

Public and Private Law Aspects of Breach of the Concession Contract in Slovenian Law

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Breach of the concession contract is partly governed by the provisions from the field of concession relations and partly by the rules of the law of obligations. However, the rules of the law of obligations apply only *mutatis mutandis* to the extent that this corresponds to the specific public law nature of the concession contract. A concession contract is not a typical contract of private law, but rather an administrative contract that is characterised by the fact that it is concluded between unequal entities for the protection of public interest, whereby this requires a departure from certain general rules of contract law. This paper critically discusses the current regulation of breaches of the concession contract in Slovenian law from the standpoint of administrative doctrine and jurisprudence and its peculiarities in public law, and offers some proposed solutions.

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1. Introduction

A concession contract is a typical form of administrative contract (Pirnat, 2000, pp. 151–152).¹ It is a contract with dual legal nature where civil and administrative elements intertwine (Brezovnik, 2008, p. 206). In such a relationship, the grantor not only acts as a contracting party, but also as the holder of public authority,² whereby this requires special legal regulation of some – otherwise typical concepts from the law of obligations – including breach of contract.

Slovenian law regulates administrative contracts only partially according to sector-specific regulations, in which we can find individual elements of administrative contracts as they are known in French law. However, this regime is also markedly flawed and discordant. This also applies to concession contracts which are scattered across a number of (general and specific) regulations. In the absence of special regulation, they are subject to the rules of the law of obligations (Obligations Code – *Obligacijski zakonik*, OC), which are not initially adapted to administrative contracts as they regulate relations between equal entities, while administrative contracts are characterised by the opposite – the public entity as the guardian of public interest, has a stronger position in the contractual relationship and thus special rights that do not have an equivalent in private law contracts (e.g. the right to amend the contract unilaterally and terminate the contract for reasons of public interest – *théorie du fait du prince*), whereby on the other hand they bind the counterparty to specific obligations (e.g. the duty to implement the concession despite the occurrence of unforeseeable circumstances – *théorie de l'imprévision*) (Štemberger, 2021, pp. 258–259; Štemberger & Millard, 2021, pp. 254–256).

Breach of the concession contract is thus partly governed by regulations in the field of concession relations and partly by the rules of the law of

¹ Regarding the legal nature of the concession contract, see also Grilc & Juhart (1991, pp. 17–18); Ahlin (2008, pp. 249–245).

² Judgment of the Supreme Court of the RS, III Ips 20/2019-7, 24. 9. 2019.

obligations (Đerda, 2006, p. 105; Ahlin, 2008, p. 249), which in practice leads to a number of ambiguities and dilemmas, especially regarding the relationship between civil and public law consequences of a breach of contract, which often overlap, and consequently to a difficult delimitation of jurisdiction between the general and administrative judiciary. Some of these dilemmas will be addressed in this paper.

The aim of this paper is to evaluate critically the current regulation of breach of the concession contract in Slovenian legal system with emphasis on those aspects of contract law which, in light of public interest, require the modification of civil law rules with specific rules of public law. In evaluating the current regulation, this paper draws in particular on the views of comparative law. The legal regime of administrative contracts is regulated very poorly in Slovenian law, whereby the key role in the development of this concept mainly lies in administrative doctrine and jurisprudence, which mostly rely on French legal solutions regarding the main characteristics of administrative contracts. Due to the similarities in the legal framework, the paper also analyses the consequences of breach of the concession contract in Croatian law. The final part of the paper presents the main findings on the discussed topic.

The paper seeks to answer the following research questions: When has the concession contract been breached? What is the difference between rescission of the contract (*razdor pogodbe*), revocation of the concession due to a breach (*odvzem koncesije*), and termination of the concession contract (*odpoved koncesijske pogodbe*) under EU law? What are the differences between the enforcement of sanctions for breach of contract by the grantor and by the concessionaire? When is liability for damages assessed on the basis of a contract and when on the basis of the provisions on State liability for the unlawful exercise of powers, and how do the assumptions of these liabilities differ? What legal protection is provided in the event of public law dissolution and civil law dissolution of the concession relationship?

The first part of the paper focuses mainly on the comparative method, both in terms of legal regulation and legal literature. Unlike in Slovenian law, where this area is regulated in particular by private law rules, in French and Croatian law special public law rules have been established under which this concept must be examined and which deviate in part from the general rules of contract law. Based on the findings of the comparative law study, the second part of the paper analyses the Slovenian legal order from the point of view of the current legal regime. The dogmatic method was used to determine the sanctions available to the contracting parties in

the event of a breach of contract, and the preconditions for their application. The study of case law was used in particular to explain the concept of breach of the concession contract and to distinguish between the different legal sanctions for breach of contract, as these are not regulated by law, while the axiological method was used to identify the legal problems of the current regime and to formulate possible solutions or proposals for the future. The overall discussion is also based on the logical method that allows for consistent and internally logical conclusions that are consistent with the rules of formal logic. Induction, deduction, analysis and synthesis are also used among the methods and research techniques.

The topic is of particular interest due to the changes in case law on the application of the rules of the law of obligations to administrative contracts, including concession contracts. While it was initially considered that, in the absence of a specific legal regime, the general rules of the law of obligations applied in full to administrative contracts, more recent case law has emphasised that these rules can only be applied *mutatis mutandis* and that this also applies to the rules on breach of contract and its consequences. The novelty of the presented research lies in the fact that no scientific papers published so far have dealt with the issues covered. The paper has therefore a cognitive value for both science and practice.

2. Breach of the Concession Contract from a Comparative Law Perspective

Although the concession contract is regulated in detail in EU law, Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (Directive 2014/23/EU) does not specifically govern breach of the concession contract. Some aspects of this concept are indirectly evident in the context of the modification and termination of the concession contract during its duration. Authors such as Arrowsmith (2018, pp. 48–49), Brown (2008), Hartlev and Liljenbol (2013) can be considered as leading authors who studied these two concepts (especially in terms of the question of when a new concession should be granted due to an amendment to the concession contract). The regulation of a breach of the concession contract is therefore left to the individual Member States. Among them, the most comprehensive theory had been developed in French law, which, in the case of a concession contract, created a legal regime specific to administrative contracts. In France,

therefore, it is practically impossible to find a textbook that does not deal with administrative contracts and, in their context, concession contracts and the consequences of their breach. Major authors include theoreticians such as Jêze, Chapus (Chapus, 2001), De Laubadère, Moderne, Delvolvé (De Laubadère, Moderne & Devolvé, 1984) and many others, while an exceedingly important role for the evolution of this concept is attributable to the French Council of State (*Conseil d'État* or CE). The arrangements of a number of other countries, including Spain, Portugal and Croatia, are also based on the principles established by French law. The French and Croatian regimes for breach of concession contracts will be presented below.

