Barnabás Lenkovics

Crises, Human Rights and Legal Challenges

Summary: The purpose of this study is to ponder on – and provide assistance in tackling – the latest challenges affecting individual lives and human rights. The three most severe crises of our days are global-scale social inequality; declining populations in rich economies and overpopulation in poor countries; and the threat of a climate change disaster. These three crises aggravate each other, and their negative effects combine and materialise concurrently. The key question is how social sciences – especially economics and legal sciences – respond to the symptoms of these crises and whether they can offer an accurate diagnosis or recommend a possible therapy. Do they need to exercise self-criticism and bring their scientific truths more in line with reality? It is crucial to seek answers to these questions for the sake of sustainability and future generations.

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I am a member of an unlucky generation: after having witnessed the fall of socialism – a monumental historical experiment, an ideology rooted in the concept of equality –, we embraced private ownership and market economy with great expectations only to see these high hopes start to evaporate. Although I have touched upon the subject in a previous article[1] already, I did not think even then that the situation would escalate to the extent seen these days. In the aftermath of the global financial and economic crisis, we are now facing a refugee crisis, an immigration crisis or, as it is commonly referred to, a migrant crisis; even the term 'crisis' is sometimes substituted by 'impasse'.

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Resolving the series of crises of our times is not a task for my contemporaries or myself; it will have to be tackled by future generations. Even so, I am deeply concerned: aren't we, the elderly, responsible for the failures of history? Could we have done more to predict and prevent the crises? After all, just as the history of socialist planned economy can be described as a series of crises and reforms, so can capitalist market economy be explained as a sequence of distortions and adjustments. The older generations, therefore, have ample experience in the field of reforms and adjustments. At present, however, in addition to global social inequality and impoverishment, we need to reckon with two additional crisis aggravating factors: the threat of a climate change disaster and overpopulation in the poorest countries of the world. In terms of magnitude and severity, the crisis situation arising as a combined result of the three factors appears to be more devastating than any other – whether socialist or capitalist – economic, financial or comprehensive ideological crisis we have seen before. The reforms, ad-

E-mail address: lenkovics@mkab.hu

justments and corrections implemented thus far are insufficient to address the situation. This new crisis calls for new solutions. As Albert Einstein put it, *"Problems cannot be solved with the same mindset that created them".*

The title of this paper is intended to reflect on this momentous era. Once we separate the two members of the adjectival phrase 'human rights', it becomes evident that the challenges are twofold: we need to face both human and legal challenges before channelling them back to the economic and financial fundamentals; indeed, the triggers of the crisis are rooted in the exploitation of natural resources, growth and profit-driven production, artificially induced consumption and the unfair distribution of goods.

A presentation at a recent conference began with the presenter's assertion that, in view of the pervasive relativism of our times, there is a need to redefine even the most natural and most obvious institutions of mankind, such as marriage and the family. We ought to return to the natural foundations of life, for abandoning them or challenging the course of nature will ultimately turn us against ourselves. As a typical symptom of seeking a way out of the crisis, this need for a paradigm shift has increasingly come to the surface in recent times in various contexts. The Fundamental Law of Hungary offers a broad framework, a possibility and an opportunity for seeking a way out (finding – or sometimes, returning to – the right path) in that it proclaims that the nation and the family provide the fundamental framework for community, and in doing so, it rehabilitates such fundamental values as loyalty, faith and love. It restores respect for work and intellectual achievements by proclaiming that they constitute the strength of a community and the self-esteem of every human being. By declaring the obligation of helping the vulnerable and the poor, it protects the institutions of the rule of law and social solidarity, as well as the results they have achieved so far. Summarising centuries of market economy experiences, it pledges to ensure the conditions of fair economic competition only, to act against the abuse of a dominant economic position and to protect the rights of consumers. (National Avowal of Faith and Article M).

The real question, however, is whether this new-old approach and attitude have emerged and taken hold in mentality, especially in the most affected areas such as social sciences, economics and legal sciences. This question was in the focus of my analysis and the economic and legal papers and studies outlined below are intended to give an insight into my findings.

