

Preface to the Contributions on the Change of Parties in Contract Law

The idea to organise a workshop on the transfer of contracts came when I started working on a paper on this subject. At first sight, it seemed that in those countries where the transfer of contracts was left unregulated, the market practice and the jurisprudence came up with solutions to cater to the needs of the parties. Based on these solutions, the parties could transfer their contractual positions.

The same was true in Hungary. Until the New Civil Code entered into force in 2014, the Old Civil Code did not regulate the transfer of contracts. Still, the courts acknowledged that by assigning all rights and receivables and transferring all obligations under the contract, the contractual position itself can be transferred to the new party entering the contract. When the New Civil Code was prepared, the legislator intended to codify the case law developed by the courts. However, since the entry into force of the New Civil Code, the courts have been struggling to apply the rules on the transfer of contracts.

In the past few decades, the UNIDROIT Principles of International Commercial Contracts and the Draft Common Frame of Reference introduced rules on the transfer of contracts. Even though these documents are typically based on detailed background materials, the same does not seem true in the case of the rules on the transfer of contracts. The preparatory materials and the commentaries to the UNIDROIT Principles and the DCFR tell very little about the considerations behind the rules.

Our workshop held in November 2022 analysed issues relating to the change of parties with an international panel: Roberta Peleggi (Sapienza University of Rome), Jan Lieder (University of Freiburg), Paul MacMahon (London School of Economics) and myself (ELTE Law School).

This issue of ELTE Law Journal publishes three articles that grew out of our discussions.

Roberta Peleggi's paper provides an overview of how Italian law regulates the transfer of contracts. The Italian experiences are especially relevant, as the Italian Civil Code was one of the first codifications in Europe that included rules on the assignment of a contract. The paper puts the Italian rules in perspective by comparing them to the solutions of the UNIDROIT Principles and their application in practice.

Jan Lieder explains how the transfer of contact is possible under German law, even though the German Civil Code does not contain rules on the transfer of contract. The paper explains the doctrinal dispute concerning the legal nature of the transfer but argues that

these positions are two sides of the same coin. The paper then explains how the case law on the transfer of contract created a flexible and reliable regime that caters to the needs of the parties.

In the third paper, I provide an overview of Hungarian law's struggle with handling the new rules on the transfer of contracts. The paper explains how the transfer of specific contracts (e.g., package travel contracts) was regulated in sectoral laws and how the courts developed a general framework for the transferability of contractual positions. The paper then introduces the rules of the New Civil Code on the transfer of contracts and explains the difficulties that the courts have encountered over the last decade. The paper argues that the primary reason for these uncertainties is that the legislator failed to clarify the legal nature of the transfer.

The comparative approach of the papers could be helpful for courts to tackle the challenges arising in the context of the transfer of contracts and could also assist legislators when regulating legal succession in the contractual position. The contributions show the importance that the rules on the transfer of contract need to be in line with the rules on transfer in general (i.e., how movable and immovable property, rights and receivables are transferred), and legal succession, and also provide examples how the various questions, such as the involvement of the party remaining in the contract, could be regulated. The paper could also assist legal professionals when faced with legal problems which their national laws fail to regulate.