Revista de Științe Politice. Revue des Sciences Politiques • No. 86 • 2025: 81 – 95

ORIGINAL PAPER

Comparative analysis of unilateral termination and countermand – legal institutions with a role in contract termination

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Abstract:
The rule of irrevocability of contracts, regulated by the provisions of Article 1270 of the Civil Code, expresses the principle that a contract may be modified or terminated only by mutual agreement of the parties or for reasons authorized by law. Article 1321 of the Civil Code enumerates the cases in which a contract may be terminated: by performance, by mutual agreement of the parties, by unilateral termination, by expiration of the term, by fulfillment or, as the case may be, non-fulfillment of a condition, or by fortuitous impossibility of performance. In the field of transport contracts, however, the Civil Code derogates from these provisions and grants the sender the right to unilaterally renounce or modify the contract. The legal act by which the sender unilaterally modifies the transport contract is called a countermand. Thus, according to Articles 1970-1975 of the Civil Code, the sender has the right to suspend the transport and request the return of the transported goods, their delivery to a person other than the one indicated in the transport document, or to dispose of them as they see fit. However, the sender is obligated to pay the carrier for expenses incurred and compensate for any immediate damages resulting from the countermand. Unilateral Termination is a mechanism through which one of the contracting parties may terminate the contractual relationship. In the Romanian Civil Code, this concept is regulated based on the type of contract and the specific conditions applicable in each case. According to Article 1276, paragraph 2 of the Civil Code, in contracts involving successive performance (e.g., lease agreements, insurance contracts), unilateral termination is permitted, provided a reasonable notice period is observed. The Civil Code allows the beneficiary of a service contract to unilaterally terminate it, with the obligation to reimburse the service provider for the expenses incurred and compensate for the portion of the work already performed.
The parties may include specific clauses in the contract allowing unilateral termination, establishing conditions such as a minimum notice period, the payment of compensation, and written notification of the other party.

Keywords: *countermand, irrevocability, unilateral termination*

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Principles governing the effects of civil legal acts – general rules applicable to most civil contracts. A civil legal act represents a manifestation of will made with the intention of producing legal effects, namely to create, modify, or extinguish a civil legal relationship. The effects of a civil legal act are governed by a series of essential legal principles that ensure the stability, fairness, and predictability of legal relationships. These principles apply to the majority of civil contracts and reflect a balanced approach between the parties' freedom of will and the protection of their legitimate interests. The correct understanding and application of these rules is an essential condition for the safe and lawful conduct of civil legal relations. These principles provide coherence and stability to legal relationships and reflect the core values of private law.

The principle of the binding force of the legal act is regulated by Article 1270 of the Civil Code, according to which "a lawfully concluded contract has the force of law between the contracting parties" (Article 1270 Civil Code). The phrase "has the force of law" signifies a "transfer" of authority from the law to the lawfully concluded contract (Bularca, 2023: 63). Based on this legal text, it follows that the parties are bound to strictly observe the agreed clauses, and no party may unilaterally withdraw from the contract, except in cases permitted by law or by the parties' agreement. Such intervention must, however, be justified by truly exceptional interests, as in principle, such interference is incompatible with the rules of the rule of law (Pop, Popa, Vidu, 2020: 86).

The principle of the relativity of the effects of the legal act, as provided by Article 1280 of the Civil Code, expresses the idea that the legal act produces effects only between the parties who concluded it and, under limited conditions, in relation to third parties (e.g., stipulation for another, oblique or Paulian actions, effects concerning universal or universal title successors), since third parties cannot be bound by a contract to which they were not parties. However, the binding force of a contract may extend to certain third parties, referred to as "successors in title," who did not participate in the conclusion of the contract but are nonetheless affected by its legal consequences (Veress, 2023: 79).

The principle of the opposability of the effects of the contract expresses the notion that a contract produces effects not only between the contracting parties (according to the principle of relativity) but also in relation to third parties, within certain limits, through the recognition of the contract's legal factual effects. This rule does not mean that third parties become bound by the contract, but rather that they must acknowledge and not hinder its effects where the law so provides. Through opposability, contracts gain effectiveness not only between the parties but also within the general legal order, being safeguarded against unjustified third-party interference. This principle ensures the security of civil transactions and protects already established legal relationships.

The principle of the irrevocability of the civil legal act reflects the rule that, once validly concluded, a legal act cannot be unilaterally revoked by one of the parties. It produces binding and stable effects, reflecting a will freely and consciously expressed.

Of particular relevance to this study is the analysis of the functionality of the principle of binding force and, especially, as a consequence thereof, the development of the principle of irrevocability.

The irrevocability of the civil legal act, whether considered a consequence of the principle of binding force or regarded as an autonomous principle governing the effects of legal acts, expresses the idea that a bilateral or multilateral legal act cannot be annulled through the unilateral will of one of the parties, and in the case of a unilateral legal act, its author may not retract their own manifestation of will.

