Judicial Revocation

Kata Zsuzsanna Horváth[1]

I. Introduction

The legal problem I would like to review is the question of judicial revocation. In this essay my goal is to look at the regulation concerning judicial revocation in two countries, in the United States and in Hungary.

My sources were the Restatement of Law which is a secondary source of law written and published by the American Law Institute to clarify the law, the Uniform Commercial Code which is a model statute covering for example sales of goods, credit and bank transactions which has been adopted by most of the states, as well as the Hungarian Civil Code.

Naturally, the comparison cannot be perfect as the United States does not have a Civil Code itself. In the United States system there is case-law thinking. This is the reason why I tried to look at cases concerning judicial revocation.

This paper consists of eight parts including the introduction part. After trying to give a definition of judicial revocation, I concentrate on revocation in the context of contracts. Then, I summarise the United States rules governing revocation. In another part I write about the Hungarian regulations regarding this topic. Next, I analyse American and Hungarian cases, where I highlight the differences and similarities. Finally, there is a conclusion part.

II. Definition

First of all, let us see the meaning of the expression "judicial revocation". In the common law system judicial revocation can refer to different things, but the basic definition of it can be given like this: an annulment or cancellation of a statement or agreement.

This term is used in different fields of law[2]. In the context of contracts, revocation can refer to the offeror cancelling an offer. Restatement of Law contains it this way: "[a]n offeree's power of acceptance is terminated when the offeree receives from the offeror a manifestation of an intention not to enter into the proposed contract".[3] In this case it means that an offer can be withdrawn by the offeror.

In the context of contracts, revocation can also refer to the buyer's right to revoke acceptance. The buyer is entitled to do that if the goods do not conform to the contract specifications. Special conditions need to occur which can authorise the buyer to revoke the acceptance.[4] According to the Uniform Commercial Code "[t]he buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him".[5]

In the context of wills, revocation can refer to the invalidation of a will by the testator. It is a voluntary act by the testator which is done with a definite intention to revoke the will. Without this intention even physical destruction will not revoke the will. [6] Revocation of a will

[1] University of Szeged Faculty of Law.

[2] https://www.law.cornell.edu/wex/revocation

[3] Restatement of Law § 42

[4] UCC § 2-608 (1)

[5] UCC § 2-608 (1)

[6] https://disinherited.com/wills-variation/revocation-wills/

sometimes occurs by operation of law in circumstances involving a change in the marital status of the testator (e.g. marriage, divorce).[7]

In the context of trusts, revocation can refer to the termination of a revocable trust or revocable living trust by the settlor.[8]

III. Judicial Revocation in the Context of Contracts in the USA and in Hungary

After having familiarised ourselves with the definitions, let us narrow down the scope of the investigation. I would like to concentrate on the first definition. My aim is to focus on judicial revocation in the context of contracts.

In this paper, I will compare a few American cases to Hungarian cases, concerning the regulation of judicial revocation in contracts. In the Hungarian legal system judicial revocation is also a known and used concept. In Hungary it refers to the offeror's right to withdraw the offer. However, this right can only be exercised till the offeree accepts the original offer.

Before going on to analyse the cases I would like to give some information, in the following two chapters, about the regulation of judicial revocation in the context of contracts mainly in the United States but also in Hungary.

IV. Revocation of an Offer by the Offeror in the USA

In the American legal system most offers are revocable. A simple offer may be withdrawn even if the offer expressly excludes it, because the relevant legal principle is that an informal agreement becomes a binding transaction only if consideration is given. [9] In the case of option contracts different rules apply but I will not include these special rules in this essay.

According to the Restatement of Law an offeree cannot exercise his or her right of acceptance anymore if the offeror gives to the offeree a manifestation of an intention not to enter into the proposed contract.[10] The question arises: what manifestation of intention means. It basically refers to the fact that communication is usually needed when revoking an offer. The communication does not necessarily include the word "revoke" but it needs to be straightforward. It needs to be clear from it that the offeror is not willing to enter into the proposed contract. It is also important that the communication cannot be equivocal because this way the communication does not revoke the offer.[11]

Indirect communication can also be sufficient when revoking an offer. Restatement of Law states that "[a]n offeror's power of acceptance is terminated when the offeror takes definite action inconsistent with an intention to enter into the proposed contract and the offeree acquires reliable information to that effect".[12] Naturally, some kind of communication is required and the indirect communication also has to be non-equivocal. It can happen, for example, through a third person, or by a definitive offer to a second offeree. Sometimes we cannot decide what are the intentions of the offeror if acting this way so there has to be a basic standard, which is a reasonable person acting in good faith meaning that the standard to which the offeree is held is that of a reasonable person acting in good faith.[13]

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[7] https://disinherited.com/wills-variation/revocation-wills/

[8] https://www.law.cornell.edu/wex/revocation

[9] GRAZIANO – BÓKA 2010: 232.

