing at the time of the conclusion of the contract, then the contract is aimed at an impossible goal and is therefore void (6:107. §). Vékás and Gárdos (2014:2326) add that it is possible that at the time the contract is concluded, the service is still impossible (but the contract was not invalid), because the obligee can implement it until the due date of the contract's performance. According to the Ptk. 6:179. § (1), if performance becomes impossible, the contract is terminated. This is conceivable in the current situation, and since there are significant fights in Eastern Ukraine, it is possible that the delivery of goods in either directions would no longer be possible (e.g. a plant or factory was blown up). (In extreme cases, it is even conceivable that

the Ukrainian partner disappears completely.) What happens in this case is that after the conclusion of the contract, certain circumstances cause the performance of the contract to fail. It should be added that, in a legal sense, the Ukrainian state can also order an export or import ban on certain products. The war has a clear physical hindering effect: destroyed roads and other infrastructure. This can prevent delivery or even contact between the parties.

6. Conditions for contractual non-performance in Hungarian law

The rule "responsibility for damages caused by breach of contract" (Ptk., 6:142. §) states that whoever causes damage to the other party by breach of contract must compensate for it. According to Hungarian law, anything other than regular (contractual) performance of the contract counts as breach of the latter (Benke and Nochta, 2017:164). The law offers only limited possibilities for exemption. (Contrary to the previous version of the Hungarian Civil Code, in effect till 2013.) However, the Hungarian legislator restricted the need to compensate only to damages foreseeable at the time of the conclusion of the contract. If the lack of performance was involuntary, the aggrieved party is to be compensated for lost profit. The two conditions help ensure that the risk sharing between the contracting parties is at a healthier level (Vékás and Gárdos, 2014:2191-2192). Exculpation has a limited applicability according to the Civil Code. If someone does not act in accordance with the contract, the other party has the opportunity to demand compensation. According to the commentary of the Hungarian Civil Code by Vékás and Gárdos, 2014:2192), risk-taking is voluntary, therefore, if the contracting party is not performing as expected, (s)he has to reimburse the other party for the loss. This has already appeared in Hungarian judicial practice. The Civil Code formulates the exculpatory clause based on international examples (CISG Article 79, PECL Article 3:104, UNIDROIT Basic Principles Article 7.1.7): it requires the joint (conjunctive) existence of three conditions. The first is that the damaging event/circumstance occurs outside of the breaching party's control.

It is obvious that this is the case with the Ukrainian war, because private individuals cannot influence it. It should be added that the problems of two parties - and the non-fulfilment of one of them - can be a problem for third parties. And the fate of multi-party contracts can develop interestingly in case one of them cannot perform due to the war (this can even be observed for the current international production chains). According to Hungarian law, cases of force majeure include, for example, natural disasters, political-social events, state measures, or even radical market changes (Vékás and Gárdos, 2014:2193). It is also important to note that one of the contracting parties may not pass on possibly irreparable losses resulting from their economic decisions to the other party, they must bear the risk. (Budapest-Capital Regional Court 1. Gf. 75.032/2013/7)

The second condition is that the given event cannot be foreseen. In this case, no one could have known that the Russian army would invade Ukraine before

February 24, 2022. It is an important question what the contracting parties did when they learned about the invasion of Ukraine. In this respect, two fundamental differences arise in this regard, depending on how close the event is to the contracting parties. The impact of the conflict clearly appeared early in Ukraine and regarding the goods or services that are directly related to it. In contrast, in Hungary, for example, it was only felt much later. Thus, a certain quantity of certain goods may already have been stored, so the execution of the contract, as well as the production and fulfilment, only became a problem later. In this situation, it is worthwhile for the contracting parties to negotiate and agree that at least some of the services will be delayed. When the war breaks out, they can already prepare for the fact that the conditions will probably turn for the worse.

The third conjunctive condition for exculpation is that the party could not have been expected to avoid the circumstance preventing contractual performance or to avert the consequences of the damage. This means the applicability of the “attributability criterion” that plays a role in the Civil Code. An important rule for the application of the three conditions is that the obstacle referred to in the second condition must be examined with regard to the date of the conclusion of the contract, and the third condition when the breach of contract is realized. The Civil Code uses an exculpatory proof system, the breaching party must bear the burden of proof for all three conditions.

