The Rebus sic stantibus Doctrine from a Comparative Perspective with a Special Emphasis on its Legal Treatment in the Croatian Legal System and Jurisprudence

Doctrina *rebus sic stantibus* în perspectivã comparativã, cu accent special pe tratamentul sãu juridic în sistemul juridic și jurisprudența din Croația

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Abstract

The rebus sic stantibus doctrine, as a basis for the adaptation or termination of a contract due to changed circumstances, is not equally regulated in common law and civil law countries. Today, in most countries belonging to the civil law tradition, this institute is expressly regulated in the national laws. On the other hand, common law countries do not recognize the rebus sic stantibus doctrine, but they have comparable institutes, such as frustration and impracticability. In light of this fact, the aim of this paper is to provide a comparative overview of rebus sic stantibus in civil law and common law countries, with a special emphasis on the Croatian model. The central part of the paper deals with the legislative framework and a critical analysis of the positions of the judicial practice related to rebus sic stantibus in Croatia. On the basis of this analysis, in the final part, the author discusses whether there is a need for amendments of the Croatian law and judicial practice de lege ferenda in order to adapt to the needs of the contemporary business practices and the tendencies found in comparative legal systems.

Keywords: *rebus sic stantibus; changed circumstances; contract adaptation; contract termination; frustration, impracticability.*

Rezumat

Teoria rebus sic stantibus, ca fundament al adaptării sau încetării unui contract datorate unei schimbări a împrejurărilor încheierii acestuia, nu este reglementată unitar în ţările aparţinând common law şi tradiţiei de drept civil. Astăzi, în majoritatea

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ţărilor aparţinând tradiţiei dreptului civil, această teorie este reglementată în mod expres în legile naţionale. În schimb, common law nu recunoaşte teoria rebus sic stantibus, ci teorii comparabile cunoscute drept frustration şi impracticability. În lumina acestui fapt, scopul lucrării de faţă este acela de a oferi o imagine de ansamblu comparativă a teoriei rebus sic stantibus în ţările de drept civil şi common law, cu accent deosebit pe modelul croat. Partea centrală a lucrării se referă la cadrul său legislativ şi cuprinde o analiză critică a poziţiilor practicii judiciare legat de teoria rebus sic stantibus în Croaţia. Pe baza acestei analize, în final, autorul pune în discuţie nevoia modificării legii croate şi a practicii judiciare de lege ferenda, în sensul adaptării acestora nevoilor practicilor contemporane în afaceri şi tendinţelor constatate în sisteme juridice comparative.

Cuvinte-cheie: *rebus sic stantibus; împrejurări schimbate; adaptarea contractului; încetarea contractului; frustration; impracticability.*

1. Introduction

The principle of party autonomy is one of the fundamental principles of the law of obligations, both for civil and commercial contracts. It allows the parties to establish and design their relationships in the manner most favorable to them, as long as they remain within the scope of the cogent rules[1]. The freedom of the parties to regulate their relationship is closely tied to the generally recognized principle of *pacta sunt servanda* which originated in Roman law[2]. This is another fundamental principle of the law of obligations, which states that the contract is the law for the parties and they are therefore obliged to perform it in the stipulated manner[3]. Furthermore, this principle aims to prevent the parties from unilaterally amending the contract and ensuring the *in favorem contractus* approach[4].

However, the circumstances which existed at the time of the conclusion of the contract can subsequently change in a significant way. In such situations, the principles of consciousness, fairness and equality of the parties can derogate the absolute formalism in the adherence to the provisions of the contract in certain cases[5]. Therefore, certain legal systems depart from the strict application of the *pacta sunt servanda* principle, and allow the adaptation or termination of the contract based on the interpretation of the

[1] See e.g: Art. 2 Croatian Obligation Act, Official Gazette Croatia 35/05, 41/08, 125/11, 78/15, 29/18. Hereinafter: COA.

[2] Also see: Jauernig/Stadler, 17. Aufl. 2018, BGB § 313. marg. 2. Available at: URL=< https://beck-online.beck.de> Accessed 18 March 2019.

For Croatian law see: Silvija Petrić, The Adaptation or Termination of the Contract due to Changed Circumstances Under the New Obligations Act, *The Journal of the Faculty of Law of the Riijeka University*, Vol. 21. Issue 1/2010, p. 3.

[3] *Ibid*. Petrić, p. 4.

[4] *Ibid*. See also: Zvonimir Šafranko, Rebus sic stantibus, Law in the Economy, 49, Issue 5/2010, p. 1278.

[5] These principles can be found in all laws on obligations. See among others: Art. 4 and 7. COA.

rebus sic stantibus doctrine[6].

This doctrine is not universally recognized in all legislatures. There are substantial divergences in its recognition and interpretation in civil law and common law countries. In civil law countries, the *rebus sic stantibus* doctrine allows the adaptation or termination of the contract due to changed (new) circumstances which occurred after the contract was concluded, could not have been foreseen or removed, which makes the performance of the other party excessively onerous[7]. Under the legal systems which expressly regulate this doctrine, the parties are bound to perform their contractual obligations until there is a change in (economic) circumstances, which could not be foreseen at the time of the conclusion of the contract[8]. Thus, reb*us sic stantibus* should be distinguished from *force majeure* which represents an absolute (both physical and legal) impediment to the performance of the contract, and it is not limited to economic hardship[9]. Unlike in civil law countries, the concept of *rebus sic stantibus* does not exist in common law countries. These countries rely on similar institutes, such as *frustration and impracticability*[10]*.* However, despite principal similarities, these institutes differ in significant ways[11].

