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I. Introduction

The phenomenon of rapid development of economic trade, being from time to time shaken by serious financial crises in the world, led to an increase in interest in the issue of changing circumstances into contractual obligations over time[1]. These obligations, in the modern economic climate, are often subjected to serious and deep shocks, caused by economic turmoil and social changes[2]. In the international commercial law, the essence of the contractual state of the parties is best expressed by the basic principle of business marketing - *pacta sunt servanda*- ("*sanctity of contracts*"). This principle, together with the principle of good faith, aims to stabilize the terms of cooperation and ensure the security of economic turnover, enabling rational conducting business activity and constructive distribution of economic risk[3].

The progressive dynamics of the development of world trade contacts, however, leads to the increasing sensitivity of markets in the event of unforeseen changes in socio-economic relations, which may negatively affect contractual obligations, in particular, the situation of a party seriously affected by the negative effects of these changes in circumstances[4]. Such situations would affect

[1] E. Bagińska, *Klauzula rebus sic stantibus- współczesne zastosowania,* Gdańskie Studia Prawnicze (2010), tom XXIV, p. 177.

[2] J. Rajski, *Z problematyki funkcjonowania zasady pacta sunt servanda i klauzuli rebus sic stantibus we współczesnym klimacie gospodarczym,* Przegląd Prawa Handlowego 2010, nr 3, p. 4.

[3] J. Rajski, *Z problematyki funkcjonowania zasady pacta sunt servanda i klauzuli rebus sic stantibus we współczesnym klimacie gospodarczym,* Przegląd Prawa Handlowego 2010, nr 3, p. 4.

[4] J. Rajski, *Klauzule hardship w kontraktach zawieranych w międzynarodowym obrocie gospodarczym*, Przegląd Prawa Handlowego 1999, nr 3, p. 1.

the contractual balance of the parties and lead to undermine the principle of contractual equilibrium.

The tendency, gaining an advantage in international contractual practice (also in foreign legislative solutions) is a departure from a rigorous understanding of this principle, due to the risk of obtaining socially unjust and undesirable effects. In the case of some radical changes the well-known remedy still remains the *rebus sic stantibus clause* (together with its substitutes in different countries), which aims to not only protect the party that has been affected by the circumstances, but also to ensure commercial stability by keeping the contracts in place. However, the often-encountered lack of such a clause in a given country, its narrow boundaries and, above all, the significant heterogeneity of solutions applied by individual legal systems in this area is a serious challenge for the security and certainty of global trade. To meet these challenges, the latest international contract practice has developed some unique and autonomous solutions, in particular the so-called hardship clause. It is a response to unforeseen changes in circumstances, while maintaining - unlike the force mejeure clauses - the most important aspects of the contract in force, in order to fully fulfill its sense in the new reality[5]. Therefore, the hardship clause is primarily aimed at balancing the rights and obligations of contractors, as well as adequately spreading the economic risk on both sides.

II. The problem with variety of *rebus sic stantibus* clauses

In the world, we basically distinguish three models of approach to the issue of the *rebus sic stantibus* clause[6]. The first of these relies on the full, code-based regulation of the *rebus sic stantibus* clause. Such a solution operates in Poland (article 357(1) of the Civil Code), Italy (article 1467 of the Civil Code), Greece and Portugal and is the least frequently encountered[7].

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[5] G. Gorczyński, *Force majeure i hardship* [w:] Popiołek *W. red. Międzynarodowe prawo handlowe. System Prawa Handlowego 2013,* Tom 9, Warszawa: C.H. Beck, p. 651.

[6] *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Referrence (DCFR)*, Outline Edition, prepared by the Study Group o a European Civil Code and the Research Group on EC Private Group, Christian von Bar (edit.), Monachium 2009, p. 232-233; A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania. Klauzula rebus sic stantibus*. Warszawa (2014), C. H. Beck., p. 44.

[7] A. Szumański, *Ochrona prawna…*, p. 60, A. Brzozowski, *Wpływ zmiany…*, p. 44.