2.1. French Law

French law distinguishes between buy-out and revocation of a concession. While the buying-out of a concession is envisaged for reasons of public interest, i.e. when it is in the public interest that the provision of a certain service ceases (i.e. is discontinued) or that its concessional form is dissolved, revocation of the concession constitutes a sanction due to a breach by the concessionaire. This is a special arrangement of the right to terminate unilaterally an administrative contract for reasons of public interest and for breaches on the side of the counterparty, which differs from the general arrangement in that it does not belong to the grantor on the basis of the general principles of administrative contracts (developed in French case law),³ as is the case with administrative contracts, but must be provided for in the contract (Athanasiadou, 2017, p. 197). Likewise, the sanction of buy-out and revocation of the concession cannot be executed by the grantor independently by issuing an administrative act, rather, the concession contract can only be invalidated by a court decision (Waline, 2016, p. 501). The sanction of revocation of the concession may be exercised by the grantor only in the event of a serious breach by the concessionaire. Such a breach shall not be deemed to have taken place in case of a delay in the performance of works under the concession contract.⁴

The concessionaire is entitled to full compensation in the event of the buy-out of the concession, which also includes lost profits,⁵ so it is rarely

³ CE, 2. 2. 1983, Union des transports urbains et régionaux.

⁴ CE, 12. 3. 1999, SA Méribel 92.

⁵ CE, 2. 5. 1958, Distillerie de Magnac-Laval.

used in practice (Dourlens & De Moustier, 2014, pp. 49–50). However, compensation does not belong to the concessionaire in the event of revocation of the concession, as the reasons for the revocation are on his side. At most, damage due to the breach can be claimed by the grantor. Since buy-out and revocation of the concession are separate concepts, the determination of the amount of compensation due to unilateral termination in the public interest cannot refer to the breaches of the counterparty and in this way reduce the compensation.⁶ If the sanction of revocation of the concession proves disproportionate, the court (at the request of the counterparty) may order the grantor to pay compensation.⁷

French case law has long been based on the view that the sanction of unilateral termination of the contract belongs only to the public authority, not to the private counterparty, which is obliged to continue to fulfil the contract despite the breach (Bucher, 2011, p. 240).⁸ Accordingly, in the event of breaches by the public authority, the private counterparty has to file for invalidation of the contract with the public authority. If the public authority does not comply with such a request, the private counterparty can challenge the decision to reject its request by bringing an action before the competent court, which could pronounce the invalidation.⁹ Otherwise, i.e. if the private entity had immediately ceased fulfilling its contractual obligations, it would have thereby made itself vulnerable to sanctions for breach of contract, namely also to revocation of the concession.¹⁰

More recent case law has recognised the legality of contractual provisions which give the counterparty the right to terminate unilaterally certain administrative contracts,¹¹ if the public law entity does not fulfil its contractual obligations, on three conditions: this right must be provided for in the contract, the subject of the contract must not be the actual performance of the public service, and the contracting party must not terminate the contract if the public entity invokes the reason of general interest. In addition, the counterparty may not terminate the contract without first giving the public law entity the opportunity to oppose the in-

⁶ CE, 31. 7. 2009, Société Jonathan Loisirs.

⁷ CE, 10. 2. 2016, Société Signacité.

⁸ CE, 15. 1. 1986, Société de l'habitat moderne.

⁹ CE, 7. 1. 1976, Ville d'Amiens.

¹⁰ CE, 7. 10. 1998, OPHLM du Havre.

¹¹ CE, 8. 10. 2014, Société Grenke location.

validation of the contractual relationship on grounds of general interest. If a reason of general interest exists, the private counterparty must continue with its implementation of the contract. It may, however, use the court to challenge the existence of the public interest which had been invoked by the public entity and which prevents the termination of the contract. In addition, it may also claim compensation for damages that it had incurred due to breaches by the public entity (Athansiadou, 2017, p. 198). Since concession contracts are concluded in the public interest and are based on the principle of continuous provision of public services, this exception shall normally not apply to them. Due to non-fulfilment of contractual obligations, the grantor may also impose monetary sanctions or replace the contractor (concessionaire) (Brenet, 2011, pp. 219–245).

2.2. Croatian Law

In Croatian law, the consequences of breach of the concession contract are regulated by the Concessions Act (*Zakon o koncesijama*, CA), which is the general regulation for the field of concessions, and by sectoral laws. With regard to issues not regulated by these provisions, the provisions of the General Tax Act (*Opći porezni zakon*), the General Administrative Procedure Act (*Zakon o općem upravnom postupku*, CGAPA¹²), and the Act governing contractual relations apply to concession contracts. The reference to the CGAPA provisions means, in particular, the application of the administrative contract provisions (Art. 150–154 of the CGAPA), since a concession contract is defined as an administrative contract (Art. 5/3-5) of the CA).

In the event of a breach of an administrative contract, the CGAPA entitles the public entity to terminate the contract and to claim compensation for the damages suffered as a result of the breach (Art. 153/2 of the CGAPA). The counterparty can initiate an administrative dispute against the decision to terminate the contract (Art. 153/5 of the CGAPA).

On the other hand, in the event of non-performance of contractual obligations by the public entity, the counterparty cannot unilaterally terminate the contract, but may lodge a legal remedy of objection, which is decided on by the body competent to supervise the work of the public entity (Aviani & Đerđa, 2011, pp. 484–485). In this remedy, the contracting party

¹² The paper uses the abbreviation CGAPA (Croatian General Administrative Procedure Act) to distinguish it from the Slovenian General Administrative Procedure Act.

may also claim compensation for the damages suffered as a result of the non-performance of the obligations by the public entity. A party may also initiate an administrative dispute against the decision on the objection (Art. 154 of the CGAPA). A public entity, as a contracting party, thus has the opportunity to remedy the alleged irregularity before the case comes before the courts, which is in line with the principle of speed and economy of proceedings. If the public entity fails to remedy the infringement, the Administrative Court may order it to fulfil its contractual obligations by judgment (Art. 58/4 of the Administrative Dispute Act, *Zakon o upravnim sporovima*, ADA).

