ESZTER TÓTH FÁBIÁN

The General Right of the Orderer to Rescind „at any Time" Delivery Contracts, as Well as Contracts for Work, Labour and Materials of Economic Units

The charactersitic transactions of a society building up socialism are contracts effectuating the turnover of production, as well as those of enterprising type, having an important role in creating the conditions of reproduction on an increasing scale. Just therefore, these cannot be left out of consideration at investigating into dogmatic questions. The process of differentiation, which presents itself, even if sometimes with some interruptions, has similarly some importance. Here I think of that in a socialist society not only the contracts concerning the work of performation have some distinguishing marks but — in the scope of financial contracts — the mutual connections of economic organizations, the inner contractual connections of large units, the contracts between nationals and economic units, as well. Closest to the classical contractual connections are the mutual contracts of nationals, though these are, too, under the effect of the typically socialist legal principles, contractual principles, and the circumstance that the economic media, in which they are active, has changed.

In the mutual transactions of economic units — be those turnover investment — the conclusion of contracts is therefore so important because this is one of the guranatees and means of realizing the production, in fact, in the interest of a definite aim. The end of a treaty is to be implemented. I.e., for the jurist, the point of view of requirements concerning the implementation of the contract is reversed. While the principle of pacta sunt servanda, established in the bourgeois society, is therefore to be followed according to the jurist because the agreement was concluded, in the centralized stage of building socialism — where the so-called "Soviet model" of economic direction is prevailing — it is just the other way round, the contract is to be concluded in order to be followed, strictly, together with all its conditions as prescribed in the contract. It is presumable that the interest of contract — coinciding with the interest of people's economy — is contained by the plan. Therefore, the interest of jurisprudence and legal practice is reduced by a level, namely to the level of ensuring the implementation corresponding to the contract, and not the investigation corresponding to the contract, and not the investigation into actions, corresponding to the interests. From the point of view of legal dogmatics, among others also the requirement, raised in respect of the seriousness of declarations in the contract, helps establish the stricter legal opinions concerning implementation. In this way we have got so far that, e.g. our Act II of 1959 raises

identical requirements in respect of implementing the contract, whosever the contracting partner may be. The same principles are expressed in the system of sanctions, as well. The motive for the latter one was, too,[1] to enforce that conduct, corresponding to the given contract, and to make alone possible the liquidation of the legal relation if there was no other solution (cf., e.g. delay, faulty performance). And even, the general and special rules of the possible cancellation of an agreement not of sanctioned character are very strict. In the scope of the contracts of economic units (plan-contracts) there is essentially no opportunity to any cancellation. The change in the plan-task is similarly a necessarily mechanical way of looking concerning implementation, based upon the economic arrangements, resp. it only enables the revision of the contract in its part not touching the plan.

Owing to those told above, according to the opinion prevailing in the socialist legal literature, the principle of the so-called real implementation has essentially been recognized as in the basic principle of the civil law of socialist legal systems the "ius in personam". Since its formation, it has however been — in several relations[2] — not unambiguous.

Tho following major controversial questions are to be found:

1. what is the content of this principle?[3]
2. how wide is its effect within the civil law?[4] (is it the basic principle

[1] Gyula Eörsi sees also in his article "A reális teljesítés elve a gazdaságirányitás új rendszerében" (The principle of real fulfilment in the new system of economic direction) the cause of that Civil Code extended the principle of real fulfilment to the contracts of nationals in the requirement realized in respect of the seriousness of declaration. Cf.: Jogtudományi Közlöny, 1968. Nos. 7-8, p. 342.

[2] I would mention as examples only a few works from the part of the Hungarian legal literature falling to this period: György Aczél: A szállítási szerződések (Delivery contracts). Budapest, 1952, Jogi és Államigazgatási Könyv- és Folyóirat Kiadó, pp. 35-39. Gyula Eörsi: A szocialista polgári jog alapproblémái (Basic problems of the socialist civil law). Budapest, 1965. Akadémiai Kiadó, pp. 71, 76, 80. Idem: A tervszerződések (Plan-contracts), 1957. Akadémiai Kiadó, pp. 379-408. László Fülöp: A szállítási szerződési rendszer új szabályozása (New regulation of the system of delivery contracts). Döntőbíráskodás, 1966, No. 3, Mihály Görgey: Kellékszavatosság a szállítási szerződések körében (Warranty of specified quality in the scope of delivery contracts) Budapest, 1965. Közgazdasági és Jogi Könyvkiadó, pp. 142, 169, 182.

[3] We find in the work of I.B. Novicky and L.A. Lunc: Obsee utchenie ob obyazatelstv (Moscow, 1950. Gosyurisdat) that the principle of the real fulfilment means the suitable implementation of the content of obligation (pp. 270-291). V.K. Rajher opposes the enlargement of the principle of real fulfilment in such a high degree. Cf.: Legal questions of the contractual discipline (in Russian), Leningrad. Izdatelstvo Universiteta, 1958. Official Hungarian translation, pp. 27-29. (Institute of Political and Legal Sciences of the Hungarian Academy of Sciences, Sz. 1210) In respect of its first early domestic exposition in the legal literature Cf.: György Aczél: Ip. cit. pp. 35-39, where he strongly emphasizes the role of this principle in the fulfilment of the Plan and it follows of this, of course, that he considers the requirement of the fulfilment in natura as similarly important as the suitable fulfilment of the contractual stipulations. Similarly Béla Kemenes: A reális teljesítés, valamint a kötbér és kártérítés viszonyának kérdése polgári jogunkban (The question of the real fulfilment as well as of the relation between the penalty for non-performance, and the remuneration for injury suffered, in our civil law. Jogi Dolgozatok, Szeged, 1954 (Manuscript).

