

Unilateral Termination of Contracts and Rights of Withdrawal

- | | |
|--|--|
| 1. General considerations
<i>by Emőd Veress</i> | 5. Romania
<i>by Emőd Veress</i> |
| 2. The Czech Republic
<i>by Milan Hulmák and Markéta Zimnioková</i> | 6. Serbia, Croatia, Slovenia
<i>by Attila Dudás</i> |
| 3. Hungary
<i>by Emőd Veress</i> | 7. Slovakia
<i>by Milan Hlušák</i> |
| 4. Poland
<i>by Łukasz Stępkowski</i> | 8. Concluding remarks
<i>by Emőd Veress</i> |

1. General considerations

1.1. Overview

In general, as it is based on the mutual consent of the parties, a contract can be terminated by a mutual dissent, practically by a new, destructive contract. Also, there are several cases of exceptions. In some instances, the law provides the possibility for unilateral termination of the contract, based on various reasons addressed below. In other cases, the parties may include in their contract a clause that permits the termination of the contract by one of the parties.

1.2. Unilateral termination of contracts concluded for an indefinite period

Contracts concluded for an indefinite period may be terminated unilaterally by either party, subject to a reasonable period of notice. Generally, this possibility is established through mandatory norms.¹

There is no necessity to include a termination clause, as the possibility to terminate the contract concluded for an indefinite period arises in general directly from the law. In the case of these contracts, any clause to the contrary or the stipulation of a

1 Vékás, 2019, p. 358; Veress, 2020, p. 59.

Veress, E., Hulmák, M., Zimnioková, M., Stępkowski, Ł., Dudás, A., Hlušák, M. (2022) 'Unilateral Termination of Contracts and Rights of Withdrawal' in Veress, E. (ed.) *Contract Law in East Central Europe*. Miskolc-Budapest: Central European Academic Publishing. pp. 461–503. https://doi.org/10.54171/2022.ev.cliece_chapter14

benefit in exchange for the termination of the contract must be considered contrary to the law and therefore null and void. Perpetual contractual ties are not allowed by law because they limit individual freedom. The right to terminate the contract concluded for an indefinite period belongs to either party. The parties can determine the notice period; for example, a six-month notice period gives specific stability to the contract concluded for an undetermined period.

1.3. Legal rights to unilateral termination of a contract not conditioned to a breach of contract by the debtor

In some cases, the law itself grants a right to unilateral termination. Usually, it is the case of mandate. The mandate contract may be terminated by the revocation of the mandate by the principal (mandator) or by the resignation of the agent (mandatory). The fact that the mandate can be denounced unilaterally is explained by the *intuitu personae* character of this contract, where, if those special relations of trust between the contracting parties no longer exist, the law makes it possible for either party to terminate the contractual relations by unilateral expression of this intent.

Notable cases of unilateral termination of contracts were introduced in the civil law of East and Central European countries, which are member states of the EU (and not just, such as in the case of Serbia) through EU consumer protection norms. For example, the consumer rights directive (Directive 2011/83/EU) necessitated that all concerned national legislations introduce 14 days (a so-called ‘cooling-off period’) for withdrawal from a distance or off-premises contract.² Such right of withdrawal:

- is not conditioned to giving any reason,
- is recognized only in favor of the consumer, the trader has no such right, being bound by the *pacta sunt servanda* principle,
- in general, is not conditioned to the payment of any costs by the consumer (but the consumer shall bear the direct cost of returning the goods unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them),
- practically, such a consumer contract is concluded under the condition of the non-exercise of the right of withdrawal,
- this legal right to termination (withdrawal) is not applicable in some specific cases, for example, in case of goods made to the consumer’s specifications or clearly personalized (customized); goods which are liable to deteriorate or expire rapidly; sealed goods which are not suitable for return because of health protection or hygiene reasons and were unsealed after delivery; contracts concluded at a public auction; service contracts after the service has been fully performed if the performance has begun with the consumer’s prior express consent, and with the acknowledgment that he or she will forfeit the right of withdrawal once the contract has been fully performed by the trader, etc.

2 If the trader has not provided the consumer with the information on the right of withdrawal, the withdrawal period shall expire in 12 months from the end of the initial withdrawal period.

- the exercise of the right of withdrawal terminates the contract,
- the trader shall reimburse all payments received from the consumer (including, if applicable, the costs of delivery) without undue delay and in any event not later than 14 days from the day on which he or she is informed of the consumer's decision to withdraw from the contract; the trader shall not be required to reimburse the supplementary costs if the consumer has expressly opted for a type of delivery other than the least expensive type of standard delivery offered by the trader;
- unless the trader has offered to collect the goods himself or herself, with regard to sales contracts, the trader may withhold the reimbursement until he or she has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest,
- the consumer is liable for any diminished value of the goods only resulting from the handling of the goods other than what is necessary to establish the nature, characteristics, and functioning of the goods; the consumer shall in any event not be liable for the diminished value of the goods where the trader has failed to provide notice of the right of withdrawal.

Another field where national legislation may permit unilateral termination to maximize the value of the debtor's assets is insolvency law. The insolvency specialist conducting the affairs of a debtor may unilaterally terminate ongoing contracts concluded by the insolvent debtor.

1.4. Legal right to unilateral termination of a contract conditioned to a breach of contract by the debtor

If the debtor does not perform the contractual obligations, then the creditor may request enforcement. However, if the execution is no longer of interest to the creditors, they may unilaterally terminate the contract and obtain damages.³

The creditor has the right to choose between performance and termination: the right to request performance derives from the law which obliges the debtor to fulfill the obligations taken precisely; the right to termination is given as an immediate remedy to exit a difficult situation that no longer offers the security of the consideration for the creditor. Thus, termination, in this case, is a sanction for the breach of the synallagmatic contract, consisting of its retroactive cancellation and the restoration of the parties to the previous situation. The basis of termination is the reciprocity and interdependence of the performances in the synallagmatic agreement. The creditor has the interest to terminate the contract not accomplished in whole or in part by the debtor, not to remain legally bound. Moreover, in many cases, the creditor has performed his or her own obligations; thus, the restoration to the previous situation (restitution of the creditor's performances) and the payment of damages is the solution per the interests of the creditor.

³ For the problem of damages, see Chapter XIII.

For example, A and B entered into a sales contract for a car. The total price was 20,000 euros. At the date of concluding the contract, B paid an advance of 8,000 euros, and they agreed that the rest would be paid within three months. Ownership of the car was transferred from A to B, and the car was delivered to B. Nevertheless, B did not pay the rest of the price. A has the option to request the performance of the contract: to sue B, asking the court to oblige B to pay the amount of 20,000 euros, and can also request damages. However, A may also terminate the contract: maybe he or she has another buyer lined up for the car, who offers a higher price or is more reliable than B. By termination, the contract will end, A will become the owner again, and B must return the car. In turn, A must also reimburse the advance payment received but may claim damages for the harm suffered.

To serve as a basis for unilateral termination, the breach of contract must be severe enough to justify this sanction.⁴ If the breach is of minor significance, then the creditor has no right to termination. In many cases, national legislation may condition the right to unilateral termination to formal notification of the debtor and granting an additional time for performance when this is perceived fair by the legislator.

There is also a possibility for judicial termination of the contract. This is relevant when national legislation provides that a particular type of contract can be terminated only by a court or when there is litigation regarding the breach of contract, or the party wants to obtain a court decision to restore the previous situation.

The effects of termination can be summarized as follows:

- the terminated contract is considered never to have been concluded; termination produces retroactive (*ex tunc*) effects,
- unless otherwise provided for by law, each party is required to return to the other party the benefits received,
- termination does not produce effects on the clauses related to the settlement of disputes (for example, an arbitration clause, clauses determining territorial jurisdiction, or choice of laws) or on those that are intended to produce effects even in case of termination (for example, the clause on damages).
- termination may be cumulated with the damages claimed by the creditor.

Termination also takes a specific form applicable to contracts with successive performance. In this case, the contract terminates only for the future (*ex nunc*). For example, A and B entered into a 36-month lease for an industrial hall. The monthly rent was set at 5,000 euros. After the first three months, B no longer pays the rent. After waiting two months, A unilaterally terminates the contract. In this case, termination can only take effect for the future because – with regard to the performed part of the contract – A and B cannot be returned to the situation before the conclusion of the contract. The use of the building by B for its own activities and consequently the value of that use (the rent) can no longer be returned. Thus, termination produces effects for the future. If B vacates the building following the declaration of unilateral termination,

4 Vékás, 2019, p. 231.

A will be entitled to the rent value for the two months in which B used the hall without paying for it. If B does not leave the industrial hall after A's contract has been terminated, A can ask the court to order B's eviction from the building. In the case of contracts with successive performance, the creditor has the right to terminate, even if the non-performance is of minor significance but has a repeated character. The creditor, in this case, likewise has the right to damages.

There is also a possibility to regulate by contractual norms the termination of the contract by the parties, which is helpful in certain situations because it can detail and specify the general norms or can declare the contracted moment of performance essential and provide for automatic termination of a contract if such a time is not respected.

1.5. Contractual right to terminate a contract

The law generally recognizes the validity of the clauses by which the contracting parties reserve the right to unilaterally terminate their contract, called unilateral termination or simply termination clauses.

If the parties have included in the contract a termination clause, then the binding force of the contract resulting from the initial agreement of wills ensures the possibility for the party to terminate the contract through a unilateral manifestation of will.

The right to termination may be recognized in favor of both parties, or only in favor of one of the contracting parties (asymmetrical termination clause). For example, in a lease contract concluded for three years, the right to terminate the contract can be provided only in favor of the lessee, the lessor being bound by the contractual period. Thus, the lessee can terminate the contract (for example, if he or she found a similar property for rent for a more advantageous rent) and has the security of maintaining the current contract from the lessor for three years (who has no right to terminate the agreement).

Very importantly, the right to unilaterally terminate the contract may also be recognized for consideration (i.e., the person exercising this right must pay a certain amount to the other party). If a benefit has been stipulated in exchange for the termination, in general, termination takes effect only when this service (commonly, a payment) is performed.

As it was stated before, these clauses are valid only in fixed term contracts (because in the case of contracts for an indefinite duration, the stipulation of consideration in exchange for termination of the contract is void). The right to termination recognized for consideration implies the performance of a payment, which is intended to prevent the prejudice of the other party by exercising this right. For example, the lease contract concluded for a fixed term of 3 years, but which can be terminated unilaterally by either party with a 30-day notice, and with the payment of 10% of the rent calculated for the rest of the contract period.

The right to terminate a contract unilaterally – once recognized by the agreement – cannot be exercised abusively or in bad faith. Being an optional right, the faculty

to exercise it can be based on any subjective premise.⁵ The exercise of the right of cancellation has nothing to do with the breach of contract by any of the parties.

2. The Czech Republic

2.1. Unilateral termination of contracts

Czech legislation recognizes various ways of unilateral termination of contracts. The common feature is that the will of one party is exercised regardless of that of the other one. Termination will have *ex nunc* effects (the obligation is extinguished for the future) or *ex tunc* effects (the contract itself is extinguished retroactively). It is necessary to fulfill the conditions stated in the general law of obligations or the legal norms applicable to specific contract types.

The CzeCC recognizes so-called termination (*výpověď*, in German *Kündigung*), withdrawal (*odstoupení*, in German, *Rücktritt*), but in special cases also cancellation (*zrušení*), or revocation (*odvolání*) (e.g., in the case of a mandate agreement).

2.2. Termination and withdrawal

Termination and withdrawal are essential. Both termination and withdrawal are juridical acts so rules for any other juridical acts shall apply to them. They may be employed if stipulated by the parties in advance or provided for by statute.⁶

2.2.1. Termination

In the case of termination, it is not necessary to state the grounds for termination in the notice for termination,⁷ but such condition may be stipulated by a contract or by the legal regulation of certain types of contracts.⁸ No period for termination must be included in the termination notice.⁹

In some cases, the CzeCC introduces special rules for termination, e.g., the termination of the usufructuary lease is linked to the usufructuary lease year.¹⁰

2.2.2. Withdrawal

Withdrawal rules are similar to the ones applicable for termination – giving any grounds for withdrawal is not a requirement for the validity of such an act.¹¹ Grounds for withdrawal must exist though (and any other preconditions must be met) when the withdrawal takes effect. It is of no significance if these grounds and preconditions later ceased.

5 Veress, 2020, p. 59.

6 CzeCC, § 1998 (1) and § 2001.

7 Supreme Court Ref. No. 32 Cdo 750/2009.

8 E.g. CzeCC, § 2310 (1) of the for the unilateral termination of the lease of business premises.

9 Supreme Court Ref. No. 20 Cdo 2685/99.

10 CzeCC, § 2339 (1).

11 Supreme Court Ref. No. 32 Cdo 4459/2011.

In contrast, the CzeCC explicitly allows withdrawal because of delayed performance even if the additional time lapses only later.¹² In such a situation the withdrawal enters into force at that time.

