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Considerations for Restriction on the Right of Rescission in Case of Obviously Minor Breaches

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Abstract: Whether, and how, to rescind the right of one party (the non-breaching party) to rescind a contract in case of an obviously minor breach by the other party (the breaching party) is a recurring topic in the field of contract law. The *Minutes of the Ninth Work Conference of the Courts Nationwide on Civil and Commercial Trial (the Minutes of the Ninth Work Conference)* stipulates that whether a contract shall be rescinded depends on whether a breach is obviously minor and affects the fulfillment of the contract purposes expected by the non-breaching party. In juridical practice, however, there are no clear criteria to define what constitutes obviously minor breaches, and the factors considered in such cases are often inadequate to allow for a fully considered decision. By analyzing Article 55 of the *Judicial Interpretation of the General Provisions of Contracts of the Civil Code of the People's Republic of China (Draft for Comments)* and reviewing the previous juridical practices, we present our conclusions regarding the conditions and factors that should be considered when restricting the right of rescission in cases of obviously minor breaches with a view to unifying the judicial judgment criteria by differentiating the type of breaches.

Keywords: obviously minor breaches, right of rescission, considerations

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Research Questions

The *Civil Code of the People's Republic of China* (hereinafter referred to as the *Civil Code*) defines the right of rescission based on the principle of autonomy of will.^① Yet, it does not explicitly provide whether the right of rescission of one party shall be restricted when the other party breaches the contract in a minor way that still allows the non-breaching party to terminate the contract as agreed. Indeed, it can be challenging to determine whether a request to rescind the contract shall be supported in strict accordance with contract provisions, given the complexities that may arise during the performance of the contract. According to Article 47 of the *Summary of the National Civil and Commercial Trial Work Conference of Courts* issued by the Supreme People's Court (*Minutes of the Ninth Work Conference* for short), courts should, based on the principle of good faith, determine whether the contract shall be rescinded by verifying whether the breaching party's default is obviously minor and whether it affects the fulfillment of the contract purposes by the non-breaching party.^② While the principle of good faith can be invoked to address legal loopholes, there is still ongoing debate regarding what constitutes "obviously minor breaches." Therefore, during judicial proceedings, it is essential to exercise prudence when evaluating the legitimacy and reasonableness of a non-breaching party's request to rescind a contract. Currently, there is a lack of standardized criteria to define "obviously minor breaches" and the various factors to be considered in such cases. Moreover, excessive discretion of courts during judicial practice may impede the formation of unified judicial rules. Therefore, it is imperative to further discuss the considerations and evaluation criteria for defining obviously minor breaches and restricting the right of rescission.

Analysis of Article 55 of the *Draft for Comments*

In November 2022, the Supreme People's Court issued the *Interpretation for General Provisions of Contracts of the Civil Code of the People's Republic of China* (hereinafter referred to as the *Draft for Comments*). Article 55 of the *Draft for Comments* declares, "The people's court shall approve the request of one party to terminate the contract as agreed on the ground that the other party has breached the contract. However, there is an exception to this, that is, when the breach is obviously minor, does not affect the fulfillment of contract purposes by the non-breaching party, and rescinding the contract is obviously unfair to the breaching party in this case. In such cases, if the non-breaching

① Paragraph 2 of Article 562 of the *Civil Code* stipulates, "The parties may agree on the causes for rescission of the contract by a party. When a cause for rescission of contract arises, the party with the right to rescission may rescind the contract."

② Article 47 of the *Minutes of the Ninth Work Conference* stipulates, "When the conditions for contract termination are met and the observant party requests to terminate the contract on this ground, the people's courts should examine whether the breach is obviously minor and whether it affects the realization of contract purposes expected by the observant party, and determine whether the contract should be terminated based on the principle of good faith. If the breach is obviously minor and does not affect the realization of contract purposes expected by the observant party, the people's courts should reject the request of the non-breaching party to rescind the contract; otherwise, they should accept it."

party requires the breaching party to assume corresponding liabilities for its breach or to claims other remedies, the people's courts shall approve it." To a certain extent, this Article represents an improvement on the basis of Article 47 of the *Minutes of the Ninth Work Conference* to a certain extent. While abiding by the principle of strict liability, it specifies as an exception the restriction on the right of rescission in case of obviously minor breaches and adds the condition of "obvious unfairness" based on the principle of fairness. In terms of liability attribution, this Article clearly specifies that the non-breaching party may require the breaching party to fulfill corresponding obligations even if its request to terminate the contract is rejected by a court. Based on the principle of good faith and fairness, this Article aims to give certain discretion to courts to properly restrict the right of rescission of the non-breaching party and thus maintain transaction safety.

