SETTLEMENT (TRANSACTIO)QUICK DECIDING THE CIVIL DISPUTES IN ROMAN AND POLISH LAW AND IN DCFR

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Abstract: agreement is one of the fastest ways of deciding current disputes, or avoiding them in the future. Hence, this is not only the legal instrument, but also the economic one, due to which, the costs of legal and extra legal proceedings are minimized. Applying such the way of solving the civil conflicts, accelerates the economic turnover and has a positive influence on the economic situation. Hence, the agreement has been knownfor the ancient times. The first documented sources, connected with existing such the legal institution, were noticed in the Roman law. Initially, atransaction did not have its autonomic character of the agreement, and it could be made by means of stipulation. Only during post-classical period,the transaction gained the status of legally protected separate agreement. In Polish legal system the settlement is regulated by two articles 917and 918 of the civil code. The structure of the settlement corresponds with the Roman one. However, the legislator regulated the issue of significant components of the settlement agreement and the way of cancelling it, if it was signed by mistake. In the project of European Civil Code there are not any regulations, typical for the settlement agreement; this is because of regulating only the part of general liabilities. The settlement is only mentioned at the occasion of the possibility to change the content, or the conclusion of the agreement, exactly through signing the settlementagreement by the parties.

Key words: settlement agreement, Roman law, civil law, DCFR, economy of law, rate of proceedings, disputes under civil law.

1. Introductory issues

Efficient economic turnover guarantees well-functioning economy, and as a consequence, welfare and social stabilization. One of the serious obstacles on the way to achieve this purpose, can be the legal disputes resulting from the civil law activities. The sources of disputes can be; ignorance of law by the parties, ambiguity of legal regulations, and the other circumstances, e.g. the lack of possibility to predict, and at the same time, to include in the constructing works contract, all the actions, necessary to accomplish the contract.

Settlement is a form of solving the conflict of dispute, resulting from already existing legal relationship,except for the law court, although, the Polish legislator, on the model of other legislations, implemented the form of court settlement (art.10,223,468§2item2c.c.). The possibility of court settlement exists even before bringing an action, through initiating the conciliatory proceedings, to regulate the civil case by settlement (art.184-186c.c.)[1].

However, the subject of this paper is presenting the rules of applying ex-court settlement and its results in Roman law, in Polish law, and in the project of the European Civil Code, prepared by the studio group of prof. Chr. Von Bar, also called Draft Common Frame of Reference (DCFR).The purpose of this work is to indicate the need of wider

[1]J. Lapierre,*Ugoda sądowa w polskim procesie cywilnym*, Warszawa 1968.

promotion of extra judicial ways of solving civil disputes. Such the way of solving disputes is profitable because of the rate and economy, what has its deciding meaning for the economic development. Talking about quite well known subject in Polish literature[2] has its additional justification in the internationalisation of civil conflicts because of cancelling the political, economic, and partly the fiscal borders.

2. Settlement in Roman law

Transaction, in Latin terminology was defined by the term *transactio*, which meant the agreement finishing the dispute between parties, in friendly, quick, economic way, allowing in this way, to avoid the proceedings costs. The transaction subject was undertaken many times in Romanistic literature. It is worth to mention here the works by the following authors: A. Burdese[3], C. Bertolini[4], W. Osuchowski[5], and M. Żołnierczuk[6].

During the classical period, transaction did not have an autonomic legal institution character, but it was made by stipulation, or by doing activities typical for the subject of litigation, e.g. *macipatio, in iure cession and tradition,* if there was the property litigation. The legal results of such the activities were similar to *pactum de non petendo*, and defendant could use *exception pacti*[7]. Hence, the transaction was treated as the abstract activities, the aim of which, was solving the existing dispute, or solving the issue of legal ambiguity, or duties of the parties of existing legal relationship, to avoid the dispute in the future.