[10] Restatement of Law § 42

[11] Restatement of Law § 42

[12] Restatement of Law § 43

[13] Restatement of Law § 43

It is important to note that in case of both direct or indirect communication the revocation is ineffective if the offer is itself a contract or after the power of acceptance has been duly exercised.[14]

We should also have a look at the time when the revocation is considered received by the offeree. According to § 68 of Restatement of Law "a written revocation is received when the writing comes into the possession of the person addressed, or of some person authorised by him to receive it for him, or when it is deposited in some place which he has authorised as the place for this or similar communications to be deposited for him".[15] This date is relevant because the revocation, in order to be effective, has to arrive earlier than the offeree accepting the offer.

Regarding this question we should also look at the regulation concerning the time when acceptance takes effect. Section 63 of Restatement of Law informs us that "[u]nless the offer provides otherwise, an acceptance made in a manner and by a medium invited by an offer is operative and completes the manifestation of mutual assent as soon as put out of the offeree's possession, without regard to whether it ever reaches the offeror".[16] The acceptance is effective when having been put out of the offeree's possession, e.g. sent by post. This way it can happen that an acceptance is already given by the offeree but the offeror not knowing about it revokes its offer. This way, theoretically, the revocation is ineffective because the acceptance has already occurred. However, a new regulation has been developed. Now, the consignor's right to dispose of the consignment does not cease when the consignment is dispatched but may be exercised until delivery.[17]

Let us have a quick look at the buyer's right to revoke the acceptance. The main difference between this and the offeror's right to withdraw the offer is that the buyer's revocation always occurs after acceptance. While the revocation of an offer is only effective if an acceptance has not occurred yet.

V. Revocation of an Offer by the Offeror in Hungary

The Hungarian legal system uses the notion of revocation to refer to the offeror's right to cancel his or her proposed offer. According to Section 6:65 (2) of the Civil Code "[t]he offer shall cease to be binding if the offeror withdraws its offer by a declaration of acceptance addressed to the other party before the other party's acceptance is sent".[18]

It is important to highlight that this right can only be exercised till the offeree's acceptance is sent. So, basically, the American and Hungarian solutions are really similar concerning this question. However, in Hungary the consignor does not have the right to dispose of the consignment after it has been sent. This can lead to significantly different decisions.

We need to also mention that in Hungary a written offer can only be withdrawn in writing.[19] Also, an offer that has become effective may not be withdrawn if it states that it is irrevocable or if a time limit is set for its acceptance.[20] It is different from the American version where a contract can be revoked even if it says the contrary.[21]

[14] Restatement of Law § 43
[15] Restatement of Law § 68
[16] Restatement of Law § 63
[17] GRAZIANO – BÓKA 2010: 235.
[18] Civil Code § 6:65 (2)
[19] Civil Code § 6:65 (3)
[20] Civil Code § 6:65 (4)
[21] Restatement of Law § 42

VI. American Cases

I would like to present two American cases concerning judicial revocation. The main case I will analyse is about the seller's right to revoke the offer. The second case is a very intriguing one where we will concentrate on the time of the acceptance.

Firstly, I will analyse the case of Rhode Island Tool Company v. United States.[22] The factual background of this case is the following: on 10 September 1948, in response to an invitation to bid, the plaintiff submitted a bid on a number of items contained in the invitation. However, the sales manager of the plaintiff who prepared its bid failed to notice the change of the bolts in the invitation to bid. The change of the bolts from stud to machine was a substantial change as the machine bolts cost more. Notice of award was mailed to the Company on 4 October 1948. The plaintiff discovered its error late on 1 October 1948, and on the first working day thereafter, 4 October 1948, the sales manager of the plaintiff notified the defendant by telephone that they made an error and that they desire to withdraw the bid. We do not know whether the notice of award was mailed before or after the telephone conversation. The notice of award was received by the plaintiff after the telegram of withdrawal had been sent.