2.2.3. *Distinctions between termination and withdrawal*

Regarding the distinction between these institutions, the moment from which the effects of termination take effect may differ. In the case of termination, the obligation is terminated with *ex nunc* effects, while in the case of withdrawal, the obligation is terminated with *ex tunc* effects. Therefore, while the obligation is terminated, in case of withdrawal the contract itself ceases to exist. However, the parties can agree on a different rule.¹³

The general rule is that in respect of continually performed obligations, termination is preferred to withdrawal.¹⁴ Retrospective effects of withdrawal are limited to a certain extent,¹⁵ e.g., due penalties, damages, and other terms shall remain in effect even after withdrawal. Moreover, withdrawal for contracts on permanent, continuing, or partial performance may have only prospective effects¹⁶ if the performance, which has been rendered, had some utility to the creditor. The differences between termination and withdrawal can thus be often wiped out.

While distinguishing between these two institutions, binding the effects of the termination to the expiration of a certain period is also not a determining tool, because even in the case of termination, the obligation may extinguish already at the moment of a unilateral juridical act.¹⁷

2.3. *Grounds for termination*

2.3.1 *Contracts concluded for an indefinite period*

According to § 1998 paragraph 1 of the CzeCC, a party may terminate an obligation if so stipulated by the parties or provided by a statute. If a party terminates an obligation, the obligation is extinguished upon the expiry of the notice period. However, if an obligation may be terminated without a notice period, the obligation is extinguished on the date the notice of termination becomes effective.¹⁸

Contracts concluded for an indefinite period can be terminated under § 1999 of the CzeCC unless otherwise provided for by law. According to § 1999 paragraph 1 of the CzeCC, if such a contract obliges at least one party to perform a continuous or successive (recurrent) activity or obliges at least one party to tolerate such an activity, the obligation may be extinguished by the end of a calendar quarter with at least three

12 CzeCC, § 1979.

13 Výtisk in Petrov et al., 2019, p. 2160.

14 CzeCC, § 1999.

15 CzeCC, § 2005.

16 CzeCC, § 2004 (3).

17 CzeCC, § 1998 (2).

18 CzeCC, § 1998 (2).

months' notice of termination. Pursuant to § 1999 paragraph 2 of the CzeCC, this rule does not apply if a party has agreed to refrain from a certain activity and the nature of the obligation clearly shows that the duty is not limited in time.

The CzeCC provides parties with a certain kind of protection against a contract concluded for a long, definite period of time, e.g., 100 years. If a contract has been concluded for a definite period without a serious reason in a way that it obliges an individual for his or her entire life or obliges anyone for more than ten years, extinction of the obligation may be claimed after ten years from its creation. A court shall also extinguish an obligation if the circumstances on which the parties apparently relied when the obligation was created have changed to such an extent that the obligor cannot be reasonably required to be further bound by the contract.¹⁹ If a party waives its right to claim extinction of an obligation in advance, the waiver is disregarded, unless the obligor is a legal person.²⁰

Regarding leases, the CzeCC establishes a special rule stating that if the parties do not stipulate the period of a lease or the date when the lease ends, the lease is conclusively presumed to be a lease for an indefinite period.²¹ If the parties agree on a lease for a definite period exceeding fifty years, the lease is presumed to have been stipulated for an indefinite period; during the first fifty years, the lease may only be terminated on the stipulated grounds for termination and within the stipulated notice period.²²

2.3.2 Consumer protection

The regulation of contracts concluded between an entrepreneur and a consumer contains special rules for unilateral withdrawal. Taking into account the specific circumstances of contract formation the consumer is given a right to withdraw from the contract without any specific reason.

We can mention § 1829 paragraph 1 of the CzeCC according to which a consumer has the right to withdraw from a contract concluded at a distance or off-premises within fourteen days in some special cases even within thirty days. If he or she has not been advised of his right to withdraw per § 1820 paragraph 1 f) of the CzeCC, the period in which he or she may withdraw is longer.²³ Another example is the rules for termination of time-sharing.²⁴ The consumer has this right also with regard to consumer credit under Act No. 257/2016 Sb.

2.3.3 Obligations based on mutual trust

The right to terminate the contract unilaterally can be justified in contracts based on mutual trust, e.g., the mandate.

19 CzeCC, § 2000 (1).

20 CzeCC, § 2000 (2).

21 CzeCC, § 2204 (1).

22 CzeCC, § 2204 (2).

23 CzeCC, § 1829 (4).

24 CzeCC, §§ 1861–1865.

A mandatary may terminate a mandate no earlier than before the end of the month following the month in which a notice of termination was delivered.²⁵ If a mandatary terminates a mandate before arranging the matter for which he or she was specifically authorized or the arrangement of which he or she commenced under a general authorization, he or she shall compensate the resulting damage according to the general provisions for payment of damages.²⁶

Pursuant to § 2443 of the CzeCC, the mandator may revoke a mandate at will; however, he or she shall compensate the mandatary for the costs which that mandatary has incurred until that time, and also for any damage incurred, where applicable, as well as paying the mandatary a part of the remuneration appropriate to the effort made. If a mandate is extinguished by revocation, the mandatary shall arrange everything which cannot be delayed until the mandator or his or her successor expresses another intention.²⁷

Similar rules are applicable to contractual representation. An authorization is extinguished if revoked by the principal or terminated by the agent.²⁸ Until the agent becomes aware of the revocation, his or her juridical acts have the same effect as if the authorization were still effective. This, however, may not be invoked by the party which knew or should and could have known of the revocation of the authorization.²⁹ If the agent terminates the authorization, the agent shall still do everything that cannot be postponed to prevent any harm being incurred by the principal or his or her legal successor.³⁰

2.3.4 Unilateral termination of a contract conditioned to a breach of contract

The CzeCC gives the opportunity to unilaterally terminate the contract in the case of a breach of contract. Generally, it is allowed to withdraw from any contract when there is a fundamental breach of contract.³¹ The CzeCC also recognizes a preventive preliminary withdrawal for the party after the conduct of the counterparty undoubtedly indicates that such a counterparty is about to commit a fundamental breach of contract and fails to provide reasonable security after being requested to do so by the party.³²

Specific regulation can be found in relation to certain types of breach of contract – e.g., delay, defects, breach of information duties, etc. – and also in relation to particular contractual types, e.g. sale, lease, contract for works etc.

As far as defects are concerned there is generally a possibility to withdraw from the contract if the defect cannot be removed and prevents the proper use of the

25 CzeCC, § 2440 (1).

26 CzeCC, § 2440 (2).

27 CzeCC, § 2442.

28 CzeCC, § 448 (1).

29 CzeCC, § 448 (2).

30 CzeCC, § 449 (1).

31 CzeCC, § 2002 (1).

32 CzeCC, § 2002 (2).

performance.³³ The CzeCC also enables withdrawal from the contract in the case of delayed performance, if the delay is a substantial breach of the contract or the obligation is not performed in an appropriate additional time.³⁴

Special rules for termination conditioned to a breach of contract can be found among the specific contract types. For example, the regulation of the contract of sale states that if a defective performance constitutes a fundamental breach of contract, the buyer has the right to withdraw from the contract,³⁵ while if a defective performance constitutes a non-fundamental breach of contract, there is no possibility to unilaterally terminate the contract, unless the seller fails to remove a defect of a thing in time or refuses to remove the defect.³⁶

2.4. Limitations

If it is possible to terminate the obligation by the effect of law or by contract for the entire duration of the contract, the limitation does not occur.³⁷

Some authors believe that in cases where the right to terminate the contract arises causally only because of a certain fact, from a certain clearly definable moment when it can be used for the first time, the right to terminate the contract is limited. However, this approach is not general.³⁸

3. Hungary

3.1. Termination in lack of breach

Under Hungarian law, dissolution of the contract, in general, is based on the agreement of the parties. The contract is formed by the parties: they create it and therefore it is only logical that they can also terminate it if they wish.³⁹ Practically, by their mutual agreement, the parties may dissolve (*megszüntetés*) the contract for the future (*ex nunc*), or rescind it (*felbontás*) with retroactive effect (*ex tunc*) as from the date of its conclusion.⁴⁰ In the event of the contract's dissolution, the parties shall owe no further performance and shall be required to settle with each other for the services already performed before the dissolution. In the event of the rescission of the contract, the services already performed shall be returned. If the original situation cannot be restored in kind (irreversible service) then the contract shall not be rescinded.⁴¹ Instead, dissolution of the contract is possible.

33 CzeCC, § 1923.

34 CzeCC, § 1969.

35 CzeCC, § 2106 (1) d).

36 CzeCC, § 2107 (3).

37 Šilhán in Hulmák et al., 2014, p. 1175; Hadamčík, 2020, pp. 590.

38 Výtisk in Petrov et al., 2019, p. 2152; Supreme Court, Ref. No. 33 Cdo 3037/2019.

39 Vékás, 2019, p. 355.

40 For details, Veress, 2019b, pp. 307–308.

41 HunCC, § 6:212.

The contract shall be terminated by mutual consent if the parties make a declaration to that effect, even if expressed by implied conduct. According to case law, if the debtor terminates the contract against the applicable legal rules, dismantles the equipment owned by the creditor which is necessary for the performance of the contract, the creditor's conduct in removing this property, belonging to him or her, cannot in itself be regarded as an implied termination of the contract by mutual consent, nor as acceptance of the termination without legal consequences.⁴²

Of course, in some cases dissolution by unilateral juridical act is possible.⁴³ This right can be based directly on a provision of the law, or on a contractual clause permitting unilateral dissolution.

The person entitled to unilaterally terminate or cancel the contract by virtue of law or based on the contract may dissolve the contract by a juridical act addressed to the other party. In the event of unilateral termination (*felmondás*) of the contract, the rules on the dissolution of the contract, while in the event of cancellation (*elállás*), the rules on the rescission of the contract shall apply, with the proviso that the party shall only be entitled to cancel the contract if he offers the simultaneous return of the service he received.

Practically, the party is only entitled to cancellation in the case of reversible services, on condition that it offers to return the service it received at the same time if such service was performed. That party also must be able to effectively return the service. The party entitled to cancellation under the contract cannot exercise this right if, as a result of a change in circumstances, the other contracting party is no longer able to return the goods.⁴⁴

Effects:	<i>ex tunc</i> (retroactive)	<i>ex nunc</i> (non-retroactive)
Mutual agreement:	rescission (<i>felbontás</i>)	dissolution (<i>megszüntetés</i>)
Unilateral declaration:	cancellation (<i>elállás</i>)	termination (<i>felmondás</i>)

Cancellation is a unilateral statement addressed to the other party. It is not, however, necessary to state the reason or title of the withdrawal. Notice of withdrawal may also be given by fax.⁴⁵

When the basis of cancellation or unilateral termination is given by a contractual clause, the consent of the other party is in concordance with this terminability of the contract.⁴⁶

If the parties set forth the right of cancellation subject to the payment of a certain amount of money (forfeit money, *bánatpénz*), the court may, at the request of the debtor, reduce the amount of excessive forfeit money. As the Kúria stated, to determine whether the amount of the forfeited money is excessive, the courts must consider the

42 BH 2006. 256.

43 HunCC, § 6:213.

44 BH 2004. 320.

45 BH 2005. 393.

46 For a detailed analysis, see Veress, 2019b, 319–323.

amount of the penalty in relation to the value of the service provided. Forfeit money is manifestly excessive if its amount substantially exceeds the monetary value of the other party's pecuniary interest in the performance of the contract, including the damages caused by non-performance.⁴⁷

Forfeit money practically is the 'price' paid for cancellation.⁴⁸ It constitutes an absolute amount, being payable even if no damage can be shown or if the damage suffered by the party affected is less – or more – than the sum determined as forfeit money in the contract. In this sense, case law established that where the parties have agreed to exercise the right of cancellation in return for the payment of forfeit money, the cancellation is lawful conduct that does not constitute a breach of contract and no damages in excess of the forfeit money may be claimed.⁴⁹ This demonstrates the fundamental difference between forfeit money on the one hand and penalty on the other, the latter, under Hungarian law, being compatible with proof of greater damage than the one expressed in the penalty clause.

The forfeit money provides the party exercising the right of cancellation with an alternative power to perform the contract or to withdraw from the contract in exchange for the loss or payment of the forfeit money. Cancellation in exchange for a payment of a sum is lawful conduct and therefore cannot give rise to any obligation to pay damages. The opposing party to a contract who has undertaken to pay a penalty may not claim the penalty if the other party has not exercised its right of withdrawal but may instead bring an action so that the contract is performed. In contrast to forfeit money, a penalty is not an entitlement to unilateral release from contractual obligations, but an incentive to perform the contract and the other party may claim the penalty as a lump sum in damages. If the entitled party has not exercised his or her right of cancellation within the time limit laid down in the contract, he or she may subsequently withdraw from the contract only if he or she proves that his or her interests have been prejudiced (for details, see the analysis below on the cancellation for breach of contract).⁵⁰

Cancellation or unilateral termination is possible also in the case of a preliminary breach of contract.⁵¹ A preliminary breach of contract is the situation when it becomes obvious before the expiry of the time limit for performance that the debtor will be unable to perform his or her service when it will become due, and because of this the performance no longer serves the interests of the creditor, the creditor may exercise his or her rights arising from the default. If it becomes obvious before the expiry of the time limit for performance that the performance will be defective then, after the expiry of the time limit set for repairing the defect or for replacement with no result, the creditor may exercise his or her rights arising from defective performance.