In light of the above, this paper aims to provide a comparative overview of the interpretations of *rebus sic stantibus* in civil law and common law countries. The central part of the paper deals with the analysis of the provisions on *rebus sic stantibus* in Croatian law and judicial practice. In the final part of the paper, the author discusses whether the provisions and positions taken by the Croatian law and judicial practice are in accordance with the needs of the contemporary legal dealings and the tendencies in comparative law.

2. The *rebus sic stantibus* in civil law countries

[6] The term rebus sic stantibus is based on the Latin phrase: *„contractus qui habent tractum succesivum et dependiam de future rebus sic stantibus intelligentur,"* Asril Sitompul, Pacta Sunt Servanda in Treaties Law. Available at: http://pihilawyers.com/blog/p=16. Accessed on 27. 3. 2019.

[7] See among others: Art. 369. COA; Ian Brownlie, Principles of Public International Law, 4th Ed, Oxford, London, 1990, p. 620; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed: 27. March, 2019.

[8] *Ibid*.

[9] Hutchison, Andrew, *Change of Circumstance in Contract Law: The Clausula Rebus Sic Stantibus*, Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law, Vol. 72, No. 1/2009, p. 60; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019. For more on the economic inability to perform thecontract, see: Karl Larenz, Lehrbuch des Schuldrechts, Band I, Allgemeiner Teil, 14. Auflage, Verlag C.H. Beck, 1987, München, p. 318 et seq.

[10] A similar doctrine exists under the UN Convention on Contracts for the International Sales of Goods (CISG) as the concept of harship. For more on this concept see: Kröll/Mistelis/Perales Viscasillas CISG/Atamer, 2. Aufl. 2018, CISG Art. 79 Rn. 78-86. Available: URL=< https://beck-online.beck.de> Accessed on 18 March 2019.

[11] Also see: Hubbard, Steven W. „Relief from Burdensome Longterm Contracts: Commercial Impracticability, Frustration of Purpose, Mutual Mistake of Fact, and Equitable Adjustment", *Missouri Law Review* vol. 47, no. 1/1982, p. 83 and 92; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/ MurUEJL/2001/18.html. Accessed on: 27. March, 2019.

2.1. From Roman law to the enactment of the first National Codifications in Europe

Chronologically speaking, the *rebus sic stantibus* doctrine had a long gestation period and it appeared relatively late. This is because the principle of *pacta sunt servanda,* which mandates the strict compliance and performance of the contractual provisions for the contracting parties, held the absolute primate for a long time and it strictly applied to all contracts. Certain attempts of establishing a favorable approach to changed circumstances by some Roman authors (such as Paulus, Marcellus i Africanus) did not make a notable impact[12].

This historical preference of the *pacta sunt servanda* principle over *rebus sic stantibus* has religious origins, because monistic religions required the believers to strictly comply with the given word and the fulfillment of obligations[13]. The first significant departure from the *pacta sunt servanda* principle occurred with the development of trade in the interpretations of the canonists from the 12th and 13th century[14]. In their interpretations, the contemporary jurists stated that long-term contracts with successive deliveries should be interpreted in accordance with the language of the contract only if there are no subsequent changes of circumstances[15].

The more significant development of trade led to an increased popularity of the *rebus sic stantibus* doctrine in the decisions of the church courts regarding usurious contracts in the 15th and 16th century[16]. However, the economic and trade crisis, which lasted until the end of the 18th century, hindered the full recognition of this doctrine for all contracts and the rejection of this theory and the re-introduction of strict compliance with the *pacta sunt servanda* principle[17]. The decreased popularity of the *rebus sic stantibus* doctrine was a result of the revolutionary movements and liberalism which were on the rise in Europe

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[12] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1279. For Roman sources see: Digest, Book L, 17.

[13] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019. See also: Garner, James W., *Revision of Treaties and the Doctrine of Rebus Sic Stantibus*, Iowa Law Review, Vol. 19, No. 2/1934, p. 319.

[14] Hutchison, Andrew, *Change of Circumstance in Contract Law: The Clausula Rebus Sic Stantibus*, Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law, Vol. 72, No. 1/2009, p. 61; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019.

[15] *Ibid* Aziz.

[16] Hutchison, Andrew, *Change of Circumstance in Contract Law: The Clausula Rebus Sic Stantibus*, Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law, Vol. 72, No. 1/2009, p. 63; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019.

[17] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019. See also: Hutchison, Andrew, *Change of Circumstance in Contract Law: The Clausula Rebus Sic Stantibus*, Tydskrif vir Hedendaagse Romeins-Hollandse Reg (Journal for Contemporary Roman-Dutch Law, Vol. 72, No. 1/2009, p. 60-63.

at the time[18]. This situation preceded the adoption of the first codifications in Europe at the end of the 19th and the beginning of the 20th century. Considering the fact that the *rebus sic stantibus* doctrine was integrated differently into the national legislation of civil law countries, the following sections analyse separately German and French law as the typical comparative law representatives in this sense.

2.2. From the enactment of the national codifications to this day

2.2.1. France

France is a civil law country in which civil and commercial courts did not allow the adaptation or termination of commercial and civil contracts due to changed circumstances[19]. This formalism and rigidity in the application of the *pacta sunt servanda* the earlier French judicial practice[20]. The situation did not change significantly even with the adoption of the French *Code Civil* in 1804[21]. It provided in article 1134 that contracts can only be adapted with the consent of both parties, or under the conditions provided by law, and that the contracts have to be performed in good faith[22].

