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The Main Features of the New Lithuanian Contract Law System Based on the Civil Code of 2000

1. Introduction

The Seimas (Parliament) of the Republic of Lithuania adopted the new Civil Code of Lithuania on 18 July 2000.¹ The new code entered into force on 1 July 2001, replacing the Civil Code of 1964. The adoption of the new Civil Code was a great event in the life of Lithuanian society, as this legal act must be described as the 'Constitution of Private Law', which establishes the main principles of the civil relationships between legal and natural persons. Many new rules were introduced by the Civil Code in company law, family law, law of succession, property law, law of obligations, and other areas. However, from the economic point of view, the most important changes took place in the area of contract law. The Civil Code of 1964 provided only a few general rules and some special rules regarding specific contracts. For example, the Civil Code of 1964 had no General Part of Contract Law, and it did not establish the principle of freedom of contract. Such a situation caused by the planned economy was understandable because the main role in the planned economy belonged not to the contract but to the plan.

In the market economy, contract law plays a crucial role. A contract is the legal form of business relationships. The market economy, based on private property and private initiative, needs effective rules concerning contracts. These must provide legal mechanism for a fair and equal realisation of such private initiatives. Therefore, the main task in the process of drafting the new Civil Code was to create new, modern and effective contract rules, which had to correspond to the changed economic situation. On the other hand, contract law is an institution of private law in which the ideas of unification and harmonisation of law are realised in the broadest manner. Thus, the creation of new national rules for contracts means in fact the

¹ Valstybės žinios (Official Gazette), 2000, No. 74-2262 (in Lithuanian).

transformation of results of the regional or transnational unification and harmonisation of contract law at the level of the national legal system. This is true in respect of the new Civil Code of Lithuania — many contract law provisions of this code were borrowed from such well-known instruments of unification and harmonisation of contract law as the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law.^{*2}

The aim of this article is to describe the main rules of Lithuania's General Part of Contract Law and to demonstrate how some results of international unification and harmonisation of contract law have been integrated into the new Civil Code of Lithuania.^{*3}

2. The place of contract law in the structure of the Civil Code

The contract as a bilateral legal transaction is one of the sources of obligations. This means that contract law is one of the institutions of law of obligations. Naturally, the main rules of contract law are contained in Book 6 of the Civil Code, titled 'Law of Obligations'. Due to the systematic nature of the Civil Code, the contract law provisions are divided into two portions in Book 6 — the General Part (arts. 6.154–6.228) and the Special Part (arts. 6.305–6.1018) of Contract Law. The rules of the General Part provide the notion of a contract; kinds of contracts; principles of contract law; and the main requirements involved in the formation, interpretation, and performance of contracts. The rules of the General Part are *lex generalis* and are applicable to all kinds of contracts except in cases where special rules establish different provisions.

The Special Part, which regulates specific contracts, provides *lex specialis* rules for a number of specific contract types. These are foreseen in this part as being traditional contracts, such as contracts of sale, loan, and lease, and, secondly, modern contracts, like factoring, franchising, and leasing contracts. In total, the Special Part includes rules in respect of 53 specific contract types. In addition, article 6.155 of the Civil Code provides that special rules for certain contracts may be established by other laws. This provision is already being realised in practice; for example, public procurement contracts, contracts for the public sale of securities, and some other specific contract types are regulated not by the Civil Code but by special laws.

Book 6 also contains the General Part of the Law of Obligations (arts. 1.1–6.153). The rules of this General Part specify sources of obligations, modalities of obligations, rules for the fulfilment of obligations, grounds for the nullification of obligations, and so on. Unless any exceptions from general rules are established by norms regulating contractual relationships, the provisions of the General Part that contain regulation covering general questions concerning the Law of Obligations must likewise be applied to contracts. For example, rules on the fulfilment of obligations (arts. 6.38–6.65) are, *mutatis mutandis*, applied in respect of contracts as well.

Rules on contractual liability are of two kinds. General rules on contractual liability are provided in Chapter XXII, 'Civil Liability', of Book 6. This chapter provides general rules, common to contractual and tortious liability, and specific rules applicable only in the case of contractual liability (arts. 6.256–6.262). Special rules of contractual liability applicable to specific contracts are provided by the corresponding articles of the Special Part of Contract Law dealing with specific contract types.