The question is whether the plaintiff could have revoked its bid this way or a binding contract was constituted. The Court stated that under the old post office regulations when a letter was deposited in the mail the sender lost all control of it. It was irrevocably on its way. However, the new regulation changed the entire picture. In 1948 the regulation read as follows:

"Withdrawal by sender before dispatch. (a) After mail matter has been deposited in a post office it shall not be withdrawn except by the sender…

Recall of matter after dispatch. (a) When the sender of any article of unregistered mail matter desires its return after it has been dispatched from the mailing office application shall be made to the postmaster at the office of mailing…

(b) When application has been made in due form for the recall of an article of mail matter the postmaster shall telegraph a request to the postmaster at the office of address, or to a railway postal clerk in whose custody the matter is known at the time to be, for the return of such matter to his office, carefully describing the same, so as to identify it and prevent the return of any other matter…

(c) On receipt of a request for the return of any article of mail matter the postmaster or railway postal clerk to whom such request is addressed shall return such matter in a penalty envelope, to the mailing postmaster, who shall deliver it to the sender upon payment of all expenses and the regular rate of postage on the matter returned…"[23]

The Court held that the sender now does not lose control of the letter the moment it is deposited in the post office, quite the contrary, the sender retains the right of control up to the time of delivery. Therefore, the acceptance is not final until the letter reaches its destination, because the sender has the absolute right of withdrawal from the post office. The sender even has the right to have the postmaster at the delivery point return the letter at any time before actual delivery.

So, in this case the Court stated that the new post office regulations indicate that the bid could be withdrawn before the letter containing the bid reaches its destination. In this case the letter did not reach its final destination before withdrawing the bid, so the Court held that there was no binding contract, since plaintiff withdrew its bid before the acceptance became effective.

[22] Rhode Island Tool Company v. United States, 130 Court of Claims Reports 698, 128 F. Supp. 417 (1955)
[23] 39 CFR 10.09, 10.10 (1939 Ed.)

However, I would like to mention another case where the question of acceptance taking or not taking effect on dispatch was decided the other way around. This case is the Soldau v Organon Inc. case.[24]

This case is about an employee, John Soldau, who was discharged by Organon. He received a letter from Organon offering to pay him double the normal severance pay in consideration of a release by Soldau of all claims against Organon. The letter incorporated the proposed release. Soldau signed and dated the release and deposited it in a mailbox. When he returned home he found out that he had received a check from Organon in the amount of the increased severance pay. He returned to the post office, where he deposited the letter in the mailbox, persuaded a postal employee to open the mailbox, and got back his letter. He cashed Organon's check. After that he filed suit against Organon, alleging violation of state law and of the Age Discrimination in Employment Act.

The question was whether a binding contract was formed with the acceptance sent, or him getting the letter back prevented the acceptance to take place. Soldau rested his case on cases, like the Rhode Island Tool Company v. United States case, where it was stated that as the letter can be retrieved by the sender after it has been deposited into the mailbox, the acceptance does not take effect on dispatch.

However, the Court stated in this case that the release was deemed fully communicated to Organon, and a binding contract was formed, at the time the plaintiff deposited the executed release in the mailbox. The fact that the plaintiff retrieved the release from the mailbox is of no consequence under California statutory and decisional law.

The Court stated that the "effective when mailed" principle has a long history of, and it is really important in creating certainty for contracting parties. The Court added that Commentators unanimously agree with that rule and highlighted the principle's essential soundness, on balance, as a means of allocating the risk during the time between the making of the offer and the communication of the acceptance or rejection to the offeror. Therefore, the Court held that acceptance takes effect on dispatch.

Regarding this question, I would also like to Restatement of Law and look at the regulations stated there. According to § 63 of Restatement of Law states that "[u]nless the offer provides otherwise, an acceptance made in a manner and by a medium invited by an offer is operative and completes the manifestation of mutual assent as soon as put out of the offeree's possession, without regard to whether it ever reaches the offeror".[25]

In § 63 Restatement of Law explains that it is often said that an offeror who makes an offer by mail makes the post office his agent to receive the acceptance, or that the mailing of a letter of acceptance puts it irrevocably out of the offeree's control.[26] However, in the United States new post office regulations were introduced.

Under United States new postal regulations the sender of a letter has the right to stop delivery and reclaim the letter. Basically, the sender has the right to retrieve his or her letter. But it is important to emphasise that this right of the sender does not prevent the acceptance from taking effect on dispatch. In § 63 Restatement of Law states that the acceptance takes effect on dispatch because the offeree needs a dependable basis for his decision whether to accept.[27] The common law provides such a basis through the rule that a revocation of an offer is ineffective if received after an acceptance has been properly dispatched.