D. 2.15.1 (Ulp. 40 *ad ed*.) *Qui transigit, quasi de re dubia et liteincertanequefinitatransigit.*

According to Ulpian,transaction was acceptable, if the subject of litigation was not defined (*re dubia*), if the litigation was not sure (liteincerta), or if it was not finished yet. In the first two cases, the idea was to solve the dispute, or to undertake the preventive activities, not to allow to initiate it. In the last case, the transaction was a way to solve existing litigation, which was under the civil proceedings. As long as there was not the sentence announced, the case could be finished at any stage of court proceedings[8].

Another classical lawyer Paulus expressed similar notion, in two excerpts. One of them refers to *fideicomis* issue, whereas the other one *senatusconsultum* from 178, about the issue of children succession after their mother.

D. 50.16.229 (Paul. *l. singul. de tacitisfideicommissis*): *"Transactafinitave" intellegeredebemus non solumquibuscontroversiafuit, sedetiam quae sine controversiasintpossessa*:

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[2]S. Dmowski, [in:] G. Bieniek (red.), *Komentarz do kodeksu cywilnego. Księga trzecia*, v. 2, Warszawa 2011; M. Pyziak-Szafnicka, [in:] *System prawa prywatnego*, v. 8, Warszawa 2011; Z. Gawlik, [in:] A. Kidyba (red.), *Kodeks cywilny. Komentarz*, v.3, *Zobowiązania - część szczególna*, Warszawa 2010; Z. Radwański, J. Panowicz-Lipska, *Zobowiązania*, Warszawa 2004; W. Czachórski, *Zobowiązania. Zarys wykładu*, Warszawa 2003; A. Szpunar, *Z problematyki ugody w prawie cywilnym*, PS 1995, No.9; Z. Masłowski, *Uznanie, ugoda, odnowienie, zwolnienie z długu, poręczenie*, Warszawa 1966; L. Ostrowski, *Ugoda sądowa*, NP 1972, No.7-8,

[3] A. Burdese, *Tra causa e tipo negoziale. Dal diritto classico al postclassico in tema di transazione*, Madrid 1997-1998.

[4]C. Bertolini, *Della transazione secondo il diritto romano*, Torino 1900.

[5] W. Osuchowski, *O nieoznaczonych prawnie stosunkach kontraktowych w klasycznym prawie rzymskim*, Lwów 1933, p.178 and following.

[6] M. Żołnierczuk, *Rzymskie sądownictwo polubowne (okres przedklasyczny i klasyczny)*, Lublin 1978.

[7]M. Talamanca, *Istituzioni di diritto Romano*, Milano 1990, p.643.

[8] See: J. Freixas, *Una contribución al estudio de Ulpiano 50 ad edictum, D. 2.15.1 (De transactionibus).* In: Estudios J. Iglesias I, Madrid 1988, pp.223-234; F. Pringsheim, *Liberalitas*. In: StudiAlbertario, 1, Milano, 1953, pp.659-683.

D. 50.16.230 (Paul. *l. singul. ad senatusconsultumOrfitianum*): *Utsuntiudicioterminata, transactionecomposita, longioristemporissilentiofinita*.

In the second text by Paulus, there is one more case of applying the sanction. The parties could make the agreement according to the liability, which fell under the statute of limitation(*longioristemporissilentiofinita*).

There was impossible to make the agreement in cases, which were solved by final judicial sentence (*res iudicata*). The possibility to make the transaction was possible in case, if there was the chance to appeal, to accelerate the solution of litigation, what is stated in the following excerpt by Ulpian.

D. 2.15.7**: (**Ulp. 7 *disputationum*):pr. *Et post rem iudicatamtransactio valet, sivelappellatiointercesseritvelappellarepotueris.*

Making the transaction as an agreement between the litigation parties was impossible to do without any harm towards the third persons. Such the statement results of the excerpt by Antonius Pius and LucjuszWerrus.

D. 2.15.3 **(**Scaev. *L. 1 dig.*):pr. *ImperatoresAntoninus et Verusitarescripserunt: "Privatispactionibus non dubiumest non laediiusceterorum*.

The transaction was treated as private agreements, and they could not be made to worsen the situation of third persons, e.g. through obliging them to particular activities, or abandonment of activities.