Although some French scholars considered this to be an indirect introduction of the *rebus sic stantibus* doctrine into French law, the French courts in civil and commercial matters were not inclined to such interpretations and they refused to allow the adaptation and termination of contracts[23]. The only exception in this regard were the decisions of the French administrative courts which, under the influence of the consequences of World War I and the large economic crisis and the devaluation of national currency, allowed the adaptation of the contract price only for contracts related to the concession of power and gas, public works and government contracts[24].

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[18] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on 27. March, 2019.

[19] Monteiro, Antonio Pinto; Gomes, Julio, *Rebus Sic Stantibus - Hardship Clauses in Portuguese Law*, European Review of Private Law vol. 6, no. 3/1998, p. 320, Silvija Petrić, Adaptation or Termination of the Contract Under the New Obligations Act, *The Journal of the Faculty of Law of the University of Rijeka*, Vol. 21. Issue 1/2010, p. 6.

[20] *Ibid*.

[21] Zvonimir Šafranko, Rebus sic stantibus, Pravo u gospodarstvu, Vol. 49, Issue 5/2010, p. 1299.

[22] Tako i: Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019. Also see: Silvija Petrić, Adaptation or Termination of the Contract Under the New Obligations Act, *The Journal of the Faculty of Law of the University of Rijeka*, Vol. 21. Issue 1/2010, pp. 6-8.

[23] Under French law, this theory is called „theorie de l`imprevision" (the theory of unforeseeability, impervision). Also see: Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1278. On the rejection of this theory by Frency courts, see: Đorđe Čobelić, Promenjene okolnosti u privrednom i građanskom pravu (clausula rebis sic stantibus), Beograd, 1972, p. 18.

[24] O tome vidi više: Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/ 2001/18.html. Accessed on: 27. March, 2019.; Silvija Petrić, Adaptation or Termination of the Contract Under the New

This situation remained in force in France until the enactment of the amendments to the French Civil Code in 2016. The amendment to article 1195 expressly provides that, if there is a change of circumstances which were not foreseeable at the time the contract was concluded, and thus the other party did not agree to the risk of such a change and suffered significant hardship, it is entitled to request renegotiations with the other contracting party in order to adapt the contract[25].

During the course of the renegotiations for the adaptation i.e. adjustment to the new circumstances, the party invoking the changed circumstances must continue to perform their obligations from the initial contract[26]. The French legislature provides that the next step can only be taken if the renegotiations fail. In such a case, the parties can consensually terminate the contract with effect from the occurrence of the changed circumstances or some other date the parties agree to[27]. If an agreement cannot be reached by the parties, then the French legislator allows the parties to seek the adaptation or termination of the contract before a court. If the parties are unable to agree on such a resolution in a reasonable time, then one of the parties can request a judicial adaptation or termination of the contract[28].

It thus follows that the *rebus sic stantibus* doctrine was only recognized and applied as a basis for contract adaptation and termination of all contracts (commercial and civil, not only administrative) from 2016[29]. Thereby, the French legislator removed all doubts and the French law officially recognized the *rebus sic stantibus* doctrine. However, there are still traces of the French legal heritage and the idea that the *pacta sunt servanda* principle and party autonomy have precedence. The French legislator granted the rights to seek judicial contract adaptation or termination based on changed circumstances very reluctantly. Namely, the parties seeking the adaptation/termination were still required to attempt a consensual resolution, and to even subsequently initiate court proceedings jointly, and only thereupon a single party could request judicial contract adaptation/ termination, if all else fails. The question arises how the appropriate deadline for reaching the agreement would be determined. Considering the fact that the relevant provisions have been implemented under French law for a fairly brief period of time, it will be interesting to see the answers offered by the French judicial practice.

Obligations Act, *The Journal of the Faculty of Law of the University of Rijeka*, Vol. 21. Issue 1/2010, p. 8; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1299.

[25] See Art. 1195. franc CC, Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, p. 30.

[26] See Art. 1195. franc CC, Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, p. 30.

[27] Ibid. For more on the reform related to *rebus sic stantibus* in the French legislature, see: John Cartwright, Simon Whittaker (edt.); The Code Napoléon Rewritten: French Contract Law after the 2016 Reforms, Hart publishing, Oxford and Portland, 2017, p. 187.

[28] See Art. 1195. franc CC, Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, p. 30.

[29] For more about doctrine rebus sic stantibus in Portugeese law see: Papanikolaou, Panagiotis. "Rebus Sic Stantibus und Vertragskorrektur auf Grund Veranderter Umstande im Griechischen Recht," *European Review of Private Law* vol. 6, no. 3/1998, p. 303-318.

2.2.2. Germany

Unlike France, Germany adopted the concept of *rebus sic stantibus* much sooner. This occurred first in the German judicial practice[30]. Although the BGB from 1990 did not contain an express *rebus sic stantibus* provision, the German courts applied it through the extensive interpretation of the impediment to perform the contract, which was extended to economic impediment[31]. Over the years, the adaptation or termination of the contract were initially justified through the interpretation of the principles of consciousness and fairness, from Paragraph 242 of the BGB. This paragraph provides in relevant part that: *„an obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration*[32]*.*

This understanding was severely criticized and abandoned very soon[33]. It was replaced by the interpretation of the German professor Oermann who developed a doctrine entitled *Wegfall der Geschäfstgrundlage*[34]*.* This doctrine was cited in thousands of decisions under German law as it provides that the contract is built on the contractual basis (purpose)[35]. The legal basis of the contract is the perception of the existing contractual circumstances which were known to the parties at the time the contract was concluded, or they were known to one party while the other could not have been unaware of such circumstances[36]. The contractual basis serves as the foundation for the conclusion of the contract and the development of the contractual relationship. If there is a radical change in such circumstances after the conclusion of the contract, a court can adapt or even terminate the contract[37].

