PhD THESIS

Emma Király-Szitás

Miskolc

2026

UNIVERSITY OF MISKOLC
FACULTY OF LAW
DEÁK FERENC DOCTORAL SCHOOL OF LAW

Emma Király-Szitás

COMPARATIVE PERSPECTIVES OF CONVALIDATION OF FORMALLY DEFECTIVE CONTRACTS FOR THE TRANSFER OF OWNERSHIP OVER IMMOVABLE PROPERTY

(PhD thesis)

Deák Ferenc Doctoral School of Law
Head of the Doctoral School: Prof. Dr. Erika Róth, full professor

Doctoral Programme: CECL PhD programme

Supervisor: Prof. Dr. Attila Dudás, full professor

MISKOLC

2026

To my daughter, Zsófia, with all my love.

RECOMMENDATION FROM THE SUPERVISOR

"Comparative Perspectives of Convalidation of Formally Defective Contracts for the Transfer of Ownership over Immovable Property"

Doctoral candidate: Emma Király-Szitás
Institution: University of Miskolc, Faculty of Law – Deák Ferenc Doctoral School of Law
Supervisor: Prof. Dr. Attila Dudás

1. Relevance of the Thesis and its Objectives

The submitted doctoral dissertation deals with a classic issue of civil law, which is also of significant importance in modern legal practice. The research deals with the formal requirements of contracts for the transfer of ownership rights over immovable property and the legal consequences pertaining to their defects and the possibility for their elimination by convalidation. The central problem of the thesis is to what extent and under what conditions invalidity due to a lack of prescribed form can be eliminated through performance of the respective obligations of the parties. The aim of the dissertation is also to determine whether convalidation as a 'cure' is present in the legal systems of the selected Central Eastern European countries and, if so, in what form: does it appear in statutory provisions or in court practice.

The relevance of the topic is supported by several factors. On the one hand, real estate transactions are of paramount importance in economic life. Here, formality has traditionally been strongly enforced. On the other hand, the rapid development of the market economy and technical developments pose new challenges to the classical system of formal requirements (this includes the spread of forms of digital contracting and cross-border transactions). Thirdly, it should also be emphasised that the legal systems of Central and Eastern Europe have undergone a specific process of development, which was greatly influenced by both the legacy of the socialist legal system and the subsequent legal harmonisation processes. This makes this region particularly suitable for a comparative analysis of the issue under examination.

The student's goal is to explore whether formally defective real estate contracts can bear legal effects in the legal systems of the analysed countries if performance has occurred and, if so, the legal fate of the contracts remaining in force.

In addition, the student's goal is to demonstrate how performance can influence the legal consequences of invalidity. According to the issue at hand in the thesis, convalidation, where applicable, is not merely a legal institution that provides an exemption from strict formal requirements, but in some cases a solution that serves the purposes of fairness and legal

certainty (as in Switzerland and Croatia), prioritising the mutual interests of the parties (and also the prevention of abuse of rights) over the provisions protecting public interest.

2. Contributions of the Dissertation

One of the most significant scientific contributions of the dissertation is that it does not analyse the phenomenon of convalidation narrowly, as a dogmatic category, but examines it more broadly. Thus, in addition to examining the legal occurrence of convalidation, the student deals with its forms of manifestation in juridical practice and interpretation. The student states that in some legal systems, where the legislator does not explicitly recognise the institution of convalidation, the tools of judicial practice and legal interpretation include solutions that serve to maintain the legal effects of formally defective contracts.

The thesis is particularly valuable in its findings that explore the connections between classical civil codes and Central and Eastern European legal systems. She points out how the solutions developed in French, Austrian, German and Italian law influenced the development of the legal systems of the region. At the same time, she also emphasises how the specific historical transformation of these systems, especially the socialist era, affected the approach to invalidity and its remedy in the legal systems examined.

One of the main significances of the dissertation is the recognition that, especially in real estate transactions, convalidation based on performance may be the factor that makes the law not adhere rigidly to form but prioritises the protection of the already realised contractual relationship. The author argues that in certain cases, maintaining the legal effects related to performance does not serve to weaken legal certainty, but rather to strengthen it.

3. Methodological approach

The thesis is methodologically mature and consistent. The student uses several complementary methods: a historical approach, which presents the development of formal requirements and invalidity starting from Roman law foundations, a comparative legal analysis, which covers the law of Central and Eastern European countries as well as the main European legal systems, a dogmatic analysis, which provides a systematic analysis of the categories of invalidity and the concept of convalidation, a case-law analysis, which presents the functioning of the institute under examination through court practice.

The methodological diversity and variety ensure that the different approaches contribute to a comprehensive conclusion about the research question by reinforcing each other. The student

is able to form the results of the research through historical and comparative analyses into dogmatic conclusions.

4. Structure of the Thesis

The structure of the dissertation is clear and easy to follow. The introductory chapters define the framework and methodology of the research and clarify the basic concepts. This is followed by a historical overview, which lays the foundation for the subsequent comparative analysis.

The central chapters contain a detailed analysis of the classical codifications and the selected Central and Eastern European legal systems. The author proceeds in a logical sequence from general theoretical questions to the examination of specific legal systems and then synthesises their results to reach her own conclusions.

The central part of the dissertation is provided by the analysis of the selected Central and Eastern European legal systems. In this part, the student first examines the general provisions of the given countries on the validity of formally deficient contracts and the possibility of convalidation in separate subsections. After that, she analyses the same issues considering formally defective contracts for the conveyance of ownership rights over immovable property. Finally, it turns to judicial practice in search of an answer to how the highest judicial instances relate to the issue of convalidation and to what extent they interpret and follow the legal regulations in this issue.

The structure of the thesis is suitable for presenting the examined legal problem to the reader in a transparent manner. The connections between the chapters are well developed, and the line of thought is consistent.

5. Processing of the Literature and Legal Sources

The student has processed a wide range of relevant literature, which covers both classical and contemporary legal literature. The inclusion of international sources particularly strengthens the scientific value of the thesis.

The analysis of the primary sources of law – acts, court decisions – is conducted thoroughly and in a professional manner. The author not only presents the sources of law, but also critically interprets them and incorporates them into his argument.

The referencing system is consistent and meets the scientific requirements, which reflects the high level of technical sophistication of the thesis.

6. Evaluation of the Doctoral Student's Research Performance

The dissertation reflects the student's theoretical preparation and research competence. The doctoral student worked independently, consistently and with a critical approach throughout the research.

The professional cooperation between the supervisor and the doctoral student was carried out smoothly and constructively throughout the entire duration of the research. The doctoral student consistently took into account the suggestions and comments made during the supervisor's consultations and incorporated them into the research process and the text of the dissertation. During the collaboration, she was open to the professional issues raised, which contributed to the continuous development of both the content and the structure of the thesis.

7. Summary and recommendation

Overall, it can be stated that the dissertation reflects thorough scientific work. Furthermore, the thesis makes a significant contribution to the examination of civil law, especially the issue of formal invalidity and convalidation. Its virtues are its complex approach, methodological soundness, and independent scientific position.

The dissertation meets the requirements for doctoral dissertations.

On the basis of the aforementioned, I recommend the dissertation "*Comparative Perspectives of Convalidation of Formally Defective Contracts for the Transfer of Ownership over Immovable Property"* for public defence.

In Novi Sad, 31st August 2026



Prof. Dr. Attila Dudás

Supervisor

STATEMENT

In accordance with the provisions of the Regulation on the Use of Artificial Intelligence of University of Miskolc and the Guidelines for the Use of Artificial Intelligence of the Deák Ferenc Doctoral School of Law, I, undersigned Emma Király-Szitás, declare that I have used / have not used artificial intelligence in my doctoral dissertation and thesis booklets.