47 EBH 2014. P9.

48 Vékás, 2019, p. 357.

49 BH 2005. 173.

50 BDT 2009. 1982.

51 HunCC, § 6:151.

A contract is not a perpetual handcuff on the hands of the parties.⁵² Unless otherwise provided by the HunCC, contracts giving rise to permanent legal relationships and concluded for an indefinite period of time may be unilaterally terminated by any of the parties while observing an appropriate period of prior notice. Any clause excluding the right of unilateral termination shall be null and void.

3.2. Termination for breach of contract

Cancellation and unilateral termination are possible also as sanctions of a breach of contract.

If, as a consequence of the breach of contract, the creditor's interest in the performance of the contract has ceased, he may cancel the contract, or if the situation that existed before the conclusion of the contract cannot be restored in kind, he may unilaterally terminate the contract unless otherwise provided for by law.⁵³ Cancellation or unilateral termination both are addressed declarations of law, which must be received by the opposing party to be effective.⁵⁴

For the creditor's juridical act to be valid, he or she shall be required to indicate the reason for cancellation or unilateral termination, if he or she is entitled to do so on more than one ground. The creditor may switch from the indicated reason for cancellation or unilateral termination to another one.

The debtor shall not claim the monetary reimbursement of the service that remained without consideration if the creditor proves that he is unable to reimburse the service provided to him for a reason for which the debtor is liable. If the creditor has paid consideration for the service, he or she may request its reimbursement, even if he or she is unable to reimburse the service provided to him or her, and proves that the reason for it can be traced back to a circumstance for which the debtor is liable.

Minor, insignificant breaches of contract which do not jeopardize the creditor's interests and do not cause a cessation of interest do not confer the right to avoid the contract.⁵⁵ The case law has established that a lender abuses his or her right if he or she unilaterally terminates the loan contract because of the non-payment of one month's installment and the short delay of some installments instead of using the available security to satisfy his or her claim.⁵⁶ Similarly, it was stated that the immediate termination of the bank loan contract, thus rendering the entire debt overdue, and the loss of the possibility to repay the loan in periodic installments, puts the debtor in a serious economic situation. The principle of proportionality requires a reasonable relationship between the harm and its consequences. If there are no serious consequences for a party's failure, the aggrieved counterparty cannot undertake measures that would result in drastic legal consequences.

52 Vékás, 2019, p. 359.

53 HunCC, § 6:140.

54 Vékás, 2019, p. 357.

55 Veress, 2019b, p. 310.

56 EBD 2015. P4.

Therefore, unilateral, and immediate termination of the contract can only be applied in the event of a serious breach of contract, where there is a credible threat or a real and present danger that the loan won't be repaid. Any other termination right for any other, less serious default or other less serious breach of contract is unfair and invalid.⁵⁷

In the practice of the courts, it has also been established that, from the point of view of cessation of interest, the creditor must prove not that he or she has no interest in general in the performance, but that his or her interest lapsed in the further performance of the contract by the debtor in question.⁵⁸

Unfounded cancellation or termination is unlawful conduct, practically a breach of contract, which gives rise to liability for the wrongful exercise of the right of cancellation or termination by the contracting party.⁵⁹

An important regulation in the HunCC refers to substitute transactions.⁶⁰ In the event of his cancellation or unilateral termination, the creditor is permitted to conclude a new, substitute contract capable of achieving the objective pursued by the initial contract, and he or she may claim from the debtor, per the rules on compensation for damages, the reimbursement of the difference between the value determined in the initial contract and the one determined in the substitute transaction, as well as the costs arising from the conclusion of the substitute transaction.

As was stated before, if the obligor is in default (delay), the obligee may claim performance or if, as a consequence of the default, the obligee's interest in the contract performance has ceased, the obligee may cancel the contract.⁶¹

The cessation of his or her interest in the performance does not need to be proved for the cancellation by the creditor, if

- according to the agreement between the parties or the recognizable purpose of the service, the contract should have been performed at the specified time for performance, and not at another time; or
- the creditor set an adequate grace period for subsequent performance, and this grace period expired without any result.

The debtor shall compensate the creditor's damage arising from the default or, in the case of a pecuniary debt, the damage exceeding the default interest, unless the debtor provides an excuse for his default.

In case of material defects, an insignificant defect shall not give rise to cancellation.⁶²

57 BDT 2011. 2571.

58 EBD 2013. 09. P15.

59 Veress, 2019b, p. 312.

60 HunCC, § 6:141.

61 HunCC, § 6:154.

62 HunCC, § 6:159 (3).

4. Poland

On the issue of unilateral termination of contracts and the rights of withdrawal according to Polish law, it must be said first that the PolCC indeed recognizes the concepts of termination of a contract – as a general term (*rozwiązanie umowy*), withdrawal from a contract (*odstąpienie od umowy*), and termination by notice or denunciation of a contract (*wypowiedzenie umowy*).⁶³ At times, any of those may be unilateral, either according to a stipulation included in a contract, a legal rule found in the PolCC, or a specific statute. The PolCC does not introduce a general power to unilaterally terminate a contract, however. Where it does refer to unilateral powers, the PolCC also does not provide a uniform approach to the issue, and the specific grounds therefore may differ between the PolCC proper, the specific statutes, and a given rule in a contract.⁶⁴ This omission from the PolCC certainly does not help any counsel that wishes to render legal aid unto their clients; as such, a party to a contract must consider his or her specific circumstances when attempting to unilaterally absolve themselves of a contract, in whatever way which would be applicable.

4.1. Termination

Termination (*rozwiązanie*) is referred to in the PolCC 43 times as of the time of writing, albeit none of those rules provide a legal definition of what termination ought to mean.⁶⁵ As to the letter of the law, Article 77 § 2 of the PolCC on the form of contracts provides that where the contract was concluded according to law in the written form, the documentary form, or the electronic form, its termination by consent of the parties, as well as withdrawal therefrom and its termination by notice or denunciation shall require observance of the documentary form, unless the law or the contract would reserve a different form. The wording of this rule implies that termination (at least by consent of the parties) qualitatively differs from withdrawal and denunciation. Nevertheless, the Polish Supreme Court has at times provided that, strictly speaking, ‘termination’ means setting a contract aside by means of a new contract; where the term is used generally, it is to be taken to mean the cessation of the binding nature of the contract because of

63 To make this rule distinct from general termination, this text shall employ the term ‘denunciation’ for *wypowiedzenie*.

64 Outside termination, withdrawal, and denunciation, a contract may be unilaterally avoided by invoking a defect of a statement of intent (*wada oświadczenia woli*).

65 It might be said here that not only contracts may be ‘terminated’ according to the PolCC; according to Article 42¹ § 2 of the PolCC, whereunder a court-appointed representative (*kurator*) may, in the event that his or her actions have not resulted in a legal person – whose representative organs are missing – to be put in order or to be liquidated, petition the court of registration to terminate such a legal person.

‘various events,’⁶⁶ including, but not limited to the action of (one of) the parties to a contract. Thus, according to the view of the Supreme Court, ‘termination’ is the general term for what may happen to a contract, rescinding its binding nature, including because of withdrawal or denunciation⁶⁷. Such a view remains at a tension with the wording of the PolCC, which refers to termination, withdrawal, and denunciation as separate issues. In addition, some rules of the PolCC refer only to some, or only to one of those three, making ‘termination’ hardly something that should encompass the other two every time.

In my view and as regards contracts, at its most basic, termination is the cessation of the contract’s binding nature. This is done normally without affecting the contract’s prior existence and legal effects already brought about thereby.⁶⁸ This cessation may be caused by a contract provided for in a prior contractual stipulation, or by a separate, self-standing agreement (an *actus contrarius*), which are classic instances of termination. However, termination may occur also by a unilateral juridical act (*jednostronna czynność prawna*) made out by one party to another, in cases provided for in a statute or a prior agreement between the parties. Termination may also be ordered by a court seized with an appropriate petition.⁶⁹ For this analysis, unilateral modes of termination shall be considered.

Unilateral powers of a party to terminate a contract are the exception to the rule that both parties may frame their contractual relationship pursuant to the rule in Article 353¹ of the PolCC (freedom to contract), as they grant one of the parties the power to affect the other party. No such general statutory rule on unilateral termination is present in the PolCC. However, a contractual power to unilaterally terminate a contract is alluded to in Article 385³ § 14 of the PolCC, in that it is, in the case of doubt, an instance of an unfair contractual term to the detriment of a consumer to deprive only him or her of a power to terminate a contract, withdraw from it, or to denounce it. In my view, it is thus not inconceivable that the parties might introduce a unilateral contractual⁷⁰ power to terminate a contract into that very contract, save where Article 385³ § 14 of the PolCC, a rule from a specific statute, or

66 According to judgment of the Polish Supreme Court of March 22, 2012, case Ref. No. V CSK 84/11, reported in Wolters Kluwer’s LEX no 1214611, wherein among those ‘various events’ of termination the Supreme Court lists consent of the parties, denunciation, judicial termination, termination by death of one of the parties, and termination by passage of pre-set time.

67 This approach is taken by Article 446 (4) 2 of the Act of September 11, 2019 – Public Procurement Law (the PZP), as the contracting authority is obliged to draft an *ex post facto* report on the contract within one month from ‘termination of the contract due to the making of a statement to denounce it, or due to withdrawal from it’.

68 See below for the rules applicable to so-called ‘bilateral contracts’ (*umowy wzajemne*), which are synallagmatic contracts and PolCC, Article 497.

69 See e.g., Article 632 § 2 of the PolCC: Where the performance of a specific work would cause the party accepting the work to incur a grave loss due to a change of relationships that could not have been foreseen, a court may increase the lump sum or terminate the contract.

70 Something that has been noted in the literature, Koch in Gutowski, 2019, on PolCC, Article 479 § 2 ‘*niekiedy również jednostronne oświadczenie jednej z nich*’.

the limits to the freedom of contract would preclude it. However, that power would have to be explicit to be effective,⁷¹ and its fairness vis-à-vis consumers is by definition suspect.

Furthermore, as regards bilateral contracts (*umowy wzajemne*),⁷² the PolCC in Article 497 provides that ‘the preceding rule [i.e., Article 496 of the PolCC] shall be applied *mutatis mutandis* in the event of termination or nullity of a bilateral contract.’ Article 496 of the PolCC in turn states that if the parties are to affect a return of mutual performances because of withdrawal from a contract, each of them is entitled to the right of retention until the other party would offer the return of the performance received or offer security for the claim to return. The Polish Supreme Court has opined that a reference to ‘withdrawal’ in Article 496 of the PolCC ‘indirectly’ refers further to Article 494 of the PolCC,⁷³ in that where the parties have terminated the contract *ex tunc*, their performances are to be returned per Article 494 of the PolCC applied *mutatis mutandis*. Be that as it may, that view of the Supreme Court implies that termination of non-bilateral contracts does not cause this effect, and thus termination of all those other contracts does not require the restitution of performances. In addition, that court has also provided in a later case that where bilateral contracts involve permanent (i.e., continually rendered) obligations (*zobowiązania trwałe*), an instance of which is the lease agreement (*umowa dzierżawy*), the parties cannot terminate any such obligations *ex tunc*⁷⁴.

On specific statutory unilateral powers to terminate a contract, while the PolCC and specific statutes may link such termination with prior unilateral denunciation,⁷⁵ specific statutes are also known to provide for unilateral termination without referring to prior denunciation and any periods of notice. Those statutory unilateral

71 See judgment of the Appellate Court in Warsaw of November 8, 2007, case Ref. No. I ACA 652/07, reported in Wolters Kluwer’s LEX no 516525, wherein that Court provided *obiter dictum* that a statement of unilateral termination of a contract must have substantive grounds in order to be effective (i.e., must have an express legal basis).

72 I.e., contracts where the parties oblige themselves in such a manner that the performance rendered by one party onto another shall be the equivalent of the performance by that other party (PolCC, Article 487 § 2).

73 Judgment of the Polish Supreme Court of October 7, 1999, case Ref. No. I CKN 262/98, reported in OSNC 2000/4/71.

74 This is allegedly due to the features of the lease contract, its purpose, and because a performance of the lessor consisting in making the object of lease available for use and for collection of proceeds to the lessee ‘cannot be deemed nonextant’, according to judgment of the Polish Supreme Court of November 15, 2002, case Ref. No. V CKN 1374/00, reported in OSNC 2004/3/45.