The final affirmation of Oertmann's position was its inclusion into the provision of Article 313 BGB in 2001[38]. This article provides that, if the circumstances which formed

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[30] MüKoBGB/Finkenauer, 8. Aufl. 2019, BGB § 313 Rn. 8. Available: URL=< https://beck-online.beck.de> Accessed 18 March 2019; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/ 18.html. Accessed on: 27. March, 2019.

[31] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1300; Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, p. 30.

[32] See: par. 242. BGB. In this sense, see: Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, pp. 30-31.

[33] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301.

[34] MüKoBGB/Finkenauer, 8. Aufl. 2019, BGB § 313 Rn. 8-11. Available: URL=< https://beck-online. beck.de> Accessed on: 18 March 2019; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/ MurUEJL/2001/18.html. Accessed on: 27. March, 2019.

[35] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301.

[36] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301.

[37] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301; Silvija Petrić, Adaptation or Termination of the Contract Under the New Obligations Act, *The Journal of the Faculty of Law of the University of Rijeka*, Vol. 21. Issue 1/2010, p. 6.

[38] Tako i: MüKoBGB / Finkenauer, 8. izdanje 2019, BGB § 313 marg. 1, 2. Available: URL=< https://beck-

the contractual basis of the contract significantly change after the conclusion of the contract, or if they would not have concluded the contract, or would have agreed to different terms if they had foreseen such a change, contract adaptation can be requested[39]. Adaptation is allowed under the condition that all the relevant circumstances of the case are taken into account, as well s the contractual and statutory risk allocation, and if it would be unreasonable to expect the performance of the other party[40]. If it is determined that the substantive terms which form the basis of the contract are incorrect, they are treated as changed circumstances[41].

With such a regulation, expressly recognized that changed circumstances can affect the contract, it is notable that the German legislator intended to allow a narrow or minimal scope of contract adaptation. Only if such a solution is not possible, the contract can be avoided or terminated in cases of long-term contracts.

It is interesting that the German legislator treats inaccurate substantive terms which form the basis of the contract as changed circumstances as well. An inaccurate perception of the material terms of the contract could be considered an error. However, considering the fact that the *rebus sic stantibus* doctrine is applied widely to all contractual basis under German law, then this approach is correct. Namely, the material terms definitely are a part of the basis of the contract and thus, it is justified to allow the adaptation or termination of the contract if they were incorrect[42].

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online.beck.de> Accessed on: 18 March 2019. Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, p. 31; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301.

[39] See Art. 313. BGB.

[40] See Art. 313. BGB.

[41] See Art. 313. par. 2. BGB. See also: Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301. See Art. 313. par. 3. BGB. Sličan koncept prisutan je danas i u švicarskom pravu. O tome vidi više: Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, *Murdoch University Electronic Journal of Law*, Vol. 8, 3/2001, available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1301.

[42] Under German law, the *disturbance of* the contractual base is the generic term which includes both the *omission* and the initial *absence of* the business base*. The contractual basis* can be determined as the subjective and objective base of the factual criteria. The so-called *subjective formula of the contractual basis* is constituted by the common intentions of the parties which are not included in the contract but they are identifiable and unobjectionable by the business partner of one party regarding the existence, future occurrence or continuation of certain circumstances which are within the business will of the parties. In contrast, the *objective contractual basis* is mainly supported and accepted in the literature. The reason of that is because it refers to all circumstances whose existence or continuance is required so that the contract as intended by both contracting parties can still exist as a meaningful regulation. Considering the fact that both the subjective and objective elements have tobe taken into consideration for each contract,the subjective formula ispredominant in the German practice. Jauernig / Stadler, 17th edition 2018, BGB § 313 marg. 3. Available: URL=< https://beck-online.beck.de> Accessed on: 18 March 2019. Italy, just like Germany, recognized the *rebus sic stantibus* doctrine in judicial practice for a longer period of time. Chronologically speaking, Italy was the first civilvlaw country which introduced it expressly into the Italian *Codice civile* backin 1942 in the provisions of Art. 1467. (Dubravka Klasiček, Marija Ivatin, modification or dissolution of contracts due to changed circumstances, Pravni vjesnik, Vol. 34, Issue: 2/2018, p. 32; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1302). Such a regulation was retained to this day. The Italian CC provides that contract termination could be requested by the party whose contractual preformance has become excessively onerous due to extraordinary and unforeseeable events. (See Art 1467. tal. CC. Contract termination can then be requested with the effects laid

It should be noted that German authors caution that courts should still be guided by the principles of consciousness and fairness in their application of the *rebus sic stantibus* doctrine, and to be vigilant for attempts of the parties to fraudulently rely on changed circumstances in order to avoid performing their obligations[43].

