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GENESIS OF THE *REBUS SIC STANTIBUS* CLAUSE IN THE POLISH CIVIL LAW

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Abstract: The article is centred around the genesis of the *rebus sic stantibus* clause in the Polish civil law. The beginnings of the clause should be traced back to the post-WWI period, when Poland was in the process of restoring its independence, and to the monetary inflation that accompanied that process. The regulation of the *rebus sic stantibus* clause was also materially impacted by the decisions of Polish courts, particularly by the judgement of the Polish Supreme Court of 25 February 1922 in the Fliederbaum–Kuhnke that turned out to have an international reach. As a result, the Regulation of the President of the Polish Republic of 14 May 1914 on the Revaluation of Private and Legal Liabilities, also referred to as *Lex Zoll*, was issued in connection with the monetary reform. After that, the work on the draft of the *rebus sic stantibus* clause was commenced by the Codification Commission of the Republic of Poland. Ultimately, the clause was incorporated into Article 269 of the Polish Code of Obligations of 1933, and it was practically applied shortly after the end of World War II. The *rebus sic stantibus* clause was not provided for in the Polish Civil Code of 1964 until its 1990 amendment. The reintroduction of the *rebus sic stantibus* clause to the Polish civil law was the result of Poland's inflationary monetary policy adopted in 1980s.

Key words: *rebus sic stantibus* clause, indexation, nominalism, *Lex Zoll*, Polish Code of Obligations of 1933

1. Introduction

The definition of the *rebus sic stantibus* clause was formed in the Middle Ages and it was connected with the work of glossarists at Italian universities.[1] The genesis of the clause was traced back to the sources and principles of the Roman law. Generally, the *rebus sic stantibus* clause was initially defined as follows: *any legal relationship (or "everything" in general, as it was once said) may expire or change if such expiry or change is required under modified relationships*.[2] Thereby, the clause constituted a departure from the mandatory performance of obligations in the case of circumstances that were beyond debtor's or creditor's control. As the impact of new conditions of obligation performance was not attributable to the parties to the contractual relationship of obligation, it therefore constituted *vis maior* (force majeure).

The Middle Ages were characterised by the so-called currency debasing by monarchs enjoying coinage rights. This complied with the *monetae sunt regales* principle. Sovereigns would change the value of money by altering the precious metal content in the new monetary unit.[3] This phenomenon was known in entire Europe. Such currency issue activity allowed monarchs to circulate larger amounts of money, and it consequently increased their financial abilities. As a result of such monetary practice, liabilities incurred in a given monetary unit could be repaid in a new one. Obviously, minor fluctuations in the purchasing power of money were, and they still are, considered a typical result of the changing economic situation. However, when such fluctuations are sharp and they exceed the agreed limits, a financial obligation should be modified respectively.[4] This problem is connected with two principles regarding the performance of financial obligations, i.e. with the principle of nominalism and indexation. What is important, the very changes in the purchasing power of money during WWI were the basis for the incorporation of the *rebus sic stantibus* clause into the Polish civil law.

The *rebus sic stantibus* clause was under lawyers' severe criticism, particularly in the 18th century, as there was a general understanding that it could be abused and that it could violate the safety of legal transactions. On the other hand, the principle of *pacta sunt serenade* was adopted, which implied that, regardless of the changed circumstances of agreement conclusion, the agreement needed to be performed. In the 19th century,

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[1] Cf. R. Jastrzębski, *Geneza i znaczenie klauzuli rebus sic stantibus w polskim prawie prywatnym* [Genesis and meaning of the *rebus sic stantibus* clause in the Polish private law], (in:) "Studia z Dziejów Państwa i Prawa Polskiego", tom XIII [Studies on the History of the Polish State and Law, Volume XIII], Kraków-Lublin-Łódź 2010.

[2] K. Przybyłowski, *Clausula rebus sic stantibus*, (in:) *Encyklopedja Podręczna Prawa Prywatnego* [Encyclopaedia of Private Law], ed. H. Konica, Warsaw 1930–35, p. 125.

[3] Cf. K. Przybyłowski, *Klauzula „rebus sic stantibus" w rozwoju historycznym* [The *rebus sic stantibus* clause in historical development], Lvov 1926; A. Stelmachowski, *Nominalizm pieniężny a waloryzacja* [Monetary nominalism and indexation], "Studia Cywilistyczne", tom VI [Civil Law Studies, Volume VI], 1965, p. 282 et seq.