Making agreements was not possibleat every case. There are numerous cases in Digests; disputes resulting from a will[9], alimentation duty[10], cases related to emancipated property *filiusfamilias*[11], among others. Making agreements on the basis of praetor's edict, about theft, robbery, or offence, meant the person was marked by dishonour (infamia)[12].

G. 4.182: *Sedfurtiaut vi bonorumraptorumautiniuriarum non solumdamnatinotanturignominia, sedetiampacti, ut in edictopraetoris scriptum est; et recte: plurimumenim interest, utrum ex delicto aliquis an ex contractudebitor sit.*

The solution given by Gaius shows that the other decisions were applied towards the obligations associated with the legally forbidden deed, and different, in case of the obligations resulting from the agreement. In the first case, the idea was not to allow the escape of the offenderfrom the penal responsibility by marking him at least by dishonor[13]. Such the legal status was also applied during post-classical period.

C. 2, 11, 18 *Idem A. Antiocho. Non damnatosquidemdumtaxatiniuriae, sedpactosquoqueperpetuuminfamatedictum. verumpactoseosdemum, qui ullosadversariisnummos pro mala conscientia ex transactionenumerassent, in haccausaplacuitintellegi. ceterum simplex eiusrei gratia integramexistimationemillibatamqueconservat. quod siiureiurandodecisacontentioest, nemodubitaverit, quinreligionemabsolutioiudicantissequatur. PP. XIIII k. Ian. Saeculare II et Donatoconss.* [a. 260]

In that rescript, the offender of the deed, treated as one of the status quo *iniurii*, agreed with the victim, and made the transaction with him/her. As a result, the

[9]D. 2.15.6 (Gai. 17 ad ed. proinvc.).

[10] However, in that case transaction could be made at praetor, so that was a kind of court settlement. D. 2.15.8 (Ulp. *l. 5 de omnibus tribunalis*).

[11]D. 2.15.10 (Ulp. l.1. repons.).

[12]G. 4.182.

[13] More about infamia in such the cases, see: B. Sitek, *Infamia w Ustawodawstwiecesarzyrzymskich*, Olsztyn 2003, p.134 and following.

victim resigned from *actioiniuriarum*, whereas the idea of the offender was to avoid infamy. The original status quo was the basis of issuing the rescript. The victim, despite the transaction, brought an action against the offender because of *iniurii*.The offender, however, did not agree with the plea, alleging that the transaction annulled the victim's claim. The emperor Gordian in his solution,referred to the decision, worked out already during the classical period,in the praetor edict, namely; infamy refers not only to the person convicted on the basis of *actioiniuriarum*, but also, to the one, who makes the transaction with the offender, taking money in return. However, if the victim forgave the offender of *iniurii*, the offender, in this case, did not have infamy[14].

The transaction was the legal action, which required good faith from the parties, interested in making it.

D. 2.15.16 **(**Hermog. *l. primo iurisepitomarum*):*Qui fidemlicitaetransactionisrupit, non exceptionetantumsummovebitur, sed et poenam, quam, si contra placitumfeceritratomanentepacto, stipulantirectepromiserat, praestarecogetur*.

The transaction in Roman law had quite strong proceedings protection, particularly during the post-classical period, when it became independent legal contract (*datioobtransactione)* , giving the basis of bringing an action *actiopraescriptisverbis*[15].

The emperor Arkadiusz[16] in the constitution from 11thOctober 395 decided to implement the infamy punishment for the lack of respect of the commitment resulted of *pactum* or *transactio*[17].

