

The influence and consequence of contract discharge in China's Civil Code

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Abstract. With the rapid development of the world economy, China is becoming a key player in global trade and investment processes. Developing and updating legal rules governing contractual relations plays an important role in ensuring transparency, stability, and fairness in the business environment. Thus, the main purpose of this study was to identify the existing problems in the laws governing the process of contract cancellation and to make recommendations to improve the relevant aspects. In the course of the research, the legal method and the method of comparison were applied. As a result, the main procedures and grounds provided by the Civil Code of the People's Republic of China for the termination of contractual obligations were identified. It was learnt that parties can terminate a contract in case of material breach of the terms of the agreement, which includes default, exceeding deadlines or changing circumstances that significantly affect the performance of the contract. The study also identified specific challenges that actors face when terminating contracts. Such as the unpredictability of the legal consequences of excluding a party from a contractual relationship, which can pose serious economic risks. The impact of factors such as economic crises on the termination of contractual obligations was also emphasised in the findings of the study. An important conclusion was the need to improve the legislation in the field of contract termination. The results of the study can be used to improve the law on contract termination in China, which can be the basis for developing clearer and more adaptive rules, thereby reducing possible legal risks for the business community

Keywords: changes in legislation; legal practice; risks and challenges; recommendations; entrepreneurship

Introduction

In a rapidly changing global market, where business transactions are becoming increasingly complex and large-scale, it is important for entrepreneurs to quickly adapt to new

legal requirements. Also, in the context of global economic challenges, threats of crises and uncertainty, a proper understanding of the procedures and grounds for termination

Suggested Citation

Article's History: Received: 31.05.2024 Revised: 30.08.2024 Accepted: 25.09.2024

Qi, JF., Toktobaev, B., & Zhang, Q. (2024). The influence and consequence of contract discharge in China's Civil Code. *Social & Legal Studios*, 7(3), 17-26. doi: 10.32518/sals3.2024.17.

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of contractual obligations is a key factor in managing risks and ensuring business stability. Thus, the study of the termination of contractual obligations under the Civil Code of the People's Republic of China (2020) now represents an important contribution to the practical field and provides relevant information for the business community operating in the Chinese market. The problematic aspect of this study is the need to analyse and clarify the mechanisms for the termination of contractual obligations that are enshrined in the new rules of the Civil Code of the People's Republic of China. The introduction of these changes creates significant legal uncertainty, raising questions about the procedures, grounds, and possible consequences of contract termination.

Scientific research on the problem of termination of contractual obligations under the Civil Code of the People's Republic of China has been conducted by lawyers and researchers focusing on analysing the legislative changes. For example, the Article by C. Valcke (2023) provides an overview and analysis of the changes in Chinese law related to the consent of the parties when entering into contracts. The author elaborates on the innovations in the Civil Code of the People's Republic of China, highlighting aspects of the parties' free will, including trade practices and mutual consent rules. The researcher focuses on how these changes may affect contractual relations and the protection of interests of parties to transactions. But at the same time, some important aspects related to the problems of application of innovations in the Civil Code of the People's Republic of China have not been considered in detail in the paper. In particular, there is no analysis of the practical difficulties faced by the parties in implementing the new rules on consent in the conclusion of contracts. The Article also overlooks the issues of legal clarity and predictability in the context of the new legislative rules, which may have a significant impact on legal practice and the business environment. These unaddressed aspects may be key in applying the changes in actual practice and require further research to better understand their impact on the business environment and jurisprudence in China.

The work by R.J. Tuibaev and A.K. Egesheva (2021) examines the problems and prospects of civil procedure in Kyrgyzstan. In the context of this study, the authors touch upon the problems of contract law and discuss the challenges associated with resolving disputes over breaches of contractual obligations. However, despite the extensive research, there are still some unresolved issues in the work. In particular, it has not considered what specific legal mechanisms are provided to protect the interests of the offending party in contract termination. An examination of these mechanisms could help in understanding the effectiveness of the legal defence and possible improvements.

N.S. Semenov (2022) describes in his study the difficulties encountered in establishing information relations in e-justice in the Kyrgyz Republic and examines them in the context of contractual relations. The author considers the problems arising in the conclusion and execution of contracts in Kyrgyzstan, as well as legislative initiatives to improve contractual relations. The author also makes a comparison with the contract law of China, including an analysis of the effectiveness of normative and practical recommendations aimed at improving contractual relations and improving their legal regulation. However, at the same time, the paper lacks a detailed examination of the changes in the Civil Code of the People's Republic of China, the norms of

which are compared with the contract law of Kyrgyzstan, as well as cases from court practice or specific scenarios, which leaves room for a deeper understanding of how the new legal norms may affect real business situations and what challenges may arise in the process of their application.