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In his study entitled 'Banks vs. the Fundamental Law', *László Vértesi* stresses[2] the need to reconsider a number of basic concepts, such as market economy, corporate social responsibility, freedom to conduct business, freedom and purity of economic competition, consumer protection, protection of the weaker party, state intervention and the sharing of public dues. Although these are basic concepts and basic categories, their content, justification, tools and levels should be redefined. The author also refers to the sentence quoted from the National Avowal above: *"We proclaim that we are duty-bound to help the vulnerable and the poor".* What is the origin of this creed? Is it linked to capitalism or socialism? Is it related to market economy or to state-directed planned economy? Is it accompanied only by individual diversity, selfishness, enrichment, race, competition and profits or social responsibility, solidarity, equality and equalisation as well? Similarly, we could enumerate several articles and numerous institutions of the Fundamental Law and analyse them from the aspect of the required paradigm shift.

In his study entitled 'Unorthodoxy or Heterodoxy in Economics', *László Csaba* also searches for new answers to a new set of questions.[3] The adjective 'unorthodox' has been frequently cited in recent years in conjunction with government policy and a number of relevant legal acts and legal solutions. In economics, László Csaba carries this forward by tracing the concept further back in time to different authors. For example, no one called *Mahatma Gandhi*'s or *Ernst Schumacher*'s ecological economics or the nature-friendly economics of Buddhism 'unorthodox'; they were referred to as alternative economics. That notwithstanding, these thinkers were considered to be eccentrics at their time in any event. Such unorthodox – anti-mainstream – economic theories, however, started to gain ground in the wake of the 2008–2009 financial crisis and the resulting economic and social global crisis. Instead of holding fast to the remains of a fossilised way of thinking driven by liberal dogmas, *Joseph Stiglitz* emphasises flexible government policy governed by common sense. In his book 'Irrational exuberance', *Robert Shiller* writes about the end of the reign of the stock exchange; *Daron Acemoglu* and *James Robinson*, in turn, contemplate the origins of power, welfare and poverty. The Polish researcher *Grzegorz W. Kolodko* also addresses similar questions in his book 'Megatrends', while *Thomas Piketty*, the celebrity economist of the day, discusses economic relations from an entirely different angle than traditional liberal textbooks in 'Capital in the 21st century'. From the latter book, László Csaba underpins one particular thought, namely, that from a historical point of view, the development of the United States is exceptional and cannot be generalised, even though it has been held up as an exemplary model of the Washington doctrine worldwide.[4] As regards its analysis on the distribution of wealth, Piketty proves that inequalities rise continuously without the state's redistribution, which calls for increasing state intervention. By contrast, the withdrawal of the state, the ideology of the minimal state and non-intervention from the government, as fundamental principles, have all strengthened along the lines of the boost given to neo-liberalism by Reagan and Thatcher. And if the market, left to its own devices, exacerbates these financial inequalities further, democratic capitalism, just like in the period following World War I, will be called into question. And as we know from post-WWI history, excessive inequality leads to fascism and communism.

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Indeed, these new or unorthodox economic views warn of enormous threats. In this regard, it is extremely interesting that economic science worldwide is miles ahead of what is still being taught at universities, even though a series of non-traditional approaches are now at hand. Why is this such a thought-provoking fact? Once we project it onto the law, it becomes obvious. If due to the distorted operation of enormous institutional systems worldwide extreme gaps open up between the poor world and the rich world in both a moral and a social sense, and all this takes place 'legally', in the framework of institutions created, maintained and operated by the law, should we continue to maintain the legal system that created and operates these institutions? To put it more bluntly, is it not true that the main culprit is the legal system that creates and grants a status to such institutions, guaranteeing, protecting and maintaining their privileges? Is it not law that acts as the obstacle to change? Behind the mask of fossilised legal dogmas, is it not the rigid, dogmatic – globalised – interpretation of the law that causes the doom of the world? In this sense, it is an enormous task and challenge to define the concept of the law itself and to channel it back to social sciences in order to

ensure that it is not self-contained or self-serving, and it does not depart from new trends in demography, sociology, moral philosophy or economics. The law needs to keep up with these trends; it should integrate the latest results of other social sciences into its own conceptual system and institutions and change in line with them. Good jurisprudence and good law are one step ahead of the world at all times; they act as a driving force, generating the required changes themselves. By contrast, saddled with its rigid institutions and systems that had been adjusted to global economic and financial interests, today's law lags far behind.

