

RIGHT OF WITHDRAWAL ACCORDING TO THE NEW PROPOSAL OF REGULATION ON COMMON EUROPEAN SALES LAW IN COMPARISON WITH THE CZECH CIVIL CODE (CHOSEN QUESTIONS)

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This paper deals with the right of withdrawal according to the Czech Civil Code in comparison with the proposal of Regulation on Common European Sales Law

Keywords: withdrawal, termination, effects of withdrawal, Regulation on Common European Sales Law, Czech Civil Code, consumer

1 Introduction

In this paper we focus on the research of the legal institute of withdrawal. The main starting point for us to explicate the institute of withdrawal will be the legislation according to the proposal of Regulation on Common European Sales Law¹ compared with the Czech Civil Code. It will not be forgotten the fact that it currently is going through the Czech Parliament the proposal of the new Czech Civil Code², which is newly adjusted the Civil Law materia.

Withdrawal from the contract is a shared common European value. It becomes therefore an interesting source of the knowledge of how the various common European legal projects (as PECL, DCFR and the others) grips the right of withdrawal or how the emerging European legislation provides this right. It is particularly also interesting the situation in which the Czech republic (CR) is because of there is process of adopting the new Civil Code. This situation offers the possibility to compare the different approaches of currently discussed draft of the new Civil Code, especially if the newly adopted version responds to developments of this issue at EU level.

The main part of this paper will be fixed on the withdrawal in consumer matters, when the general grounds of the Institute of withdrawal will be limited only to the minimum necessity, especially with regard to the scope of the proposal of Regulation on Common European Sales Law, which will be confronted with Czech legal regulation of this issue.

2. Withdrawal de lege lata according to the Czech civil code

2.1 Right of withdrawal from a contract according to the Czech Civil Code – basis of the legal regulation

„The withdrawal from contract is unilateral, addressed and explicit legal act, which leads to the termination of the contract from the beginning when it is performed according to the law.“³

Withdrawal from the contract as a legal act shall meet certain conditions to ensure that it will be the legal act (conceptual features of a legal act) as well as certain formalities of a legal act to be valid and caused the required legal consequences (the particulars features of the legal act). The conceptual features of the legal acts provided by § 34 of the Civil Code., provides: *„Legal act shall be defined as an expression of will directed in particular to rise, change or extinction of rights or duties connected with such expression by legal regulations.“*⁴

By using analysis of this rule we reach these four conceptual features of a legal act and thus withdrawal from the contract:

1) expression of the will, 2) focus of the expression of the will, 3) recognition of the expression of the will by law, 4) the legal consequences, which the acting person in his expression of the will intended to cause⁴

The fulfillment of these conceptual characters is required to perfection, of the legal act. It is still necessary to distinguish the validity of a legal act, which is based on fulfilling of requirements of the legal act, which are categorized as follows:

1) entity, 2) will, 3) expression, 4) relation between will and its expression, 5) subject⁵

By accomplishing of these requirements is a legal act valid. The withdrawal has to also meet the need that this legal act has to get into the sphere of the addressee of this unilateral legal act, while maintaining the required form of legal act (theory of delivery), to lead to the cancellation of the contract.

Withdrawal from the contract according to § 48 paragraph 1 of the Civil Code allows the application of this institute only in two cases. The first case is the possibility to withdraw from the contract if it is provided by law and the second is the situation when parties of a contract agree with this possibility. A special provided option to withdraw from the contract is necessary to consider also the possibility of withdrawal from the contract concluded in distress and at arm's length⁶. The whole provision of § 48 of the Civil Code serves as a general clause governing this institution of withdrawal in the Czech Civil Code. Institute of withdrawal is adapted very broadly in the Civil Code. There is very poor regulation in connection with the right of withdrawal especially with regard to solving the state caused by resignation, withdrawal effects of treatment, rights and obligations after withdrawal and the other, which in practice raise many doubts and problems. Based on the duality of Czech contract law (Civil and Commercial Code), we have to conclude that modifications of withdrawal contained in the Commercial Code are much more socially desirable and more detailed, although even we can find many doubts in connection with this issue.