In the Article by H. Jiang and A. Appen (2022), the authors examine the new rules on the validity of contracts in the Civil Code of the People's Republic of China and their impact on the freedom of contracting of state-owned enterprises. The Article examines the changes in the legislation, focusing on issues related to restrictions and freedom of contracting by state-owned enterprises. However, the paper did not sufficiently consider the implications and effects of the new rules on the overall business environment and investment climate in China. The lack of a more detailed analysis of the impact of these changes on different sectors of the economy and possible challenges for foreign investors leaves room for additional research in this area.

B. Ling (2021) explores new contract law norms in the Civil Code of the People's Republic of China. The author analyses in detail the changes and amendments made to the legislation and describes their impact on the regulation of contractual relations. The Article focuses on key aspects such as the form of the contract, performance of obligations, liability of the parties and other issues related to the conclusion and performance of contracts. Despite this, the paper did not fully consider the topic of alternative ways of dispute resolution in contractual relations, such as mediation or arbitration. Also, the author leaves without due attention the issues related to the application of new rules in international contracts and their compliance with international standards.

X. Chao (2022) explores in his Article the relationship between contract law and financial regulation in China, with the focus on the perspective of illegality. Analysing the impact of legal aspects on the financial sphere, the author highlights which aspects of contract law may be considered illegal in the context of financial transactions. The paper highlights key legal provisions and their impact on the conclusion and execution of contracts in the financial sphere. However, the paper did not address the problems associated with the practical aspects of applying these principles in practice, as well as the possible challenges faced by parties in financial transactions under contract law. Also, an important addition could be the consideration of recent changes in legislation and their impact on the area of contractual relations in the financial sector.

Thus, the purpose of this study was to conduct a comprehensive analysis of the Civil Code of the People's Republic of China regulations to identify the problematic issues in the contract termination process, and to assess the possible impacts of this process on the business environment.

Materials and methods

To achieve the objective, the study used methods such as the legal method, including the analysis of jurisprudence, as well as the comparative method. The legal method that was applied during the research involved analysing the texts of the Civil Code of the People's Republic of China (2020) related to the termination of contractual obligations. Articles, paragraphs, and changes in the law were carefully analysed. Particular attention was paid to the identification and detailed examination of key terms and concepts used in the legislation to fully understand their context and meaning.

In doing so, analysing case law was an effective method for examining the rules of the Anglo-Saxon legal system and their reflection in the Civil Code of the People's Republic of China. The court decision in “Davis Contractors Ltd v. Fareham Urban District Council” (2023) was analysed in the study to examine precedents and dissect legal aspects related to contract termination by the breaching party. This approach allowed for a more detailed understanding of the principles embedded in the laws and their specific application in court judgements, which in turn contributes to a deeper understanding of how the Anglo-Saxon legal system influences the development and interpretation of law in China.

The comparative method within the study was key to identifying the characteristics and unique features of the law on the termination of contractual obligations in the Civil Code of the People's Republic of China. The Civil Code of the People's Republic of China covers a wide range of issues, including property, contracts, inheritance, obligations, and much more, including norms defining the process of concluding, executing, and terminating contracts. Firstly, the statutory provisions governing the termination of contracts were compared with similar provisions in the laws of other countries. For comparison of legal norms between China and the norms of the Romano-Germanic legal system, the German Civil Code (2002) was analysed. The German Civil Code is the primary legislative act defining civil law in Germany, including norms regulating the procedure and conditions for contract termination, as well as the obligations of parties and the consequences of breaching contractual obligations. For comparison with the Anglo-Saxon legal system, the law of the United Kingdom was analysed. The Contracts (Applicable Law) Act (1990) is UK legislation that establishes rules for determining the applicable law in contracts, including provisions for choice of law, governing law determination, and resolution of conflicts of laws, aiming to ensure clarity, predictability, and consistency in cross-border contractual relations.

This method involved analysing differences and similarities in legal approaches to the termination of contractual obligations, identifying trends and basic principles applied in different jurisdictions. Particular attention was paid to the context and interpretations of key terms to understand how similar or different the legal concepts and their application are in different parts of the world.

Results and discussion

Grounds for termination of the contract. A contract, according to the Book III, Chapter I, Article 464 of the Civil Code of the People's Republic of China (2020), is a formal agreement between the parties aimed at establishing, modifying, or terminating civil law relations. This agreement regulates the interaction of individuals or legal entities within the framework of civil law and establishes their mutual rights and obligations. When analysing this norm in detail, it is important to note that the contract can be concluded both in writing and orally, depending on the specific circumstances. It is based on the principle of freedom of contract, provided that the legitimate rights and interests of the parties are respected. Contracts can relate to various spheres, including transactions, services, labour relations. This formulation allows for a wide range of contractual relations to be taken into account, giving the parties flexibility to regulate them in accordance with the law. It also emphasizes the importance of transparency and legality in

the conclusion, execution, and termination of contracts to ensure fairness and stability of civil law relations.