In relation to non-contractual performance, we have to talk about the delay of the obligee, which happens if the latter does not perform the service when it is due. Hungarian law recognizes the case of the so-called double delay: when the first delay has occurred, the non-performing party was granted another reasonable additional deadline for subsequent performance, but it also ended without results. In this case, the person entitled does not have to prove the lapse of interest, the expiry of the additional deadline is sufficient. In jurisprudence, the solution has also appeared that the rightholder can, in addition to setting the additional deadline, state that failure to meet the new deadline means the termination of the contract. Otherwise, if the performance is delayed, the creditor can claim damages due to the obligee's delay. In connection with the exemption, it is important to mention that the burden of proof for the three items together lies with the breaching party. At the same time, the issue of proof is somewhat influenced by the fact that the evaluation of whether the existence of the circumstances is sufficient for the rescue, falls within the scope of judicial discretion (Wellmann, 2013: 232).

7. Particular contracts

Different legal problems can be observed in many contractual areas. Construction law - is one area of private law in which there are many contractual agreements and which is sufficiently sensitive to deliveries and rising prices. On the one hand, shortages of certain building materials may also occur in Hungary, and, on the other hand, the conflict has a significant price-inflating effect, which is

difficult to manage. This may prompt the parties to either try to terminate the contract or renegotiate the terms. It is also necessary to take into account the major state building projects, which may be suspended or cancelled due to the conflict, because of shortages, disruption of the supply chain, and significant price increases caused by inflation. These may entail the renegotiation of contracts. At the same time, the suppliers cannot fulfil their obligations for a reason, since so far more than 11 sanctions packages have affected the relationship with Russia. A possible solution here is to extend the deadlines if the intention to build still exists and the obstacles such as lack of building materials, workers or other services are only temporarily there (Schrade und Partner, 2022).

In relation to real estate contracts it is important to mention that crisis situations and wars have had an extraordinary impact on the housing market. The lack of housing is connected to periods of war and crisis, where the state has an increased role (Zerres, 2019:281). Here one has to think about the protection of tenants and may even limit private autonomy. The destruction of houses results in a shortage of homes, and the refugees also need to be accommodated somewhere. In Hungary, people primarily live in self-owned apartments, and only a small portion of the apartments available is rented out, typically based on an apartment rental agreement, as specified in the Ptk. (Residential lease agreements Section 6:342 – 6:348). Ukrainian refugees were first accommodated in hostels and larger community accommodation on a humanitarian basis. Later, as it was important for their lives to normalize, efforts were made to provide them with work in Hungary and at that time they already had an income, from which they could rent accommodation. Regarding apartment rental, it should be noted that it is often not easy for a Ukrainian person to find accommodation in Hungary, due to a lack of information and trust. There is a fear among Hungarian apartment rental companies that they will not be able to evict the tenant if he/she does not pay. As a solution to this, non-governmental organizations try build up trust by directly renting out apartments¹².

One solution in a war situation, which can help the buyer if they do not have enough cash, to specify alternative services in the contract. In this case, if one of the goods or services becomes impossible due to the war, there is still a way for the party to choose from the remaining products or services (Ptk.: 6.181.§ (1) - Impossibility of alternative services) Although it should be noted that in this case too, one has to think about what kind of goods are concerned, and, for example, due to the delivery, it is not certain that the customer will actually receive them.

8. Amendment of contract by the court

According to Hungarian law, it is also possible for the court to amend the contract. According to section 6: 192.§ of the Ptk., in case of a long-term legal relationship between the parties, if after the conclusion of the contract some

¹² <https://www.habitat.hu/hirek/2022/06/alberlet-tamogatasi-program-ukrajnabol-menekuloknek/>

circumstances changed that would lead to a harm to the substantial legal interest of a party if the performance of the contract continued under unchanged conditions, the latter party may initiate the procedure. The Civil Code adds as an essential condition that the change in circumstances could not have been seen at the time of the conclusion of the contract, nor was it caused by the party, and that the change in circumstances does not fall within the scope of ordinary business risk. If the Ukrainian war is relevant to any contract, it is obvious that these two conjunctive conditions can apply, because it is obvious that no one could have seen the war breaking out, and none of the contracting parties could have caused it. And it should be added that this is not an ordinary business risk, because it was not expected. In the case of the Ukrainian war, the contracting parties should prepare for significant changes regarding the circumstances. Thus, if they wish to conclude a contract now, the state of war must be taken into account. Regarding the amendment of the contract by the court, the latter only has the right to change from the time of asserting the claim (when the claim is filed), and it is possible to do so with *ex nunc* effect into the future.