Modern civil law not only incorporates the principle of good faith for the exercise of rights but also includes the principle of prohibiting the abuse of rights (Liang, 2008, p. 265). The determination of whether the exercise of a right has the primary purpose of harming others should be based on a comparison between the benefits the obligee can obtain from exercising the right and the losses that others, the country, and society may suffer (Wang, 2013, p. 14). Protecting the non-breaching party's reliance interest based on the contract is undoubtedly important. However, it is equally important to ensure that the non-breaching party's rights are not abused at the expense of others, the public, or society as a whole. Therefore, restricting the right of rescission of the non-breaching party is also a requirement under the principle of prohibition of the abuse of rights.^① Just as one scholar said, "As individuals, all of us are entitled to certain rights and discretion. However, we must remember that when exercising such rights or discretion, we must do so in a manner that does not violate the laws and moral principles that we all uphold" (Wang, 2001, p. 548). On the one hand, the non-breaching party's request to terminate the contract as agreed is usually a result of weighing the pros and cons of doing so. It is based on the rational assessment of maximizing its own interests, usually with a motive to gain greater benefits, such as opportunities to conclude contracts with other parties or receiving higher liquidated damages. On the other hand, when a breach of contract occurs, the non-breaching party is often entitled to multiple rights, including the option to continue to perform the contract, requesting the breaching party to bear the liabilities for its breach, or rescinding the contract. The right of rescission, as a right of formation, can be exercised by the non-breaching party simply by expressing its intention to rescind the contract to the breaching party. This can result in lower costs for the non-breaching party to request contract rescission, potentially leading to an imbalance of interests between the parties involved. To prevent the non-breaching party from abusing its right of rescission in a seemingly legitimate way, it is necessary to establish institutionalized restrictions on the right of rescission in cases of minor breaches. This approach can not only help prevent the non-breaching party from abusing its right while still protecting its rational reliance interest, but it can also help to rebuild a balanced and stable contractual relationship.

^① Article 132 of the *Civil Code* stipulates, "No person of the civil law shall abuse his civil-law rights and harm the interests of the state, the public interests, or the lawful rights and interests of others."

As Article 55 of the *Draft for Comments* represents a specific restriction on the agreed right of rescission, it is important for courts to determine whether to restrict the non-breaching party's agreed right of rescission in cases of obviously minor breaches to prevent excessive restrictions. Moreover, this Article, which is based on Article 47 of the *Minutes of the Ninth Work Conference*, reflects how the Supreme People's Court balances and adjusts the interests of both the breaching party and the non-breaching party in accordance with the principle of good faith. We suggest that the phrase "obviously violating the principle of good faith" be included in Paragraph 1 of this Article as a condition for restricting the agreed right of rescission of the non-breaching party. Thus, we believe that judicial bodies should restrict the agreed right of rescission of the non-breaching party under the following conditions: (a) The breaching party's default is obviously minor; (b) The breach of contract does not impede the fulfillment of the contract purposes expected by the non-breaching party; (c) The non-breaching party's rescission of the contract blatantly contravenes the principle of good faith or is manifestly unfair to the breaching party.

Legal Foundation for Restricting the Right of Rescission in Case of Obviously Minor Breaches

First, from the perspective of value orientation, restricting the agreed right of rescission in cases of obviously minor breaches reflects a balance between the principles of the autonomy of will, freedom of contract, good faith, and fairness. This approach is consistent with the value orientation of the *Civil Code*, which aims to promote transactions while ensuring fairness between the parties. The principle of good faith includes positive requirements for civil subjects through compulsory norms, thus functionally limiting the scope of autonomy of private law (Wang, 2005, p. 46). In essence, the principle of good faith embodies the legislature's intention to balance the interests among and between civil subjects, and between civil subjects and society. It establishes the norm that civil subjects should balance their interests with one another and with social interests during civil activities. The principles of the autonomy of will and freedom of contract are embodied throughout the *Civil Code* as basic principles of civil law. Despite that, the principle of good faith recognizes the initiative of judicial bodies and grants judges discretionary power in trials. This principle focuses more on protecting the interests of the public and society, as well as ensuring a moral minimum in transactions. In this way, the principle of good faith serves as a counterbalance to the principles of autonomy of will and freedom of contract, ensuring that these principles are not used to justify actions that are harmful to society or violate basic moral standards. The principle of fairness also imposes some restrictions on the autonomy of will. In cases where there is a conflict between the principle of the autonomy of will and the principle of fairness, the latter should prevail.^① Therefore, in case of obviously minor