[4] A. Stelmachowski, *Nominalizm pieniężny a...* [Monetary nominalism and...], p. 294.

such an opinion was expressed, e.g. in great civil law codifications taking place at that time (particularly in the Napoleonic Code of 1804, the Civil Code of Austria of 1811, or the Civil Code of the German Empire of 1896), which did not regulate the *rebus sic stantibus* clause at all.[1] The clause was also overlooked in the Digest (Set) of Laws of the Russian Empire of 1832. Noteworthy is the fact that in Poland these regulations became effective after the restoration of independence in 1918.

2. The *rebus sic stantibus* clause in the Polish state *in statu nascendi*

World War I had a material impact on the wording of economic and legal terms alike. This was noted by Szymon Rundstein, who in 1918 observed that legal terms and structures that had been withdrawn from use were re-introduced to legal practice; in his observations Rundstein also stated that nobody expected that the war would bring back to life the already forgotten – and criticised – *rebus sic stantibus* clause.[2] Of course, the said clause was not revived in all countries; e.g. in France, the principle of monetary nominalism dominated, despite inflation.[3] Kazimierz Przybyłowski justified the revival of the *rebus sic stantibus* clause by the departure from liberal and individualistic concepts in favour of the extension of the scope of the free judicial assessment.[4] The outbreak of the world war was considered to be an event of force majeure, in which fires, droughts, or political revolts (e.g. wars and revolutions) were included. Therefore, different countries would issue regulations of a moratory nature that aimed at the suspension of the term of obligation performance by debtors.[5]

At the beginning, it should be stressed that the introduction of the *rebus sic stantibus* clause to the Polish private law was connected with the situation in the monetary market that resulted in hyperinflation of the Polish mark, and with the stance of the judicature of that time. In the first case, the countries actively participating in the war, i.e. the German, Austro-Hungarian and Russian Empires, implemented an inflation policy to cover the expenses incurred in relation to the warfare. In practice this meant currency overissue. What is important is that the currencies of the aforementioned countries

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1 Cf. K. Przybyłowski, *Klauzula „rebus sic stantibus" w rozwoju...* [The *rebus sic stantibus clause* in historical development], p. 61 et seq.

2 Sz. Rundstein, *Niemożność wykonania zobowiązań a wojna* [Inability to perform obligations and war], "Themis Polska" [Themis Poland] 1918, p. 6.

3 Cf. J. Wasilkowski, *Zagadnienie waloryzacji zobowiązań prywatno-prawnych w orzecznictwie francuskiem* [Valorisation of private and legal obligations in French jurisprudence], Warsaw 1926/27, pp. 42–43. Also: J. Wasilkowski, *Contribution à l'ètude du problème de la valorisation dans le domaine du droit privè*, Warsaw 1927.

4 Cf. K. Przybyłowski, *Clausula rebus sic stantibus* (in:) *Encyklopedja...* [Encyclopaedia...] p. 127.

5 In more detail in: R. Jastrzębski, *Lex Zoll. Zarys prawno-ekonomiczno-historyczny* [Lex Zoll. Legal, economic and historical outline], Warsaw 2016, p. 24 et seq.

were circulated in Poland. The end of the war was characterised by "currency upheavals" that were connected with the necessity to carry out monetary reforms and to repay the financial obligations incurred in then applicable legal tenders.

Therefore, courts faced a serious dilemma concerning the repayment of financial obligations in the nominal amount, regardless of the changed purchasing power of the legal tender. In the Polish territory, this was connected with the "mortgage clearing" phenomenon, consisting in the repayment of financial obligations by debtors in the nominal amount. Currency unification performed in Poland, as a result of which the Polish mark was recognised as a sole legal tender, did not change the situation.[1] It is worth mentioning that as a result of expenses incurred by Poland (particularly war expenses), the Polish mark became "paper currency" of unspecified value.[2] As a result, Polish courts faced a material problem of both legal and ethical nature, as the laws of the occupants (i.e. Austria, Germany and Russia) generally supported the principle of *pacta sunt servanda*. In judicial practice this meant applying to liabilities of dependents (e.g. children, disabled persons, pensioners) and to mortgage-backed loans, in particular, the widely understood principles of equity,[3] as considering the repayment of financial obligations in the nominal amount to be effective, with no consideration of the changed purchasing power of money, was met with numerous public protests.