Article 357[1] of the Polish Civil Code:

§ 1. If owing to an extraordinary change of circumstances, the performance of an obligation would entail excessive difficulties or would threaten one of the parties with a glaring loss, which the parties did not predict at the moment of the conclusion of the contract, a court of law may, having weighed the parties' interests, according to the principles of community coexistence, determine the manner of the obligation's performance, the amount of the obligation or it may even rule on termination of the contract. When terminating the contract, a court of law may, where necessary, rule on the settlements between the parties, bearing the principles set out in the preceding sentence in mind.

The second model shapes the so-called "substitutes of the *rebus sic stantibus* clause"[8], based on well-established solutions of judicature and case law (American law, English law, German law, Austrian law, and Swiss law) [9]. The third model includes systems basically rejecting the idea of the *rebus sic stantibus* clause (like in France and Belgium)[10]. In France, this is due to an extremely rigorous approach to art. 1134 of the Napoleonic Code (the French equivalent of the principle *pacta sunt servanda*[11]) and results in the inability to modify the contract before the court[12]. The only solution of this type functions in contracts of an administrative nature as an institution of the so-called "Imprevision" (French: "unpredictability") [13].

Among the substitutes of *rebus sic stantibus* clause, we distinguish: "doctrine of frustration of contract"[14] (English law), "commercial impracticability"[15], (in US law), "*Wegfalls der Geschäftsgrundlage*" [16] (termination of the contract basis) under German law, "*jijo henko no gensoku*" [17] in Japanese law, and many similar institutions in various jurisdictions, most of very different nature[18].

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[8] A. Szumański, *Ochrona prawna…*, p. 61.

[9] A. Brzozowski, *Wpływ zmiany…*, p. 20.

[10] A. Brzozowski, *Wpływ zmiany…*, p. 48.

[11] *Ibidem…* p. 48.

[12] A. Szumański, *Ochrona prawna…*, p. 62.

[13] A. Szumański, *Ochrona prawna…*, p. 62, M. Sośniak, *Umowy obligacyjne we francuskim prawie cywilnym i handlowym (zagadnienia ogólne)*, Warszawa 1985, p. 75- 77.

[14] A. Szumański, *Renegocjacja…*, p. 151- 164. E. Bagińska, *Klauzula rebus sic stantibus - współczesne zastosowania*, Gdańskie Studia Prawnicze (2010), Vol. XXIV p. 178, also: A. Olejniczak, *Problematyka umów długoterminowych w świetle prawa angielskiego*, „Problemy Prawne Handlu Zagranicznego" 1990, Vol.15, p. 130-137., T. Pajor, *Odpowiedzialność dłużnika za niewykonanie zobowiązania*, Warszawa 1982, p. 18-24.

[15] A. Szumański, *Ochrona prawna…*, p. 62, A. Szumański, *Renegocjacja…*, p. 164.

[16] A. Brzozowski, *Wpływ zmiany…*, p. 20, A. Szumański, *Renegocjacja…*, p. 193.

[17] A. Szumański, *Ochrona prawna…*, p. 63, A. Szumański, *Renegocjacja…*, p. 213.

[18] *Ibidem…*, p. 32; A. Brzozowski, *Wpływ zmiany…*, p. 31- 33.

One can distinguish between constructions referring to the construct of inability to provide, constructions derived from force majeure, as well as institutions derived from the principle of good faith as a general clause[19]. Many of them originate simultaneously from more than one legal structure (e.g. American "impracticability").

Individual institutions also differ in terms of application premises. First of all, when it comes to the criterium of "uniqueness" of circumstances, we can speak of a "special" change (Italy), "radical" change (England), "extraordinary" change (Poland) or "social catastrophe" (Switzerland). However, in the context of American law, the premise of uniqueness remains irrelevant[20].