[4] Endre Nizsalovszky considers it — it seems to me — as the basic principle of the whole civil law. One is sure that, according to him, it is decisive to nationals in the same way as to the socialist economic units. Cf.: Az állami vállalatok forgalmi viszonyainak új alakulásához (On the new development of the turnover relations of national enterprises. Állam- és Jogtudomány, 1968, vol. XI.

of the whole branch of law or only of ius in personam or possibly only of economic contracts)

3. in what extent does it determine the actions, free will of parties?[5]

4. on the basis of what criteria can be established, whether this is really a basic principle?[6]

5. is this really a basic principle?[7]

6. what is its role in the socialist economy?[8]

No. 4, p. 335. Miklós Világhy enumerates it among the basic principles of the civil law, although he emphasizes that it is most characteristic of the legal relations based on the contract. As he says, it expresses the principle of contractual trustworthiness, In contradistinction to the standpoint, prevailing in the Hungarian legal literature, he sees its general phrasing in art. 198 of Civil Code, according to which: "From the contract an obligation results to fulfil the delivery, and an entitlement to require the delivery." Cf. the book of Miklós Világhy—Gyula Eörsi: Magyar polgári jog (Hungarian civil law.) Vol. 1. General Part. Ownership. 3rd unchanged reprint. Tankönyvkiadó. Budapest, 1973. pp. 28, 33. Gyula Eörsi considers it in his work: Összehasonlító jog. Jogtípusok, jogcsoportok és a jogfejlődés útjai (Comparative civil law. Law types, law groups and the ways of the development of law), Budapest, Akadémiai Kiadó, 1975, p. 313, as only the basic principle of the fulfilment of the plan-obliged economic units. A similar conclusion is to be found in V.V. Laptev's paper: Hogyaystvennoe pravo. Yuriditcheskaya Literatura. Moscow, 1967, pp. 146-147. establishes, too, that this principle is in contrast with the nature of the legal relations between nationals. László Asztalos does not even mention it among the basic principles of civil law, in his lecture notes, entitled: Polgári jog I. Általános rész II. Személyek (Civil law I. General part II. Persons), p. 35. Tankönyvkiadó, Budapest, 1982. On the other hand, Lajos Tamás regards it as the basic principle of civil law, more closely of the contract law, in his lecture notes entitled: Magyar polgári jog. Általános rész (Hungarian civil law. General part). And he sees its normative expression in art. 198, sec. 1, as well as art. 277, sec. 1, of Civil Code. (Tankönyvkiadó, Budapest, 1981). E. Warkallo considers it as the basic principle of the whole law of obligations (iura in personam), emphasizing that it includes both the obligations ex contractu and those es delicto, may these have been concluded between nationals or between socialist economic units: Ogolne Zasadi wikonowania zobowiazan. Studia Prawnicze 1973, N. 37, pp. 41-61. V.K. Rajher holds it as the basic principle of contracts, whether we speak of transaction of socialist organizations or of those between a socialist organization and a national or of transactions between nationals, although he remarks that if a national is obliged, we should proceed very carefully and attentively, taking into consideration the principle of personal liberty which also follows from the Soviet law (cf.: Op.cit, pp. 59-60). S.N. Bratus also deals in his work: Subject and system of the Soviet civil law (in Hungarian, Közgazdasági és Jogi Könyvkiadó, Budapest, 1964, pp. 138-146) with the basic principles of civil law but here he does not enumerate the principle of real fulfilment. It is true that he admits that his enumeration is probably defective and complains that the Soviet legal literature has so far not dealt recollectedly enough with the basic principles of civil law. In a later paper, however, he recognizes it as a principle of the ius in personam (law of obligations) in the strict sense of the word: K desyatiletiyu Osnov grazhdanskogo zakonodatelstva soyuza CCCR i soyuznykh respublik Pravovedenie (1971, No. 6, p. 16).

[5] Béle Kemenes: A szerződések szabályozásának elvi kérdései a Polgári Törvénykönyvben (Questions of principle of the regulation of contracts in Civil Code), Acta Universitatis Szegediensis Acta Juridica et Politica, Tomus VIII, Fasciculus 2, Szeged, 1961, pp. 62-63. And cf. with the works enumerated in the previous note.

[6] Cf. with the works mentioned in notes Nos. 4 and 5.

[7] Ibidem.

[8] H. Hutschenreuter: Das Prinzip der realen Erfüllung und sein Platz bei der Lösung der gegenwärtigen Wirtschaftspolitischen Aufgaben. Staat un Recht. 1976. No. 1, pp. 63-73. I. Herrnberger—H. Langer: Zur Weiterentwichlung des Verhältnisses von realer Plan- und Vertragserfüllung. Staat und Recht, 1975, No. 7, pp.

7. what is the effect of the kinds of economic direction?[9]

In order to prove the many-sidedness of interpreting this concept, I am referring to V.S. Tolstoy who writes in his book, edited in 1973: we could hardly find two works, determining the essence of this principle in the same way.[10]

We find a similar statement in a paper of V.V. Laptev, as well, who says about the principles concerning implementing obligations that these have no generally accepted list and no uniform interpretation of their content, either.[11]

Whaterver opinion the authors of the socialist special literature had about the above-mentioned basic principle, they represented a uniform standpoint therein that the contracts in natura, apart from a strict exception. As a principle, its version, named by us as the principle of adequate implementation,[12] lived mostly in common knowledge or it was, at least, considered as an obligation to be fulfilled in natura. As a result of the economic reform, more and more words were spoken about, in which form this principle may get acceptance in an economy, functioning indirectly, i.e. by using the elements of market mechanism.

In the Polish literature, the principle clausula rebus sic stantibus is wanted as a help. It is though that a modernized variant of this would be

---

1020-1030. Such: Rechtliche Mothoden zur Sicherung des Abschlusses realer Planverträge. In: Aktuelle des Vertragssystems. Berlin, 1957. VEB Deutscher Zentralverlag, pp. 7-31. G. Pflicke: Materielle Interessiertheit und materielle Verantwortlichkeit. Vertragssystem, 1957, No. 2. pp. 1ff. Materielle Interessiertheit und Santionen. Vertragssystem, 1957. No. 3., Die Bedeutung des sozialistischen Bewußtseins und der materiellen Interessiertheit bei der Bekämpfung von Vertragsverletzungen. Vertragssystem, 1960, No. 6. %. Panzer and L. Penig: Vertragsesetze und Wirtschaftsrecht. Staat un Recht, 1966. No. 4 pp. 603, Points 3,4,7. H. Such: Der Liefervertrag. Berlin, 1967. Staatsverlag der DDR. pp. 329ff. I. Spitzner: Wirtschaftsleitung. Berlin, 1965, pp. 221.

[9] With the question, similarly more than one work dealt. We mention two of these as examples. Thus: Gyula Eörsi: A gazdaságirányítás új rendszere áttérés jogágról (On the right of passing over to the new system of economic direction), Közgazdasági és Jogi Könyvkiadó. Budapest, 1968. p. 223., V.V. Laptev: Op.cit. (Hozyaysvennoe pravo, etc.), pp. 146-148. He establishes that the methods of the order of economic direction and of planning have effect on the way of meeting our liabilities, i.e. on the content of the real fulfilment, as well. It is better, to name tha basic principle of fulfilment, which was formed as a result of the central, direct economic direction and obliges the parties bilaterally, the principle of adequate fulfilment and, the same time, not to consider it as a basic principle of civil law. Cf.: Tóthné Eszter Fábián: A szerződés teljesítésének alapkérdései a szocialista gazdaságirányítási rendszerekben (Basic principles of fulfilling the contracts in the system of the socialist economic direction (Manuscript). Szeged, 1982, p. 135.