This irrevocability derives from the principle of binding force, representing both a direct consequence and a guarantee of its application. Thus, the rationale underlying the principle of binding force also serves as the foundation for the irrevocability of civil legal acts.

Termination of a Civil Contract is regulated by the Romanian Civil Code depending on the cause of termination (Article 1321 Civil Code). A contract terminates, under the conditions provided by law, through performance (the most natural form of termination), mutual agreement of the parties (the parties may agree, based on the principle of contractual freedom, to bring an end to a previously concluded contract), unilateral termination (permitted if provided by law—e.g., employment contracts, indefinite duration service contracts—or stipulated by the parties' agreement), expiry of the term (the contract ends upon the expiration of the period provided), fulfillment or, as the case may be, non-fulfillment of a condition, fortuitous impossibility of performance (when, due to reasons not attributable to the parties, the object of the obligation becomes impossible to perform, the contract is terminated by operation of law), as well as any other causes provided by law (rescission/termination, annulment, death/incapacity of a party).

In practice, it is essential that termination occurs in accordance with the provisions and formalities set out in the Civil Code in order to avoid litigation or claims for damages.

It is important to note that most forms of termination are grounded in the fundamental principles of civil law: freedom of will, equity, and good faith. These offer the parties a flexible yet rigorously regulated legal framework. Article 1321 of the Civil Code serves as a general legal standard in the matter of civil contract termination. The diversity of termination methods reflects the complexity of contractual legal relationships and provides tools suited to the specific circumstances of each contract. In all cases, compliance with legal provisions and general principles of civil law ensures a fair and effective termination of the contract.

Among the forms of termination listed in the above-mentioned article, this paper focuses on the mechanism of termination by unilateral denunciation.

As previously stated, Article 1270 (2) of the Civil Code acknowledges the possibility of terminating a contract by mutual agreement of the parties, which is a natural expression of the principle of freedom of legal acts. Thus, just as a contract is formed by mutual consent (mutuus consensus), it may likewise be ended by mutual dissent (mutuus dissensus) (Boilă, Luntraru, 2023: 87).

The possibility of unilateral revocation of contracts requires a differentiated analysis, depending on whether the contract is concluded for a fixed term or for an indefinite period.

The Civil Code establishes certain rules regarding the unilateral revocation of contracts, using the term "unilateral denunciation," which is governed by Articles 1276 and 1277. These provisions set forth a series of rules that must be supplemented by specific legal provisions applicable in particular matters (Pop, Popa, Vidu, 2020: 129).

Article 1276 of the Civil Code regulates certain aspects regarding the unilateral denunciation of a fixed-term contract. It is considered that this provision is not limited to cases expressly provided by law but allows the parties to include a termination clause in any type of contract, except where the law explicitly prohibits it. In this context, it has been argued that unilateral termination agreed upon by the parties does not constitute an exception to the principle of binding force of the contract but is instead an expression of their freedom of will, being accepted and anticipated through their initial agreement

(Nicolae, 2000–2001: 63). However, other opinions view the inclusion of such a clause as an exception to the principle of binding force (Boilă, Luntraru, 2023: 87).

According to Article 1276(1) of the Civil Code, titled "Unilateral Denunciation," when a party is granted the right to denounce the contract, this right may be exercised only before the commencement of performance.

In the case of contracts characterized by successive or continuous performance, denunciation may be effected even after performance has begun, provided that a reasonable notice period is observed. However, such denunciation shall not affect obligations already performed or in the course of performance (as per Article 1276 (2) Civil Code). Nonetheless, the effects of termination shall not extend to services or obligations already executed or underway.

If the contract provides for a consideration in exchange for termination, such consideration shall produce legal effects only to the extent that it is actually performed. It can thus be concluded that, in the case of fixed-term contracts, the law accepts both termination for consideration (onerous termination) and termination without consideration (gratuitous termination). An example of onerous termination is regulated by Article 1545 of the Civil Code, in the form of penalty earnest money. According to this provision, "if the contract expressly stipulates the right of one or both parties to withdraw from the contract, the party terminating the contract forfeits the earnest money paid or, as the case may be, must return double the amount received."

Following unilateral termination, the contract ends, but in certain cases, the terminating party may still incur obligations, such as the reimbursement of amounts received or the payment of damages, depending on the nature of the contract and the contractual provisions. In contracts requiring immediate performance, if the parties have established a price for exercising the right of termination, this must be paid at the time of termination, but no later than the moment the other party performs its obligation. In other words, if one party unilaterally terminates the contract but pays the termination price after the other party has already performed its obligation on time, the mechanism of termination can no longer be validly invoked.

The analysis of Article 1276 of the Civil Code reveals that it governs a specific situation, namely when one party is entitled to unilaterally terminate the contract based on a right expressly recognized by the other party.