Secondly, there are different grounds for referring to the *rebus sic stantibus* clause: 'impracticability' (American law), 'excessive difficulty in providing a benefit' (French law), "disappearance of the contractual basis" (German law), 'frustration of the contractual basis' (English law), "threat of a glaring loss" (Polish law). Thirdly, there are also different approaches to the "unpredictability criterion" and the "criterion of fault".

Legal systems are also characterized by a different approach to legal effects caused by the fulfillment of the conditions of the *rebus sic stantibus* clause and its substitutes. The most common effects may include periodic release of the party from the obligation, automatic termination of the contract or even modification of the contract by the court - all of these options are sometimes used alternatively, or within an internally- defined hierarchy[21].

Analysis of the above solutions in particular legal systems leads to the conclusion that the legal protection of a party affected by a change in circumstances in the framework of the *rebus sic stantibus* clause (or its substitutes) is extremely diverse, which in my opinion should be assessed negatively.

The presented scale and scope of discrepancies questions the certainty of economic and legal turnover (especially in the context of the economic boom and rise of international transactions). This leads to the conclusion that, any model of *rebus sic stantibus* clause- at least on the national level- has ceased to fulfill the important role of the repartition of the economic contract risk.

Moreover, even the attempts made at an international convention law level are not enough. For example, the Vienna Convention[22] included in its art. 79 (in the

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[19] A. Szumański, *Ochrona prawna…*, p. 65.

[20] *Ibidem…*, p. 68.

[21] *Ibidem…*, p. 69.

[22] The United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention), available at: https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf.

chapter "Exemptions") an institution referring to the neutral term impediment (obstacle), which is in effect a compromise between the Anglo-Saxon principle of strict liability, and the continental principle of contractual liability based on fault (fault liability)[23]. However, it is based more on the force majeure concept and if certain conditions are met, it only allows the debtor to be released from liability, but it does not imply the possibility of modifying the terms of the contract.

Therefore, it is worth asking a question about the need for a universal model of protection for a party affected by adverse effects of a change in circumstances that would adequately lead to satisfying the growing needs of practice and international trade in this area. To address these challenges, the latest international contract practice has evolved the so-called adaptation clauses, the most important of which are hardship clause clauses.

III. The concept of Hardship

The hardship clause has recently gained international recognition in the form of model clauses incorporated into the contract, which can be found, inter alia, in the UNIDROIT Principles, ICC Rules (Rules of the International Chamber of Commerce) and FIDIC Principles (Rules of International Federation of Consulting Engineers). There is also a clear tendency for the parties to use the so-called "tailor-made" clauses, which aims to adapt the given clause to the specificity of the given contract and its language[24]. A more detailed analysis of the hardship clause helps to understand the key role it plays in modern economic circulation in the process of making the so-called repartition of economic risk.

The term hardship is generally understood as events independent of the will of the parties which they also did not anticipate at the time the contract was concluded and which lead to a change in the contractual balance to the extent that the performance becomes a particular nuisance for at least one of them[25].

Hardship applies to circumstances that are both unpredictable and inevitable. In contrast, to force majeure, these events do not completely prevent the fulfillment of the obligation, but constitute a serious nuisance, impracticality and the general lack of the economic sense of the original contractual

[23] A. Szumański, *Ochrona prawna…,* p. 64.

[24] G. Gorczyński, *Force majeure i hardship…*, p. 661.

[25] Lorenz & Partners, *Comparison of commonly used Hardship and Force Majeure Clauses. Newsletter* 2014, No 119, p.4.

relationship[26]. A hardship clause is therefore usually understood as a clause incorporated into a contract under which a party affected by particular circumstances (after the conclusion of a contract) may request a renegotiation process if those circumstances materially affected the original contractual balance and equilibrium[27].

The hardship clause, which is the product of international contractual practice, belongs to the category of contractual renegotiation, while the hardship institution falls under the category of normative renegotiation[28]. Thus, while the content of hardship clause is each time determined by the parties to the particular contract, the hardship institution is reflected in the norms of international law, so-called *lex mercatoria* (ICC Rules, articles 6.2.1-6.2.3 of the UNIDROIT Principles).

