THOUGHTS ABOUT THE CONTRACT law IN COMPARISON OF HUNGARIAN AND CANADIAN LAW

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Abstract

It is widely known that Hungarian and Canadian legal systems differ from each other in many ways, but people are generally not aware of the fact that there are striking similarities as well that can be derived from the development of ancient culture and traditions. Our research is seeking for answers to certain questions regarding different aspects of managing contracts – the creation, performance, amendment, and the termination. What can even be called a contract in Hungary and in Canada? What are the most common types of contracts in these countries? What are the governing rules and principles of the creation, performance, and termination of the agreements? The cultural differences and similarities affect the different stages of contracts even more than we might think.

Keywords: *Hungarian and Canadian legal systems, managing contracts, cultural differences,and similarities.*

Introduction

We are writing our article on cultural specialties of managing contracts and agreements with Hungarian firms compared to Canadian ones.

First, we would like to identify the questions arising in connection with this topic. It is possible to identify three different stages of the 'lives' of contracts, being the first one is the creation. The second stage is the performance and amendment of contracts. While the last stage is their termination. In our article we are going to follow this common 'route' of the contracts and introduce the Hungarian and Canadian specialties of these phases.

Our aim is also to answer the question that even what is the definition of a contract in Canada and in Hungary? What are the most common types of contracts in the two countries from a civil law perspective? How is a binding contract (or agreement) made in Hungary and in Canada between the parties, what are the possible forms of agreements? Also, what are the governing rules regarding the creation of a contract. Naturally, the cultural differences between the two countries, Hungary, and Canada that in some ways affect the creation, performance, amendment, and termination of agreements in these countries.

To answer the above questions - and mainly the question that how a contract is made in Hungary and in Canada - we must take into consideration the simple fact that the cultural background of the two countries is pretty much different. Therefore, their legal systems have always been different as well.

The Hungarian legal system is based on the continental Roman-law (*ius Quiritium*) tradition which originates from the fifth century before Christ and its first appearance was the so called Twelve Tables

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(*Lex duodecim tabularum*). Then, this tradition was further developed by the Justinian codification and finally took its shape by the editor Dionysius Gothofredus in the so-called work Corpus Iuris Civilis in 1583 in Geneva. It is possible to categorize the survival of the Roman Law on different regions of Europe and the world. The first category is its continuous survival, while the second is the rebirth of the Roman Law, and the third is its so-called reception.

The Roman-law – and the many legal institutions of the Roman public law – is connected to the law in force, in which not only it lives further but it is determined by it as well. It is particularly true for Europe, which is going through unification, as the basis of the European Law is the Roman Law itself, which - according to the statement of *Theodor Heuss* [1]– forms one of the three tiers of European culture besides the Bible and Greek philosophy.

The civil law of the Hungarian legal system – that is nowadays – have been affected and therefore shaped by different continental legal instruments, e.g. the French Code Civil of 1804, which is the most significant of the French codes. It contained the principle of equality of rights and, among other things, abolished the special rights of the orders. Its central issue was the sanctity of property. With its principles of freedom of contract and will, it dynamized the hitherto static concept of property. It consists of 2281 sections, an introduction and three books. A long-standing, modern-day code is still in force in France, but also in other areas (e.g., Quebec, Canada, or Louisiana, USA), and the case law has been successfully developed so that a comprehensive revision has proved unnecessary to this day.

The survival of the Roman Law is also embodied by the German BGB (*Bürgerlisches Gesetzbuch*) 1900 or the Austrian ABGB (*Allgemeines bürgerlisches Gesetzbuch*) published after forty years of preparation in 1811, which is purely an act on private law and does not contain any public law elements.

The Hungarian civil law literature was therefore built on the above antecedents when for example the draft of the old Hungarian Civil Code (Act IV of 1959) entered into force – the provisions of which are not effective today, and when its amendment was enacted – Act V of 2013 on the Civil Code – as well.

While, the Canadian legal system was shaped by the scheme of the Common Law, except for Québec, which – being the only one having this kind of quality - has its own civil code.