In Europe, the decision of the Polish Supreme Court of 25 February 1922 in the Flieder-baum–Kuhnke[4] case regarding the repayment of pre-war mortgage debts turned out to be critical. In the statement of grounds to the decision, the Supreme Court ruled that the payment of a mortgage-backed loan should not be made in the nominal amount or even in the gold standard. According to the court, in the latter case, this could put debtors at the brink of financial ruin. Therefore, the amount of the cash consideration should oscillate between the aforementioned amounts, and it was to be defined at the court's discretion. A gloss to the statement made by Fryderyk Zoll, in which he suggested that indexation of financial obligations should be made particularly on the basis of the legal title, played an important role in the future of indexation of financial obligations. The decision of the Polish Supreme Court was met with widespread acclaim also in other countries, mainly those where inflation was present (particularly in Germany and Austria). In Germany, in their judgements, courts would still defend the principles of nominalism, even though

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[1] Cf. Z. Karpiński, *Ustroje pieniężne w Polsce od roku 1917* [Monetary systems in Poland before 1917], Warsaw 1968, pp. 37–43; Z. Landau, J. Tomaszewski, *Gospodarka Polski Międzywojennej 1918-1939. Tom I. W dobie inflacji (1918-1923)* [Economy of Interwar Poland 1918–1939. Volume I. In the Inflation Era (1918–1923)], Warsaw 1967, pp. 276–292.

[2] Cf. E. Taylor, *Inflacja Polska* [Polish Inflation], Poznań 1926, pp. 22–23; S. Głąbiński, *Teorja Ekonomiki Narodowej* [Theory of National Economy], Lvov 1927, p. 310.

[3] In more detail in: R. Jastrzębski, *Między nominalizmem a waloryzacją – judykatura in statu nascendi II Rzeczypospolitej* [Between nominalism and indexation – jurisprudence of the Second Polish Republic *in statu nascendi*], "Czasopismo Prawno-Historyczne" [The Legal and Historical Journal] 2011, Volume LXIII, issue 1.

[4] C 186/21, "Orzecznictwo Sądów Polskich" 1921–22, poz. 461, z glosą F. Zolla [Polish jurisprudence 1921–1922, Item. 461, with a gloss by F. Zoll].

currency depreciation constituted a great social problem. Therefore, the decision of the Polish Supreme Court was met with respect and acclaim by German lawyers, who looked forward to similar judgements being passed by German courts. Peter Oertmann had an interesting comment on this topic. In his work on indexation, he concluded that with the decision of 25 February 1922, young Republic of Poland put German courts – which still defended the Mark ist Mark principle – to shame. Moreover, based on the said decision of the Polish Supreme Court, the future judgement of the Court of the German Reich of 28 November 1923 was passed.[1]

The decision of the Supreme Court in the Fliederbaum–Kuhnke case had an impact on Polish legal regulations, and the matter of indexation of financial obligations became one of the elements of a monetary reform carried out by Władysław Grabski in 1920s. The preparation of a relevant legal regulation was entrusted to a special commission chaired by Fryderyk Zoll.[2] The commission's work resulted in the drafting of the Regulation of the President of the Polish Republic of 14 May 1914 on the Revaluation of Private and Legal Liabilities[3] that was issued on the basis of the Act on the Treasury Mending and Monetary Reform of 11 January 1924.[4] The Regulation, commonly referred to as Lex Zoll governed, in general, the matter of indexation of depreciated financial obligations; whereby the courts' discretion was considered to be of great importance in the definition of indexation limits.[5]

3. The *rebus sic stantibus* clause in the Code of Obligations of 1933

Polish experience as regards hyperinflation of the Polish mark in particular had a significant impact on the codification of the Polish law of obligations, on which the Codification Commission of the Republic of Poland worked.[6] The Commission's activities were mainly influenced by the work of Ernest Till, K. Przybysławski and Ludwik Domański.[7]

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1 Cf. F. Zoll, B. Hełczyński, *Regulation of the President of the Polish Republic of 14 May 1914 on the Revaluation of Private and Legal Liabilities together with Supplementary Regulations on Revaluation of any and all Private, Public and Legal Liabilities*, Kraków 1925, pp. 19–20.