The Civil Code of the People's Republic of China (2020) contains rules governing the cancellation of a contract. Firstly, the Book III, Chapter VII, Article 557 of the Civil Code, notes that the termination of a contract entails the end of the relationship under this agreement and the termination of the rights and obligations associated with it. This means that the parties are no longer obliged to fulfil the terms of the contract, and their mutual influence within the framework of civil-law relations ceases. Analysing this norm, it is important to note that the termination of the contract may occur on various grounds. The Book III, Chapter VII, Article 563 of the Civil Code of the People's Republic of China provides that the parties have the right to terminate the contract in case of breach of obligations, which is expressed in several circumstances. Firstly, if there is a force majeure that makes it impossible to achieve the purpose of the contract. Secondly, if one of the parties declares failure to fulfil the main obligation before the expiry of the fixed term. The third circumstance is related to the delay in the fulfilment of the obligation and its failure to be fulfilled within a reasonable time after notification.

Also, the Book III, Chapter VII, Article 563 notes the possibility of cancellation of the contract in case of delay in fulfilment of obligations or violation of its essential conditions. In a situation where the performance of obligations becomes problematic due to long delays or significant breaches by one of the contractual parties, the right of termination becomes an important tool to restore a fair balance between the parties. It allows the aggrieved party to terminate the agreement free of further obligations and, if necessary, to claim damages. For example, if a supplier regularly fails to deliver goods on time or the quality of services does not meet the agreed standards, the other party has the right to terminate the contract. This mechanism balances long-term relationships and emphasizes the importance of good faith performance. It also provides an incentive for parties to honour the terms of the contract, as breach may result in the loss of the contract. This principle ensures fairness and efficient functioning of civil law relationships in the context of the Civil Code of the People's Republic of China. The Book III, Chapter VII, Article 566 of the Civil Code of the People's Republic of China (2020) also provides that in the event of termination of a contract due to default, the party with the right to terminate is entitled to claim damages from the breaching party, unless the parties have agreed on other liability. This guarantees compensation to the party whose interests have been violated due to the default of the other party.

Despite the importance of this rule, it has some shortcomings. According to the Book III, Chapter VII, Article 563, relying on an abstract notion of “failure to achieve the objective” without clear criteria and definitions can be a source of uncertainty and unfairness in the context of contract termination. The subjective assessment of the parties may differ significantly, creating the potential for ambiguous interpretations and disputes whether the breaches are indeed so serious as to justify termination. This undermines the basic principle of predictability and clarity in contractual relations. The lack of specific timeframes and procedures for identifying and resolving breaches can also lead to delays and confusion in the termination process. Parties may find it difficult to determine when delays begin and how

quickly or efficiently disputes should be resolved. This increases risks to the business environment, where clear and expeditious cancellation mechanisms can be essential. To improve the situation and ensure a fairer and more efficient termination process, clear, concise, and specific rules should be introduced that are defined by criteria, procedures, and timeframes, providing parties with clear guidance and predictability in contractual relationships.

To avoid such shortcomings, the introduction of clear and specific criteria is recommended, such as setting clear deadlines or standards that define “impossibility to achieve the objective”. This will reduce uncertainty, lower the risk of possible conflicts, and ensure a better application of the norm in practice. It is also important to introduce time limits within which a party must remedy a breach to avoid cancellation. Additionally, it is proposed to use standards of professional responsibility, to assess the weight of each breach and to introduce prior warnings before termination of the contract. These specific criteria would help reduce uncertainty, provide clear guidance to the parties, and ensure a more transparent application of the rule, which would ultimately reduce the risk of potential conflicts and increase the efficiency of the termination process.

Other authors have also studied this issue. For example, S. ZeHua (2020) analyses in his work the right of a party to terminate a contract in case of breach of obligations and methods of resolving the arising difficulties in the context of contractual relations. The author examines court and arbitration decisions concerning cases of default by parties to a contract and offers a reflexive view of effective strategies for resolving the arising controversies. As well as the conducted research, the author's study reveals the problems in the Chinese legislation that regulates the cancellation of contractual obligations. Analysing the main conclusions of the work of S. ZeHua (2020) it is worth agreeing that the Chinese legislation has some inaccuracies and requires amendments to the rules governing both the grounds for the cancellation of contracts and the procedures for such cancellation. However, the author has examined the issue in more detail and noted that in addition to amending the code, it is also important to pay attention to the efficiency and accessibility of the judicial and arbitration system to ensure fairness and effective resolution of disputes. Analysing and supporting this conclusion, it should be emphasised that unclear wording of laws can lead to legal uncertainty in resolving disputes both in everyday life and in court.