It is essential to emphasize that the provisions of Article 1276 (1)–(3) are suppletive in nature, meaning that the parties may derogate from them by agreement. For example, they may stipulate that the right of termination may be exercised after performance has commenced, that it will have immediate effect even without payment of the termination price, or that it will affect obligations currently being performed.

Similarly, Article 1277 of the Civil Code (regarding contracts concluded for an indefinite period) provides that such contracts may be unilaterally terminated, provided a reasonable notice period is observed. Any contrary provision or clause stipulating a consideration in exchange for termination in such cases is deemed unwritten. Thus, in the case of indefinite-term contracts, the law recognizes a legal and gratuitous right of unilateral termination. Provisions prohibiting perpetual obligations are mandatory (Pop, Popa, Vidu, 2020: 130).

The Civil Code regulates legal termination for several types of contracts, including: sale with repurchase agreement (Art. 1758), lease (Art. 1816), residential lease agreements (Arts. 1824–1825), mandate (Art. 2030), commission (Art. 2051), consignment (Art. 2063), deposit (Art. 2115), and insurance (Art. 2209). In all these cases,

termination must be carried out in good faith, and abusive exercise of the right is not permitted.

Regarding consumer contracts, regulated by Article 1177 of the Civil Code, the special rules of consumer protection legislation apply, supplemented by Civil Code provisions.

Accordingly, unilateral termination constitutes a flexible legal mechanism, recognized either by agreement or by law, with wide applicability in the field of civil contracts, including in consumer law.

Unilateral termination of a contract does not constitute a breach of the principle of the binding force of contracts, but rather an exception, expressly regulated by law or contractually agreed by the parties. While contracts are generally governed by the principle that they must be respected until full performance of the obligations undertaken, unilateral termination is not inconsistent with this principle and is considered an expression of contractual freedom.

It is important to stress that unilateral termination of a contract—regardless of its source, whether in law or contractual provisions—must be exercised in good faith, for well-justified reasons, and arbitrary, abusive, or damaging acts are excluded (Boilă, Luntraru, 2023: 88).

The transport contract – an atypical contract that derogates from the principles governing the effects of civil legal acts. Article 1955 of the Civil Code defines the transport contract as the agreement by which one party, called the carrier, undertakes, as a principal obligation, to transport a person or a good from one location to another, in return for a price which the passenger, sender, or consignee agrees to pay at the time and place agreed upon.

The definition provided by the Romanian Civil Code therefore refers to both passenger and goods transport contracts. Being a general definition encompassing both, it is, without doubt, of a broad nature, and the article in question refers only to the essential elements of a transport contract. Consequently, in order to rigorously reflect the actual legal structure of each type of transport contract, this article must be corroborated with the provisions of Sections II and III of the special regulation, which expressly govern the goods transport contract and the passenger and luggage transport contract, respectively. These provide a precise approach to the elements which, at a theoretical level, allow for a complete legal definition of each type of contract.

Hence, there are important structural and functional differences between the two types of contracts. A first element of differentiation lies in identifying the parties to each contract. In the case of passenger transport, the parties are the carrier and the passenger, which corresponds to a "classic" contractual structure—where the effects are limited to the parties and third parties. However, when analyzing the goods transport contract, this model no longer applies in the same way. In such contracts, the parties are *the sender* and *the carrier*. The beneficiary of the contract is the consignee, even though they do not take part in the conclusion of the contract. It is crucial not to confuse the contracting parties with the participants in a goods transport contract. The notion of participant is broader and includes both the contracting parties and the consignee, who is not formally a party to the transport contract but acquires rights and obligations under it, provided they adhere to the contract.

The transport contract is considered an exception to the principle of the relativity of the effects of legal acts (*res inter alios acta, aliis neque nocere, neque prodesse potest*),

and some authors equate it, in legal nature, with a stipulation for the benefit of a third party. The transport contract therefore appears as a contract concluded in favor of a third party, that is, a contract between the sender (as stipulator) and the carrier (as promisor), in favor of the consignee—the third-party beneficiary—who thereby acquires a direct right against the carrier.

From a structural standpoint, there are clear similarities between stipulations for the benefit of a third party and the transport contract (Cristoforeanu, 1925: 54; Scurtu, 2001: 28): the carrier's performance benefits the consignee entirely, just as in a stipulation for another; the consignee has a direct action against the carrier if the latter fails to fulfill the obligations undertaken toward the sender; and the sender, like a stipulator, retains a unilateral right to revoke the contract until the consignee adheres to it.

The third-party beneficiary's rights arise directly from the contract between the promisor and the stipulator; only the exercise of these rights depends on the will of the third-party beneficiary. A stipulation for another involves three types of legal relationships: between the stipulator and promisor, between the promisor and third-party beneficiary, and between the stipulator and third-party beneficiary. Emphasizing these relationships, as well as the legal position of the beneficiary and the legal nature of this type of contract, serves to highlight the symmetry between stipulations for another and the transport contract.