In the case of the use of artificial intelligence (hereinafter: AI), I declare the following:

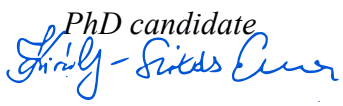
1. The name of the AI tool used: Grammarly, ChatGPT
2. The URL and the version number of the AI tool used: v1.141.2, GPT-5.3
3. The exact date of production of the generated content (year, month, day): February 2026
4. The purpose and extent of use (describing in detail which part of the dissertation and to what extent the use of AI affects, and for which sub-task the AI was used): During the writing of the thesis AI tools were used to check grammatical errors and for translation. The results were not taken verbatim therefore, artificial intelligence did not affect the core of the thesis, the conclusions and analyses, which represent the author's individual thoughts and conclusions.

I acknowledge that according to the Guidelines for the Use of Artificial Intelligence of the Deák Ferenc Doctoral School of Law, *„The use of AI is prohibited for the formulation of theses, research results, conclusions, inferences and analyses. Any thesis or paper prepared in this way is not admissible."*

Budapest, 31st August 2026

Emma Király-Szitás

PhD candidate



SUMMARY

The dissertation seeks to answer the question of whether convalidation is present in the legal systems of the selected countries. As the research shows, the legislators of the countries under study define and interpret this legal institution differently. The most widespread interpretation concerns the so-called relative nullity, in which a contract suffers from a certain defect, that is not significant enough to affect the interests of the parties. In such a case, the parties are by law free to decide whether to give legal effect to the contract or to consider their contract null and void with respect to the given defect.

In addition, Yugoslav legal history attaches a distinct meaning to this legal institution. Namely, scholarly literature includes the case when the nullity of a contract suffering from a formal defect is cured by partial or full performance of the obligations arising from the contract.

The research actually deals with this question, that is, it tries to find an answer to what legal consequences the legislators of the selected countries have assigned to formally defective contracts or whether they have provided for the possibility of remedying these defects and, if so, under what conditions and legal frameworks this was permitted.

The research was carried out in three stages: first, the dissertation examined the general obligation or contract law provisions of the given countries and then investigated whether the legal institution of convalidation is present. In the second step, the research examined the *lex specialis* provisions pertaining to contracts for the conveyance of ownership rights over immovable property, and finally, based on relevant judgments from the case law of the selected countries, it established how the selected countries approach the issue of convalidation in judicial practice, also whether the legal provisions are followed by the courts or they may interpret this legal institute more freely in practice.

Firstly, the research deals with the French, German, Austrian, Swiss and Italian codifications, as legal systems that have had a significant impact on the development of the legal systems of the Central and Eastern European countries. The main element of the research, however, is the selected Central and Eastern European countries, namely Hungary, Poland, the Czech Republic, Slovakia, Romania, Slovenia, Croatia and Serbia.

The dissertation is divided into seven separate chapters. Between the introductory and the concluding chapters, there are five separate chapters dedicated to the formal requirements of contracts, their invalidity and convalidation. The first of these chapters provides a historical overview of the topic; the next chapter is devoted to the analysis of the provisions of the Central European codifications and the available legal literature. This is followed by the chapter that examines the legal institution of convalidation in general. The following chapter examines the *lex specialis* in the context of real estate contracts. Finally, the research concludes with an analysis of judicial practice.

The main aim of the dissertation is to reveal the framework within which the legislators of the selected countries apply the legal mechanism of convalidation, if they do, and to answer the question of what reasons motivated the legislators to implement or to exclude the institute of convalidation regarding certain contracts.

LIST OF ABBREVIATIONS

1928 Draft - 1928. évi magánjogi törvényjavaslat Magyarország Magánjogi Törvénykönyve [1928 Draft on the Hungarian Private Law Code].

1946 Decree - Dekret z dnia 11 października 1946 r. - Prawo rzeczowe [Decree of 11 October 1946 – Property Law].

1950 Civil Code - Občanský Zákoník [Civil Code], Sbírka zákonů republiky Československé (24. 8. 1948 — 31. 12. 1959) [Collection of Laws of the Czechoslovak Republic (24 August 1948 — 31 December 1959)] nr. 141/1950 Coll.

1959 HunCC - 1959. IV. Törvény a Magyar Köztársaság Polgári Törvénykönyvéről [Act IV of 1959 on the Civil Code of the Republic of Hungary].

1964 Czechoslovak Civil Code - Občanský Zákoník [Civil Code], Zbierka zákonov Slovenskej republiky (01.04.1964 - 30.06.1969) [Collection of Laws of the Slovak Republic (1 April 1964 — 30 June 1969)] nr. 40/1964 Zb.

ABGB - Allgemeines bürgerliches Gesetzbuch from 1811.

Act 71/2011 - Lege nr. 71 din 3 iunie 2011 pentru punerea în aplicare a Legii nr. 287/2009 privind Codul civil [Act no. 71 of June 3, 2011, on the implementation of Act no. 287/2009 on the Civil Code].

Agricultural Land Act Slo - Zakon o kmetijskih zemljište [Agricultural Land Act] as amended by Zakon o spremembah in dopolnitvah Zakona o kmetijskih zemljiščih – ZKZ-H (Uradni list RS, št. 100/25 z dne 4. 12. 2025) [Act amending and supplementing the Agricultural Land Act – ZKZ-H (Official Gazette of the Republic of Slovenia, No. 100/25 of 4 December 2025)].

BGB - German Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515).

Civil Decision no. XXV - XXV. számú Polgári Elvi Döntés – az ingatlan-átruházási szerződés érvényességéről [XXV. Civil Law Decision of Principle – On the Validity of Contracts for the Conveyance of Ownership on Real Property].

Codice Civile - Codice Civile, Testo del Regio Decreto 16 marzo 1942, n. 262 aggiornato con le ultime modifiche legislative apportate, da ultimo, dal D.L. 8 agosto 2025, n. 117, convertito, con modificazioni, dalla L. 3 ottobre 2025, n. 148, dalla L. 23 settembre 2025, n. 132, dalla L. 2 dicembre 2025, n. 182 e dal Decreto del Ministero dell'economia e delle finanze 10 dicembre 2025 [Civil Code, Text of Royal Decree No. 262 of March 16, 1942 updated with the most recent legislative amendments, most

recently introduced by Decree-Law No. 117 of 8 August 2025, as converted, with amendments, by Law No. 148 of 3 October 2025, as well as by Law No. 132 of 23 September 2025, Law No. 182 of 2 December 2025, and by the Decree of the Ministry of Economy and Finance of 10 December 2025].

Codul Civil 1865 - Codul Civil din 26 noiembrie 1864 as amended.

CroOA - Zakon o obveznim odnosima [Obligations Act], NN 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23, 69/26.

CroProperty Act - Zakon o vlasništvu i drugim stvarnim pravima [Property and Other Real Rights Act], Narodne novine Republike Hrvatske [National Gazette of the Republic of Croatia], No. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/1, 81/15, 94/17.

Czech Cadastral Act - Zákon č. 256/2013 Sb., o katastru nemovitostí (katastrální zákon) [Act No. 256/2013 Coll., on the Cadastre of Real Estate (Cadastral Act)].

Draft LawOA - Predlog zakona o izmenama i dopuni Zakona o obligacionim odnosima – Obrazloženje [Draft Law on Amendments to the Obligations Act – Explanatory Memorandum from 22 November 2019 of the Government of the Republic of Serbia, published in the Official Gazette of the Republic of Serbia no. 18/20.

GBG - Bundesgesetz vom 2. Feber 1955 über die Grundbücher (Allgemeines Grundbuchsgesetz 1955) [Federal Law of 2 February 1955 on Land Registries (General Land Registry Act 1955 – GBG. 1955)].

GPC 1888 - Opšti imovinski zakonik za Knjaževinu Crnu Goru 1888 [General Property Code of 1888].

HunCC - 2013. évi V. törvény a Polgári Törvénykönyvről [Act V of 2013 on the Civil Code].

Act CXX of 2009 - 2009. évi CXX. törvény - a Polgári Törvénykönyvről [Act CXX of 2009 on the Civil Code].

Implementation Land Act - 2013. évi CCXII. törvény mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról [Act CXXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act].

