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# **ДОГОВІР ЯК УНІВЕРСАЛЬНА ФОРМА ПРАВОВОГО РЕГУЛЮВАННЯ**

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## **SUBJECTIVE GROUNDS FOR TERMINATION OF THE CONTRACTUAL RELATIONSHIPS**

Juridical facts in the binding field are represented by the grounds for termination of the obligations.

However, contractual obligation may be a juridical fact by itself, by which means proprietary interests in property, ownership right are forfeited, proprietary rights, as well as obligations, are limited. Thus, obligation or its particular part can be a juridical fact which changes or completes another obligation in other legal relations.

Grounds for termination of the contractual relationships can be found in Chapter 50 of the Civil Code of Ukraine and described in twelve articles.

Such grounds include: a) termination of the obligation by performance (Art. 599); b) termination of the obligation by accord and satisfaction (Art. 600); c) termination of the obligation by offsetting (Art. 601); d) termination of the obligation upon the parties' consent (Art. 604); e) termination of the obligation by debt relief (Art. 605); f) termination of the obligation by confusion of debts (art. 606); g) termination of the obligation by impossibility of performance (Art. 607); h) termination of the obligation with the physical person's death (Art. 608); and i) termination of the obligation with the liquidation of a legal entity.

All these grounds can be conveniently classified into two groups: *subjective*, that is such depending on the will of the parties to an agreement or other participants in civil-law relations and therefore being juridical facts – actions by their nature (unilateral repudiation, due performance, accord and satisfaction agreement, offset of liabilities, agreement of the parties, novation, debt relief), and *objective* – not depending on the will of the participants in civil-law relations and thus juridical facts – actions (confusion of debts, impossibility of performance, physical person's death, liquidation of a legal entity).

It is characteristic that according to Art. 598 of the Civil Code of Ukraine this list is not non-exhaustive, and therefore, in theory the agreement may establish other grounds for termination of obligations, which will be different from those specified in Chapter 50 of the Civil Code of Ukraine.

**Termination of the obligation at the request of either party.** Article 525 of the Civil Code of Ukraine contains the general thesis that “unilateral repudiation shall not be allowed unless otherwise provided by the agreement or law.” That is, the possibility of unilateral repudiation can be fixed either in law or in the agreement.

Part 1 of Art.615 of the Civil Code of Ukraine states that “in case of the obligation violation by one of the parties, the other party shall be entitled to repudiate

in full or in part, if established by the agreement or law.” This issue is similarly settled in Part 3 of Article 538 of the Civil Code of Ukraine, whereby if either party to the obligation fails to fulfill its obligations or if there is evidence that it will fail to fulfill its obligations in due time or to the full extent, the other party shall be entitled to refuse the fulfillment of its obligation in full or in part. In this case any repudiation of the agreement is considered reasonable provided that fulfillment of obligations violate agreement terms or if the agreement cannot be performed for other reasons not dependent on the will of the parties (but in no way due to the loss of the customer's interest in the obligation). In this case, repudiation is deemed to be a remedy.

Consequently, for occurrence of a juridical fact terminating obligation certain conditions are necessary, such as violation of civil rights of the party to the obligation or a real concern of such violation.

