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BOOK REVIEWS

GÁBOR HAMZA: **Az európai magánjog fejlődése. A modern magánjogi rendszerek kialakulása a római jogi hagyományok alapján** [Trends in the Development of Private Law in Europe. The Role of the Civilian Tradition in the Shaping of Modern Systems of Private Law]. Nemzeti Tankönyvkiadó, Budapest, 2002, 362 p.

It was the end of year 2002 when the monograph *Az európai magánjog fejlődése* (*Trends in the Development of Private Law in Europe*) was published by *Gábor Hamza. Gábor Hamza* is full professor of Roman Law and Comparative law at the Faculty of Law, Eötvös Loránd University of Sciences, and he is the head of the Department of Roman Law, as well. The aim of this monograph is to describe the formation of the private law-systems of today based on the Roman Law traditions. Being the editor of this book I intend to give a short presentation, which might be encouraging for further reading of the book.

Gábor Hamza purposed to present the formation and the structure of the modern private law systems with the method of the comparative private law with special emphasis on the subsequent fate of Roman Law. It has to be taken into account that there are several studies in the international literature, which deal with the general presentation of the universal history of private law. There are also numerous general introductions to the comparative law (*droit comparé*), too. I refer hereby—as examples—to the works of *René David*[1] and *Franz Wieacker*.[2] Taking into consideration these studies one has to underline the specific methodological basic-principle of Professor *Hamza's* book. To sum it up one can say that the author attempts to compound those scientific approaches, which are applied by the international legal literature. As a consequence of this it is not only the *historia externa* of private law, which can be found in the book, but one may also collect several pieces of information on the dogmatical questions and the history of institutes of private law in the present book. Nevertheless one can find useful datas on the history of the science of private law, as well.

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[1] David, R.—Jauffret-Spinosi, C.: *Les grands systémes de droit contemporains.* Paris, 2002.[11] In English: David, R.—Brierley, J. E. C.: *Major Legal Systems in the World Today. An Introduction to the Comparative Study of Law*. New York, 1978.

[2] Wieacker, F.: *Privatrechtsgeschichte der Neuzeit*. Göttingen, 1967[2].

If one pays attention to the essence of this methodology it may not be surprising that the author puts high emphasis on Roman law and on the subsequent fate of Roman law. It is absolute beyond doubt that Roman law can function as a possibility for integration among the national legal systems. Overwhelming as it may be but Roman law can be regarded as a *lingua franca* of law.

If one takes a short look on the title of the present book, one may think that the monograph concerns only the European countries. If one takes the table of contents under close inquiry one may see that this book is not exclusively on the development of law in Europe. Nevertheless we may find the short legal history of private law of every European country. Additionally the book gives detailed analysis on the impact of the European civilian tradition on countries outside Europe. One can read chapters on the legal development of North America, Central America and South America, South Africa and some countries of Asia, as well.

Professor *Hamza's* book is divided into four large parts, as follows:

1. The Origins of European Private Law;
2. The Development of European Private Law in the Middle Ages;
3. The Development and Codification of European Private Law in Modern Times;
4. The Influence of the European Civilian Tradition on Countries Outside Europe.

I think that the titles of the parts themselves testify upon the historical and comparative approach of the book. This may result that one can regard this monograph as legal history, although I am convinced that the book itself is more than a summary of history of private law.

The first part of the book gives a very useful introduction to the beginnings of the European private law. The very first paragraphs of the book are on the fate of Roman law after the demise of the West-Roman Empire. This chapter also contains an analysis on the codification of Roman law in the Roman (Byzantine) Empire during the reign of Justinian. This codification can be regarded as the most important and most famous codification-process of the antiquity. I refer hereby to *David Dudley Field*, the famous American jurist in the 19th century who said that the code of Justinian is "*a great achievement of human genius*".[3] It is absolutely beyond any doubt that the Code of Justinian had a huge impact on the codifications of Europe in the modern times.