Land Registries Act - Zakon o zemljiški knjigi [Land Registries Act] (Uradni list RS, št. 58/03, 37/08 – ZST-1, 45/08, 28/09, 25/11, 14/15 – ZUUJFO, 69/17, 11/18 – ZIZ-

L, 16/19 – ZNP-1, 121/21 in 100/25 – ZS-1) [Official Gazette of the Republic of Slovenia, Nos. 58/03, 37/08 – ZST-1, 45/08, 28/09, 25/11, 14/15 – ZUUJFO, 69/17, 11/18 – ZIZ-L, 16/19 – ZNP-1, 121/21 and 100/25 – ZS-1].

Land Registries Act - Zakon o zemljišnim knjigama [Land Registries Act], Narodne novine Republike Hrvatske [National Gazette of the Republic of Croatia], No. 63/19, 128/22, 155/23, 127/24.

Land Transaction Act of 1973 - Zakon o prometu zemljišta i zgrada ("Službeni list FNRJ" br. 26/54., 19/55., 48/58., 52/58., 30/62., 53/62., "Službeni list SFRJ" br. 15/65., 43/65. - službeni pročišćeni tekst, 57/65., 17/67., "Narodne novine" br. 52/73., "Službeni list SFRJ" br. 11/74., "Narodne novine" br. 27/91., 91/96.) Land and Building Transactions Act [Official Gazette of the Federal People's Republic of Yugoslavia, Nos. 26/54, 19/55, 48/58, 52/58, 30/62, 53/62; Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 15/65, 43/65 – official consolidated text, 57/65, 17/67; Official Gazette of the Socialist Republic of Croatia, No. 52/73; Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 11/74; Official Gazette of the Republic of Croatia, Nos. 27/91, 91/96].

Land Transfer Act - 2013. évi CXXII. törvény a mező- és erdőgazdasági földek forgalmáról [Act CXXII of 2013 on the Transfer of Agricultural and Forest Land].

LR Act - 2021. évi C. törvény az ingatlan-nyilvántartásról [Act C of 2021 on the Land Registry].

New Civil Code of 2014 - Zákon č. 89/2012 Sb. Zákon občanský zákoník [Law no. 89/2012 Sb. Civil Code] from 1st January 2014.

Notaries Act Srb of 2011 - Zakon o javnom beležništvu [Act on Notaries Public], Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 31/2011, 85/2012, 19/2013, 55/2014 – other statute, 93/2014 – other statute, 121/2014, 6/2015 and 106/2015 and 94/2024.

OR - Bundesgesetz vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht) [Federal Act of 30 March 1911 on the Supplementation of the Swiss Civil Code (Fifth Part: Code of Obligations)].

Polish Civil code - Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Act of 23 April 1964 – Civil Code], Dz. U. 1964 Nr 16, poz. 93 [Journal of Laws], consolidated text: Dz. U. 2025, poz. 1071, 1172, 1508.

RoCC - Lege nr. 287/2009 privind Codul civil [Act no. 287/2009 on the Civil Code].

SCC 1844 - Zakonik građanskij za knjažestvo Srbije, enacted on 11 March 1844 [Serbian Civil Code of 1844].

Serbian Cadastre Act - *Z*akon o državnom premeru i katastru [Law on State Survey and Cadastre], Official Gazette of the Republic of Serbia, Nos. 72/2009, 18/2010, 65/2013, 15/2015 (Constitutional Court Decision), 96/2015, 47/2017 (authentic interpretation), 113/2017, 27/2018, 41/2018, 9/2020, 92/2023 and 91/2025.

SkCC - Zákon č. 40/1964 Zb. Občiansky zákonník [Act No. 40/1964 Coll., Civil Code]. Adopted 26 February 1964. Promulgated 5 March 1964. Version effective from 1 January 2026 to 30 July 2026.

SkCom - Zákon č. 513/1991 Zb. Obchodný zákonník [Act No. 513/1991 Coll., Commercial Code as amended].

SloOC - Obligacijski zakonik [Obligations Code], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 83/01, 28/06, 40/07, 97/07 (official consolidated version) and 64/16.

Slovak Cadastral Act - Zákon č. 162/1995 Z. z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam (katastrálny zákon) [Act No. 162/1995 Coll., Cadastral Act]. Version effective from 1 April 2025.

Slovenian Property Code - Stvarnopravni zakonik [Property Code], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 87/02, 91/13 and 23/20.

Srb Property Transfer Act of 2014 - Zakon o prometu nepokretnosti [Act on the Conveyance of Real Property], Službeni glasnik RS, No. 93/2014, 121/2014 and 6/2015.

SrbCC - Građanski zakonik za Kraljevinu Srbiju od 11. marta 1844. godine [Serbian Civil Code from 11 March, 1844].

SrbOA - Zakon o obligacionim odnosima [Obligations Act] ("Sl. list SFRJ", br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 – Ustavna povelja i "Sl. glasnik RS", br. 18/2020) [Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 29/78, 39/85, 45/89 – Constitutional Court Decision and 57/89; Official Gazette of the Federal Republic of Yugoslavia, No. 31/93; Official Gazette of Serbia and Montenegro, No. 1/2003 – Constitutional Charter; Official Gazette of the Republic of Serbia, No. 18/2020].

SrbProperty Law Act - Zakon o osnovama svojinskopravnih odnosa [Basic Property Relations Act] ("Sl. list SFRJ", br. 6/80 i 36/90, "Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 115/2005 - dr. zakon) [Official Gazette of the SFRY, Nos. 6/80 and 36/90;

Official Gazette of the FRY, No. 29/96; Official Gazette of the RS, No. 115/2005 – other law].

SrbZPN of 1974 - Zakon o prometu nepokretnosti [Real Estate Transactions Act] (Službeni glasnik SRS, br. 15/74 i 14/77) [Official Gazette of the Socialist Republic of Serbia, Nos. 15/74 and 14/77].

SrbZPN of 1981 - Zakon o prometu nepokretnosti [Real Estate Transactions Act] (Službeni glasnik SRS, br. 43/81, 24/85 – dr. zakon, 28/87, 6/89 – dr. zakon, 30/89 – dr. zakon i 40/89, Službeni list SFRJ, br. 55/90 – odluka USJ i Službeni glasnik RS, br. 53/93 – dr. zakon, 67/93 – dr. zakon, 48/94 – dr. zakon i 53/95 – dr. zakon) [Official Gazette of the Socialist Republic of Serbia, No. 43/81, 24/85 – other Act, 28/87, 6/89 – other Act, 30/89 – other Act and 40/89; Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 55/90 – Decision of the Constitutional Court of Yugoslavia; and Official Gazette of the Republic of Serbia, Nos. 53/93 – other Act, 67/93 – other Act, 48/94 – other Act and 53/95 – other Act].

SrbZPN of 1998 - Zakon o prometu nepokretnosti [Real Estate Transactions Act] (Službeni glasnik RS, br. 42/98 od 18.11.1998. godine) [Official Gazette of the Republic of Serbia, No. 42/98 of 18 November 1998].

Swiss Merger Act - Bundesgesetz vom 3. Oktober 2003 über Fusion, Spaltung, Umwandlung und Vermögensübertragung [Federal Act of 3 October 2003 on mergers, divisions, conversions and asset transfers].

Swiss Civil Code - Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 [Swiss Civil Code from 10th December 1907].

TFEU - Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences, Official Journal C 326 , 26/10/2012 P. 0001 – 0390.

ZOO - Zakon o obligacionim odnosima (Sl. SFRJ 29/1978) [Obligations Act (Official Gazette of the SFRY, No. 29/1978)].

ZPN - Zakon o prometu z nepremičninami (ZPN) [Propertz Transactions Act], Uradni list SRS, št. 19/76, 42/86 in Uradni list RS, št. 44/97 – ZSZ [Official Gazette of the Socialist Republic of Slovenia, Nos. 19/76, 42/86, and Official Gazette of the Republic of Slovenia, No. 44/97 – Building Land Act (ZSZ)].