On the other hand, the exercise of the right to repudiation is conditioned by other (certain) circumstances not related to the violation of the agreement. The occurrence of such circumstances may be caused both by external circumstances and by such actions that are not violations of law and not aimed at termination of the contractual obligations of either party. *First*, vesting right to repudiation is often related to the special, personal-trusting (fiduciary) nature of the contractual relationship of the parties or special significance of the subjective qualities of either party. Due to the fact that personal relations may result in the conclusion of agreements between the citizens and with the participation of entrepreneurs, the right to repudiation is granted to both in this case. The legislator assumes that the deterioration of the fiduciary relationship between the parties may give rise to the agreement termination, but it is pointless to establish the reasons for such deterioration and, accordingly, termination through judicial procedures is not appropriate in this case. *Second*, the right to repudiation is granted to the parties when the agreement is concluded without fixing its term. In such a case, vesting right to repudiation is due to the need to provide the parties with the agreement, which has no specific time limits, additional opportunities for its termination (except for reaching an agreement by the parties) in case of loss of either party's interest in further performance of the agreement. Such grounds may include Clause 4 Part 1 of Article 1141 of the Civil Code of Ukraine, according to which simple partnership agreement is terminated in case of a participant's refusal from the further participation in a simple partnership agreement or termination of the agreement upon demand of one of the participants, unless the agreement between the participants provides survival of the agreement in respect to the other participants. *Third*, the right to repudiation, which is not due to any circumstances, is sometimes granted to the economically weaker party of the agreement – a citizen other than entrepreneur or a party to the agreement applying for goods, works, services (in relation to the party to the agreement constantly engaged in entrepreneurial activity). As an example we can mention Part 1 of Article 825 of the Civil Code of Ukraine, according to which a tenant shall be entitled, at the consent of other persons permanently residing with such a tenant, to terminate tenancy agreement at any time by advance written notice of the landlord three months prior to such termination.

Article 604 of the Civil Code of Ukraine states that **the obligation shall be terminated upon the parties' consent**. Right of the parties to terminate agreement by

mutual consent is based on the freedom-of-contract doctrine. But freedom of contract in general and termination of the agreement in particular cannot be absolute. Restriction of the freedom of contract is intended to protect the weaker party to contractual relations. Inclusion of the provision prohibiting termination of the agreement by consent of the parties is unlawful. Cancellation of the obligation by its termination by consent of the parties shall be grounds which occurrence depends entirely on the will of both parties.

In addition, termination of the agreement results not only in termination of rights and obligations of the parties that arose during the agreement, but also in a number of consequences. In particular, all obligations fulfilled under the agreement before its termination shall remain fulfilled upon its termination, and all legal consequences resulting from such fulfillment shall remain unchanged, and fulfilled obligations cannot be considered as unreasonable gains and shall not be subject to return. In addition, the termination cancels everything which was supposed to be fulfilled but has not been fulfilled before the termination, in other words, all obligations and rights which appeared before termination shall come to an end, i.e. cease to exist.

One of the important features of contractual obligations in modern civil law is its transferability. The ability to change the structure makes it independent of the debtor and creditor, who can change without effect on the obligation.

Obligation between the same parties may be changed for another and the previous obligation shall be terminated. Part 2 of Article 604 of the Civil Code of Ukraine states that the obligation shall be terminated upon the parties' consent to replace the initial obligation with a new one between the same parties (novation).

The legal ground for obligation arising from novation is the parties' agreement to terminate the initial obligation, which simultaneously establishes a new obligation. As the new obligation cancels the old one, the novation terminates all additional obligations ensuring fulfillment of the initial obligation, unless the parties agree that they continue to be valid.

Fulfillment of the obligation is the main regulatory basis for its termination and involves implementation of actions by the creditor and the debtor that form the scope of their rights and obligations. By fulfilling the obligations their goal is achieved – serving the rights and interests of the creditors, and by means of due fulfillment the obligation is terminated.

Obligation shall be deemed duly fulfilled in case of compliance with five basic requirements. At the same time these requirements are conditions for occurrence of a juridical fact and its legal capacity to produce consequences:

1) *appropriate subject-matter of fulfillment* (Articles 610, 620, 622 of the Civil Code of Ukraine). Juridical fact of due fulfillment occurs when the creditor receives an item determined by the obligation, and therefore satisfies own interests.

2) *appropriate subject of fulfillment* (Articles 527, 528 of the Civil Code of Ukraine). An action that is defined as an obligation must be carried out by the person defined by such obligation.

3) *appropriate period for fulfillment* (Articles 530, 531 of the Civil Code of Ukraine). The period of obligation is a temporal expression of the possibility of a juridical fact to occur. In this sense, the temporal dimension regarding law can act both

as a chronological (sequence of actions, moments in time), and as a chronometric (sequence of events) characteristic.

