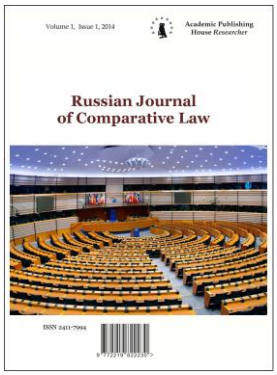
Published in the Slovak Republic
Russian Journal of Comparative Law
Has been issued since 2014.
E-ISSN 2413-7618
2018, 5(1): 32-40

DOI: 10.13187/rjcl.2018.5.32
http://ejournal41.com



Between Freedom of Contract and Public Policy in France and in Russia

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Abstract

The purpose of this research is to perform a comparative analysis of the legal institution of unilateral termination of commercial relationship in two countries – Russia and France. The paper outlines that the French text refers to a «sudden break of commercial relationship», while the Russian language uses the term «unilateral refusal to execute the contract». The possibility of compensation for damage in the event of a sudddent break in commercial relationship is directly provided for by the French Commercial Code. Moreover, this provision is public policy, which makes it mandatory for a party wishing to terminate commercial relationship. In the Russian legislation, there is no general rule, however, an analysis of the legislation and case law conducted in this paper makes it possible to identify situations in which the legislator and the court protect the victim of a sudden refusal to execute the contract. The paper takes a new look at the analysis of Russian laws in the light of the public policy limits established in the French experience.

Keywords: France, Russia, freedom of contract, public policy, termination.

1. Introduction

In France and in Russia freedom of the contract is an essential and basic principle of contract law. New Article 1102 of the French Civil Code states that “everyone is free to contract or not to contract, to choose the person with whom to contract, and to determine the content and form of the contract within the limits imposed by legislation”. Contractual freedom does not allow derogation from rules which are an expression of “public policy”. In addition, Article 6 of the French Civil Code establishes that “Statutes relating to public policy and morals may not be derogated from by private agreements”.

The freedom of contract was not recognized in Soviet law, since there was no market economy. Further, the political system has changed, and Russia has moved to new historical period and new regulations. In modern Russian law there is freedom of contract, however, it has limitations: the parties cannot violate the public interests, the rights of third parties, the principles of morality and good faith, etc.

2. Methods and materials

In order to examine and compare the unilateral motiveless termination of the commercial relations in France and Russia, we use different methods according to the goals of the research. In order to study the doctrine and opinions of the moders researchers we use text analysis. Formal

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legal method is used to study the legal regulations and case law. We use as well comparative method to present the different approaches established in two countries.

National sources and material from both countries are used. We study the legislation, as well as case law, which perfectly illustrates the particular problems. In addition, articles and opinion of famous lawyer are examined.

3. Discussion

France

3.1.1. Balance between freedom of contract and public policy in commercial contracts in France

The principle of freedom of contract provides to the parties free choice on the different stages of relations: from the choosing the subcontractor, freely determination of the content of agreement, the establishing and changing the governing provisions during execution of the contract, and to the termination of relations. However, according to the mentioned above articles of the French Civil Code, the parties have to respect the mandatory rules which named by French Civil Code "ordre public" – "public policy".

What is "Ordre public"? Public policy refers to all the principles, written or not, which are, at the time when we evoke them, considered in a legal order as fundamental principles and which, for this reason, require to derogate the effect of the private will (Cornu, 2018).

3.1.2. The rule of public order in the Article L. 442-6, I, 5° of the French Commercial code: the contractual agreement does not always create the law of the parties

Article L. 442-6, I, 5° of the French Commercial Code, the provisions of which are of a public policy nature, engages the responsibility of the author for the sudden even partial termination of a commercial relationship without written notice having regard to the duration of the business relationship and respecting the minimum period of notice determined by reference to usage of trade. The author is forced to repair the damage caused.