Table of Contents

1. Introduction xiii

1.1. Relevance and Purpose of the Research xvii
1.2. Definition of the Research Topic: Formal Requirements, Invalidity and the Concept of Convalidation xviii
1.3. Actual State of Legal Scholarship and Research Gap xxiv
1.4. Research Questions and Objectives xxvi
1.5. Structure of the Dissertation and Scope of the Research xxviii

2. Historical and Theoretical Foundations of Convalidation 1

2.1. Formalism in Archaic Roman Law and the Evolution Toward Consensualism through Praetorian Remedies 3
2.2. Selected Roman Law Institutions Preserving the Legal Effects of Defective Legal Transactions 8
2.3. Canon Law and the Moral Foundations of Convalidation 13

3. Convalidation in Classical Civil Law Codifications 15

3.1. Formal Requirements and the Transfer of Ownership in France 16
3.2. The Principles of '*Formfreiheit*' and '*Eintragungsgrundsatz'* in Austrian Law 24
3.3. The '*Heilung*' of Invalidity of Real Estate Contracts due to Formal Defects in Germany 29
3.4. Formal Requirements and the Principle of Consensualism in Switzerland 37
3.5. Formal Requirements, Nullity and Functional Equivalents of Convalidation in Italy 43
3.6. Comparative Summary 51

4. General Frameworks of Convalidation in Central-Eastern Europe 57

4.1. Theoretical Treatment of Convalidation in the Doctrine 57
4.2. Historical Influence of Classical Civil Law Codifications on the Development of Private Law in the Region 64
4.3. Legal Evolution and Socialist Codifications of Civil Law (1950–1990) .. 80
4.4. Contemporary National Rules on Convalidation 96
4.4.1. Hungary 96
4.4.2. Poland 100
4.4.3. Czech Republic 105
4.4.4. Slovakia 107
4.4.5. Romania 109
4.4.6. Slovenia 113
4.4.7. Croatia 115
4.4.8. Serbia 118

5. Convalidation of Real Estate Contracts in Central-Eastern Europe 121

5.1. Hungary 122

5.2. Poland 128
5.3. Czech Republic 131
5.4. Slovakia 135
5.5. Romania 138
5.6. Slovenia 142
5.7. Croatia 146
5.8. Serbia 152
5.8.1. Targeted Convalidation in Land Registry Law (2026 Reform) 157

6. Judicial Practice and Case Study Analysis 159

6.1. Methodology of Case Selection 159
6.2. Decisions from France, Austria, Germany, Switzerland, and Italy 160
6.2.1. France 160
6.2.2. Austria 162
6.2.3. Germany 164
6.2.4. Switzerland 167
6.2.5. Italy 170
6.3. Case Law from Central-Eastern European Countries 172
6.3.1. Hungary 172
6.3.2. Poland 176
6.3.3. Czech Republic 178
6.3.4. Slovakia 181
6.3.5. Romania 183
6.3.6. Slovenia 185
6.3.7. Croatia 190
6.3.8. Serbia 194
6.4. Observed Similarities and Differences 197
6.5. Limits of Judicial Convalidation in Real Estate Transactions 199

7. Conclusions and Recommendations 201

7.1. Summary of Key Findings 201
7.2. Evaluation of the Hypotheses 202
7.3. Implications for Legal Doctrine and Practice 203
7.4. Recommendations for National Legislators and the EU 204
7.5. Perspectives for Future Research 207

Bibliography 208

1. Introduction

In modern legal systems, contract law rests on the foundational principles of private autonomy and freedom of contract.[1] These principles grant individuals the liberty to negotiate and enter into agreements that best suit their interests, with minimal interference, as long as they do not contravene public order or mandatory legal provisions.[2] However, this freedom is not without restrictions. In the available legal literature and pieces of legislation, it can be observed that legal systems frequently impose strict formal requirements, particularly on contracts pertaining to the conveyance of ownership rights over immovable property, because of their significance as capital and the obligation of the land registry entry.

Statutory formal requirements in contracts are aimed at protecting the private interests of the parties by strengthening evidence, discouraging rash commitments, and marking the boundary between contract negotiation and conclusion.[3] At the same time, following a prescribed form can reduce the risk of manipulation and forgery, increase trust in the legal transaction itself, and reduce transaction costs.[4,5]

Furthermore, in addition to evidentiary and cautionary functions for the parties, formal requirements in contracts also ensure the protection of public interests. For example, by prescribing formal requirements, the legislator aims to strengthen legal certainty, ensure the transparency of real estate transactions, create a reliable documentary basis for taxation and registration, and support the proper functioning of real estate registration systems.[6] However, in connection with these functions, it should also be emphasised that the legal effect of the land registry entry may differ depending on the legal system of the countries analysed in this dissertation. Namely, in some countries it has a declarative effect, while in others it has a constitutive effect.

---

[1]Möllers, T.M.J. (2018) 'Working with Legal Principles – Demonstrated Using Private Autonomy and Freedom of Contract as Examples'. *European Review of Contract Law*, 14(2), pp. 101–137. doi: https://doi.org/10.1515/ercl-2018-1007, p. 113.

[2] *Ibid.*

[3] Kötz, H. (2017) *European Contract Law*. 2nd edn. Oxford: Oxford University Press, 2017, p. 75; Dudás et al, 2022, p. 254.

[4] Mankowski, P. (2010) 'Formzwecke' [Functions of Forms]. *JuristenZeitung,* 65(13), pp. 662-668, p. 664.

[5] For example, by adhering to a mandatory form, contracting parties could avoid the cost of judicial proceedings in case of a dispute. It is more efficient to have a drawn-up agreement, at least in simple written form, than to prove the existence and content of an orally concluded agreement.

[6] Mankowski, 2010, p. 668.

Therefore, this issue is discussed separately in the dissertation during the analysis of each legal system. These aims are the reason that justifies the existence of exceptional deviations from the freedom of form in high-value real-estate transactions.

In connection with the freedom of form of contracts and the exceptions to this basic principle, it is evident that this question appears at more than one level. Namely, there are also exceptions to the exceptions to formal freedom in contracts. The present research seeks answers to the question of the second layer of exceptions, with the institute of convalidation in focus. More precisely, whether, and how, subsequent convalidation can reconcile public interests with the apparent will of the parties in case defects occur in the form of their respective juridical act.

Strict formal requirements have always been associated with juridical acts pertaining to the conveyance of ownership of immovable property, due to their traditional economic importance.[7] Namely, formalism served to protect property holders by ensuring the seriousness of contractual intent and the certainty of legal transactions.[8]

Comparative legal literature has described property law as a relatively static and technically rigid area, characterised by deep dogmatic structures. In the available legal literature, the phrase "technocratic conservatism" appears as a reference to this strict approach to property law.[9] This term reflects a legal mentality that seeks to preserve existing legal structures and accepts change only when it is inevitable.[10]

In the past, the form of contracts was associated with much greater importance than today, both in terms of validity and enforceability.[11] In Roman law, contracts concluded under strict formal requirements could produce legal consequences for the parties, while simple agreements (*nuda pacta*) did not have enforceable legal effect.[12] However, with the rise of industrial and commercial activity, an opposite need surfaced.

---

[7] Bocchini, F. (2016) *Le vendite immobiliari. Vol. 1: Contratto e pubblicità [Real Estate Sales. Vol. 1: Contract and Publicity]*. Milan: Giuffrè, p. 95.
[8] *Ibid.*
[9] Van Erp, S. (2019) 'Comparative Property Law', in Reimann, M. and Zimmermann, R. (eds) *The Oxford Handbook of Comparative Law*. 2nd edn. Oxford: Oxford University Press, p. 1037.
[10] *Ibid.*
[11] Dudás, A., Hulmák, M., Zimnioková, M., Menyhárd, A., Stępkowski, Ł., Veress, A., Hlušák, M. (2022) 'Form of Contracts' in Veress, E. (ed.) *Contract Law in East Central Europe*. Miskolc-Budapest: Central European Academic Publishing, https://doi.org/10.54171/2022.ev.cliece_chapter8, p. 253.
[12] *Ibid.*

Namely, Roman semi-formal arrangements could arise through the mere transfer of a thing, through written instruments, or through partial performance.[13] According to legal scholarship, these arrangements foreshadowed a more rationalised approach to juridical acts and led to simpler forms in legal transactions.[14] Over time, judicial practice, legislative reforms, and regional and global integration of markets have contributed to the gradual transformation of property law systems.[15]

This tendency can also be observed nowadays as the permanence of property law is increasingly being questioned. The historical development (the abolition of the feudal land tenure system, the modernisation of land registry systems, and the reform of security law) shows that property law can, and in some cases should, adapt to economic and social changes.[16]

Taking into account the close connection between contract law and property law during the process of conveyance of ownership rights on immovable property, especially in legal systems where land registry entry has a constitutive effect, meaning that without it the conveyance of rights does not occur, the regulation of the formal requirements of real estate contracts should be studied in light of the general system of property law as well.