The second part of Professor *Hamza's* book begins with a theoretical definition on the term of *ius commune*. As it is well-known there are many interpretations of *ius civile* in the legal literature. In the favor of a better

[3] Cf.: *David Dudley Field Centenary Essay* (ed.: A. Reppy). New York, 1949.

understanding it's worth quoting the definition of *ius civile* applied by the author:

> "*Ius civile is nothing else but the surviving Roman law, which is functioning as a common legal system of the Europe of the Middle Ages and the very beginning of the Modern Times, including the countries having particular legal systems. This legal system is followed by the civil codes and other acts of the nations from the middle of the 18th century to the 19th century.*"[4]

This chapter gives a very detailed analysis on the development of law in Europe in the Middle Ages. Nevertheless one finds very useful pieces of information on the legal development of bigger countries, such as France or the Holy Roman Empire, but one can gather really important datas on the smaller countries, as well. For instance we can read some paragraphs on the law of Wales, which became the part of England in 1283. It may be interesting to pay attention to the fact that the English legal system was introduced in Wales no sooner than in 1536 and 1543, based on the *Acts of Union*.

The book contains outstanding information on the field of history, too. We can make out that it was *Ivan*, the Third (1462–1505) in Russia who used the title '*tsar*' in international relations for the first time. The title '*tsar*' is in very tight connection with the well-known theory of the '*third Rome*'. (We can also find very detailed bibliography on the theory of third Rome.)[5]

It is absolutely beyond any doubt that the most sophisticated part of the book is chapter 3, "*The Development and the Codification of European Private Law in Modern Times*". Incredible as it may seem this chapter includes every European country without any exception. The first point of the chapter introduces the development of the European jurisprudence at the beginning of the modern era by sketching the most important scientific tendencies. Nevertheless we can also read about the history of the science of law in the legal history of the countries, as well.

The first part of chapter 3 deals with countries of German language in Europe. *Gábor Hamza* gives a very detailed picture on the codification of the German Civil Code, BGB, which was put into force on the 1st of January, 1900. This Civil Code had huge influence on the codification of other European and non-European countries. Concerning Roman Law this code has particular relevance. As this code became effective in Germany the force of the previous law, the so-called *law of Pandects*—which is a subsequent version of classical and post-classical Roman law—ceased to exist.

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[4] Cf. Hamza: *op. cit.* 45.

[5] Cf. Hamza: *op. cit.* 89.

Upon reading this chapter one gets familiar with the background of the German Civil Code, i.e. with the German science of private law, *Historische Rechtsschule, Begriffsjurisprudenz*, etc.

As it is wide-known after the second World War Germany was separated into two parts, *Bundesrepublik Deutschland* (BRD) and *Deutsche Demokratische Republik* (DDR). DDR belonged to the socialist world, therefore its legal system had to be taken into accordance with the socialist theory and economic structure. As a consequence of this there were many modifications on the legal system after the changes. It is worth mentioning that DDR adopted its own Civil Code, called *Zivilgesetzbuch* in 1976. After the reunification of the two parts of Germany, BGB became effective on the territory of the former DDR, as well.

One has to take into account as well, that Professor *Hamza's* book—which was published in 2002—pays attention to the very important modifications of BGB, which were adopted at the very beginning of 2002.

Chapter 3 gives a very thorough description on the law of Switzerland, containing private law doctrine and the codification of private law, too. One can clearly see how ZGB and OR was composed with regard to the law of the cantons in Switzerland.