2.2 The Right of Withdrawal in the consumer affairs lege lata

„The consumer contracts are not a special type of contract in accordance with EU legislation, the consumer contracts are contracts in which the consumer acts as a person which is not in business position. The provisions of § 52 of the Civil Code requires that the position of either Party performing the contract shall be trader and the consumer, which for these purposes are defined dynamically.“⁷ The definitions of consumer contracts and the notions of consumer and supplier are made precisely in § 52 paragraphs 1 to 3. The first paragraph deals with the rule, that a consumer contract is for example the purchase contract, contract for work, or other contracts, but only if the parties are consumer on one side and the supplier on the other. The second paragraph provides that the contractor is the person who acting within their business or other entrepreneurial activities in the connection with the contract. On the contrary, the consumer is such a natural person who, during conclusion of the contract and performance, is not acting within his business or other

¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Common European Sales Law, COM(2011) 635 final, page nr. 19, point 26; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>

² The proposal of the new Czech Civil Code, accessible from:

<http://obcanskyzakonik.justice.cz/cz/uvodni-stranka.html>

³ Jiří Mikeš, Jiří Švestka. Odstoupení od smlouvy ve vztahu ke kupní smlouvě o převodu nemovitosti. *Právní rozhledy* 7/2000, s. 284 – Translation: Withdrawal from contract in relation with purchase contract about transfer of real property

⁴ the same in Jan Hurdík, Josef Fiala, Milana Hrušáková. *Úvod do soukromého práva*. 3. nezměn. vyd., Brno : Masarykova univerzita, 2006, str. 151 – Translation: Introduction into the private law

⁵ again page Nr. 152

⁶ § 49 Czech CC

⁷ Fiala, J. a kol., *Občanské právo*. Praha: ASPI, a.s., 2006, str. 186 – Translation: Civil law

entrepreneurial activity. The Consumer can be an individual entrepreneur.

Withdrawal from consumer contracts is unique thanks to the fact that the consumer may withdraw from the contract, if permitted by law as a way to his advantage, or for breach of contractor's obligations. Basically at the same time, the consumer is not obliged to indicate the reason for withdrawal. In contrast, the possibility to withdraw from the contract for the supplier is greatly reduced. Withdrawal from the contract in the consumer relations thus showing differences compared to the general conditions for the withdrawal, particularly in terms of consumer advantage, which is justified by its weaker position (the function of protecting the weaker contracting party).

The general rules governing consumer contracts are involved in the provisions of § 55 and 56 of the Civil Code. Contractual arrangements can not derogate advantages given by the law to the consumer, it means that these mandatory rules can not be changed to consumer disadvantage. Arrangement as a benefit of consumers, which goes beyond the law, is allowed. The important one rule is also the modification of interpretation of consumer contracts. Section 55, paragraph 3 of the Civil Code provides that: "In case of doubts about the meaning of consumer contracts the interpretation favorable to the consumer prevail."⁸ The wording favorable to the consumers, however, does not correspond to the Council Directive 93/13/EEC from 5 April 1993, which in its Article No. 5 uses the term most favorable to the consumer⁹. It is therefore a possible conflict with the Directive. This probable conflict should be resolved by interpretation. The national law should be interpreted in harmony with the decisions of the Court¹⁰ according to the ECJ¹¹ case law. Therefore, this provision should be interpreted as the most favorable as possible for consumers. But the Consumer protection can not reach such an extent to make impossible the free determination of subject matter (performance) of the contract and price for services or goods. This would be in direct contradiction with the essence of the performance of business activities or other trading activities, but also unduly restrict the contractual autonomy of the parties. Therefore, § 56, paragraph 2 of the Civil Code provides that the provisions of § 56 paragraph 1 of the Civil Code does not apply to contractual agreements, which define the subject of the contract or the price of performance.