^① Leading Group of the Supreme People's Court for Implementation of the Civil Code of the People's Republic of China (Editor-in-Chief) (2020). *Understanding and Application of the General Provisions of the Civil Code of the People's Republic of China*. The People's Court Press, p.62.

breaches, it is crucial to hold the breaching party accountable based on the principles of good faith and fairness, to maintain the contract's validity and ensure further performance. This also helps to prompt civil and commercial subjects to exercise their rights in good faith, thus promoting fair transactions and competition and maintaining social equity and justice.

Second, from the perspective of balanced interests, if there is a minor breach of contract, the decision to restrict the right of rescission hinges on the weighing of protecting the non-breaching party's civil rights and interests versus maintaining order and stability in the transaction market. Some argue that Article 55, which grants courts excessive discretion, may harm the rights and interests of the non-breaching party and should be removed. However, we believe that since the non-breaching party already has the right to terminate the contract in the event of fundamental and general breaches, it is essential to restrain the non-breaching party from unjustly claiming contractual rescission or excessive damages so as to prevent the transaction risks that may arise from abuse of contractual rescission. Just as one scholar said, "It should be regarded as an abuse of rights if one party claims its contractual rights merely on the ground of the other party's obviously minor breach with the aim to release itself from a contract that has already been its burden" (Schwab, 2006, p. 180). More importantly, without prejudice to the non-breaching party's right to request the breaching party to bear corresponding liabilities for breach of contract, such restriction can minimize the harm to the contractual parties, keep their interests balanced, and ensure the transaction stability and order.

Third, from the perspective of contract purposes, obviously minor breaches usually do not constitute a necessary condition for contract rescission. Incorporating the legislative term "contract purpose" is a means of protecting the parties' true intentions by selectively including them in the legal evaluation system based on value judgment (Wang, 2022, p. 203). It is generally believed that contract purposes form the basis for the parties to conclude a contract, reflecting their subjective motives to conclude the contract and their expected objective economic benefits. If there is an obviously minor breach of contract, merely restricting the right of rescission of the non-breaching party generally does not affect the parties' contractual motives and expected economic benefits. "Failure to achieve contract purposes" is synonymous with "affecting the expected economic benefits for concluding the contract" (Cui, 2015, p.47). Since the non-breaching party has the option to request that the breaching party assume corresponding liabilities for breaching the contract (such as taking remedial measures or compensating for losses), such restriction will not have a negative impact on the non-breaching party or the performance of the whole contract from an objective point of view. Therefore, the realization of contract purposes expected by the parties will not be affected.

Considerations in Case of Obviously Minor Breaches

The definition of obviously minor breaches is primarily at the discretion of the courts. Article 55 of the Draft for Comments also does not provide clear criteria or considerations for defining such breaches. Typically, significant minor breaches include minor delays in performance, minor defects in

performance, improper performance of collateral obligations, and occasional breaches of continuing contracts. To define an obviously minor breach, the following conditions may be considered:

Assessing the Severity and Consequences of Subjective Faults of the Breaching Party