[10] V.S. Tolstoy: Ispolnenie obyazatelst. Moscow, 1973. Yuriditscheskaya Literatura. Chap. II, pp. 46-47. N.I. Krasnov: Realnoe ispolnenie dogovornykh obyazatelstv. Yuriditcheskoy Literatury. Moscow, 1959, pp. 12-55. He paints a similarly coloured picture.

[11] V.V. Latev: Op. cit. pp. 145-146. In the Hungarian legal literature, it is earlier, uniformly enough, meant by this the fulfilment, corresponding to the contract, which obliges both parties in the same way, although it was also mentioned, in a stricter sense, as a requirement of the fulfilment in natura. As to the domestic connections, I would only mention two characteristic examples: Gyula Eörsi: A tervszerződések (Plancontracts). Akadémiai Kiadó, Budapest, 1957, p. 381. Mihály Görgey: Kellékszavatosság a szállítási szerződések körében (Warranty of specified quality in the scope of delivery contracts). Budapest, 1965. Közgazdasági és Jogi Könyvkiadó, pp. 173-175.

suitable for solving the contractual severity of nationalized economic units. A detailed paper is published by P. Bubienska on this question. He criticizes N Dawidowicz who directly says that in social turnover the contracts are concluded, as a matter of fact, with a tacit clause "rebus sic stantibus" because we have to reckon on the emergence of some new unforeseen needs. A.Stelmakhowski similarly thinks to discover the presence of the mentioned clause in the rules — in case of changed economic conditions — which permit to cancel the contract. S.Buczkowski also speaks of the presence of the clause in certain cases of cancellation. As F. Bubienska establishes that the practice of the arbitration committee only accepts the possibilities enumerated in the rule of law concerning modifying, cancelling or rescinding the contract, and assumes a negative standpoint as to the stipulations "endangering" the contract. It is his opinion that this traditional clause may be present in Code Civil and in other rules of law in a rudimentary form, but in case of the turnover of socialized units we should find other means which — in case of changed conditions — may substitute the "clause" with success, corresponding better to the aims of socialist economy.

J.Trojanek, writing on the real implementation, expressly emphasizes that this is no principle destined for its own end. There may occur some conditions under which — in the time of implementation — it is not only more advisable to insist on the real implementation of the obligation but it may be direct harmful. The assertion of contracts under changed conditions comes into collision in the majority of cases, both with the interests of the mutually co-operating units and with the general interests of people's economy. He refers to the Soviet Z.M. Zamengof who, similarly, represented a comparable standpoint.[13]

It is to be noted that in the Soviet Union — as a result of the economic reform, introduced continually in the spirit of gradualness — there is a debate in literature not only about modifying, cancelling the already existing contracts but — as the system of allocations can only slowly be liquidated — the right of giving up the wares, productions seeming to be superfluous for the future customers already before concluding the contract is more and more definite and elaborated towards the allocationg organ. It is interesting that, for instance, in case of the wares of technical-technological destination, the allocation can be cancelled on the basis of any consideration, while in case of the articles of public consumption is only possible in respect of the part becoming superfluous or unnecessary. A detailed paper in the scope of this subject is to befound in J.A. Katkova's work.[14]

It is to be established from those said until now that a very important value of the economy of the socialist society is the satisfaction of the real

[12] Tóthné Eszter Fábián: The legal and economic basic problems of contracts, in the mirror of the systems of economic direction. Thesis for obtaining a candidate's degree. Szeged, 1978 (Manuscript), pp. 102-10%.

[13] P. Bubienska: Wplyw zmiany stosunkov na inovwy dostawy i sprzedazy miedzy jednostkami gospodarki Uspolecznionej. Studia Prawnicze, 1972. No. 32, pp. 111-145., J. Trojanek: Zasada realnego wyko nania umow gospodaczych Przeglad Ustawodawstwa Gosoparczego. 1968, Nos. 8-9, pp. 286-261. Z.M. Zamengof: Izmeneie i rastorzhenie hozyaystvennykh dogovorov. Mojow, 1967. Yuriditcheskaya Literatura.

[14] E.A. Katkova: O prave pokupatelya na otkaz ot ot produkcii, izlisnikh ili nenuzhnykh tovarov pri zajlyutcheni dogovora postavki. "Aktualnye problemy grazhdanskogo prava i protsessa," pp. 23-37. Irkutski A.A. Zhdanov State University. Publications. Vol. 79, Legal series 11, part 3, Irkutsk, 1972.

needs of producers and consumers, taking into consideration the laws of economics, so that no superfluous production may take place and no unusable goods be produced. This would, namely, induce particularly much damage, needing manpower, raw material, store, money, fuel etc.

The Hungarian legal regulation wants to prevent all these in the domain of contracts in a very radical way by having ensured to the orderer the so-called right or rescinding the contract "at any time" at the two most important agreements of people's economy.

This right is due to the orderer even in case of the goods in respect of which the transporter was burdened by the duty of concluding a contract. Otherwise, this is justified because the duty of concluding a contract burdens the transporters in respect of the products which are the most needed from the point of view of people's economy; in concreto, of course, only if it is asked for by the orderers. In spite of their ordering, it is still more favourable if the production is terminated in the course of processing than if the finished product becomes finally a frozen main stock. This right of the orderer to rescind the contract is, according to the rule of law, incompatible with the system of plan-instruction — when the demands were generally and finally established by the plan — but it is very useful in case of indirect direction, particularly if it is possible to harmonize — with the help of economic incentives and other means — the interests of enterprises with the all-social interests.[15] This right of challenge helps the allignment with the changing needs. "Own" claims of the orderer can change, as well, and also those of the person, in whose interest he is active. E.g. if this, as a result of innovation, invention, can realize his production in the way, too. that be has set aside one or another contract concluded in the interest of that or if his orderers do not claim, any more, one of his products, resp. if there is no more any call for that article.