The comparative analysis of these two legal constructs—stipulations for another and the goods transport contract—has been carried out by legal scholars from various perspectives. Some authors consider the transport contract to be "a practical application of stipulation for another" (Gidro, 2017: 25–28).

Other scholars (Tiță-Nicolescu, 2012: 20) argue that, when there is no contract between the sender and the consignee, the transport contract constitutes a stipulation for the benefit of a third party, where the sender is the stipulator, the carrier is the promisor, and the consignee is the beneficiary of the stipulation. The specific element in this case lies in the fact that the sender's right to modify the transport contract is extinguished once the consignee expresses their will to exercise the rights arising under the transport contract, or as soon as the sender delivers the duplicate of the transport document to the consignee. From that moment onward, the right to modify the transport contract through further instructions transfers to the consignee.

Failure to fulfill the stipulation, meaning failure by the carrier to deliver the goods to the consignee (e.g., if the consignee cannot be located, refuses or neglects to receive the goods, or if there are disputes between multiple consignees regarding delivery, or for any other reason not attributable to the carrier), triggers a specific procedure in transport law: the carrier must immediately request instructions from the sender, who must provide them within 15 days, failing which the goods will either be returned to the sender at their expense or sold by the carrier. The carrier shall be compensated by the consignee or the sender, as appropriate, for damages caused by the consignee's delay in taking delivery of the transported goods (Romanian Civil Code, Article 1981).

Other scholars consider that it is necessary to assess whether, under the current regulation of the goods transport contract in the Civil Code, the contract still involves a stipulation for the benefit of a third party. The issue arises from the wording of Article 1977 of the Civil Code, which states that "the consignee acquires the rights and obligations arising from the transport contract by accepting the contract or the transported goods."

Under the regulation of stipulation for another, the right of the third-party beneficiary arises directly from the stipulation, and their acceptance or rejection of this

right constitutes merely the exercise of a potestative right that the beneficiary acquires together with the patrimonial right. In contrast, under the goods transport contract, the consignee must accept the contract or the transported goods, through which act of will they acquire both rights and obligations under the contract. Through this acceptance, the consignee becomes a party to the transport contract, which explains why they acquire not only rights, but also obligations. Thus, the consignee rather occupies the position of an adherent to the contract.

This view is also supported by Article 1974 of the Civil Code, which provides: "The sender's right to modify the transport contract is extinguished as soon as the consignee has expressed the intention to exercise the rights arising under the transport contract pursuant to Article 1977 or as soon as the sender has handed over to the consignee the duplicate of the transport document. From that moment on, the right to modify the contract through further instructions is transferred to the consignee" (Stoica, 2020: 35).

Hence, there are also differences compared to a stipulation for another, namely that under a stipulation for another, the third-party beneficiary can only acquire rights, whereas under a transport contract, the consignee acquires both rights and obligations. There are similarities, but not identity, between the position of the third-party beneficiary in a stipulation for another and the position of the consignee in a transport contract. According to other opinions (Scurtu, 2001: 26–30), with which we concur, the consignee holds autonomous rights arising directly from the transport contract, and it is considered that the legal position of the consignee exhibits a distinct originality. Moreover, the consignee can be regarded as the holder of autonomous rights originating from the very transport contract itself (Căpăţînă, 2000: 44).

Another distinguishing element in defining the two types of transport contracts—goods and passengers—is their purpose: in the case of a goods transport contract, the purpose is the delivery of the goods into the hands of the consignee, while in the passenger transport contract, the purpose is the passenger's travel, that is, their arrival at the agreed destination. The obligation to transport persons includes not only the travel operation but also embarkation and disembarkation procedures.

The type of obligation also differs between the two contracts. In the case of goods transport, the obligation is one of result. As an exception, Article 1958 (2) of the Civil Code provides that a carrier who offers services to the public in the course of their professional activity free of charge is not subject to the rules governing the transport contract and is only bound by a duty of prudence and diligence. Regarding the type of obligation in passenger and baggage transport, the solutions differ: for baggage transport, the rule under Article 1958(2) applies, whereas for passenger transport, Article 2002(2) stipulates that the carrier is obliged to bring the passenger on time, unharmed, and safely to the destination. Thus, we are dealing with an obligation of result regardless of whether the transport is paid or gratuitous, and this obligation encompasses both the movement of passengers and a *safety obligation*, understood in the legal literature (Pop, Popa, Vidu, 2012: 33–34) as an obligation to bring passengers unharmed and safely to their destination.

Safety obligations are not expressly enshrined in legislation; they are regarded as a subcategory of obligations *to do*, contractual in most cases, and sometimes legal. They represent a contractual or statutory duty whereby one party must safeguard the other party—and even third parties—against risks that threaten their physical safety (Pop, Popa, Vidu, 2012: 33).