In the context of this article, the parties to a contract cannot derogate from the rules of public order in favor of their own provisions. Similarly, compliance with the notice provided for in the contract does not insure the author of the rupture against the penalty for the sudden termination of aforesaid relationship. Moreover, even when a notice period is agreed by the parties in the contract according to the provisions of Article L. 442-6, I, 5°, the judge may disregard for such notice period if it seems to him insufficient with respect to the length and to other circumstances. So, the public policy rule set forth in the French Commercial Code prevails over the "law of the parties". Examples:

A) Cour d'Appel de Paris , Pôle 5, Chambre 5, arrêt du 12 septembre 2013- 11/22934. In this affaire the Court of Appeal of Paris reminds that the judge cannot be bound by the stipulations of a termination clause in the contract when it comes to the evaluation of compliance with public policy.

B) *Cass. com., 22 oct. 2013, № 12-19.500, Bull. civ. IV, № 156.* In a judgment of 22 October 2013 the commercial chamber of the Court of Cassation reminds that «the existence of a contractual period of notice does not exempt from the judicial review whether this notice period takes into account the duration of the commercial relationship and other circumstances at the time of the notification of the break ". Here the Court of Cassation reduces the length of the contractual notice from twenty-four months to six months on the grounds that the initial period of notice was too long in view of the short period of commercial relations established between the parties (less than twenty months).

It is self-evident that the public policy nature of the aforementioned provisions authorizes the judge to increase the notice period provided for in the contract if it seems to him insufficient as well as to reduce it in the event that it seems excessive (Beaumont, 2015).

3.1.3. "Sudden termination of an established business relationship, even partially, without prior written notice commensurate with the duration of the business relationship and consistent with the minimum notice period determined by the multi-sector agreements in line with standard commercial practices." – what does it mean?

In order to understand what actions can be qualified and punished by the Article L. 442-6, I, 5° of the French Commercial Code, we will consider step by step the notion of each element.

3.2.1. "Established commercial relationship"

The notion of "commercial relationship" covers all types of relationships between two professionals, with the exception of consumer relations. The article applies regardless of the quality of the author of the break. The victim of sudden termination could have any legal status: for example, an association, a merchant, etc. It is important to note that the doctors are excluded from the application because their ethics prohibit practicing medicine as a business *(Cass. com., 23 octobre 2007)*. Advocates, notaries and industrial property agents are also excluded *(CA Aix 7 février 2013; Cass. com. 20 janvier 2009; Cass. com. 2 avril 2013)*.

The article applies to the purchase and sale of products as well as to the provision of services *(Cass. com. 16 décembre 2008; Cass. com. 18 mai 2010)*.

The legislator's goal is to punish any prejudicial termination of commercial relationship when one partner acts in bad faith, that is to say without legitimate reason, unilaterally and abruptly breaking the relationship awhile creating a confidence for the partner to continue the relationship or renew the contract. As a result any established relationship whether pre-contractual, contractual and even post-contractual is covered by the Article L. 442-6, I, 5° (Look examples here: *Lyon, 10 avr. 2003: BICC 2004, № 626; JCP E 2004, № 7, p. 254. Versailles, 14 oct. 2004: JCP E 2004, № 51, p. 2002; Paris, 14 déc. 2005: RDLC 2006, № 2, p. 101; Paris, 12 janv. 2005: RDLC 2005, № 3, p. 84; Paris, 29 nov. 2007: D. 2008. Pan. 2196)*

Moreover, it does not matter if the contract was concluded for the fixed period and was renewed. The notion of established commercial relationship exceeds the simple contractual commercial relationship (Grandmaire, 2017).

3.2.2. Sudden nature of the termination

In French we use the word "brutale" which can be translated in English as "sudden" or "abrupt". Regardless the different translations the sense of this notion reminds the same.

In order to be prejudicial and to be entitled to damages the breach must include two elements: firstly, according to the common law be "unpredictable, sudden and violent" (CA Rouen, May 30, 2002: JurisData № 2002-184180) and secondly, be made without prior written notice taking into account the previous commercial relation or the good practices recognized by the professional agreements.