It is not only BGB, which had huge impact on the codification of smaller countries. Under no circumstances can we underestimate the influence of the French Civil Code, *Code civil*, adopted in 1804. This Code declares in Art. 1732 that damages, which are caused against law, should be compensated by the liable person:

> "*Art. 1382. — Tout fait quelconque de l'homme, qui cause á autrui un dommage, oblige celui par la faute duquel il est arrivé, á le réparer.*"[6]

This principle is the very basic of the *delictual liability*.[7] This principle shows up in the modern civil codes, too.[8]

Gábor Hamza analyses the composition of the French *Code civil*, as well. He clarifies that the codificators of *Code Civil* paid attention to the prior French written law (*droit écrit*) and customary law (*droit coutumier*), as well. As it is known, *Code civil* had four fathers ("*Pères du Code civil*"), two of them were experts of Roman law *(Jean-Etienne Marie Portalis* and *Jacques de Maleville*), while two of them were specialists of French customary law (*Félix-Julien-Jean Bigot de Préameneu* and *François-Denis Tronchet*).

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[6] *Code civil*, 1990. (red.: Lucas, A.). Paris, 1990. 629.

[7] The term of delictual liability is pretty much equivalent with the term tort liability applied by Common Law countries.

[8] Cf. § 339 of the Hungarian Civil Code of 1959.

French law is also in effect in the oversea-counties and oversea parts of France, as well: *départements d'outre-mer* (French-Guyana, Guadeloupe, Martinique and Réunion), *collectivité départementale* (Mayotte), *collectivité territoriale* (Saint Pierre, Miquelon) and *territoires d'outre-mer* (French Polinesia, New-Caledonia, Wallis and Futuna). One has to take into account that there are several differences of legal and administrative nature between these territories.

Professor *Hamza* gives a good introduction to the law of the so-called mini-states in Europe. Hence, we may get information on Monaco, as well. It is not widely known that at the present day Monaco does have its own civil code—called *Code civil*—, consisting of 2100 articles, which is not equivalent with the French *Code civil*.

One can learn a lot about such mini-states, as the Channel Islands or the Isle of Man. These parts may be very interesting or useful for businessmen, hence these islands are really good opportunities for *off-shore* companies in Europe.

I figure out that the Hungarian lawyers and researchers may find extremely interesting those parts of the book, which deal with the Central-Eastern European countries (Hungary, the Czech Republic, etc.), the former Yugoslavian territories (Slovenia, Croatia, etc.) and the Soviet-successor states (Estonia, Armenia, Ukraine, etc.). It is not overwhelming to declare that many important historical and economic changes have happened in these territories, which have immeasurable legal significance, as well. Professor *Hamza's* book is the first to report about them in Hungarian language. Being the modifications in the legal system of these countries in close connection with the historical changes Professor *Hamza* provides a thorough historical and political introduction. These parts might have relevance for historians and political scientists, as well.

I am sure that without a good view to the historical changes one would not be able to understand those legal changes of high relevance, which were able to build the very basic of the market economies in these former Socialist countries. Of course this transition has not been put into practice to the same extent in each country. It has many reasons of political, social, economic nature. We have no possibility to analyze them, because that would need very detailed study on these countries. To sum it up having read this part of the book one may see the common legal roots of these countries and may find ideas how they will find their place in Europe of the future. As it is widely known, some of these countries—e.g. Hungary—are going to be members of the European Union in the short run, while others join the EU in a longer run.

The fourth and last part of Professor *Hamza's* book deals with the influence of the European civilian tradition on countries outside Europe. This chapter

makes known what kind of impact the European tradition of private law had on states, which are not located in Europe.

Hence, we find very relevant information on the legal development of North America, Central America and South America, South Africa and some countries of Asia.

The author gives full particular of the role of the European private law in legal development of Louisiana. Louisiana does have a very specific situation among the member-states of the USA, hence this state was bought by the USA from France in 1803. The first civil code of Louisiana, *Louisiana Civil Code* was adopted in 1808. This code, which was originally composed in French is based on the French *Code civil* of 1804, but it has also many connections to Roman law, as well.[9] In the present days Louisiana does have its third civil code, which was adopted in 1870. The *travaux preparatoires* to modify this Code began in 1979. This Code still maintains the characteristics of the European civil law, but one may also realize the influence of the *Common Law*, as well. All things considered the legal system of Louisiana—being *mixed jurisdiction*—is unique among the member-states of the USA.