The province of Quebec was ceded to Great Britain by France in 1763, but the law previously in force - that had been built on *Coutume de Paris* - was still applied in its territory. The so-called Code civil de la province de Québec (its original, official name was *Civil Code of Law Canada*) entered into force in 1866. The model of its first three books was the French *Code Civil*. The fourth book of the Code deserves special attention because at that time it was still a rare exception to regulate civil and commercial law in a single code. The drafters of the Civil Code relied more heavily on the tradition of the *Coutume de Paris* and the works of a lawyer, *Robert-Joseph Pothier* than the editors of the Code

[1] Theodor Heuss, was a liberal democratic legislator, first president of West Germany, author, and leader of the Free Democratic Party. He also helped draft a new constitution for postwar West Germany. After receiving a political science degree from the University of Munich (1905), Heuss was an editor on several newspapers and taught at the Hochschule für Politik in Berlin.
https://www.britannica.com/biography/Theodor-Heuss (Date of access: 20.11.2021).

Civil, but the common law tradition also left its marks on the Code. After nearly four decades of preparations, the new Civil Code (Code civil de Québec), entered into force in 1994. The Code civil of Québec consists of ten books and essentially preserves the continental traditions rooted in Roman Law. The fifth book of the Codex on obligations contains both the contracts of the territory of civil law and commercial law.[2]

The creation of an agreement in Hungary and Canada

Naturally, other basic principles of law – for instance Principle of good faith and fair dealing; Principle of generally expected standard of conduct; and Prohibition of abuse of rights also need to be taken into consideration and obeyed both during the contract negotiations and after it. It is important to note that only a lawful aim of the contract may be considered valid.

What are the most common types of contracts in the two countries from a civil law perspective? The four most common types of contracts in Canada are the contract of sale, the lease and hire of services, the lease and hire of things and the mandate contract. We can note that these types of contracts are very common in Hungary as well.

In both Hungary and Canada, the contract law is described by the fact that a contract is a legally binding promise.

In Hungary, according to the provisions of the Act V of 2013 on the Civil Code we can state that for the creation of a contract a so-called offer and an acceptance are needed.

What is the definition of a contract?

According to Section 6:58 of the Act V of 2013 on the Civil Code (hereinafter: Ptk.) [The contract] *The contract is the mutual and concordant juridical act of the parties from which the obligation to perform the service and the entitlement to claim the service arises.*[3] Section 6:59 [Freedom of contract] (1) *The parties shall be free to enter a contract and shall be free to choose the other contracting party.* (2) *The parties shall be free to determine the content of the contract. With their concordant intent, they may depart from the rules of contracts concerning the rights and obligations of the parties, if such derogations are not prohibited by this Act.*'

Before concluding an agreement, it is obligatory for the Parties to comply with some principles of law. For example, Section 6:62 of the Ptk provides that *'the parties shall be required to cooperate during contract negotiations, upon the conclusion of the contract and during its existence and dissolution and shall inform each other with respect to any important circumstances concerning the contract.'*[4] This obligation affects all the three phases of a contract, that is, both formation, performance, and termination of it as well.

We would like the summarize the Hungarian rules based on the article of Wellmann György[5]. As far as the conclusion of the contract is concerned, the new Civil Code is still based on the principle of

[2] FÖLDI ANDRÁS – HAMZA GÁBOR: *A római jog története is institúciói, (The history and the institutions of the Roman law)*, Eszterházy Károly Egyetem Oktatáskutató és Fejlesztő Intézet, 2018., p. 128.

[3] Hungarian Civil Code, Polgári törvénykönyv, (in abbreviation: Ptk.) Section 6:58 of Act V of 2013.

[4] Ptk. Section 6:62 of Act V of 2013.

[5] WELLMANN GYÖRGY: A szerződések általános szabályai az új Ptk.-ban- II. rész (The general rules of the contracts in the new Hungarian Civil Code – II.Part)
https://ptk2013.hu/szakcikkek/wellmann-gyorgy-a-szerzodesek-altalanos-szabalyai-az-uj-ptk-ban-ii-resz/3611 (Date of access: 20.11.2021).