According to the CA (Art. 73), unilateral termination of the concession contract may occur in the following cases: if the concessionaire fails to pay the concession fee more than twice in a row or pays it irregularly; if the concessionaire fails to carry out works or to provide services in accordance with the quality standards set out in the concession contract, the special law and other regulations governing concessions; if the concessionaire fails to carry out the prescribed measures and actions necessary for the protection of the general or public good and for the protection of nature and cultural assets; if the concessionaire has provided inaccurate information in the tender; if the concessionaire fails to start the performance of the concession contract or a part thereof within the agreed time limit; if the concessionaire performs other works contrary to the concession contract or fails to perform the works required by the concession contract; if the concessionaire has transferred the concession contrary to the law and the concession contract; if the concessionaire fails to provide a new appropriate guarantee required by the grantor in accordance with the provisions of the law; if there has been a modification of the concession contract which would require a new award procedure; if at the time of the award of the concession there was a reason for which the concessionaire should be excluded; if the Court of Justice of the EU, in a procedure under Art. 258 of the Treaty on the Functioning of the European Union (TFEU), finds serious breaches of the TFEU or Treaty on European Union (TEU) which should not have led to the award of the concession to the contractor, in other cases in accordance with the provisions of the CGAPA and the concession contract.

Before unilaterally terminating the contract, the grantor must inform the concessionaire of his intention and set a reasonable period of time to remedy the grounds for termination. If the reasons are not remedied within the time limit, the grantor shall terminate the concession contract by an administrative act. The grantor has the right to compensation for damag-

es suffered as a result of the termination in accordance with the general provisions of the law of obligations. The amount of compensation is determined by the grantor through the decision by which the concession contract is terminated.

The CA gives the concessionaire the right to request the termination of the concession contract on the grounds set out in a specific law. In such a case, the grantor shall annul the decision granting the concession and terminate the concession contract (Art. 73/7–8). The regulation in the CA is thus more favourable for concessionaires than in the CGAPA, which only regulates the right to object in case of breach of the concession contract by the public law entity (Koprić & Nikšić, 2010, p. 299).

It follows from the above that unilateral termination of the concession contract is not only envisaged as a sanction for breach of obligations under the contract, but also for breach of other public law acts, thus blurring the line between civil law and public law termination of the concession contract.

3. Breach of the Concession Contract in Slovenian Law

3.1. Legal Framework for Concession Contracts

Concession contracts in Slovenian law are governed by a series of general¹³ and special laws, supplemented¹⁴ by the Public-Private Partnership Act (*Zakon o javno-zasebnem partnerstvu*, PPPA) as a systemic law for awarding concession based on public-private partnerships regardless of the value of the concession, and the Certain Concession Contracts Act (*Zakon o nekaterih koncesijskih pogodbah*, CCCA), which is the basic regulation for the awarding of construction work concession and concession for the performance of services falling within the scope of Directive

¹³ Services of General Economic Interest Act (*Zakon o gospodarskih javnih službah*, SGEIA), Institutes Act (*Zakon o zavodih*, IA).

¹⁴ E.g. Health Services Act (*Zakon o zdravstveni dejavnosti*, HSA), Pharmacy Practice Act (*Zakon o lekarniški dejavnosti*, PPA), Mining Act (*Zakon o rudarstvu*, MA), Water Act (*Zakon o vodah*, WA), Environmental Protection Act (*Zakon o varstvu okolja*, EPA), Veterinary Practice Act (*Zakon o veterinarstvu*, VPA), Social Welfare Act (*Zakon o socialnem varstvu*, SWA), Labour Market Regulation Act (*Zakon o urejanju trga dela*, LMRA).

2014/23/EU. In this respect, the CCCA is primarily used in relation to other regulations (Art. 10 of the CCCA). Notwithstanding the provisions of specific laws, the concession award procedure, which at the same time meets the criteria for concession contracts within the scope of Directive 2014/23/EU, should therefore apply the provisions of the CCCA and the provisions of specific laws only if they do not conflict with the CCCA (reverse *lex specialis* rule, Štemberger, 2022, pp. 51–52, Mužina et al., 2020, p. 62), while the PPPA applies subsidiarily in relation to specific laws, to the extent that it is not otherwise specified. Regarding issues that are not regulated by the aforementioned regulations, the rules of the law of obligations apply, “to the extent that the public law elements of the concession contract do not exclude them”.¹⁵ This means that the combined application of different rules needs to be used, whereby this often leads to a lack of transparency of legal rules, to ambiguities due to different regulation of the same issues and difficulties in applying them, as it is often unclear how these rules relate to each other (Brezovnik, 2008, p. 198). This also applies to breach of the concession contract.

3.2. Theoretical Premises of Breach of (Concession) Contract

Breach of the concession contract in Slovenian law has not yet been the subject of a wide-ranging examination. Mužina (2004, pp. 726–732, 739–746), Ahlin (2008, p. 262), Ferik (2014) and Kranjc (2001, pp. 691–694) were partly involved in solving this issue, but only in the context of dissolution of the concession relationship, not in more detail and comprehensively. The view of (administrative) theorists has so far been more focused on other issues related to concession relations, such as the legal nature of the concession contract (Mužina, 2004; Pirnat, 2000, pp. 154–156), the procedure for concluding the concession contract (Zuljan, 2019, pp. 61–72; Mužina, 2019, pp. 117–122), amending the concession contract during its validity (Mužina, 2022, pp. 685–714), termination of a concession contract that had been concluded for an indefinite period (Pohar, 2016, p. 26), arbitrability of disputes arising from concession relations (Galič, 2011, pp. 11–13), etc.

¹⁵ Judgments of the Supreme Court of the RS, II Ips 50/2019, 19. 6. 2020 and III Ips 80/2018, 12. 2. 2019.

On the other hand, a similar concept in the field of private law is considered as one of the main concepts of contract law which, in recent theory, has been examined in detail mainly by Možina (2006; 2016, pp. 260–289; 2019, pp. 179–206; 2020, pp. 134–167) and before that by Lapajne (1931), Štempihar (1952) and Cigoj (1976).