3. The *rebus sic stantibus* doctrine in Common Law countries

The adoption of the *rebus sic stantibus* from Roman law did not impact common law countries. The judicial practice and legislature in those countries developed independently from Roman law, which is why the *rebus sic stantibus* doctrine is not expressly regulated nor mentioned in case law, either historically, or today[44]. However, courts from the Anglo-Saxon legal tradition have developed substitute institutes which regulate situations of changed circumstances. These are the doctrines of: *frustration* and *impracticability*[45]. Although all these doctrines are different, they are also similar because they relate to the assessment of the effect of changed circumstances on the contract[46].

3.1. The frustration doctrine

The *frustration* doctrine developed independently from Roman law in English law. It was first mentioned in the *Taylor vs. Caldwell* case (1863), which recognized the possibility of release from contractual obligations due to subsequent events[47]. The inability to perform the contract is connected to subsequent impediments which occurred after the conclusion of the contract, which are not caused by either party, and which substantially changed the *implied terms*, i.e. the initial obligation[48].

This doctrine has a much broader scope than *rebus sic stantibus,* because it does not

down in art. 1458. tal. CC). If the other party offers offers an equitable contract adaptation, the affected party is bound to accept it. Ordinary contracting risks do not constitute changed circumstances. (See Art. 1467 tal CC.Also see: Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1302.).

[43] MüKoBGB / Finkenauer, 8. izdanje 2019, BGB § 313 marg. 5. Available: URL=< https://beck-online.beck.de> Accessed on: 18 March 2019

[44] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed: 27. March, 2019; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1305.

[45] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed: 27. March, 2019.

[46] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1306.

[47] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1306. In this case, the court released the lessee of the payment obligation for the lease of a concert hall, because it was burnt down prior tothe commencement of the lease term. The existence of the concert hall was an implied term. Considering the fact that it was burnt down, the court released the lessor from liabity for non-performance of the contract. Ibid.

[48] Also see: Aleksandar Goldštajn, Commercial Contract Law – International and Comparative, Zagreb, 1991, str. 305; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1307.

only cover the frustration of the purpose, but also other types of frustration, such as the destruction or unavailability of the object of the obligation, death, temporary inability to perform, legal impediments etc.[49].

The *frustration* doctrine was further developed in the cases of *Krell vs. Herny* and *Davis Contractors Ltd. v. Fareham U.D.C*[50]. In the *Krell vs. Herny* case from 1903, the court found that a contract is frustrated not only when there is a subsequent inability to perform, but also if the purpose of the contract is frustrated[51]. Furthermore, in the *Davis Contractors Ltd. v. Fareham U.D.C*. case, it was stated that frustration exists even if the circumstances change in a way that the contractual obligation no longer corresponds with the obligation intended by the parties[52]. Thus, the court found that *"…frustration occurs whenever the law recognizes that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract"*[53].

3.2. The impracticability doctrine

The *impracticability* doctrine was expressly introduced into the American legislature back in 1962, through the provision of Art. 2-615. UCC (Uniform Commercial Code: hereinafter: UCC). Its scope of application is limited to commercial sales contracts, in cases where the economic circumstances have changed so much that the purpose of the contract is threatened[54]. In such cases, parties can be released from their obligation, and they will not have to perform, if the delayed or incomplete delivery from the seller was caused by an unforeseen event whose absence or non-occurrence was a presumed at the time of the conclusion of the contract[55]. Thus, *impracticability* exists only if the performance has become excessively and unreasonably difficult[56]. The decision on whether the requirements for

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[49] Also see: Aleksandar Goldštajn, Commercial Contract Law – International and Comparative, Zagreb, 1991, str. 305; Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1307.

[50] In this case, Henry agreed to rent a hotel room in order to observe the coronation of the king. Since the ceeremony was postponed due to the king's illness, the purpose of the contract could not be fulfilled. Therefore, the court released Henry from the payment obligation for the hotel room. Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1307.

[51] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1307.

[52] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html.

[53] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html.

[54] Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, pp. 1306-1307; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019. The frustration doctrine was adopted in several common law countries, such as Canada, Australia and New Zealand. Ibid.

[55] See: Art. 2-615. UCC. Zvonimir Šafranko, Rebus sic stantibus, Law in Economy, Vol. 49, Issue 5/2010, p. 1308.

[56] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/

impracticability were met is made by the courts on a case-by-case basis[57].

Therefore, this doctrine requires that the newly occurred circumstances change the initial position on which the contract was based, in a way that affects the direct economic purpose of the contract, that such a situation was not the fault of the contracting parties, and that its absence was the basic prerequisite for the conclusion of the contract[58].

It can be concluded that both the *frustration* and *impracticability* doctrines refer to changed circumstances, but in a different way than the *rebus sic stantibus* doctrine. The scope of the *frustration* doctrine is broader than that of *rebus sic stantibus* and impracticability. It covers situations which are connected to both subsequent changes and the changes to the purpose of the contract. On the other hand, the *impracticability* doctrine is limited to the change of economic circumstances, and only to commercial sales agreements. Therefore, the scope of *impracticability* is narrower than the *rebus sic stantibus doctrine*.

4. *Rebus sic stantibus* in Croatian law and jurisprudence

4.1. The requirements for contract adaptation or termination

The r*ebus sic stantibus* doctrine is regulated expressly in Croatian law in Articles 369-372 of the Croatian Obligations Act (hereinafter: COA)[59]. The adaptation or termination of the contract can be requested due to changed circumstances which occur after the conclusion of the contract, which could not be foreseen at the time of the conclusion of the contract, and which make the performance of the contract excessively onerous to on contracting party or would cause significant loss[60].