As has already been noted, due to the systematic nature of the Civil Code, other books of the Civil Code are also of great importance in contract law. Book 1, 'General Provisions', provides general rules on legal transactions, validity of legal transactions, limitation of actions, and so forth. These rules are applicable to contracts as well. For example, Part 2 of article 6.154 establishes what contracts are subject to the norms of the Civil Code that regulate bilateral and multilateral transactions (arts. 1.63–1.96). Thus, for example, the rules regarding nullity of a contract are found in Book 1, not in Book 6. There is one more reason for Book 1 being especially important for contract law. This book contains the rules on private international law, including the rules concerning the law applicable to contractual relationships (arts. 1.37–1.42).

Book 2, 'Persons', also includes some important rules relating to contract law. The relevant articles of Book 2 establish provisions addressing the legal capacity of natural and legal persons (including contractual capacity), restriction of capacity, rules on agency, and rules on the validity of contracts made by agents and by management bodies of legal persons.

² For more information, see V. Mikelenas. Unification and Harmonisation of Law at the Turn of the Millennium: The Lithuanian Experience. – Uniform Law Review 2000/2, pp. 253–261.

³ For a more detailed introduction to Lithuania's new contract law, see D. Mikeleniene, V. Mikelenas. Contracts. Lithuania. – International Encyclopedia of Laws. Contracts. The Hague: Kluwer Law International 2004.

The provisions of Book 3, 'Family', are linked with special rules regulating contracts and contractual capacity in the area of family law. For example, relevant articles of Book 3 establish special requirements for the form and content of a marriage contract (arts. 3.101–3.108) and special provisions on the validity of contracts related to the disposal of assets that belong to family property or are in the common ownership of spouses.

As Book 4, 'Real Rights', deals with various real rights — ownership, possession, mortgage, servitudes, etc. — its rules are important in contract law for several reasons. Firstly, the rules of this book establish provisions concerning the moment of transfer of ownership. Secondly, the rules in this book provide protection of the good-faith possessor of things acquired under an onerous contract. Thirdly, the relevant articles impose special requirements for the form and content of some kinds of contracts on real rights, such as mortgage and pledge contracts (arts. 4.170–4.228).

Some important rules for contract law purposes may be found in Book 5, 'Succession'. Examples include rules on the liability of heirs for the contractual obligations of a deceased person (arts. 5.50–5.67) and rules on the voluntary division of the estate between heirs upon succession (arts. 5.69–5.70).

3. Principles of Lithuania's Contract Law

The main principles of Lithuania's Contract Law distinguished by the doctrine of law are freedom of contract, good faith, consensualism, *pacta sunt servanda*, the equality of parties, etc.⁴ Some of these principles are distinctly determined by the Civil Code. For example, article 6.156 establishes the principle of freedom of contract. According to this article, the content of the principle of freedom of contract consists of several elements. First of all, freedom of contract means that the parties are free to enter into contracts and determine their mutual rights and duties at their own discretion. Thus it is recognised that a contract is the result of the free expression of the will of the parties and it is prohibited to compel another person to conclude a contract, except in cases when the duty to enter into a contract is established by law or a free-will engagement. For example, in the event of a public contract, a legal person (businessman) who renders services or sells goods to an indefinite number of persons — i.e., to everyone who makes a request (enterprises in transport, communications, electricity, heating, gas, water supply, and other areas) — is obliged to enter into contracts with the consumers (art. 6.161).

Another element of the principle of freedom of contract opens up the possibility for the parties to conclude contracts other than those that are established by the code if this does not contradict laws — i.e., so-called innominate contracts. The parties may also form a contract that contains elements of contracts of several classes. Such contracts are governed by the norms regulating the separate classes of contracts unless otherwise provided for by the agreement of the parties or this contradicts the essence of the contract.

One more element of the principle of freedom of contract is the right of the parties to specify the conditions of a contract at their own discretion, except in those cases where certain conditions of a contract are determined by requirements set forth by law. Where the conditions of a contract are established by a non-mandatory law rule, the parties may agree on non-application of these conditions, or they may agree on any other conditions. If the parties do not enter into such agreement, the conditions of a contract must be determined in accordance with the non-mandatory rules. Where particular conditions of a contract are not regulated either by laws or by the agreement of the parties, in cases of dispute such conditions are determined by a court on the basis of consideration of usages and the principles of justice, reasonableness, and good faith, as well as by application of analogies to statutes and the law.