It is especially difficult to keep in step – or rather, drive the changes –in private law or in property law, but it is also far from being an easy issue in the dogmas of constitutional law, in the institutions of economic constitutionality or, in an even broader sense, in the area of second-generation human rights. Reorganisation, austerity, repossession, retrenchment and the likes are extremely frequently used terms these days, indicating that, although by the end of the 20th century the system of human rights reached a level where economic, social and cultural human rights are universally guaranteed to all mankind, the 21st century began to dismantle the system and revoke the very same rights. Suffice it just to refer to the world of work and labour law to illustrate the status of workers, especially in developing countries. As *David C. Korten* pointed out in his book 'When Corporations Rule the World', while a skilled worker at a US car manufacturer makes 30 dollars an hour, a worker in the Philippines gets 30 cents for doing the same job.[5] There is a hundredfold difference between 30 cents and 30 dollars. Yet we proclaim that human dignity is inherent to every human being, and every person has an equal and unimpeachable right to human dignity. Every person is ranked equal. How do you reconcile these ideals with a hundredfold difference in material goods? What will happen if, standing up for his dignity and demanding his rights, the worker in the Philippines decides to move to the place where he can make 30 dollars an hour? This is precisely what we see today in the context of a global-scale migration.

4 The disproportions and injustice prevailing in the distribution of material goods are just as obvious in the financial sphere. In his article entitled 'Kiút a káoszból? A pénzügyi piacok jogának dilemmái (A Way Out of Chaos? Legal Dilemmas in Financial Markets)', *Imre Forgács* called attention to the fact that the meltdown can be attributed, to a significant degree, to inadequate prudential law instruments, poor credit rating activity and to the 'financial weapons of mass destruction', i.e. nearly unregulated derivative securities. The consequences, to this day, are borne by taxpayers worldwide.[6] In other words, although the default of Goldman Sachs takes place in the United States, it drives 3 million people in Hungary into poverty or, as the Hungarians say, removes the roof from over their heads. And today, as demonstrated by the migrant situation, this expression can be also interpreted in the literal sense. It is the source of severe tensions, for example, that the legislative and legal enforcement bodies of nations are becoming increasingly unfit to regulate and control a digitalised, globally operating international financial system. Some experts believe that besides new legislation and supranational institutions, there is also a need for a new legal theory for finances. For that, we should take the specificities of financial markets and the controversies of existing regulations as a starting point. It was 20 years ago when I first read that an immense amount of free money supply was enveloping the global market and the network of electronic stock exchanges like a

swarm of bees, 24 hours a day. Just by the click of a mouse, enormous amounts of money can be transferred across the globe, from emerging regions to Asia and then onward to Europe. And this activity resembles that of a swarm of bees because anywhere the bees can spot a blooming meadow – i.e. profits, earnings, yields –, they buzz around, suck the nectar out of the flowers and then move on. This makes stock traders and their clients richer and the areas deprived of the badly needed nectar of income even poorer. In line with the simile often applied in civil law, I call this a global Matthew effect in reference to the Bible; namely, *"Whoever has will be given more, and they will have an abundance. Whoever does not have, even what they have will be taken from them"* (Matthew 13:12). In its broader sense, including the industrial and service capital system as well, the functioning of this global financial institutional system is based on the axiom that the rich get richer and they will be in abundance. But where does this richness come from? The recently published World Bank Report is a good example: 1 per cent of the total population of the world owns 50 per cent of the total wealth of the world. Previously, Forbes Magazine referred to a rate of 20/80; i.e. that 20 per cent of the world's population owned 80 per cent of global wealth. In fact, the two ratios do not exclude each other; at most, within 20/80 1/50 is just another, even more extreme ratio. And the book by Thomas Piketty also reveals that the richest persons of the world will continue to get richer – by over 10 per cent annually – in recessions; i.e. at times when economic growth stagnates or even declines. Thus, the wealth of the richest grows 10 per cent faster than the average growth of capital or material goods. This could not be possible without the global functioning of legal institutions and organisation systems that allow this to happen.