Hardship clause consists of determination of circumstances under which the party can rely on the occurrence of hardship (premises), as well as determining the legal consequences of occurrence of such a factual state. The preamble can be used as an optional element, in which the parties declare their will to act in good faith and uphold the original legal relationship as well as the general will to continue mutual cooperation.

The "circumstances" activating hardship shall be evaluated based on the criterion of substantial change (substantial hardship) comparing to the initial time the contract was made. An extremely important role is played by the definition of the framework of substantial hardship so that it include as much as possible actual states threatening the integrity of the contractual relationship created between them and would not be subject to any interpretation problems[29].

In addition, the circumstances shall occur beyond the control of any contracting party. This means that the change of circumstances should be independent of the sphere of action of the parties to the contract. However, the degree of independence is usually different in particular clauses[30]. In contractual practice there are both radical clauses according to which the change cannot have any connection with the parties to the contract, as well as more liberal exemptions, according to which the party just cannot be at fault by causing the said circumstances.

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[26] A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania umowne w obrocie gospodarczym. Klauzule umowne.* Przegląd Ustawodawstwa Gospodarczego 1991, No 1-4, 9-11.

[27] I. Schwenzer, *Force Majeure and hardship in International Sales Contracts* Victoria University of Wellington Law Review 2008 Vol. 39, p. 712.

[28] A. Szumański, *Renegocjacja umów w międzynarodowym obrocie gospodarczym. Studium prawnoporównawcze* Kraków, 1994, p. 117.

[29] A. Brzozowski, *Wpływ zmiany okoliczności…*, p. 316.

[30] A. Brzozowski, *Wpływ zmiany okoliczności…*, p. 314.

Another commonly used criterion is the criterion of unforeseeability, which however should not be understood as the absolute inability to predict the occurrence of the given circumstances, but rather as the factual failure to take these circumstances into account when concluding the contract. These may also be circumstances that have already occurred, but have not been sensibly recognized by the parties[31].

It should be noted, that all the criteria discussed are neither absolute nor unconditional. Some circumstances, although generally recognized by the parties (eg crisis, systematic increase or decrease in prices of a given raw material), can become overwhelming while, their scope, size and timing could exceed the rational images of the parties[32].

In practice, the parties have the habit of indicating a significant change in circumstances by identifying the subject to which the change in conditions applies or by indicating the underlying nature of the changes[33]. In the first case, the parties recognize the circumstances of the hardship clause in a general or detailed manner. The general ones, therefore, contain an abstractly defined set of situations, the advantage of which is the significant flexibility of the contractual relationship between the parties. The disadvantage of this solution is the immanent need for interpretation, introducing a dose of uncertainty regarding the qualification of a given factual state as a hardship. On the other hand, the inclusion of a clause in a too detailed way by enumerative listing of event categories, may result in the omission of certain circumstances. Hence, the adoption of mixed constructions becomes an increasingly popular practice in international trade, gaining the approval of doctrine[34].

The "consequences" of the hardship clause generally include the objectives of conducting negotiations within the framework of a given clause. Usually, two basic objectives are distinguished: restoration of contractual balance ("objective criterion") and equalization of contractual injustice ("subjective criterion"). Sometimes, a mixed, objectively-subjective criteria are used by the parties[35], who refer to the principles of good faith, as well as the principles of loyalty and equity[36].

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31 A. Brzozowski, *Wpływ zmiany okoliczności…*, p. 316.

32 A. Szumański, *Renegocjacja umów…*, p. 121-122.

33 A. Brzozowski, *Wpływ zmiany okoliczności…*, p. 314.

34 J. Rajski, *Klauzule hardship w kontraktach zawieranych… p. 3;* A. Brzozowski, *Wpływ zmiany okoliczności…*, p. 315.

35 A. Szumański, *Renegocjacja umów…*, p. 122.

36 J. Rajski, *Klauzule hardship w kontraktach zawieranych…*, p. 3.

The circumstances and consequences of the hardship clause determined in this way lead to strictly defined legal consequences, most often in the form of an obligation to commence renegotiation process (in good faith). If one party lacks the will to achieve consensus or negotiate without due diligence, the other one might be entitled to compensation claims[37].