The second main principle of Lithuania's Contract Law as established by the Civil Code is good faith. According to article 6.158, all parties to a contract are obliged to act in good faith and in accordance with the principle of fair dealing in their contractual relationships. The parties may not change or exclude by their agreement the duty to act in good faith or that of fair dealing. This principle is not just a significant rule governing the behaviour of parties to a contract. It is also an effective tool for the courts in deciding civil cases related to disputes between parties to a contract. For example, in one of its recent cases, the Supreme Court of Lithuania ruled that, notwithstanding the fact that there is no duty to enter into a contract, it is nevertheless the duty of both parties to act in good faith during the negotiations.⁵

The principle of *pacta sunt servanda* is established by article 6.189, which provides that a contract formed in accordance with the provisions of the law and valid has the force of law between its parties. A contract binds the parties not only as to what it expressly provides but also in all the consequences deriving from its nature or determined by law. A contract must be performed by the parties in a proper way and in good faith

⁴ V. Mikelenas. Contract Law. General Provisions of Contract Law: A Comparative Study. Vilnius: Justitia 1996, pp. 89–90.

⁵ Supreme Court, judgement of 19 January 2005, Case 3K-3-35/2005.

(art. 6.200). However, there are several exceptions to the principle of *pacta sunt servanda*: article 6.204 of the Civil Code provides an institution of changed circumstances. According to this article, the performance of a contract is considered to be obstructed under such circumstances as fundamentally alter the balance of contractual obligations — i.e., either the cost of performance has essentially increased or the value thereof has essentially diminished. In the event that the performance of a contract becomes obstructed, the aggrieved party has the right to make a request to the other party for a modification of the contract. Such a request must be made immediately after the occurrence of obstructions, and the grounds on which the request is based must be indicated therein. The request for the modification of the contract does not in itself entitle the aggrieved party to the right to suspend performance of the contract. Where within a reasonable time the parties fail to reach an agreement on the modification of the contractual obligations, any of them may bring an action before a court. The court may dissolve the contract and establish the date and terms of its dissolution or modify the conditions of the contract with a view to restoring the balance of the contractual obligations of the parties. Other exceptions to this principle are the doctrines of impossibility of performance, *force majeure*, and gross disparity of the parties.

The principle of consensualism, as the opposite of the principle of formalism, means that the agreement of the parties is the sufficient (the only necessary) element of a contract. The Civil Code defines a contract as an agreement of two or more persons to establish, modify, or terminate legal relationships by which one or several persons make themselves beholden to one or several other persons to perform certain actions (or to refrain from performing certain actions) while the latter persons obtain the right of claim (art. 6.154). According to article 6.159, the agreement of legally capable parties is the essence of the contract. The form of the contract is a necessary element of the contract only in cases where this is directly prescribed by law in a mandatory manner.

The principle of equality of parties is guaranteed by special rules on the formation of contracts (e.g., rules regarding standard terms of contracts) and by the institutions of gross disparity of parties (art. 6.228) and changed circumstances, among others.

4. Types of contracts

Classification of contracts into various types according to different criteria is the task of legal doctrine. However, keeping in mind that classifications are important for a proper qualification of contractual obligations, interpretation of a contract, and application of the corresponding legal rules, the Civil Code directly provides several criteria for the classification of contracts.

First of all, it is clear from article 6.160 of the Civil Code that all contracts are divided into two large groups: commercial contracts and consumer contracts. Commercial contracts are those contracts concluded by natural or legal persons for commercial (business) or professional purposes. A consumer contract is a contract for the acquisition of goods or services that is concluded between a natural person (the consumer) and a person who sells such goods or services (the supplier) for purposes not related to the consumer's commercial or professional activities — i.e., for the satisfaction of the consumer's personal, family, or household needs, as opposed to needs related to business or professional activity (Part 1, art. 1.39). It is very important to make the distinction between commercial and consumer contracts, as their legal regulation differs in the emphasis consumer contracts place on the priority of protection of the consumer's rights. For example, the Civil Code provides some special rules concerning the formation, content, and performance of a consumer contract (in, e.g., art. 6.188). As has already been mentioned, these rules are intended for the protection of the consumer's rights and interests, as the consumer is the weaker party to the contract. But these rules are not applied in respect of commercial contracts.