2 In more detail in: R. Jastrzębski, *Lex Zoll. Zarys*...[Outline...], Warsaw 2016, p. 62 et seq.

3 Journal of Laws, No. 42, Item 441.

4 Journal of Laws, No. 4, Item 28.

5 In more detail in: R. Jastrzębski, *Lex Zoll*..., Warsaw 2016, p. 115 et seq.

6 Cf. L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919-1939* [Civil law in the work of the Codification Commission of the Republic of Poland between 1919 and 1939], Wrocław 2000.

7 In more detail in: E. Till, *Polskie prawo zobowiązań. (Część ogólna). Projekt wstępny z motywami* [Polish law of obligations (General part). Bill with motives], Lvov 1923, p. 38–39; *Projekt prawa o zobowiązaniach w opracowaniu koreferenta projektu adwokata Ludwika Domańskiego* [Bill of the law on obligations as compiled by the co-speaker for the project, Ludwik Domański, advocate], „Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja Prawa Cywilnego" [Codification Commission of the Republic of Poland. Civil Law Section], Warsaw 1927, Volume I, issue 1, p. 79.

In June 1933, the Codification Commission Board passed a final bill of the Code of Obligations that was handed over to the Minister of Justice. The Code of Obligations was issued in the form of the Regulation of the President of the Republic of Poland of 27 October 1933.[1] The *rebus sic stantibus* clause was regulated in Article 269 of the Code under one clause being Section V: Expiry or modification of obligations in the case of an event of force majeure, that reads as follows:

Should, as a result of an event of force majeure including a war, epidemic, total crop failure or other natural disasters, the performance be connected with grave difficulties or should it put one of the parties at a risk of incurring a substantial loss, which the parties could not have forecast at the time of agreement conclusion, a court may, if it finds it necessary under the principle of good faith, define how the performance should be made, indicate the amount thereof, or even terminate the agreement, upon having previously considered the interests of both parties.

The legal structure thus incorporated into the Code of Obligations that included the *rebus sic stantibus* clause allowed courts to adequately modify the performance or even to terminate the agreement based on the principles of good faith and the interests of the parties to the agreement.[2] What is important, it did not consider financial obligations. It is worth mentioning that the matter of the decreased purchasing power of money was nevertheless one of the topics on which the Codification Commission had worked. However, the Commission had withdrawn from drafting a separate regulation on the depreciation of the monetary unit, mainly due to Poland's monetary prestige. At the same time, it was stressed that in the event of such a disastrous situation, courts should, *per analogiam*, apply the provisions of Article 269 of the Code of Obligations.[3]

As a result of the Great Depression of 1930s, trade and industry organisations[4] of that time, which contrary to agricultural organisations had not been granted any allowance as regards the repayment of liabilities,[5] strived for the application of Article 269 of the Polish

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[1] Journal of Laws, No. 82, Item 598.

[2] In more detail in: L. Domański, *Instytucje Kodeksu Zobowiązań. Komentarz teoretyczno-praktyczny. Część ogólna* [Institutions of the Code of Obligations. Theoretical and practical comment. General part], Warsaw 1936, pp. 903–911; R. Longchamps de Berier, *Zobowiązania* [Liabilities], Lvov 1939, pp. 404–410; J. Korzonek, I. Rosenblüth, *Kodeks Zobowiązań. Komentarz* [Code of Obligations. Comment], Kraków 1934, pp. 581–585; A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania w prawie polskim (Na tle prawa niektórych państw obcych)* [Impact of changed circumstances on liabilities in the Polish law (Against the laws of selected countries)], Warsaw 1992, p. 132 et seq.

[3] Cf. L. Górnicki, *Prawo cywilne w pracach Komisji Kodyfikacyjnej...* [Civil law in...], p. 445; L. Domański, *Instytucje Kodeksu Zobowiązań. Komentarz...*[Institutions of the Code of Obligations...], pp. 75–77, 909–910.

[4] Cf. I. Rosenblüth, *Wpływ moratorjum rolniczego na zobowiązania kupiectwa* [Impact of the agricultural moratorium on trade liabilities], „Głos Prawa" [The Law Voice] 1935, no. 11–12; J. Bibring, *Deflacja i jej wpływ na wykonanie zobowiązań prywatno-prawnych* [Deflation and its impact on the performance of private and legal obligations], „Przegląd Sądowy" [The Court Review], 1934, no. 6.