Civil law theory considers any conduct of a party that in any way deviates from what has been agreed with the contract as breach of contract. The law of obligations distinguishes between several types of breaches: non-fulfilment (delay), improper fulfilment, subsequent impossibility of fulfilment of obligations, and breach of side contractual obligations (Možina, 2020, pp. 137–138). General contract law associates the breach of contract with several (different) legal consequences: despite the breach, the party not at fault may insist on the fulfilment of the contract or it may withdraw from the contract (more appropriately: rescind the contract) with a simple statement, if the contract has not already been rescinded under law, but in any case holds the right to compensation (Art. 103 and 239 of the OC).

Breach of the concession contract takes place in the event of failure to perform, improper performance as well as untimely performance of contractual obligations that may occur on the side of the grantor or the concessionaire, as well as when conduct takes place that is contrary to the prescribed rules or what is customary for such contracts or the nature of legal relationships. However, acts or actions of the grantor in the public interest, which are based on a law or a legal regulation and which relate directly to the counterparty and are proportionate in relation to the interference with the rights of the counterparty (e.g. revocation of the concession – see below), shall not be considered as breach of contract. In such cases, the private party is therefore not entitled to compensation, but to financial balance, which constitutes compensation for interference with the legal position of the individual (Pirnat, 2000, p. 147). In this respect, it should be emphasised that the contracting party, which is a public law body (the grantor), must pursue public interest, which generally outweighs other contractual interests, in all its decisions relating to the concession relationship and in the exercise of its rights under the contractual relationship. This also applies to the enforcement of sanctions for breach of contract.¹⁶

¹⁶ See the Judgment of the Supreme Court of the RS, II Ips 50/2019. 19. 6. 2020.

4. Legal Consequences of Breach of the Concession Contract in Slovenian Law

4.1. Distinguishing Between Dissolution of the Concession Contract and Dissolution of the Concession Relationship

As a rule, Slovenian legislation in the field of concessions deals separately with reasons for dissolution of the concession contract and reasons for dissolution of the concession relationship, whereby often a certain (or the same) circumstance in some cases represents a reason for both dissolution of the contract and dissolution of the concession relationship. In this respect, the question arises as to when and, if at all, the distinction between dissolution of the concession relationship and dissolution of the concession contract is to be considered and is reasonable.

The answer to this question must be based on the current regulation for the concession award procedure. In accordance with the provisions of sector-specific regulations, the concession can be obtained either at the moment of finality of the concession decision (decision on the selection of the concessionaire) or no sooner than with the conclusion of the concession contract. In the first case, the concession contract should be understood as a legal act executing the decision on the selection/designation of the concessionaire, whereby the grantor and the concessionaire regulate in more detail the mutual rights and obligations already acquired by the final administrative decision, while in the second case, the concession relationship is established no sooner than with the conclusion of the concession contract.

The distinction between dissolution of the concession contract and dissolution of the concession relationship is therefore particularly important when the concession has been obtained at a time before the conclusion of the contract (with the finality of the selection decision). In such cases, the concession or concession relationship does not automatically dissolve with the dissolution of the concession contract, but continues its existence as long as a decision on the selection/designation of the concessionaire exists.¹⁷ It is only with the finality of the decision on revocation of the

¹⁷ Similarly, the Decision of the Supreme Court of the RS, III Ips 43/2016, 25. 7. 2017, the Judgment of the Supreme Court of the RS, III Ips 64/2014, 28. 10. 2015 and the Judgment of the Administrative Court of the RS, III U 90/2009, 19. 1. 2010. Differently on this see Mužina (2004, p. 406), who believes that the concession contract must also be dissolved with each dissolution, and *vice versa*.

concession that the concession relationship and the concession contract dissolve.¹⁸ *A contrario*, in the case of the acquisition of a concession at the time of the conclusion of the concession contract, any dissolution of this contract should also be deemed as leading to the dissolution of the concession relationship, whereby the reasons for the dissolution of the concession relationship are usually more broadly determined. With the termination of the contract and with the consequential finding that the concession had been dissolved, the concession award decision also loses legal effect.¹⁹

4.2. Rescission of the Concession Contract Due to a Breach

In the case of concession contracts, despite certain specificities, the rights and obligations are determined contractually and not unilaterally by an administrative decision. It is for this reason that the provisions of private contract law concerning the forms of termination of the contractual relationship can also be applied *mutatis mutandis* to them. Rescission of the contract is a civil sanction available to the party not at fault, as it would be unfair to require it to persevere indefinitely with a contract whose (correct or complete) fulfilment is uncertain. However, due to the tendency to maintain contracts in force (*pacta sunt servanda*), the legislator linked this right to the fulfilment of certain assumptions, e.g. the expiration of an appropriate additional deadline for the fulfilment of obligations, notification duty, deadline for the enforcement of claims for breach of contract, etc. (Možina, 2011, pp. 60–61). These assumptions vary depending on the type of breach of contract.

Rescission as a form of civil law termination of the concession relationship is often specifically regulated by sector-specific regulations that determine the reasons (breaches) for which the contract can be rescinded by a unilateral declaration of will. These grounds are often broader than in the field of the law of obligations and also include grounds which are not necessarily contractual in nature, such as breach of obligations imposed by concession acts or conduct contrary to the law.²⁰ In this context, it is necessary to highlight the inconsistent terminology used by sector-spe-

¹⁸ Art. 58/1 of the PPA.

¹⁹ Judgment of the Administrative Court of the RS, III U 90/2009, 19. 1. 2010.

²⁰ Art. 145 of the WA.

cific rules for individual methods of termination of a civil law contractual relationship. This is illustrated by the arrangement in the MA. In Art. 58, entitled “rescission of the concession contract” (which indicates that it is a sanction for breach of contract), the first paragraph states that the concession contract is “rescinded” by way of “withdrawal” from the concession contract, and then in the continuation gives the competent ministry the right to “withdraw” from the concession contract on the basis of legally stated reasons, which include not only a breach of the contract but also other reasons. The fourth paragraph of the same article refers to the concessionaire’s right to “terminate” the concession contract, while the fifth paragraph specifies the concessionaire’s right to propose to the competent ministry the “withdrawal” from the concession contract. Thus, the true meaning of the provision may only be achieved through interpretation, which undermines legal certainty and the resulting requirement for clarity and certainty of the rules.