Although the *Civil Code* generally upholds the principle of strict liability for liability attribution, it does not completely abandon the principle of fault liability. “If the principle of strict liability is a general principle for liability attribution, then the principle of fault liability is a special one” (Wang, 2002, p. 64). Since the breach is obviously minor, the subjective fault of the breaching party (usually manifested as a minor fault) will naturally be relatively minor. One party may violate its obligations under a master contract (judging from the perspective of a generally reasonable person) have some minor defects in contract performance, or violate collateral obligations under a contract (such as failure to fulfill the obligations of notification, assistance, confidentiality, and protection as agreed in the contract). However, if these breaches occur due to objective obstacles or for a good cause, and the breaching party does take the initiative to contact the non-breaching party for negotiation and settlement to actively prevent the increase of losses, the breaching party may be deemed to have only a slight fault. Even if losses are incurred by the non-breaching party, such losses can be compensated for by taking remedial measures or according to the criteria for liquidated damages agreed to in the contract. In such cases, the non-breaching party’s request to terminate the contract should generally be rejected. For example, in the “Retrial Case of Lease Contract Disputes Among the Sanya Pearl Industrial Co., Ltd., Sanya Pearl Plaza Commercial Management Co., Ltd. and Hainan Ganglong Electrical Appliance Co., Ltd.”, the Supreme People's Court held that, “The breach of contract by the Hainan Ganglong Electrical Appliance Co., Ltd. was minor and incurred trivial losses to Sanya Pearl Industrial Co., Ltd. Therefore, it does not constitute a fundamental breach... The payment was overdue for only three days beyond the period that allows ‘Sanya Pearl Industry Co., Ltd. to exercise its right to terminate the contract as agreed.’ Obviously, this breach is not an intentional malicious breach of contract... Hainan Ganglong Electrical Appliance Co., Ltd. had a minor breach of contract, but it was justified and did not result in any significant losses for Sanya Pearl Industrial Co., Ltd. The foundation for the performance of the contract was also not affected. Therefore, the initial judgment denying the request of Sanya Pearl Industrial Co., Ltd. to terminate the contract was appropriate.”^①

Assessing Whether the Non-breaching Party Fulfills Its Obligation of Tolerance

The obligation of tolerance requires people to be tolerant when they experience minor setbacks or inconveniences as a result of the lawful actions, insignificant unlawful actions, fulfillment of obligations, or factual behaviors of others, within reasonably justifiable limits or as permitted by law. This entails refraining from reacting negatively and instead choosing to tolerate such conduct and its consequences, even if they have the right to object or challenge. This course of action ensures that

① Refer to the Supreme People's Court (2018) ZGFMZ No. 125 Civil Judgment.

the person responsible can obtain their rightful benefits (Qin, 2021, pp, 34-38). The non-breaching party's tolerance for breach of contract should be judged based on the tolerance of the general public (including acquiescence and reasonable trust based on daily commercial activities or practices). The actual performance of the contract and the ability of the breaching party to perform it should also be considered. It should be deemed that the non-breaching party has fulfilled its obligation of tolerance for minor performance defects if the non-breaching party chooses not to send a notice to terminate the contract or demand that the breaching party make the remaining payments but continues to perform the contract and accepts the situation as it is in an express or implied way when the breaching party has made most of the agreed payments or completed the primary obligations of the contract, despite minor payment defects or collateral obligation violations. For example, in the "Retrial Case of Contract Disputes Between Wang Shunxi and China Galaxy Investment Management Co., Ltd.", the Supreme People's Court held that, "In general, both parties to the contract have the obligation to tolerate minor defects. Under the principle of good faith, if one party deems that the other party's minor breach of contract is unacceptable, it should promptly and unambiguously communicate its objections. In this case, China Galaxy Investment Management Co., Ltd. has paid the agreed amount and completed its main obligations under the contract. Therefore, its breach of contract is not fundamental. Moreover, Wang Shunxi has no evidence to prove that he voiced his objection immediately after receipt of the payment and subsequently accepted the situation as it stood. Furthermore, his decision to initiate legal proceedings against the company more than a year later may be deemed inconsistent with the principle of good faith."^①

Conducting a Substantive Review of the Conditions for Contract Termination

In fact, many contracts include general provisions such as "If one party violates the contract, the other party (non-breaching party) has the right to unilaterally terminate the contract", or "If one party delays payment, the other party has the right to unilaterally terminate the contract" (without specifying the severity of the breach). Such provisions treat any breach of contract as grounds for rescission, without making any distinction between different types or levels of breaches. As a result, these provisions are not clear with regard to the specific conditions under which rescission may be invoked. If a contract is performed this way, it can be rescinded randomly, resulting in huge chaos in contract performance and thus threatening transaction safety and stability. Therefore, courts should conduct a substantive review of the agreed conditions for rescission. Specifically, they should distinguish between general provisions and specific provisions and explore the true intentions of the parties to conclude a contract based on the theory of contract interpretation. This can help avoid a situation in which the non-breaching party requests to terminate the contract as per the aforementioned provisions. For example, in the "Second Instance Case of Equity Transfer Disputes Between the Siping Jiuzhou Real Estate Development Co.,

① Refer to the Supreme People's Court (2018) ZGFMS No. 3713 Civil Judgment.