consensual contracts, i.e. the conclusion of the contract does not require the transfer of the goods or any other real act, but it is sufficient to express the will of the parties in a reciprocal and consistent way (consensus). The consensus shall cover relevant issues which are considered relevant by either Party. The question on which the party has clearly stated that it does not wish to conclude the contract in the absence of agreement on the matter shall be deemed to be 'material'. Agreement on remuneration is always an important issue, without which the contract is not concluded. Nevertheless, the new Hungarian Civil Code contains an auxiliary rule to facilitate the conclusion of the contract in cases where it can be concluded that an agreement between the parties on remuneration has apparently been reached, even though no actual agreement has been reached on its exact extent or method of calculation. According to Article 6:63(3): *"If the contract has been concluded but the parties have not clearly determined the level of the consideration or have stipulated a market price as consideration, the median price at the time of performance shall be paid on the market corresponding to the place of performance"*. The content of the contract may be freely determined by the parties, within the limits of the cogent legal provisions. However, the contractual content, which is mandatory by law, becomes part of the contract. This means, on the one hand, that the parties do not have to agree separately on matters settled by law and, on the other hand, that the contract is concluded with mandatory legal content even if the parties do not have to deal with it differently, despite the prohibition. In the case of long-term business relationships, it is common for the parties to refer only to the habits and practices already established between them, or to follow a practice regularly even without a contractual provision. Therefore, the law stipulates with a new rule [Article 6:63(5)] that: "*The content of the contract becomes the content of all customs in the application of which the parties have agreed on their previous business relationship and all practices which have been established between themselves. Furthermore, the content of the contract shall become the content of any custom widely known and regularly applied in the relevant business by the subjects of a contract of a similar nature, unless its application between the parties would be unjustified, subject to their previous relationship.*' 'Practice' is what the parties have developed in their relations with each other, while 'custom' can be between the parties and may be independent of them in the business. The conclusion of the contract requires the making of an offer and its acceptance. A legal declaration clearly expressing the intention to enter a contract, covering the relevant issues, which entails a contract constraint. As a rule of discretion, a tendering obligation may still be excluded, but such a legal declaration, which does not have a legal obligation, does not constitute an offer but is merely an invitation to tender. The tenderer may determine the time of the contract constraint and it shall commence when the tender becomes effective. A new termination case between the rules for the termination of the tender obligation (§ 6:65) is the rejection by the other party, and the regulation of the withdrawal of the offer is also new. An offer that has not yet become effective may be withdrawn but may be withdrawn only until the other party's acceptance statement has been sent and only if the offer did not include that it was irrevocable. And if the tender has set a time limit for acceptance, it cannot be withdrawn beforehand. The offer may be accepted by a legal declaration expressing agreement with it. A statement of acceptance, like any other legal declaration, may be made orally, in writing or by implied conduct. However,

silence shall be deemed to be acceptance only based on an express prior agreement between the parties. The old Civil Code provides that acceptance with a content other than the offer shall be considered as a new offer. However, the new Civil Code [§ 6:67 (1)–(2)] breaks with this rigid approach and gives the possibility of so-called "amended acceptance": a legal declaration expressing agreement with the offer constitutes acceptance even if it contains an additional or different condition that does not constitute an important issue, does not affect it. In the event of a derogation on non-material matters, the contract shall be concluded with the content as stated in the acceptance declaration. However, the tenderer may, on the one hand, exclude the possibility of amended acceptance in the tender and, on the other hand, even in the absence thereof, prevent the additional or different terms from becoming contractual content if he objects to them without delay. In business, it is common for a contract concluded orally to cover only the essential elements of the agreement, but one of the parties shall, without delay after the conclusion of the contract, write the agreement in detail and send it to the other party. The new Civil Code settles the case where such written "confirmation" differs from the oral agreement. If the derogation (addition, amendment) relates to issues that do not constitute materiality, it becomes part of the contract, provided that the other party does not object to it without delay.[6]

The contract shall be concluded in writing only if it is ordered by law or if the parties expressly agree to it. Tenders and acceptance declarations may only be made in writing for the conclusion of a contract concluded in written form. A contract with a written form must be drawn up in a document, but it is not necessary that a single document contains the legal declarations of all parties, but it is also sufficient for the parties' legal declarations, contained in a separate document, to contain together their mutual and consistent declarations of will. A document is not only a paper document, but also an electronic document, but the latter only fulfils the criterion of writing if it is equipped with an advanced electronic signature and a time stamp. Consequently, a contract with a written form cannot be validly concluded e.g. by e-mail exchange. If the contract is in written form, at least the essential content of the contract must be written, and the contracting parties must sign the document. In the case of documents issued in several copies, it is sufficient for each party to sign a copy intended for the other. The contract for violating formality is null and void. In the case of a formal contract, not only the conclusion of the contract, but also its modification and termination shall be valid only in the specified form. Contracts may also be concluded by means of a representative.[7]

The obligation to enter a contract may be based on a legal requirement and on the agreement of the parties. Since the freedom of the parties to conclude contracts is in line with the requirements of a market economy, legislation (law) may impose a contractual obligation only in exceptionally justified cases (e.g. in the case of a monopoly situation or for some purpose of public interest). For example, the obligation to conclude contracts for utility companies or public transport companies, or the imposition of compulsory liability insurance in certain occupations. If the law imposes an obligation to conclude a contract and the party who is liable for this obligation refuses

[6] Section 6:67(3).
[7] The rules of representation are set out in Articles 6:11 to 20.

to conclude the contract, the court may, based on the action of the other party, establish the contract, and determine its content.

