

Termination of the contract by the breaching party in Civil Code of China

JingFei Qi*

Master of Law, Lecturer
Luoyang Normal University
471934, 6 Jiqing Rd., Luoyang, China
Kyrgyz National University named after Jusup Balasagyn
720033, 547 Frunze Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0000-0003-4709-7578>

Bolot Toktobaev

Doctor of Law, Professor
Kyrgyz National University named after Jusup Balasagyn
720033, 547 Frunze Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0000-0002-7106-1324>

Qian Zhang

Master of Law, Lecturer
Kyrgyz National University named after Jusup Balasagyn
720033, 547 Frunze Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0000-0002-4703-7471>

Abstract. Civil law and regulations governing civil legal relations are an important issue in the legal system of every country in the world. Understanding the authority to end a contract and the possibilities of terminating it, especially by a party that does not fulfil its terms in good faith, is very relevant in the realities of the modern world. This study aims to investigate the fundamental principles and possibilities of contract termination for a party in breach of obligations under the Civil Code of the People's Republic of China (PRC). To achieve this goal, the author uses systemic and structural, dialectical, historical and formal legal methods, comparative legal methods, analytical and synthetical, and others. The investigation established that the status of a contract is crucial in the modern world, including in the PRC. According to international customs, contracts must be unconditionally fulfilled, but sometimes situations arise that lead to early termination or cancellation of a particular contract, so the results of this study can be a foundation for a more fundamental comprehension of the conditions and possibilities of termination of a contract by the party that has breached it, while minimising losses and risks in the future. The results of this study will be especially relevant for potential partners planning to sign a contract in China, as they will help them understand the specifics of compliance with the contract terms and conditions and help them take legally correct actions in case the contract terms are no longer fulfilled. It is also important to understand how to avoid similar situations when signing civil contracts and what needs to be done to fulfil the contract in full

Keywords: cancellation of the contract; civil legal relations; opportunistic behaviour; arbitration; legal impasse

Introduction

The dynamic nature of the socio-economic and legal development of modern states requires continuous improvement of contractual systems. Hence, the pressing task for all nations, including the People's Republic of China

(PRC), is to revamp the legal framework to align with contemporary standards and realities. In jurisdictions guided by the rule of law, the primary basis for civil law is typically the Civil Code.

Suggested Citation

Article's History: Received: 09.08.2023 Revised: 17.11.2023 Accepted: 23.12.2023

Qi, J., Karaman, O., Toktobaev, B., & Zhang, Q. (2023). Termination of the contract by the breaching party in Civil Code of China. *Social & Legal Studios*, 6(4), 183-191. doi: 10.32518/sals4.2023.183.

*Corresponding author



The Civil Code of the People's Republic of China (2020) implemented noteworthy modifications and enhancements to legislation, specifically concerning the regulations governing the termination of obligations in contract implementation. As noted by W. Liming (2022), a contractual deadlock typically arises when one party is unable to fulfill a long-term contract due to shifts in the economy, productivity, or other factors, and the other party declines to terminate the contract. The second paragraph of Article 580 of the Civil Code of the PRC (2020) grants the right to terminate the contract to the party failing to fulfill its obligations. Chinese legislation has confirmed this right, which has sparked discussions in academic and legal circles about the correctness of such a decision.

In his work, Chinese scholar P. Xiao (2022) asserts that actual performance and damages stand as the primary remedies for breach of contract, yet he does not specify the sequence in which they should be applied. Notably, a claim for debt does not encompass actual performance, as it involves a negative evaluation of the breach of contract, and the utilisation of damages is constrained by the challenge of determining the benefit of performance. Consequently, neither remedy inherently holds precedence in a broad context.

A generally accepted principle of contract law is the duty to fulfill a contract with honesty, a judgement recognized by the global legal community. The same principles are used in the Civil Code of the PRC (2020). According to the generally accepted rule that no one can benefit from his own unlawful behaviour, the law provides the bad faith party with the entitlement to cancel the contract if that party has intentionally breached the terms of the contract and failed to fulfil its obligations.

H. Shiyuan (2023) examines in detail in his article the provision of long-term contracts in China with legal protection by the judiciary and the executive branch of government. The problematic of the study is that Article 580 of the Civil Code of the PRC (2020) provides for a new approach to judicial termination, which may provide some improvement, but only for cases related to the fulfilment of a non-monetary obligation. This rule does not apply to the fulfilment of a financial duty.

Some scholars, notably Z. Sun (2020), contend that the second paragraph of Article 580 in the Civil Code of the PRC (2020) grants the party failing to meet its obligation the right to request contract termination. This forms the basis for the appeal by the party in default. This provision represents a common legal scenario for contract termination, stipulating that the non-performing party has the authority to terminate the contract. In 2019, Article 48 of the "Minutes of the Working Conference of the National Court of Civil and Commercial Proceedings" explicitly embraced the concept of a contractual impasse.