Ltd. and Kuang Ye”, the Supreme People’s Court held that, “According to the *Equity Transfer Agreement*, ‘If one party breaches the *Agreement* and causes losses to the other party, the other party has the right to claim damages from the breaching party and unilaterally terminate the *Agreement*’. This provision appears to have imposed a restriction on the right of rescission of the non-breaching party by requiring that losses be incurred as a condition for termination. However, as a breach of contract almost always results in losses, this provision essentially grants the non-breaching party the right to terminate the agreement as long as a breach has occurred. It is still ambiguous about the specific conditions for rescission”. As a consequence, the Court rejected the plaintiff’s request to rescind the *Equity Transfer Agreement* in this case.^①

Assessing Whether the Losses from Rescission are Commensurate with the Consequences of Minor Breaches

With reference to the provisions of Article 584 of the *Civil Code* on losses caused by the breach of contract,^② the losses caused to the non-breaching party shall be calculated based on the interests expected to be obtained upon performance of the contract and the foreseeable losses at the time of conclusion of the contract. Based on the principles of good faith and fairness, courts should not approve the request of the non-breaching party to terminate the contract if the minor breach of contract causes little harm to the non-breaching party and its losses can be fully compensated by deducting the performance bond or by other means, or where the minor breach does not cause substantial damage to the contractual interests of the non-breaching party, but will cause immeasurable losses to the breaching party if the contract is terminated. For example, in the “Trial Case of Equity Transfer Disputes Among the Tibet Yuanze Mining Co., Ltd., Zhao Lin and Yunnan Chihong Zn & Ge Co., Ltd.” the Supreme People’s Court held that, “Since the transfer of equity between both parties involves substantial consideration, a minor breach of contract by one party is not a sufficient ground for the other party to terminate the Contract.” Therefore, the final judgment is that the parties shall continue to fully perform their obligations as agreed in the Contract.^③

Examination of the Necessity of “Not Affecting the Realization of Contract Purposes Expected by the Non-Breaching Party”

The criterion for judging “failure to achieve contract purposes” is usually the severity of

① Refer to the Supreme People’s Court (2018) ZGFMZ No. 863 Civil Judgment. In addition, the Supreme People’s Court held a similar view in the (2021) ZGFZMZ No. 494 Case.

② Article 584 of the *Civil Code* stipulates, “Where a party fails to perform his contractual obligation or his performance does not conform to the agreement so that the other party suffers a loss, the amount of compensation shall be equivalent to the loss caused by the breach of contract, including the benefits expected to be obtained should the contract had been performed, except that it shall not exceed the loss that may be caused by the breach that the breaching party foresees or should have foreseen at the time of conclusion of the contract.”

③ Refer to the Supreme People’s Court (2018) ZGFMZ No. 1126 Civil Judgment. The Supreme People’s Court also holds a similar view in the (2014) MSZ No. 1233 Civil Ruling.

consequences of breaching a contract from an objective perspective, i.e. whether the breach actually deprives the obligee of the interests in performing the contract and makes it impossible for the non-breaching party to obtain the interests it pursues at the conclusion of the contract. This criterion can also well explain why defective performance, and partial performance, among others, may result in the termination of a contract.^① Some argue that “contract purpose” is related to the right of rescission, and including it in Article 55 of the Draft for Comments may lead the courts to judge whether to approve the request to exercise the agreed right of rescission based on the high criteria for exercising the legal right of rescission. Imposing too strict a restriction on the agreed right of rescission is an excessive interference with the autonomy of will of the relevant parties by the judicial power. We believe that it is necessary to take “not affecting the realization of contract purposes by the non-breaching party” as one of the basic conditions to restrict the non-breaching party from exercising its right of rescission. Our reasons are as follows:

(a) The contract purposes of the non-breaching party served as the foundation for contract formation and should be safeguarded by law. However, it is not always necessary to protect the interests of the non-breaching party by granting its request to terminate the contract in the event of an obviously minor breach. In other words, the condition of not impeding the realization of contract purposes serves as a means of restricting the right to rescind the contract in such cases.