75 According to Article 730 PolCC: ‘Termination of a contract for a bank account concluded for an indefinite period may occur at any time due to denunciation by any of the parties; however, a bank can denounce such an agreement only due to important reasons’. According also to the Act of February 12, 2009 on Special Rules on Preparing and Carrying Out Investments in the Area of Public-Use Airports, Article 27 (3), which links termination with prior denunciation of contracts for lease, usufruct, tenancy, or lending in the event of constructing an airport on land previously contracted out.

powers to terminate a contract are likely to be vested in public authorities,⁷⁶ but may also be available to private parties that have concluded certain long-term contracts.⁷⁷ In my view, a self-standing power to terminate a contract directly affects the obligation between the parties; this is done by way of a unilateral juridical act (*jednostronna czynność prawna*). If one were to point to a difference between the power to terminate and the entitlement to denunciate a contract (itself carried out by a unilateral juridical act), then unlike denunciation,⁷⁸ a self-standing power to terminate, in my view, does not necessarily have to be exercised vis-à-vis the other party where it does not involve prior denunciation. While it is expedient to make the exercise of that power known to the other party, the difference between a self-standing power to terminate a contract and the entitlement to denounce a contract (which eventually leads to termination) is, in my view, that the effect is immediate when a unilateral juridical act is made in the case of the former. The power to terminate may also work *ex tunc* e.g., in case of bilateral contracts (*ex* Article 497 PolCC applicable *mutatis mutandis*) or elsewhere when the parties so intended. Denunciation on the other hand, while also effected by a unilateral juridical act, requires making an effective statement of intent vis-à-vis the other party, works *ex nunc* and requires completing the periods of notice, if any, to effectively end the binding nature of the contract.

4.2. Right of withdrawal

The PolCC recognizes the concept of withdrawal from a contract (*odstąpienie od umowy*), although it must be said that there are several instances of rights of withdrawal: general contractual rights of withdrawal, wherein such a right is stipulated in a contract;⁷⁹ a variation of the former, where withdrawal is effected by payment of an agreed sum (*odstępne*);⁸⁰ rights of withdrawal as regards bilateral

76 According to Article 10 of the Act of June 15, 2007 on the Court Physician, whereunder the President of a Regional Court may terminate a contract for the performance of acts carried out by a court physician with immediate effect, where he or she would entertain reasonable doubt as regards honesty of a certificate issued by a court physician. According also Article 45c (1) 3 of the Act of September 25, 1981 on Public Undertakings, whereunder the founding authority may terminate a contract to manage a public undertaking *inter alia* where the manager has committed a material breach of the contract to manage a public undertaking.

77 According to Article 71a of the Act of July 16, 2004 – the Law on Telecommunications, whereunder in the event of a carryover of a public phone number, a user may terminate a service agreement with a service provider outside any period of notice.

78 According to the judgment of the Polish Supreme Court of May 23, 2019, case Ref. No. II CSK 159/18, reported in LEX no 2672922: ‘Denunciation constitutes a unilateral juridical act of a right-defining power [*uprawnienie prawo-kształtujące*] in its nature, which, in the event of reaching the other party of the obligatory relationship (taking account of the rule of PolCC, Article 61) leads to setting that relationship aside, with an *ex nunc* effect.’ The original text reads as follows: ‘Wypowiedzenie stanowi jednostronną czynność prawną o charakterze prawokształtującym, która w przypadku dotarcia do drugiej strony stosunku zobowiązaniowego (przy uwzględnieniu dyspozycji Article 61 k.c.) prowadzi do zniesienia tego stosunku ze skutkiem prawnym na przyszłość.’

79 PolCC, Article 395.

80 PolCC, Article 396.

contracts that can be either contractual or statutory;⁸¹ rights of withdrawal that may be conferred by rules applicable to specific contracts (e.g. contract of sale);⁸² and rights of withdrawal provided for in specific statutes other than the PolCC (e.g. the right of withdrawal pursuant to Article 27 of the Act of May 30, 2014 on Rights of Consumers, where a contract is a long-distance contract or a contract concluded outside the premises of an undertaking). Those rights may vary in that there may be a time limit during which they may be exercised or that they would be independent of any such time limit; they could quash the contract *ex tunc* as if it were never concluded and make the parties return their performances, or they could only work *ex nunc*; they could be available immediately for use or require a prior procedure or a set of circumstances (e.g., a statement of the other party that they shall not perform the contract).⁸³ In my view, what is shared between all of the above is that the right of withdrawal must be made by a statement of intent (*oświadczenie woli*) to the other party.

A contractual right to withdraw from a contract is generally governed by Article 395 of the PolCC. This provision provides⁸⁴ that it may be stipulated that one or both parties shall be entitled to a right to withdraw from a contract within a specified time limit. That right shall be exercisable through a statement made to the other party. In addition,⁸⁵ in the event of exercising the right to withdrawal, the contract shall be deemed not to have been concluded. That, which the parties have already rendered as performance shall be returned in an unaltered state unless alteration has been necessary within the limits of ordinary management. Appropriate remuneration is owed to the other party for services provided and for the use of property.

It has been a staple of case law on the rule in Article 395 PolCC of the Polish Supreme Court that a contractual right to withdraw pursuant to the rule in Article 395 of the PolCC requires a time limit during which it must be exercised. Where there is no such time limit prescribed by the parties, the stipulation is null and void.⁸⁶ Nevertheless, the court has also opined that the time limit needs not to be shorter than the duration of the contract itself,⁸⁷ that the parties may freely define causes and effects of withdrawal should they so intend while providing for a time limit⁸⁸ and that the parties may frame a stipulation akin to the ‘genuine’ right to withdrawal that ‘may draw close to denunciation in its nature’ while omitting a time

81 PolCC, Articles 494–495.

82 PolCC, Article 552.

83 PolCC, Article 492¹.

84 PolCC, Article 385 § 1.

85 PolCC, Article 385 § 2.

86 According to the judgment of the Polish Supreme Court of July 6, 2016, case Ref. No. IV CSK 687/15, reported in Wolters Kluwer’s LEX no 2109482.

87 Order of the Polish Supreme Court of May 21, 2020, case Ref. No. V CSK 592/19, reported in Wolters Kluwer’s LEX no 3028840.

88 Judgment of the Polish Supreme Court in IV CSK 687/15 above.

limit provided for in Article 395 of the PolCC.⁸⁹ Even if a contractual right to withdrawal expires or is null and void, the parties still can avail themselves of statutory rights to withdraw.⁹⁰

Apart from the rule above, it is possible to include a right to withdraw encompassing a withdrawal compensation (*odstępne*). According to the rule in Article 396 of the PolCC, where it has been stipulated that one or both parties may withdraw from a contract by payment of a specified amount (withdrawal sum), the statement of withdrawal is only effective when made concurrently with the payment of the withdrawal sum. Thus, by paying the withdrawal sum, the party may free himself or herself from the obligation.

The PolCC provides for statutory rights to withdraw from a contract as regards bilateral contracts. There are several grounds for statutory rights to withdraw from such contracts, beginning with Article 491 of the PolCC.

Article 491 of the PolCC associates a statutory right to withdrawal with culpable delay (*zwłoka*) of performing an obligation arising out of a bilateral contract. According to its § 1, where one of the parties incurs culpable delay in performing an obligation arising out of a bilateral contract, the other party may set an appropriate and additional time limit for that party to perform, on pain that they would be entitled to withdraw from a contract in the event of expiry thereof. In addition, that party may, either without setting an additional time limit or after its expiry, demand the performance of the obligation and redress of damage resultant from that culpable delay. According to § 2, where the performances of both parties are divisible, and one of the parties incurs culpable delay only as to a part of the performance, the right to withdraw from a contract to which the other party is entitled is restricted, per the choice of that party, either to that part or to the entire remainder of the performance not rendered. That party may also withdraw from the entire contract where partial performance would be meaningless for that party because of the features of the obligation or because of the purpose of the contract intended by that party and known to the party incurring a such culpable delay.

Pursuant to Article 492 of the PolCC, where the right to withdraw from a bilateral contract was reserved for the case of failure to perform the obligation within strictly defined time, the entitled party may, in the case of culpable delay of the other party, withdraw from the contract without setting an additional time limit. The same applies to the case where the performance of the obligation by one of the parties after the date originally set would be meaningless for that party because of the features of the obligation or because of the purpose of the contract intended by that party and known to the party incurring such culpable delay.

89 Judgment of the Polish Supreme Court of October 12, 2018, case Ref. No. V CSK 493/17, reported in Wolters Kluwer's LEX no 2577357.

90 Judgment of the Polish Supreme Court of September 12, 2019, case Ref. No. V CSK 328/18, reported in Wolters Kluwer's LEX no 3122455.

Article 492¹ of the PolCC provides in turn that if a party obliged to render the performance declares that they shall not render it, the other party may withdraw from the contract without setting an additional time limit, including before the set date of performance for that obligation.

According to Article 493 § 1 of the PolCC, if one of the mutual performances became impossible as a result of the circumstances for which the party obliged is responsible, the other party may, according to their choice, either demand the redress of the damage resulting from the non-performance of the obligation or withdraw from the contract. Pursuant to § 2 of that rule, in the case of a partial impossibility to render performance by one party, the other party may withdraw from the contract if partial performance would be meaningless for that party because of the features of the obligation or because of the purpose of the contract intended by that party and known to the party whose performance became impossible in part.

Article 494 § 1 of the PolCC sets the consequences of withdrawal as regards bilateral contracts. According to that text, the party which withdraws from a bilateral contract shall be obliged to return to the other party all that which they received from the latter by virtue of the contract, whereas the other party is obliged to accept it. The party which withdraws from the contract may demand not only the return of what the performance consisted of but also the redress, pursuant to general rules, of the damage resulting from the non-performance of the obligation. In addition, Article 494 § 2 of the PolCC states that the performance shall be immediately returned to the consumer.

Article 495 of the PolCC governs the impossibility to perform an obligation as regards withdrawal where none of the parties is liable. According to § 1, if one of the mutual performances has become impossible as a result of circumstances for which neither party is liable, the party who was to make that performance cannot demand the counter-performance, and if they received it already, that party then shall be obliged to return it in accordance with the provisions on unjust enrichment. Pursuant to § 2, if the performance by one of the parties became impossible only in part, that party shall lose the right to the appropriate part of the counter-performance. However, the other party may withdraw from the contract if partial performance would be meaningless for that party because of the features of the obligation or because of the purpose of the contract intended by that party and known to the party whose performance became impossible in part.

The Polish Supreme Court has offered on withdrawal from bilateral contracts that such withdrawal generally applies *ex tunc*, with the contract deemed not to have been concluded at all.⁹¹ Where there would be outstanding parts of the performance to be rendered by the parties unto another, then the parties would be released from doing

91 In other words, Article 395 § 2 of the PolCC is to apply *mutatis mutandis*, according to the Order of the Polish Supreme Court of August 10, 2018, case Ref. No. III CZP 17/18, reported in Wolters Kluwer's LEX no 2604061.

so; nevertheless, permanent obligations (obligations that are continuous or successive) may be withdrawn from only *ex nunc*.⁹²

Apart from the above rules applicable either to withdrawal in general or to withdrawal in the context of bilateral contracts, the PolCC provides for withdrawal as regards specific contracts.⁹³ Some of those contracts are mutual (bilateral, or synallagmatic) contracts (e.g., sale, supply, contract for a specific work, contract for construction works, carriage), and thus Article 494 of the PolCC would apply to the extent it is not precluded by specific rules on a given contract.⁹⁴

Specific statutes may include special rules on withdrawal; such rules are subject to the *lex specialis* relationship with the PolCC. The rule in Article 27 of the Act on Rights of Consumers referred to above, often applicable as regards sale, provides that the consumer is entitled to withdrawal ‘without bearing the costs,’ save the costs specified in Articles 33, 34 (2), and 35 of the Act.

4.3. Denunciation

Self-standing termination and withdrawal are not the only possibilities for the unilateral end of a contract. The third option to make the contract cease to bind is to denounce it, leading to the concept of denunciation (or termination by notice – *wypowiedzenie*) which is recognized in the PolCC (e.g., in Articles 365¹, 384¹, 385³ § 14, 664 § 2, 673, 698 § 2, 709¹¹, and 723 of the PolCC). Nevertheless, the PolCC does not precisely define the concept or the effects of denunciation. It is common ground that this rule is often associated with the cessation of continuous, permanent obligations, although the parties may include a power to denounce a contract concluded for a specific period; either the parties or a statute may also specify periods of notice for denunciation.⁹⁵ Polish law precludes the existence of perpetual obligations (*zobowiązania wieczyste*), i.e., obligations that would bind the parties forever; continuous or successive obligations must be capable of being denounced.⁹⁶ According to the Polish Supreme Court – in II CSK 159/18 above –, denunciation constitutes a unilateral juridical act

92 Judgment of the Polish Supreme Court of May 15, 2007, case Ref. No. V CSK 30/07, reported in OSNC 2008/6/66; resolution (*uchwała*) of the Polish Supreme Court of November 20, 2019, case Ref. No. III CZP 3/19, reported in OSNC 2020/5/35. There is some literature which appears to criticize this approach (Panfil, 2018, Ch. VIII, para. 1), advocating for the possibility of withdrawal from continuous contracts. The Polish Supreme Court appears to be unmoved as of the time of writing, however.

93 E.g. contract for sale: PolCC, Article 552; warranty as regards sale: PolCC, Article 560 § 1; contract for supply (*dostawa*): PolCC, Article 610; contract for a specific work (*umowa o dzieło*): PolCC, Articles 631 and 644; contract for construction works: PolCC, Article 6494; loan: PolCC, Article 721; contract for carriage: PolCC, Article 783; insurance contract: PolCC, Article 812 § 4.