The pre-contract is a case of contractual obligation based on the agreement of the parties. This legal institution is maintained by the new Civil Code with significantly amended rules. The court shall have the possibility to establish the contract even if the pre-contract did not contain an agreement on the essential aspects of the contract and to establish it by amending the terms laid down in the pre-contract. The new Civil Code (§ 6:73) therefore authorizes the court only to establish the contract on the terms laid down by the parties at the request of one of the parties. The conditions for refusing to conclude a contract, i.e. the applicability of the 'clausula rebus sic stantibus' principle, are also substantially tightened. This can only be done, as is the case with the conditions for a change in the court contract, if the party refusing to conclude the contract proves that the conclusion of the contract would harm his substantial legal interests because of a change in a circumstance which he did not cause, is not part of his business risk and was not foreseeable at the time of the conclusion of the pre-contract.

A new solution is that the Civil Code regulates the conclusion of contracts through a competitive tendering procedure, recognising that such procedures can take place outside the scope of cases regulated by special laws (e.g. Public Procurement Act, Public Finance Act, Concession Act, National Land Fund Act, etc.). The general rules of the Civil Code (§ 6:74-76) will effectively apply to the so-called "private competition", since these special laws fully contain the rules of each tendering procedure, so the Civil Code rules cannot be "threaded" there. As a rule, a call for tenders in a competitive tendering procedure means the undertaking to conclude a contract: the caller must conclude the contract with the tenderer of the most favourable tender, unless the right to refuse to conclude the contract has already been stipulated in advance in the invitation. Furthermore, the obligation to conclude a contract is made quite illusory by the rule that the party making the invitation may withdraw his invitation until the expiry of the time limit indicated in the invitation, since this way he can legally avert the conclusion of the contract even in the light of the tenders already received. If the tenderer does not conclude the contract with the most favourable bidder without having provided for this possibility, the establishment of the contract may be requested from a court. The 'auction', i.e. the tendering procedure for the price only, is specific to the general rules of competition in that the contract is concluded by the announcement of the winner ('by knocking down') at the purchase price obtained (i.e. the evaluation of the tenders and the conclusion of the contract with the 'winner').

After the main regulations of the Hungarian Civil Code in connections with the contracts, we would like to summarize the characteristics of the Canadian contract law by the publication of Jean-Louis Baudouin. In Canada, the four most common types of contracts are: the contract of sale, whereby a person acquires the ownership of property in return for payment; the lease and hire of services, whereby a person offers his services to another in return for payment; the lease and hire of things, whereby a person is temporarily granted the use of property (e.g., an apartment) in return for a price (rent); and the mandate, whereby a person gives another the power to represent her. Unlike other agreements, a contract is a legally binding promise. If one of the parties fails or refuses to fulfil its promise without

a valid reason recognized by law, the party suffering the consequence of this breach of promise may call upon the courts either to force the defaulting party to carry out its promise (specific performance) or to demand compensation in the form of damages. Quebec civil law and Canadian common law generally follow similar rules in this regard: a contract legally entered represents a legal bond between the parties. Parties are free to contract whenever and for whatever reason they wish. The only limits to absolute contractual freedom are certain restrictions imposed by legislation and by accepted ethics. Contracts contrary to a statutory law such as the Canadian Criminal Code are null and void. (Examples of this might include a work contract for a professional killer, or for a sex trade worker). The same is true for a contract that goes against accepted ethics, or in civil law, public order.

Civil Code regulations governing contracts in Quebec[8] are derived mainly from French civil law. (French civil law is sourced from Roman law.) In other provinces, regulations governing contracts are based mostly on jurisprudence (previous court decisions) and on traditional British common law.

Many provinces, however, have adopted legislation codifying the rules of certain contracts. This is particularly true of sales and consumer contracts. Although Canada's two major legal systems differ in certain respects for contract law, the practical solutions they provide are very similar when not identical.

For a contract to be valid and therefore legally binding, five conditions must be met.

First, there must be the mutual consent of both parties. No one can be held to a promise involuntarily made. When consent is given by error, either under physical or moral duress, or because of fraudulent practices, the contract may be declared null and void at the request of the aggrieved party. In certain types of contractual relationship, the law demands that the consent of the party be both free and informed. This is the case, for instance, with contracts involving medical treatment.