On the basis of all these, we think that, in the relation of the solution of the Hungarian positive law, it is superfluous to refer to the clause rebus sic stantibus because the orderer (vendee) is not obliged to certify any condition, or justify before any instance, why he sets aside a contract. There is only a single limit of terminating a contract carelessly, which is, however, sufficient to retain somebody from doing this, namely: the reparation in full. It is unquestionable that in the background of this right of rescission (terminating a contract) there is, among others, the possibility that in the period from concluding the contract till implementing it, the conditions may have changed. This, however is not good for both parties, and is not even for the good of the obligor — as mostly in the classical variant of the clause rebus sic stantibus — but exclusively for the good of the orderer (vendee), and not only because, taking into consideration the relation of the two parties or generally their economic situations, he would have been slighted but for the simple reason that this was his interest and, therefore, supposedly also that of people's economy. The protection of the obligor can, of course, not be neglected, either, because he may already have been active in the interest of

[15] It is considered as standing in the service of satisfying the needs better, e.g. by Lajos Besenyei: A szocialista szervezetek közötti termékforgalmi szerződések szankciós rendszere, különös tekintettel a szállítási szerződésekre (System of sanctions of the turnover of production contracts between socialist organizations. with special regard to delivery contracts. Thesis for obtaining a candidate's degree, 1974. Szeged (Manuscript), p. 160.

implementation, bona fide. Thus, the burden of rescission cannot devolve on him.

This right of rescission cannot be compared to the théorie de l'imprévision, formed in the practice of the French Conseil d'Etat and applied in exceptional situations, nor to the rules of law, giving an exemption to the parties in large numbers from the compelling force of private-law contracts, or to the English frustration resp. the German Wegfall der Geschäftsgrundlage.[16] These have developed as a result of the mass aggravation of obligtions. Though, it is true, these were applied exceptionally after the passing of wars, catastrophic crises, as well, because there may occur — even without the mentioned situations — some changes, not seen at concluding the contracts, affecting a large number of persons, in case of which the contract cannot remain valid. It is characteristic of these legal institutions that they render legal assistance to one or the other party only by conducting judicial proceedings, in order to relieve him from the contract — as, e.g. according to the Hungarian private law, as well, prior to the Civil Code[17] — or to modifying the contract. The weaker party, who got into an economically difficult situation, mostly the obliged one, is protected.

In case of the Hungarian solution, we cannot speak of the above-mentioned characteristics. This institution, as mentioned, serves thoroughly different aims. Its formation did not go smoothly. Its practical application gives, in case of a debate, therefore trouble to legal courts because the aim of the rules concerning the violation of a contract is invariably to enforce the conduct corresponding to the contract. They authorize to oblige primarily to this.

The right to have a contract judicially set aside by one of the parties "at any time," named "rescission" by the maker of law, is such a "forming" law[18], by the practice of which a contract may be terminated unilaterally, possibly restoring the original state in order to prevent some major damage or loss.

It follows from the general rules of Civil Code concerning rescission that this institution cannot be effective without any limit. According to Art. 320, sec. 1 of Civil Code,[19] rescission can be founded upon a contract or a rule of the law.

The rights of rescission, founded on the rule of a law, may generally be classified into two categories:

Under one of the categories fall the cases in which the authorized party resiles from the contract owing to the breach of it by the other party. In

[16] Gyula, Eörsi: Összehasonlító polgári jog stb. (Comparative civil law etc.) pp. 247-250. Attila Harmathy: Változások a szerződések burzsoá elméletében (Changes in the bourgeois theory of contracts.) Állam- és Jogtudomány, 1974, vol. XVII/4. Cf. particularly with pp. 606-608.

[17] Frigyes, Görög: A kötelem ügyleti megszüntetése (The termination of obligation with a tranaction). In: Magyar Magánjog (Hungarian civil law), vol. III: Law of obligations. General Part. Ed. — in-chief: Károly Szladits. Budapest, 1941. Grill Károly Könyvkiadó Vállalata.

[18] László Asztalos: Polgári jog I. Általános rész. Személyek. (Civil law I, General part II. Persons). Tankönyvkiadó, Budapest, 1982. p. 69. Lajos Tamás: Magyar polgári jog. Általános rész (Hungarian civil law. General part). Tankönyvkiadó. Budapest, 1981, p. 96. Miklós Világhy: Ideiglenes tananyag a polgári jog általános részéből (Provisional subject-matter of instruction from the general part of civil law). Tankönyvkiadó. Budapest, 1977. p. 198.

[19] Act. IV of 1959, amended by Act. IV of 1977.

these cases the rescission is of sanction character. From among the cases belonging here particularly the right of rescission is important, ensured particularly owing to the default or the faulty fulfilment of the obligor. The following do, however, not fall within the scope of the present subject as further bases of rescission: the refusal of fulfilling a contract by the obligor, similarly the impossibility of fulfilling a service.

The cases to be drawn under the second group are those, in which the violation of the contract by the obligor is no condition of exercising the right of rescission by the orderer. (Such are the contracts of confidential or gratuitous character in the circle of nationals, delivery contracts and contracts for work, labour and materials at the transactions of economic units, the change of official prices).[20] In these cases — as well as in case of rescission because of the retroactivity of a legal rule (Civil Code, Art.226 — the exercise of the right of rescission falls within the scope of personal, deliberation. But the protection of the lawful interest of the other party is an important point of view, as well. To the exercise of the right of rescission, belonging to these two groups, the existence of different conditions is needed, resp. different legal effects are connected with the different cases of rescission.

In the present economic system in Hungary, the carriers of the interest of people's economy are enterprises. The directing organs — even if not without any contradiction have lost the right of deciding the everyday economic questions.

Prior to building it in the Civil Code amended, the order on delivery contracts made an expressed duty of the orderer (vendee) to recognize the requirements properly and to provide for the corresponding measures. This duty is now to be seen clearly from Art. 1. sec. 1, Art. 3, sec. 2, Art. 4, sec. 1, Art. 31, sec. 2 and Art. 43, sec. 2. of Civil Code amended, where the points in quiestion are: the aim of the Act, the requirement of the planned, proportionate development of people's economy, the duties of the state-owned enterprises and co-operatives. These should, namely, perform their tasks on the basis of aims of the national economic plan, in the interest of satisfying the social requirements.

The orderer (vendee) is burdened by the duty, to follow with attention the requirements, not only prior to concluding the contract but in the whole course of the existance of the contract. It was therefore made a task and right of the orderer (vendee) to decide, which contract proved to be superfluous.

According to the rules of law on the subject therefore, if the actual formation of the requirement cannot be measured properly at concluding the contract, or if after concluding the contract the requirement changes in a considerable degree, the orderer (vendee) may "at any time" use his right of rescission because every further outgivings for implementing the contract on the ordered product, which however proved to be superfluous in the meantime, would contravene the general interests of people's economy.

The ensurance of this right corresponds to the practical requirements. There may namely occur some cases, too, when the needs were already missing at concluding the contract and nevertheless, the conclusion of the

[20] Gyula Eörsi: Kötelmi jog általános rész (Law of obligations. General part). Tankönyvkiadó. Budapest, 1979, p. 128.

contract took place, owing to the carelessness of the orderer. The orderer may recede from the contract in this case, as well, because it is not prescribed in the legal rule that this right can only be exercised in case of a demand, ceasing to be later.