According to article 1270 of the Romanian Civil Code (Forța obligatorie) a valid contract has the force of law between the parties; thus, they have to fulfil their obligations. Article 1271 states that this requirement holds even in cases where the fulfilment of the obligation becomes more difficult. The parties are required to evaluate the risks and they should apply risk decreasing legal mechanisms (e.g. clauses on inflation indexing) (Veress, 2017:112). According to Veress, this means that modification of contracts by judges, which means an interference in private autonomy, is only possible in very special cases. The rest of the articles specifies the possibilities of modifying contracts by judges. This can happen if the contractual circumstances have changed significantly after the conclusion of the contract, this change was not reasonably foreseeable at the time of the conclusion (*impreviziune*), the party obliged to perform did not expressly undertake the risk of the change of circumstances, it is not to be expected that he would have undertaken these risks, and the performance of the contractual obligation would be manifestly unfair. Before the court may be requested to modify or terminate a contract the obligee is required to start negotiations in good faith on adapting the contract to the new circumstances. A prerequisite for the court's action is that the preliminary consultation between the contracting parties was unsuccessful (Codul civil Art. 1271) (Veress, 2017:112)

9. The Ukrainian war in the light of Hungarian court practice

It is worth examining how Ukraine and the Ukrainian war have appeared in judicial practice so far. In doing so, I tried to examine the economic and private law court cases in Hungary after February 24 2022, where Ukraine played a role.

The first legal case is Gfv.30.388/2021/4 (Curia of Hungary), where one of the important issues was the difficulty of locating the witness, which caused his

interrogation to fail, and the risk of the impossibility of obtaining the data necessary for expert evidence had to be borne by the party obliged to provide evidence, based on the general rule of the interest in proof. In the case, in connection with a faulty performance, the parties entered into an agreement before the court, and then the defendant company was sold, the new owner amended the founding document, raised capital and appointed a new Ukrainian managing director. The plaintiff requested the liquidation of the debtor company, but after ordering the liquidation, the managing director did not comply with his obligation to prepare a closing balance sheet and submit documents. Although the plaintiff received sums from the defendant in accordance with the agreement, he still maintained claims. However, the new manager could no longer be heard as a witness in the lawsuit: the search after him was unsuccessful. Thus, expert evidence in the absence of the required documents could not be ordered. Since the plaintiff could not prove his additional claims, he had to bear the legal consequences.

Next, in a case aiming the termination of joint ownership of a property (judgment no. Pf.II.20.206/2022/46, Debrecen Regional Court of Appeal) the defendant referred to the outbreak of the Ukrainian war, claiming that the conflict also significantly affected the value of city (Debrecen) properties, but the court did not agree with this. In this case, at first instance, the court argued that it was not possible to terminate the common property due to the Russian-Ukrainian war. This argument, however, was not supported by the Regional Court of Appeal, since the case had already been going on for 11 years, and the district court did not have any data on how the value of real estate in the city (and especially that of the litigation) was affected by the armed conflict. The Regional Court of Appeal added that it is not known how the value of real estates changed due to the war, and it would have been necessary for the court of first instance to provide evidence for this (if one of the parties requests it, although it requires special expertise to determine this fact).

In connection with the Ukrainian war, it is necessary to talk about the court order No. 75175/2022/8 of the Budapest-Capital Regional Court, in which an employer turned to the court with the request to establish the illegality of a strike announced for an indefinite period from September 5, 2022 by its employees. The applicant indicated that on March 9, 2022, they concluded an agreement with the trade union to avoid the strike, taking into account the epidemiological situation (Covid 19) that still existed at the time, as well as the refugee crisis caused by the Russian-Ukrainian war conflict. In this case, the court granted the request and declared the strike illegal.

It can be stated that so far, few cases have dealt with the Ukrainian conflict (that reached the courts). Also, it can be seen from the first case that the chances of proof deteriorate if a Ukrainian party (in case of disappearance) is involved in the case. It is worth paying attention to this fact by prospective litigants. An interesting question is the price change, how it can be determined to all, or to what extent the question of price change has a place in a given case (if it already existed before the conflict).

10. Summary

The outbreak of the Russian-Ukrainian war has had a significant impact on the international economy and the lives of all of us. The countries surrounding Ukraine experienced the negative consequences of the war first-hand, and the conflict demanded a number of immediate measures from them. The EU is also active in trying to resolve the conflict. Already after the annexation of Crimea, it adopted several economic measures against laws that had a serious impact on trade and the economy. The sale or distribution of certain products for Russia is completely forbidden.

The war in Ukraine caused a confusion regarding certain products, as shortages appeared and production chains were also interrupted, but at the same time, an oversupply of agricultural products developed, which is difficult to handle. There are several issues to be resolved in relation to many areas of private law, for example labour, rent and travel law.

The contracts, in relation to which I examined the relevant parts of Hungarian law, also contain standards for the current situation. One important rule is concerned with illegal contracts. In contracts, conditions determined individually provide an opportunity to deal with new circumstances in connection with the conflict. I presented the consequences of contractual non-fulfilment according to Hungarian law, and what conditions apply to exculpation.

Finally, I presented a few cases from Hungarian private law judicial practice, although, of course, cases connected to the war have not yet appeared in high numbers in the judgments.

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