T. Zhang (2012) provides an intriguing illustration in his work, citing the case of Xinyu Company v. Feng Yumei, which involves a dispute related to a sales contract. In this case, the right to terminate the contract, bestowed upon the party in default, was the initial clause to take effect. After that, the court ordered a trial to resolve the issue of contractual impasse. In the PRC, there is a legal practice of contract termination by a party that does not fulfil its terms (Han, 2017). Chinese and foreign legal scholars are increasingly turning to the basic provisions on the form and substance of the contract, trying to adapt it more and more to the current conditions.

This study was conducted to examine the main ways of contract termination under Chinese law, as well as to understand the aspects of contract termination in China by a party that does not fulfil its terms.

Materials and methods

Using the systemic-structural method, the author identified the main aspects of the study and described the priority areas of possible changes in legal contractual relations in civil matters in the PRC. The dialectical method became the methodological basis for searching for information and outlining the fundamental features or traits of the legal framework for regulating the performance of contracts in the PRC. The use of the dialectical method also made it possible to analyse and describe the multidimensional nature of the legal nature of contractual relations in general.

Due to the use of the analysis method, it was possible to study the developments of scholars in the context of contract law, and to identify inconsistencies in the provisions of legal acts regulating contractual relations in civil cases in the PRC. The article uses the synthesis method to analyse the provisions of the Civil Code of the PRC (2020). The method of systematic analysis was used to study the general theoretical and methodological foundations of legal regulation of contractual relations and their nature. Using the methods of generalization and abstraction, as well as the methods of synthesis and analysis, the author managed to study not solely the primary content, but also the details of the provisions of the Civil Code of the PRC (2020) relating to termination of contracts by a party which has not fulfilled its obligations.

The systematic approach was used as a method which allowed the author to identify the peculiarities, problematic aspects and the status of protection of legal provisions in the legislation of the PRC. Specifically, the systemic-structural method of research has provided avenues for thoroughly elucidating the legal nature of concepts and categories within civil law. Through the application of structural and functional analysis to the elements of the civil law system, the author successfully clarified the core aspects of civil law relations, the structure of obligations, civil law sanctions, and other pertinent elements.

The use of historical, comparative legal, and formal logical research methods made it possible to analyse the stages and processes of formation and further development of legal regulation of contract law in civil relations in the PRC. These methods were used in the interpretation of civil law provisions both directly in practice (in the process of creating laws, in the systematization and implementation of civil law) and for scientific purposes to provide a doctrinal interpretation, as well as in the formulation of scientific concepts, classifications of legal facts, types of contracts, objects of civil rights, etc. The interdisciplinary method allowed the author to study the peculiarities of contract law as an integral element of civil legal relations.

When considering the provisions of the Civil Code of the PRC (2020) and the regulatory framework governing contractual relations (Order of the President..., 1999), the author used the normative and dogmatic method of research. The comparative legal method was employed to examine and draw comparisons between the stipulations of legislation in the PRC. The comparative method was used for a better understanding and application of legal norms, as well as to identify gaps and shortcomings in civil law, its

improvement and unification. In addition, using documentary analysis and the method of comparison, the author formed a concept of understanding the peculiarities of termination of a contract by a party that has not fulfilled it in the PRC.

Using the methods of systematization and generalization, the author describes, systemizes and summarizes the terminology of the subject under study, in particular, the definitions of the concepts of “contractual impasse”, “opportunistic behaviour”, “termination of contract”, “legal deadlock”, “arbitration”, etc.

In the course of the research, the author examined the Civil Code of the People’s Republic of China (2020) alongside the provisions of the Order of the President of the People’s Republic of China No. 44, “Civil Procedure Law of the People’s Republic of China” (1991), and the Order of the President of the People’s Republic of China No. 15, “Contract Law of the People’s Republic of China” (1999).

Results

Civil legal relationships encompass both property-related and personal non-property-related legal connections. As a foundational branch of law, civil law is grounded in the principles of legal equality, voluntary consent, and the autonomy of property for participants engaged in civil legal relationships. Civil law norms regulate a wide range of legal relations, including the functioning of such legal institutions as the institute of property rights, the institute of inheritance, and the institute of civil liability (Bachvarova, 2019). To grasp the intricacies of Chinese legislation in civil and contract law, it’s crucial to delineate the regulatory framework that underpins civil legal relationships in China. The Civil Code of the PRC (2020) governs all conceivable types of legal civil relations in the country. When delving into the specifics of the right to terminate a contract, it’s noteworthy that the timeframe for exercising this right is typically stipulated by law or through contractual agreements between the parties, and this holds true for the PRC as well. The principal distinctions brought about by the new Civil Code of the PRC (2020) predominantly impact three key facets

of contractual relations: time limits of invoking the right to terminate a contract; the possibility and timing of contract termination through litigation or arbitration; the possibility of contract termination by the party that has breached or failed to perform the contract.

This was written in detail by lawyers from the international legal digital platform *Conventus Law* (Seto, 2020). This research was focused on the analysis of changes in the rights to terminate a contract by the party that breached it and the study of their features.