(b) This aligns with the spirit of Article 47 of the *Minutes of the Ninth Work Conference*. As one scholar has noted, this approach involves correcting and interpreting the parties’ assumed intentions, rather than simply relying on the express terms of the contract. The article negates certain provisions agreed upon by the parties and supplements them with the parties’ presumed intentions. The intended purpose of Article 55 of the Draft for Comments is to incorporate the principles of good faith and fairness into a specific system, with the aim of preserving the transaction order and preventing the non-breaching party from abusing their right of rescission. This aligns with the spirit of Article 47 of the *Minutes of the Ninth Work Conference*. Just as one scholar has noted, “This is essentially a way of correction and interpretation based on ‘contract purposes’, i.e. negating part of the contents agreed by the parties and supplementing them with the assumed intentions of the parties” (Wang, p. 211).

(c) The concept of “contract purposes” is not limited to the provisions concerning the legal right of rescission, but is also referenced in other sections of the *Civil Code*, including those related to contract interpretation, performance, and termination. For instance, Article 142 and Paragraph 2 of Article 466 address the interpretation of the contract text and also make reference to the underlying purposes of the contract. In the *Civil Code*, the concept of “Contract purposes” is mentioned not only in the provisions concerning the statutory right of rescission but also in the provisions on contract interpretation, performance, and termination other than statutory rescission, such as Article 142

^① Leading Group of the Supreme People’s Court for Implementation of the Civil Code of the People’s Republic of China (Editor-in-Chief) (2020). *Understanding and Application of the General Provisions of the Civil Code of the People’s Republic of China (I)*. The People’s Court Press, p.639.

and Paragraph 2 of Article 466 on the interpretation of the contract text,^① Paragraph 2 of Article 509 on the performance of collateral obligations under the contract,^② Article 511 for the situation where the way of performing the contract is not clearly specified,^③ and Article 580 on submitting a request for rescission in case of a contractual impasse^④. It can be argued that “contract purposes” as a fundamental part of the contract exist throughout the whole *Civil Code*.

(d) In fact, in a large number of cases, the Supreme People’s Court has taken “not affecting the realization of contract purposes by the non-breaching party” as an essential condition to review and as the ground to reject the non-breaching party’s request to terminate the contract or order the parties to continue to perform the contract.^⑤ Therefore, whether viewed positively or negatively, “contract purposes” have become a basic factor for judicial bodies to consider when determining whether the contract shall be rescinded.

Research Into Obviously Minor Breaches by Classification

Given the complex contractual relationships between the parties to a contract in the real world, it is also necessary to consider the restriction of the agreed right of rescission by distinguishing obviously minor breaches from the following aspects so as to further balance the interests of relevant parties in an individual case.

Distinguishing the Contract Parties

Reviewing whether the contract is signed by commercial entities can help maintain the normal transaction order. Commercial disputes often arise when two equal parties, product manufacturers and operators, engage in commercial activities for profits (Li, 2004, p. 61). These disputes differ from typical civil disputes in that they are related to commercial activities and the concerned parties are businesses that are involved in such commercial activities for continuous profits. As a result, these businesses will enter into formal and professional contracts for the sake of profits, leading to intricate and multifaceted contractual relationships. One scholar argued early on that the key to realizing the

① Article 142 of the *Civil Code* stipulates, “Where an expression of intent is made to a specific person, the meaning of the expression shall be interpreted according to the words and sentences used, with reference to the relevant terms, the nature, and purpose of the civil juristic act, the custom, and the principle of good faith. Where an expression of intent is not made to any specific person, the true intent of the person performing a civil juristic act may not be interpreted solely on the words and sentences used, but along with the relevant terms, the nature and purpose of the civil juristic act, custom, and the principle of good faith.” Paragraph 2 of Article 466 regulates, “Where a contract is made in two or more languages which are agreed to be equally authentic, the words and sentences used in each text shall be presumed to have the same meaning. Where the words and sentences used in each text are inconsistent, interpretation thereof shall be made in accordance with the related clauses, nature, and purpose of the contract, the principle of good faith, and the like.”

② Paragraph 2 of Article 509 of the *Civil Code* stipulates, “The parties shall comply with the principle of good faith, and perform such obligations as sending notices, rendering assistance, and keeping confidentiality in accordance with the nature and purpose of the contract and the course of dealing.”