C.Th. 2,9,3 = C. 2,4,41 = Brev. 2,9,1: *IMPP. ARCAD(IUS) ET HON(ORIUS) AA. RUFINO P(RAEFECTO) P(RETORI)O. Si quis maior annis adversum pacta vel transactions nullo cogentis imperio, sed libero arbitrio et vol(un)tate confecta putaverit esse veniendum vel interpellando iudice(m) vel supplicando principibus vel non inplendo promissa ea, quae in(vo)cato dei omnipotentis nomine eo auctore solidaverit, non sol(um) inuratur infamia, verum etiam actione privates restituta poena, (quae) pactis probatur inser(t)a, earum rerum et proprietate careat et (emo)lumento, quod ex pacto vel transactione illa fuerit consecutus. (quae) omnia eorum mox conmodo deputabuntur, qui intemerata pact(i) iura servaverint. Eos etiam huius litis vel iactura dignos iubemus esse vel munere, qui nomina nostra placitis inserentes salutem p(rin)cipum confirmationem initarum esse iuraverint pactionum.DAT. V ID. OCT. CONST(ANTINO)P(OLI) OLYBERIO ET PROBINO CONSS.*

The emperor Arcadius itemised the deeds,which break the resolutions of the transaction, they are, among others; appeal one of the paries of the transaction to the judge or emperor, to annul it, and to adjudicate the dispute again. Breaking the

[14] The possibility to avoid the conviction for committing *iniurii*on the basis of forgiveness existed in reality during the classical period, what is mentioned by KlaudiuszSaturninus. Whereas, if the dispute would have been solved on the basis of oath, it should have been sworn at the judgeLib. sing. De poenispaganorum D. 48,19,16,3. Zob. C. Bertolini, *op. cit.*,p.199 and following; W. Osuchowski, *O nieoznaczonych prawnie stosunkach kontraktowych w klasycznym prawie rzymskim*, Lwów 1933, p.178 and following.

[15] C, 4,21,17; C. 2.4.40; C. 2.4.6.1. See: M. Marrone, *Istituzioni di diritto Romano*, Palermo 1989, pp.722-3.

[16] That Constitution was prepared by the Arkadiusz's office, what is indicated in the place of issuing the Constitution, Constantinople.

[17] In Theodosius Code the extract above is entitled *De pactis et transactionibus, and* in Justinian Code the title was *De transactionibus*. The text saved in Justinian Code, apart from small differences, rather editorial in their character, does not contain significant differences.

transaction was also the lack of meeting a liability by any of the parties, on the basis of the oath sworn of gods (*per deum*), or of the emperor (*per salutem principis*)[18].

The default of transaction terms gave the basis to bring an action *actiopraescriptisverbis.*The action had penal character, so the party, which gave the consideration, and did not receive the same consideration, had the right to demand the penalization , or the refund of everything, what the opposite party gained, as a result of unilateral consideration[19].

The punishment for breaking the terms of agreement was infamy, or financial punishment, if it was added in the agreement, and also loss of gained benefits from transaction (*commodum ex transactionepraeceptum*). The infamy punishment for breaking the terms of transaction appears as the additional punishment. Applying the infamy for people who break the terms of transaction, was the kind of mutual trust of parties of the transaction.

The transaction in Roman law did not become the independent legal institution also during the post-classical period , but it was the agreement, which had the independent legal protection by *actiopraescriptisverbis*. F. Logchamps de Bérier writes „… the tendency to *transactio* was proved by economy of behaving[20].” Talking about the economy, we should consider, not only the possibility to avoid the payment of costs of proceedings, but also, saving the time, necessary to carry out the proceedings, lasting sometimes for long years.

3. Settlement in the European law

The Union legislator is not going to create the uniformed system of civil law. There are only regulated several problematic areas, such as; journey contract, abusive clauses, consumer protection, or the ban of competitiveness. According to G. Alpa, in this way, the European legislator created the bases to the initiatives, aiming to build the uniformed European system of civil law, particularly the law of contract[21]. Such the activities were undertaken by numerous research groups, the most popular of them are: O. Lando group, Chr. von Bar and project UNIDROIT. Nowadays, the subject of discussion is the project of the European Civil Code, prepared by the group of Chr. Von Bar, hence, the presentation of settlement agreement will be the only proposition.