The book by *Dani Rodrik*, 'The Globalization Paradox',[7] describes the process that we had taught to be development in the past – the establishment of WTO, UNCITRAL, UNIDROIT, GATT, IMF and similar regulatory powers – on the basis of a new approach. In order to facilitate the movement of capital and global production, international agreements obliged signatory states to dismantle in their national legislation such barriers to international capital and trade that are deemed dominant relative to their position: customs duties, duties, contributions, conservation and environmental conditions, occupational health and other social burdens unwelcome by capital in view of their ability to reduce profits. In order to join the mainstream of this development – and because they tend to believe in new ideologies and the mainstream in any event –, nation states readily sign these agreements and dismantle and rescind in their national legislation the instruments, conditions and guarantees that serve their protection. By doing so, they reinforce an impersonal, multinational, transnational and global institutional system, while in terms of their immune system and protection mechanism, nation states and national legislation weaken. And this is how it is possible for the rich to get richer and the poor to get poorer.

And those getting richer do not take responsibility for what becomes of those getting poorer: impoverishment, wage slavery, debt slavery. This is the real weapon of mass destruction: divorced from reality, an artificial market of construed derivative products has emerged. An apt example is the foreign currency-based consumer loan contract as a financial product. Eight hundred thousand such contracts have been concluded in Hungary, of which four to five hundred thousand families have effectively lost ten, fifteen or twenty years of their lives, for these lives are now consumed by trying to find a way to pay back the loan that

has, in the meantime, ballooned to become a multiple of the initial principal amount.

5 In her article on the overhaul of the financial supervision system of the European Union and on the Banking Union, *Lorina Buda* notes: *"Since the EU was unprepared for crisis management, the initial financial crisis has since become a crisis of the real economy and a political crisis".*[8] The author, at this point, referred to the 2008 financial crisis rather than the current migrant crisis. From this statement, at best, we may draw one general conclusion: that the EU is unprepared for any crisis. For the future, the EU envisages a type of integration – a federation growing out of the foundation of an idolised European Union common market. This is eerily similar to the socialist doctrine frequently cited at the time; namely, that we are progressing toward the advanced stage of socialism and ultimately, communism, through continuous, linear development. Finally it became clear that this was nothing more than botched human experimentation. In any event, socialism was not prepared for addressing bankruptcy precisely because of the delusion that it progresses on a straight path of unbroken development toward the only possible future, communism.

In the article, the author also refers to *Jean Pisany-Ferry*'s, 'impossible trinity' such as: (1) no-coresponsibility for the default of private firms (2) no-monetary financing rule; i.e. the rescue of private firms and banks from public funds is prohibited, (3) bank-sovereign financial interdependence. The problem is that the third criterion cannot be reconciled with the previous two. If there is interdependence between the state and the financial sector, then the state will be forced to intervene – for instance, in order to rescue foreign currency debtors –, for social impoverishment and the loss of homes would impose such an enormous social burden on the state that it would not be able to withstand. This is why it has no option but intervene and pass some of it on to the banking sector that put this product on the market in the first place.