Hence, the passenger transport contract is a contract by which one party, called the carrier, undertakes, as a principal obligation, to transport the passenger/traveler on time, unharmed, and safely from one location to another agreed with the passenger, in return for a price that the passenger undertakes to pay, and to ensure suitable conditions for the safe embarkation and disembarkation of the passenger.

The goods transport contract is a contract by which one party, also called the carrier, undertakes, as a principal obligation, to transport a good from one place to another, in return for a price that the sender or consignee undertakes to pay, and to deliver the good at the time and place agreed upon.

As previously mentioned, under Article 1270 of the Civil Code, a contract validly concluded has the force of law between the contracting parties. The binding force of the contract derives from the "force of law" that the law itself confers upon the contract in the relations between the parties. From the recognition of the contract as the "law of the parties," two fundamental rules follow: the irrevocability of contracts and the relativity of their effects.

The rule of irrevocability expresses the idea that *a contract may be modified or terminated only by mutual consent or for reasons authorized by law*. The Civil Code, however, derogates from this principle in the field of transport law by granting the sender the right to unilaterally renounce or modify the contract, provided they compensate the carrier for incurred expenses and direct, immediate damages resulting from compliance with their instructions. According to Articles 1970–1975 of the Civil Code, the sender has the right to suspend the transport, to request the return of the goods, to demand their delivery to a person other than the one specified in the transport document, or to dispose of them as they see fit—but is bound to pay the carrier the expenses and the value of any damages that directly result from this countermand.

Moreover, new developments in contract law, such as unilateral termination, have a direct explanatory role in understanding the legal nature of the countermand in transport contracts.

In conclusion, the transport contract—with its distinguishing elements based on whether it concerns goods or persons—is a legal construction that derogates from two fundamental principles governing the effects of civil legal acts. These exceptions may be summarized as follows: it derogates from the principle of relativity through the status of the consignee—akin to that of a third-party beneficiary under a stipulation for another; and, it derogates from the principle of irrevocability through the sender's right of countermand—the unilateral right to amend or cancel the contract.

The countermand in the goods transport contract. From a historical perspective, the Commercial Code derogated from the principle established by Article 969(2) of the former Civil Code through the provisions of Article 421 of the Commercial Code, granting the sender the right to unilaterally renounce or amend the contract, provided that they compensated the carrier for the expenses incurred and the direct and immediate damages resulting from the execution of such instructions. This derogation was considered an exception in contract law, where the general rule was that a contract was concluded by mutual agreement—*mutuus consensus*—and could only be terminated by the mutual will of the parties—*mutuus dissensus*.

The current Civil Code also derogates from this principle in the field of transport law and grants the sender the right to renounce or modify the contract unilaterally, subject

to the obligation to pay the carrier the expenses incurred and direct and immediate damages resulting from carrying out such instructions.

Accordingly, pursuant to Articles 1970–1975 of the Civil Code, the sender has the right to suspend the transport, to request the return of the transported goods, to demand their delivery to another person than the one indicated in the transport document, or to dispose of them otherwise as they see fit, but must pay the carrier the expenses and the value of the damages which are the direct consequence of the countermand.

Whereas under the former regulation, the sender's right to unilaterally modify or renounce the contract was viewed as an exception to contract law and had no basis in general civil law, the current regulation, under Article 1270 (2) of the Civil Code, provides that a contract may be amended or terminated only by agreement of the parties or for reasons authorized by law. Therefore, a contract may be terminated by the will of a single party, but only for legally authorized reasons. In light of current legislation, such modification is no longer viewed as a major exception, but rather as having the legal nature of a statutorily authorized cause (Baias, Chelaru, Constantinovici, Macovei, 2012: 1978).

The rationale for granting this right to the sender is both economic and legal: by recognizing this right, the sender's interests are better protected—for instance, they may wish to redirect the goods to a more favorable market, or to halt the shipment if the consignee has died or gone bankrupt before the goods arrive; moreover, if the goods have been transferred during transit, the buyer, who subrogates into the seller's rights, may have an interest in changing the destination of the goods (Scurtu, 2001: 78).

Under the previous regulation, there were two legal provisions—Articles 420 and 421 of the Commercial Code—that addressed the sender's right to unilaterally terminate the transport contract, including in cases where the transport was excessively delayed. The current regulation provides a more extensive legal framework through Articles 1970–1975 of the Civil Code, which more thoroughly address two key forms of unilateral modification: modification by countermand, and modification due to impediments to transport performance.

An inventory of the aspects regulated by the Civil Code in this section on the sender's right to dispose of the goods shows that the legislation, from a general theory perspective, is focused on the following issues: the sender's right, under Article 1970, to unilaterally modify or renounce the transport contract, a right further detailed and supplemented by Article 1973 under the notion of *subsequent disposal right* or *countermand right*; the right of disposal in the event of impediment to transport, regulated by Article 1971, and supplemented by Article 1972, which provides the remedies available to the carrier should the sender fail to exercise this right; matters regarding the holder of the countermand right, as regulated by Article 1974; and lastly, the carrier's right to refuse the countermand, governed by Article 1975, which sets out the circumstances under which the carrier may legally refuse to execute the countermand (Cotuțiu, 2015: 143–145).