Directive of the European Parliament and Council 97/7/EC of 20 May 1997 regulates the protection of consumers in respect of distance sales contracts. This amendment responds to the development of new modern way of communication. The Directive in its Article 6 establishes the right of withdrawal, providing: "For any distance contract the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods."¹² The transposition into the Czech legal order is made in § 53 of the Civil Code, where paragraph 7 states: "If the contract is concluded by using distance communication, the consumer has the right to withdraw within 14 days from overtake (acceptance) of the performance without giving any reasons and without any penalties. In the event that the contractor did not submit information to the consumer, which is required to be submitted in writing or other similar manner in accordance with paragraphs 4 and 6, is the deadline for withdrawal 3 months after the acceptance of performance. However, if the information is properly submitted during longer period, than the 14 days period begins to run." We can see that the transposition into the

Czech legal system is more favorable to consumers than the minimum standard by the Directive requires. Firstly, by being granted a longer period than seven days¹³, and secondly by the fact that for providing services the Czech law is distinguished between a different beginning of the period for withdrawal. The Directive provides the beginning of the period for exercising the right from the time the contract was concluded, while the Czech Civil Code from take-over of performance. This is valid also for applying the "extended" three-month period in the event of a breach of information duties. The withdrawal is in some cases impossible, unless otherwise expressly agreed¹⁴. If the withdrawal occurs according to § 53 paragraph 7 of the Civil Code, then a mutual obligation of restitution arises. The general provisions for restitution duty are covered by § 457 of the Civil Code¹⁵. The restitution obligation in connection with the right of withdrawal from distance contract is being modified by § 53 paragraph 10 of the Civil Code, which states: "If the consumer exercises the right of withdrawal pursuant to paragraph 7, the Contractor is entitled only to reimbursement of actual costs associated with returning the goods. The supplier is also obliged to return the amounts paid by the consumer within 30 days of withdrawal." This is a transposition of Article 6, paragraph 2 of the Directive of the European Parliament and Council Directive 97/7/EC¹⁶.

Another possible way how to negotiate a contract is a contract negotiated away from business premises. Such a negotiated contract is quite often connected with abuse of a lack of time, which can lead to irrational consumer purchases. Council Directive 85/577/EEC dated 20 December 1985 brought a fundamental revision of this issue. Czech legislator implemented the directive in § 57 of the Civil Code. The transposition of the Directive into the Czech law has brought a higher level of protection for consumers than is required by the Directive. It was chosen a longer period for withdrawal - the consumer can withdraw from the contract in writing within 14 days after its conclusion (Directive requires a minimum of 7 days from fulfillment of the obligation to inform consumers in writing about the right of withdrawal)¹⁷. If, however, supplier has not yet fulfilled the supply of goods or services, then the consumer may withdraw from the contract without giving reasons and without any penalty up to 1 month. If the consumer has expressly arranged the visit of the supplier to order something, then the consumer cannot exercise the right of withdrawal which is given to him in connection with the conclusion of the contract negotiated away from business premises. The supplier must also notify the consumer in writing about the right to withdraw from the contract not later than when contract was concluded. The written notice must include designation of the person by which the right can be exercise, including the residence or domicile of such person¹⁸. The transposition into the Czech law is better for the consumer because of the fact that if the information obligation about the right to withdraw is not observed by the trader, then the consumer has the right to withdraw from the contract within one year after its conclusion. Council Directive 85/577/EEC only requires: "Member States shall ensure that their national legislation lays down appropriate consumer protection measures in cases where the information referred to in this Article is not supplied."¹⁹ The consumer protection in connection with contracts negotiated away from business premises is excluded for some cases.²⁰

⁸ See also s § 35 Czech CC. Rules for interpretation

⁹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [online]. [20.1.2012]. accessible from: <<http://eur-lex.europa.eu>> ,...Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail...."

¹⁰ If the national law leads to more possible interpretations, then it is necessary to use that interpretation which responds to the aim intended by the Directive; judgement of ECJ C-106/89 [online]. [14.1.2012]. accessible from: <<http://eur-lex.europa.eu>>

¹¹ European court of justice

¹² Ar. Nr. 6 par. 1 Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts

¹³ in the each EU Member State we can find different periods, compare: Hans Schulte-Nölke and Andreas Börger. Accessible from: <http://www.eu-consumer-law.org/consumerstudy_part2e_en.pdf> [online]. [21.1.2012]. page 54 etc.