Although mandatory formal requirements serve important functions today as they did in the past, including the purpose of publicity, they can also pose significant challenges. Contracts that fail to meet prescribed formal criteria, such as lacking the form of a notarial deed or written form, are often rendered null and void, despite reflecting the clear and consensual intent of the parties.

The aforementioned suggests that the relationship between contract law and property law is more dynamic than the traditional dogmatic approach presumes, especially in real estate transactions. In this changing legal and economic environment, the problem of formal defects in real estate transfer contracts and the possibility of their subsequent validation acquires particular importance. Legal systems have to find efficient solutions for economic transactions. On the one hand, they should accommodate legal certainty for the contracting parties and, on the other, maintain formal requirements.

---

[13] Abry, K. (2023) *The construction, sources, and implications of consensualism in contract, Studies in the history of law and justice.* Cham: Springer Nature Switzerland, p. 33.
[14] *Ibid.*
[15] Van Erp, 2019, p. 1037.
[16] *Ibid.*

This problem raises the central question of whether formally deficient contracts in which the parties performed their respective obligations, thus reflecting their will to be bound by that contract, could be capable of producing legal effects through subsequent validation. This dilemma is particularly pronounced in the case of the conveyance of ownership rights over immovable property, where financial interests are of great importance and usually a legal professional (attorney at law and/or a public notary) is involved in the process of preparing the contract itself, which leads to the fact that flaws in the required form of a juridical act are unusual. The conclusion of a real estate contract is followed by the procedure of entry in the land registry, which requires that the contract be drawn up in a certain form in order to achieve the goal of concluding the contract – the transfer of ownership rights. The problem of adhering to prescribed formalities is more significant in countries where land registry entry has a constitutive character, meaning that the transfer of ownership occurs only by the registration of the new owner in the land registry.

The institution of convalidation, that is, the subsequent validation of a juridical act that was initially invalid due to the failure to comply with prescribed formalities, provides a possible answer to this question.

The Latin verb *convalescere*, while primarily meaning 'to recover' in a medical sense,[17] also acquired a technical legal connotation in Roman jurisprudence. In legal contexts, it refers to the process during which an originally invalid juridical act might later acquire legal validity.[18] The concept of the institute is especially important when examining whether initially invalid juridical acts can later become valid if certain conditions are met, such as the performance of contractual obligations.[19] The basis for the analysis of convalidation lies in the connection between legal certainty arising from the prescription of formal requirements and the protection of the genuine will of the parties to be bound by their respective contract.

Although the concept of convalidation lacks a generally accepted definition, and its interpretation varies from country to country, it can be sparsely observed in civil law systems, though with a significant role.

In some legal systems, convalidation is regulated by formal statutory provisions (although often under different terminology), while in others it appears only in

[17] Heumann, H. G. (1926) *Heumanns Handlexikon zu den Quellen des römischen Rechts [Heumann's Handbook of the Sources of Roman Law]*. 2nd edn. Jena: Gustav Fisher, p. 106.
[18] *Ibid.*
[19] Zimmermann, R. (1993) *The Law of Obligations: Roman Foundations of the Civilian Tradition*. München: Beck, p. 682.

scholarly work or jurisprudence. In several countries, as is the case in selected Central-Eastern European countries, the influence of classical civil law codifications, such as the Austrian ABGB[20], the French Code Civil, the German BGB, the Swiss Civil Code and the Obligations Act, and the Italian Codice civile, has resulted in unique approaches that correct (or more precisely remedy) defective formalism with a more pragmatic possibility of 'healing' a formally deficient juridical act.

It should be noted that, from a terminological aspect, the aforementioned legal systems are differentiated into two groups. The first comprises the classical civil law codifications: the French, Austrian, German, Swiss, and Italian civil law codifications (hereinafter, classical civil law codifications). These legal systems were selected because of their significant historical and dogmatic influence on the development of modern European private law.

The centre of comparative analysis in this dissertation, the second group, comprises selected legal orders from Central-Eastern Europe: Hungary, Poland, the Czech Republic, Slovakia, Romania, Slovenia, Croatia, and Serbia (hereinafter, Central-Eastern European legal systems). These legal systems were subjected to the reception of classical civil law codifications, the socialist regime, and the post-socialist legal developments and reforms. The term therefore does not express a mere geographical category, but a legal-historical and comparative law one.

1.1. Relevance and Purpose of the Research

Real property transactions appear to be significantly regulated areas of private law, both because of their economic importance and ability to affect the rights of third parties and often the public interest. As opposed to other types of contractual relationships regulated under the system of freedom of form, contracts for the conveyance of ownership rights on real estate are subject to strict formal

[20] Allgemeines Bürgerliches Gesetzbuch from 1811. Hereinafter referred to as ABGB. It has to be clarified that the ABGB was amended by the so-called *Teilnovellen.* For more see: Szitás, E. and Dudás, A. (2026) 'The Evolution of the Legal Institute of Convalidation of Null and Void Contracts in the Yugoslav Legal Tradition: Historical Influences and Legal Legacy', *Pravni vjesnik,*42(1), p. 30; Kamila Staudigl-Ciechowicz, 'Die Teilnovellen als letzter Akt der österreichischen Zivilgesetzgebung in Mitteleuropa' (2020) Beiträge zur Rechtsgeschichte Österreichs 289 <http://dx.doi.org/10.1553/BRGOE2020-2s286> accessed 6 March 2026.
Since the *Teilnovellen* did not bring substantial changes in the title on settlement and general provisions on contracts and legal transactions, the relevant pieces of legislation analysed in this research do not seem to have undergone changes.

requirements.[21] These typically include notarisation, registration in land registries, and written declarations.[22] However, such requirements are not arbitrary. They reflect a long-standing continental European tradition in which special forms are prescribed for transactions of particular social importance to protect the parties and ensure legal certainty.[23]

However, despite the mandatory nature of such formalities, legal and practical realities often differ. In many cases, parties between themselves may informally agree on the essential terms of a real estate contract, for example, paying the price and taking possession of the property, without fully complying with formal requirements. These situations lead to questions of the legal outcomes of non-compliance and the broader aims and basic principles of contract law, such as legal certainty, economic efficiency, and fairness.

Convalidation, as a legal concept, connects these principles. On the one hand, it protects the autonomy of the parties and often public interests through the entry in the land registry or taxation rules, and on the other hand, it recognises that if the fundamental aims for which statutory formalism had been foreseen have been achieved by performance or otherwise,[24] the contract should not be invalidated merely because of non-compliance with formal requirements. In this regard, convalidation can function as a corrective instrument if the circumstances allow it, i.e., when the mutual interests of the parties prevail over the reasons for which the mandatory form is prescribed, for example, to prevent unjust enrichment.