If there is neither a legal provision establishing such a right nor an agreement between the parties regarding the timeframe for exercising the right to terminate the contract, and a party neglects to act within a reasonable period upon the other party’s request, the right is forfeited. According to Article 564 of the Civil Code of the PRC (2020), if the duration for exercising the right to terminate a contract is either stipulated by law or agreed upon by the parties, and neither party exercises the right after the specified period has lapsed, the right is extinguished. This rule is crucial in ensuring the equitable treatment of all parties involved in a contract. In cases where neither the law nor the parties define such a possibility or timeframe, and the right is not exercised within one year from the date the party entitled to terminate the contract fails to act within a reasonable time following the other party’s request, the right becomes obsolete and is considered waived. This approach to respecting the rights of the parties is crucial for maximizing the effectiveness of the contract itself, but if the contract cannot be completed or terminated at the stage of performance, this leads to a problematic situation. In this scenario, alternative measures must be employed to safeguard the rights of the contracting parties. Given that the essence of a contract always involves the establishment, modification, or termination of civil legal relations between the parties, these essential components cannot be circumvented (Bayern, 2015). The process of fulfilment of agreements, from conclusion to full implementation of a contract, always goes through the stages in Figure 1.

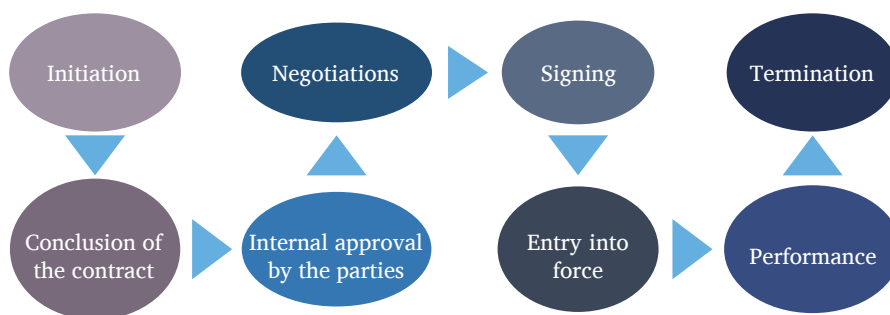


Figure 1. Stages of the process of fulfilment of agreements

Source: authors of the investigation, based on “The 7 stages of contract management and contract lifecycle” (2022)

In China, the conclusion of a contract depends on the joint intentions of the parties, and in the vast majority of cases, this occurs when both parties agree on their common goals. The problem that arises during the execution of a contract is called “contract impasse”, and the situation when a contract cannot be proved to be valid until it is concluded or its performance is monitored is called “legal deadlock” (Kinanis & Papavarnava, 2022). In this case, the contract is valid on the basis of its legal force, and the debtor is unable

to fulfil its obligations for valid reasons, it is the debtor’s responsibility, and it may start the process of contract termination. The party that does not breach the contract does not have such a right. In addition, both parties may be deprived of the opportunity to terminate the agreement through negotiations or otherwise if the creditor had the opportunity to do so at the beginning but later lost it and was unable to use it. The contractual duties emanating from the contractual obligation in these two circumstances cannot be

resolved by termination. An impasse in a contract prevents the debtor from fully and effectively exercising the creditor's rights (Friedman, 1968). Due to contractual obligations in this case, the debtor, also known as the non-performing party, cannot fulfil its contractual obligations. In addition, both parties usually lose efficiency due to the long-term instability of the relationship between rights and obligations. Granting the party in breach the authority to terminate the contract in the event of a contractual impasse can release contractual obligations more quickly and efficiently, preventing the parties from being held to the terms of the contract for a long period of time by termination.

It is important to note that the effectiveness of a contract is determined by national laws that assess the strength of the contract. A contract enters the performance stage when it is concluded and becomes effective. All parties are obliged to comply with the legal aspect of the contract, i.e., to strictly fulfil its terms and their legal obligations, and to ensure all rights of other contracting parties. One party becomes liable to the other for a breach of contract when it fails to fulfill its contractual obligations, whether in part or in full. Despite a breach by one party at any point during implementation, the contract persists. The defaulting party is still obligated to fulfill its contractual duties as outlined in the agreement if such performance remains feasible. However, if the contract's objectives have been met for all involved parties, and no other conflicts arise, it is advisable to terminate the contract. Grounds for contract termination may also include deposit, confusion, or dismissal in addition to performance or performance-related termination. The legal lock feature of the contract will no longer be effective, and the parties will no longer be bound by it if the contract is terminated for cancellation, deposit, confusion, or release.

Given that the two main principles of contract law are fairness and equity (Markovits, 2021), a party may keep the contract in force and not exercise the right of termination. In this case, the legal obligations of the contract will remain binding on both parties. In some cases, the benefits gained by the party in good faith and the harm caused to the party not in good faith by not exercising the ability to terminate the contract could be substantially compromised, suggesting that the party acting in good faith may have exploited its rights in this context. Clearly, in such a situation, the party declines to terminate the contract and insists that the non-performing party fulfill its obligations to continue to perform the contract if there is evidence that the good faith party is abusing its rights.