The orderer's rescission is unhindered, as well, if he anyway admits the existence of the demand but he can better serve his "own" interests by using his material means in another field. It looks to me that, this time, the right of rescission is directed toward an aim incompatible with the social destination of the right, realizing with this the abuse of rights, regulated in Art. 5 of the Civil Code. But in the new system of the direction of economy, the task of enterprises is to strive for a legitimate activity, as remunerative as possible. If the orderer can only achieve this by exercising the authorized right of rescission, the right of rescission cannot be contested. Otherwise, in the case, too, the liability for all damages is an effective factor against using rescission.

The orderers of delivery contract and those of work, labour and materials have the right of free rescission. The regulation of the two contracts, partly as compared with the proceedings of rescission. According to Art. 35. sec. 1 of the order in council No. 44/1967 (XI. 5.) Korm (implementing order) on the contract for work, labour and materials, "the orderer may at any time recede from the contract but he obliged to pay damages for the contractor."

The general right of rescission of the orderer was originally regulated by Art. 23 of tthe order in council No.10/1966 (II.14) Korm. on the delivery contract, in the following way:

"(1) The orderer may rescind a contract before the term of accomplishment; he is, however, obliged to compensate the contractor for the expenses incurred. The fundemental conditions of delivery may dispose this in a different way, as well.

(2) If the rescission is attributable to the blamable conduct of one of the parties, the legal consequences of the breach of a contract ensue."

This regulation did not serve either the practical or the theoritical requirements. There were several objections against it:

(a) it limited the right of rescission unjustifiedly to the period not exceeding the term of fulfilment in the scope of delivery contracts;

(b) in case of rescission it only prescribed the refunding of expensen to the debit of the orderer, presumably with the intention of dividing risk;

(c) in spite of some economic-political conceptions, sec.2, declared the lawful rescission, written in sec. 1, to be under certain conditions an illegal conduct and, in these cases, fastened to these the legal consequences of the violation of a contract;

(d) but it was not justified with that the regulation should be different for delivery contracts and for those for work, labour and materials.

The amendment was made necessary by these circumstances and contained in order in council No. 3/1970 (II. 3.) Korm., as follows:

"The orderer may rescind a contract at any time, he is however obliged to compensate for the damage of the contractor" (Art. 23.).

Then this became the text of the Civil Code amended, in connection with the general right of rescission of the orderer of delivery contract and of the contract for work, labour and materials (Art. 381. sec. 1, Art. 395. sec. 1). This full liability for damages means, in fact, a compensation because

— in lack of unlawfulness — the point in question is not a formation of liability.

The right of rescission and the legal consequences, ensuing in case of exercising this, are regulated in the rule of law with cogent provisions (cf. Civil Code, Art. 386, sec. 1, and Art. 401, as well as order in council No. 7/1978. (II. 1.) Mt, concerning the implementation of chapters XXXIV and XXXV of Civil Code, on the delivery contracts and those for labour and materials of economic organizations", Art. 113, sec. 1). At concluding the contract, the orderer can therefore not renounce the discission validly, resp. if the parties mutually settled a different legal consequence, this agreement is invalid.

According to order in council No. 10/1966 (II.14) Korm., the fundamental conditions of delivery could provide on Art. 23, sec. 1, in a different way, too. This rule was not taken over by order in council No. 2/1970 (II.3.) Korm., either. This was a very important change because the prevalence of the right of rescission could be prevented concerning any product by the fundamental conditions of delivery. At the same time, the amendment of Civil Code, with character of rule of law, terminated the system of fundamental conditons, at least in its earlier form.

The orders regulating the general right of rescission of the orderer (vendee) do not contain any provision for formal requirements for the declaration of rescission. Just therefore, here the general rule of ius in personam (law of obligations) is to be applied. According to Art. 320, sec. 1 of Civil Code: "He who is entitled — owing to a contract or a rule — to rescission, exercises his right with a declaration, addressed to the other party. Rescission dissolves the contract."

As to the formal requisites of declaration, Art. 218, sec. 3 provides as follows: "If the validity of a contract is connected by a rule of law or the agreement of parties with a prescribed form, the termination or dissoution of a contract concluded in such a form is also only valid in this prescribed form." The same section recognizes — in case of the existence of agreeing wills — also the validity of the existence of the actual dissolution or termination, brought into being by an indicative conduct.

The relevant rules do not speak of the formal requisites of rescission. It is questionable whether it can be made orally or with an indicative conduct. From the provisions of the above-mentioned rule of law the conclusion can be drawn that the descission, dissolving a contract unilaterally, requires the use of written records, at least in the form as it is used at concluding contracts.[21] The cause of that the form of declaring rescission is no problem of the present-day practice, is that the economic units generally inform one another of their intentions, as a rule, in writing.

It is not determined in any rule of law, either, what the declaration of descission should contain. Just therefore, such a declaration is also to be considered as suitable which does not specify exactly the title of descision but the will of concluding person can be concluded from it. To the interpretation Art. 207, sec. 1 of Civil Code is to be applied, that is to say, the presumable wish of the declaring person, and taking into consideration the conditions of the case, as well, the generally accepted meaning of words will be decisive.

[21] The Commentary on civil code (A Polgári Törvénykönyv magyarázata, vol. II) Közgazdasági és Jogi Könyvkiadó. Budapest, 1981, pp. 1471-1474, 1807, 1808, 1875, 1876, does not take stand concerning formal requirements.

The lawsuits, connected with rescission, get before a judge, at any rate, not alway under this title. In different litigious matters — in subjects of compensation, guarantee, purchase price, enterpreneurial remuneration, resp. penalty for non-performance — rescission as a frequent eliciting cause of the litigation, plays a role. The starting point in deciding these lawsuits is generally whether the applied title of rescission is legal.

It is not indifferent to either of the parties, upon what grounds the authorized person wants to have the contract judicially set aside. Namely, if he exercises his general right to rescind the contract, he should pay condemnation; and if he recedes from the contract owing to that the other party violated it, then this pays a penalty for non-performing the contract and also compensation if the damage is higher than the penalty. Therefore, the orderer ought to inform the contractor (enterpreneur) in his declaration of rescission about the title of his terminating the contract. Nonetheless, it often occurs that the orderer does not make known exactly the title of his rescission. For the sake of unifying the judicial practice, the Economic College of the Supreme Court issued its ruling (hereinafter called: GK 16).[22]

According to this, if the orderer rescinds the contract, he should give the cause of rescission in his declaration given to the other party, resp. he should say the title of rescission, as well. In want of which — or if the particular title of rescission does not follow clearly from the conditions of the case — the declaration of rescission should be considered as valid on the basis of the general right of the orderer to rescind a contract. The orderer may give the particular title of rescission later on, as well, if it is based on a breach of the contract. The orderer may also transform later on his rescission, exercised owing to a breach of the contract, into a rescission exercised upon the general title. According to the generally accepted standpoint, however, in the proceedings of appeal, the title of descision cannot be changed any more.