[5] In more detail in: R. Jastrzębski, *Wpływ siły nabywczej pieniądza na wykonanie zobowiązań prywatno-prawnych w II Rzeczypospolitej* [Impact of the purchasing power of money on the performance of private and legal obligations in Second Polish Republic] Warsaw 2009, p. 271 et seq.

Code of Obligations. However, courts were generally of the opinion that Article 269 of the Code of Obligations concerned deep and extraordinary changes in the economic life only, which were treated on a par with a war or a natural disaster.[1] The outbreak of World War II was such an event. Therefore, the *rebus sic stantibus* clause was applied after the end of WWII, which corresponded to the economic and political situation of the Polish state *in statu nascendi*. However, it should be mentioned that WWII damage was greater and, just like after WWI, debtors started making debt repayments in depreciated currency, which was accompanied by the "mortgage clearing" phenomenon.

Therefore, decisions of Polish courts generally supported indexation, with the concurrent application of provisions of Article 269 of the Polish Code of Obligations. The post-WWII judgements of the Polish Supreme Court were of particular importance; in its judgement of 3 December 1945, the Supreme Court stated that the devaluation of the so-called Krakow zloty was a general economic disaster which, being the outcome of the war, fell under the definition of the event of force majeure referred to in Article 269 of the Polish Code of Obligations.[2] In its other judgement, the Supreme Court stressed that principles set forth in Article 269 of the Polish Code of Obligations should be applied with reference to any obligations/liabilities if the principles of equity and good faith so required. This resulted from the fact that the majority of Polish courts backed indexation of financial liabilities. However, the changed socio-political situation, which in practice meant a change in Poland's political system after WWII, affected the application of the *rebus sic stantibus* clause. Therefore, in October 1948, the Ministry of Justice issued a recommendation as per which cases heard by courts and concerning pre-war private and legal obligations were suspended until the issuance of relevant statutory regulations[3].

Then, a Decree of 27 July 1949 on incurring new debts and defining the amount of unredeemed debts was issued, which is in force to this day.[4] The Decree is nominalistic and it was issued on the basis of new economic and social assumptions of the Polish People's Republic.[5] However, it did not rescind Article 269 of the Polish Code of Obligations, and the said Code remained in force until the Act of 23 April 1964 (i.e. the Civil Code) came into effect.[6] When the work on the Civil Code was underway, many postulated the

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[1] Cf. Jurisprudence of the Supreme Court of: 11 January 1938, C II 1717/37, "Jurisprudence. Collection of Judicial Reviews. Civil Law Section" 1938, Item 278; 24 November 1937, C III 2082/37, "Collection of the Supreme Court's Decisions. Judgements of the Civil Law Chamber" 1938, Item 409.

[2] Decision of the Supreme Court of 3 November 1945, C III 575/45, "Collection of the Supreme Court's Decisions. Judgements of the Civil Law Chamber" 1947, Item 10.

[3] Weekly Newsletter of the Ministry of Justice of 15 November 1948, No. 58; Notary Review, 1948, Volume II, pp. 556–557.

[4] Journal of Laws, No. 45, Item 332.

[5] In more detail in: P. Zieliński, T. L. Michałowski, *O zaciąganiu i określaniu wysokości zobowiązań pieniężnych. Wstęp – Przepisy Prawne – Komentarz* [On incurring financial obligations and defining their amount. Introduction – Laws – Comment], Warsaw 1950; L. Domański, *Zobowiązania pieniężne w świetle dekretu z 27 lipca 1949 r.* [Financial obligations in the light of the Decree of 27 July 1949], „Przegląd Notarialny" [The Notary Review] 1949, Volume II.