The second is contractual capacity — the mental ability to keep the promise one has made. A young child, a person suffering from a serious mental disorder and in some cases a minor is all considered incapable of contracting.

The third condition is that the contract should have an object or a purpose. It must concern a specific and agreed-upon good or service.

The fourth condition is '*lawful cause*' in civil law; or a so called '*valuable consideration*' in common law. In this area, important technical differences exist between the two legal systems. Briefly, according to this fourth condition, the promise made must be serious and each obligation assumed by one of the parties must find a corresponding (but not necessarily equivalent or equal) promise made by the other party. A person may thus legally sell goods at a price that does not represent their actual market value. The contract would still be a valid one.

The fifth condition, which is not required in all cases, is the compliance in certain circumstances to formalities provided by law, such as a valid written instrument. In general, this condition holds for contracts that may have serious consequences for the parties; or those for which certain measures of publicity are required."[9]

[8] Articles 1377, 1456 of the Québec Civil Code – QCC.
[9] JEAN-LOUIS BAUDOUIN: *Contract law in Canada*

Generally spoken, we can state that none of the countries' legislation requires a contract to be written to be legally binding to the Parties concluding it. However, in certain cases described by the law it is necessary to conclude the contract in writing to be legally binding – e.g., this is the situation in the case of Real Estate Sale and Purchase Agreements.

Furthermore, we can note that the creation of a written agreement is often beneficial for the contracting Parties as later they can read their own copy of it and remind themselves of the content of the contract and the obligations they have taken on. Also, when one of the Parties would like to sue the other contracting Party, it is much easier to prove the existence of a contract by having a written document.

Hungarian legislation in Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: Pp.) differentiates between different forms of official documents as follows:

Pp provides the definition of Public deeds under Section 323 as follows: *'[Public deeds] (1) A public deed means a paper-based or electronic document, which was issued in accordance with the legal provisions by a court, a notary, or other authority or administrative organ acting within its scope of responsibilities. (2) A public deed shall be deemed original unless proven to the contrary, but the court may ex officio call upon the entity issuing the deed to make a statement regarding its authenticity.'*

Private deed of full probative value: Section 325 of Pp: 'CXXX A private deed shall have full probative value, if a) the deed was written and signed by the issuing person with his own hand, b) two witnesses confirm that the issuing person signed the deed not written with his own hand in whole or in part, or acknowledged his signature as his own, in front of them; for confirmation, the deed shall be signed by both witnesses, indicating their name and, unless otherwise provided by an Act, domicile or, in the absence thereof, place of residence, in a legible manner, c) the signature or initials of the issuing person on the deed is authenticated by a judge or a notary, d) the deed is signed by a person entitled to represent the legal person, in accordance with the rules pertaining to him, e) the deed was drafted and countersigned in the proper manner by an attorney-at-law or a registered in-house legal counsel, confirming that the person signing the deed signed the deed drafted by another person with his own hand or acknowledged a signature as his own in front of that attorney-at-law or registered in-house legal counsel, f) the person signing the deed affixed to the electronic deed his qualified electronic signature or seal, or advanced electronic signature or seal based on a qualified certificate, as well as a timestamp, if required by law, g) the electronic deed is authenticated by the signatory through the Document Authentication Based on Identification service specified in a government decree, or h) it is created through a service, specified by an Act or government decree, where the service provider attributes the deed to the issuing person through the identification of the issuer, and certifies the attribution to a person together or on the basis of data that can be traced back clearly to a signature

https://www.thecanadianencyclopedia.ca/en/article/contract-law?gclid=CjwKCAjwiY6MBhBqEiwARFSCPoDVk20W2DBQz4FEVrufPmW9276nHy1oZCfbG0G4wVJ_AaBXUuOsOhoCt5IQAvD_BwE, (Date of access: 20.11.2021) Further reading:

JOHN MCCAMUS, The Law of Contracts, 2nd ed. (2013).

ANGELA SWAN, JUKAB ADMASKI AND ANNIE Y. NA, Canadian Contract Law, 4th (2018).

made by the issuer with his own hand; furthermore, the service provider records a certificate of clear attribution to a person into a clause attached to and forming an inseparable part of the electronic deed, and signs it and the deed with at least an advanced electronic seal and at least an advanced timestamp.[10]

The performance and amendment of agreements

To introduce the existence of the current practice related to the performance and amendment of agreements, it is necessary to highlight that there are different universal governing principles adopted by both legal systems – Hungary and Canada – that affect the performance of agreements concluded in both countries.