One has to take into consideration that the legal system of Canada is also very similar to the European—mainly the French—law from many aspects.

It is not only the legislation where European civilian traditions had influence in North-America. There are very important connections between the American and the European jurisprudence, as well. Professor *Hamza* provides a good summary on that.

The author summarizes the legal development of the Central American and South-American states. It is very important to pay attention to the efforts to unify private law in the Central American and South American states. These trends for unification are rooted in the common legal traditions, which are undoubtedly based on Roman law.[10] From this point of view the *conference of Arequipa* (Peru), which was held between 4–7, of August, 1999 with the participation of Argentina, Bolivia, Peru and Puerto Rico, has particular significance. On this conference the *Acta de Arequipa* was passed, which contains the basic principles for unification private law in Central America and South America.

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[9] Herman, Sh.: Der Einfluß des römischen Rechts auf die Rechtswissenschaft Louisianas vor dem amerikanischem Bürgerkrieg. *ZSS RA* 113 (1996) 293–345.; Palmer, V. V.: Two Worlds in One: The Genesis of Louisiana's Mixed Legal System, 1803–1812. In: *Louisiana: Microcosm of a Mixed Jurisdiction* (ed.: Palmer, V. V.). 1999.

[10] Garro, A. M.: Unification and Harmonisation of Private Law in Latin America. *AJCL* 40 (1992) 587–616.

From the aspect of the Romanists the part, dealing with South Africa is extremely interesting. It is not hard to find out the reason for that. In the South-African Republic the so-called *Roman-Dutch Law* is still valid. The expression Roman-Dutch Law comes from Simon van Leeuwen who used it first in Latin then in Dutch. In Afrikaans language Roman-Dutch Law is *Romeins-Hollandse reg*. Nowadays, with regard to the influence of Common Law the legal system of the South-African Republic can be considered as a mixed-jurisdiction, as well.

Although we cannot find the legal history of every Asian country in this book, we may gather very interesting information on the legal development of several Asian states. For instance it is very fascinating to keep in mind that the German law, especially BGB had huge impact on the legal development of Japan and South-Korea. It is in connection with the very strong economic relationship between the countries mentioned. *Gábor Hamza* puts high emphasis on the scientific emphasis on *Roscoe Pound* who played very important role in the spread of Roman law traditions and comparative law in China.

One has to pay attention to the fact that Professor *Hamza* provides a very rich bibliography to his book. To be clear the bibliography can be divided into two parts. On the hand one can find bibliography by each country. On the other hand one can read a twenty-five-page long general bibliography at the end of the book, which may serve as a perfect guide for further researches. The list of abbreviations, the index and the table of contents in six languages (Hungarian, English, French, German, Spanish and Italian) makes the entire work easy and quick to use. It is very likely that the English edition of this book is to appear soon.

Professor *Hamza's* book can be regarded as a course-book and handbook, as well. I find it very important to highlight that the monograph assumes the basic knowledge of history and institutes of Roman law. Hence it is advisable to use it together with the textbook of Roman law by Professor *András Földi* and Professor *Gábor Hamza*, which was published in the fall of 2002 in its seventh revised and extended edition.[11]

I am convinced that Professor *Hamza's* monograph on the development of private law in Europe is outstanding in international measures, as well. This book is strongly recommended for law-students or for researchers. Not only does have the book an extremely rich database on the development of private law but it also does analyze the most important trends of the present and future in a very logical and clear system. Therefore this book might be also useful for practicing lawyers, as well who often meet problems of conflicts of law or

[11] Földi, A.—Hamza, G.: *History and Institutes of Roman Law*. Budapest, 2002.

international commercial law. The book is especially current in our days, when the composition of the *ius commune (privatum)Europaeum* is in progress. All in all one can offer this book to those who intend to have a general but very deep summary on the development of private law in Europe and countries outside Europe with special emphasis on the trends of the future.