[6] Journal of Laws No. 16, Item 93.

incorporation of the *rebus sic stantibus* clause into the new civil code based on Article 269 of the Code of Obligations. Among them were, e.g. Witold Czachórski, but his motion was rejected by the Codification Commission at the time of the third reading of the bill; one of the major opponents of the incorporation of the *rebus sic stantibus* clause into the Civil Code was Jan Wasilkowski, who supported the principle of nominalism, as regards the performance of financial obligations.[1]

4. Modern regulations concerning the *rebus sic stantibus* clause in the Polish law

Following the 1964 entry into force of the Polish Civil Code, Poland suffered an economic crisis in the 1980s, as a result of which the purchasing power of the Polish monetary unit (Polish zloty) dropped, with which the performance of financial obligations (particularly in connection with the liability for damages, estate distribution, dissolution of co-ownership) was connected. Therefore, many called for the reintroduction of the *rebus sic stantibus* based on Article 269 of the Polish Code of Obligations;[2] e.g. in 1985, the Civil and Agricultural Team of the Legislation Council to the Prime Minister considered such reintroduction of the *rebus sic stantibus* clause to be necessary. This matter was examined by the Commission for the reformation of the civil law.[3] As a result, Articles 357^1 and $358^1(3)$ of the Civil Code were drafted; they were introduced to the Polish civil law system in connection with the 1990 amendment to the Civil Code.[4] In their contemporary wording, the said Articles read as follows:

Article 357^1: *If, because of an extraordinary change in the relationship, the performance would entail grave difficulties or would put one of the parties at a risk of incurring a substantial*

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[1] Cf. *Discussion Materials to the Bill of the Civil Code of the Polish People's Republic*, Warsaw 1955, p. 178; J. Skąpski, *Wpływ zmiany stosunków na zobowiązania. Klauzula „rebus sic stantibus"* [Impact of changed relationships on obligations. The *rebus sic stantibus* clause], (in:) *Studia z prawa zobowiązań* [Studies on the law of obligations] ed. Z. Radwański, Warsaw–Poznań 1979.

[2] Cf. K. Zagrobelny, *Klauzula rebus sic stantibus w prawie cywilnym* [The *rebus sic stantibus* clause in the civil law], "Nowe Prawo" [The New Law] 1984, no. 1; A. Dyoniak, *Spadek wartości pieniądza a majątkowe stosunki rodzinne* [Decreased value of money and family property relationships], "Nowe Prawo" [The New Law] 1985, no. 5; B. Kordasiewicz, *Zjawisko inflacji a prawo spadkowe* [Inflation and the inheritance law], "Nowe Prawo" [The New Law] 1985, no. 5; A. Oleszko, *Zasada nominalizmu w prawie cywilnym* [Principle of nominalism in the civil law], "Palestra" [The Bar] 1986, no. 12; E. Łętowska, *Zjawisko inflacji a prawo cywiln*e [Inflation and the civil law], "Nowe Prawo" [The New Law] 1985, no. 5; A. Nowicka, *Nominalizm a inflacja: w oczekiwaniu zmian legislacyjnych* [Nominalism and inflation: Awaiting legislation changes], "Państwo i Prawo" [The State and the Law] 1989, issue 9; Z. Gawlik, *W sprawie klauzuli rebus sic stantibus w kodeksie cywilnym* [On the *rebus sic stantibus* in the civil law], "Państwo i Prawo" [The State and the Law] 1990, issue 3.

[3] Cf. *Ocena stanu prawa cywilnego i rolnego* [Assessment of the condition of the civil and agricultural law], "Nowe Prawo" [The New Law] 1985, no. 10; Z. Radwański, *Kierunki reformy prawa cywilnego* [Civil law reform directions], "Państwo i Prawo" [The State and the Law] 1987, issue 4.

[4] The Act of 28 July 1990 on amending the Civil Code (Journal of Laws No. 55, Item 321); amendment: the Act of 23 August 1996 on amending the Civil Code (Journal of Laws No. 114, Item 542).

loss, which the parties did not take into consideration at the time of agreement conclusion, the court may define how the performance should be made, indicate the amount thereof, or even terminate the agreement, upon having previously considered the interests of the parties. When terminating the agreement, the court may (if necessary) decide on the settlements between the parties following the principles set forth in the foregoing.

Article 358[1](3): *Should there be a material change in the purchasing power of money after the obligation has arisen, the court may – having previously considered the interest of the parties and in keeping with the principles of community life – change the amount of the financial obligation or the manner of its performance, even if they have been set forth in the agreement.*

The regulations quoted *in extenso* refer to an extraordinary change in the relationship; the first of the Articles cited constitutes a departure from the principle of *pacta sunt servanda*, whereas the latter – from the principle of monetary nominalism.[1] Compared to the Code of Obligations, the latter Article is a novelty as the pre-war Code, in its final version, did not contain a similar regulation.