Pursuant to Article 125 of the TFEU, "the Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State". Similarly, a Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State. Therefore, neither the European Central Bank nor the national central banks are allowed to purchase debt securities; however, some signs of easing this prohibition have already materialised. The European Central Bank may now purchase sovereign Member State bonds. *"One of the causes of the financial crisis was the absence of a body that monitors macro-level risks. There was no one to call attention to the risks arising from collective behaviour".*[9] In the summary, *Lorina Buda* concludes that "the crisis management performed across the European Union points far beyond the crisis, in that it actively shapes the long-term future of the EU. The crisis management measures implemented so far have launched institutional reforms, without which the crisis would have brought down the entire Union like a house of cards. With this, however, they set the development of integration on a path that is far from being completed, and that remains in progress long after the end of the crisis. Obviously, this assumes the existence of a common goal shared by all EU Member States or by at least members of the euro area. This goal, however, is yet to be defined clearly".[10] Attempts at crisis management at the level of the European Union are also informative. The financial crisis of Cyprus comes to mind as another apt

example for the erosion of tight principles: Cyprus was the first country to choose a path different from the previously seen recapitalisation of banks (i.e. when distressed banks were bailed out using public funds). Among other things, this may have been in an effort to prevent absurdities, as seen in the case in the United States, where bail-out funds went towards CEO bonuses and the CEO, in turn, ended up pushing the bank into bankruptcy. This, justifiably so, spurred general outrage and ultimately prompted a turnaround. For the first time, it was shareholders who lost the value of their stock. Accordingly, it is shareholders that bear the risk of a bank default and should that prove to be insufficient, deposit holders become second-round risk bearers. In other words, not only investors, but deposit holders as well, face the risk. It should be noted that the ratio of non-resident deposit holders at Cypriot banks was in the range of 30 to 60 per cent. The default of brokerage firms and small banks gave rise to similar questions in Hungary. What can deposit holders do? The National Deposit Insurance Fund provides compensation for losses up to HUF 30 million. In reality, risk is being distributed between the individual members of the sector. Ultimately, all small deposit holders of financially sound banks will bear the losses arising from the compensation paid to the depositors of bankrupt banks. Investors, on the other hand, do not enjoy such a high level of protection; as they have taken higher risks, they should bear bigger losses. Accordingly, the Investor Protection Fund compensates investors up to EUR 20,000 (around HUF 6 million). What happens, then, if a bank also acts as an investor, while the investment firm or brokerage firm also collects deposits? The system needs to be rearranged, for neither the supervisory authority, nor legal regulations can prevent such entanglements and the efficiency of supervision is insufficient to prevent a meltdown in time. At times like this, are aggrieved investors worthy of being afforded the same protection as depositors? But how many of them? Only one institution or all of them? How should we define the eligible entities? Is it discriminative or not? Is it positive or negative discrimination? So many new questions, so few new answers.

6 A Constitutional Court decision on the referendum about the early retirement of men at 40 [No. 28/2015 (IX. 24.)] is also related to the protection of public funds: Article N of the Fundamental Law stipulates the constitutional requirement of balanced budget management. The negative experiences of the 20 years following the political transition demanded a strict stipulation of a constitutional fiscal barrier in the Fundamental Law. Pursuant to Paragraph (3), in performing their duties, the Constitutional Court, courts, local governments and other state organs shall be obliged to respect the principle of balanced budget management. They cannot allow any steps to be taken that would lead to – or even threaten with – a potential domino effect-like crumbling of the fiscal balance.

The constitutional court cases outlined below are intended to illustrate the crisis symptoms and basic categories mentioned so far, along with the responses given. One such case concerns the so-called savings cooperative integration [Constitutional Court Decision No. 20/2014 (VII. 3.)]. The financial sector is one segment of the economic system as a major sub-system of society and the producer of material goods. The financial sector finances the economy and is often referred to as the driver of the economy. Financial stability, therefore, is clearly a prerequisite for economic stability. At the same time, through global multinational and transnational bank networks, even a remote crisis spills over to the Hungarian banking and financial system despite all