The countermand. The legal act by which the sender unilaterally modifies or terminates the transport contract is called a countermand. In general theory (as regulated by the Romanian Civil Code), the content of the countermand right is determined, as previously mentioned, by the provisions of two articles of the Civil Code: Article 1970, which sets out what the sender may modify in general, and Article 1973, which further details these prerogatives through specific references to aspects that may be changed under the sender's right of subsequent disposition. According to Article 1970(1) of the Civil Code, the sender may suspend the transport and request the return of the goods or their delivery to a person other than the one mentioned in the transport document, or otherwise

dispose of them as they see fit. In accordance with Article 1973 (1), the sender's right of subsequent disposition grants them the following possibilities: to withdraw the goods before departure; to stop the goods during transport; to postpone delivery of the goods to the consignee; to order the return of the goods to the place of departure; to change the consignee; to change the destination; or to make another modification of the terms of transport performance. It may be said that Article 1970 functions as a general rule in the area of countermand, while Article 1973 serves as a special rule. The provisions of Article 1973 can be grouped, from a content perspective, into two categories: termination of the contract – the sender has the right "to withdraw the goods before departure, to stop them during transport, or to order their return to the place of origin"; modification of contractual execution terms – such as changing the consignee or destination – without altering the essential terms of the contract.

In this context, the sender is also subject to a prohibition: they may not issue a subsequent instruction that results in the division of the transport, unless otherwise provided by special legislation.

In line with this generalization principle, Article 1970 also stipulates that a sender issuing a countermand must pay the carrier the expenses and the value of damages which are the direct consequence of the countermand. Article 1973 (2) elaborates further: a sender who has issued a subsequent instruction must pay the carrier, depending on the modification made: the price for the completed portion of the transport; fees owed due to the execution of the subsequent instruction; expenses caused by implementing the subsequent instruction; compensation for any damage suffered as a result of executing the countermand.

The timing of the modification is left to the sender's discretion, but it is beyond dispute that the subsequent instruction must be issued after the conclusion of the contract (with the moment varying depending on the type of transport—whether consensual or real—both types being possible in transport law), and before the consignee adheres to the contract.

To exercise the countermand right, formal conditions are required: the sender must present the transport document signed by the carrier or a receipt of delivery, if such a document has been issued. The modifications resulting from the countermand must be recorded in the transport document or the receipt, under the carrier's new signature. While Article 1970 states that the countermand's modifications must be recorded in the transport document or receipt under the carrier's signature, Article 1973 specifies that the sender may issue "subsequent written instructions." In fact, regarding form, the provisions of Article 1973 are meant to complement those of Article 1970, reinforcing the idea that the carrier must accept the new legal commitment in writing. However, given that the transport contract is generally consensual, Article 1973 also covers situations where no transport document or receipt was issued—a scenario theoretically possible under Article 1962 of the Civil Code, which addresses the form requirements of transport documents and allows such an exception.

When analyzing the form-related provisions—Articles 1962 and 1956 in the general rules on goods transport contracts, and Articles 1241–1243 in the Civil Code concerning contract formality—it is clear that contract modifications are subject to the same formal conditions required for the contract's conclusion, unless the law expressly requires the written form as a condition of validity. Thus, since the written form of the transport contract is required for evidentiary purposes, the formal conditions for

modifying the transport contract are also required ad probationem (Baias, Chelaru, Constantinovici, Macovei, 2012: 1982–1983).

With respect to the holder of the right, the general rule is that the sender holds the right of subsequent disposition. By exception, this right may also belong to the consignee. According to Article 1974 of the Civil Code, the sender's right to modify the transport contract is extinguished as soon as the consignee expresses the intent to exercise the rights conferred by the transport contract or as soon as the sender delivers the duplicate of the transport document to the consignee.

From that moment, the right to modify the transport contract through subsequent instructions transfers to the consignee. The consignee acquires rights and obligations under the transport contract by: (i) accepting the contract, (ii) accepting the transported goods, and (iii) receiving the duplicate of the transport document from the sender.

Granting the sender the right to modify the contract creates for the carrier the obligation to comply with such modifications. Execution must occur under the conditions provided by Article 1970 of the Civil Code, and any failure by the carrier to perform this obligation—or performance under other conditions—results in liability for the damages caused by executing the countermand in violation of Article 1970.

The carrier may refuse to comply with a subsequent instruction in the following situations: if its execution would seriously disrupt the proper conduct of operations; if, in the case of a change in destination, the additional fees and expenses are not covered by the value of the goods or by other guarantees; if, at the time the instruction is received, execution is no longer possible. Additionally, the carrier is obliged to inform the sender or the consignee, as applicable, of the refusal to execute the countermand.