The creators of European Code of civil law, gathered in the Studio Group for the European Civil Code matters[22], created the European Civil Code, called Draft Common Frame of Reference (DCFR). According to F. Emmert, the assignment managed by Chr. Von Bar, is the greatest step for the development of the contract law, from the time of issuing Code Civil (1804) and BGB (1896) in Germany[23]. The Chr. Von Bar Studio Group accepted the basic rule of the European project of legal system;

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[18]C. Bertolini, *Della transazione secondo il diritto romano*, Torino 1900, p.339 and following.

[19]Abouttransactionthereisalsomentioned in:Żołnierczuk, *Rzymskie sądownictwo polubowne (okres przedklasyczny i klasyczny)*, Lublin 1978.

[20]F. Logchamps de Bérier: In: W. Dajczak, T. Giaro, F. Logchamps de Bérier (red.), *Praworzymskie. U podstawprawarzymskiego*, Warszawa 2009, p.146.

[21] See: G. Alpa, *I contratti*. In A. Tizzano (ed.) *Il dirittoprivatodell'UnioneEuropea*, vol. I, Torino 2006, p.721.

[22]See A. Wundarski, *Wspólny System Odniesienia – na drodze do Europejskiego Kodeksu Cywilnego*? In: P. Chmielnicki, E. Książek, K. Winiarski (red.), *Współczesne problemy w administracji publicznej. Wybranezagadnienia*, Częstochowa 2008, p.65 and following.

[23]F. Emert, The Draft Common Frame of Reference (DCFR) - The Most Interesting Development in Contract Law Since the Code Civil and the BGB. In: Indiana University Robert H. McKinney School of Law Research PaperNo. 2012-08.

the freedom of contracting. This freedom, however, should guarantee justice, which is the basic value of each legal system. Hence, the main prerequisite of each contract, is a high level of information with the content and meaning of contract. The full information allows us to accept the statement, that the contract is for the interest of both parties, and it is just, at least between them. The agreement should not generate any costs for the third persons.

In the project of European Civil Code, the regulations related to the settlement, are located in the third book entitled "Liabilities and corresponding laws", in the chapter entitled "Releaseor settlementatjoint liabilities". The curiosity is the fact, that in that work, there is not a definition of settlement. The originator decided only to introduce the notion of settlement, at defining the results of finishing the liabilities resulting from the contract. Such the solution is the consequence of the assumption of wide ranging freedom of contracting and shaping the existed legal relationship, accepted by Chr. von Barteam. The project does not contain legal solutions typical for particular types of liabilities. Whereas, the reference to thesettlement, has only its sense in case of joint liabilities, and in connection with release from debt. The release from debt and settlement are the institutions similar to each other within their consequences, however, they are different within the dogmatic construction of both the institutions.

In art. III.-1:108 concerning replacement, or resigning from the liability by means of agreement, there was decided, that each law, transaction, liability, or contract can be modified, or terminated, if the parties decide to make appropriate agreement. The final contract of existing liabilities does not have to be made in the specific way. It can be replaced by another contract concerning the same matter, which is defined as novation, in different legal systems.However, the settlement does not have any influence on the range of responsibility for the earlier damage, or for arbitrary clause. Therefore, the transaction cannot release the debtor from maintaining the damages, resulting from improper completion of the fundamental contract, e.g. penal interest, excepting if the transaction agreement includes also these liabilities[24].

The creators of the European Civil Codeproject, return to this solution in art.III.-3:509 item(2), in relation to the settlement and the consequences of closing the liability. According to this solution, closing the liability relationship by making the transaction, does not influence on additional decisions included in terminated contract.*(Termination does not, however, affect any provision of the contract for the settlement of disputes or other provision which is to operate even after termination*). Cancelling the contract does not close the transaction, or its essence, or its particular parts[25].