On the other hand, public law rules do not – other than exceptionally – regulate the manner of rescission of the concession contract. Since this is a civil law form of termination of the contractual relationship, it is possible to adopt a position to implement it by means of a non-public authority act.²¹ Consequently, such an act cannot be challenged by means of legal remedies under the General Administrative Procedure Act (*Zakon o splošnem upravnem postopku*, GAPA) and the Administrative Dispute Act (*Zakon o upravnem sporu*, ADA-1), rather the unlawfulness related to the rescission of the contract can be asserted before a court of general jurisdiction. Laws in the field of concession relations also do not bind the sanction of rescission to the prior notification of a breach of contract and the provision of an appropriate additional deadline for its elimination. This is also an important difference, not only in relation to private law contracts, but also in relation to the sanction of revocation of the concession due to a breach, where sector-specific rules often provide for such prior notification duty. Nevertheless, the theory argues that such a requirement should also apply to the rescission of a concession contract, which is in line with the principle of *favor negotii* (Mužina, 2004, p. 744). The right of revocation of the concession as a result of a breach is in principle reserved under French and Croatian law only for the grantor and not also for the counterparty (the concessionaire). Similar to Slovenian law, some regulations in the field of concession relations restrict the

²¹ Art. 58/3 of the MA.

concessionaire's right to dissolve the contract, which is a fundamental difference to the regulation in the OC. Thus, e.g. the SAA and the LMRA stipulate that the concessionaire may only terminate the contract due to breaches by the grantor, if the grantor fails to fulfil its obligations under the concession contract in such a way as to prevent the concessionaire from executing the concession contract, but not in other cases.²² There is therefore a general prohibition of the dissolution of the contract by the concessionaire, which is prescribed in order to safeguard the continuity of the performance of the public service. In other cases, unless otherwise provided by the sector-specific regulation or the contract, the right to dissolve the concession contract shall be vested in the party not at fault, i.e. also in the concessionaire. This follows from the general rules of obligation law (Art. 103 of the OC).

As a rule, the dissolution of the contract shall have an *ex nunc* effect, as concession contracts are usually lasting legal²³ relationships, which are characterised by the fulfilment of obligations or the provision of services (possibly repetitive) over a long period of time (Možina, 2020, p. 153; Možina, 2011, p. 62).²⁴ This means that already completed fulfilments remain in force, but no new obligations can arise on the basis of such a contract (Možina, 2011, p. 62).

4.3. Revocation of the Concession Due to a Breach

Revocation of the concession by way of an administrative decision of the grantor is a typical public law method of termination of the concession contract before the expiry of the period for which it had been concluded. It is therefore a unilateral measure of the competent public authority (*ex iure imperii*), which is permissible only if it has a legitimate basis (in law or in another regulation) and is implemented by an administrative decision. Administrative theory highlights two forms of revocation of the concession, which correspond in substance to the buy-out and revocation of the concession under French law: "revocation due to a breach" and "revocation of a concession in the public interest", which is essentially a modality of the right to terminate unilaterally the contract in the public interest. The

²² See Art. 47j/2 of the SAA and Art. 98/2 of the LMRA

²³ Judgment of the Administrative Court of the RS, III U 69/2019-15, 11. 11. 2021.

²⁴ See the Decision of the Constitutional Court of the RS, U-I-193/19-14, 6. 5. 2021, point 9 of the statement of grounds.

main difference between them is that revocation of the concession due to a breach is the result of the conduct of the concessionaire, and revocation in the public interest is the result of reasons that are not on his side, but rather due to the reason that the implementation of the concession is no longer in the public interest (Brezovnik, 2008, pp. 210–211). Therefore, only with this form of revocation the concessionaire has the right to compensation in accordance with Art. 44(3) of the SGEIA, which *de facto* means the right to financial balance (Pirnat, 2003, pp. 1615–1616).

The breaches justifying revocation of the concession vary according to the area of regulation and are often not listed exhaustively but can also be regulated by contract. On the basis of the SGEIA, which is a systemic law governing concessions for services of general economic interest, the concession may be revoked for culpable reasons only if the concessionaire has not started the provision of concession services of general economic interest within the specified time limit, and not due to the poor provision of the public service or its non-performance after the concessionaire has already started implementing it.²⁵ In such cases it is therefore necessary to apply sanctions for breach of contract under the general rules of the law of obligations (Ahlin, 2008, p. 262). On the other hand, the IA as a systemic law in the field of non-economic public services, binds the revocation of the concession precisely to the reason that the concessionaire has not performed the public service in accordance with the regulations, the concession act, and the concession contract.²⁶ Among the reasons justifying revocation of the concession due to a breach, there is often the failure to submit to the supervision of the implementation of the concession,²⁷ if the concessionaire fails to remedy the deficiencies within the deadline set by the decision of the competent inspector ordering the elimination of the identified deficiencies,²⁸ or failure to comply with the measures imposed in relation to the supervision,²⁹ non-payment³⁰ of the concession fee or other public charges, as well as failure to report the prescribed data or the reporting of incorrect data.³¹

²⁵ See Art. 44/1 of the ZGJS.

²⁶ Art. 27/3 of the IA.

²⁷ Art. 59/1/10 of the MA.

²⁸ See Art. 146/1/3 of the WA.

²⁹ See Art. 44j/1/5 of the HSA and Art. 56/1/4 of the PPA.

³⁰ See Art. 59/1/3 of the MA and Art. 146/1/1 of the WA.

³¹ See Art. 59/1/5 of the MA.

Since it is necessary to strive for the preservation of the concession relationship (*favor negotii*), the grantor must, in accordance with the views of the theorists, notify the concessionaire of the breaches and set a reasonable time limit for their elimination. Only when this has not happened can the concession be revoked by the grantor *ex officio* by way of an administrative decision.³² This is also confirmed by the regulation of concessions in the field of pharmaceutical services (Art. 57 of the PPA), health services (Art. 44j/2 of the HSA), water concessions (Art. 147 of the WA), and public service concessions in the field of labour market regulation (Art. 100/2-3) of the LMRA). Consequently, the implementation of the revocation measure also takes longer. Part of the theory, therefore, takes into account the above-mentioned shortcomings and holds that the obligation to give prior notice does not make sense in cases of breaches which require immediate revocation if, e.g., the concessionaire does not comply with the decisions issued in the framework of the supervision. In such cases notification would be pointless (Mužina, 2004, pp. 743–744).