94 The clarity of those specific rules may vary. For instance, the Polish Supreme Court has provided that withdrawal pursuant to Article 644 of the PolCC (specific work) is effective *ex nunc* (according to the judgment of the Polish Supreme Court of January 24, 2017, case Ref. No. V CSK 219/16, reported in Wolters Kluwer’s LEX no 2237427).

95 See Gniewek and Machnikowski, 2021, PolCC, Article 365¹ § 3.

96 See e.g., the Resolution of the Polish Supreme Court of December 9, 2021, case Ref. No. III CZP 16/21, reported in Wolters Kluwer’s LEX no 3268910.

of a right-defining power in its nature (*uprawnienie prawo-kształtujące*), which, in the event of reaching the other party of the obligatory relationship (taking account of the rule of Article 61 of the PolCC) leads to setting that relationship aside, with an *ex nunc* effect. According to the Supreme Court, this *ex nunc* effect applies even where the contract being denounced is a bilateral contract, e.g., a lease (*dzierżawa*),⁹⁷ franchising contract,⁹⁸ a mandate (*zlecenie*) where it is for consideration,⁹⁹ and leasing.¹⁰⁰ As such, denunciation causes different effects than general termination, even as regards bilateral contracts where Article 497 PolCC would apply to termination.¹⁰¹ In my view, this differentiates denunciation from a general power to terminate a contract, especially a bilateral contract, and thus it cannot be said that denunciation is a mere instance of (or only a reason for) termination.

While the possibility of denouncing contracts producing continuous or successive obligations may not be precluded, the parties may stipulate that the power to denounce a contract would be impeded for a set period, making denunciation possible only after the expiry thereof. The Polish Supreme Court has hitherto accepted a yearly period of such an impediment as not directly precluded by Article 365¹ of the PolCC.¹⁰²

As is the case with general termination and withdrawal, specific statutes may also provide for denunciation of contracts and contain special rules on denunciation. The Act of March 8, 2013 on Counteracting Excessive Delays in Commercial Transactions (*Ustawa o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych*) provides in Article 7 (3a) and (3b) respectively that a creditor may withdraw from a contract or denounce it where the time limit for payment specified in the contract exceeds 120 days calculated from the service of an invoice or a bill on the debtor, confirming the supply of goods or performance of a service, and such a period has been set with a breach of Article 7 (2) of the act. Where the creditor has denounced the contract pursuant to (3a), pecuniary performances (*świadczenia pieniężne*) due from the debtor regarding goods already supplied or services already performed shall become due within the time limit of 7 days from the day of denouncing the contract. When the creditor would not receive a pecuniary payment within that time limit, he or she shall be entitled to interest referred to in Article 7 (1) of the act.

97 Judgment of the Polish Supreme Court of April 8, 2011, case Ref. No. II CSK 434/10, reported in Wolters Kluwer's LEX no 1027169.

98 Judgment of the Polish Supreme Court of June 23, 2005, case Ref. No. II CK 739/04, reported in Wolters Kluwer's LEX no 180871.

99 E.g., commercial real property management: Judgment of the Polish Supreme Court of October 9, 2013, case Ref. No. V CSK 472/12, reported in Wolters Kluwer's LEX no 1396517.

100 Resolution of the Polish Supreme Court of September 16, 2015, case Ref. No. III CZP 52/15, reported in OSNC 2016/9/99.

101 It might be added here that the legal basis for this, according to the Polish Supreme Court, is the 'nature' of the permanent relationship of the parties (II CK 739/04, II CSK 434/10), apart from the rule in PolCC, Article 365¹ (II CSK 159/18).

102 Judgment of the Polish Supreme Court of June 13, 2013, case Ref. No. V CSK 391/12, reported in OSNC 2014/2/22.

5. Romania

5.1. Termination not conditioned to breach of contract

It follows from the binding force of the contract that the parties can normally only modify or terminate the contract jointly by their common will (in practice, by a new contract – in the latter case, we may speak of a contract of termination). Unilateral modification or termination of a contract is exceptional.

A very important case is a contract concluded for an indefinite period, which may be terminated unilaterally by either party, subject to reasonable prior notice. Any clause to the contrary and any clause providing for consideration in exchange for termination of the contract shall be deemed unwritten (i.e., non-existent).¹⁰³

Another case of crucial importance is the unilateral termination clause included in contracts by the parties themselves.¹⁰⁴ If the contract provides for the possibility of unilateral termination of the contract (*denunțarea contractului*) in favor of one of the parties, this right (power) may be exercised until the performance has begun.¹⁰⁵ A contractual relationship that can be unilaterally terminated at any time, without any reason, is much weaker than a normal contractual relationship that cannot be terminated without a reason specified in the legislation. A unilateral termination clause weakens the binding force of the contract and renders the obligation vulnerable.

Unilateral termination can be exercised as follows:

- the parties may set a time limit for the exercise of this right (the exercise of the right to unilateral termination is usually subject to a time limit in practice since no one will allow the possibility of unilateral termination to hover over the obligation for an indefinite period of time),
- if no time limit has been specified, this right may be exercised until performance has begun,
- in the case of a contract for continuous or successive performance, that right may be exercised after performance of the contract has begun, provided that a reasonable period of notice is observed, but termination of the contract may have effects only in respect of the future.

If the party terminating the contract is required to perform a service as a consideration for the termination, the unilateral termination of the contract can only have legal effect from the moment of performance of that service (in general, payment of a certain amount of money on compensation). That is to say, the party who has promised to pay compensation may terminate the contract by paying it, and the party who has given it may terminate the contract by losing it. The possibility to exit the contract by simply paying compensation weakens the obligation: if such a clause has

103 RouCC, Article 1277; Veress, 2020, p. 59.

104 Veress, 2020, pp. 55–59.

105 RouCC, Article 1276.

been included in the agreement for the benefit of one or both parties, the contract may be terminated by one of them by a unilateral declaration of intention and the payment of compensation.

The rules of the RouCC on unilateral termination of a contract are dispositive in nature, and the parties may include different private rules in their contract.

The right to terminate the contract unilaterally – once recognized – in our opinion cannot be exercised abusively or in bad faith. Being a potestative right (a right subject solely to the will of the entitled party, which may be exercised without restriction, and without giving, or even having a reason), the faculty to exercise this right can be based on any subjective premise. The exercise of the right to terminate the contract has nothing to do with a culpable breach of contract by the other party, in which case the sanction of resolution *ex tunc* or *ex nunc* on the part of the creditor applies.

However, termination clauses are not compatible with those contracts which are declared irrevocable by law. Thus, a donation contract is not valid when it contains clauses allowing the donor to revoke it.¹⁰⁶

5.2. Termination conditioned to breach of contract

A party enters into a synallagmatic (bilateral, mutual, or reciprocal) contract because it expects the counterparty to counter-perform in exchange for its own performance. If the counterparty breaches the contract and fails to counter-perform, then termination is one possible way of resolving the conflict. However, the creditor may also choose to demand performance in kind. Either way, he or she is entitled to damages.

Resolution *ex tunc* (*rezoluțiune*) or resolution *ex nunc* (*reziliere*, from the French *résiliation*, with no direct English equivalent) constitute a sanction for breach of a synallagmatic contract.¹⁰⁷ Resolution *ex tunc* or resolution *ex nunc* terminate the valid contract (repudiate the obligation) according to the will of the creditor, in the first case with retroactive effect from the date of the conclusion of the contract, and the second case only with prospective effect, on cases when the debtor has breached the contract. Breach of contract is also sometimes possible in unilateral contracts: for example, a loan on interest can be the object of resolution.¹⁰⁸ In another unilateral contract, the *commodatum* (loan for use),¹⁰⁹ the RouCC allows the lender to recover the object of the loan when the borrower breaches his or her obligations,¹¹⁰ for example when he or she does not use the object properly. This is also an implicit recognition that resolution of contract is also possible in case of unilateral contracts.

Resolution *ex tunc* and resolution *ex nunc* are a declaration of the creditor's intent to terminate the contractual relationship, a type of civil sanction. If Primus is the seller and Secundus is the buyer, and Primus does not deliver the property for which ownership has been transferred by the contract within the deadline, Secundus may

106 RouCC, Article 1015 (1).

107 RouCC, Articles 1549–1554.

108 Baudouin, Jobin and Vézina, 2013, p. 1026.

109 A loan of an article for a certain time, to be used by the borrower, without paying for it.

110 RouCC, Article 2156.

decide on the resolution of the contract. The otherwise valid contract will be terminated *ex tunc*, and therefore if Secundus has paid the price or part of the price, Primus will have to pay it back. Or, another example, when a tenant does not pay the rent for three months, the lessor can opt for the resolution *ex nunc* of the contract. Resolution *ex nunc* is a sanction for breach of contracts performed continuously or successively, where returning to the situation before the conclusion of the contract is excessively difficult or outright impossible (e.g., it is not possible to return the use of the dwelling made by the tenant, and therefore it would be pointless to return the rent previously paid). Resolution *ex nunc*, therefore, terminates the lease from the day it occurred.

In addition to resolution *ex tunc* and *ex nunc*, the broader category of termination for breach of contract also includes the situation where termination occurs automatically, the effects of the contract being ceased without any specific expression of the will of the creditor, usually based on a specific contractual clause.

A clear distinction must be drawn between invalidity, on the one hand, which includes nullity (*nulitate absolută*), voidability (*nulitate relativă*), and non-existent (unwritten) clauses (*clauze luate ca nescrise*), and resolution *ex tunc* or *ex nunc*, on the other hand, as both have very similar legal effects, but also present fundamental differences:

- Invalidity can arise in relation to any legal transaction; resolution *ex nunc* or *ex tunc* can only occur in the case of synallagmatic contracts, termination by resolution being a specific sanction for breach of a contract.
- Invalidity is caused by reasons existing at the moment of the conclusion of the juridical act (breach of the norms governing the valid formation of the contract), whereas resolution can only be considered in the case of valid bilateral contracts, because of the default of the debtor after the conclusion of the agreement.
- The cause of the civil sanction is also different: in the case of invalidity, the cause is the breach of the law, and in the case of resolution the cause is the breach of contract.

Also, a distinction has to be made in regard to unilateral termination of the contract not conditioned to a breach of contract. It is clear, that under Romanian law resolution is a sanction for breach of contract. In contrast, unilateral termination of a contract does not imply a breach, but:

- the right to terminate is granted by law temporarily (for example, in the case of consumer contracts that can be terminated by the consumer for 14 days),
- the law may recognize this right permanently and definitively, by virtue of the nature of the type of contract in question (for example, in the case of a contract of mandate); in both the cases referred to above, the law effectively weakens the binding force of the contract,
- or the parties themselves institute this right of termination in their contract (either free of charge or in exchange for a consideration, for the benefit of one or both of them – i.e., asymmetrically, or symmetrically).

Thus, we can draw the following conclusions regarding the compared tools for termination:

- their causes are different: in the case of resolution, the fundamental condition is breach of contract, whereas in the case of termination this is not conditioned to a breach, it is a right exercisable in practice according to the discretion of the entitled party, without the need to state any reasons,
- they also differ in that the right of resolution may be linked to any sufficiently serious breach of a synallagmatic contract, whereas the right of unilateral termination – being exceptional in nature, as an exception to the binding force and irrevocability of the contract, which is instituted by law for certain types of contract (consumer contracts, contracts of mandate) or by the express agreement of the parties – may only be exercised based on prior, specific authorization;
- they are similar in their legal effects (ending the contractual obligation), with the important difference that the unilateral termination of a contract, not conditioned to a breach is not usually accompanied by damages (except in the case of the payment of the consideration referred to above), whereas the right of resolution does not preclude the right to claim damages from the party in breach of contract.

The main common features of resolution *ex tunc* and resolution *ex nunc* are:¹¹¹

- Both resolution *ex tunc* and resolution *ex nunc* are based on the debtor's material breach of contract. The breach of contract may be either non-performance (negative breach) or insufficient performance, in the latter case, the performance does not correspond to the content of the service owed. A debtor who performs, but not at the time, place, or in the manner it should have performed (positive default) is also in breach of contract. For example, a contractor is negligent, careless, or incomplete in his or her performance and is not performing adequately. In such a case, as it was shown, the creditor may also choose to enforce the performance in kind (so that the creditor can demand that the performance should be satisfactory or even have the performance corrected by another party at the expense of the debtor). If the positive breach of contract is substantial, the creditor may use his or her right to resolution *ex nunc*. This will have legal effects for the future, i.e., the contractor will have to be held to account for his or her activities to date. However, the contractor will also be liable for any damages caused.
- As a general rule, the debtor must be summoned to perform before termination for breach of contract may occur and must be granted an appropriate grace period.¹¹² This is the default (*punere în întârziere*). There are statutory cases where default occurs by operation of law, or the parties may provide in a clause that the default is automatic, without the need to give the debtor notice and a grace period.