The proceedings of appeal are the continuations of preceedings of first instance on another level. Nevertheless, certain elements of the case are conserved by finishing the proceedings of first instance. It is, therefore, not allowed to vindicate a right which should have been decided in merito in the proceedings on the first instance.

It belongs to the investigation into the title of rescission the statement of the above-mentioned ruling, as well, that "if there was no room for rescission on the basis of the title, given in the declaration of rescission, and the party issuing this declaration does not change the title, the court of law cannot establish the lawfulness of decision under the pretext of a different ground."

In the course of the proceedings, one of the parties usually contests the legality of decision. In the case if the orderer applies his general right of rescission, this does not mean any problem because rescission on this basis is always lawful. In case of a rescission on the basis of violating the contract however, if it is contested, the court should establish whether the conditions, determined in the rule of law, do or do not exist, and it should decide,

[22] Collection "Polgári, Gazdasági és Munkaügyi Elvi Határozatok" (Civil, Economic and Labour Laws Decision of Principle), Budapest, Közgazdasági és Jogi Könyvkiadó, pp. 443-445. Its modified variation is to be found in the publication "Polgári és gazdasági elvi határozatok a Magyar Népköztársaság Legfelsőbb Bíróságának irányelvei, elvi döntései és állásfoglalásai" (Directives, Decisions and Rulings of the Supreme Court of the Hungarian People's Republic, Civil and Economic Affairs). Közgazdasági és Jogi Könyvkiadó, Budapest, 1980. pp. 408-410.

depending upon this, about the lawfulness of rescission. If the court of law establishes the illegality of the descision of sanction-character, the orderer is entitled to exercise the right of general rescission "at any time" — as it is named by the above-mentioned ruling No. GK. 16.

The orderer may rescind a contract not only before the term of fulfilment but after its resultless expiration, as well. In case of default of the obligor, therefore, the orderer may choose between two titles of rescission, too. He may use his right of general rescission or, in case of vanishing of his interest, he may base his right of rescission on the default of the obligor. This rule is most considerable in the cases in which the proof of ceasing of his interest hits agains difficulties, though in case of violating the contract this is a condition of rescission. The orderer, for lack of needs, wants by all means to get rid of the contract, at any rate without paying for this. It is questionable, why is it only possible to rescind the contract in case of the violation of the contract by the obligor only after proving the ceasing of the interest, while, otherwise, this action does not need any motivation.

In connection with the general right of rescission, it is also debated whether it may be realized without any restriction. It is namely not made depend by the rule of law either on time or on the occurrence of definite conditions. If it can be exercised at any time till the termination of the contract, whether we would clear then the way for the arbitrariness of the orderer, allowing his rescission till the payment of remuneration, as he can maintain the contract till the date corresponding to him by retaining his recompense.

According to Pál Boytha, the orderer can set aside the contract validly even after the happening of notifying the completion, delivery or act of transferring. He motivates his standpoint with that the nearer the contract gets to its predestined termination the higher the sum of compensation will be and the amount approaches more and more the value of the subject of the contract what is a suitable retaining force against the unjustified exercising of the right of rescission.[23]

The orderer is expected latest at the date of taking over the ware, to be in clear with if there is a solvent demand, respectively whether the contract is superfluous to him. Thus, according to the right standpoint, the orderer is free to exercise his right of rescission till the fulfilment of delivery.

This practical expediency is determined by ruling No. GK 16, as well. In the sense of this, the orderer may exercise the right of general rescission as long as the fulfilment has not taken place.

This also applies to the case where the fulfilment had already happened before the term of fulfilment terminated (e.g. preliminary delivery was accepted by the orderer).

This ruling has highly promoted the unification of judicial practice but it would be a better solution to make the text of the rule of law unambiguous. The Civil Code amended has similarly had no provision in this respect. We do not think, however, probable that it wanted to prolong the right of recission even to the period after the fulfilment of delivery.

In the course of lawsuits, however, more and more trouble was caused in the domain of jurisprudence, as well, by the recurring debate about the

[23] Pál Boytha: A megrendelőt illető bármikori elállási jog (General right of rescission "at any time", being due to the orderer. Döntőbíráskodás, 1971, No. 1.

question, when the contract should be considered as fulfilled. Ruling No. GH 32 of the Economic College of the Supreme Court approaches the problem from its practical side. It speaks, instead of the expression "fulfilment", applied in ruling No. GK 16, about the happening of delivery and taking over of goods. It modifies ruling No. GK 16 in the way that the orderer may exercise his general right ("at any time"), as well as that based on the termination of his interest as a result of the delay, as long as delivery and taking over have not taken place. With delivery, he gave namely expression to that he needed the thing. The ruling emphasizes, as well, that he orderer, alone on the basis of his duty of co-operation, only takes the thing into responsible custody, without losing his right of rescission.[24]

A similarly animated discussion was provoked in connection with the mentioned contracts by the long since known rule that the contract is terminated by the rescission with the effect ex tunc.

It is expounded by György Boytha that once the main characteristics of these contractual connactions is the objective reality, preventing the cancellation of the contract with retroactive effect.[25] In his opinion, owing to the circumstances, facts, taking place after the conclusion of the contract, a long line of irreversible legal effects were produced which cannot be declared as null and void by the declaration of decission. In these cases, therefore, the produced legal connections, legal relations continue remaining existent, independently of cancelling the contract, though the general legal consequence of rescission was the in integrum restitution. But even in the case to be restituted, a further problem is meant by the circumstance that, if the contractual connection becomes dissolved by the delivery of the declaration resp. by the communication of the declaration of rescission with immediate retroactive effect, then what the basis of in integrum restitutio, resp. the connection between the earlier contracting parties will be in the time of the efforts for restituting the original state.

György Boytha's final conclusion was that after rescission the contract is not broken, only modified, it is focussed on another delivery.

Let us take the simpler fall when the original state can be restored.

At solving the question, we should set out from that, between the parties, a legal connection of course remains after rescission, as well, the aim of which is no more to fulfil the contract but the possible implementation of the in integrum restitutio. Just therefore, after rescission we cannot speak, any more, about a contract, in a modified form. either.

