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THE DOCTRINE OF *L'IMPRÉVISION* IN FRENCH CONTRACT LAW

The doctrine of *l'imprévision* as exception to the principle *pacta sunt servanda*, well known for French administrative law was introduced in French civil law by the new article 1195 Code civil (Civil Code of French). It is one of the main innovations of the Ordinance o. 2016-131 on the reform of contract law, the general regime and the proof of obligations [1], which allows the renegotiation or termination of a private-law contract in case of hardship. In the absence of legal provisions, judicial case-law had up until now rejected this principle [2, p. 75]. *L'imprévision* is usually seen as encompassing all situations in which a party's contractual obligations have become harder and more onerous to perform – although not impossible – because of an unforeseen event posterior to the conclusion of the contract [3, p. 53]. Reforming this area of law required the French legislator to strike a new balance between, on the one hand, the principle of *pacta sunt servanda* and the legal certainty that is usually ascribed to it and, on the other hand, the idea of contractual solidarity and fairness that lies at the foundation of every exception for *imprévision* admitted elsewhere [4, 90]. The rules governing *l'imprévision* have been completely changed, however it can be argued that the inspiration for that change is European contract law, French administrative contract law or even the practice of contract law as contract-makers have been circling *imprévision* rules for decades. Thus, inspiration is coming from above (European contract law), from below (contract practices) and from the "sides" (administrative contract law) [3, p. 44].

Legal systems that already allow an exception to *pacta sunt servanda* for cases of impossibility may take one of three different approaches to cases of *imprévision:* they may not discharge the parties unless performance has become actually impossible; they may extend the existing exception for impossibility to (some of) these cases; or they may develop of separate exception. These different approaches have been taken in French, English and Germany law, respectively [4, p. 94].

The traditional French approach to *imprévision* is notorious for its uncompromising adherence to *pacta sunt servanda*. It is perfectly illustrated by the *Cour de cassation's* leading decision in *Canal de Craponne,* where the owner of a channel asked the courts to increase the charges that where due to them by the adjoining owners in exchange for their obligation to maintain the channel under

contracts concluded in 1560 and 1567, which had become entirely derisory in 1876. While the lower courts allowed the claim and modified the contract, expressly admitting an exception to the principle of *pacta sunt servanda* for contracts that are executed over a certain period of time, the *Cour de cassation* overruled the decision, pointing out that Article 1134 reproduced a general and *absolute* principle that applies to *all* contracts, including those entered into before the *Code civil* was enacted. Thus, it was not the task of the courts, however fair they thought their decision to be, to modify a contract and replace freely negotiated terms [4, p. 94-95; 5].

French courts based on the general principle of good faith [6, p. 501; 4, p. 108] imposed in case of *l'imprévision* to renegotiate contracts to rebalance disproportionate contractual duties where both parties had agreed on it, or termination of the contract. The concept of *l'imprévision* applies if new circumstances that are beyond the control of the parties and that were unforeseeable arise, rendering the contract substantially more burdensome or substantially altering the economic balance between the obligations. The same approach is in the Belgian legal discourse [7, p. 101; 8, p. 123].

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RAFAŁ LEMKIN AND INTERNATIONAL DISCOURSE ON «GENOCIDE» IN THE FIRST HALF OF THE 20TH CENTURY

There is no argument that the crime of genocide took place during a lot of wars and armed conflicts, even if the term and concept was not reflected and verbalized in the public consciousness. The recognition of the terminology of this type of crime provoked not only a linguistic dispute, but also resulted in the significant consequences concerning the substance [5, p. 27]. Fascism, World War II and their consequences led to the need to clarify the term, which would have functioned in the documents of international law and would have identified the deliberate destruction of entire national or racial groups as a predetermined method of operation. The number of victims and aggressors' atrocities during World War II had forced the international community to adopt the legislation penalizing genocide.

The conference paper concentrates on introducing one of the Polish lawyers who the large part of his life spent and worked outside Poland. Rafał Lemkin (also known abroad as Raphael Lemkin) was born in 1900 in Bezwodne and died in 1959, in New York. During the inter-war period he worked as a public prosecutor for the District Court of Warsaw. He was also involved in the work of the Committee on Codification of the Laws of the Polish Republic. He was interested in humanization of human relations and international law [7, pp. 209-216].

Foremost Lemkin is recognized as a person who coined the term of «genocide». In 193, he took part in the conference on international criminal law in Madrid and he made a presentation of his essay *Crime of Barbarity* to the Legal Council of the League of Nations. He introduced the «crime of barbarity» as a crime against international law. Later then the concept of that crime evolved into the idea of genocide. In 1937 this lawyer was chosen to the Polish mission to the 4th Congress on Criminal Law in Paris. During that conference he put forward the idea of possibility of defending peace through criminal law.