How to determine the length of a prior notice? The legislator does not establish any method, however in several areas of business activities the professional agreements exist (for example, in transport, banking, etc). For example, transport relationship may be subject to a standard contract providing for a notice period of three months if the duration of the relationship is one year or more. If there is no applicable commercial practice acknowledged by multi-sector agreements, the lawyers propose to count the length as 1 month for each year of business relationship (D'Estais, 2014), however taking into account other important criteria:

- the investments made by the victim;
- the business involved (for example, seasonal fashion collections);
- a constant increase in turnover;
- the market recognition of the products sold by the victim and the difficulty of finding replacement products;
- the existence of a post-contractual non-compete undertaking ;
- the existence of exclusivity between the parties;
- the time period required for the victim to find other openings or refocus the business activity;
- the existence of any economic dependency for the victim.

Examples:

A. Cour de cassation, civile, Chambre commerciale, 6 septembre 2016, 14-25.891. The commercial chambre of the Court of Cassation states that the foreseeable nature of the breach of an established commercial relationship does not necessarily exclude its brutality within the meaning of Article L. 442-6, I, 5° of the French Commercial Code. In this case one company has stopped supplying his partner overnight without sending him a termination letter or written notice of termination. The Court bases his decision on the conclusion that this predictable nature can only result from an act of the author of the break, which manifested his intention not to pursue the commercial relationship. It is the only act that could give rise to a period of notice.

B. Cour de cassation, Chambre commercial, Rejet, 20 novembre 2012 № 11-22.660. Since the last contract concluded between the parties was not renewable by tacit agreement, the plaintiff company could not be unaware that this contract would likely to be the subject of a new negotiation or would not to be renewed at the end of the term. The plaintiff company could not reasonably hope for the continuity of the commercial relationship for the future.

C. CA Lyon, 3 juill. 2008 : JCP E 2008, № 51-52, p. 27. The notification of a call for tenders may constitute the manifesting intention not to continue the commercial relation on the previous conditions and thus it may cause the period of notice to run. However, it is still necessary for such intention be written and sufficiently clear to reflect the intent not to continue the relationship in the case of refusal of the new conditions.

3.3. Partially termination

Sudden termination of an established business relationship does not necessarily require a complete termination of relationship. The text of the French Commercial Code establishes as well a partial termination.

Cass. com., 18 October 2016, № 15-13.834. A sharp drop in turnover could be seen as a partially termination. Two companies of the group Carrefour had a long-term relationship with the service provider. The relationships lasted more than 17 years. In October 2005 Carrefour had announced the termination of the relationship giving 15 months' notice. However, the victim had brought the action before the judge of the Commercial Court of Paris on the basis of the Article L.442-6 I 5° of the French Commercial Code. The Court established that the real partial termination of relationships between two companies of Carrefour group and the service provider had started in January 2005. Thus, the Court ordered to compensate the damages to the service provider.

There is also a need to notice that a non-significant decrease in turnover, in the context of already fluctuating relations between two partners, does not characterize a sudden partial termination. In this case, the 15 % decrease in turnover is not sufficient to characterize the sudden break of commercial relationship *(Cass. com., 11 sept. 2012, № 11-14.620)*.

3.4. Sanctions and damage

3.4.1. Damage related to the sudden break of an established commercial relationship

The actions based on the Article L.442-6 I 5° allow to obtain the compensation for damage from the party who is the author of a sudden break. It is important to emphasize that the remedy could be seek for the damage caused by the sudden termination and not for the termination itself (Chevrier, 2015).

The principle of the damage reparation is based on the victim's loss of profit. Currently, it exists two ways to count the compensation for damage:

A. As an expected gross margin during the period of insufficient notice, which corresponds to the difference between selling price and cost price (Cass. Com., 3 dec 2002 № 99-19.822; CA Paris 4 mars 2011 № 09/22982);

B. As a contribution margin, which corresponds to the difference between turnover and variable costs (Schulte, Morhedec, 2011).