efforts to avoid just such situations. According to many experts, Hungary fell victim to over-banking and over-internationalisation. The excessive nationalisation of the socialist era was followed by over-privatisation, and at present, in the spirit of a historical search for balance, efforts are aimed at finding the right proportions and sizes and correcting all "excesses". One such segment is the savings co-operative sector within the financial system as a sub-system of the economy. At about 10–15 per cent, it has a fairly moderate share within the financial system. Its role, however, is far more important in offering financial services to the inhabitants of villages and in providing funds to regional micro, small and medium-sized enterprises, especially those in the agricultural sector. There is a clear economic policy and social policy intention on the part of the government that the government tries to implement through legislation, and while it should be the task of the executive branch and its real tool would be a government measure, the government cannot ensure this without formulating the relevant legislation. Thus, in essence, the executive branch requests a tool from the legislative branch and uses this tool to craft the relevant regulations, provided that it enjoys supermajority on laws requiring a two-thirds majority.

The current adjustments in the state's role in economy can be explained by the latest historical pressures exerted on nation states to seek techniques and tactics of self-defence against the symptoms of the global crisis.

7 At this point, another item should be mentioned in relation to the global crisis. Ethology professor *Vilmos Csányi* brings into focus the problem of the ecological footprint in his article entitled '7.5 Billion People are Anti-Green'.[11] In 2015, in the period between 1 January and 13 August, mankind consumed the entire stock of renewable goods that should have lasted for the whole year. Whatever we consume from 14 August to 31 December, we take it away from next year, leaving little for future generations. According to scientists' calculations, at the average living standard of general welfare societies, the Earth – the provider of the ecological resources required for life – is capable of supporting 2.5 billion people. With a world population of 7.5 billion, our living standards should be a half, a third or a quarter of our existing standards; instead of lavish consumption and luxury, we should pursue a thrifty, restrained and natural lifestyle. This goes against all economics that measure the level of development of a country in GDP, national income, per capita consumption, production growth, retail indices and the likes (used today as indicators of development).

There is, however, a different kind of calculation: the Happy Planet Index. The notion of having such an index derives from one of the poorest countries on Earth: Bhutan. The gap between GDP and the level of happiness is aptly illustrated by the saying: 'In an underdeveloped country, don't drink the water; in a developed country, don't breathe the air'. The Happy Planet Index is designed to resolve this conflict by including values other than economic indicators in the calculation, such as pure drinking water, unpolluted air, uncontaminated soil, healthy crops and meat products, fresh vegetables and fruit, family and social support networks or small communities supporting the individual. Instead of welfare, it gauges well-being, the conditions of which are still in place in many poor countries. At the same time, the ten best scoring countries in 2013 were welfare states (such as Denmark, Norway, Sweden, Finland, Switzerland, etc.) that succeeded in striking a sustainable balance between industrial (civilisational) richness and natural abundance. To connect the concept of sustainability to the global social gap mentioned above – that is un-

sustainable in the economic, financial, social and moral sense alike –, evidently, the threat of a climate change disaster (which is partly attributable to overpopulation) and the migration of the so-called climate refugees greatly contribute to the process. As water is depleted, pastures are destroyed by drought and the few remaining forests are logged, deprived of their living conditions, hundreds of thousands, millions of people abandon their homes just like at the times of great migrations.

8 The question arises: why do most of these people seek help from Christian Europe? Why is it Europe that has the most developed social care systems and major social solidarity institutions in place? And once they are here, why does the host country need to reckon with an increased threat of terror? Why cannot they integrate? In extremely complex situations, it is often the simplest questions that provide the easiest answers, be it about climate change, social impoverishment or migration. Besides granting rights, integration should be subject to strict conditions: refugee rights should be coupled with obligations toward the nation state and laws should be observed and upheld. Otherwise, the prophecy of *Samuel P. Huntington*– 'the clash of civilisations – may become a reality.[12] Reaching the welfare state founded on the rule of law, the citizen of a poor country will try to cash the cheque made out to him in the name of human rights and the rule of law. The question is: who should cover the required funds? After two centuries of development, Europe has accumulated a sufficient amount of reserves to cover – and guarantee for future generations (i.e. its own children and grandchildren) – the welfare state and the rule of law. Can it guarantee the same for the same number – or even a greater number – of immigrants, Or will the reserves be depleted in a matter of years, while its performance and the returns thereon fall far behind the previous level? How will it replenish the reserves? These are the enormous human rights and legal challenges of our times, especially with respect to crisis manager nation states.