Ádám Boóc

FRANÇOIS GENDRON: **L'interprétation des contrats.** Montréal, 2002. 225 p.

It was the year 2002, when the book *L'interprétation des contrats* was published by *François Gendron* in Montréal. The author is attorney-at-law and also professor at the *Collége militaire royal du Canada*. In the past he wrote books on historical issues.[1] *François Gendron* is also doctor of history at the University of Paris. This book of him however deals with a typical civil-law topic. The interpretation of a contract ot agreement is undoubtedly a classical question of private law, no matter if we regard national legal systems or international private law. Therefore it is always useful to have a good summary on this key-issue of civil law. To begin with I may affirm that *François Gendron* did compose a really important and interesting work in this matter. In the followings I try to present a short summary of the book with the intent to encourage the reader to study the entire work of *François Gendron.*

The preface of the book is written by *Jean-Louis Baudouin* who is a judge at the Court of Appeal in Québec (*Cour d'appel du Québec*). *Baudouin* really trusts that the work of *Gendron* is to become a classical one on this topic soon.

Gendron's book is divided into seven chapters as follows:

1. *L'acte d'interprétation;*
2. *La règle des règles: l'intention;*
3. *La méthode textuelle*;
4. *La méthode logique*;
5. *La méthode objective*;
6. *L'interprétation du contrat d'adhésion;*
7. *Conclusion*.

Nevertheless, the author presents a wide view of the dogmatic questions with reference to legal history and legal systems of several countries. He focuses however on the civil law of Canada. Therefore he refers very often to the *Code*

[1] La jeunesse sous Thermidor. Paris, 1983.; The Gilded Youth of Thermidor. Montréal, 1993.; Dictionnaire historique de la Révolution française. Paris, 1989.

civil du Québec (hereinafter *C.c.Q.*), and quotes many expressive examples from the Canadian jurisdiction.

As it is known the first Civil Code of Canada came into force in 1866 with the title *Code civil de la province de Québec*. Originally the official title of the code was *Civil Code of Low Canada*. The editors of this code put extremely high attention to the French *Code Civil* of 1804, concerning especially the first three books of the code. Nevertheless the so-called *Coutume de Paris*—which used to be considered as effective law in Québec—and the works of *Robert-Joseph Pothier*, the great French jurist from Orléans did have huge influence on the Canadian Civil Code.[2] One can also find the impact of the *Common Law* in the Canadian civil law, as well.

It was the year 1994, when the new Canadian Civil Code, the *Code civil du Québec* (*Code civil of Québec*) was put into force. The new Canadian Civil Code consists of ten books, and safeguards traditions of Roman law, as well. *Gendron* quotes the provisions of the new Canadian Civil Code many times, by marking it as new law. All in all one can remark that the Canadian legal system can be regarded as a *mixed jurisdiction*.[3]

The book of *Gendron* begins with an introduction to the three terms of high importance on the field of the interpretation of contracts. In *Gendron's* opinion when one interprets a contract one has to pay attention to the *qualification* of the contract. One has to take into consideration those proofs and elements of each case, which may be helpful to the appropriate qualification of the contract. In many situations it is also the task of the judge to qualify the contract and there are also many cases, when the qualification is not obvious.

There are cases however when there is only one possible way of interpretation. For cases with only one possible interpretation one can find good examples in Canadian law, too. Let me refer nonetheless to the law of the European Community, in which the principle of the *acte claire* is laid down, as well.[4] To be very short the principle of *acte claire* regulates that there are provisions of law, which can be interpreted only in one way. It is known that the contract can be viewed as a *law* of the parties—I refer hereby to the Latin regula: *contrahentibus contractus legem ponit*—hence the principle of the *acte*

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[2] About Pothier see esp.: Montmorency, J. E. G.: Robert Joseph Pothier and French Law. In: *Great Jurists of the World* (ed.: By Sir J. Macdonell and E. Manson). Boston, 1914. reprint: New Yersey, 1997.