With regard to the entitlement to terminate a contract, it is generally accepted that the party in non-default has and exercises this right, but the party in compliance usually does not have this right. Looking at Article 562 of the Civil Code of the PRC (2020), there are three different types of contract termination: contractual termination, agreement termination and judicial termination (Jiang & von Appen, 2022). The term "termination of the agreement" (also known as "mutual termination") describes a decision taken by the parties to terminate the original contract and enter into a new contract for this purpose. It is not a termination of a contract based on an application by one party, but rather the termination of a previous contract by entering into a second contract, which is the essence of contract cancellation. This is not a correct legal termination of a contract, as it is fundamentally different from the termination of a contract under

civil law. When a contract is terminated, there are two contracts: the original contract and the contract that completes the original contract. Since both statutory termination and termination by negotiation are considered unilateral terminations, they must be used to terminate contracts under civil law. This right to terminate arises for two reasons: first, it relies on the arrangement established between the parties prior to the signing of the contract; and second, it stems from clear legal provisions.

The theory of "effective breach" was introduced in China more than thirty years ago and has garnered some support, although its overall recognition within the Chinese legal system, judicial practice, and academia is not widespread. Criticisms of the effective breach theory revolve around two main aspects: factual and evaluative. However, meeting the two necessary conditions for applying the effective breach theory is generally challenging: the contract can be performed instead, and the benefits of performance can be accurately determined (Wang, 2011). As a result, a breach of contract may not always lead to efficient resource allocation. The sole legal recourse for a party in breach is typically to terminate the contract. The right to terminate a contract for a party acting in good faith is a common law right, whereas the right to terminate a contract for a defaulting party is a unique legal right that can only be exercised in the event of a contractual impasse. In such situations, the party failing to meet its contractual obligations can submit a claim for termination to the relevant authorities. Parties fulfilling the terms of a contract in good faith have the option to terminate the contract, although they typically refrain from doing so (Bakung *et al.*, 2022). Contracts in a deadlock generally remain in force and often do not benefit either party. Legal provisions typically grant the bona fide party the opportunity to exercise the right to terminate the contract, and this is also the case in the PRC. It's important to note that if the party acting in good faith chooses not to exercise the right to terminate the contract, termination becomes unavailable.

Article 577 of the Civil Code of the PRC (2020) stipulates that if one party fails to fulfill its contractual obligations or deviates from the agreed-upon performance, it is held accountable for default. This entails the obligation to either continue fulfilling its duties, take corrective actions, or compensate the other parties for any resulting losses. However, the Civil Code of the PRC (2020) primarily focuses on the legal consequences of default, leaving unanswered the question of how various remedies should be applied in the event of a contract breach. Actual performance adheres to the original agreements, while compensation for damages typically diverges from such performance, leading to distinct legal protection outcomes for parties acting in good faith.

In the current legal landscape of the PRC, the right to terminate a contract due to non-fulfillment can only be exercised through litigation or arbitration. For instance, the right to establish an organisation can be utilised for both private and public purposes in China, whereas the right to terminate a contract (akin to the right to enter into a contract) can be invoked through notice, legal proceedings, or arbitration (Rödl, 2013). There is a broad consensus that the party not in breach holds the right to terminate the contract, encompassing the option of complete termination. In contrast, the right to terminate a contract is more constrained for the party in default. Granting the defaulting

party the right to terminate a contract is a distinctive legal requirement. Consequently, all possible measures should be implemented to ensure the comprehensive protection of the rights of the party acting in good faith. Only the decision of a court or arbitral tribunal determines whether a contract is terminated, as judicial termination has a final effect that can fully resolve the differences between the parties (Dosi, 2020). In all cases, the use of the right of termination in the PRC entitles the recipient to provide compensation for damages caused by the agreement. The defaulting party will continue to be accountable for violating the terms of the contract even after the right to terminate has been exercised.

By way of judicial or arbitral decision, the contract is terminated, its binding force is removed, and the effect of “legal blocking” of the contract is eliminated when the defaulting party terminates the contract by means of public remedies. Neither party is obliged to continue to fulfil the terms of the contract, as it prohibits continued performance in the event of a deadlock and because the contractual obligations lose their legal effect to exist once a court or arbitration tribunal has ruled on its termination. Article 199 of the Civil Code of the PRC (2020) specifies that the right to terminate or cancel a contract is either prescribed by law or agreed upon by the parties, and its calculation starts from the date when the party holding such right becomes aware that it is effective. Once this designated period elapses, the right to withdraw, terminate, or exercise other related rights is forfeited (Civil Code, 2020). If a party neglects to invoke the right to terminate the contract after the expiration of the contractually specified period, that right ceases to exist, as outlined in Article 564 of the Civil Code of the PRC (2020). While the Chinese Civil Code does not explicitly address the pre-emption of the right to terminate a contract, there are no standardized court practices or regulations governing such pre-emption in termination cases. Unless otherwise stipulated by the party fulfilling its contractual obligations in good faith, the right of termination must be exercised within one year from the date the right is acquired, and it will be nullified if not utilised within that timeframe. Due to variations in different types of contracts, there are instances where the one-year period may not be enforceable in court.