The study by J. Herbots (2021) takes a detailed look at Civil Code of the People's Republic of China and its impact on the law of contracts. In contrast to the study conducted, the author highlights the positive changes in China's contract law since the adoption of the new code. He focuses on the fact that the wording of the norms in the code provides the parties with wide opportunities to consider a variety of contractual relations, providing flexibility in their regulation in accordance with the law. However, one cannot fully agree with the author because, despite the positive aspects of the flexibility of the new Civil Code of the People's Republic of China that he highlights, he overlooks the potential negative consequences of this flexibility. The author fails to consider that uncertainty in the wording of the law may lead to legal disputes and conflicts, which will create a risk to predictability and fairness in law enforcement. Nor does the author analyse specific measures to mitigate these risks or to balance

legal flexibility with predictability. Consequently, the study leaves some aspects of the problem without proper attention and analysis, which makes its conclusions partially incomplete and insufficiently substantiated.

T. Yao (2023) analyses the innovations introduced in the Civil Code of the People's Republic of China and assesses their contemporary value. Unlike previous studies, this paper presents more reasoned conclusions, highlighting the changes in the code and their impact on modern society. Similarly to the conducted research, the author highlights the problems related to the ambiguity of the wording of the code norms. Analysing the work of T. Yao allows agreeing with the conclusion that despite the improvements and adjustments in the new code, some norms still do not ensure proper fairness and effective functioning of civil-law relations in the context of the Civil Code of the People's Republic of China. However, it is worth noting that the author's study does not provide concrete suggestions for improving the unclear language, nor does it indicate possible methods of implementation. This would enhance the practical relevance of the work and provide more concrete recommendations for legislators and legal practitioners.

Thus, the norms granting parties the right of termination require clarity, specificity, and predictability. Adjusting the rules to clarify terms, establish clear criteria and define specific procedures promotes fairness, reduces the risks of disputes, and ensures more effective regulation of contractual relations.

Procedure for terminating contracts. An important component is to follow the statutory procedures for the termination of a contract. This process includes mandatory steps such as prior notification to the other party of the intention to terminate the contract, adherence to specified terms and conditions, and clear regulation of the consequences of termination. This method aims to ensure fairness and justice in the termination process and effectively protects the interests of both parties. Well-established termination procedures serve as a guarantee that the parties' actions comply with the law, which helps to prevent conflicts and ensures a balance of interests in the termination of the contract (Rowan, 2022). This structured approach creates transparency in the termination process and helps to ensure that any disputes that may arise are resolved fairly.

The first and one of the most important elements of the termination procedure is the observance of deadlines. According to Book III, Chapter VII, Article 564 of the Civil Code of the People's Republic of China (2020), if the time limit for exercising the right to terminate a contract is fixed by law or agreed by the parties, and the parties have not exercised this right after the expiry of the time limit, this right lapses. Where no time limit is specified, such a right of termination is forfeited if the party with the right has not exercised it within one year from the time when it became aware or should have become aware of the reasons for termination, or within a reasonable time after the other party has made a claim. This rule helps to ensure the temporal validity of the decision on termination, as well as to prevent abuse of this right. However, it should be noted that the definition of “reasonable period of time” provides subjective interpretative possibilities, which may lead to disagreements and disputes in court practice. The concept of “reasonableness” (Chapter VII, Article 564) leaves room for individual interpretations based on the subjective views

and interests of the parties. This uncertainty may become a source of discrepancies in determining specific time limits for the cancellation of a contract. In practice, such situations may give rise to disputes as to how quickly or how long a party must respond to a breach to consider its actions reasonable. Additional clarity and specificity in the law, by providing clear criteria for defining a “reasonable period”, would help prevent potential disputes and establish more unambiguous standards in regulating the time aspects of contractual termination procedures (Berdar, 2023). This in turn would contribute to the fairness and efficiency of the termination process, providing a more predictable and stable basis for the resolution of disputes in this area.

Notice to the other party is also a mandatory element. If either party expresses a desire to terminate the contract in accordance with the law, the other party must be duly notified (Kasianenko *et al.*, 2020). The cancellation of the contract takes place at the time of receipt of the notice by the other party. If the notice specifies that the contract is to be terminated automatically upon the debtor’s failure to perform the obligation within a certain period, the contract is cancelled upon the expiration of the specified period (Chapter VII, Article 565). This rule, which allows automatic termination of the contract upon default within a certain period, may face the problem of not taking into account circumstances beyond the control of the parties. Situations such as force majeure or unforeseen problems may be a reason for failure to fulfil an obligation, and yet automatic termination without consideration of the context may lead to unfair consequences. For example, if a supplier was unable to fulfil an obligation due to a natural disaster such as a flood, automatic termination does not consider objective circumstances. In addition, ambiguity in the concept of “adequate notice”, in Chapter VII, Article 564 of the Civil Code of the People’s Republic of China (2020), can create problems as parties may interpret the term differently, leading to potential disagreements and disputes. The lack of clear criteria and standards for determining what is considered “proper notice” makes the termination process less predictable and more susceptible to subjective perceptions. It is important to consider that the standards for “proper notice” may vary depending on the nature of the contract and the circumstances of the case. A detailed definition of criteria, such as the timing, form of notice and means of delivery, would help to eliminate uncertainty, and prevent potential conflicts. Such an approach would contribute to a fairer and more efficient contract termination process by providing clarity and unambiguity in understanding the notice requirements for termination.