In the regulation of the *rebus sic stantibus* institute, the Croatian legislator, like other

18.html. Accessed on: 27. March, 2019; PERILLO, Joseph. *The Law of Contracts*. 3rd Edition. St. Paul, Minn.: West, 1987.

[57] Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019.

[58] Zvonimir Šafranko, Rebus sic stantibus, *Pravo u gospodarstvu*, Vol. 49, Issue 5/2010, p. 1308; Aziz T Saliba, Rebus sic stantibus: A Comparative Survey, Murdoch University Electronic Journal of Law, Volume 8, Number 3 (September 2001), available at: http://classic.austlii.edu.au/au/journals/MurUEJL/2001/18.html. Accessed on: 27. March, 2019.

[59] See Art. 369-372 COA.

[60] See Art. 369 para. 1 COA. The provisions of th COA from 2005 on the adaptation and termination of the contract due to changed circumstances (396-372 COA) differ from the provisions of the COA from 1978 (133-136 COA from 1978). The legislator stated the grounds for the amendments as the simplification of the requirements for the adaptation or termination of the contract. The new provisions do not provide that it is easier to adapt or terminate the contract under the provisions of the COA from 2005, but that the fulfillment of the purpose of the contract is no longer a requirement for the adaptation or termination of the contract. Furthermore, the unfairness criteria for this institute was pushed aside with the amendments of the COA, because it is not a requirement for the termination, but only for the adaptation of the contract. The purpose of this approach was to emphasize that the primary remedy for changed circumstances should be contract adaptation, and only thereafter, contract termination. (Draft Obligations Act,available at: http://www.iusinfo.hr/Appendix//RDOCSB_HR//ent_id_556.PDF, p. 10, 31.1.2019).

civil law legislators, did not expressly provide for a definition or examples of changed circumstances[61]. This approach is appropriate because it is difficult to foresee all the possible circumstances which could fall into this category[62]. The formulation of the provisions of the COA leads to the conclusion that changed circumstances are only those which impact the economic weight of the performance and the balance between the contracting parties and the mutual performances[63]. Therefore, there has to be an occurrence of factual circumstances which did not exist at the time of the conclusion of the contract which replace the previous circumstances[64].

The circumstances have to be inevitable and extraordinary in comparison to the circumstances expected in the ordinary course of dealings[65]. The provisions of the COA also point to this fact, where the term „extraordinary circumstances" is used in Article 369 Paragraph 1, under the title „Changed Circumstances"[66]. The adaptation or termination of the contract cannot be requested by the party which is invoking changed circumstances, even though it was bound to take such circumstances into account at the moment of the conclusion of the contract, or if it could have avoided or overcome such circumstances[67]. This conclusion was confirmed by the Croatian judicial practice which concluded that legal entities which conduct economic (professional) business have to take into account the business risk of the reduction of demand and price during the conclusion of contracts[68].

The level of due care which should be applied in such cases cannot be universally determined, but it is assessed in relation to the type of business. Merchants and experts are obliged to adhere to the higher standard of due care of a good business person, or good expert[69]. On the other hand, a lower standard of due care applies to the citizens and consumers in comparison to merchants and experts. Therefore, when entering into a contract, financial institutions, such as banks, must consider the possibility of changed interest rates in order to avoid the harmful effects of the contract[70]. If the financial

[61] In this sense, compare Article 269 COA with Paragraph 313 BGB.

[62] In this sense, see for example Paragraph 313 BGB.

[63] Gorenc, V. et al. Commentary of the Obligations Act, Zagreb, 2014, p. 605.

[64] Gorenc, V. et al. Commentary of the Obligations Act, Zagreb, 2014, p. 606. The Croatian judicial practice defines changed circumstances in this sense,stating that those are only circumstances which accurred between the conclusion of the contract and the accrual of the obligation and which impact the affected party in an unpredictable, inevitable and irresistible way. See, for example, the Decision of the District Court in Split, Gž-1855/15, from 10. III. 2016.

[65] Therefore, only the party which is prevented from performing its contractual obligation due to changed circumstances which created large economic loss can request the adaptation or termination of the contract. This was confirmed by the Croatian judicial practice which concluded that the other side which didnot receive the performance of the contract due to changed circumstances cannot invoke such circumstances. In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev 1616/15-3, from 6.9.2016.

[66] In this sense, see Article 369. of the COA.

[67] See Article 369. paragraph 2 of the COA.

[68] In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev 710/2013-2 from 4.9.2013.

[69] In this sense, see Article 10 paragraph 1 of the COA.

[70] In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev-2521/95, from 7. II. 1996.

institutions failed to do so, they would not be entitled to request the adaptation or termination of the contract due to changed circumstances, in the event of a decrease in interest rates or an inflation of prices[71].

Furthermore, difficulties such as weaker purchase power or a difficult economic situation do not qualify as extraordinary events which could not be foreseen at the time of the conclusion of the contract[72]. The mere fact that recession occurred after the conclusion of a sales contract is not a change of circumstances under the *rebus sic stantibus* doctrine[73]. Similarly, the increase of competition on the hospitality market and the decrease of purchase power after the conclusion of a lease agreement for a hospitality establishment do not constitute circumstances which could not have been foreseen by the party at the time of the conclusion of the agreement[74].

The increase of the prices is not a changed circumstance in the sense of the doctrine *rebus sic stantibus*[75]. Also, if the initially stipulated price was symbolic and it surpasses the regular costs of the maintenance of the object of the contract, and one party does not agree to the adaptation of the price amount which was previously agreed, the other party can request the termination of the contract[76].