The compensation for loss of profit does not cover all the harm suffered by the victim. In order to be compensable, the losses and the harm must result from the "brutality" of the termination. In reality, it is very hard to prove. For example, the harm resulting from the reduction in the number of employees is not compensable, because the decision of the chef of the company to dismiss the employees results not for the sudden nature of the termination, but from the fact of the termination (Gauclère, Van Doorne-Isnel, 2013).

However, in some situations the victim succeeds in seeking the additional compensation, for example, if the investments specially made in the context of commercial relationship, or if the victim is suffered from the vexatious behavior of its partner. The judge sometimes can accept the demand for the compensation for moral damage (CA Bordeaux 30 avril 2009 № 09/4565).

Any action is time-bared after 5 years.

3.4.2. Types of sanctions

The first sanction which could be imposed is the compensation for the damage (loss of profit). The judge can also pronounce the nullity of the whole contract or the nullity of the clause in

question. Moreover, the judge may request the discontinuity of unlawful abusive practice and force to maintain the commercial relationship.

When the sudden break has potential or proven anti-competitive effects, another law can be applied as well. For example, the combination of two conditions –an economic dependence of the victim and the sudden break, which can influence the market competition or market functioning, – can lead to the sanctions pronounced by the Competition authority ("Autorité de la concurrence"). The amount of such sanctions can reach 10 per cent of the annual turnover (DG CCRF, 2017).

In addition, there is a possibility of the intervention of the Minister of Economy. The commercial chamber of the Court of Cassation established the power of the Minister of the Economy to enter in the affaire and to pronounce the civil fine for the sudden break of established commercial relationship. Before the entry into force the law « Sapin II » the maximum amount of the fine could be up to 2 million Euros or 3 times of amounts unduly paid. The law "Sapin II" increased the amount of civil fine from 2 million to 5 million Euros (Héry, 2017).

The most significant affaire illustrated the intervention of the Ministry of the Economy was in 2016 (Giovanni, Fèvre, 2017). We have already considered this case in the part "Partial termination" *(Cass. com., 18 October 2016, № 15-13.834)*. The main interest of this affaire lies in the fact that the Ministry of the Economy, Finance and Industry participated in this case and ordered the Carrefour to pay the civil fine of 100 000 Euros for the sudden break of established commercial relationship. Court of Cassation notes that the amount of the civil fine imposed on Carrefour had to take into account the size of Carrefour's turnover, as well as preventive effect to the companies of the same size and notoriety (Karapetov, Fetisova, 2015).

Russia

3.1.1. Unilateral motiveless termination of the contract in Russian practice

3.1.2. We would like to consider the Russian legislation and practice in the light of the French legal restrictions, as well as to make a comparison with French legal rules. It is important to highlight that a motiveless termination covers the cases where there is neither aggravated breach of the contractual obligations nor force majeure.

After the complex analysis of Russian civil and commercial legislations, the researcher can easily note that there is no common rule which could establish the obligation for the party to the contract to inform another party about the unilateral termination using a particular "reasonable" notice (the phrase "unilateral termination" could be also replaced with the phrase "unilateral refusal to execute the contract", which is closer to the Russian text). That is why we would like to search for the cases, where Russian legal practice can act in the "French way" protecting the victim to the sudden termination of a commercial relationship.

3.1.2. The unilateral refusal to execute the contract for the repayable rendering of services

According to the article 782 of the Russian Civil Code the party shall have the right to refuse to execute the contract for the repayable rendering of services, provided the executor's actually incurred expenses are paid out. At the same time, the executor also has the right to refuse to execute the obligations under the contract for the repayable rendering of services, provided the customer's losses are fully reimbursed.

The article does not mention the reason, so the party can refuse even motiveless, without the partner's breach, without the advance/early warning. The only obligation each party has is to provide to another party sums of money established by law.