111 Veress, 2020, 98–100.

112 RouCC, Articles 1522 and 1516.

- Resolution *ex nunc* or *ex tunc* takes place by a unilateral declaration of the creditor's will: the creditor has the choice of demanding the performance of the contract or terminating the contract. In the case they have no more interest in in-kind performance, the creditors choose to use their right to resolution, but they do not need to prove the lapse of interest: proving the breach is sufficient to open the creditor's right to resolution. The option to use the right to resolution or to opt for enforcement in-kind is entirely up to the creditor. A debtor in breach of contract has no right to invoke resolution.
- The creditor has the right to resolution by operation of the law, it is not necessary to include a specific clause in the contract. However, detailed rules going beyond the provisions of the RouCC may be laid down in the agreement of the parties.
- Resolution is generally a declaration to the debtor, the effect of which is generated by a notice served on the debtor, by means of a declaration of resolution.
- As resolution is a definitive declaration of intent, it cannot be revoked without the consent of the opposing party.
- Resolution is not subject to any specific formality. This rule also applies to withdrawal from a contract subject to formalities.
- Of course, resolution does not exclude contractual liability: in addition to the cancellation of the contract, the creditor can also claim damages.

The High Court of Cassation and Justice has held in a case that a condition of resolution is that the contract should not contain a clause waiving the right of termination in favor of the right to enforce the performance in-kind. In a pre-contract of sale, the following clause was included:

‘in the event that the contract of sale is not concluded for reasons related to the will of one of the parties or because of the non-performance of an obligation contained in this agreement, the party who is not at fault may apply to the court for a decision replacing the contract of sale and, if this is not possible, may apply for the restitution of the advance payment, may request the sum included into the penalty clause and ask the payment of the costs.’

The person promising to buy has brought an action for resolution of the contract because the person promising to sell has failed to enter into the promised contract of sale. The High Court of Cassation and Justice dismissed the action because, according to the contract clause relied on, the parties had stipulated that the court decision replacing the contract was the primary sanction. Thus, the person promising to buy should have asked for it because he or she had effectively waived his or her right of resolution. The action for resolution is contrary to the will of the parties expressed by the pre-contract and the court cannot go against the validly expressed will of the parties.¹¹³ (In my view, the decision is erroneous. The clause can be interpreted at most as an implied waiver

113 High Court of Cassation and Justice, II Civil Law Chamber, Decision No. 4046/2013.

of the right of withdrawal. The question is whether a waiver of the right of withdrawal occurring before the breach is valid. In my view, no; the law clearly provides the option for the claimant to choose between enforcement in kind or rescission.)

The most significant difference between resolution *ex nunc* and resolution *ex tunc* is that resolution *ex tunc* is retroactive, while resolution *ex nunc* has only effects toward the future. In the case of resolution *ex tunc*, each party is obliged to return to the counterparty all the assets which he or she has received under the contract (restoration of the previous situation, *restitutio in integrum*). If the previous situation cannot be restored, the rules on damages apply. In the case of a supply of fungible assets, the previous situation may be restored by the return of other assets of a similar nature. In fact, resolution *ex nunc* is a specific subtype of resolution *ex tunc*.

Resolution may only apply to a part of the contract if the service is of a divisible nature. In a multilateral contract, the non-performance of an obligation by one party does not entail the termination of the contract as against the other parties, except in the case where the non-performance of the service should have been considered fundamental.

The creditor is not entitled to resolution if the default is minor. In the case of contracts with continuous (or periodic) performance, the creditor is entitled to terminate even if the default is minor but recurrent. Any contrary clause shall be deemed to be non-existent (unwritten). However, in the case of a minor default, the creditor is entitled to a proportionate reduction of his or her performance if the circumstances so permit. If the services cannot be reduced, the creditor is only entitled to compensation.

Under Romanian law, there are three forms of termination of the contract for breach:¹¹⁴

- when the creditor exercises his or her right to unilateral resolution,
- when the court orders (approves) the resolution,
- Resolution may also occur automatically (*ope legis*) if provided for by law or agreed by the parties.

Unilateral resolution is conditional on the debtor being in default. The debtor may be in default *ope legis* (automatically) or by having been summoned to perform by the creditor (using a written notice to perform). If the creditor gives the debtor notice, an appropriate grace period for performance must also be set. In the second case, unilateral resolution is possible if the debtor has not performed within the grace period set. Default *ope legis* applies in cases where the obligation can only be usefully performed within a certain period of time. A grace period is also not necessary where the debtor is at fault for the impossibility of performing the obligation in kind; where the debtor has breached an obligation to abstain (*non-facere*); where the debtor has manifested to the creditor beyond reasonable doubt an intention to default; or where, in the case of a contract of continuous performance, the breach is of a repetitive nature. Likewise,

114 Veress, 2020, 100–102.

no grace period should be imposed in a commercial relationship where the obligation is to pay money and the debtor has not performed on time.

Romanian law does not explicitly regulate the institution of prior breach of contract. A prior breach of contract may occur if it becomes clear before the expiry of the time limit for performance that the debtor will not be able to perform the service when it is due. In such a case, however, the obligation may still be discharged immediately without granting a grace period, based on the rule of the debtor's fault described above.

The notice of resolution must be given within the limitation (prescription) period for bringing an action. In any case, the notice of withdrawal or termination shall be entered in public registers such as the Land Register or other such registers, to be enforceable against third parties.

The notice of withdrawal or termination is irrevocable from the date of its service to the debtor or, where applicable, from the expiry of the grace period for performance.

A non-performance clause (*pact comisoriu*) is a contractual clause which (if the conditions set out in the clause are met) leads to the termination of the contract *ope legis*. A non-performance clause has an effect if it expressly provides for the essential obligations, the non-performance of which entails the termination of the contract. In this case, too, automatic resolution is conditional on the debtor being in default, unless the parties have stipulated that this follows from a simple failure to perform. A notice to perform (to put the debtor in default) has no legal effect unless it expressly restates the conditions for the operation of the non-performance clause.

The second type, judicial resolution has multiple practical benefits. A unilateral resolution can be challenged *ex post* by the debtor, and it can be proved that the conditions for default did not exist (e.g., the default was insignificant, no adequate grace period was granted or there is no fault on the part of the debtor, etc.), i.e., the fact of unilateral termination of the contract by the creditor can be challenged by the debtor. He or she may no longer do so if the default is declared by a final court decision. Likewise, it is also advisable to opt for the judicial remedy of default if performance has been affected by the creditor and the creditor wishes to obtain an enforceable title to restore the original situation (to recover the service rendered).

There may also be cases where the law does not allow unilateral resolution of the contract, resulting in addressing a court becoming mandatory. For example, in the case of a maintenance contract, if the reason for the default is the conduct of one of the parties, which runs contrary to good morals, or which inhibits performance, or there is an unjustified failure to perform the maintenance obligations, the court has exclusive jurisdiction on resolution.¹¹⁵ Any contrary provision shall be deemed as non-existent (unwritten).

Resolution in both its forms terminates the contract. In the event of resolution (regardless of its type), as a rule, each party must return the performance received

115 RouCC, Article 2263.

from the other, unless otherwise provided for by law, as the rules on resolution *ex tunc* are applicable to resolution *ex nunc* in lack of provisions to the contrary.¹¹⁶ Romanian law however expressly provides,¹¹⁷ regarding contracts that must be performed continuously or successively, that resolution shall only have effects *ex nunc*, unless otherwise provided for by law.

The creditor is also entitled to compensation for the damage caused to him or her. Resolution does not affect contractual clauses relating to the settlement of disputes or clauses which are intended to have effects in the event of termination of the contract (e.g., a penalty clause, clauses establishing jurisdiction, etc.).

6. Serbia, Croatia, Slovenia

6.1. Serbia

The SrbLO governs different cases when the parties are entitled to terminate the contract unilaterally. They may be classified into two groups. The first comprises cases when the unilateral termination of the contract is justified by the culpable conduct of the counterparty. This is the repudiation of the contract because of non-performance. The second group relates to cases when a party can terminate the contract unilaterally even when the counterparty performs or is willing to perform in good faith. This is usually the case with long-term contracts. In addition, the parties may agree to establish a right to terminate the contract unilaterally by paying a sum for the purpose of compensating the other party for the damage he or she sustains because of the termination of the contract. This is the forfeit money.

In case of the debtor's default in performing obligations in a contract for consideration, the creditor is entitled to request either the performance or may repudiate the contract, but in both cases retains the right to request compensation for damage.¹¹⁸ The procedure for the repudiation of a contract because of non-performance (*raskidanje ugovora zbog neispunjenja*) depends on whether the timely performance of one or both of the parties' obligations is considered the contract's essential element. The time of the performance of the parties' obligations is usually not considered an essential element of the contract. It becomes an essential element if the parties agreed explicitly that the contract shall be considered repudiated if the debtor fails to perform by the expiry of the deadline, or such a conclusion can be implied from the nature of the transaction.¹¹⁹ In both cases the repudiation is effectuated out-of-court, that is by the creditor's declaration of intention, which is the usual procedure of repudiation of the contract adopted in comparative law.¹²⁰ When the time of the performance is an essential element of the contract, in the case of non-performance

116 RouCC, Article 1549 (3).

117 RouCC, Article 1554 (3).

118 SrbLO, Article 124.

119 SrbLO, Article 125 (4).

120 Dudaš in Pajtić, Radovanović and Dudaš, 2018, pp. 368–369.

the contract is considered repudiated by the expiry of the deadline for performance.¹²¹ However, the creditor may uphold the contract if he or she subsequently – after the default – notifies the debtor without delay that he or she requests performance.¹²² If the creditor requested the performance of the obligation, but the debtor did not perform in a reasonable time after the notification either, the creditor may repudiate the contract.¹²³ The rules on the repudiation of the contract differ when the time of the performance is not an essential element of the contract. The law first declares that in this case, the creditor retains the right to request the performance and the debtor the right to perform even when the deadline for performance has expired.¹²⁴ If the creditor opts for the repudiation of the contract, he or she is required to grant the debtor an additional appropriate deadline for the performance.¹²⁵ There is no statutory definition of the appropriateness of the additional deadline, nor can there really be one. It is up to the creditor to specify a deadline in which, based on the nature of the transaction and the object of the debtor's obligation, it can be presumed that the debtor is granted a reasonable time to prepare and effectuate the performance.¹²⁶ Should the debtor fail to perform by the additional appropriate deadline, the consequences are the same as in the case of repudiation of a contract in which the time of the performance is an essential element.¹²⁷ The creditor is not required to allow the debtor an additional appropriate deadline when it may be implied from the debtor's conduct that he or she will not perform by the additional deadline either.¹²⁸ Moreover, the creditor may repudiate the contract even before the debtor's obligations became due when it is obvious that the other party will not perform.¹²⁹ This is the anticipatory breach of contract.¹³⁰

In both cases, when the time of the performance of the debtor's obligation is an essential element and when it is not, the creditor determines whether the statutory conditions of the repudiation are satisfied and bears the consequences of his or her wrong qualification of circumstances or bad judgment. The creditor, therefore, repudiates the contract at his or her own risk.¹³¹ The debtor may initiate a court procedure to have the unlawful repudiation set aside and declare that the contract is still effective between the parties. This is called control litigation.¹³²

The only restriction the law sets for the creditor's right to repudiate the contract is that the scope of the debtor's failure to perform must not relate to a negligible portion

121 SrbLO, Article 125 (1).

122 SrbLO, Article 125 (2).

123 SrbLO, Article 125 (3).

124 SrbLO, Article 126 (1).

125 SrbLO, Article 126 (2).

126 Dudaš in Pajtić, Radovanović and Dudaš, 2018, p. 371.

127 SrbLO, Article 126 (3).

128 SrbLO, Article 127.

129 SrbLO, Article 128.

130 Dudaš in Pajtić, Radovanović and Dudaš, 2018, p. 371.

131 Dolović Bojić, 2016, p. 5.

132 Dolović Bojić, 2016, p. 81.

of the obligation.¹³³ Difficulties may arise in relation to the scope of the debtor's non-performance justifying repudiation in the case of successive obligations. Does the non-performance of a single obligation justify the repudiation of the contract? The SrbLO prescribes in this regard that if a party fails to perform one or more successive obligations, the other party is entitled to repudiate the contract with respect to other future obligations as well, if the circumstances imply that they will not be performed either.¹³⁴ Moreover, the creditor may repudiate the contract regarding obligations already performed as well, if he or she lost interest in the performance received, without future obligations.¹³⁵ However, in this case, the debtor may uphold the legal effect of the contract, that is to prevent the repudiation if he or she provides the creditor sufficient security for the performance of future obligations.¹³⁶ In addition to the requirement that the non-performance must not affect only a negligible part of the obligation, according to the majority opinion in the literature, the non-performance must not be attributable to the debtor's fault either, though this condition is not explicitly named in the SrbLO.¹³⁷ Finally, the SrbLO prescribes the duty of the creditor to effect all notifications to the debtor aiming to repudiate the contract without delay.¹³⁸