¹⁴ § 53 paragraph 8 Czech CC

¹⁵ Part about unjustified enrichment

¹⁶ „Where the right of withdrawal has been exercised by the consumer pursuant to this Article, the supplier shall be obliged to reimburse the sums paid by the consumer free of charge. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods. Such reimbursement must be carried out as soon as possible and in any case within 30 days.“

¹⁷ Ar. 4 and 5 Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises [online]. [20.1.2010]. accessible from: <<http://eur-lex.europa.eu>>

¹⁸ § 57 par. 2 Czech CC. Information duty raised from Ar. 4 Directive 85/577/EEC

¹⁹ Ar. 4 Directive 85/577/EEC in fine

²⁰ § 57 par. 4 Czech CC

With regard to the aim of this paper, we will not further discuss the concept of the institute of withdrawal affecting: 1) the sale of goods in store, 2) distance contracts for financial services 3) time-sharing, 4) travel contracts, although these legal areas are also important and interesting especially in the field of consumer protection.

3. Withdrawal according to the new proposal of regulation on Common European Sales Law

The proposal of Regulation on Common European Sales Law responds to a very long solved question about changes in the consumer Acquis. This question was solved for a long time and the proposal is the output in the form of legislative action as the contribution to solve the problems connected especially with the cross-border sale. The cross-border sale is today complicated for traders and consumers. The legislation is nowadays confusing, different and bringing a high level of uncertainty and increased costs to overcome these shortcomings due to fragmentation of legislation, directives and national rules. The new proposal is thereby preventing the free movement of goods and related services. Participants will be able to opt (choose) the rules contained in this regulation. It means that the regulation will be not generally binding but gives the freedom to the parties to choose whether to use the proposal and will be bound by it or not. The choice of option to use the regulation or not is like a bridge to overcome problems connected with opinions of many members states of EU about common European set of rules in the field of private law. Many members states are sensitive about intervention into their Civil Codes or other rules in the field of private law due to their long legal tradition and regard to the fact that national legislation in these countries is understood as a cultural value.

The rules according to the Common European Sales Law provide the matters of contract law that are of practical relevance during the life cycle of the types of contracts falling within the material and personal scope, particularly those entered into online. Apart from the rights and obligations of the parties and the remedies for non-performance, the Common European Sales Law should therefore govern pre-contractual information duties, the conclusion of a contract including formal requirements, the right of withdrawal and its consequences, avoidance of the contract resulting from a mistake, fraud, threats or unfair exploitation and the consequences of such avoidance, interpretation, the contents and effects of a contract, the assessment and consequences of unfairness of contract terms, restitution after avoidance and termination and the prescription and preclusion of rights. It should settle the sanctions available in case of the breach of all the obligations and duties arising under its application.²¹ The right to withdraw from the contract concluded between the trader and the consumer as distance contract or away from business premises is covered mainly in Chapter 4 of the draft regulation.

3.1 Withdrawal according to the proposal of regulation on Common European Sales Law

Proposal of the regulation in great detail regulates the right to withdraw from the contract concluded between the trader and the consumer at a distance or away from business premises in its Chapter No. 4, Article 40 and followings. These rules are unilateral mandatory (can not worsen the position of consumers, but it is possible to favor him beyond the proposal of the regulation). The proposal of the directive also covers provisions on information duties, which affect also the obligation to inform the consumer about the right of withdrawal and the manner of its exercise, both before the conclusion of the contract itself^{22 23} and

then the proposal also covers additional disclosure requirements and confirmation. The article 18, paragraph 2 provides that if the consumer requests to start the providing of services related to goods and delivery during the period for withdrawal referred to in Article 42, paragraph 2, the trader owes the duty to ask the consumer to submit the application on durable medium. This obligation applies to both Contracts concluded away from business premises as well as the Distance Selling (contracts). If the trader fails to provide such information in accordance with the proposal, then such a breach has negative consequences, for example, if the trader does not inform the consumer about the right of withdrawal under Article 17, paragraph 1, the deadline for withdrawal expires one year after the end of original deadline for withdrawal or if the trader provides required information to the consumer within one year after the original deadline for withdrawal, then the withdrawal period expires after fourteen days from the date after the date when consumer receives required information.