What is also important, the parties are free to shape the content of the hardship clause - in international contract practice, the most frequently encountered hardship clauses are aimed at eliminating all inaccuracies[38]. The parties may provide a specific way to verify the occurrence of the circumstances, as well as the obligation to notify such an event without undue delay on pain of specific sanctions[39].

A common solution in international practice is suspension of contract performance for the duration of negotiations, and in the case of failure to reach a consensus - even termination of the contract. The parties often also request the intervention of a third party who in the case of fruitless renegotiations will take the form of a peacemaker and propose modification of the contract (conciliation clauses) or even modify the contract by binding decision (arbitration clauses)[40].

IV. Institution of Hardship in International Model Law

Recognition of the significance of the role that hardship clauses perform in international trade was reflected in the UNIDROIT Principles of International Trade Contracts[41]. Provisions containing detailed regulation of the model hardship clause can be found in articles 6.2.1, 6.2.2. and 6.2.3.

Article 6.2.1 indicates the general principle of binding contractual power, stating that even if due to the occurrence of certain circumstances the performance of the obligation would be onerous, the debtor is bound to perform its obligations. The official Explanation to this article emphasizes that the obligation needs to be performed even if the party would suffer heavy losses instead of expected profits. However, once supervening circumstances are such that they

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[37] A. Brzozowski, *Wpływ zmiany okoliczności…*, p. 323.

[38] A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania umowne w obrocie gospodarczym. Klauzule umowne.* Przegląd Ustawodawstwa Gospodarczego 1991, No 5, 41-42.

[39] J. Rajski, *Klauzule hardship w kontraktach zawieranych…*, p. 3.

[40] A. Szumański, *Renegocjacja umów…*, p. 122-123.

[41] G. Gorczyński, *Force majeure i hardship*…, p. 676-686.

lead to a fundamental alteration of the equilibrium of the contract, they create an exceptional situation referred to in the Principles as "hardship".

Article 6.2.2 defines hardship as the occurrence of events that seriously change the contractual balance by increasing the cost of performance of the obligation or the value of the other party's benefits decreases, provided that a total of four additional premises take place. First of all, these events would have to become known or become known to the disadvantaged party only after the conclusion of the contract. Secondly, they could not reasonably be taken into account by this party when entering into a contract. Finally, the events ought to be beyond party's control and the risk of the events was not assumed by the disadvantages party.

Article 6.2.3 describes the legal effects of hardship. The most important right of the party affected by the discussed circumstances is the right to request the initiation of renegotiations, notified without undue delay and on a specific ground. At the same time, it does not automatically entitle the party to withhold performance (suspension may only take place under absolutely exceptional circumstances). It is only when the parties fail to reach a consensus within a reasonable time, that any of them may request the court to resolve the dispute. If the court considers that the conditions justifying the existence of a hardship are fulfilled, he may, if he considers it reasonable, order the termination of the contract under certain conditions or adapt it to new circumstances in order to restore the contractual balance and equilibrium.

Comment to the art. 6.2.3 provides a number of explanations for a better understanding of the legal consequences of hardship institution. That the court may direct the parties to further negotiations, or keep the contract in force if it deems it appropriate. The comment emphasizes the role of the principle of good faith (Article 1.7) and the duty of co-operation between the parties (Article 5.3), which bind the parties both in the matter of requesting renegotiation and their reliable conduct. According to the Comment, disadvantaged party must honestly believe that a case of hardship actually exists and not request renegotiations as a purely tactical manoeuvre. Then, once the request has been made, both parties must conduct the renegotiations in a constructive manner, in particular by "refraining from any form of obstruction and by providing all the necessary information". Paying attention to the general nature of hardship under the UNIDROIT Principles, it is recommended that the parties adapt their own hardship clause to fully reflect the individual needs of the contracts of a given category.