To address this issue, it is valuable to refer to Article 564 of the Civil Code of the PRC (2020), which outlines the loss of the right to terminate a contract if neither party exercises such right within one year from the required date or fails to do so within a reasonable period after the other party’s request (Seto & Li, 2022). Consequently, as per the legally stipulated rules, the termination period for the right to terminate a contract in the PRC is one year. This standardisation aids in unifying litigation rules, providing clear legal guidance for court practices, and avoiding a differentiated approach to various types of civil contracts in this context. In general, any civil contract can be terminated through three means. Firstly, by providing notice of termination, and secondly, by initiating litigation or applying for arbitration. Concerning the first method of contract termination, the termination moment is when the notice is received by the other party. In the case of termination through the commencement of litigation or arbitration, the termination time was not explicitly specified before the adoption of the Civil Code of the PRC (2020). In court practice, two methods are commonly employed to determine the termination time of a contract through the initiation of litigation or arbitration:

- ▶ the date when a copy of the complaint or arbitration claim is served on the other party;
- ▶ the date when the court or arbitration award becomes effective.

As per the stipulations in the Civil Code of the PRC (2020), the primary method for determining the moment of contract termination is applied when finished due to the initiation of litigation or arbitration. Consequently, when a contract is terminated through legal proceedings, the termination moment is when a copy of the complaint or an arbitration application is served on the other party.

Chinese law, under Article 110 of the Order of the President of the People’s Republic of China No. 15 (1999), allows for a situation where a defaulting party is not obligated to continue fulfilling its non-monetary obligations under the contract. This provision aims to prevent a scenario where one party repeatedly demands the continuation of non-monetary obligations, while the other party that failed to fulfill its obligations seeks protection of its interests. To address this, PRC legislators introduced the concept of the right of the defaulting party to terminate the contract, without explicitly addressing the liability for breach of contract. Without the application of the principles of this concept, the contract cannot be terminated, leading to a deadlock. As highlighted earlier, Article 580 of the Civil Code of the PRC (2020) grants the parties the right to demand termination of the contract, and the term is properly understood as encompassing the defaulting party, thereby transferring the right to terminate the contract to the defaulting party while retaining its liability for breach of contract (Chen, 2021). This right of termination for the defaulting party specifically applies to non-monetary obligations and must be exercised through court or arbitration institutions; it cannot be invoked through legal means or agreement. This new provision in the Civil Code of the PRC (2020) contributes to resolving a contractual impasse based on the principle of good faith, facilitating a more straightforward resolution for all parties involved in the contractual process.

The Civil Code of the PRC (2020) outlines that good faith performance of the contract and damages are the primary remedies for breach of contract. However, it does not specify the procedure and possibility of their application, as neither remedy is universally applicable. Liability for breach of contract should be primarily determined based on the fulfillment of the contractual purpose and its effectiveness.

Discussion

There are generally two contrasting interpretations regarding whether the second paragraph of Article 580 of the Civil Code of the PRC (2020) permits a party in breach of a contract to legally terminate it in the event of an impasse. The first perspective supports the right of the defaulting party to terminate the contract, while the second rejects this right (Mai, 2022). To delve deeper into these viewpoints, it is beneficial to examine them more closely. Researchers advocating for the belief that the defaulting party should have the opportunity to terminate the contract in the event of a deadlock often adopt a one-sided approach. Those in favor of this stance may not always consider that such an option also significantly restricts the circumstances under which the contract may be terminated by the defaulting party. The primary rationale for endorsing the termination of a contract is often rooted in the fundamental principle of contract

law – efficiency. Efficiency, in this context, can manifest in one of two forms: promoting the growth of social wealth and actively preventing a decline in wealth (Fantoni, 2022). In a contractual deadlock, social wealth cannot increase, and the economic well-being of the party in deadlock diminishes. Allowing the defaulting party to terminate the contract can prevent a detrimental reduction in social wealth, aligning with the principle of efficiency. The second perspective is one of mandatory dismissal.

The termination of a contract is aimed at promptly releasing the defaulting party from its constraints, with the primary objective not being punishment or holding the defaulter liable. Granting the defaulting party the right to terminate the contract in the event of an impasse can expedite the release of the parties from its restrictions. However, it's crucial to note that the right to terminate does not absolve the defaulting party of its liability for breach of contract. Advocates of the second approach, who do not support giving the defaulting party the right to terminate the contract, assert that contracts should be meticulously adhered to, and the law should not provide the defaulting party with such termination rights. Among the opinions of scholars supporting this notion, the phrase “No one can be heard by referring to his own sinfulness” is often cited (Amianto, 2019). This principle serves as the foundation upon which numerous researchers, including those in civil law in the PRC, base their arguments. Generally, the reluctance to concede to a party that has, after entering into a contract, failed to fulfill its obligations can be understood. The main reasons for this reluctance include:

- ▶ Ignoring strict compliance with the contract. The right of the party that does not fulfil the contract to terminate the contract violates the concept of strict compliance with the contract, as it is an “institutional innovation” that significantly weakens the binding force of the contract.