[3] Cf. Hamza, G.: *Az európai magánjog fejlődése. A modern magánjogi rendszerek kialakulása a római jogi hagyományok alapján*. Budapest, 2002. 273–274.

[4] Cf. the following cases: *Wienand Meilicke c. ADV/ORGA F. A. Meyer A.G. (C/83/91.)*, and *SRL CILFIT et al. c. Ministero della Sanitá (C-283/81)*.

claire can be applied for the interpretation of the contracts, too. In this context *Gendron* refers to a famous statement of the French *Cour de Cassation* from the 15th of April, 1872:

> "*Il n'est pas permis aux juges, lorsque les termes des conventions sont clairs et précis, de dénaturer les obligations qui en résultent et de modifier les stipulations qu'elles renferment.*"[5]

Of course, *Gendron* is aware of the fact that there are limits of the qualification of the contract. As qualification does have major influence on the entire interpretation of the contract, the qualification should be in accordance with the mandatory law, depending obviously on the law of the contract.

As it can be seen from the titles of the chapters, *Gendron* puts special emphasis on the intent of the parties. The intent of the parties should be the most important element for the correct interpretation of the contract. When one is about to interpret a contract one has to take under close inquiry the *common will* of the parties. The Art. 1425 of *C.c.Q.* gives the following regulation for this:

> "Dans l'interprétation du contrat, on doit rechercher quelle a été la commune intention des parties plutôt que de s'arreter au sens littéral des termes utilisés."

In this aspect I refer to the paragraph 207 of the Hungarian Civil Code, regulating as follows:

> *"207. § (1) The contractual declaration in case of debate should be interpreted as the other party had to interpret it according to the generally accepted meaning of the words with regard to the supposable intent of the declaring party and the circumstances of the case*."

As wee see it the Hungarian Civil Code puts really high emphasis on the so-called *Erklärungstheorie*, which is based on the declaration of the party. The opposition of the *Erklärungstheorie* is the *Willenstheorie*, which rather highlights the will of the party. I refer hereby to the different opinions of the German Pandectists of the 19th century.[6] *Gendron* himself also deals with question on page 63 of his book. On page 63 he states generally that when interpreting the contract the French tradition supports rather the inner will, while the German tradition favours the declaration, i.e. the German tradition is based on the *Erklärungstheorie*.

I would like to emphasize hereby that the Hungarian legal system is in quite tight connection with the German law, based on historical grounds.[7]

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[5] Gendron: *op. cit*. 28.

[6] Cf. Földi, A. — Hamza, G.: *A római jog története és institúciói*. Budapest, 2002[7]. 588.

[7] Cf. Hamza, G.: *Die Entwicklung des Privatrechts auf römischrechtlicher Grundlage unter besonderer Berücksichtigung der Rechtsentwicklung in Deutschland, Österreich, der Schweiz und Ungarn*. Budapest, 2002. 131–147.

Gendron also purports that this general statement regarding French tradition and German tradition can be debated, because the German BGB (*Bürgerliches Gesetzbuch*) from 1900 contains also provisions, which strengthens that one should take into account the inner will of the party, as well. *Gendron* refers to par. 133 of BGB, which rules, as follows:

> "*133. §. Bei der Auslegung einer Willenserklärung ist der wirkliche Wille zu erforschen und nicht an dem buchstäblichen Sinne des Ausdrucks zu haften"*.