Revocation is a form of public authority intervention and must therefore be limited to the barest possible minimum, whereby this also follows from the principle of proportionality.³³ This is followed by the VPA, which also allows for temporary revocation for a period of one month to one year.³⁴

4.4. Termination of the Concession Contract under EU Law

Art. 44 of Directive 2014/23/EU provides that Member States shall ensure that contracting authorities and contracting entities have the possibility, under the conditions laid down in the applicable national law, to terminate a concession contract during its term, where one or more of the following conditions is fulfilled: a modification of the concession has taken place, which would have required a new concession award procedure; the concessionaire was, at the time of concession award, in one of the situations due to which he should have been excluded from the process of granting concessions; the Court of Justice of the European Union finds, in a procedure pursuant to Art. 258 TFEU, that a Member State has failed to fulfil its obligations under the Treaties by the fact that

³² Ex. Art. 57 of the PPA, Art. 44j/2 of the HSA, Art. 100/2 and 100/3) of the LMRA and Art. 147 of the WA.

³³ Ex. Art. 14 of the PPPA

³⁴ See Art. 68 of the VPA

a contracting authority or contracting entity belonging to that Member State has awarded the concession in question without complying with its obligations under the Treaties and this Directive.

This provision has been implemented in the Slovenian legal order with Art. 61 of the CCCA, which provides an additional reason for the termination of the concession contract, i.e. if the concessionaire does not respect the decision of the grantor referred to in paragraphs 6 and 7 of Art. 59 of the CCCA, which refer to the exclusion reasons for the concessionaire's sub-contractors. The theory points out that the termination of the concession contract under the provisions of the CCCA is not a concept of the law of obligations, but rather a form of public law dissolution of the concession contract. The implementation of the termination does not depend on the will of the grantor, as is the case with civil law forms of dissolution of the contract, but rather it is its obligation (Mužina et al., 2020, p. 285).

Given the nature of the breaches that give rise to the termination of the concession contract under the CCCA, the grantor is not obliged to call on the concessionaire to remedy the breaches, since most of the breaches are such that they cannot be remedied. The exception applies to the reason for the existence of an obligatory exclusion reason, as the concessionaire can enforce remedial mechanisms (Art. 45/8 of the CCCA) to demonstrate its competence to participate in the concession award procedure, despite the existence of an exclusion reason.

The reasons for termination of the contract under the CCCA are reminiscent of the reasons for revocation of the concession as a result of a breach, as in both cases it is the result of a breach of public legal acts. However, it is not clear from the legal provisions which act is used to terminate the concession contract, as it does not regulate this issue. Since, in accordance with the CCCA, the acts issued in the process of concluding a concession contract are of a legal business nature (Štemberger, 2022, pp. 53–54), acts issued in the process of implementing the concession contract can similarly be considered as such.

4.5. Damage Liability

Damage liability for breaching the concession contract is assessed in accordance with the provisions of the OC on contractual liability for damages, in accordance with which the debtor's liability for a breach and thus for damages is presumed, whereby the debtor may not be liable if he proves that the fulfilment was prevented by subsequent and unforeseeable cir-

cumstances that he could not prevent, eliminate or avoid (Art. 240 of the OC). The injured party shall be entitled to compensation for any damage suffered as a result of breach of contract (principle of full compensation), which may not exceed the damage that the debtor could reasonably have foreseen (principle of foreseeability of damage) upon conclusion (more appropriately: breach) of the contract in light of the facts that had been or should have been known to him at the time, unless the damage had been caused intentionally or through gross negligence (Možina, 2016, pp. 261–267).

If the damage is caused by the public authority acts of the grantor (e.g. due to the unlawful revocation of the concession), it must be deemed that the damage caused to the other party was the result of such public authority act. Although such conduct may also constitute a breach of the contract, damage liability must be assessed in accordance with the provisions of Art. 26 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*, CRS), as the breach arises from the unlawful performance of public authority functions by the grantor. This position is also affirmed by case law.³⁵ According to case law, unlawful conduct by the State in the adoption of an administrative act is present in cases of unreasonable deviation from the clear provisions of substantive law and established (judicial) practice; failure to apply a completely clear provision of law or deliberate interpretation of a regulation contrary to established judicial (administrative) practice due to bias; gross breaches of the rules of procedure; errors that are completely outside of any procedure provided for by law; and in the case of other similar qualified breaches.³⁶ This is the so-called qualified unlawfulness of an administrative act.

In this regard, it is interesting to note the position of the Ljubljana Higher Court, which, according to the provisions of Art. 26 of the CRS, also dealt with a case where the grantor first unlawfully terminated the concession contract (and thus breached the contract), and then revoked the concession by an administrative decision due to the termination of the contract.³⁷ According to the above position, the damage could be con-

³⁵ See the Judgment of the Higher Court in Ljubljana, I Cp 1884/2015, 30. 9. 2015 and the Judgment of the Supreme Court of the RS, II Ips 434/2010, 20. 3. 2014. Differently on this in the Judgment of the Supreme Court of the RS, III Ips 18/2006, 3. 10. 2006.

³⁶ Namely, e.g. Judgments of the Supreme Court of the RS, III Ips 5/2014, 25. 3. 2014; II Ips 448/2010, 30. 1. 2014; III Ips 92/2011, 10. 12. 2013; II Ips 170/2012, 19. 12. 2013; II Ips 98/2010, 20. 3. 2013.

³⁷ See the Judgment of the Higher Court in Ljubljana, I Cp 2025/2018, 6. 11. 2019.

sidered as a result of the unlawful termination of the contract, as this led to the subsequent revocation of the concession and therefore sanctions should be enforced in the civil law sphere (contractual liability for damages). However, in the present case, the right to the concession was already granted with the finality of the concession decision, which means that the concession relationship still existed despite the unlawful termination of the concession contract (damage event).³⁸ Only with the revocation of the concession did the concessionaire actually suffer damage due to the termination of the pharmacy activity, as this was the moment when the concession relationship was dissolved.³⁹ The Court thus found that “the conduct of the defendant (the grantor), by first terminating the concession contract without culpable reasons on the part of the plaintiff and by committing gross procedural violations, then defining it as a breach of contract and then revoking the concession, was outside the allowed and possible interpretation and assessment of legal provisions, which corresponds to the unlawfulness referred to in Art. 26 of the CRS.”⁴⁰

A different conclusion may be made in the event of dissolution of the concession relationship due to the dissolution of the contract itself. If such dissolution (e.g. rescission) were to be unlawful, the injured party would have to claim damages on a contractual basis (for breach of contract),⁴¹ despite the fact that it subsequently (e.g. without legal basis) revoked the concession. Any (subsequent) unlawful conduct of the grantor when the concession is revoked is not in such case causally related to the damage that had been caused.⁴²

The State’s liability for unlawful exercise of public authority power is secondary to the procedures that are designed to ensure the constitutionality and legality of the services of the holders of public authority, and therefore represents a successful objection to the abandonment of legal protection, provided that the affected party can use it to enforce the elimination of the alleged wrongdoings and thus prevent damage from being incurred.⁴³ This

³⁸ For more on this see section 4.2.