- ▶ Violation of the basic rule of law that no party may benefit from a breach of contract. Breach of contract is unacceptable behaviour. Legal rights cannot be created by improper behaviour. When a contract is at an impasse, the party in default is the one who breaches the contract and acts in an improper manner.

Granting the defaulting party the right to terminate the contract may lead to opportunistic behavior, as it enhances the contractual rights of the defaulting party, allowing it to gain advantages contrary to basic legal principles (Chernykh, 2022). The purpose of the system is to deter opportunistic behavior, and enabling the defaulting party to terminate the contract in an impasse could increase the risk of opportunism, such as malicious breach of contract that undermines the binding force of the contract, and diminish the likelihood of the creditor's claim for continued performance and enforcement of its rights. These exceptional circumstances hinder the exercise of the creditor's rights and interests.

The unilateral termination of a contract by a party breaching its terms is a widely debated topic globally. Vietnamese scholar N.T. Trang (2017), for instance, explores the legal regulation possibilities in Vietnam, noting differences with the results of this study. According to the Vietnam Civil Code (2015), unilateral termination of a contract is recognized, with fines and compensation collected even after such termination. Despite distinctions, there are similarities, such as the provision that a contract will be terminated if the

other party significantly breaches its obligations, ensuring proper fulfillment of the original contract terms. A comparable situation is observed in Italian law, where scholar A. Canella (2023) considers contract termination possibilities for a party not fulfilling its terms under the Italian Civil Code (1942). Similar to the PRC, Italian civil law allows for such a possibility, with specific provisions governing the process of unilateral contract termination: to study in detail the initial terms of the contract; to write a letter to the legal representative complaining about the failure to fulfil obligations under the contract; to assess the losses and request compensation; to apply to court or arbitration proceedings to resolve the conflict and terminate the contract.

As for the legislation of the England, P. Brampton (2022) believes that the Civil Law of his country provides for the possibility of unilateral termination of a contract, but this right can be easily lost if the right measures are not taken in time (Civil Law Act..., 1966). In his work, he emphasizes the importance of identifying all possible termination rights at the very beginning of the process and carefully choosing which one to exercise. In general, early termination of a contract should always be approached with great caution, as if a party intends to terminate a contract without having the legal right to do so, it may hold itself liable for the other party's losses caused by the wrongful termination. These losses can be very significant, especially if the contract is terminated at an early stage, i.e., at the beginning of a project. In the England, as in the PRC, a party may have either a general right of termination or a contractual right of termination, or in certain circumstances it may have both (Berman & Kim, 2015). As in the PRC, a party wishing to terminate a contract early must justify its decision by one of three conditions: violation of the original terms of the contract; serious breach of the “intermediate term” when the initial terms of the contract are fulfilled but very late; categorical refusal to fulfil the terms of the contract.

Similarly, to the PRC, after justifying the reasons for the desire to terminate the contract, the party that has breached its terms must apply to a judicial authority or an arbitration representative to resolve the conflict. Therefore, in the People's Republic of China (PRC), parties typically enter into a contract to achieve their financial benefits. However, if the fulfillment of contractual terms faces obstacles, the primary purpose of the contract, both legally and practically, cannot be realised. Conversely, meeting a debt obligation may involve excessively high fulfillment costs, surpassing the anticipated financial benefits from the successful implementation of the contract. Proper application of liability for breach of contract is crucial to safeguard the objective interests of the parties involved in the contractual process. In court proceedings, accurately applying liability for breach of contract is challenging due to diverse contract types, breach forms, and objective difficulties like information gaps. Therefore, to prevent the nullification of general termination principles in China for minor negligence and to discourage intentional breaches by the defaulting party, additional restrictions on the circumstances permitting the defaulting party to terminate the contract should be implemented.

Conclusions

The results of the investigation show that a party acting in good faith has the right to terminate a contract, a principle applicable in the civil law of the People's Republic of

China (PRC). The PRC Civil Code addresses the application of actual performance to monetary debts and excludes it for non-monetary debts. However, the code does not specify whether actual performance or compensation for damages should take precedence, leading to a lack of consensus in the theoretical community. In litigation, when a non-breaching party seeks to rescind a contract and claim damages while the contract is still performable, judges must judiciously interpret the rights to litigation and efficiency. Common disputes arising from contract breaches involve the non-defaulting party seeking continued performance and the defaulting party seeking damages or rescission. Judges are often faced with the dilemma of choosing between actual performance and compensation for damages.

The study reveals that the non-defaulting party can terminate the contract based on legal provisions and hold the defaulting party accountable for breaching the contract, especially when it hinders the contract's intended purpose.

However, this exception doesn't apply if the defaulting party has the capacity to fulfill its obligations. Accelerating the development of a case database and adopting a categorical approach can guide the formulation of judicial interpretations related to the rules of liability for breach of contract. This ensures that the PRC Civil Code, as a fundamental law in a market economy, effectively regulates trade relations and organises the economy. Further research on the right to terminate contracts in the PRC by parties failing to comply with provisions can enhance understanding of the concept of a contractual impasse and explore changes in PRC legislation governing the roles of all parties in contracts.