At exercising the right of general rescission of the orderer, therefore, the delivery contract, as well as the contract for work, labour and materials are dissolved and further on, the basis of the legal connection between the parties is the duty of compensation, burdening the contractor resp. enterpreneur; resp. the duty of mitigating the damages, with the fulfilling of which duty, the parties promote the restitution of the original state, at least in the domain of value relations.[26]

[24] Ruling No. GK 32, In: Bírósági Határozatok, 1983, No. 5, pp. 368-369.

[25] György Boytha: Az elállás intézménye jogunkban (The legal institution of rescission in our law). Jogtudományi Közlöny, 1967, No. 7.

[26] László Kecskés deals in his article: A szerződéstől elálló fél restitúciós és kártérítési kötelezettségének megítélése (Adjucation of the duty of restitution and compensation of the party rescinding the conract) with the mutual relation between restitution and compensation, taking place in connection with rescission. Jogtudományi Közlöny, 1978. No. 11, pp. 682-689.

The legal consequence of rescission is that the orderer is obliged to pay the damage of the contractor resp. enterpreneur. The rule of law does not allow any exception of this provision. It namely protects the interests of the obligor against the hasty acts of the orderer. The protection has increased by that the damage should be recompensed to full extent. Thus, at calculaging the extent of compensation, in the sense of Art. 353, sec. 4 of Civil Code, we should take into consideration the deteriation in value of the assets of the damaged person and the pecuniary advantage being in arrears, including the expenses of recompensation, as well, which are necessary to reducing or eliminating the financial or non-financial losses of the damaged person. The nonfinancial damage, revived by the Civil Code amended can come in question in case of juristic persons if the rescission harmfully influences the participation of the obligor in the economic turnover. This hardly occurs in connection with the general rescission but is theoritically not excluded.

The Act does not attach any legal consequence to rescission, apart from the obligation of compensation. Nevertheless, it often occurs that the contractor wishes to vindicate penalty for nonperformance against the orderer. We should clear the question, therefore, whether the duty of paying non-performance penalty falls upon the orderer.

We should start from that the payment of penalty is connected with the breach of contract, not exculpated. The general rescission is, however, not to be classified among the cases of the violations of contracts because the legislator speaks of it not in the Chapter of "Violation of contracts" but in that of "Modification and termination of contracts." Moreover, rescission cannot be considered as blameable or reproachable because it is not connected with any condition, its exercising "at any time" is permitted by a rule of law. It is indifferent, therefore, by what motives the doer felt moved to rescind the contract: owing to a change in his needs, or only because he previously improperly assessed them. That is to say, in this case he should not pay any penalty.

István Zsemberi takes the opposite standpoint. He regards rescission as one of the cases of terminating a contract. Therefore, in his opinion, the obligation of paying penalty for non-performance charges the orderer in the same way as the obligation of compensation. In his view, namely, "this interpretation is required by the struggle against the irresponsible and overhasty conclusion of contracts, as well, which loosen the contracting discipline and disturb the planned course of people's economy."[28] We cannot accept this standpoint from economic point of view because this part is played satiffactorily by the obligation of compensation, as well, so much the more because from this there is no exemption. The enterprise would not pay more amount even if a culpable violation of a contract were ascertained because the penalty for non-performance is always included in the amount of the compensation to be paid.

The situation is formed in a different way if the contracting parties agree about that in case of rescission of the orderer he pays a non-

[27] The same is the standpoint of Gyula Eörsi: A reális teljesítés elve a gazdaságirányítás új rendszerében (The principle of real fulfilment in the new system of economic direction). Jogtudományi Közlöny, 1968, Nos. 7-8. pp. 341-360.

[28] István Zsembery: A mezőgazdasági termelőszövetkezetek árukapcsolatainak néhány kérdéséről (On some questions of the tie-up sale of agricultural cooperatives). Magyar Jog, 1970. No. 4.

performance penalty of definite extent. Taking into consideration that the non-performance penalty is expressly a sanction of the violation of a contract, the matter of question is, in fact, not a penalty for non-performance but a forfeat. The use of this permitted by Art. 320, sec. 2 of Civil Code. Nonetheless, in the present-day legal arrangement, in case of delivery contracts and those for work, labour and materials, no forfeat can be stipulated validly but the damage, induced at the date of rescission, should fully be compensated. The economic organisation can, namely — as referred to above — not deviate from the provisions concerning the contracts of delivery and of work, labour and materials, without an expressed permit. But in this case, the proved full and natural damage of the obligor should be compensated. It is hardly possible to decide reassuringly, how much this restriction is justified.

In the following we shall investigate into how the orderer may use his general right of rescission if a breach of contract was committed. This is primarily considerable because of the conditions of rescission to be applied and of legal consequences.

Among the cases of violations of contracts, that are essential from the point of view of the subject, we should also separate the delay of the obligor, resp. the faulty fulfilment. The rescission, based on the delay of the obligor can only be considered as legal if the orderer proves that the fulfilment became without any interest for him because of the delay. If often occurs that the orderer cannot prove this precondition but — for lack of needs — he nevertheless wants to get rid of the contract, becoming superfluous. In this case, the statisfaction of opposite requirements raises a complicated problem because the orderer is burdened by the obligation of a full compensation, the deliverer (enterpreneur) committed, on the other hand, possibly the culpable violation of a contract, owing to which he would be obliged to pay penalty for non-performance. Is it equitable in such a case that the orderer should pay compensation? It is not equitable, nevertheless, this is lawful. In this case, from among the claims colliding with one another, the claim of the obligor seems to be stronger. We are facing the problem returning later on, too, that the rules of violation being able to enforce the principle of real fulfilling in the old form, are in contradiction to the general right of rescission, regulated on the basis of new conception.

The situation is even more complicated in case of a defective fulfilment. In this case, the orderer exercises his general right of rescission, as a rule. in the case if he had only the possibility to ask for repairs or exchange because to rescission he had to prove the termination of interest. It became debated whether the delivery of a defective product is qualified as such a fulfilment which — according to the earlier propounded standpoint — prevents the enforcement of any right of rescission as the contractor (enterpreneur) took over the obligation in the contract to deliver an undamaged product (work). In the opinion of Pál Boytha, in case of a defective fulfilment, the obligor owes — on the basis of a legal guarantee or undertaken indemnity — a further obligation in order to fulfil the contract completely. Therefore, till the elimination of the defect, the contract remains valid, even if the taking over and payment by the orderer took already place earlier. With regard to this, there is nothing to prevent legally that the orderer may set aside a contract at any time, which has remained — owing to the defective fulfilment — further on valid, by exercising his general right

of rescinding a contract at any time.[29] In our opinion, the fulfilment of a contract with a defective thing, which is nevertheless suitable for proper use, is such a fulfilment, the taking place of which no more enables the use of the general right of rescission "at any time."[30] Then the orderer can only rescind the contract in the form of a sanction of its violation. But here he again impacts the problem that he should verify to this the termination of his interest in the contract.