One of these principles is the *Pacta sunt servanda* and another principle is *Clausula rebus sic stantibus*. According to the principle of *Pacta sunt servanda*, the agreements concluded must be kept. It means that the obligations taken on by the agreement must be duly performed. This principle is also provided by the Section 6:34 which is among the general provisions related to the performance of obligations in the Ptk – the *General rule of performance*: 'The service shall be performed in accordance with the content of the obligation.'[11]

On the other hand, principle *Clausula rebus sic stantibus* provides us further details regarding the obligation performance expectation of the law: it means that in some instances the obligation to perform according to contract might still change according to certain conditions.

This latter principle is embodied by Section 6:192 of the Ptk as follows: *'[Amendment of the contract by court] (1) Any of the parties may request the court to amend the contract if, in the permanent legal relationship between the parties, due to a circumstance that occurred after the conclusion of the contract, the performance of the contract with unchanged conditions would harm his substantial legal interest, and a) the possibility of a change in the circumstances was not foreseeable at the time when the contract was concluded; b) the change in circumstances was not caused by him; and c) the change in circumstances falls outside his normal business risk. (2) The court may amend the contract from the date determined by it, but not earlier than from the date when the claim for the amendment of the contract was enforced at court, and in a manner which prevent the change in circumstances from harming the substantial legal interest of any of the parties.'*[12]

Obligation to provide information in connection with obstacles forms fundamental principle related to the performance of contracts which is provided by Section 6:126 of the Ptk: 'The parties shall be required to notify each other if the performance of an obligation undertaken in the contract is expected to be affected by an obstacle unless the other party should have known of this obstacle even without such notification. (2) The defaulting party shall be liable in accordance with the rules on liability for damage caused by breach of contract for the damage he caused by not complying with the obligation to provide information in connection with the obstacles.[13]

[10] Section 325 of CXXX of 2016 on the Code of Civil Procedure (Pp).
[11] Section 6:34 of Act V of 2013 (Ptk).
[12] Section 6:192 of Act V of 2013 (Ptk).
[13] Section 6:126 of Act V of 2013 (Ptk).

Special provisions in agreements

In our article we would like to spare a separate chapter for the topic of special provisions in contracts as these special provisions might be crucial for the Parties. For instance, the use of General Terms and Conditions is widespread and is becoming more and more accepted when signing a contract. What makes this acceptance so special is that the party signing the agreement does not read the whole text of General Terms and Conditions, but states that he or she has read and has understood it in all parts. The signature of the contract itself makes another – maybe not even known – list of terms and conditions (that is another contract or a whole system of contracts) binding to the Party.

In accordance with their increasing frequency and importance in economic life, the new Civil Code contains in a separate chapter the rules for concluding contracts under standard contractual clauses.[14] This is the most common of the special forms of contracting. Its main feature is that it lacks the classic bilateral bargaining process. Its main applications are mass-scale business turnover and consumer-to-business contracts (e.g. consumer loan agreements). A standard contractual term is a contractual term that is unilaterally predetermined by its employer for the purpose of concluding several contracts without the involvement of the other party and which has not been individually negotiated by the parties. The new Civil Code regulates the conclusion of contracts under standard contractual clauses in substance in accordance with the rules of the old Civil Code, which were already harmonised with EU law (Directive 93/13/EEC) in 2006. However, the new Civil Code also contains new rules, such as the rule on the becoming contractual content of an additional claim against the consumer, which also meets the requirement of an EU directive, or the rule on the conflict of general terms and conditions (the so-called 'battle of the blankets'), which is the codification of paragraph III of Resolution GK 37 of the Supreme Court.

The new Hungarian Civil Code expresses the increasing importance of electronic communication by including the special rules for the conclusion of contracts by electronic means as one of the special cases of contracting.[15] In this context, the Civil Code contains, in accordance with the provisions of Act CVIII of 2001 on certain aspects of e-commerce services and information society services, the rules on the obligation of the electronically providing party to provide information, the correction of data entry errors, the effective entry into force of the electronic contract declaration and its confirmation. These rules on the conclusion of electronic contracts are dispositive, but in the case of the conclusion of a contract between the consumer and the entrepreneurs are cogens, since the law declares an agreement other than those which are different from them null and void. The rules governing the conclusion of electronic contracts apply only to contracts concluded online (by clicking) and do not apply to contracts concluded by electronic mail or equivalent individual means of communication (e.g. sms).