1.2. Definition of the Research Topic: Formal Requirements, Invalidity and the Concept of Convalidation

Comparative scholarly literature finds it difficult to pinpoint the precise purpose the lawmakers had in mind when prescribing mandatory formal requirements for contracts for the sale of immovable property.[25]

Generally, formal requirements serve different purposes. Namely, they have an evidentiary purpose, when the written record of an agreement serves as proof of its

[21] Kötz, 2017, p. 83.
[22] *Ibid.*
[23] Smits, J. M. (2021) *Contract law: A Comparative Introduction.* 3rd edn. Cheltenham-Northampton: Edward Elgar, p. 102.
[24] For example, by registration.
[25] Kötz, 2017, p. 83.

existence and contents; a warning function, keeping contracting parties from making hasty decisions; and the purpose of marking the boundary between negotiations and contract conclusion.[26]

The purchase of immovable property is, besides being of great value, also considered *"the most important transaction a person of modest means ever enters into, and then only a few times in a lifetime"*.[27] Therefore, the standpoint on mandatory formal requirements for contracts for the conveyance of ownership rights over immovable property derives from the aforementioned significance of a real estate sale. The imposition of a mandatory form for a real estate sale contract may serve a specific, logical, and protective function for the parties involved, which is necessary considering the pressure real estate agencies impose on potential buyers.[28]

Formal requirements in contracts for the transfer of immovable property are of fundamental importance to achieve legal certainty, evidentiary purposes, publicity, and protection against transactions entered into incautiously. Furthermore, it is widely accepted that in order for the buyer to acquire ownership of immovable property, the entry of the change in the holder of the ownership right in the land registry is essential. This procedure, however, requires a document (*titulus*) so the entry can be carried out, because the land registry cannot register changes based on an oral contract.[29] Therefore, by imposing the mandatory form of an authentic notarial deed or written form, formal requirements acquire protective and evidentiary functions at the same time, and the necessary validity for registration in the land registry, which realises the publicity function of the land registry system as well.

Accordingly, if the legislator attaches such a significant role to the form of the contract, failure to comply with the rules will also have negative consequences. For instance, as a penalty, the nullity of a contract suffering from a formal deficiency is foreseen, which is usually the final fate of a defective contract.[30]

However, strict application of provisions pertaining to formal requirements may lead to the invalidity of agreements even though the parties intended to be bound by the contract and have fully or in preponderant part performed their respective obligations. This structural tension between strict statutory formalism and the genuine

[26] Kötz, H. (2019) 'Comparative Property Law', in Reimann, M. and Zimmermann, R. (eds) *The Oxford Handbook of Comparative Law*. 2nd edn. Oxford: Oxford University Press, pp. 912-913.
[27] Kötz, 2017, p. 83.
[28] *Ibid.*
[29] *Ibid.*
[30] Zimmermann, 1993, p. 682.

intent of the contracting parties raises a central doctrinal question: to what extent should a formally defective contract be preserved once its economic purpose has already been realised?

When imposing formal requirements, the legislator must determine not only which legal transactions should be subject to formal requirements and how far they extend, but also what consequences a defect in form should entail, and in which exceptional cases deviations (i.e., exceptions from prescribed formalities) may be tolerated.[31]

When the aim of prescribing a specific form is to protect *"a party from undue haste in entering an important and risky transaction",* the contracting party whose interests are being safeguarded has to be exempt from the transaction if formal requirements are lacking.[32] Continental legal systems resolved this problem through the penalty of nullity. Namely, in continental legal systems of private law, legislators consider contracts concluded without the mandatory formal requirements to be null and void.[33]

The sanction of nullity, however, is not self-evident. For example, in a hypothetical case where the defect is caused by the notary public rather than the parties concluding the contract, the automatic invalidation of such a contract may appear disproportionate and ineffective. As emphasised in German legal scholarship, stricter supervision or disciplinary liability of notaries may in certain situations constitute a more appropriate response than the annihilation of the parties' agreement.[34]

Even if a formal defect arises from the negligence or ignorance of the parties (despite the generally accepted principle of *ignorantia iuris nocet*), rendering the contract null and void does not always appear to be the most appropriate solution. Therefore, the drawbacks of invalidity must remain proportionate to the purposes served by prescribing formal requirements, and legislative or judicial exceptions may be necessary to protect the parties' contractual interests and the purpose of the contract the parties intended to achieve by concluding it. In such cases, protecting the parties' interests would prevail over the interests safeguarded by the provisions foreseeing mandatory form (or rather, would not jeopardise them).

---

[31] Westerhoff, J. (1984) 'Wie begründen wir Formnichtigkeit?' [How do we justify formal invalidity?]. *Archiv für die civilistische Praxis*, 184, pp. 341-384, p. 375.
[32] Kötz, 2017, p. 80.
[33] *Ibid.*
[34] Westerhoff, 1984, p. 375.

Within this doctrinal framework emerges the concept of "cure through performance"[35]. This concept refers to the central research topic of this thesis, i.e., convalidation of null and void contracts for the conveyance of ownership rights over immovable property.[36] The term 'convalidation' does not denote a uniform or codified category across European private law. Rather, it functions as a generally accepted term in legal doctrine describing the legal mechanism through which a contract initially null and void for lack of required form subsequently produces legal effects as a consequence of performance by the parties.

For the purposes of this dissertation, performance-based convalidation is defined as follows:

Performance-based convalidation refers to the legal recognition of a contract initially null and void or ineffective due to non-compliance with prescribed formal requirements, where subsequent full or substantial performance has occurred. An additional condition is the satisfaction of the protective purposes of the rules regarding formality to such an extent that maintaining the sanction of nullity would be disproportionate.

This definition places convalidation primarily at the level of the law of obligations. However, in the particular case of contracts pertaining to the conveyance of ownership rights over immovable property, performance cannot be identified with the payment of the purchase price or handing over the possession. In most civil law systems, ownership of land requires compliance with additional formal and publicity requirements, particularly registration in a public land registry. Consequently, performance may enshrine the entry into the land registry as well. Nevertheless, the performance of contractual obligations may lead to different legal consequences.

It should further be emphasised that the countries examined in this research have not established a uniform meaning of performance. Depending on the jurisdiction, performance may refer to different acts. Therefore, the definition set out in this subchapter is general in nature. The precise meaning of performance will be examined separately in light of the jurisdictions and doctrines of each researched country.

---

[35] According to comparative legal scholarship, this concept is applicable in various cases of nullity, which occurred because of the omission of formal requirements. In these cases, nullity could "be cured" by the performance of their respective contractual obligations by the parties involved. For more see: Kötz, 2017, p. 80.

[36] For the purposes of readability, this concept will hereinafter be referred to as performance-based convalidation.

The concept therefore presupposes a distinction between obligatory and real effects of contracts for the conveyance of immovable property. In this structure, performance-based convalidation primarily affects the obligatory aspect. Namely, once the purchase price has been paid and possession delivered, treating the underlying contract as legally invalid or even non-existent becomes significantly difficult to justify. Yet, such performance cannot substitute for constitutive registration where property law requires it. Thus, convalidation in these cases relaxes the harshness of nullity due to non-observance of mandatory form, but at the same time does not jeopardise the values protected by the property law systems.

Comparative analysis shows that legal systems adopt different techniques. Some explicitly codify them in their respective legal acts and provide for curing mechanisms (as in certain provisions of German law), some treat contracts concluded without the observance of statutory form as valid at the obligatory level but incapable of producing real effects (as in Austrian law), while others stabilise the relationship *inter partes* but deny opposability to third parties in the absence of formal compliance (as in French law). Despite these variations, a common structural observation could be made, i.e., as a compromise or proportional solution, performance-based convalidation operates as a corrective mechanism on the obligatory level, which relaxes formal requirements to keep in effect the genuine will of the contracting parties, while preserving, on the level of *in rem* rights, publicity provided by the land registry systems and protection of third parties.

Therefore, the object of this research is not the general theory of form or the entirety of the doctrine of invalidity, but specifically the doctrinal conditions under which performance may influence the legal consequences of formal defects in contracts for the transfer of immovable property. The inquiry focuses on the limits, functions, and structural justification of this corrective mechanism, particularly within Central-Eastern European legal systems.

Clarifying this concept is methodologically essential, as is its differentiation from other categories of exceptions to the sanction of invalidity of contracts with formal deficiencies and functional equivalents.

For the purposes of clarity in this dissertation, it is equally important to distinguish performance-based convalidation from other legal institutes that may also strive to preserve the legal effects of a defective juridical act. Although these mechanisms have a similar purpose, they are conceptually different. Accordingly, this

dissertation differentiates between performance-based convalidation, conversion, confirmation, partial invalidity, *ratihabitio*, judicial validation, and statutory cure linked to the completion of the transfer of ownership. Out of these categories, the thesis considers the latter mechanism, as provided for by § 311b(1) sentence 2 BGB, as a functional equivalent of performance-based convalidation. The dissertation examines these legal institutes only insofar as they contribute to the precise delimitation of the concept of convalidation and to the presentation of its functional equivalents in different legal systems.