The contract is terminated by the lawfully exercised rescission with retroactive effect. Before the modification of Civil Code, there was no legal possibility to rescind a contract in part. It occures, nevertheless, that the orderer wanted to use his right of rescission concerning only one part of the contract — generally the part that was not fulfilled, as yet. In this question, we see different standpoints though the legality of rescission has generally not been challenged. The opinions have rather been different in the field of solution. There was an opinion, according to which: if the delivery is divisible then a partial rescission may also occur. This problem was terminated by the Civil Code amended in respect of the contracts of delivery and those for work, labour and materials. In the sense of Art. 381, resp. Art. 395, sec. 2, if the situation before concluding the contract cannot be restored or if it is motivated by a people's economic interest or by another interest which is worthy of a particular appreciation: the court of law may — in case of the discission of the orderer, upon the petition of either of the parties — terminate the contract for the future. In such cases, too, the orderer is obliged to compensate the contractor for his damage.

The amendment therefore rightly uphold the standpoint that the orderer is due to a partial rescission, as well, because this similarly motivated by people's economic point of view as the full rescission is.

The practice of judicature has generally recognized the right of a partial rescission of the orderer earlier, as well.

There was no uniform practice of judicature in respectc of what with certain things should happen, thus with the products made or unfinished till the rescission, with the basic materials laid up, which cannot be used by the contractor for another purpose and it is not possible making use of them. The courts of law have obliged the orderer more than once to take over these products, materials.

In these cases, the orderers disputed of right their obligation of taking over. It follows of the in integrum restitutio that the orderer cannot be obliged to take over the rest-delivery. All the same, in extreme cases, where the contractor (enterpreneur) reassuringly proves that every possibility to process the material for another purpose and to dispose of it was frustrated, then the orderer will yet be obliged to "take over" the thing made or essentially made, as well. This means that the orderer makes an effort to get rid of the given product in vain, he cannot — though he were entitled to — do this. The meeting of the council-presidents of the Supreme Court

[29] Pál Boytha: A megrendelőt bármikor megillető elállási jog (The right of rescission, due to the orderer at any time). Döntőbíráskodás, 1971, No. 1.

[30] Tóthné Eszter Fábián: A szerződések teljesítésének alapkérdései a szocialista gazdaságirányítású rendszerekben (Basic principles of fulfilling the contracts in the systems of socialist economic direction). Szeged, 1982 (Manuscript), p. 206. The same standpoint was accepted Ruling No. GK 16, amended by Ruling No. GK 32.

[31] GKT 1/1982. Bírósági Határozatok, 1982. No. 6, p. 453.

(No. GKT 1/1982) took a stand on this question.[31] This establishes that the decision on the subject of utilizing the superfluous product is independent of the fact, in the sphere of interest of which party the cause of modifying or terminating the conctract arose or which party is responsible for it. These circumstances are, however, not indifferent in deciding on the question, which party should bear the costs, damages connected with the utilization.

It is not a less problem, how to establish the amount of damages, particularly if the contractor (enterpreneur) has not yet solved the marketing of products and materials left behind with him, till the rendition of the judgement. We meet with a solution that the contractor (enterpreneur) enforced his claim to a compensation in details, corresponding to marketing. And a practice also began to develop which wanted to apply in this case the rule of Civil Code concerning the general condemnation.

The many kinds of the legally ensured ius resistendi of the orderers of delivery contracts and of those for work, labour and materials correspond to the economic requirements, in spite of the above-mentioned minor inconsequences. We could mention, as yet, that the Civil Code amended also speaks about the right of rescission "at any time", in the same way as the earlier rules, specified by the ruling of the Economic College of the Supreme Court concerning the general right of rescission extending till the implementation of handing and taking over the thing or work. It would be impossible, both theoretically and practically, to loosen the "binding force" of the contract so much that somebody may rescind a contract even after fulfilment.

It is not satisfactorily cleared, as yet, what the mutual relation of the different kinds of rescission, the sequence of their applicability, the way of exercising more than one sort of rescission jointly, the kind of the obligation of compensation in case of exercising the general right of rescission are. This right is ensured by the rules of law primarily in case of the termination of, or the change in, the needs in the meantime, because the orderer is in respect of the eliciting cause generally not culpable. There arose, therefore, such an opinion that "it would be good to endeavour such a solution that in so far as the rescission cannot be attributed to the imputable conduct of either of the parties, the damage of the contractor should not be compensated finally by the orderer but — after developing the system of the social distribution of damages — in the last resort by the insurance institute or budget".[32] In this case, we would return to that this is a rescission based on a culpable conduct but it would not present itself, after all, in the form of violating a contract. In order to decide, what be righter, an extensive fact-finding investigation would be necessary. The fact-finding investigation, performed by courts of law, has shown that there are no frequent legal disputes in connection with the above-mentioned rescission. (There were all in all about 6 to 8 such disputes per country during the investigated one and a half years).

We cannot know, however, how many debates may have occurred independently from judicial proceeding because the orderer need not appeal to a court in order to enforce his right. At any rate, this only occurs — within the framework of the ordinary economy — really only is cases if the needs terminate, resp. the orderer is able to utilize the material means at his disposal to better advantage.

[32] Pál, Boytha: Elállás a szállítási szerződés teljesítési határideje előtt (Rescission before the term of fulfilment of the delivery contract). Döntőbíráskodás, 1979, No. 11.

A considerable part of questions issues from that the rules of the violation of contracts generally strive to enforce the fulfilment, while the general right of rescission serves just contrary aims.

In our iura in personam (law of obligations), the prevalence of the fulfilment in nature is a peculiar principle. But in the scope of the delivery contracts and of those for work, labour and materials this principle develops in contrast to the general principle.

The orders regulating the contract of delivery and those for work, labour and materials ensure a one-sided right of rescission to the orderer. At the majority of his contracts, provided with a name, it is not possible to terminate the labour relations one-sidedly. At the contracts mentioned, it depends on the orderer alone as on the carrier of he solvent demand, whether the actual fulfilment takes its turn. If he wants it, the obligor cannot help but fulfil even today, he cannot commute his obligation for paying money.

Although under changed condition, it is an unchanged principle that the fundamental aim of the socialist economic order is to satisfy the needs, the way to which is planned economy and its means are, as to the legal form of connections between the economic units, contracts.