³⁹ See the Decision of the Supreme Court of the RS, I Up 532/2009, 7. 11. 2010.

⁴⁰ Judgment of the Higher Court in Ljubljana, I Cp 2025/2018, 6. 11. 2019, point 17 of the statement of grounds.

⁴¹ Decision of the Higher Court in Koper, II Cpg 134/2018, 30. 8. 2018.

⁴² Judgment of the Higher Court in Ljubljana, I Cp 2025/2018, 6. 11. 2019, points 13 and 18 of the statement of grounds.

⁴³ See Judgments of the Supreme Court of the RS, II Ips 879/2008, 29. 3. 2012; II Ips 1014/2007, 13. 1. 2011; III Ips 105/2007, 24. 3. 2009.

means that the affected entity must first assert the claimed unlawfulness in the procedure envisaged for this purpose, i.e. before the Constitutional Court, when dealing with an unlawful or unconstitutional by-law (e.g. a concession act which, due to the effect of the provision of Art. 39 of the SGEIA, leads to a change in the concession contract), or in the administrative procedure and/or as an administrative dispute, when the damage occurred with the issuing of an (unlawful) administrative act (e.g. if the grantor issued a decision on the revocation of the concession contrary to legal provisions). Only if the consequences cannot be remedied in this way can it claim damages in an administrative dispute under the so-called adhesion procedure or before a court of general jurisdiction (Kerševan, 2015, p. 168). Where there is a violation of public law by the concessionaire (which does not constitute breach of contract at the same time), the grantor may claim damages if the liability for damages arising from the breach by the concessionaire is expressly provided for in the sector-specific regulation or contract. Such a basis is found in Art. 58 of the PPA, which stipulates that the concessionaire whose concession had been revoked for reasons on its side (culpable revocation) shall compensate the grantor for all damages resulting from the breach that led to the revocation of the concession. Without a specific legal basis, the grantor is not entitled to compensation despite the breach.

5. Conclusion

The concept of breach has a slightly different meaning in concession contracts than in private law contracts. Since public interest is at the forefront of these contracts, it is not possible to take the exact same approach as with private contractual relationships, where it is necessary to protect the creditor's interest to terminate cooperation with an unreliable debtor and to obtain the desired goods or services elsewhere. In the case of administrative contracts, however, the (severity) of the breach must also be evaluated separately from the public interest point of view that the contract pursues, whereby it may turn out that rescission of the contract, despite the proven breach, is a disproportionate measure that is not in accordance with the purpose of the contract.

Unlike in France and Croatia, the Slovenian legal regime restricts the rescission right of the concessionaire only to certain cases (regulated in individual sector-specific regulations), and does not offer it generally for all concession contracts concluded in the public interest. This may jeop-

ardise the principle of continuity of the performance of public service (Brezovnik, 2008, p. 102), as rescission of the concession contract leads to the fact that a service that had been performed in the public interest is no longer being carried out *vis-à-vis* the users or recipients of the public service or goods. However, it is not appropriate to restrict the rights of the concessionaire completely in the event of breaches by the grantor since the legal regime of administrative (concession) contracts is essentially aimed at protecting the public interest rather than at facilitating the position of the administration (grantor) when acting as a contracting party. Therefore, the co-contractor (concessionaire) should have certain mechanisms at its disposal to safeguard its position in the event of breaches by the grantor, such as the right to a remedy against the acts of the grantor.

Breaches by the concessionaire are sanctioned in the current regulation in the fields of public and private law. Due to the concessionaire's breaches, the grantor may rescind the contract, revoke the concession, and in some cases terminate it in accordance with the provisions of EU law. The enforcement of these sanctions is linked to different legal assumptions and is carried out by different acts (by an administrative act in the event of revocation and by a unilateral declaration of will in the event of rescission and termination of the contract under EU law). The type of sanction also determines the judicial protection, which is divided between courts of general jurisdiction and administrative courts. In case of (unlawful) revocation of the concession, the concessionaire can exercise his rights in administrative proceedings and/or before an administrative court, while disputes related to the civil law dissolution of contracts are resolved before ordinary courts.

The essential distinctive feature separating revocation of a concession as a result of a breach and rescission of a concession⁴⁴ contract lies in the fact that in the case of revocation of a concession, not only has a breach of the concession contract occurred, but also a breach of public legal acts⁴⁵ governing the concession (e.g. a concession act, decisions on the unilateral amendment of the contract, decisions issued by the grantor in the process of supervision). These breaches may also constitute a material breach of the contract, but this is irrelevant for revocation. The sanction therefore does not acquire a contractual character but retains the character of public law. Rescission of the contract is, *a contrario*, a sanction only for breach of the contract and not for breach of other legal acts. Such breaches are

⁴⁴ Judgment of the Administrative Court of the RS, III U 90/2009, 19. 1. 2010.

⁴⁵ Art. 44j/1 of the HSA, Art. 59 of the MA, Art. 146 of the WA.

often also defined in the contract itself. However, such a delimitation does not necessarily stem from the legislation, since often a certain (the same) reason in some cases constitutes a circumstance justifying rescission of the contract, and in others revocation of the concession.

As the rules often do not establish a clear boundary between rescission of the concession contract, revocation of the concession, and termination of the concession contract, this leads to confusion and a difficult delimitation of jurisdiction. This, in turn, leads to the referral of cases between courts and, consequently, to the extension of proceedings, which is particularly typical of issues that are partly governed by public law and partly by private law rules. The boundary between rescission of the contract and revocation of the concession should therefore be set more precisely, in such a way that a breach of the provisions of the contract constitutes reason for its rescission, whereas in the case of a breach of public legal acts (and not the contract as such) the breach constitutes grounds for revocation of the concession. Revocation of the concession should therefore only sanction those breaches which cannot be sanctioned in the contractual context, since the duplication of sanctions is completely unnecessary. Alternatively, the law may determine a uniform way of terminating the concession, namely through an administrative act, regardless of whether there is a breach of contract or other public law acts. Such a regulation is known in Croatia.