The following case of appearing the settlement of disputes, are the consequences of signing it by creditor and one of the debtors of joint liability. Art.III.-4.109(1) contains a common solution according to consequences of settlement of disputes and releasing from debt one of the debtors of joint liability. Releasing from the duty of benefits one of the joint debtors, releases the other debtor only according to a part of released debtor. However, he is liable in the rest part. As a result of the solution presented above, release of one of the debtors of joint liability causes the replacement

[24]Ch. von Bar and others (eds.), *Principles, Definitions and Model Rules of European Private Law Draft Common Frame of Reference (DCFR)*, http://ec.europa.eu/justice/contract/files/european-private-law_en.pdf, [read: 2013-09-08], p.728.
[25]Ch. von Bar and others (eds.), *op. cit.*, p.906.

of joint liability into the common liability. Similar solution is applied in case of court settlement. The result of art. III.-4.109(2)shows that release of the joint debtorfrom the duty of benefits through the settlement, has its legal consequences only for a moment of release. Therefore, the creditor, can vindicate indirect claims, resulting of the damages, which were not included in contract[26].

4. Settlement in Polish law

Polish legislator regulated the contract for the settlement of disputes in the civil code in two articles, 917 and 918. In art. 917, there is stated, that; *by the settlement the parties make mutual concessions within the existing legal relationships, to appeal from uncertainty according to the claim resulting of the relationship, or to assure their accomplishing, or to appeal from existing dispute, or the dispute to be.* Polish legislator joined the trend of contemporary European legal tradition, at the same time,overtaking the heritance of Roman law. The purpose of the settlement is termination of dispute, or avoiding it in the future. The condition is, however, making mutual concessions between the parties of the dispute. The legislator wants to avoid uncertainty of claims. The settlement can be signed in an arbitrary form, excepting that, the subject of a contract requires the particular form, e.g. transferring the property of real estate can be only done in a form of notarial act. The settlement, however, cannot be incompatible with the rules of social coexistence.

The concessions made by the parties of settlement, formulate the mutual character of the agreement. However, the equivalency of concessions has the character of subjective evaluation and feelings of the parties. This is also not necessary, for the parties in the agreement, to articulate explicitly the types and forms of concessions.The concessions have to refer to the civil-legal rights and duties[27]. In the judgement SN IC II CSK 98/08 there was stated that, *…the concessions are made by the parties within existing, mutual, legal relationships. Therefore, the settlement refers to the legal relationship linking the parties, and at the same time, within this relationship, there can be regulated the issues related to particular claims included in the content. There should be assumed, that the subject of settlement, become all the claims, resulting of given legal relationship – this one, which was included in the settlement[28]*.

Then, in the judgement HCCivil Chamber IV C.C. 393/05, the law court stated that, *according to art. 917 C.C.; the mutual concessions, of both the parties, are the condition to acknowledge the legal action as the settlement. The type and the range of mutual concessions, can be different, and they do not have to be of the same importance. The mutual concessions do not have to be equivalent as well. The concession of the party, in the interest of another party, is indicated not only in the content of legal relationship, but also, in the purpose of settlement, if it is to assure to make the claim, in the circumstances, in which it could be made[29]*.

The settlement can also lead to a novation, which means to the change of content of the legal relationship, according to the will of the parties. According to the judgement of HC Civil Chamber CKN 373/98*to qualify the settlement (art.917 C.C.) as the novative agreement at the same time (art.506 §1C.C.), it is necessary to exist the unambiguous adjustments, that; within mutual concessions, and within the frameworks*

[26]Ibidem, p.1005.

[27] R. Morek, In: K. Osajda, *Kodeks cywilny. Komentarz, t. II Zobowiązania*, Warszawa 2013. Komentarz do art. 917 k.c. („Legalis").

[28] „Legalis".

[29] „Legalis".

of existing legal relationships between the parties, a debtor committed himself, at the agreement of a creditor, to make another benefit, or even the same benefit, but from different legal basis.

In following art.918§1 a legislator refers to appealing from the legal consequences of the settlement, made under the influence of mistake. According to the Polish legislator it is possible when, *the mistake refers to status quo, which, according to the settlement content, both the parties treated as undoubtable, and, a dispute or uncertainty would not have arisen, if the parties had known the right situation, at the moment of making the agreement.* Consequently, the general regulations about the disadvantages of declaration of will, are applied at settlement.