Another extremely important example of the hardship being attached to the so-called *lex mercatoria* is its presence as a model clause in the ICC Rules.

Introduced for the first time in 1985, they contained in the original word a model clause, which could be used by the parties to the contract, freely incorporating it into their contract one of the 4 proposed solutions. Under the latest hardship model clause (introduced in 2003) only two options are available to the parties: renegotiation, and in case of failure, termination of the contract to which the party referring to the hardship clause is entitled. It is believed, that the latter one puts parties under pressure, influencing the effectiveness of renegotiation process.

The concept of hardship has even found its place within the framework of the European Civil Code and Principles of European Contract Law (PECL)[42]. The PECL principles serve as a classic example of the so-called "Model law", which encompass a range of important private law institutions, enriched with introductory principles and notes. It is recognized that the constructions included in the PECL Principles precede their counterparts from individual countries and serve as a model for European legislators, because of their flexibility and timeliness so needed in the era of dynamic economic turnover[43]. The issue of the change of circumstances is regulated under Article 6: 111 (Change of Circumstances) of the PECL[44]:

(1) A party is bound to fulfil its obligations even if performance has become more onerous, whether because the cost of performance has increased or because the value of the performance it receives has diminished.

(2) If, however, performance of the contract becomes excessively onerous because of a change of circumstances, the parties are bound to enter into negotiations with a view to adapting the contract or terminating it, provided that:

(a) the change of circumstances occurred after the time of conclusion of the contract,

(b) the possibility of a change of circumstances was not one which could reasonably have been taken into account at the time of conclusion of the contract, and

(c) the risk of the change of circumstances is not one which, according to the contract, the party affected should be required to bear.

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[42] O. Lando, H. Beale, *Principles of European Contract Law*, Part I and II prepared by The Commission of European Contract Law.

[43] A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania* [in:] Olejniczak A. red. *Prawo zobowiązań - część ogólna. System Prawa Prywatnego* (2014). Vol. 6, Warszawa: C.H. Beck, p. 1326.

[44] M.A. Zachariasiewicz, J. Bełdowski, *Zasady europejskiego prawa umów*, KPP 2004, No 3, p. 857- 859.

(3) If the parties fail to reach agreement within a reasonable period, the court may:
   (a) terminate the contract at a date and on terms to be determined by the court; or
   (b) adapt the contract in order to distribute between the parties in a just and equitable manner the losses and gains resulting from the change of circumstances.

In either case, the court may award damages for the loss suffered through a party refusing to negotiate or breaking off negotiations contrary to good faith and fair dealing.

First of all, this includes both the *pacta sunt servanda* principle as the basic safeguard of the certainty of economic turnover, as well as the *rebus sic stantibus* clause as a kind of reaction of the legal system to an exceptional situation, exceeding the scope of the usual contractual risk. Second, it introduces the so-called "double adaptation mechanism", meaning that the parties are obliged to negotiate in the first place[45]. It is only in the event of a failure to reach a consensus, that the court may modify or terminate the contract. In addition, it introduces a number of clear, objective and flexible premises at the same time - as the criterion of "objective unpredictability" or replacing the "extraordinary nature of circumstances" by the universal notion of exceeding the usual contractual risk.

V. Conclusion

To sum up the above considerations, first of all, we should pay attention to the problem of the unique, grossly heterogeneous national solutions in the approach to the institution of *rebus sic stantibus* clause. It should be emphasized that this heterogeneity does not reflect the needs of the dynamics of economic development or international contractual practice, which therefore leads to a clear tendency for the parties to regulate the discussed issue in the form of model or "tailor-made" contractual adaptation and renegotiation clauses.