The SrbLO regulates explicitly the legal consequences of the repudiation because of non-performance, which are in line with the general effects of the termination or invalidation of a contract. First, if none of the parties performed yet, both parties are relieved from their obligations, except from the duty to compensate the other party for any damage in relation to non-performance.¹³⁹ If only one party performed, he or she is entitled to restoration of the benefits conferred. If both parties performed, both are entitled to restoration, which must be realized according to the rules on the performance of a contract for consideration.¹⁴⁰ Both parties are obliged to pay compensation for – or return the – benefits they acquired in relation to the possession or use of the object of the other party's performance.¹⁴¹ The party restoring the sum of money is obliged to pay default interest accrued from the day when he or she received the payment.¹⁴²

The unilateral termination of a contract not justified by the debtor's failure to perform his or her obligations appears usually in relation to contracts with continuous performance, that is in contracts that are not discharged by the performance of a single obligation but oblige the parties incessantly during a certain period of time. Their duration may not be eternal, regardless of how long it otherwise may

133 SrbLO, Article 131.

134 SrbLO, Article 129 (1).

135 SrbLO, Article 129 (2).

136 SrbLO, Article 129 (3).

137 Perović, 1986, pp. 504–505.

138 SrbLO, Article 130.

139 SrbLO, Article 132 (1).

140 SrbLO, Article 132 (2) and (3).

141 SrbLO, Article 132 (4).

142 SrbLO, Article 132 (5).

be. Perpetual contracts are contrary to the principles of modern society and law.¹⁴³ Therefore, in a contract with a continuous performance the period of its duration is always considered to be an essential element, be it definite or indefinite.¹⁴⁴ For this reason, it is important to allow the unilateral termination of a contract with continuous performance with indefinite duration by a simple statement of either party. The SrbLO, therefore, prescribes, though not in the part pertaining to the general rules of contract law, but in the one pertaining to the general rules of discharging of obligations, that a continuous obligational relationship having a finite duration ceases when its period of duration expires unless it has been agreed upon by the parties or prescribed by a statute that its duration shall be extended to an indefinite time if the parties did not terminate it in due time.¹⁴⁵ If the duration of the contract is not limited, either party may terminate it unilaterally (*otkaz trajnog dugovinskog odnosa*).¹⁴⁶ A statement aiming at the termination of the contract must be communicated to the other party and may be given at any time, except at the time which is considered inappropriate.¹⁴⁷ The obligational relationship shall be deemed terminated when the notice of termination stipulated by the contract has expired. If no such deadline is stipulated by contract, the obligational relationship is considered terminated when the time period established by statute, or by custom, or lacking those when an appropriate time period has expired.¹⁴⁸ This is, however, a default rule. Parties may stipulate that the obligational relationship is deemed to have been terminated when the statement on unilateral termination has been delivered to the other party, that is without the requirement to observe a notice of termination.¹⁴⁹ Finally, the SrbLO explicitly states that the creditor is entitled to request performance of the debtor's obligation that became due before it ceased to exist by expiry of the duration of the obligational relationship or unilateral termination.¹⁵⁰

The SrbLO enables the parties to determine a sum of money payable if either of them wishes to terminate the contract unilaterally. This is the so-called 'forfeit money' (*odustanica*), allowing one or both parties to terminate the contract even when the other party performs or is willing to perform in good faith by paying the other party an amount stipulated by the parties.¹⁵¹ If the party entitled to withdraw from the contract declares that he or she terminates the contract by paying the forfeit money, that party loses the right to request the performance of the contract.¹⁵² He or she is required to pay the forfeit money at the same time when the statement on withdrawal

143 Hiber, 1995, p. 69.

144 Hiber, 1995, p. 52.

145 SrbLO, Article 357.

146 SrbLO, Article 358 (1).

147 SrbLO, Article 358 (2) and (3).

148 SrbLO, Article 358 (4).

149 SrbLO, Article 358 (5).

150 SrbLO, Article 358 (6).

151 SrbLO, Article 82 (1).

152 SrbLO, Article 82 (2).

has been communicated to the counterparty.¹⁵³ If the parties failed to stipulate in the contract a deadline in which the withdrawal may be exercised, the entitled party may withdraw from the contract by paying the forfeit money until the expiry of the deadline for the performance of his or her contractual obligation.¹⁵⁴ The right to withdraw from the contract also ceases to exist when the entitled party commences with the performance of his or her contractual obligation or begins to receive the performance of the other party's obligation.¹⁵⁵ Finally, the law defines the relationship between earnest money and forfeit money, since their scope of application may overlap, when the earnest money has been stipulated with a right of the party who gave it to exercise a withdrawal from the contract. For this case the law establishes that the earnest money shall be regarded as forfeit money and both parties may withdraw from the contract by paying it.¹⁵⁶ Consequently, the rules on earnest money are to be applied to forfeit money in this case; if the party who gave the earnest money withdraws from the contract, he or she loses it. However, if the other party who received it withdraws from the contract, he or she shall be obliged to restore twice the amount of the earnest money to the other party.¹⁵⁷

A right of withdrawal from a contract in the true meaning of the term (unilateral termination of a contract with one-time performance without indicating a legitimate reason and without prejudice for the party effecting termination) in Serbian law exists in the context of consumer law. A consumer can withdraw from a contract concluded at a distance or off-premises (*pravo potrošača na odustanak od ugovora*) within 14 days from the delivery of the goods. The consumer is not required to indicate the grounds for withdrawal, nor can he or she sustain costs in relation to the withdrawal, except the direct costs of returning of goods, provided the trader agreed to bear these costs or notified the consumer in due time that he or she bears these costs.¹⁵⁸ In addition, the Consumer Protection Act envisages the right of the consumer, or of the traveler to withdraw from the travel package contract¹⁵⁹ or the time-sharing contract.¹⁶⁰ The consumer also has the right to withdraw from banking loans, financial leasing, or similar contract.¹⁶¹

6.2. Croatia

Concerning repudiation of contract (*raskid ugovora zbog neispunjanja*) because of non-performance, the HrvLO¹⁶² retained the rules of the former federal law, thus, no discrepancies may be identified in comparison to the rules of the SrbLO. Likewise, the

153 SrbLO, Article 82 (3).

154 SrbLO, Article 82 (4).

155 SrbLO, Article 82 (5).

156 SrbLO, Article 83 (1).

157 SrbLO, Article 83 (2).

158 SrbCPA, Articles 27 and 32–37.

159 SrbCPA, Article 107.

160 SrbCPA, Articles 122–125.

161 Law on the Protection of Clients of Financial Service, Article 12.

162 HrvLO, Articles 360–368.

rules on the cessation of the contract by the expiry of its duration and the rules on the unilateral termination of an obligational relationship with continuous performance (*otkaz trajnog obveznog odnosa*) are verbatim the same as in the former federal law, that is as in the SrbLO.¹⁶³ There are no differences concerning the rules on forfeit money (*odustatnina*) either.¹⁶⁴

The Croatian Consumer Protection Act also enables consumers to withdraw from a contract concluded at a distance or off-premises within 14 days from the delivery of the goods (*pravo na jednostrani raskid ugovora*).¹⁶⁵ The consumer may not incur costs in relation to the exercise of the right of withdrawal, except the direct costs of returning the goods, if the trader did not agree to bear them, provided he or she notified the consumer that in case of withdrawal the consumer bears the costs of returning the goods.¹⁶⁶ Similarly, the consumer may withdraw from a distance contract for financial services¹⁶⁷ and time-sharing contracts.¹⁶⁸ A special Law on Consumer Credit also enables the consumer to withdraw from a credit/loan contract.¹⁶⁹ Finally, the Law on the Provision of Services in Tourism envisages the right of the consumer, or traveler to withdraw from a travel package contract.¹⁷⁰

6.3. Slovenia

The Slovenian law has not departed from the rules of the former federal law on the repudiation of the contract because of non-performance (*prenehanje pogodbe zaradi neizpolnitve*) either.¹⁷¹ The rules on the effect of the expiry of the duration of a contract with continuous performance, and the right of the parties to terminate it unilaterally (*odpoved trajnega dolžniškega razmerja*), are also literally the same as in the SrbLO.¹⁷² Likewise, there are no discrepancies between the laws of Slovenia and Serbia regarding forfeit money (*odstopnina*) either.¹⁷³

The right to withdraw from consumer contracts is not generally accepted in Slovenian law either: the consumer may withdraw from a contract only if the law so provides.¹⁷⁴ As in the SrbLO and the HrvLO law, the rules of Directive 2011/83/EU on the consumer's right to withdraw from a distance or off-premises contract (*pravico do enostranske odpovedi pogodbe*) have been linearly transposed into Slovenian law. According to the Slovenian Consumer Protection Act, the consumer may withdraw from a distance or off-premises contract without indicating any reasons in 14 days

163 HrvLO, Articles 211–212.

164 HrvLO, Articles 306–307.

165 See Miščenić, 2019, p. 270.

166 HrvCPA, Article 79 (1), Article 84 (4).

167 HrvCPA, Article 95.

168 HrvCPA, Article 108 (1).

169 Croatian Law on Consumer Credits, Article 14.

170 Law on the Provision of Services in Tourism, Article 37.

171 SvnCO, Articles 103–111.

172 SvnCO, Articles 332–333.

173 SvnCO, Articles 67–68.

174 Možina in Možina and Vlahek, 2019, p. 68.

from the day of the delivery of the goods. Doing so, the consumer may incur only the costs of returning the goods to the trader, except if the trader declared that these costs shall be borne by him. The condition of the consumer's duty to bear the costs of returning the goods is that the trader notified him or her in due time that these costs are to be borne by him or her.¹⁷⁵ Similarly, the consumer may withdraw from an installment sales contract, life insurance contract and travel package contract.¹⁷⁶ Finally, the Law on Consumer Credits also envisages the right of the consumer to withdraw from a credit (loan) contract without indicating any reason.¹⁷⁷

7. Slovakia

7.1. Overview

Slovak law generally recognizes three basic tools for a party to unilaterally end an ongoing contractual relationship *sine satisfactione creditoris*, i.e., in another way than by the performance of the obligation or a manner substituting for performance. These instruments are termination by a notice (*výpoveď*), withdrawal (*odstúpenie*), and a severance payment (*zaplatenie odstúpeného*).

7.2. Termination of the contract by a notice

As regards termination of the contract by a notice, it is the means by which the duration of a contractual relationship, the subject matter of which is an obligation to act continuously or repeatedly, or an obligation to refrain from or to tolerate a certain action, may be terminated. Termination of contracts whose subject matter is constituted by other types of obligations – i.e., obligations for a one-off activity – is generally not provided for in Slovak law.

In terms of the conditions for termination, a distinction must be made as to whether the contract is concluded for an indefinite duration or for a definite duration.

If the contract is concluded for an indefinite duration, any such contract may, in principle, be terminated within a period of three months, at the end of a calendar quarter.¹⁷⁸ The only general exception to this rule is the case of an obligation to refrain from a certain activity where the nature of the obligation or the contract implies that the obligation is unlimited in time (e.g., an obligation of confidentiality); such termination is legally ineffective according to § 582 (2) of the SvkCC. The provision of § 582 of the SvkCC applies in both non-commercial and commercial relationships.

The law provides for a different length of notice in some cases, e.g., in the case of the lease of movables, the notice period is one month.¹⁷⁹ The parties themselves may

175 SvnCPA, Article 43č (1) and Article 43d (7).

176 SvnCPA, Article 53a, 48č and 57f (1) and (2). See in more details Možina in Možina and Vlahček, 2019, p. 69.

177 Slovenian Law on Consumer Credits, Article 18.

178 SvkCC, § 582 (1).

179 SvkCC, § 677 (2).

also agree on a different length of the notice period or on a different moment of its expiry. However, they cannot agree on the exclusion of termination of the contract by a notice. In this respect, the literature considers § 582 (1) of the SvKCC as mandatory.¹⁸⁰ Therefore, it cannot be validly circumvented by, for example, entering into a contract for a fixed term of 100 years. If the purpose of such a long contract term was to circumvent § 582 (1) of the SvKCC, then the agreement on such a contract term is invalid under § 39 of the SvKCC for circumvention of the law.

The cited § 582 (1) of the SvKCC does not require a justification for the termination. This means that a contract concluded for an indefinite period can be terminated even without stating a reason. Exceptions are special cases, such as the lease of an apartment, where even an open-ended contract (i.e., contract concluded for an indefinite duration) can only be terminated for statutory reasons.¹⁸¹

In contrast, in the case of a fixed term contract (i.e., a contract concluded for a definite duration), the law does not generally recognize the possibility to terminate such a contract. However, in some specific cases, the law does allow it, such as in the case of a contract for the lease of an apartment.¹⁸² However, it is not excluded that the parties themselves agree on the possibility of such termination.¹⁸³ However, contractual autonomy may be limited in this respect by mandatory provisions of the law. For example, according to § 685 (1) of the SvKCC, the list of grounds for termination of the apartment lease agreement is exhaustive and cannot be expanded by agreement.

As regards the effects of the termination, in principle it operates *ex nunc, pro futuro*. Upon expiry of the notice period, the contractual relationship shall end without the need to settle the benefits provided before the end of the contractual relationship.