It is reasonable to assume that such unilateral refuse without advance warning and without paying the forfeit entails financial and organizational risks for the parties to the contract. Therefore, the parties to the contract, understanding the limits of legal protection of their commercial relationships, decide sometimes to include either the obligation for advance/early notice or the compensation. Thus, the parties complement their rights to refuse to execute the contract with the contractual conditions. However, the courts for a long time recognized the conditions established by the parties invalid (Karapetov, Fetisova, 2015). Let us consider the examples.

A. Judgment of the Federal State Commercial Court of the North-West Area, 3 July 2009, case № A26-6447/2008. The parties have established a rule in the contract according to which any party unilaterally initiating the termination of the contract shall notify the other party in writing in not less than six months in advance, and also it shall pay to the other party compensation for loss in the amount of 80 percent of the six-month provision of the services.

The Russian Court of Cassation noted that, according the 1 paragraph of Article 782 of the Russian Civil Code, the contractor had the right to refuse to execute the contract for the repayable rendering of services, provided the executor's actually incurred expenses are paid out. The Article 782 does not contain any advance notification. Since unilateral termination of the contract is not a violation of the right, the only one consequence of the refusal must be the payment of incurred expenses, and not the compensation for the loss. Moreover, according to the text of the Article 782, the party has the right to unilaterally terminate the contract without any notice.

*B. Judgment of the Federal State Commercial Court of the Center Area, 8 November 2012, case № A35-13063/2011. T*he parties stipulated that the contract could be terminated ahead of schedule by written common agreement of the parties.Since Article 782 of the Russian Civil Code establishes the imperative right of a party to unilaterally terminate a contract, the Federal State Commercial Court considered that such right could not be limited by the parties. Therefore, the contractor has the right to terminate the contract unilaterally subject to payment of the executor's actually incurred expenses.

C. Judgment of the Federal State Commercial Court of Moscow District, November 2013, case № A41-48007/12. The parties to the contract provided that either party could refuse to execute the contract subject to notification not less than 30 calendar days before the date of termination. The Court concluded that the right to the unilaterally termination of a contract, established by Article 782 of the Russian Civil Code, could not be limited by party's agreement.

Coming back to the historical aspect, in 2014 the Supreme Commercial Court found this practice unacceptable. On March 14, 2014, the Court issued Resolution No. 14, in which he explained the application of the principle of contractual freedom for the provision of services. The Court concluded that Article 782 of the Russian Civil Code, provided for the right of each party to unmotivated unilateral refusal to execute the contract and for the unequal sharing of unfavorable consequences, did not exclude the possibility for parties to determine another way the consequences of termination. For example, the parties can set up full compensation for the loss. Also the commercial parties can provide in the contract the obligation to pay a certain sum of money from the party initiating the termination to another party.

However, such explanation OF the Supreme Commercial Courte can be implemented only for relation between commercial parties and between citizens; we shall exclude consumer relations, since the consumer is a week party *(The Court of Appeal of the Moscow City Court, 26 November 2015, case № 33-43296 / 2015).*

Resolution No. 14 established by the Supreme Commercial Court on March 14, 2014 has become the matter of dispute among the lower courts and researchers.

According to Bogdanov E.V., determination of the volume of contractual freedom is an exclusive competence of the lawmaker, and not of the Supreme Commercial Court. Thus, the Court has exceeded its competence when it invited the parties to set by themselves the conditions for full compensation for loss in case of unmotivated unilateral refuse to execute the contract. It turns out that the Court violated the very subjective right of the party to freely refuse to execute the contract, since the contract includes civil liability of the willing party in the form of full compensation for loss. Bogdanov's criticism of the above Resolution of based on the principle that the limits of contractual freedom must be established either by law or by contract (by contract – if the law allows parties to set up particular rules). Bogdanov E.V. suggests that the lower courts ignore the said Resolution of the Supreme Commercial Court, since they understand that the setting the limits of contractual freedom is a matter for the lawmaker and not for the Supreme Commercial Court (Bogdnov, 2016).