Status quo should be understood as total legal acts, which decide about creating and existing the legal relationship, and its content and range, related to the agreement[30]. The reference to the mistake is possible only in case, if status quo is undoubtable for the parties of settlement. Therefore, it is impossible to make the settlement in case, if the status quo is disputable, or uncertain, even in evaluation of one of the parties[31].

In the judgement HC the Civil Chamber II CKN 44/98 is was stated that, the *Mistake, according to art.918§1C.C., allows to annul the legal consequences of settlement, if it is related to "status quo, which both the parties considered undoubted, according to the content of the settlement, and a dispute, or uncertainty, would not have been arisen, if both the parties had known about status quo at the moment of making the settlement." The content of the cited regulation indicates that, in case of settlement, referring to the mistake at making it, it can create the consequences mentioned in the regulation, only if both the parties were mistaken. Whereas, the mistake, according to the defendant, was the result of his/her own mistaken imagination about the "financial possibilities". However, overestimating the individual payment possibilities at the moment of making the settlement, is not the mistake according to art. 918 §1 C.C. and it cannot lead to apply this regulation*[32].

In art.918§2 the legislator stated that *it is impossible to appeal from the legal consequences of the settlement because of finding the evidence of the claims, related to the settlement, except that it was made in bad faith.*Appealing from the consequences of the agreement is predicted in art. 88 c.c. Appealing from the consequences includes the whole content of the settlement, not only referring to excerpts, unfavourable to one of the parties[33].

The consequence of settlement is breaking the course of termination the claims, within the settlement. Consequently, making the settlement, leads to the termination of legal relationship. According to art.471c.c., a creditor can require making the settlement by a debtor. Making the settlement during the judicial, or arbitrary proceedings, is a discontinuance of proceedings (art.355 and 1196 §1 c.c.)[34].

5. Conclusion

[30]L. Stecki, In: J. Winiarz (eds.), *Kodeks cywilny z komentarzem*, t. II, Warszawa 1989, p.826.

[31] Z. Radwański, J. Panowicz-Lipska, *Zobowiązania - część szczegółowa*, Warszawa 2010, p.384.

[32] „Legalis".

[33] „Legalis".

[34] R. Morek, In: K. Osajda, *Kodeks cywilny. Komentarz, t. II Zobowiązania*, Warszawa 2013. Komentarz do art. 917 c.c. („Legalis").

Agreement is one of the fastest way of solving the current disputes, or avoiding them in the future. Hence, this is not only the legal, but alsothe economic instrument, which minimizes the procedural, and out of procedural costs, e.g. time. Applying such the way of solving the civil-legal conflicts, undoubtedly accelerates the economic turnover and positively influences on the economic situation. Hence, the settlement agreement has been known from the ancient times.

The first documented sources, referring to existing such the legal institution, were mentioned in the Roman law. Initially the settlement did not have the character of the autonomic agreement, but it could be made by stipulation. Only during post-classical period the settlement gained the status of independent, legal agreement. Breaking the decisions of settlement by any of the parties, was strictly punishable.

In Polish legal system the settlement is regulated according to two articles 917 and 918 of the civil code. The content of the settlement is substantially constructed according to the Roman one. However, the legislator regulated the issue of significant components of the settlement agreement, and the way of cancelling the agreement, made under the influence of the mistake. The other issues related to the settlement, have not been regulated by the code, because of wide freedom of parties' activities, given them by the legal regulations. Undoubtedly, the settlement is treated as the significant instrument of quick solutions of conflicts and, at the same time, it has its influence on the rate of economic development.

In the project of European Civil Code, there are not any typical, agreement regulations, because, it only regulates the general part of liabilities. The settlement is mentioned only, when they say about the possibility of changes in the agreement content or its ending, exactly through making the settlement agreement by the parties. Additionally, the settlement is mentioned, in case of the consequences influencing on joint liabilities, when the creditor releases only one of the debtors, whereas the rest of them stays bound to liabilities.

The project, prepared by Chr. Von Bar, reveals the latest direction of settlement institution's development. It tends to quick termination of the dispute, or to avoid it in the future, to accelerate the economic activities.