The Civil Code of the People’s Republic of China (2020) also contains provisions that regulate the consequences of cancellation. If a contract is terminated due to default, the party entitled to terminate the contract is entitled to claim damages from the breaching party, unless the parties have agreed otherwise (Chapter VII, Article 566). According to Book III, Chapter VIII, Article 584, 591 of the Civil Code of the People’s Republic of China, in the event of default or non-conformity of performance with the agreement, which results in loss to the other party, the compensation shall correspond to the loss, including the expected benefit that the party could have obtained in the performance of the contract. However, the compensation shall not exceed the losses that the breaching party could have foreseen or should have foreseen at the time the contract was entered into. Following

a breach of duty by the other party, the party suffering the loss is obliged to take reasonable steps to prevent further loss. If the loss is aggravated by the failure to take appropriate measures, no compensation shall be granted for losses that could have been prevented (Adanbekova *et al.*, 2022). Reasonable expenses incurred to prevent an increase in loss must be compensated by the breaching party.

It should be noted that these norms enshrine clear legal standards to protect the interests of the parties. Firstly, the code establishes the principle of proportionality, limiting the compensation for damages so that it does not exceed those damages that could have been foreseen or should have been foreseen by the breaching party at the time of contracting. This favours a fair and balanced apportionment of liability for default. In addition, an important aspect is the duty of the party suffering the loss to take reasonable steps to prevent further loss. This encourages parties to actively participate in minimizing losses and promotes the principle of good faith in the performance of contracts. The norms also emphasize that the costs aimed at preventing an increase in losses should be reimbursed by the breaching party, providing an incentive for the breaching party to respond promptly and effectively to the actions of the injured party (Alter & Li, 2024). Thus, these norms provide balance and fairness in the process of compensation for damages in the cancellation of a contract.

Despite the overall effectiveness, the rules of the Civil Code of the People’s Republic of China regarding the compensation of damages for contract cancellation due to non-performance of obligations have some shortcomings. The lack of a clear definition of what are considered “reasonable measures” (Chapter VIII, Article 584) to prevent further losses may lead to disagreements and disputes between the parties. Also, the lack of specific criteria for assessing what costs are “reasonable” may create uncertainty and contribute to potential conflicts of interest. One of the potential shortcomings of these rules is also the lack of a clear standard for defining “expected benefits”, which can lead to interpretations and disagreements in determining compensation for losses (Taylor & Taylor, 2023). In addition, the wording that compensation should not exceed the losses that could have been foreseen by the party may cause difficulties in practical application. The determination of the degree of foreseeability of losses may be subjective and involve a wide range of interpretations, which in turn may make it difficult to determine fair and adequate compensation. It is important to clarify and further elaborate these aspects in the law to ensure that parties have a clearer and more unambiguous understanding of their obligations and rights in these situations.

The same conclusions are drawn by S. Wei (2022) covering in his paper the doctrine of mistake and the gross misunderstanding rule in Chinese contract law. The author identifies the problems associated with misunderstanding of the parties when concluding contracts and draws attention to the shortcomings in the regulation of these issues in Chinese law. The analysis of the work of S. Wei emphasises that clarity and predictability in Chinese contract law are necessary to prevent errors and misunderstandings when concluding contracts. Taking into account the general conclusions of the conducted and analysed research, it is worth agreeing with the author’s thesis that uncertainty in the law can cause disputes and damage to business, as the parties may have different interpretations of the contract terms. Thus, both

works stimulate not only the development of more effective legislation, but also the improvement of practical implementation of contractual relations in modern China.

The work of J. Jastrzębski (2023) presents an extensive analysis of the concept of breach of contract in civil law, covering similarities and differences in this concept among different civil legal systems. The author not only highlights key aspects of breach of contract, but also attempts to trace the future development of this concept. This study provides a valuable contextual element by placing breach of contract issues in a more general global context. However, in analysing the findings of this study, it should be noted that by relying solely on general principles and standards, the author misses important details related to the cultural, historical, and institutional contexts inherent in different legal systems. Some legal norms and principles are rooted in a long history or derive from unique institutional aspects. Therefore, paying attention to the neglect of these aspects, the author’s conclusions can be agreed with only partially, namely in the context of the existence of problems of regulating the consequences of breach of contractual obligations.

Analysing the above, it can be noted that the rules on contract termination in the Civil Code of the People’s Republic of China, although it provides a framework for regulating

the procedures and grounds for termination, is subject to some shortcomings. The need for more specific standards and criteria, as well as a clear definition of procedures and timelines, would help to eliminate such shortcomings and ensure a more effective and fair application of the termination rules in China’s business environment.