Namely, the occurrence of new circumstances will not affect a large and small or medium-sized enterprise in the same manner. Furthermore, the same degree of foreseeability cannot be presumed for parties with different backgrounds, experience and market powers. Thus, this assessment should be made on a case-by-case basis.

It should be noted that a change in the characteristics of a party during the life of the contract is not a change of circumstances in the sense of *rebus sic stantibus* (for example, a merchant became a citizen or *vice versa*). Furthermore, a change in the object and purpose of the contract, the value of the mutual performances and the increased effort and costs of performance for the affected party are not grounds for the adaptation or termination of the contract under the *rebus sic stantibus* doctrine[77].

A party requesting variation or termination of the contract cannot invoke a change of circumstances that occurred after the expiry of the time limit for performance of the

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[71] In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev-2521/95, from 7. II. 1996; and the Decision of the Supreme Court of the Republic of Croatia Rev 1656/99, from 9. III. 2000.

[72] In this sense, see the Decision of the District Court in Osijek Gž-89/12 from 22. 3. 2012.

[73] In this sense, see the Decision of the District Court in Dubrovnik Gž-202/16 from 29.6.2016.

[74] In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev 1112/01-2, from 5.XI. 2003.

[75] In this sense, see the Decision of the District Court in *Zagreb, Gž-4798/02, from 5.10.2004*

[76] In this sense, see the decision of the Higher Commrcial Court *Pž-160/93, from 15.6.1993. However, regardless of the status of the contracting parties, they are not obliged to foresee the future legislative amendments, of which they did not know or could not have known at the time of the conclusion of the contract.* In this sense, see the Decision of the District Court in Varaždin – The Standing Koprivnica Division Gž-2490/15-2, from 20.1.2017. Changed circumstances do not immediately consititute grounds for the adaptation or termination of the contract. For example, the reversal of a decision on a scholarship award which was the basis for the conclusion of a scholarhip contract, after the scholarship has becme due, is not a circumstance which could serve as a basis for the contracting party to to unilaterally terminate the contract due to changed circumstances. In this sense, see the Decision of the District Court in Bjelovar, Gž-93/17-2, from 11. X. 2018.

[77] Ibid. On the other hand, the text of the COA from1978 provided that the inability to fulfil the purpose of the contract was relevant for the termination of the contract. In this sense, compare Article 133 of the COA from 1978 and Article 369 of the COA.

obligation[78]. For example, the decision on the withdrawal and annulment of shares made after the transfer of shares based on a purchase agreement are not grounds for the termination of the contract due to changed circumstances[79]. The other side, whose contractual obligations were not fulfilled due to changed circumstances cannot rely on such circumstances[80].

It is worth noting that the *rebus sic stantibus* doctrine is applicable to all contracts, regardless if they are bilaterally or unilaterally binding, named or unnamed[81]. Namely, the debtor of a unilaterally binding contract can invoke changed circumstances if the performance becomes excessively onerous or if it creates significant losses. Even though in such cases the other side which does not owe counter-performance cannot rely on changed circumstances, it would be unfair not to allow, for example, the debtor in a gift contract, to invoke changed circumstances and to insist on performance at any price[82]. Furthermore, the adaptation and termination of preliminary agreements can also be requested[83]. There are no obstacles to cancel a collective agreement which was concluded for an unfixed term, which provides for a cancellation remedy, through the application of the rules of obligation law on the adaptation or termination of contracts due to changed circumstances[84].

4.2. Court decisions on the adaptation or termination of contracts

The adaptation or termination of the contract due to changed circumstances is a form of judicial contract termination, because it can only be requested through a constitutive claim[85]. Thereby, the party whose performance had become more onerous due to changed circumstances can request adaptation, or if such a request fails, alternatively seek to terminate the contract[86]. When deciding on the termination of the contract, the court is guided by the principles of fair business dealings, taking into account the interests of both contracting parties[87].

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[78] See Article 369 paragraph 3 of the COA. This position was confirmed inth Croatian judicial practice as well. In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev 710/2013-2 4.9.201, the Decision of the Commercial Court in Zagreb, P-3139/06, from 11. XII. 2008. (confirmed by the Decision of the Higher Commercial Court Pž-1177/09, from 19.9. 2012.

[79] See the Decision of the Supreme Court of the Republic of Croatia Rev 938/05-2, from 22.3.2006.

[80] This position was confirmed inth Croatian judicial practice as well. In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev 1616/15-3, 6.9.2016.

[81] In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev-2154/886, from 5.5.1987. in Gorenc, V. et al.., Commentary of the Obligations Act, Zagreb, 2014., p. 605.

[82] Also see: ako Gorenc, V. et al.., Commentary of the Obligations Act, Zagreb, 2014., p. 605.

[83] In this sense, see the Decision of the District Court in Rijeka, Gž-1583/09, from 25. I. 2012.

[84] See the Decision of the Supreme Court of the Republic of Croatia Gž-19/16-3, from 7. XII. 2016.

[85] See the Decision of the Supreme Court of the Republic of Croatia Rev 1505/02-2, from 8.12.2004.

[86] Also see Mirjana, Baran, The Termination -Adaptation of the Contract 2014., Osijek, p. 25. Older judicial practice did not allow this, because the provisions of the 1978 COA were different. For insight on the previos framework see, for example, the Decision of the Higher Commercial Court Pž-3939/95, from 30.4.1996.