The first legal institute, with the aim of avoiding the harsh consequences of invalidity that should be differentiated from convalidation, is conversion. All the more so, since legal scholarly literature makes a clear distinction between the two institutes. Although its purpose is similar to that of convalidation, i.e., to preserve the parties' contractual intent, conversion is substantially different from convalidation in its mode of operation. Namely, by conversion an invalid juridical act is not cured; rather, it is turned into[37] a valid one whose requirements for validity are satisfied by the elements contained in the invalid contract.[38]

On the other hand, confirmation pertains to voidable contracts and results from the will of the contracting parties, expressed or tacit, to waive the right to invoke nullity.[39]

Partial invalidity principally serves to identify the part of the contract affected by the deficiency that causes the nullity of a part of the contract and to examine its impact on the fate of the rest of the contract, in terms of the possibility or impossibility of maintaining it in effect.[40] This legal institute has a corrective effect since, through its application, the attempt is made to release the contract from the part concluded beyond the limits of free disposition of the contracting parties so its unaffected part continues to exist and produce legal effects.[41]

The next concept which should be distinguished from convalidation is *ratihabitio.* The essence of *ratihabitio* is that legal acts performed without proper

[37] In scholarly literature, the term 're-interpretation' is used as well. See: Zimmermann, 1993, p. 683.
[38] Zimmermann, 1993, p. 683.
[39] See, for example, subchapters 3.1., 3.5., and 4.4.5. of this dissertation.
[40] Midorović, S. (2023) *Delimična ništavost ugovora* [Partial Invalidity of Contracts]. PhD thesis. University of Novi Sad, Faculty of Law. Available at: https://nardus.mpn.gov.rs/bitstream/handle/123456789/21298/Disertacija_13406.pdf?sequence=1&isAllowed=y (Accessed: 10 July 2026), p. 19.
[41] *Ibid.*

authorisation are subsequently approved by the principal.[42] In contrast to convalidation, the issue here is not a formal defect in a juridical act, but a lack of authorisation that the principal evades so that the legal acts performed are accepted by him/her.

Judicial validation refers to the cases in which the court renders a decision which modifies the agreement of the contracting parties with the aim of mitigating the consequences of nullity.[43]

Finally, statutory cure linked to the completion of the transfer of ownership should in this dissertation refers to the specific remedial mechanism applied in the German legal system through the so-called *'Auflassung'* and *'Eintragung',* wherein the invalidity stemming from formal deficiencies in contracts for the conveyance of ownership over immovable property is remedied when a valid *Auflassung* and registration in the land register (*Eintragung*) have taken place.

For the sake of conceptual clarity, this introductory section distinguishes performance-based convalidation from the aforementioned related legal institutes that serve the same purpose of maintaining the effectiveness of contracts declared invalid. Since these corrective mechanisms also appear in the legal literature of the analysed legal systems, they are explored in more detail in the country-specific chapters, in the interest of a clearer definition of the concepts.

The subsequent comparative analysis proceeds from the aforementioned definition of performance-based convalidation and examines how different jurisdictions treat the function of form, not adhering to it, and the possibility of remedying formal defects.

1.3. Actual State of Legal Scholarship and Research Gap

The concept of convalidation has received relatively little focus in comparative legal scholarship, especially regarding contracts for the conveyance of immovable property.[44] While numerous studies address the doctrines of nullity, voidability, and

[42] Siklósi, I. (2014) *'A nemlétező, érvénytelen és hatálytalan jogügyletek elméleti és dogmatikai kérdései a római jogban és a modern jogokban' [Theoretical and Doctrinal Issues of Inexistence, Invalidity and Ineffectiveness of Juridical Acts in Roman and Modern Law]*, Budapest: ELTE Eötvös Kiadó, p. 253.
[43] In this regard, see the specific example of Hungary: fn 463.
[44] Interestingly, the notion of convalidation seems to be frequently studied in the field of canon law in connection with the convalidation of marriage. In contrast to the legal systems analysed in this research, the *Corpus iuris canonici* explicitly uses the term convalidation for the subsequent validation of a formally deficient marriage.

the outcomes of non-compliance with formal requirements, there appears to be significantly less scholarly work that systematically examines how different legal systems assess the consequences of not observing the mandatory formal requirements of contracts for the conveyance of ownership rights over immovable property, let alone the possibility of their convalidation if they are sanctioned with nullity.

In some legal systems, there is a tendency to incorporate the possibility of remedying contracts with formal deficiencies through judicial practice or limited doctrinal mechanisms such as confirmation or conversion, rather than convalidation. On the other hand, Central-Eastern European legal orders of the post-socialist era have developed provisions that allow form-defective contracts to produce legal effects under certain conditions, usually through the performance of contractual obligations. However, the doctrinal foundations of such practices, their limitations, and their compatibility with broader principles of contract law appear to remain sparse.

This dissertation seeks to contribute a comprehensive, two-layered analysis of the legal systems of selected countries. First, it examines the historical and dogmatic foundations of convalidation in Roman and Canon law, seeking to establish how these traditions shaped the early civil codes. Secondly, it analyses how convalidation is regulated (or not) in selected contemporary European jurisdictions in general, with a particular focus on contracts concerning immovable property.

However, the research is not limited to merely exploring and observing the similarities and differences between the analysed legal systems. It aims to clarify the concept of performance-based convalidation and distinguish it from related legal institutes with similar purposes of mitigating the consequences of invalidity of contracts. In this way, the dissertation seeks to establish a more coherent understanding between formal requirements, the validity of contracts and the legal institutes ensuring the effectiveness of contracts.

From a theoretical point of view, the dissertation aims to develop a comparative legal perspective that systematically presents the legal consequences of the violation of mandatory formal requirements, as well as the place and role of convalidation in connection with the invalidity of contracts.

Additionally, the research emphasises the socioeconomic and historical factors that shaped the establishment of the contemporary regulatory framework of mandatory formal requirements of contracts, their invalidity, and the possibility of convalidation.

Consequently, the dissertation may contribute to a more coherent interpretation and application of the legal provisions pertaining to formally deficient contracts, particularly in the context of ownership transfer over immovable property. Finally, this research could provide a basis for future comparative research or even legislative reforms in the fields of contract or property law.

1.4. Research Questions and Objectives

The central research question of this dissertation is: *Could formally defective contracts for the conveyance of ownership rights over immovable property be convalidated? If yes, to what extent, under what conditions, and in which manner is convalidation allowed?*

To answer these questions, this study first examines the historical and theoretical foundations of convalidation, with a special focus on its origins in Roman and Canon law. Then, it examines the extent to which the concept is recognised (either expressly or implicitly) in the civil codes of France, Austria, Germany, Italy, and Switzerland, the last one including both the Swiss Civil Code and the Swiss Code of Obligations. These five systems serve as reference points for the comparative analysis, because of their influence on the selected Central-Eastern European countries analysed. On this basis, the study analyses the treatment of convalidation in eight Central-Eastern European jurisdictions, focusing on statutory provisions, judicial interpretation, and scholarly literature. The central question is whether these legal systems allow the convalidation of formally defective real estate contracts. In the case these countries allow convalidation in their respective legal systems, the study seeks to establish under what specific conditions the institute of convalidation is applicable and in what form it manifests. The analysis further evaluates the degree of similarities and differences among the examined jurisdictions, both in general contract law and in the specific context of immovable property transactions. Based on these findings, the dissertation aims to formulate theoretical conclusions and practical recommendations that could contribute to doctrinal clarity and uniformity.

This thesis proceeds from the working hypothesis that, in civil law jurisdictions, in relation to the transfer of immovable property, performance-based convalidation can accommodate both formal requirements and the protection of the parties' genuine will without excessively jeopardising legal certainty. The study considers the extent to

which subsequent convalidation can mediate between public-interest objectives and the parties' declaration of will when formal defects occur.