9 Pursuant to Constitutional Court Decision No. 8/2014 (III.20.), the principle of *clausula rebus sic stantibus* is a constitutional tool for crisis management. The state brings laws to intervene in private contracts *en masse,* with the same conditions as provided under Section 241 of the old Civil Code: in the case of 'significant and unanticipated changes' and grave breaches of interests. The court can restore this balance of interests and balance of values if the parties themselves proved to be unable to restore it through contract amendments. The legislative branch is also entitled to do so via normative instruments, i.e. laws. Based on the principle of fair contracting, individual judges may intervene in specific contracts when the balance of interests is upset. In the case of a large number of contracts, this intervention will be carried out by legislature via normative tools.

Constitutional Court Decision No. 34/2014 (XI. 14.) is also referred to as the foreign currency decision. The background of this case is that even the Curia's confirmed in its uniformity decision that the third branch of the government cannot address this severe problem – that involves a multitude of contracts – through resolving the dispute between two parties. The magnitude of the problem calls for normative intervention. It should be noted that the Constitutional Court had already laid the foundations for this work in its Decision No. 32/1991 (VI. 6.), which involved the same conceptual considerations in relation to housing loans granted under the interest subsidy scheme of the OTP.

Behind foreign currency-based consumer loan contracts – which seemingly had private

law implications only –, numerous circumstances outside of the realm of private law (or law itself) played a decisive role:

- large amounts of liquidity in rich, net saver countries, a lending pressure in money markets on the side of the multinational banking sector;
- strong, partly induced credit demand in poor countries;
- central bank interventions, exchange rate and interest rate policy measures, fluctuating cross rates;
- government interventions in the exchange rate of the national currency for the purpose of restricting or expanding imports or exports;
- government interventions in the money market for the purpose of downsizing the budget (elimination of interest subsidy schemes aimed at social purposes);
- global financial crisis, a steep appreciation of 'safe-haven currencies';
- depreciation of the national currency as the financial crisis spilled over.

Mention should also be made of marketing and advertising pressures exerted by the government and the banking sector, which steered hundreds of thousands of (irresponsible) borrowers toward irresistibly cheap loans even without sufficient coverage. The loans, which were denominated in foreign currency but disbursed in forint, were repaid by debtors in forint, but the amount was converted on the basis of the exchange rate of the relevant foreign currency. The back office operations (banking business technology) involved in the back and forth conversions of banks' foreign currency liquidity to forint and forint liquidity to foreign currency became so complicated that even bank officials and agents failed to fully understand them, let alone debtors. If even banks' risk analysts (risk managers) were unable to grasp the magnitude of the exchange rate risk, how could the same be expected of (often uneducated) debtors unexperienced in speculative transactions? In the context of circumstances of similar magnitude, can we still talk about consensus between parties on equal footing, bestowed with the same rights (consistency of thoroughly considered intentions), contracts that respect the balance of interest between the parties, the balance of values between service and consideration and deliver the expected win-win situation? Or were these contracts based on a gamble which could only result in one winner and one loser? In light of the dominant position of the government and the financial sphere, the abuse of public office and the abuse of economic/financial position, can we still talk about private law, and if yes, to what extent? Answers should be found to these severe questions in order to prevent the same situation from happening again and to ensure that we are not caught by similar, unexpected surprises in future.