Within the period of 14 days from over-take of goods²⁴ the consumer has the right, without giving any reasons and without incurring any costs have been charged (unless explicitly stated otherwise), the right to withdraw from distance contracts or contracts negotiated away from business premises, if the contract price exceeds 50 EUR or equivalent amount in the currency, which was negotiated for the contract price at the time of conclusion. This right shall not apply in the case of contracts using vending machines or automated commercial premises, contracts for the supply of food, beverages and other goods intended for current consumption in the household and the trader is physically delivered to the consumer's home, place of residence or to his workplace through frequent and regular supplies, contracts for the supply of goods or related services whose price depends on fluctuations in the financial market, which the trader cannot control and which may occur within the period for withdrawal, contracts for delivery of goods or digital content, which were created according to the consumer's requirements or adapted to his personal needs or goods, which is perishable or has a short period of time for consumption and others, see Article 40, paragraph 2 and 3 of the proposal of regulation. Withdrawal from the contract leads to termination of obligations of both parties according to the contract in connection with fulfillment of the contract or in connection with the duty to conclude the contract where the consumer has made an offer. These generally provided effects are modified by an accurate determination of modified rights and obligations of both the parties (trader and consumer) in case of withdrawal, those rights and responsibilities are laid down in Articles 44 and 45 of the proposal of regulation.

3.2 Obligations of the trader and the consumer in the event of withdrawal²⁵

The trader must reimburse all payments received from the consumer, including, where applicable, the costs of delivery without undue delay and in any event not later than fourteen days from the day on which the trader is informed of the consumer's decision to withdraw from the contract. The trader must carry out such reimbursement using the same means of payment as the consumer used for the initial transaction, unless the consumer has expressly agreed otherwise and provided that the consumer does not incur any fees as a result of such reimbursement. The trader is not 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. In the case of a contract for the sale of goods, the trader may withhold the reimbursement until it has received the goods back, or the consumer has supplied evidence of having sent back the goods, whichever is earlier, unless the trader has offered to collect the goods. In the case of an off-premises contract where the goods have been delivered to the consumer's home at the time of the conclusion of the

²¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Common European Sales Law, COM(2011) 635 final, page nr. 19, point 26; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:EN:PDF>

²² Ar. 13 par. 1 e) the rights of withdrawal, in accordance with Article 17; the proposal of Regulation on Common European Sales Law

²³ Ar. 17; the proposal of Regulation on Common European Sales Law

²⁴ Details are provided by Ar. 42; the proposal of Regulation on Common European Sales Law

²⁵ the proposal of Regulation on Common European Sales Law

contract, the trader must collect the goods at its own cost if the goods by their nature cannot be normally returned by post.

The consumer must send back the goods or hand them over to the trader or to a person authorised by the trader without undue delay and in any event not later than fourteen days from the day on which the consumer communicates the decision to withdraw from the contract to the trader, unless the trader has offered to collect the goods. This deadline is met if the consumer sends back the goods before the period of fourteen days has expired. The consumer must bear the direct costs of returning the goods, unless the trader has agreed to bear those costs or the trader failed to inform the consumer that the consumer has to bear them. The consumer is liable for any diminished value of the goods only where that results from handling of the goods in any way other than what is necessary to establish the nature, characteristics and functioning of the goods. The consumer is not liable for diminished value where the trader has not provided all the information about the right to withdraw. The consumer is not liable to pay any compensation for the use of the goods during the withdrawal period. Where the consumer exercises the right of withdrawal after having made an express request for the provision of related services to begin during the withdrawal period, the consumer must pay to the trader an amount which is in proportion to what has been provided before the consumer exercised the right of withdrawal, in comparison with the full coverage of the contract. The proportionate amount to be paid by the consumer to the trader must be calculated on the basis of the total price agreed in the contract. Where the total price is excessive, the proportionate amount must be calculated on the basis of the market value of what has been provided.

The consumer is not liable for the cost for:

(a) the provision of related services, in full or in part, during the withdrawal period, where: the trader has failed to provide information in accordance with Article 17(1) and or the consumer has not expressly requested performance to begin during the withdrawal period in accordance with Article 18(2) and Article 19(6);

(b) for the supply, in full or in part, of digital content which is not supplied on a tangible medium where: the consumer has not given prior express consent for the supply of digital content to begin before the end of the period of withdrawal referred to in Article 42(1); the consumer has not acknowledged losing the right of withdrawal when giving the consent; or the trader has failed to provide the confirmation in accordance with Article 18(1) and Article 19(5).