③ Article 511 of the *Civil Code* stipulates, “Where an agreement between the parties concerning the content of their contract is unclear and such content cannot be determined according to the provisions of the preceding Article, the following provisions shall be applied: (5) where the mode of performance is not clearly stipulated, the contract shall be performed in a manner conducive to realizing the purpose of the contract; and”

④ Paragraph 2 of Article 580 of the *Civil Code* stipulates, “Where one of the situations specified in the preceding paragraph exists so that the purpose of the contract cannot be achieved, the people’s court or an arbitration institution may terminate the contractual relationship of rights and obligations upon request by a party, but the default liability to be borne is not affected.”

⑤ Refer to the Supreme People’s Court (2015) MYZZ No. 163 Civil Judgment, (2018) ZGFMZ No. 1126 Civil Judgment and (2019) ZGFMZ No. 1979 Civil Judgment, as well as the (2020) ZGFMS No. 5073 Civil Ruling and (2021) ZGFMS No. 3335 Civil Ruling.

independence of commercial adjudication was to foster a mindset rooted in commercial law. This includes prioritizing the efficiency of adjudication, dynamic protection and balance of interest in the adjudication, as well as the autonomy of will of the litigants. Additionally, equal attention should be given to both the efficiency and safety of the commercial transaction (Zhao, 2012, pp. 54-64).

Based on the aforementioned characteristics of commercial activities, we believe that, against the current background of differentiating commercial trials from other types of trials, it is necessary for courts to distinguish between the parties that sign a commercial contract when reviewing minor breach cases. The reason is that parties entering into a commercial contract should pay close attention to the terms and conditions of the contract as they are signing with the expectation of reaping specific benefits from certain investments or efforts. Based on the expectation of gaining benefits in the future, when parties enter into a commercial contract, it is important for them to carefully consider the risks and benefits of doing so. In many cases, including an agreed right of rescission and establishing arrangements for breach of contract can be seen as an optimal choice. Therefore, when reviewing the right to terminate a commercial contract between the parties, courts should appropriately lower the threshold for granting the request of one party to exercise its right of rescission on the grounds of an obviously minor breach of the contract by the other party. During this process, courts should respect the autonomy of will of the parties during commercial activities, consider the performance of the contract as a whole, and follow the principles of good faith, fairness, and prohibition of abuse of rights. For example, in the “Retrial Case of Disputes over Real Estate Development and Operation Contracts Among Sichuan Xinte Industrial Co., Ltd., Sichuan Sports School and Chengdu Jindi Housing Development Co., Ltd.”, the Supreme People's Court held that, “As a legal person engaged in investment and management of stadium projects, Sichuan Xinte Industrial Co., Ltd. should have a professional and mature judgment on the risks and benefits involved in the relevant contract... The contract is distinguished by exorbitant liquidated damages that have been mutually agreed upon by all parties for even minor breaches of the contract, with the intention of compelling all parties to scrupulously adhere to the contractual stipulations.” As a result, the Court granted the request of the plaintiff to terminate the contract due to the defendant's minor breach based on the principles of autonomy of will in commercial activities and strict liability.^①

Examining the Type of Contract Signed by the Concerned Parties

Contracts can be categorized as either continuing or non-continuing. As a continuing contract necessitates the parties to fulfill their contractual obligations over an extended period, the formation and preservation of such a contract often hinges on profound trust, enduring cooperation and robust partnerships. Examples of such contracts include lease contracts, partnership or cooperation contracts, and utility contracts such as water, electricity, and gas contracts. Under these contracts, a single instance or phase of one party's failure to fulfill its obligations typically constitutes a minor

^① Refer to the Supreme People's Court (2018) ZGFMS No. 419 Civil Ruling.

breach. Just as one scholar has noted, “For a continuing contract, if one party fails to perform a certain contractual obligation, it does not necessarily mean that the other party can exercise the right of defense; if the party fails to perform the contract once, it does not necessarily constitute a fundamental breach of the contract, and the other party cannot terminate the contract. In principle, the contract once terminated has no retrospective effect on the exercised rights and fulfilled obligations” (Cui, 2000, p. 35). For continuing contracts with a fixed term,^① courts should actively guide and encourage the concerned parties to solve disputes through renegotiation. Even if the contract provides that one party may exercise the right of rescission in case of an obviously minor breach of the contract by the other party, courts should set a higher standard for determining whether to approve the request of the non-breaching party to do so and examine whether there is a good cause and other objective obstacles. In specific cases, it is necessary to judge whether the minor breach of contract by one party has caused a loss of trust between the parties, thus making it difficult for both parties to continue to fulfill the contract. This helps to prevent the non-breaching party from violating the principle of good faith and abusing the right of rescission. However, since the continuing contract is signed based on long-term trust between the parties, damage to the reliance interests of the non-breaching party should be considered when the liabilities of one party for breach of the contract are determined so as to balance the interests of both parties.