Another criterion in the classification of contracts is the manner of the conclusion of a contract. The Civil Code provides for two kinds of contracts: contracts entered into as the result of mutual agreement through negotiations and contracts of adhesion (Part 2, art. 6.160). A contract of adhesion is a standard contract — i.e., a contract containing standard contractual terms. According to article 6.185, standard terms of contract are provisions that are prepared in advance for general and repeated use by one contracting party without their content being negotiated with the other party and that are used in the formation of contracts, again without negotiation with the other party. The Civil Code provides special rules applicable only to standard contracts. These special provisions regulate the formation of standard contracts, disclosure of standard contract terms, battle as to forms, surprising standard contract terms, and so on. For example, according to Part 2 of article 6.185, standard contract terms prepared by one of the parties are binding for the other if the latter was provided with an adequate opportunity to become acquainted with said terms.

The introduction of one of the special kind of contracts — a public contract — can be explained by the difficulties of the period of transition from planned economy to market economy. There still remain some monopolies in various sectors of the economy. Therefore, it is necessary to provide certain legal protection

for market participants against possible abuse of a dominant position by these monopolies. One of the tools of such protection is the institution of the public contract. A public contract is defined by article 6.161 of the Civil Code as a contract concluded by a legal person that renders services or sells goods to an indefinite number of persons (as mentioned above, to everyone who so requests). Freedom of contract in the case of a public contract is limited by the mandatory rules concerning the formation and content of contracts. For example, in rendering services or selling goods, any legal person (businessman) is bound to enter into contracts with every person who applies for those services, with the exception of cases approved in accordance with the procedure established by law. When concluding public contracts, a legal person (businessman) may not give preference to one or another person except in cases provided for by the law. Prices and other conditions of goods and services under public contracts must be equal for all consumers of the same category, except in cases expressly provided for by law where preferential conditions may be applied to separate categories of consumers. In the cases specified by law, a legal person (businessman) is obliged to submit standard conditions of a public contract to be approved by a relevant state institution. In addition, in cases specified by law, public contracts may be concluded in accordance with standard conditions approved by the corresponding state institution and obligatory for both parties.

Article 6.160 designates some other kinds of contracts as well: unilateral and bilateral contracts; onerous and gratuitous contracts; consensual and real contracts; contracts of successive performance and of instantaneous performance; and aleatory and commutative contracts. Such classification of contracts according to the above-mentioned criteria stems from the doctrine of law and is important in the decision of practical questions on the conclusion, performance, and interpretation of a special kind of contract.

5. Pre-contractual relationships

Among the totally new provisions of the Civil Code are the rules on the pre-contractual relationships of parties. These rules were introduced for several reasons. First of all, the reality is that many contracts, especially commercial ones, are the result of protracted negotiations between the parties, and such a negative situation needed to be changed. Another reason was the lack of legislative provisions in this respect. This used to cause some difficulties for courts' practice; e.g., there was no clarity as to how to qualify the pre-contractual agreements between the parties and how to resolve the issue of pre-contractual liability.

According to article 6.163 of the Civil Code, parties are free to begin negotiations and negotiate, and are not liable for a failure to reach an agreement. However, in the course of pre-contractual relationships, parties must conduct themselves in accordance with good faith. There are some practical examples — instances of acting in bad faith in pre-contractual relationships. For example, a party is considered to be in bad faith if entering into negotiations or continuing them without intending to reach an agreement with the other party.*⁶

The second duty of the parties in pre-contractual relationships is the duty to disclose information. According to Part 4 of article 6.163, the parties are bound to disclose to each other the information they have that is of essential importance for the conclusion of a contract.

The third duty of the parties in pre-contractual relationships is the duty of confidentiality — where in the course of negotiations one party furnishes the other with confidential information, the party that has learned or received such information is under the obligation not to disclose it or use it unlawfully for its own purposes, irrespective of whether a contract is subsequently concluded (art. 6.164). Non-disclosure of important information or violation of the duty of confidentiality is also considered to be acting in bad faith. A party acting in bad faith during negotiations is liable for the damages caused to the other party.