The consumer does not incur any liability through the exercise of the right of withdrawal. It should be noted that Article 85 provides terms and conditions, which are presumed to be unreasonable and therefore invalid. We will show here only those that operate with the concept of withdrawal. The unreasonable terms are such terms that f.e. allow the trader to withdraw from the agreement based on the free discretion, if the same right is not reserved also to the consumer. Another one unreasonable term is the possibility that the trader may withdraw from the contract without restoration of the amount paid by consumer for services, which still has not been provided or such terms which provides that the price of goods, digital content and related services will be determined at the time of supply or provide, or terms allow the trader to increase the price without providing the consumer with the right to withdraw from the contract if the increased price is too high in relation to the price agreed when the contract was concluded. It does not apply to price-indexation clauses, if it complies with the law, provided that the method by which prices vary is explicitly described.

4. CONCLUSION: SUMMARY COMPARISON OF WITHDRAWAL FROM THE contract (CZECH CIVIL CODE – DRAFT of the NEW CIVIL CODE – DRAFT of Regulation on Common European Sales Law)

The existing consumer Acquis is widely incoherent and many guidelines cause some problems in the field of implementation into the national law systems. Another aspect is the fact that in the current situation is chosen minimum level of consumer protection on national level, which leads to significant differences in the legal systems of the Member States. This differences cause considerable problems to the traders, for whom it is difficult to observe legislation of all the Member States if they want to supply goods or services in the territory of another Member State and it is also difficult for the consumer who can feel threatened to conclude the contract with a foreign entity, without certainty about his rights. These problems, but also the others led to a review of the consumer Acquis. The Right of withdrawal has important position in the system of private law. However, the Directives itself do not exactly stated the exercise of the right of withdrawal and leave the specific solution of this question on the national level. This further strengthens the fragmentation of approaches and leads to a reduction of the single market. There are also important fragmentation and small interconnection of particular directives, which are leading (in some cases) to non-conceptual solutions. Moreover, under the influence of fragmentation of this issue in many directives we find legal conception in the Czech Civil Code, as chaotic and very confusing, which attenuates the primary purpose of these rules, which is consumer protection, as the weaker party of a contract.

The new draft of Czech Civil Code brings a lot of improvements and reacts to some questionable parts of the current applicable legislation. The improvements include mainly the effects of withdrawal, where the socially more appropriate regulation covered in the Commercial Code was used as basis for the New CC. However, we do not understand the intention, why the effects of withdrawal were stated again *ex tunc* (as in the current CC). However, it is true that the subsequent modification of these effects makes this issue no so important, but some doubts in connection in this regard remain. At least the question arises: why the law shall pretend that the legal relationship is invalid from the beginning, when it in fact was valid and according to it the obligation was perhaps fulfilled. Setting down the effects of withdrawal *ex nunc* is more appropriate and better meets the needs and interests of the parties, but also promotes legal certainty of course with observation of the possibility that the parties can negotiate other solution. Further positive aspect is that the proposal of new CC solved the situation that some guidelines have been not implemented in harmony with EU law, f.e. preservation of the withdrawal period (in consumer relations), if the act of withdrawal was sent before the expiry date, but not been delivered. We can see the birth of a general regulation of consumer relationships in the new proposal of CC, but under the influence of knowledge about the solution according to the draft regulations on the sale of goods, which is detailed, it can be said that this opportunity has not been fully exploited, especially with regard to the general information duties of trader in relation with the consumer or the general provisions governing the right to withdraw from the contract that governs the particular consequences (rights and obligations) after withdrawal. We consider the mutual obligation of restitution, respectively obligation to return the performance as the most controversial result in connection with the withdrawal. The draft of the new CC solved this issue again (such as the current state *lege lata*) under the provisions of unjustified enrichment (with minor modifications for consumer relations). In our opinion the withdrawal thanks to its specific characteristic and differences deserves a specific regulation which will adopt its differences.

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