7.3. Withdrawal from the contract

Pursuant to § 48 of the SvKCC '[a] party may withdraw from a contract only if this or another law so provides, or the parties have agreed.' Similarly, according to § 344 of the SvKCommC 'The contract may be withdrawn from only in cases provided for in the contract or in this or another law.' It follows from these provisions that if the right to withdraw from the contract is neither provided for by law nor by agreement, then the contract cannot be withdrawn from.

7.4. The law provides for the possibility of withdrawal in several places.

In many cases, this possibility is linked to a breach of contract. For example, according to § 517 (1) of the SvKCC, if the debtor 'fails to fulfill his overdue debt even within an additional reasonable period of time granted by the creditor, the creditor shall have the right to withdraw from the contract.' A similar regulation applies in commercial relations. Under the SvKCommC, if the breach of contract is minor, the other party

180 Sedlačko, 2019; Fekete, 2018.

181 SvKCC, § 685 (1) and § 711.

182 SvKCC, § 711.

183 Sedlačko, 2019.

may withdraw from the contract after the expiry of a reasonable additional period for remedying the breach,¹⁸⁴ if the breach is material, the party may withdraw from the contract immediately.¹⁸⁵

In commercial relations, the SvkCommC allows withdrawal from a contract before its breach in cases of anticipatory breach, i.e., where the debtor declares that he or she will not perform the contract, or where the debtor's conduct or other circumstances show beyond doubt that he or she will breach the contract in a material manner and the debtor fails to provide sufficient security on demand without undue delay.¹⁸⁶

In other cases, the possibility of withdrawal is linked to facts other than the breach of contract. For example, if the price of the work (*dielo*) determined according to the budget is to be changed, the customer may withdraw from the contract.¹⁸⁷

Finally, in some cases the right to withdraw from the contract is not limited by anything. For example, the customer may withdraw from the contract for works (*zmluva o dielo*) until the works are completed,¹⁸⁸ similarly, in a contract for the acquisition of an object, the client may withdraw from the contract until the object is acquired.¹⁸⁹ Or the consumer in the case of a distance or off-premises contract may withdraw from the contract within 14 days from the receipt of the goods or from the conclusion of the contract.¹⁹⁰

With regard to contractually agreed cases of withdrawal from the contract, it can be concluded from the provisions of the SvkCC that it is not possible to agree on withdrawal from the contract without stating a reason, except if such withdrawal is conditional on the payment of a severance payment.¹⁹¹ The impossibility to agree on withdrawal without giving a reason can also be inferred for commercial relations from the wording of § 344 of the SvkCommC, which presupposes that the contract will contain an indication of the cases in which it can be withdrawn from.¹⁹²

As regards the effects of withdrawal, in non-commercial relations '[w]ithdrawal from a contract terminates the contract from the outset, unless otherwise provided by law or agreed by the parties.'¹⁹³ Withdrawal thus has *ex tunc* effects. However, the parties may agree otherwise. Conversely, in commercial relations '[a] contract is terminated by withdrawal when, in accordance with this Act, the expression of the intention of the party entitled to withdraw from the contract is delivered to the other party.'¹⁹⁴ In commercial relations, therefore, termination operates *ex nunc*. However,

184 SvkCommC, § 346.

185 SvkCommC, § 345.

186 SvkCommC, § 348.

187 SvkCC, § 635 (3).

188 SvkCC, § 642 (2).

189 SvkCC, § 735.

190 Act No. 102/2014 Coll., § 7.

191 SvkCC, § 497; Fekete, 2018.

192 According to Ďurana, 2016.

193 SvkCC, § 48 (2).

194 SvkCommC, § 349 (1).

the parties may agree otherwise.¹⁹⁵ In both cases, however, the parties are obliged to reimburse each other for the performance provided by the other party.¹⁹⁶ The difference in effects is therefore not that significant.¹⁹⁷

7.5. *Payment of severance pay*

In both commercial and non-commercial relationships, it can be contractually agreed that the contract is terminated by the rendering of a severance payment.¹⁹⁸ In neither case, however, can a party cancel a contract by payment of a severance payment if it has already fulfilled even part of its obligation or has accepted even part of the other party's performance.

8. Concluding remarks

We may observe convergence in cases where national legislations permit the unilateral termination of the contract. The classification given in the introduction of the present chapter seems valid in all analyzed jurisdictions (termination of contracts concluded for an indefinite period; legal right to unilateral termination not conditioned to a breach of contract; legal right to unilateral termination not conditioned to a breach of contract; contractual right to terminate the contract, in many cases for a consideration (forfeit money)). However, there are conceptual and terminological differences as well.

For example, in Hungary, *cancellation* has the consequence of terminating the contract with retroactive effects, while *unilateral termination* produces similar results, but only for the future. If we analyze Romanian legislation, we can observe that the case seems similar: *resolution* ends the contract *ex tunc*, or *ex nunc* as the case may be, according to the way on which the obligation must be discharged (at once, continuously, or periodically). Still, we cannot establish an equivalence between these notions because the terms used in Romania are specific only for breach of contract, as particular sanctions. Cancellation and unilateral termination in Hungarian law refer to a broader concept: they cover the cases where a breach of contract exists, but they cover also the cases where the right to put an end to the contract derives from the law or from a contractual clause, approaching the problem from the point of view of legal consequences, not causes. Romanian legal terminology for example uses terms like (unilateral) revocation of the contract, when this right originates in law, or (unilateral) denunciation of the contract, drawing a terminological boundary between these cases, based on the cause which serves as a ground for ending the contract. Both approaches are perfectly legitimate. Similar or other fundamental and

195 Ovečková, 2017.

196 SvkCC, § 457; SvkCommC, § 351 (1).

197 According to Trojčáková, 2019.

198 SvkCC, § 497; SvkCommC, § 355.

terminological issues can be raised in almost all cases. At this stage of the comparative research of contract law in East and Central Europe, we have decided to keep the English terminology which became common in every jurisdiction to designate the different forms of unilateral termination of contracts, although we are aware of the urgent need of a revision of the terminology used and the creation of common terminology in the future, which allows the use of English as a common intermediary legal language in this region.

Another topic worthy of comparative analysis refers to the actual conditions required to end a contract in case of breach. It is common that not any breach of contract forms a sufficient ground for termination (for example, the Czech law uses the notion of fundamental breach of contract, while the Hungarian legal system conditions unilateral termination to the cessation of the creditor's interest in performance, with the same effect while stating that a minor breach of contract does not justify cancellation or unilateral termination of the contract). Serbian legislation requires that the non-performance or defective performance must affect an essential element of the contract, and in this context, the moment of performance is not perceived as an essential element in general. Termination in Serbia is not allowed when it refers to a negligible portion of the obligation.

There are legal systems (such as the Czech Republic, Hungary, and Serbia) that permit a preventive termination of contract when there is not yet a breach of contract, but a future breach is imminent. We can call this situation anticipatory breach of contract. In this sense, for example, we can already talk about a delay, even before the contractual deadline. In such cases, the creditor is not obliged to wait until the deadline specified in the contract has elapsed, but may take preventive measures, up to and including unilateral termination of the contract.¹⁹⁹ Obviously, proving a prior breach of contract raises serious problems in practice, and courts must analyze the problem carefully.

It is clear that the legal systems in the region allow for unilateral termination of a contract of an indefinite duration, even if the conditions for exercising this right differ from jurisdiction to jurisdiction (for example, Slovakia has a precise norm, that such contracts may be terminated within a period of three months, at the end of a calendar quarter, while other legislations, such as Romania, require just an adequate preliminary notice period for termination, which shall be considered on a case-by-case basis. The solution offered by Czech law is worth highlighting in this context, which specifically regulates the issue of contracts concluded for an overly extensive definite period, for example, 50 or 100 years. According to the CzeCC, if a contract has been concluded for a definite period without a serious reason in a way that it obliges an individual for his or her entire lifetime, or obliges anyone for more than ten years, extinction of the obligation may be claimed after ten years from its creation. A court shall also extinguish an obligation if the circumstances on which the parties apparently relied when the obligation was created have changed to such an extent

199 Leszkoven, 2018, pp. 158–159.

that the obligor cannot be reasonably required to be further bound by the contract. A similar solution can be achieved in other jurisdictions by invoking a general clause, essentially a breach of good morals, for example, in a contract concluded for an excessively long fixed term.

It is of particular interest that abusive cases of unilateral termination of a contract also occur in the legal systems under examination, where the creditor does not respect the legal or contractual terms prescribed to end the contract unilaterally. In such cases, the contract is not in fact terminated but remains binding because the expression of the unilateral will of the creditor was not sufficient to produce the legal effect of the termination.

References

- Baudouin, J-L and Jobin, P-G and Vézina, N (2013) *Les obligations* 7th, Cowansville (Québec): Éditions Yvon Blais.
- Dolović Bojić, K (2016) *Pravne posledice izjave volje usmerene na raskid ugovora zbog neizvršenja* [Legal Consequences of Declaration of Intention Aimed at the Termination of Contract Due to Failure of Performance], Beograd: Centar za izdvaštvo i informisanje Pravnog fakulteta u Beogradu.
- Đurana, M (2016) ‘Komentár k § 341’ [Commentary on § 341] in Mamojka, M et al. *Obchodný zákonník. Veľký komentár*, Bratislava: Eurokódex (online).
- Fekete, I (2018) *Občiansky zákonník. Veľký komentár* [Civil Code. Great Commentary], Vol. I, 3rd, Bratislava: Eurokódex (online).
- Gniewek, E and Machnikowski, P (eds) (2021) *Kodeks cywilny. Komentarz* [Civil Code. Commentary] 10th, Warszawa: C. H. Beck.
- Gutowski, M (ed.) (2019) *Kodeks cywilny. Komentarz do Art. 353–626* [Civil Code. Commentary to Articles 353–626], Vol. II, 2nd, Warszawa: C. H. Beck.
- Hadamčík, L. (2020) ‘K nepromlčiteľnosti práva vypovedieť záväzok ve svetle rozsudku Nejvyššího soudu’ [Limitation of the Right to Terminate an Obligation in the Light of the Supreme Court’s Judgement], *Právní rozhledy*, Vol. 28, No. 17, pp. 590–594.
- Hiber, D (1995) ‘O pojmu otkaza ugovora sa trajnim izvršenjem, [On the Notion of Termination of Contracts with Continuous Performance], *Pravni život*, Nos. 3–4, pp. 51–71.
- Leszkoven, L (2018) *Szerződészegés a polgári jogban* [Breach of Contract in Civil Law], Budapest: Wolters Kluwer, <https://doi.org/10.55413/9789632958286>.
- Mišćenić, E (2019) *Europsko privatno pravo – opći dio* [European Private Law – General Part], Zagreb: Školska knjiga.
- Možina, D and Vlahek, A (2019) *Contract Law in Slovenia*, Alphen aan den Rijn: Wolters Kluwer.
- Ovečková, O (2017) in Ovečková, O et al. *Obchodný zákonník. Veľký komentár* [Commercial Code. Great Commentary], Vol. II, Bratislava: Wolters Kluwer (online).

- Pajtić, B, Radovanović, S and Dudaš, A (2018) *Obligaciono pravo* [Law of Obligations], Novi Sad: Pravni fakultet u Novom Sadu – Centar za izdavačku delatnost.
- Panfil, K (2018) *Odstąpienie od umowy jako sankcja naruszenia zobowiązania* [Withdrawal from the Contract as a Sanction of Breach of the Obligation], Warszawa: Wolters Kluwer.
- Perović, S (1986) *Obligaciono pravo* [Law of Obligations] 6th, Beograd: Službeni list SFRJ.
- Petrov, J, Výtisk, J, and Beran, V (eds) (2019) *Občanský zákoník. Komentář* [Civil Code. Commentary] 2nd, Praha: C. H. Beck.
- Sedlačko, F (2019) in Števček, M et al. *Občiansky zákonník. Komentár* [Civil Code. Comment], Vol. I, 2nd, Praha: C. H. Beck (online).
- Šilhán, J (2014) ‘§ 1914 (Řádné a vadné plnění)’ [§ 1914 (Proper and Defective Performance)] in Hulmák, M et al. *Občanský zákoník V Závazkové právo. Obecná část (§ 1721–2054)* 1st, Praha: C. H. Beck.
- Trojčáková, V (2019) ‘Ex tunc vs. ex nunc účinek odstúpenia a neplatnosti – naozaj taký veľký rozdiel?’ [*Ex tunc* vs. *ex nunc* Effect of Withdrawal and Invalidity – Is There Really Such a Big Difference?], *Právny obzor*, Vol. 102, No. 2, pp. 131–154.
- Vékás, L (2019) *Szerződési jog. Általános rész* [Contract Law. General Part], Budapest: ELTE Eötvös Kiadó.
- Veress, E (2019b) ‘Gondolatok a szerződés egyoldalú jognyilatkozattal történő megszüntetéséről’ [Thoughts on Termination of Contract by a Unilateral Statement with Legal Effects] in Koltay, A, Landi, B and Menyhárd, A (eds) *Lábady Tamás Emlékkönyv*, Budapest: Wolters Kluwer, pp. 307–324.
- Veress, E (2020) *Drept civil. Teoria generală a obligațiilor* [Civil Law. The General Theory of Obligations] 5th, București: C. H. Beck.