The focus of the current analysis lies in the legal nature of the countermand.

The first point to note is that the change introduced by the current Civil Code through Article 1270 aligns the legal situation created by the countermand with the principle of contract irrevocability, establishing that a contract may be terminated for causes authorized by law, even unilaterally by one party.

From a legal perspective, the countermand may be viewed as having the nature of unilateral termination, given that both represent flexible legal institutions that may be recognized either contractually or by law, as in the case of the countermand. The fact that the right to terminate may be exercised after the contract has been formed is another point of convergence. In general theory, the termination declaration is a unilateral legal act subject to notification (Terezea, 2024: 157), since it leads to the extinction of a legal relationship (Romanian Civil Code: Article 1326), and in the case of the countermand, the idea of written form and communication is promoted.

Despite these overlapping features, the countermand and unilateral termination also differ clearly: the countermand is a legal act whereby the sender may modify certain execution-related contractual terms or unilaterally terminate the transport contract, whereas unilateral termination—also known as a withdrawal or disengagement clause—aims solely at terminating the contract; the legal basis of the countermand lies in statutory provisions, not in mutual agreement, whereas unilateral termination is based on party agreement; the right of unilateral termination is potestative in nature, and the possibility of awarding damages must be assessed in light of its legal nature (Terezea, 2024: 158); by contrast, in the case of a countermand, the Civil Code and, where applicable, special laws expressly determine what the sender must grant the carrier to enforce the countermand; for unilateral termination, the parties may decide which of them holds the right, whereas in transport contracts, the sender is the holder by default, and after adherence to the

contract, the consignee. The carrier is not granted this right and can only make certain modifications in cases of transport impediment; they do not have the right to unilaterally terminate the contract.

Contract modification in case of transport impediment. Under the previous regulation, Article 420 of the Commercial Code addressed the situation where the sender could terminate the contract due to impediments to transport or delays caused by force majeure or fortuitous events, while Article 1971 of the Civil Code currently governs the impediment to the execution of transport, without limiting itself to force majeure and fortuitous events.

According to Article 420 of the Commercial Code, if transport was hindered or excessively delayed due to a fortuitous event or force majeure, the carrier was required to immediately notify the sender, who had the right to terminate the contract. In commercial law, such cases excluded the carrier's fault, and in doctrine, such transport was described as defective transport (Cotuțiu, 2015: 136).

The current regulation broadens the scope of transport impediments, including also situations attributable to the carrier.

According to the current Civil Code, two scenarios are possible: *relative impediment* to transport execution – when reaching the destination remains possible, but requires changing the initial route or timeline; *absolute impediment* – when there is no alternative route or, for other reasons, transport can no longer continue.

In the event of relative impediment, the carrier has the right to request instructions from the sender, and in the absence of a reply, to continue transport to the destination by altering the route, provided the impediment is not attributable to the carrier. In this case, the carrier is entitled to: the price of transport; associated fees and expenses for the actual route; and appropriate adjustment of the transport timeline.

Doctrine observes that, even though the route is not explicitly mentioned in the transport document under Article 1961 of the Civil Code, it is implicitly relevant since the price and duration of the transport—both mandatory details—are typically determined based on the route. The impediment to performance must be a serious one. Since the instruction clause is contractual, it is binding on the carrier and acts as the remedy for their inability to perform the essential obligation—transporting the goods. As noted in legal literature, "these instructions are a subsidiary contract through which the parties mutually revoke the initial contract, which has become impossible to perform, and establish a new framework for fulfilling the specific obligation" (Cotuțiu, 2015: 140–141).

In the case of absolute impediment, as outlined by legal provisions—where there is no alternative transport route, where transport cannot continue for other reasons, or where the instructions provided by the sender in the transport document for such a situation cannot be executed—the carrier must request instructions from the sender.

In this scenario, the Civil Code regulates only the case where the sender is notified of the impediment, granting them the possibility to terminate the contract. The carrier is entitled only to the expenses incurred and to the proportionate transport price corresponding to the completed route. Since the impediment is not attributable to the carrier, the sender is not entitled to damages.

In this context, the Civil Code uses the term termination, and the right-holder is the sender. Thus, the reference is to unilateral termination, and the terms countermand or right of subsequent disposition are not used.

From the perspective of effects, both the revocation of the contract by mutual consent and the unilateral termination granted by law to the sender in the event of an

absolute impossibility of performance create the same legal outcome: termination of the contract for the future.

If the sender fails to respond to the carrier's notification, Article 1972 of the Civil Code applies, which establishes a procedure: if, within 5 days of receiving the notice, the sender neither provides executable instructions nor communicates termination of the contract, the carrier may: keep the goods in storage; deposit the goods with a third party; sell the goods, if storage is not possible, or if the goods may spoil or deteriorate, or if their value cannot cover the transport price, additional charges, and expenses. If the goods are sold, the proceeds—after deducting the carrier's financial claims—must be made available to the sender. If the proceeds are less than the carrier's claims, the sender must pay the difference.