Also, different clauses in business-related contracts, for instance the full payment guarantee clause is often used. In this case its signatory takes on the obligation to perform an obligation which had originally been shouldered by another person, but in the instance, it fails to perform, the signatory of the full payment

[14] Articles 6:77 to 81.
[15] Articles 6:82 to 85.

guarantee would perform. This obligation is directly enforceable if it is signed in an appropriate form determined by law, therefore it can be particularly dangerous from a business law perspective to the signatory of the clause, however it is extremely beneficial for the entitled contracting Party.

One of the most used special provision of contracts that hold great importance is the clause in which the Parties choose applicable jurisdiction and exclusivity of a certain court in case their legal relationship does not end in an amicable way and – as it is quite often happens – one of the Parties sues the other.

Termination of agreements

In Hungary, as well as in Canada, the list of the ways of termination of contracts starts with the performance. It might also happen however that the contract is terminated without performance or only by partial performance of the obligations. This can happen by the consent of the Parties by an agreement; or by one-sided statement; judicial order; order made by an authority; and in other ways such as 'confusio' – in this case, the entitled and the obliged Parties become identical. Also, by death or in case the aim of the contract becomes impossible – in this case it cannot be expected in any circumstances from the obliged Party to perform its obligations according to provisions of the contract.

Chapter XXVI of the old Civil Code dealt with certain cases of termination of the contract and the statute of limitations (§ 319-327). It not only contained provisions for the termination of the contract by mutual agreement between the parties, unilateral declarations of rights (withdrawal and termination) that led to it, but also stipulated that the contract would terminate if the same person was entitled and the obligated (confusio) and arranged when death would terminate the contract. In the structure of the new Civil Code, the XIII. Title deals exclusively with the parties' methods of termination by agreement and unilateral declaration of will, as well as the termination of the contract by the court, and places other methods of termination elsewhere, mostly within the common rules of obligations. Thus, confusio can be encountered in section 6:3(b), the death or termination of the debtor without legal successor in Section 6:3(c), the death or termination of the rightholder without legal successor in Section 6:3(d), the impossibility in Section 6:179(1). The statute of limitations was given a separate chapter in the Sixth Book (Chapter IV, § 6:21 – 6:25).[16]

The new Civil Code did not bring about any change in the fact that the contract may be terminated or terminated ex tunc with ex nunc effect, i.e. for the future, by mutual agreement of the parties, with effect retroactive to the date of conclusion of the contract. In both cases, the termination of the contract without performance will result in the termination of the rights and obligations arising from the contract. As a new rule, the law stipulates that termination of the contract is possible only if the services performed can be refunded in kind, otherwise they are reversible. In this case, the original state must be restored. The restoration of the original state, in accordance with the consistent principle of the law, means the reimbursement in kind of

[16] Az új Ptk. magyarázata V/VI. , Kötelmi Jog, Első és Második Rész; HVG-ORAC Lap- és Könyvkiadó Kft., 2013., 346.-372. o.
http://projektjeink.birosag.hu/sites/default/files/allomanyok/ptk_e_learning/ptk8/lecke13_lap1.html.

the services provided. If the situation before the conclusion of the contract cannot be restored because any service is irreversible, the rules governing the termination of the contract with ex nunc effect shall apply. The form of the termination and termination contract based on the consensus of the parties is considered in the formality of the original contract concluded (Section 6:6(2)). However, pursuant to Article 6:94(2), in principle, if the law does not require the inclusion in an authentic instrument or a private document of full probative value and the contract is not intended to transfer ownership of immovable property, the termination or termination of the contract without compulsory formality also applies if the corresponding actual condition is of the same will of the parties.[17]