Reflections on the impact of changes in circumstances on contractual obligations in international trade turn special attention to dynamically developing hardship adaptation clauses. It is worth noting the common tendency to replace the dogmatic concept of an "irrebuttable static agreement" with a different

[45] A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania. Klauzula rebus sic stantibus*, Warszawa (2014), C. H. Beck., p. 235.

vision, namely the contract of "flexible evolving contract"[46], the conditions of which "mature" together with the change of external circumstances, in order to fully reflect the parties' primary intentions in terms of economic goals and contractual equilibrium. This contains both many advantages and potential threats for the certainty of economic turnover - hence the careful approach to the issue is recommended by the doctrine[47].

The experience of international contractual practice shows the positive impact of the hardship clauses and hardship institutions on keeping the contract in force as a result of renegotiations, especially under the threat of modification or even the expiry of the legal relationship between the parties[48]. It is pointed out that the classical conception of the sanctity of contracts - *pacta sunt servanda*, does not adequately reflect the realities of the dynamics of economic and social changes and the development of global contractual practice - especially in the area of particularly sensitive and sensitive long-term contracts. Therefore, some authors see birth of a new legal concept, namely the phenomenon of a potentially evolving contract, the conclusion of which does not prejudge the final content of the legal relationship binding the parties[49]. *Summa summarum*, the modern hardship clauses allow, to reduce the sensitivity of contractual obligations to the negative impact of external, unpredictable circumstances, in fact strengthening and protecting the contractual relationship of the parties.

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[46] J. Rajski, *Z problematyki…,* p. 4 i 8.

[47] A. Brzozowski, *Wpływ zmiany okoliczności…,* p. 327.

[48] J. Rajski, *Klauzule hardship w kontraktach…,* p. 4.

[49] J. Rajski, *Wpływ rozwoju handlu międzynarodowego na teorię zobowiązań* [in:] Studia z prawa zobowiązań 1979, Warszawa-Poznań, p. 167.

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Streszczenie

W praktyce międzynarodowego obrotu gospodarczego obserwowana jest coraz większa rola jaką odgrywają rozmaite klauzule umowne o charakterze adaptacyjnym, których celem jest przystosować stosunek umowny do szczególnej zmiany okoliczności. Wśród nich szczególne piętno odcisnęły klauzule *hardship,* mające za zadanie w rozmaity sposób chronić stronę umowy dotkniętą zmianą okoliczności, kierując się przy tym zasadami słuszności, sprawiedliwości oraz równowagi kontraktowej. Łagodzą one tym samym klasyczną zasadę związania stron postanowieniami stosunku obligacyjnego- „*pacta sunt servanda*", wprowadzając w życie nową koncepcję umowy otwartej, nieustannie ewoluującej w celu odzwierciedlenia celu, w jaki zawiązany został stosunek umowny między stronami. Zakres znaczeniowy klauzul typu *hardship* w poszczególnych typach kontraktów, ich szczegółowa interpretacja, a także potencjalna kolizja w obliczu coraz szerszego zastosowania stanowią obecnie jeden z najbardziej aktualnych problemów międzynarodowego prawa gospodarczego na świecie.

SŁOWA KLUCZOWE: klauzula hardship, szczególna zmiana okoliczności.

Summary

In legal practice of international economic turnover the role of adaptation as well as renegotiation clauses is constantly rising. This is due to the fact that for parties, especially those involved in longer term complex contracts, those circumstances (yet increased with globalization process) are one of the major problems. The most significant of these clauses the hardship clauses, which successfully serve the purpose to protect the party to the contract affected by unforeseeable changed circumstances and therefore, to effectively preserve the equilibrium of the contract between the parties. By doing so, the clauses mitigate the negative impact of the rule of the sanity of contracts and promote the latest concept of the contract which is continuously evolving. The interpretation problems, the exact scope of hardship clause in particular types of contract, as well as potential conflict between two types of clauses redefined one of the most accurate issues in today's global economic turnover.

KEY WORDS: hardship clause, extraordinary change of circumstances.

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