The influence of legal systems on the provisions of the Civil Code of the People’s Republic of China. When analysing the rules of the Civil Code of the People’s Republic of China on the termination of contracts, it is important to identify the essential differences, peculiarities, and influence of the continental (Romano-Germanic) and common (Anglo-Saxon) legal systems on these rules. Considering the unique features of each system, it was possible to identify which basic principles and approaches prevail in China, as well as which elements are adapted from other legal traditions. In this context, the Romano-Germanic system, represented for example by German law, is characterized by stricter formalism and attention to detail, while the Anglo-Saxon system, as in the case of English law, tends to be flexible and influenced by extensive jurisprudence. This comparison highlights key differences and peculiarities in the approaches to the regulation of contractual termination in different legal systems (Table 1).

Table 1. Comparative analysis of the provisions of the Civil Code of the People’s Republic of China with legal systems

Aspect	Civil Code of the People’s Republic of China	Romano-Germanic system	Anglo-Saxon system
Principles of termination of contracts	The principles of fairness and reasonableness are considered, along with clear cases of termination.	Strict formalism, predominance of explicit contract terms.	Flexibility and focus on the circumstances of the case.
Criteria for termination of contracts	Include clear cases and general principles, leaving room for consideration of circumstances.	Depends on the explicit terms of the contract and its form.	Focused on circumstances, for example, “frustration of contract”.
Classification of grounds for termination	Flexible, considering circumstances and general principles.	Strict, clear classification of grounds for termination.	Flexible, situation-oriented classification.
Interpretation of key terms	Flexibility in interpretation, considering Chinese legal culture.	Precise form and clarity of key terms.	Flexibility and consideration of circumstances in interpretation.

Source: created by the author based on the analysis of the Contracts (Applicable Law) Act (1990), German Civil Code (2002), Civil Code of the People’s Republic of China (2020)

A detailed comparison of the rules of the Civil Code of the People’s Republic of China on contract cancellation with the Romano-Germanic (continental) legal system reveals notable differences in approach. In the Romano-Germanic system, for example, the principle of strict formalism and contractual freedom prevails, which implies a strong emphasis on the precise form and clarity of contractual terms. In the context of contractual termination, this is reflected in strict procedures and a clear categorization of grounds for terminating an agreement (Mingyang, 2023). For example, according to Chapter IV Article 314 of the German Civil Code (2002), provides for certain cases, such as a material breach of obligations or a change in circumstances affecting the performance of the contract. These principles, characteristic of the Romano-Germanic system, emphasise the need for precision and clarity in contractual relations, which may affect the termination of contracts and the legal consequences in case of breaches.

Unlike the Romano-Germanic system, which emphasises formalism and strict classification of grounds for termination, Chinese law is more flexible in regulating the process (Kanaryk, 2023). The Civil Code of the People’s Republic of

China pays attention to the principle of fairness, reasonableness, and the protection of the interests of the parties in contractual relations. This is reflected in the fact that, in addition to explicitly providing for cases of termination, the law leaves room for circumstances that may be considered by the court within the framework of general principles. For example, according to the Book III, Chapter VII, Article 563, the concept of “material breach” in the Civil Code of the People’s Republic of China can be interpreted more flexibly, which takes into account the specificity of Chinese legal culture, where the principles of fairness and reasonableness are more important. These differences emphasize the specificity and flexibility of the Chinese system in the context of contract termination.

In the Anglo-Saxon legal system, particularly within English law, the doctrine of “frustration of contract” is an important tool for dealing with situations where circumstances make it impossible to fulfil a contract or significantly alter its nature (Tymoshenko *et al.*, 2023). This doctrine recognises that there is a limit to the parties’ exposure to circumstances and in the event of extremely unforeseeable and altering material circumstances, the contract may be frustrated.

The principle of frustration expresses the concept of honesty and fairness, allowing the courts to adapt to the particular circumstances (Al Majed & Al Majed, 2023). An example is the case of “Davis Contractors Ltd v. Fareham Urban District Council”. In this case, hostilities caused a building ban which significantly changed the nature of the contract between the company and the city council. The court found that the new circumstances made performance of the contract effectively impossible and altered its material terms. As a result, the court decided to frustrate the contract despite the absence of express termination provisions in the contract itself. This principle means that the court has the power to terminate a contract if extremely unforeseeable and altering material circumstances arise that render the contract useless or materially change its nature. This approach emphasizes the flexibility and adaptability of the Anglo-Saxon system of law in dealing with contractual termination disputes, and the Davis Contractors decision has become a precedent establishing the principle of contract frustration in English jurisprudence (Davis Contractors Ltd..., 2013).