10 In conclusion, let us consider a scenario that aptly illustrates all of the above. When an important part of a car malfunctions and it is proven to be caused by the manufacturing error of a major car manufacturer, millions of cars are recalled in order to replace the faulty part. Similarly, foreign currency based loans were also looked upon as a product; a theretofore unknown financial product involving, in the legal sense, an atypical or unaccustomed, extraordinary contractual solution. No one could really understand the magnitude of the risk taken, even if they signed the risk disclosure document. It took five years to come to grips with the risk of the transaction, when both the outstanding principal and the monthly instalment amount doubled. Agents sold these contracts, as financial products, to customers in exchange for commission; consequently, they had a vested interest in selling as many contracts as possible. Thousands of lawyers worked on formu-

lating the wording of these contracts and put their stamps on the final result. Notaries public drew up official, public documents registering mortgages on homes and any other valuable real estate as collateral. The entire legal community participated in the promotion of a product that remained somewhat obscure even for financial experts. All of these circumstances had been considered as the legislator made its decision that was subsequently examined and approved by the Constitutional Court in the Decision mentioned above. From a different angle, we might say that the emerging situation required immediate government intervention. Since the third branch of the government was unfit to address a problem that affected such a multitude of people and the government was unable to move forward without the supporting legislation, a series of legal acts had to be formulated as swiftly as possible. As most things that are done too fast, this effort inevitably entailed numerous errors, gaps and contradictions; even so, the situation had to be tackled immediately. When a child loses a parent, for example, they must be assigned a temporary guardian and a depositary must be appointed to manage their assets. This is obviously a life situation requiring immediate attention. The same is true in the financial sector when a massive pile of hundreds of thousands of contracts is affected, and the same happens to the legislative tool in public law. And it was on the basis of constitutional law dogma that the Constitutional Court needed to proclaim that extraordinary solutions are constitutionally acceptable in emergencies requiring immediate intervention. Paragraph (2) of Article M) of the Fundamental Law proved to be a good foundation for this.

These examples aptly illustrate the economic, social and environmental crises and the human rights and legal challenges affecting our everyday lives today. The combination of the global social gap, overpopulation-induced migration and the threat of a climate change disaster spawned an emergency of global scale. We search for crisis management tools both at the national and at the international level but an extremely protracted process is ahead of us, in which future generations will need to take on the greatest and most difficult task. They will have to find a way to sustainable development, a more liveable life and their own happiness by learning from the mistakes of the past and the present. Learning from our own failures and passing on our experiences we might be able to help them lay the foundations of a more reasonable and more fair (global) world order and assist in the redistribution of goods and rights accordingly.

Notes

[1] Lenkovics, B.: Konvergencia a szakadékban. (Convergence in the Abyss). In: Bihari, M. – Patyi, A. (eds.): Ünnepi kötet Szalay Gyula tiszteletére, 65. születésnapjára. (A Celebratory Volume in Honour and for the 65th Birthday of Gyula Szalay). Universitas-Győr, Győr

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[3] Csaba, L. (2015): Közgazdasági unortodoxia vagy heterodoxia. (Unorthodoxy or Heterodoxy in Economics). *Jogtudományi Közlöny,* No. 2015/9, pp. 415–420

[4] On this, see Tamás Mellár: A liberális gazdasági doktrína tündöklése és …? (Liberal economic doctrine – Rise and ...?). *Polgári szemle,* No. 2007/11

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[7] Rodrik, D. (2014): A globalizáció paradoxona. (The Globalization Paradox). Corvina Kiadó. Budapest, p. 389, and similarly, Benedek Tóth: The changing relationship between law and economy. *Európai Jog,* No. 2013/5, pp. 1–16

[8] Buda Lorina: *Az európai unió pénzügyi felügyeleti rendszerének átalakulása és a bankunió létrehozásának bemutatása.* (Financial Supervision Overhaul of the European Union and Setting Up the Banking Union). p. 111. http://uni-nke.hu/uploads/media_items/az-europai-unio-penzugyi-felugyeleti-rendszerenek-atalakulasa-es-a-bankunio-letrehozasanak-bemutatasa.original.pdf, 04/10/2015

[9] Ibid., p. 116

[10] Ibid., p. 122

[11] Magyar Narancs, 28 May 2015, pp. 41–44

[12] Huntington, S. P. (2005): A civilizációk összecsapása és a világrend átalakulása. (The Clash of Civilizations and the Remaking of World Order). Európa Könyvkiadó. Budapest

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