Acknowledgements

None.

Conflict of interest

None.

References

- [1] Amianto, L. (2019). [The role of “unclean hands” defences in international investment law](#). *McGill Journal of Dispute Resolution*, 6(1), 3-37.
- [2] Bachvarova, M. (2019). Development of contract law. SSRN. doi: 10.2139/ssrn.3450559.
- [3] Bakung, D.A.H., Muhtar, M.H., & Amer, N. (2022). Comparative analysis of legal policies regarding force major during Covid-19 pandemic in Indonesia and China. *Batulis Civil Law Review*, 3(1), 8-18. doi: 10.47268/ballrev.v3i1.721.
- [4] Bayern, S.J. (2015). [Offer and acceptance in modern contract law: A needless concept](#). *California Law Review*, 103, 67-102.
- [5] Berman, M.L., & Kim, A.E. (2015). Bridging the gap between science and law: The example of tobacco regulatory science. *Journal of Law, Medicine & Ethics*, 43(1), 95-98. doi: 10.1111/jlme.12227.
- [6] Brampton, P. (2022). [Termination of contracts](#). Retrieved from <https://www.ibblaw.co.uk/insights/termination-of-contracts>.
- [7] Canella, A. (2023). [Contract termination for non-performance: What it is and how it works](#). Retrieved from <https://www.canellacamaiora.com/contract-termination-for-non-performance-what-it-is-and-how-it-works>.
- [8] Chen, L. (2021). Continuity and change: Some reflections on the Chinese Civil Code. *Asia Pacific Law Review*, 29(2), 287-305. doi: 10.1080/10192557.2022.2033084.
- [9] Chernykh, Y. (2022). National laws and contract interpretation. In *Contract interpretation in investment treaty arbitration: A theory of the incidental issue* (pp. 73-110). Leiden: Brill. doi: 10.1163/9789004414709_004.
- [10] Civil Code of the People's Republic of China. (2020, May). Retrieved from https://www.trans-lex.org/601705/_/civil-code-of-the-peoples-republic-of-china-.
- [11] Civil Law Act of England. (1966, October). Retrieved from <https://wwwex.ilo.org/dyn/natlex2/natlex2/files/download/85486/TON85486.pdf>.
- [12] Dosani, D. (2020). [The 4 ways to legally terminate a contract: Breach of contract, performance and agreement](#). Retrieved from <https://lincolnandrowe.com/2021/04/21/terminating-contracts/>.
- [13] Fantoni, K. (2022). [Terminating a contract for non-payment: A word of caution](#). Retrieved from <https://www.clarionsolicitors.com/articles/terminating-a-contract-for-non-payment>.
- [14] Friedman, L.M. (1968). [Contract law and contract research \(Part I\)](#). *Journal of Legal Education*, 20(4), 452-460.
- [15] Han, S. (2017). A snapshot of Chinese contract law from a historical and comparative perspective. In L. Chen & C.H. van Rhee (Eds.), *Towards a Chinese Civil Code: Comparative and historical perspectives* (pp. 235-255). Leiden: Brill. doi: 10.1163/9789004204881_011.
- [16] Italian Civil Code. (1942, March). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/16608>.
- [17] Jiang, H., & von Appen, A. (2022). The new validity rules in Chinese Civil Code and Chinese state-owned enterprises' freedom in contracting: One step too far. *Chinese Journal of Comparative Law*, 10(3), article number cxac024. doi: 10.1093/cjcl/cxac024.
- [18] Kinanis, C.P., & Papavarnava, V. (2022). [The defence of illegality – “Ex turpi causa non oritur actio” – the Cyprus approach](#). Retrieved from <https://www.legal500.com/developments/thought-leadership/the-defence-of-illegality-ex-turpi-causa-non-oritur-actio-the-cyprus-approach/>.
- [19] Liming, W. (2022). [Legislation in Book III “Contract” of the Civil Code of the People’s Republic of China with international vision](#). Retrieved from <https://cicc.court.gov.cn/html/1/219/208/203/2285.html>.
- [20] Mai, L.T.N. (2022). Real property in Chinese civil law – the process of developing property legislation. *Vietnamese Journal of Legal Sciences*, 6(1), 94-114. doi: 10.2478/vjls-2022-0005.
- [21] Markovits, D. (2021). Philosophy of contract law. In *Stanford encyclopedia of Philosophy*. Retrieved from <https://plato.stanford.edu/entries/contract-law>.
- [22] Order of the President of the People's Republic of China No. 15 “Contract Law of the People's Republic of China”. (1999, March). Retrieved from http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/11/content_1383564.htm.
- [23] Order of the President of the People's Republic of China No. 44 “Civil Procedure Law of the People's Republic of China”. (1991, April). Retrieved from http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383880.htm.