In contrast to the Romano-Germanic system, where the termination of contracts often depends on the express terms of the contract, the Anglo-Saxon legal system provides courts with a more flexible and contextualized toolkit when deciding questions of termination. The Anglo-Saxon system emphasizes fairness in particular circumstances, allowing a wide range of factors to be taken into account when making decisions. The principle of ‘frustration of contract’ in English law is a prime example of this flexible approach. Rather than strictly following the law, courts in Anglo-Saxon jurisdictions consider the circumstances of a particular case on the basis of the principle of fairness (Filatova, 2020). This allows them to consider unforeseen events or changes that may significantly affect the fulfilment of the contract.

It is also worth noting the common features of the rules of the Civil Code of the People’s Republic of China on contract termination with Romano-Germanic and Anglo-Saxon law, which are expressed in the desire to ensure fairness and protection of the interests of the parties. The Chinese legislative approach to contract termination, like the Romano-Germanic system, defines certain criteria for the termination of contracts. However, unlike the more strictly formalized continental approach, characterized by rigid procedures and clear grounds, the Chinese system leaves more room for considering circumstances in accordance with general legal principles (Mammadli, 2022). This allows for more flexibility in the treatment of termination cases, considering the context and specific circumstances. This approach promotes a more personalized treatment of situations, providing flexibility in resolving termination disputes in the context of general legal principles and fairness.

The similarities between Chinese law and the Anglo-Saxon system can be seen in their shared emphasis on flexibility in dealing with the specifics of each case. Both systems strive for a balance between clarity of contractual terms and consideration of unexpected circumstances, thus providing a flexible and fair mechanism for the cancellation of contracts depending on specific situations. In the Anglo-Saxon system, for example, the doctrine of “frustration of contract” gives courts wide latitude to terminate a contract in the event of impossibility of performance or a material change in circumstances. Similarly, the Civil Code of the People’s Republic of China focuses on the principles of fairness, reasonableness,

and the protection of the parties’ interests, allowing courts to take into account the circumstances of the case (Asatryan, 2023). This approach in both systems promotes a more personalized and fair treatment of contract termination disputes, which expresses their common interest in balanced justice.

Other authors have also considered the influence of legal systems on Chinese civil law norms. For example, the work of Z. Wu and L. Chen (2022) presents a review of the theory of property transfer in the context of English and Chinese law. The authors focus on key aspects of the theory of transfer of ownership, such as the formalities of transactions, the requirements for the transfer of ownership and the impact of changes in the law on this process. As a result, the authors identify similarities and differences between English and Chinese law in relation to contractual obligations, emphasizing the influence of the cultural, historical, and legal characteristics of each system. Analysing the authors’ main conclusions, it is worth agreeing that historical, cultural, and legal peculiarities have a significant impact on the process of property transfer in both English and Chinese law. These factors determine the basic principles and requirements for property transfer transactions, including transaction formalities and requirements for the transfer of ownership. Thus, it can be concluded that analysing the similarities and differences between English and Chinese contract law provides a better understanding of the relationship between legal norms and the cultural/historical factors that shape those norms.

N. Kornet (2011) conducts in his study a comparative analysis of contracting aspects in China, focusing on freedom of contract, contract formation, and contract termination. The author draws attention to the unique features of Chinese law, highlighting issues such as the level of freedom of contract, the process of contract formation, and the resolution of conflicts of form. The work also makes a comparison with similar aspects in other legal systems, identifying similarities and differences in approaches to the regulation of contractual relations. However, it should be noted that the author’s results do not take into account the influence of cultural and societal factors on contractual relations in China. As the results of this study have shown, the cultural context plays a significant role in the formation of legal norms and principles in China, and its consideration is necessary for a full understanding of the legal environment. Thus, the author’s neglect of this aspect may lead to misinterpretation of the results and misunderstanding of the real impact of legal norms on the practice of contract formation and cancellation in China.

Thus, by comparing the regulations with similar regulations in other countries, significant differences in the approach to contract termination procedures were found, reflecting the peculiarities of the legal systems. However, common trends were also identified, such as an increasing emphasis on protecting the interests of the parties and a desire to eliminate ambiguity in the interpretation of legal terms. These results provide an important basis for understanding the unique features of the Chinese system in comparison to global practice, and highlight possible areas of legislative improvement to improve the clarity and effectiveness of contract termination procedures.

In the light of the study, detailed amendments to the norms of the Civil Code of the People’s Republic of China are proposed to improve the mechanisms of contract termination. One of the key aspects is the expansion of the list of grounds for termination, accompanied by the introduction

of specific criteria for their application. For example, terms such as “failure to achieve the objective” and “reasonable time” can be clarified by introducing clear and uniform standards, which will ensure consistent and predictable application of these grounds.

In addition, it is proposed to introduce specific time limits for the various stages of the termination procedure, ranging from notification to completion of the process. This will provide clearer timeframes and streamline the course of contractual termination, providing the parties with a clear picture of the course of events and timeframes. Such changes promote not only clarity but also predictability during termination proceedings, which is important to ensure fairness and protect the interests of all parties to a contract.