In this final scenario, the carrier—as the debtor of the transport obligation—unilaterally modifies the transport contract by placing the goods in storage or selling them. The term "modification" is chosen by the Civil Code, which titles Article 1972 as Modifications Made by the Carrier.

Doctrine has criticized the terminology used in the Code, particularly the phrase to valorize the goods (Cotuțiu, 2015: 141–142), considering it non-legal and asserting that it refers in fact to the sale of the goods. Moreover, it is emphasized that this unilateral termination of a synallagmatic contract (bilateral contract) for the future by the carrier is distinct from the general unilateral termination of synallagmatic contracts (e.g., rescission or cancellation) due to breach of obligation, which belongs to the creditor who has performed their own obligations.

According to legal provisions, if the impediment ceases before the sender's instructions arrive, the goods are to be delivered to the destination without waiting for further instructions, and the sender must be promptly notified.

Moreover, Article 1557 (1) of the Civil Code regulates the definitive impossibility of performance. Thus, when the impossibility is total and definitive and concerns a significant contractual obligation, the contract is terminated by operation of law, provided the following conditions are met: a fortuitous event has made performance impossible; the impossibility is total and definitive; it occurred before the debtor was in default; the non-performance affects a material contractual obligation; and the obligation does not concern generic goods (Terezea, 2024: 397–400).

Countermand in the Passenger Transport Contract. As for the passenger's rights, the Civil Code expressly recognizes the passenger's right to unilaterally terminate the transport contract if, based on the circumstances, the delay in transport performance renders the contract useless for the passenger. In such a case, the passenger may terminate the contract and request a refund of the fare. To exercise this right, the following cumulative conditions must be met: improper performance of the transport contract (i.e., delay in execution); the delay renders the contract meaningless for the passenger.

Therefore, in this context, unilateral termination constitutes a ground for contract termination (Romanian Civil Code: Article 1321), falling under general contract theory and regulated by Article 1276 of the Civil Code, which states that the right to unilaterally terminate a contract may be exercised only by the party in whose favor it is granted and only if performance has not yet begun.

Conclusions. In transport law, the regulations are particularly numerous within the scope of special legislation, and as legal scholars have observed (Buciuman, 2021:

704), they currently create “a prime example of regulatory parallelism.” Such a situation—where an extensive body of special regulation exists (matched perhaps only by the domain of administrative offence law), alongside a general theory of the transport contract in the Civil Code, supplemented by the rules of common law (civil law serving as the lex generalis for transport law)—has the following effect for both practitioners and legal scholars: an overabundance of regulation does not simplify but rather increases the effort required to identify the appropriate legal solution and to explain the legal nature of institutions arising from the practice of transport activities.

The issues related to transport legislation arise on multiple levels: the transport contract is regulated in the Romanian Civil Code, but without corresponding amendments to the special rules in the field; the regulation of transport contracts is scattered across multiple sources—with distinct rules for each mode of transport (air, road, rail, maritime) and depending on the object of transport (persons or goods); the existence of international regulations governing various types of transport; the internal regulatory framework consists of a complex mix of public law norms (administrative, administrative offences, criminal law—doctrine has even discussed the need for a transport criminal law) and private law norms. These are just a few of the issues facing the legal framework of transport law, which have prompted legal scholars to call for a "detoxification" of transport legislation and for a harmonization and simplification process—a kind of “civilizing” of the legal regime applicable to transport contracts.

This discussion arises from the analysis of the countermand, which is, on the one hand, a specific institution of transport law (in the context of goods transport contracts), yet, in its regulation, we observe a dual approach: the legislation promotes both a special right and at the same time invokes an institution from general theory—namely, unilateral termination. A substantive analysis of the legal nature of the mechanisms that, in goods transport, lead to the termination or, where applicable, the modification of the transport contract in various situations requires an effort to identify how termination occurs and to determine the legal instrument used (countermand or unilateral termination under general theory), in order to understand the actual legal effects and to apply the appropriate legal norms.

If we extend this discussion to the special regimes governing each mode of transport (air, road, rail, maritime)—where the countermand is regulated in more nuanced terms than in the Romanian Civil Code—the issues become even more complex and may well constitute the subject of a separate analysis.

Authors' Contributions:

The authors contributed equally to this work.

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Article Info

Received: May 08 2025
Accepted: May 25 2025

How to cite this article:
Scarlat, D. I., Stanciu, C. (2025). Comparative analysis of unilateral termination and countermand – legal institutions with a role in contract termination. *Revista de Ştiinţe Politice. Revue des Sciences Politiques,* no. 86, pp. 81 – 95.