[87] In this sense, see the Decision of the Supreme Court of the Republic of Croatia Rev-2818/93, from

Therefore, the primary remedy in cases of changed circumstances is the adaptation of the contract, while termination is the subsidiary remedy. The other side can also offer an extra-judicial, equitable adaptation of the contract. If the parties fail to reach an agreement, the decision on the adaptation or termination of the contact is referred to the court[88]. However, the adaptation or termination agreed upon by the parties is of a consensual and not of a judicial nature. Thus, when the parties are able to reach an agreement, the *rebus sic* stantibus doctrine did not apply[89]. The parties are also free to amicably agree to adapt or terminate the contract during court proceedings[90].

This is further confirmed by the duty to notify from Article 37 of the COA, which provides that the party which intends to invoke *rebus sic stantibus* must notify the other party on its intention to adapt or terminate the contract as soon as the new circumstances occur. If a party fails to notify the other party on its intention, it does not thereby lose the right to initiate proceedings for the adaptation or termination of the contract based on changed circumstances[91]. In such a case, this party would only be responsible for the damage caused to the other party due to the absence of a timely notice[92]. The amount of damages in this case would be determined in accordance with indemnity rules[93].

If a court determines that al the abovementioned requirements were met and orders the termination of the contract, the other party can file a claim for equitable damages caused by the termination of the contract[94]. The term „damage" in this sense is not considered under indemnity rules, thus the amount of damages would be assessed under the rules of equity in accordance with the circumstances of the case[95]. Therefore, the term „damage" means the equitable distribution of loss which the parties have suffered due to the change or termination of the contract. Such a regulation is appropriate, due to the fact that neither side is responsible for the changed circumstances, and thus neither party should bare the risk of such a change[96].

5. Conclusion

The *rebus sic stantibus* doctrine has received different treatment in common law and civil law countries, due to different historical circumstances. In civil law systems, which

25.10.1995.

[88] See Article 369 paragraph. 4 COA.

[89] Also see Mirjana, Baran, The Termination -Adaptation of the Contract 2014., Osijek pp. 25-26. Older judicial practice did not allow this, because the provisions of the 1978 COA were different.

[90] *Ibid*.

[91] See Article 370 COA.

[92] See Article 370 COA.

[93] Mirjana, Baran, The Termination -Adaptation of the Contract Handbook 2014., Osijek, pp. 25-26.

[94] See Article. 369 paragraph 5 COA.

[95] Blagojević, Krulj, p. 405.

[96] Despite the changed circumstances, th Croatian legislator allows an express waiver from the parties of the right to invoke changed circumstances, unless if this would be contrary to the principles of consciousness and fairness. See Art. 372. of the Croatian Obligation Act.

rely on Roman law, the majority of countries have historically recognized the *rebus sic stantibus* doctrine in their judicial practice. The only exception can be found in French law, which rejected the application of this doctrine in commercial and civil contracts. However, in 2016, this doctrine was introduced into French law through the provisions of the *Code civil*, which brought it in line with the approach taken by other civil law countries.

Therefore, it can be concluded that most civil law countries today recognize the *rebus sic stantibus* doctrine and expressly provide changed circumstances as grounds for contract adaptation or termination, if they were not foreseeable at the time of the conclusion of the contract, and if their occurrence made the performance of the contract economically onerous.

Unlike in civil law countries, the *rebus sic stantibus* doctrine did not exist in common law countries, neither in history nor today. They do recognize, however, similar doctrines, such as *frustration* and *impracticability*. Unlike *rebus sic* stantibus, the frustration doctrine has a broader scope of application, as it covers both changed circumstances and the change of the purpose of the contract. The *impracticability* doctrine has a narrower scope, as it only applies to changed circumstances in commercial sales contracts.

Croatian law belongs to the civil law systems which expressly recognize the *rebus sic stantibus* doctrine in its COA. The Croatian legislature relies on the Roman legal tradition. Croatian law differs, however, from German and French law, which also rely on the Roman legal tradition. The field of application of the *rebus sic stantibus* doctrine under German law is wider than the one of Croatian law, as it extends to incorrect substantive terms which form the contractual basis.

Croatian law also differs from the French model of the *rebus sic stantibus* doctrine. French law, influenced by its historical circumstances, still strongly favors party autonomy and is reluctant to recognize the impact of changed circumstances on the contract. Namely, under French law, the judicial adaptation or termination of the contract can be sought only after multiple attempts of consensual contract adaptation or termination. However, under Croatian law, it is possible to initiate proceedings for the adaptation or termination of the contract, even without prior agreement. In such cases the party which fails to notify the other party on its intent will only be liable for damages caused to the other party.

Despite the noted differences between Croatian, German and French law, it can be concluded that the regulation of *rebus sic stantibus* doctrine is, in substance, similar or identical. Namely, the analysis of the Croatian judicial practice shows that the existing provisions meet the needs of the contemporary legal trends. Considering the fact that the development of the market and the new needs of the merchants have not advanced significantly, there is no need for interventions into Croatian law regarding the *rebus sic stantibus* doctrine. If there are new needs recognized in practice, legal uncertainties can be resolved based on the existing rules and the extensive interpretation of the provisions of the COA on the adaptation or termination of the contract due to changed circumstances. The only recommendation would be to extend the application of the existing provisions on the *rebus sic stantibus* doctrine to situations where the contractual basis was built on incorrect material facts, as applied under German law.