Of special interest is a specific type of contract — the preliminary contract — covered in the new Civil Code. According to article 6.165, a preliminary contract is an agreement of parties by which they obligate themselves to conclude in the future another, principal contract under the conditions negotiated in the agreement. As a prerequisite of validity the Civil Code provides that the preliminary contract must be made in writing. In the preliminary contract, the parties are obliged to establish a time limit within which the principal contract must be formed. In the event that a time limit is not established in the preliminary contract, the principal contract must be formed within one year from the date of the conclusion of the preliminary contract. If, after the conclusion of the preliminary contract, a party without due grounds avoids entering into, or refuses to enter into, a principal contract, he is bound to render compensation to the other party for damages inflicted. In the case where the parties fail to form a principal contract within the time limit determined in the preliminary contract, the obligation to form that contract is terminated.

⁶ V. Mikelenas. Commentary of Book VI of the Civil Code. Vilnius: Justitia 2003, p. 256.

6. Formation of contracts

The rules on the formation of contracts (arts. 6.162–6.188) correspond to the main provisions of the UNIDROIT Principles of International Commercial Contracts and the Principles of European Contract Law. According to article 6.162 of the Civil Code, a contract is concluded either by the proposal (offer) and the assent (acceptance) or by any other actions of the parties that are sufficient to show their agreement. Where the parties agree on all essential conditions of a contract, the contract is deemed effective, even if the parties have reserved an agreement as to secondary conditions. If the parties do not reach agreement on the secondary conditions, the dispute may be resolved by the court taking account of the nature of the contract; non-mandatory rules; usages; and the principles of justice, reasonableness, and good faith.

A contract is considered to be formed at the moment when the offeree's acceptance of conclusion of the contract reaches the offeror, unless otherwise provided for by the contract. The place of contract formation is considered to be the place where the offeror's residence or his business is located, unless otherwise provided for by law or the contract (art. 6.181).

An offer is defined as a proposal for concluding a contract such as is sufficiently definite and indicates the intention of the offeror to be restricted in his rights by a contract and to be bound in the case of acceptance (art. 6.167). An offer may be addressed to a definite person or to an indeterminate number of persons (an offer to the public). An offer to the public is a proposal for concluding a contract where said proposal is addressed to everyone, examples being the display of goods with the indicated prices on the shelves in a shop or in a shop window and a promise to pay for the performance of certain actions. Price lists, prospectuses with prices, catalogues including prices, tariff lists, and other informational materials are not considered to be an offer to the public unless there are exceptions established by law that indicate otherwise (art. 6.171).

An offer enters into effect when received by the offeree. An offer, even if it is irrevocable, may be revoked by the offeror if notice of revocation reaches the offeree before or at the same time as the offer (art. 6.168). Until a contract is concluded, an offer may be revoked if the revocation reaches the offeree before he has dispatched the acceptance. Nevertheless, an offer cannot be revoked if it is indicated therein, whether by statement of a fixed time limit for acceptance or otherwise, that it is irrevocable, or if there were reasonable grounds for the offeree to rely on the offer as being irrevocable and he acted accordingly (art. 6.169). An offer loses its effect when notice of its rejection reaches the offeror or when no reply to the offer has been received within the established time limit (art. 6.170).

Acceptance is defined as a statement made by the offeree or any other conduct thereof indicating assent to the offer. Silence or inactivity *per se* does not imply acceptance of an offer. Acceptance of an offer becomes effective when it reaches the offeror. If by virtue of the offer, or as a result of practices that the parties have established between themselves, or of existing usages, the possibility of accepting an offer without notice to the offeror (by silence or by performing concrete actions) is foreseen, the acceptance is legally effective from the moment when certain actions expressing the will of the offeree are performed (art. 6.173).

A reply to an offer that contains additions, limitations, or other modifications of conditions set forth in the offer is considered to be a rejection of the offer and constitutes a counter-offer. A reply to an offer that purports to be an acceptance but contains additional or different conditions that do not alter the essence of the conditions of the offer constitutes acceptance if the offeror, after receiving the reply, does not immediately object to the discrepancy. If the offeror does not object, the contract is deemed to be concluded under the conditions of the offer with the modifications contained in the acceptance (art. 6.178).