Examples of such contradictory decisions are: *Judgment of the Federal State Commercial Court of the Moscow District, 11 September 2014, case №A40-183017/13-173-1605; Judgment of the Commercial Court of the Moscow District, 7 November 2014, case № A40-186044/13-100-1617; etc.*

However, Karapetov A.G. takes a different view. He supposes that these lower courts seem to be unable to believe that the rules of interpretation of the Article 782 of the Russian Civil Code have changed, and they continue to follow the long-standing practice of qualifying the rule as imperative (Karapetov, Fetisova, 2015).

Moreover, some courts continue to evaluate negatively the clause about the early notification set up in the contract. They suppose that the law gives the possibility to terminate the contract

without early notification, and the parties cannot agree otherwise (See, for example: *Judgment of the Commercial Court of the North-Western District, 9 February 2015, case № A56-29241/2013* – the contract clause established the possibility of refusal only if the party provides 6-months advance notice and pays the compensation for the loss for this 6-months period is unacceptable, because such condition is a measure of responsibility. That is not allowed in the framework of such relationship.

However, there is also a positive jurisprudence.

The amount of compensation to be paid is determined by party's agreement." Several decisions support the idea that the parties can establish the rule about the compensation sum. In particular, this may be: the withholding of an advance *(Judgment of the Federal State Commercial Court of the Moscow District, 9 November 2015, № F05-11570/2015)*; the part of the agreed price for goods, works or services sold (for example, 50-60% of the total price under the contract) or the part of the total cost determined by calculation (for example, a fee for three months 'services in the event of early termination of the subscription contract); a non-refundable advance payment *(Judgment of the Federal State Commercial Court of the North-West District, 12 May 2014, № A56-1385/2013)*; payment for the complete month when the services were provided during limited period *(Judgment of the Commercial Court of the Pskov region, 30 January 2015, case № A52-3591/2014);* full payment for the particular phase of rendering services if the services were divided into phases and the refusal took place during the particular phase *(Judgment of the Moscow Commercial Court, 29 April 2015, case № A40-2765/15);* etc.

The court finds inadmissible to set up the compensation equal to the amount of the full price of the contract or to the greater amount of the full price of the contract *(Judgment of the Commercial Court of the Moscow District, 6 November 2014, № Ф05-12254/14)*.

3.2. The notice period in the case of the refusal to execute the contract

The notice should be sent in advance, since the executor cannot assume about the termination of the contractual relationship with the partner until he is informed (Byichkov, 2016). Therefore the contractual relations are considered to be terminated from the moment of delivery of the appropriate notice. Non-receipt of the notice if it is sent to the legal address is a responsibility of the executor *(Judgment of the Moscow Commercial Court, 22 October 2014, case № A40-173317/13-142-1572)*.

3.3. The principle of good faith and the notion of reasonableness

Lets us consider more examples, which are enough complex and illustrative.

A. Judgment of the Tenth Commercial Appeal Court, 12 April 2016, case № A41-37010/2015. Despite the existence of the principle of the contractual freedom in Russian law, the right to unilateral refusal to execute the contract should be limited to general principles of civil law – the principle of good faith and the notion of reasonableness. Bad faith and the party's unreasonable behavior in the event of unilateral termination of the contract are an abuse of its right.

In the judgment on 12 April 2016 the Appeal Court recognized that Auchan were acting in bad faith and unreasonable under the supply contract. Summarizing the facts of the case, it is necessary to pay attention to the time points of reference. The supply contract of unlimited duration was concluded on February 1, 2012. The contract established that an annual agreement should be concluded annually for the performance of the contract, and that the notice of termination should be sent not less than 30 calendar days before the effective date. The last annual agreement concluded by the parties ended on March 31, 2014.

However, in February 2014, Auchan unilaterally refused to fulfill contractual obligations, so stopped to send orders and on 5 May 2014 the counterparty received a notice of unilateral refusal from Auchan effective on 5 July. The supply contract implied the supply of pomegranate juice, the shelf life of which was limited to 18 months. In connection with the actual break of commercial relations in February 2014, the counterparty lawfully took measures to sell pomegranate juice to other buyers using substituting transactions. As follows from the explanation given in the Resolution of the Supreme Court of the Russian Federation of 24 March 2016 № 7 "On the application by courts of certain provisions of the Civil Code of the Russian Federation on liability for breach of obligations", if the party has concluded a substitute transaction because of the contract termination, he has the right to claim damages from the counterparty which is the difference between the price set in the broken contract and the price of goods, work or services under the substitute transaction (paragraph 1 of Article 393.1 of the Russian Civil Code).