In addition to the termination of the contract by mutual consent, the new Civil Code, exceptionally but in several places, still allows for the unilateral termination of the contract by means of a legal declaration addressed to the other party. If this is done with retroactive effect from the conclusion of the contract, withdrawal, if it is effective for the future, we are talking about termination. To avoid repetitions, the legislation draws parallels between the cases of termination of the contract with a unilateral declaration and the agreement of the parties: termination resulting in termination with ex nunc effect shall be subject to the rules of termination, while termination shall apply to termination with effect ex tunc. However, since the termination of the contract requires the restoration in kind of the situation at the time of the conclusion of the contract, the party is entitled to withdraw only in the case of reversible services, i.e. on condition that he offers to return the service he received at the same time. The justification of the law also stipulates, somewhat, that the party can return the service. In the event of a dispute, the court shall act correctly if it makes that ability the subject of an investigation. As regards the formality of withdrawal and termination, the terms of the contract shall apply mutatis mutandis to the termination of the contract by agreement. Finally, it should be noted that the law does not distinguish between normal withdrawal or termination in this place, as in the old Civil Code, i.e. without justification, and extraordinary, reasoned withdrawals or terminations, which can usually be applied as a result of serious breaches of contract by the other party. It also does not contain any provision here as to whether the termination of the contract by unilateral declaration of rights has immediate effect or whether there is an interval (period of notice) between the date on which the declaration is made, and the legal effect is set. However, the interpretation of the provision must consider the provision concerning the validity of legal declarations (§ 6:5).[18]

The provisions on termination of the contract shall apply mutation to the termination of the contract by the court. The court shall act if the parties disagree on unilateral termination and give a judgment on the termination of the contract.[19]

[17] Az új Ptk. magyarázata V/VI. , Kötelmi Jog, Első és Második Rész; HVG-ORAC Lap- és Könyvkiadó Kft., 2013., 346.-372. o
http://projektjeink.birosag.hu/sites/default/files/allomanyok/ptk_e_learning/ptk8/lecke13_lap2.html.

[18] Az új Ptk. magyarázata V/VI. , Kötelmi Jog, Első és Második Rész; HVG-ORAC Lap- és Könyvkiadó Kft., 2013., 346.-372. o
http://projektjeink.birosag.hu/sites/default/files/allomanyok/ptk_e_learning/ptk8/lecke13_lap3.html.

[19] Az új Ptk. magyarázata V/VI. , Kötelmi Jog, Első és Második Rész; HVG-ORAC Lap- és Könyvkiadó Kft., 2013., 346.-372. o

In Canada, according to Common Law, there are generally four ways of termination of agreements: by performance, by agreement, by breach of contract, by the law of frustration. The performance is the simplest and best way contracts can be terminated as this way the contract 'runs its course'. When the Parties end the contract by agreement, naturally it involves the consent of all the contracting Parties. When we speak about termination by breach of contract, we mean that the innocent Party has a right of termination for breach of contract when the obliged Party does not deliver what was originally promised and therefore this Party which fails to fulfill its obligations is in a so-called repudiatory breach or another agreed standard of breach. Under the expression 'termination by law of frustration' we mean that the underlying circumstances of contract change which materially alter the performance requirements of the contract.

This case is like the before mentioned *'clausula rebus sic stantibus'* as in this case the circumstances have changed significantly, which results in the change of expected performance of a given obligation or obligations by the obliged Party participating in the contract.[20]

Conclusion

In our article we sought answers to the following questions: What is the definition of a contract in Canada and in Hungary? What are the most common types of contracts in the two countries from a civil law perspective? How is a binding contract (or agreement) made in Hungary and in Canada between the parties, what are the possible forms of agreements? Also, what are the governing rules regarding the creation of a contract. we found it useful also to include certain special provisions that contracts often contain, and the way of termination is a significant part of this topic as well.

Comparing the legal and therefore cultural background of the two countries in our point of view it is quite surprising to notice the vast influence of Roman Law, as even in Common Law countries its traces can be found. This way of development of Roman tradition and law resulted in striking similarities – e.g. the originally Roman Law principle of *'clausula rebus sic stantibus'* and the situation connected to it is also considered in Hungary and Canada even today.

Naturally, there are also differences. In our aspect, these differences which are the result of continuous change and development of the culture and the law, make the legal systems of the two countries truly unique.

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[20] https://hallellis.co.uk/termination-contracts/ (Date of access: 23.11.2021.).

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- WELLMANN GYÖRGY: A szerződések általános szabályai az új Ptk.-ban- II. rész (The general rules of the contracts in the new Hungarian Civil Code – II.Part) https://ptk2013.hu/szakcikkek/wellmann-gyorgy-a-szerzodesek-altalanos-szabalyai-az-uj-ptk-ban-ii-resz/3611;
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- http://projektjeink.birosag.hu/sites/default/files/allomanyok/ptk_e_learning/ptk8/lecke13_lap1.html;
- Sections 6: 34; 6:58; 6:62; 6:126; 6:192 of Act V of 2013 (Ptk);
- Section 325 of CXXX of 2016 on the Code of Civil Procedure (Pp).