

Coronavirus crisis as a case of the „change of circumstances“ justifying an adaptation of the contract or its termination

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## Impact of the Covid 19 crisis on the contractual relationships

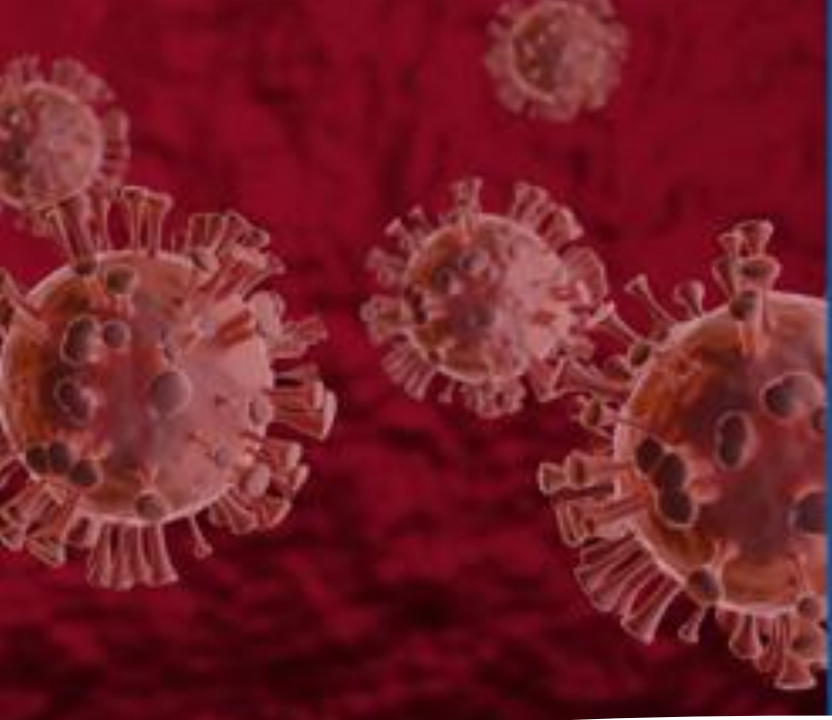
- The global economy will probably face a heavy economic crisis, with the long-lasting recession.
- Due to the contract many contractual rights cannot be fulfilled. Many branches, mostly in the area of services suffer essential losses
- The COVID – crisis raises again the question on the private law measures, necessary to protect the parties of the contracts.



# Availability of the traditional remedies against frustration of contract and hardship

- Many legal systems provide the genuine solutions against the unexpected change of circumstances.
- E.g.:
- § 313 BGB
- Art. 1195 Code civil
- Art. 357(1) Polish Civil Code (kodeks cywilny)
- Art. 451 Civil Code of the Russian Federation
- The Model Laws – e.g. III 1:110 DCFR, 6.111 PECL, 6.2.1. – 6.2.3. PICC





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# ELI Principles for the COVID-19 Crisis

## ELI Principles

- Principle 13 FORCE MAJEURE AND HARDSHIP
- (1) Where performance of a contract is temporarily or definitively prevented directly or indirectly due to the COVID-19 outbreak or States' decisions taken in relation to the COVID-19 outbreak, States should ensure that existing law on impossibility or force majeure applies in an effective way, and provides reasonable solutions. In particular, the contractual allocation of risk in these instances should be evaluated in the light of existing contracts, background legal regimes and the principle of good faith.
- (2) Where, as a consequence of the COVID-19 crisis and the measures taken during the pandemic, performance has become excessively difficult (hardship principle), including where the cost of performance has risen significantly, States should ensure that, in accordance with the principle of good faith, parties enter into renegotiations even if this has not been provided for in a contract or in existing legislation.
- (3) In conformity with the principle of solidarity, States should ensure that the consequences of the disruption of contractual relationships, such as the cancellation of travel arrangements, should not be at the sole risk of one party, in particular of a consumer or SME.

## On the problem with the clausula-rebus –sic- stantibus- approach

- Efficiency of the judicial system in deciding on adaptation of the contracts
- Duty to negotiate
- Adaptation of contracts – the missing criteria
- Termination of contracts



# Ad hoc-legislation

- E.g. of the Polish „Anti-crisis“-Shield Law
- - control of the consumer credit contracts (so called extra-credit fees)
- - postponing of the reimbursement in case of the terminated package travel contracts
- - additional protection of the tenants
- Advantages of the ad hoc-legislation