[24] John Soldau, Plaintiff-appellant, v. Organon Inc., a Delaware Corp., Defendant-appellee, 860 F.2d 355 (9th Cir. 1988)

[25] Restatement of Law § 63

[26] Restatement of Law § 63

[27] Restatement of Law § 63

Therefore, we can say that the opinion formed in Restatement of Law is similar not to the first, but to the second case I analysed. It is in line with the decision made in Soldau v. Organon Inc.

VII. Hungarian Cases

In order to find a proper case for this distinction I tried to look for cases in the Collection of Court Decisions. It is an online database where the important judicial cases are collected.

My research led to 12 results: 2 cases from 2018, 2 cases from 2019, 6 cases from 2020, 1 case from 2021 and 1 case from 2022. The 12 cases involved economic law cases, employment law cases, administrative law cases, as well as civil law cases.

The first case from 2018 is an economic law case where special consumer rights were reviewed.[28] The problem was the terms and conditions of consumer contracts. Therefore, the main question was not the question of revocation but it appeared in the decision. The Court said that a contract is concluded by the making of the offer and its acceptance, in accordance with § 6:65 (2) of the Civil Code, the obligation to make an offer shall cease if the offeror withdraws its offer by a legal declaration addressed to the other party before the other party's acceptance is sent. The Court stated, an offer may therefore be withdrawn in such a way as to terminate the obligation to submit an offer only before the other party has sent its acceptance. Finally, the Court added, that once the offer has been accepted, the contract is concluded and the offer can no longer be withdrawn.

The second case from 2018 is, in my opinion, the most relevant one among these, so I will analyse it later in this chapter.[29]

The first case from 2019 is a civil law case.[30] I believe that it contains an incorrect reference to the above mentioned regulation. The second case from 2019 is also a civil law case, but the substance of the case is not the judicial revocation.[31] There is only a reference to the legislation concerning revocation.

The first case from 2020 only involves a reference to revocation, the case deals with other kinds of problems.[32] The second case from 2020 is an employment law case, which is similar to the one I will analyse later, so I will also mention this case there.[33] The third one from 2020 is the appeal of the previous one.[34] The fourth case is the review on the first 2019 case.[35] The fifth one from 2020 is an economic law case.[36] The reference to revocation appears only in the plaintiff's application. The sixth case is about an employment law problem.[37] The substance of it is not the question of revocation, it only appears in the defendant's counterclaim.

The case from 2021 deals with an administrative law problem.[38] The facts are quite complex but the important part for us is the following: "neither … nor § 6:65 (2) of Civil Code contains a provision that a government official may not withdraw his or her declaration of termination of government service by mutual agreement until it has been accepted by the

[28] Gf.III.30.163/2018/5.
[29] Mfv.II.10.698/2017/4.
[30] Pf.20056/2019/5.
[31] P.XI.20.632/2019/17.
[32] P.20.123/2020/62.
[33] M.9/2019/26.
[34] Mf.31.142/2020/9.
[35] Pfv.VI.21.428/2019/5.
[36] Gfv.VII.30.042/2020/5.
[37] Mf.V.30.003/2020/6.
[38] Kf.III.40.460/2020/5.

employer concerned and that acceptance has been communicated to the government official". The case from 2022 is a civil law appeal, but, in my opinion, the reference to revocation is incorrect.[39]

The case I would like to analyse further is the second one from 2018. It is an employment law case and deals with the problem of consequences of unlawful termination of employment. The facts are the following: the plaintiff was employed as a nurse by the defendant. On 8 September 2016, the defendant informed the plaintiff that it had detected shortcomings in his or her work, and the possibility of terminating his or her employment as a civil servant by mutual agreement was raised. The employer gave a document dated as of 8 September 2016 to the plaintiff, which contained a request from the plaintiff to the Director General of the defendant Clinical Centre to terminate his or her employment by mutual agreement as of 30 September 2016. The plaintiff signed the document and handed it over to the defendant. On 20 September 2016, the defendant's deputy director of nursing sent an email to the plaintiff asking him or her to come in the following day to sign another paper. Next day, in an email reply, the plaintiff indicated that he or she was not in Pécs, but that he or she would be in touch later. Subsequently, in a letter dated as of 21 September 2016 and delivered to the defendant on 22 September 2016, the plaintiff informed the defendant that he or she withdrew his or her request for termination of the employment by mutual agreement of 8 September 2016. By letter of 30 September 2016, delivered on 18 October 2016 to the plaintiff's legal representative, the defendant informed the plaintiff that it considered his or her declaration of termination of his or her employment by mutual agreement to be valid and in force. On 11 October 2016, the defendant sent to the plaintiff by post the employer's certificates relating to the termination of his or her employment, indicating the termination of employment by mutual agreement as the method of termination and 30 September 2016 as the date of termination.