Gendron's opinion seems to be shared by *Helmut Köhler* who has the following point of view about this paragraph of the BGB:

> "… *§ 133* (d.h. des BGB) *verlangt, daß bei der Auslegung einer Willenserklärung der wirkliche Wille zu erforschen ist"*.[8]

As I have mentioned the Canadian law is in very close connection with French law. Therefore it may be useful to quote the relevant article of the French *Code Civil*, which contains the following provision:

> "*Art. 1156. On doit dans les conventions rechercher quelle a été la commune intention des parties contractantes, plutôt que de s'arrêter au sens litteral des termes."*

According to the Commentary of the French Civil Code the judge—interpreting the intents of the parties—should also pay attention to the ultimate behaviour of the parties, as well:

> "*Pour déterminer quelle a été la commune intention des parties, il n'est pas interdit aux juges du fond de relever leur comportement ultérieur.*"[9]

Gendron also mentions that the behaviour of the contracting parties should be thoroughly analysed when one interprets a contract.

Gendron underlines that we should be aware of the fact that the natural meaning of the words can be absolutely important during the interpretation of a contract. In this context (*La méthode textuelle*) he refers to a case, in which the Court of Appeal stated that the English word '*to ship*' can mean '*expedier*' and it is not relevant that the item of transportation was not boot.[10]

The author shows and describes many important ways of the interpretation and draws the attention to several principles to follow. As an example I refer hereby to the *règle de l'effet utile*. *Gendron* leads back the origin of this principle to Ulpian the Roman *iurisconsultus* from the 3rd century, A.D.:[11]

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[8] Köhler, H.: *BGB. Allgemeiner Teil.* Ein Studienbuch. München, 1983. 166.
[9] Code Civil (ed.: A. Lucas.). Paris, 1990. 531.
[10] Gendron: *op. cit.* 68.
[11] About Ulpian, see esp.: Honoré, A. N.: *Ulpian*. Oxford, 1982.

"*Quotiens in stipulationibus ambigua oratio est, commodissimum est id accipi, quo res, qua de agitur, in tuto sit.*"[12]

Gendron also describes the diverging opinions of *Domat* and *Pothier* in this matter.

The author provides a very deep analysis on the objective method (*la méthode objective*) of the contract. *Gendron* finds the root of this method in the intellectual mainstreams of the Great French Revolution. He deals with the question of the *good faith* (*bonne foi, bona fides* in Latin), as well. He cites the Article 6 of the *C.c.Q.*, which is a provision of the new Civil Code. This principle creates an obligation for the persons to act in good faith. Article 1375 of the *C.c.Q.* regulates that the good faith has to govern the parties during their contractual relationships, as well:

"*Art. 1375. La bonne foi doit gouverner la conduite des parties tant au moment de la naissance de l'obligation qu'á celui de son exécution ou de son extinction.*"

One can also take into consideration that the Hungarian Civil Code in par. 277 also creates an obligation for the parties to cooperate when performing their contractual obligations. *Gendron* underscores that *C.c.Q.* does not contain any definition for the term good faith. Therefore the question arises that this term may be interpreted in the so-called *subjective* and *objective* sense. The good faith has to do a lot with the so-called *culpa in contrahendo* and also with the behaviour of the '*honest man*' in *Gendron's* wording. (The term *reasonable person* may be used as a sort of synonym for the honest man.) The author thinks that the good faith is an element of high importance during the process of interpretation:

"*La bonne foi constitue un principe directeur d'interprétation, principe d'application universelle, et qui commande d'interpréter le contrat d'après le sens qui, normalement, s'imposerait á l'honnête homme.* "[13]

It is worth mentioning that a very comprehensive, comparative and historical analysis of the term good faith (*bona fides*) was published by a Hungarian Professor of Roman law, *András Földi* in 2001.[14]

Gendron gives many important advices to the right interpretation of a contract. His work can be considered as a fine guide for the appropriate interpretation of the contract. His final conclusion is that the most important aim of the interpretation is the search for the common intent of the parties (*la*

[12] Quoted by: Gendron: *op. cit*. 87.

[13] Gendron: *op. cit*. 113.