In cases where no time limit is fixed, an offer must be accepted within the time limit fixed by the offeror — within reasonable time in view of concrete circumstances, including the capacities of the means of communication used by the parties. An oral offer must be accepted immediately unless, in consideration of concrete circumstances, a different conclusion may be reached (art. 6.174).

Acceptance becomes invalid if the notice of revocation reaches the offeror before or at the same time as the acceptance becomes effective (art. 6.177).

The time limit for acceptance indicated by the offeror in his telegram or a letter is calculated as beginning at the moment the telegram is handed in for despatch or from the date written on the letter, or, if no date is indicated in the latter case, from the date shown on the envelope (the postmark). Time for acceptance indicated by the offeror by means of telecommunication terminal equipment begins to run at the moment the offer reaches the offeree. Official holidays or non-working days are included in calculation of the time limit established for acceptance. However, if notice of acceptance cannot be delivered to the offeror because the last day of the time limit falls on an official holiday or a non-working day, the period is extended until the first working day thereafter (art. 6.175).

Late acceptance is deemed to hold force if the offeror without delay informs the offeree about it or sends him a notice to that effect. If it is possible to establish from a letter or any other written notice containing a late

acceptance that it was in fact sent in time, and if under normal circumstances it would have reached the offeror in due time, the late acceptance is deemed to be effective as acceptance unless the offeror without delay informs the offeree that his offer has been withdrawn (art. 6.176).

The Civil Code provides special rules on the formation of public contracts and contracts of adhesion, and also special rules on the conflict of standard conditions, among other matters. Unfortunately, the Civil Code does not provide any special rules on the formation of a contract by means of electronic communication.

7. The form of contracts

The rules in the new Civil Code that concern formal requirements for contracts could be described as a turn from formalism toward consensualism. The previous Civil Code provided many strict provisions regarding the form of a contract, violation of which resulted in the nullity of the contract.

The new Civil Code introduced a general rule that the form of a contract is not a necessary element of the contract. Article 6.159 of the Civil Code provides that the majority of contracts are binding *solo consensus*. However, there are exceptions to this general rule. According to article 6.159 of the Civil Code, in cases prescribed by law, the form of a contract can be a necessary element of the contract.

The formal requirements of contracts are established by article 6.192 of the Civil Code. This article provides that the provisions of arts. 1.71–1.77 of the Civil Code that regulate the form of transactions, are applied in respect of the form of a contract as well. According to these articles, the parties may enter into transactions orally or in writing (in the ordinary or notarial form), or the formation of a transaction may be implied from the behaviour in fact of the parties (art. 1.71). A transaction in respect of which there is no specific form established by law is deemed to be formed if a person demonstrates by his behaviour the will to form a transaction (a contract formed by factual acts).

For some contracts the Civil Code introduces ordinary written form as mandatory. According to article 1.73 of the Civil Code, the following contracts must be executed in the ordinary written form: contracts made by natural persons in the event that at the moment of their formation the value of the property concerning which the transaction is undertaken exceeds five thousand litas, except such transactions when performed at the time of their formation; contracts for the establishment of legal persons; contracts for purchase and sale of goods by instalment; insurance contracts; arbitration agreements; contracts of lease of a movable thing for a term of over one year; preliminary contracts; contracts of life annuity (contracts of rent); and compromise agreements. This list is not exhaustive, because not only the Civil Code but other laws as well can specify mandatory written form for certain contracts. However, the notion of ‘ordinary written form’ is understood in a broad sense. Written form refers not only to the drawing up of one document signed by all the parties or the exchanging of separate documents by the parties. Information transmitted by means of modern telecommunications is also recognised by the Civil Code as an ordinary written form. According to article 1.73 of the Civil Code, documents signed by the parties and transmitted by means of telegraph, facsimile communication, or any other forms of communication terminal equipment are accorded the same power as those having been made in written form, provided that the inviolability of the text is guaranteed and the signature can be identified. So, the Civil Code clearly provides the possibility of concluding a contract by means of electronic communication.

However, the parties may agree to adopt additional requirements for the written form of a transaction (signatures of certain persons, affixation of a stamp to the document, assignment of a special form for the document, etc.) and establish certain legal consequences for non-compliance with such requirements. In the event of the parties failing to comply with the requirements established, the transaction is not considered to be formed unless the parties agree otherwise.