The question was whether this termination of employment was lawful or not. But first we must declare that § 6:65 (2) of the Civil Code concerning revocation is applicable even to the civil servant status.

In order to decide the question we have to look at the timeline. The main issue is the following: can the offer of the plaintiff on 22 September 2016 be revoked. An offer can only be revoked until the acceptance has been sent. In this case, the acceptance has not been sent yet on 22 September 2016. The paper, which the plaintiff should have signed on 20 September 2016 cannot be considered an acceptance by the defendant. The Court held that the plaintiff could withdraw his or her offer of termination by mutual agreement until the employer sent his own acceptance to the plaintiff. The Court found that the email sent by the defendant on 20 September 2016 stated that the plaintiff should sign a 'piece of paper', which could not be considered as a legal declaration of acceptance of the plaintiff's offer. As a result of all this, the termination of employment as a civil servant was considered to be unlawful.

For us, the important part of this decision is that an offer can be revoked before its acceptance is sent. The question arises in this case: what action, communication can be considered as acceptance. The Court held, that the above mentioned email did not contain that the employer has signed the instrument of termination of employment by mutual consent, i.e. the offer has been accepted. Therefore, it cannot be considered an acceptance, and the plaintiff still has the right to revoke his or her offer.

In the second case from 2020 the relevant facts were the following: the plaintiff applied to the defendant for the position of Head of Finance in November 2018. At the end of the multi-round interview process, at a meeting held on 26 November 2018, the defendant and the plaintiff agreed on the details of the employment. The plaintiff and the defendant said goodbye with the agreement that the plaintiff would be employed on the agreed terms, but the plaintiff

[39] Pf.V.20.037/2022/5.

requested that the agreed terms be sent in writing. Accordingly, in an email dated as of 28 November 2018 addressed to the plaintiff the HR Officer, on behalf of the defendant, recorded the details of the agreement. However, between the agreement and the start of work the defendant informed the plaintiff by telephone that the company management intended to fill the position with an internal employee. Later, the defendant modified its statement in an email sent to the plaintiff. The defendant wrote that "as I indicated there, there has been a change in the way the position is filled. Unfortunately, the ownership has not approved the filling of the Head of Finance position, so unfortunately your employment with the defendant is not possible".

The main problem was that the defendant wanted to revoke the offer, but the plaintiff believed that it was not possible because they had already agreed. The question was whether the offer had been accepted by the plaintiff or not, i.e. whether the contract had been made before the defendant's phone call and email on 11 December 2018.

The Court held that the offer had already been accepted by the plaintiff at the meeting of 26 November 2018. That day the defendant made an offer which was accepted by the plaintiff. This way the revocation was not effective, the contract was in force, as after the offer is accepted by the offeree the contract cannot cease by revocation of the offeror.

VIII. Conclusion

In this paper we had a look at judicial revocation in the context of contracts. I tried to make a comparison between the American and the Hungarian regulation and practises regarding judicial revocation. However, it was not an easy task as I found it challenging to find similar cases to make a more appropriate comparison. Naturally, the comparison could not have been perfect nevertheless, in my opinion, some interesting facts were found.

After having familiarised ourselves with the concept and the definition of judicial revocation we looked at the American and the Hungarian regulation regarding revocation. Even at this point we could detect similarities and differences.

Subsequently, I analysed cases from the USA and Hungarian legal system. The American cases showed that there is some contradiction regarding the question of effectiveness on dispatch. However, after reading the relevant parts in Restatement of Law we can say that according to the majority opinion the acceptance is effective when mailed. On the other hand, in Hungary such a contradiction cannot arise while there is no rule regarding the sender's right to retrieve the letter. In the Hungarian jurisdiction it is clear that the acceptance is final on dispatch.

Similarities were also detected in the American and Hungarian cases. The courts of both countries examined whether the acceptance had already happened, and a binding contract formed because withdrawal was only effective if it took place before acceptance. Therefore, the basic rule is the same in these two countries.

As a conclusion we can say that similarities and differences were also found between the American and Hungarian regulation regarding judicial regulation. Naturally, partly as a result of the difference between common law and continental law countries, the detailed rules often do not match, notwithstanding, the basic principle is the same in both countries.

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