-
- [24] Rödl, F. (2013). [Contractual freedom, contractual justice, and contract law \(theory\)](#). *Law and Contemporary Problems*, 76(2), 57-70.
- [25] Seto, M. (2020). *China – contract termination in the Civil Code*. Retrieved from <https://conventuslaw.com/report/china-contract-termination-in-the-civil-code>.
- [26] Seto, M., & Li, H. (2022). *Contract termination in the Civil Code – CWG*. Retrieved from <https://www.ibanet.org/article/B5BA4678-56BE-4BB1-B0B1-FF99C6EF5FC3>.
- [27] Shiyuan, H. (2023). Article 580 (2) of the Chinese Civil Code. In H. Jiang & P. Sirena (Eds.), *The making of the Chinese Civil Code: Promises and persistent problems* (pp. 94-113). Cambridge: Cambridge University Press. doi: 10.1017/9781009336611.005.
- [28] Sun, Z. (2020). Reflection on the right to terminate the contract of the defaulting party and resolution of the contract impasse. In *Proceedings of the 2020 3rd international conference on humanities education and social sciences (ICHESS 2020)* (pp. 443-447). Amsterdam: Atlantis Press. doi: 10.2991/assehr.k.201214.541.
- [29] The 7 stages of contract management and contract lifecycle. (2022). Retrieved from <https://www.concord.app/blog/7-stages-of-contract-management>.
- [30] Trang, N.T. (2017). *Remedies for breach of contract under the Civil Code: A comparative analysis*. Retrieved from <https://vietnamlawmagazine.vn/remedies-for-breach-of-contract-under-the-civil-code-a-comparative-analysis-6066.html>.
- [31] Vietnam Civil Code. (2015, November). Retrieved from <https://vietanlaw.com/the-law-no-91-2015-gh13>.
- [32] Wang, C. (2011). Termination of dynamic contracts in an equilibrium labor market model. *Journal of Economic Theory*, 146(1), 74-110. doi: 10.1016/j.jet.2010.12.008.
- [33] Xiao, P. (2022). On the relationship between the application of actual performance and compensation for damages in the Civil Code of the People's Republic of China. *Beijing Law Review*, 13(3), 515-527. doi: 10.4236/blr.2022.133033.
- [34] Zhang, T. (2012). The pragmatic court: Reinterpreting the Supreme People's Court of China. *Columbia Journal of Asian Law*, 25(1). doi: 10.7916/cjal.v25i1.3314.

Розірвання контракту стороною, яка порушила зобов'язання в Цивільному кодексі Китаю

Цзін Фей Ци

Магістр, асистент
Лоянський нормальний університет
471934, Джицін дорога, 6, м. Лоян, Китай
Киргизький національний університет імені Жусупа Баласагіна
720033, вул. Фрунзе, 547, м. Бішкек, Киргизька Республіка
<https://orcid.org/0000-0003-4709-7578>

Болот Токтомишевич Токтобаєв

Доктор юридичних наук, професор
Киргизький національний університет імені Жусупа Баласагіна
720033, вул. Фрунзе, 547, м. Бішкек, Киргизька Республіка
<https://orcid.org/0000-0002-7106-1324>

Цянь Чжан

Магістр, викладач
Киргизький національний університет імені Жусупа Баласагіна
720033, вул. Фрунзе, 547, м. Бішкек, Киргизька Республіка
<https://orcid.org/0000-0002-4703-7471>

Анотація. Важливе місце в правовій системі кожної держави світу належить цивільному праву та нормативно-правовим актам, які регулюють цивільні правовідносини. Дуже актуальне в реаліях сучасного світу розуміння права на розірвання контракту та можливостей припинення його дії, особливо коли це стосується сторони, що недобросовісно виконує його умови. Мета цього дослідження – вивчити основоположні принципи та можливості розірвання контракту для сторони, яка порушила зобов'язання, згідно із Цивільним кодексом Китайської Народної Республіки. Для досягнення поставленої мети застосовано системно-структурний, діалектичний, історико- та формально-правовий, порівняльно-правовий методи, методи аналізу й синтезу та інші. У процесі дослідження встановлено, що статус контракту має вирішальне значення в сучасному світі, зокрема і в КНР. Згідно з міжнародними звичаями, контракти повинні беззаперечно виконуватися, проте інколи виникають ситуації, які призводять до дострокового розірвання чи анулювання певного контракту, тому результати, які були досягнуті цим дослідженням, можуть стати основою для кращого розуміння умов та можливостей розірвання контракту для сторони, що його порушила, з мінімізацією втрат та ризиків на майбутнє. Особливо актуальними результати цього дослідження будуть для потенційних партнерів, які планують підписання контракту в Китаї, оскільки дають змогу зрозуміти особливості дотримання умов контракту та допоможуть вчинити юридично правильні дії, у разі якщо умови контракту перестануть виконуватися. Важливе також бачення того, як можна уникнути схожих ситуацій, підписуючи цивільні контракти, та що потрібно зробити, аби виконати контракт у повному обсязі

Ключові слова: анулювання контракту; цивільні правовідносини; опортуністична поведінка; арбітраж; юридичний глухий кут