If the parties have agreed to adopt a specified form for a contract under conclusion, the contract is deemed to be concluded only where it conforms to the form agreed, even though pursuant to the law such a form is not mandatory for contracts of that particular class.

Article 1.74 of the Civil Code provides that the following contract types must be executed before and verified by a notary: contracts concerning the transfer of the real rights in an immovable thing and contracts on the encumbrance of real rights and of an immovable thing; contracts of marriage (prenuptial and postnuptial); and other contracts that are to be notarised in accordance with the mandatory provisions of the Civil Code. Indeed, the notarial form of a contract can be established only by the Civil Code; i.e., other laws cannot establish such a form for a contract. However, parties to a contract have the right to execute other contracts in the notarial form; that is, they can choose a more qualified form for their contract.

A contract not made in the form required by law in this particular case should be void only when such a consequence is expressly indicated by law (art. 1.93). Non-observance of the mandatory notarial form required by the law as a necessary element of a contract results in the nullity of the contract in any case (art. 1.93). There is one exception to this general rule: where one party fully or partly performs his obliga-

tions arising from a contract that must be notarised while the other party avoids the notarisation thereof, the court may, on the action of the party who has fulfilled his obligations, declare said contract valid. In such an event, subsequent notarisation of the contract is not required (art. 1.93).

For reasons of safety and stability of the market, the Civil Code provides the obligation to register contracts of certain kinds in a public register. Therefore, the law may establish a mandatory registration of certain contracts. For example, a contract of mortgage of an immovable thing must be registered in a public register (art. 4.185). The general rule is that a contract produces its effects between the parties even if it is not registered in the mandatory order. In such instances, the rights and duties of the parties produce their effects between the parties not from the moment of registration of a contract but from the moment established by the law or by agreement of the parties, except in cases where it is expressly specified by the Civil Code that the rights and duties of the parties arise only from the moment of the registration of the contract. To take the earlier example, the mortgage of an immovable thing is valid only in the event of the registration of the contract establishing mortgage in the public register (art. 4.187). Another general rule is that the registration of a contract has only evidentiary effect against third parties. This general rule is laid down in article 1.94 of the Civil Code. According to it, the parties to an unregistered contract may not invoke the fact of the contract against third parties and argue their rights against third parties by relying on other means of proof. If the same real rights or the same thing is acquired by several acquirers but only one of them registers that contract, the acquirer who has registered the contract is considered to be vested with that thing or with the real rights in that thing. If none of the acquirers registers the contract, the acquirer who is the first to enter into a contract is considered to be vested with the rights in question. If several persons register their property rights or real rights in the same thing, the person who is first to register that transaction is vested with these rights (art. 1.75).

8. Interpretation of contracts

The rules on the interpretation of contracts form another institution introduced by the new Civil Code, as the previous Civil Code did not include any provisions in this respect. Some methods of interpretation of contracts were developed by legal doctrine and courts' practice, these factors being of great value and serving as a useful contribution in the drafting of the relevant chapter of the Civil Code.

The rules on the interpretation of contracts are set forth in Chapter XIV of Book 6 of the Civil Code (arts. 6.193–6.195).

The main rule and requirement for the interpretation of contracts is good faith: article 6.193 requires a contract to be interpreted in accordance with the principle of good faith. On the other hand, the Civil Code provides a subjective method for the interpretation of contracts: in interpreting a contract, it is necessary to seek the real intentions of the parties without being limited by the literal meaning of the words. However, in the event that the real intentions of the parties cannot be established, a contract must be interpreted in accordance with the meaning that could be attributed to it in the same circumstances by reasonable persons in positions corresponding to those in which the parties were at the time.

A systematic approach to the interpretation of contracts is introduced by Part 2 of article 6.193: all conditions of a contract must be interpreted taking into account their interrelation, the nature and purpose of the contract, and the circumstances under which it was formed. In interpreting a contract, regard must also be taken of the ordinary conditions, irrespective of their expression in the contract. In the event of doubt over notions that may have several meanings, these notions must be understood in the sense most suitable in light of the nature, essence, and subject matter of the contract.

Part 4 of article 6.193 definitely sets up the principle of *contra proferentem*, according to which conditions of a contract must, in the event of doubt, be interpreted adversely to the contracting party that suggested them and in favour of the party that accepted said conditions. But in all cases, the conditions of a contract must be interpreted in favour of the consumers and the adhering party.