Termination of a concession contract under EU law differs from other forms of termination of the concession relationship in that it only applies to concession contracts falling within the scope of Directive 2014/23/EU (and of the *CCCA*), and is possible under the reasons set out in the *CCCA*. The grantor also does not only have the right to terminate the concession contract but must do so if it finds that one of the legal reasons is given, which is a fundamental difference to rescission of the contract. However, it differs from revocation of the concession due to a breach in that the termination occurs on the basis of a unilateral declaration of the will of the grantor and not on the basis of issuance of a public authority act (administrative decision). Moreover, the reasons for termination of the concession contract are not listed exhaustively but can be extended by the grantor to other cases under certain conditions.⁴⁶

The distinction between termination of the concession contract and termination of the concession relationship is important from the point of

⁴⁶ See the Decision of the National Review Commission for Reviewing Public Procurement Award Procedure, 018-139/2018-6, 12. 9. 2018.

view of the legal basis of liability for damages for unlawful acts of the concession-granting authority interfering with the contractual relationship. If the concession relationship is terminated by rescission of the contract, liability for damages must be asserted on a contractual basis. Otherwise, i.e. if the concession relationship is terminated only by interference with the validity of the concession decision (the selection decision), the liability for damages is to be assessed according to the rules on State liability for damages for unlawful exercise of power. However, the liability assumptions under Art. 26 of the CRS are more stringent than in the case of contractual liability, as the injured party (concessionaire) must demonstrate qualified unlawfulness, which cannot be equated with every breach of the law (Možina, 2014, p. 27), but has to prove substantially more, which puts the concessionaire in a weaker legal position. Qualified unlawfulness of an administrative act⁴⁷ must be regarded as having occurred when the holder of public authority has exceeded his legal framework to such an extent that this cannot be justified or substantiated on the basis of the characteristics of the administrative or legal system itself. The element of unlawfulness will thus only be demonstrated in cases of serious breaches which clearly deviate from the standard of professional conduct.⁴⁸ Such a distinction, which depends solely on the legal basis of the liability for damages, cannot be reasonably justified, since in both cases the grantor is acting in its capacity as the public authority.

The grantor may claim damages from the concessionaire for breaches that do not have the nature of a breach of contract only if this is explicitly provided for in the legal provisions or in the concession contract. (Reasonable) application of the provisions on contractual damage liability is not possible in these cases, as the basis of such liability is not given (breach of contract). The new regulatory regime should therefore provide a specific legal basis for the award of such damages.

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⁴⁷ See Judgments of the Higher Court in Ljubljana, Cpg 82/2014, 21. 1. 2015 and I Cpg 1025/2016, 7. 3. 2018.

⁴⁸ Decision of the Higher Labour and Social Court, Psp 289/2017, 12. 10. 2017.

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PUBLIC AND PRIVATE LAW ASPECTS OF BREACH OF THE CONCESSION CONTRACT IN SLOVENIAN LAW

Summary

Breach of the concession contract is governed by the provisions from the field of concession relations and by the rules of the law of obligations. However, the rules of the law of obligations apply only mutatis mutandis. A concession contract is an administrative contract that is characterised by the fact that the parties must always pursue a public interest, which generally prevails over other contractual interests. Thus, it may happen that continued fulfilment of the contract is still in the public interest despite the breach. Slovenian law is often not adapted to the special nature of the concession contract. Regulations in the field of concession relations restrict the rescission right of the concessionaire only to certain cases and do not offer it generally for all concession contracts, which may jeopardise the principle of continuity of the performance of the public service. On the other hand, the grantor may rescind the contract, revoke the concession, and in some cases terminate it in accordance with the EU law due to the concessionaire's breaches. However, the rules often do not establish a clear boundary between these sanctions, which creates legal confusion. The intertwining of public law and private law elements of the concession contract is also typical for the assessment of damages liability. If the damage is the result of (unlawful) public authority actions by the grantor, such liability must be assessed in accordance with the rules on State liability for damages due to unlawful conduct, even if the conduct also constitutes breach of contract. The consequences of breach of public law acts by the concessionaire are not generally regulated in Slovenian law. If such a breach does not also constitute breach of contract, the grantor has the right to compensation only if the sector law so stipulates.

Keywords: breach of the concession contract, rescission of the concession contract, revocation of the concession, termination of the concession contract, damage liability, Slovenia

JAVNOPRAVNI I PRIVATNOPRAVNI ASPEKTI POVREDE UGOVORA O KONCESIJI U SLOVENSКОME PRAVNOM PORETKU

Sažetak

Na povredu ugovora o koncesiji primjenjuju se propisi iz područja koncesijskih odnosa i pravila obveznog prava koja se primjenjuju samo mutatis mutandis. Ugovor o koncesiji upravni je ugovor koji karakterizira činjenica da ugovorne strane uvijek moraju ostvarivati javni interes koji u pravilu nadmašuje druge interese. Stoga se može dogoditi da je, unatoč povredi, nastavak izvršenja ugovora još uvijek u javnom interesu. Slovensko pravo često nije prilagođeno specifičnoj prirodi ugovora o koncesiji. Propisi iz područja koncesijskih odnosa tako ograničavaju raskidno pravo koncesionara samo na određene slučajeve i ne općenito za sve ugovore o koncesiji čime se može ugroziti načelo kontinuiteta obavljanja javne usluge. S druge strane, davatelj koncesije (koncedent) može zbog povreda koncesionara raskinuti ugovor, oduzeti koncesiju i, u nekim slučajevima, raskinuti koncesiju u skladu s odredbama prava Europske unije. Međutim, pravila često ne povlače jasnu granicu među ovim sankcijama što stvara pravnu zbrku. Isprepletenost javnopravnih i privatnopravnih elemenata ugovora o koncesiji karakteristična je i za ocjenu odgovornosti za štetu. Ako je šteta rezultat nezakonitih radnji koncedenta kao tijela javne vlasti, takva se odgovornost mora provoditi u skladu s pravilima o odgovornosti države za štetu zbog nezakonitih radnji, čak i ako to također znači povredu ugovora. Posljedice povrede javnopravnih akata koncesionara u slovenskom pravu općenito nisu uređene. Ako takva povreda ne znači i povredu ugovora, koncedent ima pravo na naknadu samo ako je to propisano sektorskim zakonom.

Ključne riječi: povreda ugovora o koncesiji, raskid ugovora, oduzimanje koncesije, raskid koncesije, odgovornost za štetu, Slovenija