[14] Földi, A.: *A jóhiszeműség és tisztesség elve. Intézménytörténeti vázlat a római jogtól napjainkig*. Budapest, 2001.

recherche de l'intention commune des parties). In his point of view every contract can be regarded as a way of the reconciliation of several interests of the parties. They provide services to each other in other to satisfy their different needs. *Gendron* refers back to Roman law, in which the *contractus innominati* were categorised, as follows: *do ut des; do ut facias, facio ut, des, facio ut facias.*[15] According to the author these categorisations can abridge the entire purpose of the contracts in general. *Gendron* attached a very useful index to the book, including recommended bibliography to this issue and the twelve regulations of *Pothier* to the interpretation.

I am convinced about the fact that the book of *François Gendron* is an extremely useful, constructive and valuable analysis and summary of the interpretation of contract, which can be regarded as an *evergreen* question of private law. On the one hand this book can be recommended to the researchers of civil law, researchers dealing with theoretical problems of civil law. On the other hand the present work of *François Gendron* can be additionally applied by practising lawyers who meet often problems of interpretation during their everyday job, no matter if they are active in Canada or in other countries.

Ádám Boóc

GÁBOR JOBBÁGYI—JUDIT FAZEKAS: **Law of contract in Hungary.** Kluwer Law International, The Hague–London–New York, 2003. (From the series: International encyclopaedia of laws; general editor: Prof. Dr. R. Blanpain)

We had to wait for a long time to finally have the whole Hungarian law of contract available collected in a single book. The Kluwer Law International publisher released the handbook especially written for foreign lawyers who work in this field or are simply interested in Hungarian private law. The book is updated to July 2002—it is to be mentioned that since then the law has been changed. The authors are both university professors who have been working in the area of private law not only in the scientific field but also as practising lawyers for decades.

Gábor Jobbágyi, whose main research topics are medical law, law of life and family law, is the Head of the Private Law Institute at the Pázmány Péter Catholic University in Budapest. Judit Fazekas, currently working as an under-secretary at the Ministry of Justice, is a professor of law both at the Pázmány

[15] Cf.: Kaser, M.: *Römisches Privatrecht*. Ein Studienbuch. München, 1968. 179.; Földi—Hamza: *op. cit.* 504.

University and at the University of Miskolc; she is also an expert in European and international law.

The book begins with a general introduction in which the reader obtains an overall view of Hungary's geography and population, political system and the short history of the country as well as the history of the constitutional development and Hungarian law as an independent legal system with Roman and Austrian-German influences. This chapter is followed by a bibliography which collects the most important works written about the law of contract in Hungary in the last hundred years and also an updated and operative collection of the major sources of law.

The first part (written by Gábor Jobbágyi) deals with the general rules of the law of contract. The different chapters analyse the most relevant issues of the topic. The set-up of the book follows the system and order of the Civil Code of Hungary in order to ease its usage. These most significant issues are: formation of contract; invalidity of contract; collateral obligations securing contract; modification of contract; performance of contract; termination of contract without performance; prescription; breach of contract; faulty performance; delivery; contract for delivery of agricultural products; contract for public utility subsequent impossibility; several parties to a contract.

The second part (written by Judit Fazekas) deals with the most frequent specific types of contracts. Among these are: contract of sale; contract of services; contract of locatio conductio operis; contract of lease; lease of living quarters; tenancy; concession; contract of financial lease; franchise contract; deposit; agency; contract of commission; contract of carriage; contract of forwarding; financial obligations; insurance contract; contract of donation; contracts for maintenance and life annuity.

The main characteristic of the book is that it manages to summarise the law of contract in not more than 284 pages. It is needless to say that this extent cannot cover all the areas and details of the area neither the judicial practice. It offers an introduction, comments and explains the rules of the Civil Code.

The book, published also in Hungarian, is the coursebook of the law students at the Pázmány University. Its English version is a useful handbook for all the lawyers and for anybody showing an interest. Hopefully it can break new ground for more English-written handbooks about the Hungarian law to be published in the near future.

András Koltay