Thus, the party applied to the court to recover damages. Since the goal of the compensation for losses consists is the creation of such material conditions of the injured party, as if the obligations were fulfilled, the Court of Appeal satisfied the party's demand on the compensation for loss. However, claims for the loss of profit were not met, as the calculation of the loss of profit was not documented and proven.

To sum up, this example describes the situation of a partial break of the commercial relationship and as a consequence, the recovery from loss. Thus, the restoring the balance of commercial relationship is implied in Russian law. It is set up in certain articles, in the contrary to the French law, where we see the basic rule. However, the question of adequacy of 30-days notice is discussed neither by the parties nor by the court.

B. Judgment of the Moscow Commercial Court, 11 July 2013, № A40-148325/2012. The automobile dealer applied to the court in order d to recognize as invalid the refusal of the distributor to execute the contract. Despite the fact, that the contract included the clause stipulated that the party had a right for the unilateral refusal to execute the contract, the court granted the automobile dealer's claim. He considered that the distributor did not have the real economic reason and moreover, during the same period of time, the distributor was expanding his distribution network. The refusal to execute the contract announced by the distributor meant for the dealer the no-win situation: to start his business from zero and to re-equip the dealer center for a new car brand.

To sup up, one can say that the principle of good faith, as defined in paragraph 3 of Article 307 of the Russian Civil Code (and later explained by the Supreme Court in 2016), extends to a unilateral refusal, when formally the refusal does not contradict any rule of law, but turns out to be unfair.

4. Results

The parties to commercial relations must demonstrate fairness not only during the partnership but also in how they terminate their commercial relationships.

Since for more than 20 years there a public order embodied in the form of an article of the French Commercial Code, establishing liability in tort if the party suddenly terminates, even partially, a commercial relationship without adequate prior written notice. The public policy rule was initially designed to prevent sudden so-called 'de-referencing' by large retailers. However, the courts extended the scope of this article. The regime now represents one of the major sources of litigation before the French commercial courts (David, Gaucher, 2014).

Dispite the fact, that the main goal of this rule is to anticipate changes to business activity and give to the parties sufficient time to prepare for those changes, the professionals claims that the implementation of this legal instutute provide a strong economic inefficiency and legal insecurity (Vogel, Vogel, 2016). Moreover, no one can argue that the French judicial practice immediately and without errors determined the scope of the rule, avoiding mistakes and inconsistencies in the decisions of courts of different levels. Even today the courts determine on a case-by-case basis whether a victim party could legitimately expect a longer notice of termination than the agreement had envisaged.

In the Russian legislation, however, there is no direct prohibition on a sudden break of commercial relations in the absence of sufficient notice. Russian courts are still deciding on the possibility of the parties to agree on another regulation of their relation than indicated by law. Therefore, the Russian case law is at the stage of developing a concept that corresponds to the notions of justice, public interests and the protection of the weak party of the contract. Despite various legislative approaches, in Russia as well as in France, a party to a contract can protect its interests by using the rules established by the Russian Civil Code (for example, articles 10, 307,168 and so on, depending on the context of the case).

5. Conclusion

To break or not to break? This is the question that professionals can ask themselves during their commercial relations. If the possibility to terminate the contract is the consequence of the freedom of contract, we know that certain breaks can engage the responsibility of their author, as "freedom" and "responsibility" are closely linked.

The possibilities to terminate current or even future commercial relationships (in the case of negotiations) are now more limited than several years before because of the creation of new torts such as the "sudden termination of commercial relationship" in French law, as well as because of development the new means of protection of the victim in Russian case law.

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