4) *appropriate place for obligation fulfillment* (Article 532 of the Civil Code of Ukraine). This circumstance, along with the period determines the field where a juridical fact may occur. If the parties have not determined the place for obligation fulfillment, then provisions of Art. 532 of the Civil Code of Ukraine shall be applied according to which the place for obligation fulfillment is:

a) under obligation for transfer of real estate – at the location of this real estate;  
b) under obligation for transfer of commodities (property) based on the contract of carriage – at the place where the commodities (property) are handed over to the carrier;

c) under obligation for transfer of commodities (property) based on other transactions – at the place of production or storage of commodities (property), if this place is known to the creditor at the moment of obligation creation;

d) under monetary obligations – at the place of the creditor's residence, and if the creditor is a legal entity – at the place of its location at the moment of obligation fulfillment. If the creditor changes its residence (location) at the moment of the obligation fulfillment and informs the debtor thereof, obligations shall be fulfilled at the new creditor's residence (location) with all the expenses related to change of the place for fulfillment to be covered at the creditor's account;

e) under other obligation – at the place of the debtor's residence (location).

5) *appropriate way of fulfillment* (Articles 529, 533 of the Civil Code of Ukraine). The requirement of appropriate way of obligation fulfillment means that the obligation shall be fulfilled by the debtor by commission of actions that constitute the scope of obligations. The obligation shall be fulfilled in accordance with the terms of the obligation and requirements of the law, other legal acts, and in the absence of such requirements – according to the business practice or other requirements specified.

The reason for termination of the obligation shall include **accord and satisfaction** as well. Article 600 of the Civil Code of Ukraine provides that the obligation shall be terminated upon consent of the parties as a result of the accord and satisfaction (transfer of money, other property etc.) by the debtor to the creditor.

Regarding the moment when a juridical fact that terminates the accord and satisfaction occurs, its determination depends on various circumstances. In this regard, doctrine and practice have developed three approaches. According to the first approach, the moment of the obligation termination is connected with the moment of transfer of the compensation for termination to the creditor. The second possible approach is that the obligation shall be terminated from the moment the parties conclude accord and satisfaction agreement, that is compensation for termination. Choosing this position creates a loss of distinction between compensation for termination and novation. We believe that the moment of occurrence of a dispositive fact must be determined by the parties to the obligation.

**Offsetting.** According to Article 601 of the Civil Code of Ukraine, the obligations shall be terminated by offsetting similar counter claims being matured as well as claims with non-identified maturity or the maturity established by the moment

of the claim. Part 2 of this Article states that offsetting of counter-claims may be performed at the request of either party.

Offsetting is possible under several conditions:

1) *similar claims*. Subject-matter of both claims shall include things of the same kind.

2) *counter claims*.

3) *period for fulfillment is due, period for fulfillment is not fixed or determined at the time of presentation*

Current practice has also developed three options for determining the moment from which the requirements to offsetting are considered to be discharged.

The first option can be described as follows. Due to the fact that offsetting is a unilateral transaction, which requires the will of one party, it shall be deemed to be completed and discharge the claims at the moment of notification of the other party on offsetting.

The second approach provides that obligations shall be deemed to be terminated as of the effective date of the obligation which is due later.

A kind of the agreement termination by mutual consent of the parties is a *debt relief*.

Article 605 of the civil Code of Ukraine states that the obligations shall be terminated as a result of the creditor's release of a debtor from its obligations (the debt relief) unless this violates rights of the third persons regarding the creditor's property. The debt relief shall mean that the creditor relieves the debtor of its obligations without reciprocal performance of obligations and therefore the obligation is terminated.

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## **ВЧЕННЯ ПРО ЦИВІЛЬНО-ПРАВОВУ ВІДПОВІДАЛЬНІСТЬ: СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ РОЗВИТКУ**

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Наукове видання

# **ДОГОВІР ЯК УНІВЕРСАЛЬНА ФОРМА ПРАВОВОГО РЕГУЛЮВАННЯ**

## **ЗБІРНИК НАУКОВИХ ПРАЦЬ**

за матеріалами

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