In interpreting a contract, regard must be paid also to the preliminary negotiations between the parties, practices that the parties have established between themselves, the conduct of the parties subsequent to the conclusion of the contract, and the existing usages.

Where a contract is drawn up in two or more languages and all of these versions of the contract are of equal legal power, in the event of discrepancy between versions in different languages, preference is given to the version that was first to be drawn up (art. 6.194).

Article 6.195 allows the court to fill the gaps of a contract where the parties have left without being discussed certain conditions that are necessary for the performance of a contract. Such gaps in the contract may, at the demand of one of the parties, be eliminated by a court, which is to determine appropriate conditions by taking into consideration non-mandatory legal norms; the intentions of the parties; the purpose and essence of the contract; and the criteria of good faith, reasonableness, and justice.

9. Content, performance, and termination of contracts

Due to the principle of freedom of contract, the General Part of Contract Law provides only a few rules in respect of the content of a contract. The most important rule is established by article 6.196, which provides that the terms of a contract may be express or implied. Implied contract terms have to be discovered from the essence and purpose of the contract; the nature of the relationships established between the parties; and the criteria of good faith, reasonableness, and justice.

The rules on the quality of performance and contract price, borrowed from the UNIDROIT Principles of International Commercial Contracts, are also important.

The main requirements for the performance of contracts are contained in article 6.200 of the Civil Code. According to this article, a contract must be performed by the parties in a proper way and in good faith. In performing a contract, each party is bound to contribute to and to co-operate with the other party. The parties are bound to use the most economical means in the performance of the contract. Where, on account of a contract or its nature, a party in exercising certain actions is bound to make the best effort in the performance of a contract, this party is bound to make such effort as a reasonable person would make in the same circumstances.

Article 6.204 establishes the principle of *rebus sic stantibus* and provides the possibility of modification or termination of a contract in the event of a change of circumstances.

As a consequence of the principle of co-operation, article 6.208 of the Civil Code provides the possibility for the debtor to eliminate defects of performance and certain conditions for the realisation of such a possibility.

One of the aims of the new rules for contracts was to ensure the stability of contractual relationships, as the stability of contractual relationships is one of the factors that ensure the stability of the whole market. For these reasons, the Civil Code establishes some general rules regarding the termination of contracts. Firstly, a party may dissolve the contract where the failure of the other party to perform it, or defective performance, is considered to be an essential violation of the contract (art. 6.217). In the event of an essential violation, the contract may be terminated in an extra-judicial manner — i.e., without a court judgement. However, the Civil Code requires due notice and relevant co-operation in the exercise of this right. Secondly, on any other grounds except that of fundamental breach, the contract may be dissolved only within the judicial proceedings resulting from an action of the interested party. Thirdly, a contract for an indefinite period may be terminated by either party, provided the party gives notice about his intention to dissolve the contract to the other party a reasonable time in advance unless otherwise provided for by law or in a contract.

In most cases, the creditor has the option of choosing either termination or any other remedy (e.g., a specific performance). However, there are specific rules that provide special regulation of the exercise of the right to terminate a contract and establish special conditions for the realisation of this right. For example, in cases of a sale of energy, a lease, etc., the possibility of the termination of a contract is limited (art. 6.390).

10. Conclusions

The analysis of the new Lithuanian Contract Law enables one to draw some conclusions. First of all, it is evident that the majority of the new rules on contracts correspond to the provisions of the well-known international instruments, the effectiveness of which has been proved in practice. Secondly, the Civil Code distinctly establishes in law the difference between commercial and consumer contracts and provides special provisions for the protection of consumers' interests. Thirdly, there are special institutions introduced that ensure the reasonable balance of the interests of both parties and do not allow any gross disparity among the parties or a possibility of abuse of the dominant position of one of the parties. Finally, there are special provisions protecting the stability of contractual relationships. Indeed, the effectiveness of all of these new provisions directly depends upon the activity of courts. The implementation of international uniform rules in the form of national statutory law requires use of the comparative law method by the national courts as well. The application of uniform law is not possible without uniform court practice. However, the aim of achieving uniform practice on the part of the courts is more complicated than — or even utopian in comparison with — the aim of achieving uniform statutory law.