In the context of further improvements, it is strongly recommended that specific standards be developed for “adequate notice” and “reasonable measures” in contract termination proceedings. An example would be the introduction of clear requirements for the form of notices, defining what aspects and information the parties’ notices should include. This would not only harmonize notification procedures, but also ensure clarity and accessibility for all participants in the process.

It is suggested that standards for “reasonable measures” be developed, namely specific parameters and criteria defining what may be considered reasonable measures in particular circumstances. These parameters may include resource constraints, time limits and the adequacy of the action taken. Supported by judicial and practical examples, these standards will become more specific and adapted to a variety of situations, thereby increasing their effectiveness and real-world applicability.

Conclusions

The research has identified the main circumstances under which the parties have the right to terminate a contract, including cases of non-performance of obligations, breach of material terms and changes in circumstances. However, some norms have identified shortcomings, such as ambiguity in the wording, for example, of the terms “impossibility of achieving the goal” and “reasonable time”. This uncertainty may lead to ambiguities and disputes in the interpretation of these concepts. Such misunderstandings can hinder the application of norms and leave room for subjective interpretations, which emphasizes the need for a clearer and more precise formulation of norms in order to prevent possible ambiguities and strengthen the resilience of the legal system to potential disputes.

The paper highlights the importance of clear procedures and the establishment of clear timeframes for the termination of contracts, including strict notice requirements and automatic termination in case of breach of obligations.

However, the potential difficulties arising from objective circumstances and different interpretations of the concept of “adequate notice” are noted. This can lead to variation and disagreement in the interpretation of the notice requirements, creating risks for the parties to the contract. Such complexities underscore the need to carefully define and specify procedures and notification requirements to avoid potential misunderstandings and to ensure that contract termination mechanisms function more effectively in practice.

The analysis of the consequences of contract termination has focused on damages and the obligations of the parties. The need for clearer and more specific standards to define “reasonable measures” to prevent loss in the context of termination has been identified. For example, terms such as “reasonable measures” in the context of compensation can be interpreted subjectively, leading to potential disputes between the parties. Establishing clear and binding standards will help to eliminate uncertainties and ensure a more effective and fair mechanism for compensation of losses in contractual termination. This is an important aspect to ensure stability and predictability in contractual relationships and to protect the interests of the parties in the event of a breakdown of the agreement.

The comparative analysis with the regulations of other countries was an important step in the study to determine the extent to which the Romano-Germanic and Anglo-Saxon legal systems have influenced Chinese law in the context of contract termination. A detailed comparison of the statutory provisions governing contract termination procedures with similar provisions in other countries’ legal systems revealed similarities, differences, and common trends. As a result of this analysis, it became clear to what extent elements of the Romano-Germanic and Anglo-Saxon systems were reflected in Chinese law, and which features were adapted or modified by China’s own legal traditions. This approach has not only deepened the understanding of the peculiarities of Chinese contract cancellation law, but also revealed the degree of flexibility and openness to external legal influences in the context of the formation of the Chinese legal system.

Continued research in this direction can greatly enhance the understanding of the mechanisms for regulating contract termination and make constructive contributions to the improvement of the law. It can also help to identify new trends and challenges faced by parties in contract termination and suggest innovative approaches to address them.

Acknowledgements

None.

Conflict of interest

None.

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Анотація. В умовах стрімкого розвитку світової економіки Китай стає ключовим гравцем у глобальних торговельних та інвестиційних процесах. Розвиток та оновлення правових норм, що регулюють договірні відносини, відіграє важливу роль у забезпеченні прозорості, стабільності та справедливості в бізнес-середовищі. Таким чином, основною метою цього дослідження було виявлення існуючих проблем у законодавстві, що регулює процес розірвання договорів, та надання рекомендацій щодо вдосконалення відповідних аспектів. В ході дослідження було застосовано правовий метод та метод порівняння. У результаті було визначено основні процедури та підстави, передбачені Цивільним кодексом Китаю для припинення договірних зобов'язань. З'ясовано, що сторони можуть розірвати договір у разі істотного порушення умов договору, що включає в себе невиконання зобов'язань, перевищення строків або зміну обставин, які істотно впливають на виконання договору. Дослідження також виявило специфічні виклики, з якими стикаються суб'єкти при розірванні контрактів. Наприклад, непередбачуваність правових наслідків виключення сторони з договірних відносин, що може створювати серйозні економічні ризики. Вплив таких факторів, як економічні кризи, на припинення договірних зобов'язань також підкреслюється у висновках дослідження. Важливим висновком стала необхідність удосконалення законодавства у сфері розірвання договорів. Результати дослідження можуть бути використані для вдосконалення законодавства про розірвання договорів у Китаї, що може стати основою для розробки більш чітких та адаптивних правил, тим самим зменшивши можливі юридичні ризики для бізнес-спільноти.

Ключові слова: зміни в законодавстві; юридична практика; ризики та виклики; рекомендації; підприємництво