Alternatively, contracts can be classified into standardized contracts and bespoke contracts. A standardized contract is a type of contract whereby one party sets out the contractual terms without negotiating with the other party.^① While theoretically the parties to the contract have the freedom to choose whether to enter into the contract, what to include in the contract, and who to conclude the contract with, due to factual or legal monopoly, they may have limited options. This creates a superficial appearance of the meeting of minds that masks the substantial lack of freedom in expressing their intentions (Yu, 2000, p. 26). In practice, the party in a stronger trading position typically provides the standardized contract, and the counterparty is often unable to negotiate modifications, even if it has noticed the standard clauses that they would like to change. Although the current legislation has corresponding provisions on standardized contracts and standard clauses, the dominating party that provides such standard clauses typically fulfills the obligation of reminding and explaining the clauses regarding the right of rescission to the counterparty, which causes the counterparty to argue for the invalidity of the relevant standard clauses. Due to a wide disparity in objective economic status, the counterparty has to accept such clauses and may be unable to exercise the right of defense based on such standard clauses. Therefore, courts should adhere to the principle

① Paragraph 2 of Article 563 in the *General Provisions of Contracts of the Civil Code* stipulates, “For a contract under which the debtor is required to continuously perform an obligation for an indefinite period of time, the parties thereto may rescind the contract at any time, provided that the other party shall be notified within a reasonable period of time.” This means the parties to an indefinite, continuing contract may rescind the contract at any time (provided as stipulated in the contract). The General Provisions also provide that the parties to a continuing lease contract, partnership contract, or property service contract with an indefinite term may rescind the contract at any time. Therefore, indefinite, continuing contracts are discussed here.

② Paragraph 1 of Article 496 of the *Civil Code* stipulates, “A standard clause refers to a clause formulated in advance by a party for the purpose of repeated use which has not been negotiated with the other party when concluding the contract.”

of fairness and exercise greater cautions when reviewing a case in which the party that provides the standardized contract requests to rescind the contract as per the standard clauses based on the other party's minor breach and the right of rescission cannot be restricted as per the standard clauses. This is particularly important when the defense of the breaching party against the standard clauses is weak or untenable. Examples of standardized contracts include financial loan contracts provided by financial institutions or commercial real estate purchase contracts provided by real estate developers. If it is stipulated under a loan contract or real estate purchase contract that the lender or seller has the right to terminate the contract directly when the borrower or buyer defaults on loan payments or housing payments, the courts should apply higher and more stringent criteria when considering whether to approve such a request for termination. If the default duration is brief and the default amount is minor, the courts should typically deny the non-breaching party's request to rescind the contract. In particular, when the breaching party has a slight default on payments for a brief period of time due to objective causes (such as COVID-19), the non-breaching party that provides the standardized contract should be subject to higher tolerance requirements.

Conclusions

Incorporating provisions for obviously minor breaches into the judicial interpretation of the *Civil Code* is an urgent necessity. We should, based on Article 55 of the Draft of Comments, treat the restriction on the right of rescission as an exception to the principle of strict liability while requiring the breaching party to assume corresponding compensation liabilities for any loss caused by its breach of contract as an alternative for contract termination that is prescribed in the contract. This can effectively reduce any possible adverse consequences resulting from the non-breaching party's exercising its right of rescission, and is the best approach to maintaining transaction safety and creating a harmonious society. Moreover, the conditions for imposing the aforementioned restriction on the right of rescission should be strictly reviewed and determined in practice to prevent the abuse of judicial discretion. Therefore, we examined the considerations for determining the aforementioned restriction conditions in judicial activities, with an aim to unify the judgment criteria, improve the business environment, and thus realize the balance of interests of all contractual parties.



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