5. Summary

The regulation of the *rebus sic stantibus* clause in the Polish civil law is connected with the economic crisis suffered after World War I, which in practice was the outcome of the inflationary monetary policy of the occupants (i.e. the German, Austro-Hungarian and Russian Empires) participating in World War I, as well as of the inflationary monetary policy adopted later on by the Polish state. The decisions of the Polish Supreme Court had a material impact on the formation of the *rebus sic stantibus* clause. The most important of them was the judgement in the *Fliederbaum–Kuhnke* case, which was elaborated at length in the European legal writings of that time, particularly in countries that dealt with similar problems after the end of World War I. This resulted in the issue of the Regulation of the President of the Polish Republic of 14 May 1914 on the Revaluation of Private and Legal Liabilities, also referred to as *Lex Zoll*. However, it should be stressed that the Regulation was temporary and thus did not constitute a *rebus sic stantibus* regulation.

Ultimately, as a result of the activity of the Codification Comission of the Polish Republic, the *rebus sic stantibus* clause was regulated under Article 269 of the Polish Code of Obligations of 1933. In that way, after World War I, Polish legal regulations departed from the principle of *pacta sunt servanda* that dominated in European codifications. Besides, the Polish regulation of the *rebus sic stantibus* clause in the Code of Obligations of 1933 arouse interest of European civil law scholars, and the translation of and the discussion

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[1] Cf. W. Robaczyński, *Kilka uwag na temat relacji między art. 357[1] a 358[1] § 3 k.c.* [Selected remarks on the relationship between Articles 357[1] and 358[1](3) of the Civil Code], "Rejent" 1996, No. 11; A. Brzozowski, *Wpływ zmiany okoliczności na zobowiązania (klauzula rebus sic stantibus; waloryzacja świadczeń pieniężnych)* [Impact of the changed circumstances on liabilities (the *rebus sic stantibus* clause; indexation of financial liabilities), "Studia Prawa Prywatnego" [The Studies on the Private Law] 2008, issue 1.

on the content of the said Code was an example of that interest.[1] Scholars from France and neighbouring countries (e.g. Henri Capitant or Henri Felix Mazeaud) expressed their opinion on the clause included in the Code. Polish scholars considered the regulation incorporated into Article 269 of the Code of Obligations to be one of novel concepts of the civil law of that time that was closely related to the Polish experiences at the beginning of 1920s. They particularly stressed the unique character of the regulation compared to the private law regulations of other countries, e.g. Germany, Austria or France.[2]

In fact, the regulation included in the Code of Obligations was practically applied shortly after World War II; however, given the changed political and economic situation, monetary nominalism was introduced as the applicable principle. The Polish Civil Code of 1964 did not contain the *rebus sic stantibus* clause, which was connected with the legal system of then socialist Poland. The statutory regulation of the *rebus sic stantibus* was reintroduced to the Polish legislation in 1990s,[3] and just like in the interwar period, it was connected with Poland's inflationary monetary policy.

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[1] Cf. *Code des obligations de la République de Pologne*, Paris 1935; *Readings on the Polish Code of Obligations in Lyon and Paris*, "Przegląd Prawa i Administracji" [The Law and Administration Review] 1935, p. 311; Z. Nagórski, *Codification of the Civil Law in Poland (1918–1939)*, (in:) *Studies in Polish and Comparative Law*, London 1945.

[2] Cf. E. Waśkowski, *Nowe idee w kodeksie zobowiązań* [New ideas in the Code of Obligations], "Głos Prawa" [The Voice of Law] 1934, No. 6; M. Lewy, *Nadużycie prawa według orzecznictwa francuskiego i prawa polskiego* [Abuse of law according to the French and Polish jurisprudence], Warsaw 1938, pp. 110–111; E. Altstaedter, *Wytyczne zasady kodeksu zobowiązań*, [Guiding principles of the Code of Obligations] "Nowa Palestra" [The New Bar] 1934, No. 5.

[3] Cf. R. Jastrzębski, *Wpływ siły nabywczej pieniądza na wykonanie zobowiązań*...[Impact of the purchasing power of money...], Warsaw 2009, p. 421–425.

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