Based on this, the research presupposes that in the French, Austrian, German, Swiss, and Italian classical civil law codifications, convalidation is not included in legislation as an independent institution among the provisions of the civil codes but is enshrined through provisions that refer to its existence or is excluded altogether.

Furthermore, this work speculates that Central-Eastern European jurisdictions influenced by the models established by classical civil law codifications are more open to performance-based convalidation in real-estate contracts. Additionally, in high-value real estate transactions, convalidation by performance will be more likely to achieve an optimal balance between legal certainty and substantive fairness than a regime of strict nullity. Finally, legal systems that explicitly or implicitly recognise convalidation can achieve a more flexible and fairer private-law system without significantly compromising legal certainty.

Several general and special methods and procedures should be used for data collection, interpretation and description, and inference. The complexity of this topic and the theoretical sources suggest that the research should be approached indirectly.

This thesis adopts doctrinal, historical, and comparative methods. Materials utilised include national civil codes or acts of obligations, case law, and scholarly literature.

The research begins with the historical analysis of Roman and Canon law, with an attempt to explain the origins of convalidation. Then, the main part follows, where doctrinal analysis of the relevant provisions, legal literature, and case law of the selected jurisdictions shall be conducted. To this end, a comparative recapitulation notes the principal similarities and differences between the researched legal systems.

In addition, the study reviews judicial rulings on form-defective real estate contracts from the respective countries to explore how the doctrine functions in practice.

Finally, it offers a critical assessment of each system's approach, highlighting strengths, shortcomings, and general coherence. The assessment of the gathered information should provide a clear description of the current law and support practical, well-reasoned proposals for clarification and possible harmonisation.

1.5. Structure of the Dissertation and Scope of the Research

The dissertation is structured into the following six main chapters: Chapter I: Historical and theoretical foundations of convalidation in Roman and Canon law; Chapter II: Convalidation in classical civil law codifications; Chapter III: The legal framework of convalidation in Central-Eastern Europe (general rules); Chapter IV: Convalidation of real estate contracts in Central-Eastern Europe (special rules); Chapter V: Comparative case law analysis; Chapter VI: Conclusions and recommendations.

Throughout these chapters, the dissertation focuses on civil law systems with the tradition of codified private law. The jurisdictions examined in detail are France, Austria, Germany, Switzerland, Italy, Hungary, Poland, the Czech Republic, Slovakia, Romania, Slovenia, Croatia, and Serbia. The first five countries are selected because they are exemplary foundation models of civil law systems and have influenced Central-Eastern European legal systems regarding the rules of formal requirements and contract validity. On the other hand, the eight selected countries of Central-Eastern Europe offer a rich field for examining diverse contemporary solutions influenced by socio-political ideals of the socialist era, the reforms of post-1989 transitions in contract law, and property rights and land registry reforms.

The sections dealing with the legal developments in Serbia, Croatia, Slovenia, Hungary, Romania, as well as the historical background of some successor states of the former Yugoslavia, are based on reworked and extended versions of articles co-authored with my supervisor, Prof. Dr. Attila Dudás. They are adapted and integrated into this dissertation with appropriate modifications to fit the broader comparative framework.

Substantively, the analysis concentrates on contracts for the transfer of ownership of immovable property (primarily sales, but also donations where relevant, for example, France). The questions of form and the possibility of convalidation when the required formalities are not observed are the core focus. Land-registration law and notarial practice are mentioned insofar as they relate to the validity of contracts or the curing of formal defects, but technicalities of registration procedure, cadastral law, planning law, and tax or administrative aspects are not elaborated in this research.

Doctrinally, the institute of convalidation is used narrowly: mechanisms rendering a contract valid despite an initial failure to adhere to the required form. The

study does not address defects unrelated to form (lack of capacity, illegality, error, fraud, and others).

Temporally, the focus is on the law as it stands at the time of writing, using a historical approach to explain the conceptual lineage from Roman and Canon law to the great codifications of the nineteenth and early twentieth centuries. In the Central-Eastern European jurisdictions, particular attention is paid to developments since the 1960s and post-1989 reforms.

Methodologically, comparison is based on the analysis of statutory sources, leading commentaries and databases of case law. The primary sources are consulted in their original languages where possible; otherwise, the dependence on official or accepted translations is indicated. Case selection concentrates on high-court cases directly presenting formal invalidity and any path to cure.

Differences in publication practices and availability of databases vary across jurisdictions, which are acknowledged as a practical limitation.

2. Historical and Theoretical Foundations of Convalidation

The roots of formal requirements in contract law can be traced back to Roman law. Formal conditions as conditions for the validity of acts were pronounced especially in the archaic period. In those times, specific transactions were valid only if executed in prescribed forms.[45] These formalities originally served evidentiary and cautionary functions.[46] Later, however, Roman law developed so-called consensual contracts: agreements binding solely based on mutual consent and required no formalities for their validity.[47] This change was caused by the growing commercial activity and a practical need for flexibility in legal relationships to ensure quick and efficient business management.[48] Legal and economic relations evolved, and the rigidity of formalism increasingly proved impractical.[49] Because of these circumstances, exceptions for faster and less costly transactions appeared, allowing certain agreements to remain valid despite formal defects, reflecting later institutes such as convalidation.[50]

Furthermore, Roman tradition influenced not only the medieval *ius commune* but also subsequent legal developments through Canon law, which introduced moral and theological considerations.[51]

Roman law, revived after the 11th century with the rediscovery of Justinian's Digest, gradually shaped European legal systems.[52] Merging with Canon and feudal law, it formed the *ius commune*, which dominated continental Europe until national codifications emerged.[53] Roman legal principles influenced key civil codes, for

---

[45] Kötz, 2017, p. 74.
[46] *Ibid*, p. 75; Sič, M. (2000) 'Posebna forma ugovora u antičkom Rimu-radi sigurnosti stranaka ili zaštite interesa države' [Special Form of Contract in Ancient Rome - for the Safety of the Parties or the Protection of the Interests of the State] in Popović, M. (ed.) *Rekonstrukcija pravnog sistema Jugoslavije na osnovama slobode, demokratije, tržišta i socijalne pravde II*. *[Reconstruction of the Legal System of Yugoslavia on the Basis of Freedom, Democracy, the Market and Social Justice II.].* Novi Sad: Pravni fakultet, pp. 59-71, p. 70.
[47] Schulz, F. (1961) *Classical Roman Law.* Oxford: Clarendon Press, p. 524.
[48] *Ibid.*
[49] Kötz, 2017, p. 75; Mousourakis, G. (2015) *Roman Law and the Origins of the Civil Law Tradition.* Cham-Heidelberg-New York-Dordrecht-London: Springer, 2015, p. 54.
[50] Zimmermann, 1993, p. 682.
[51] Kuttner, S. (1960) *Harmony from Dissonance: An Interpretation of Medieval Canon Law*. Latrobe. PA: Archabbey Press, p. 43.
[52] Domingo, O. R. (2017) 'The Revival of Roman Law and the European Legal Tradition'. Emory Legal Studies Research Paper. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2989080 (Accessed 28th July 2025), pp. 1-31, p. 1-2.
[53] *Ibid.*

example, the ones at the centre of analysis in this paper. Although no longer directly applied, Roman law remains foundational in civil law traditions and relevant to global legal thought. [54]

Already in Roman law, the relaxation of the initial strict formality of legal transactions was evident, caused by changes occurring in the market economy and society in general. This easing of the strict formality and ritualistic conduct of legal transactions naturally impacted the legal consequences of invalidity arising from formal defects, which fostered the emergence of various institutions with the aim of mitigating them.

Therefore, this chapter examines the historical antecedents of convalidation (or subsequent validation) of invalid legal transactions, primarily through the lens of Roman law and Canon law. The central topic of the dissertation being the convalidation of formally deficient contracts, it is necessary to review the legal consequences Roman law attached to such transactions and to determine whether it recognised legal mechanisms that remedied the consequences of invalidity resulting from formal errors.

Furthermore, the chapter examines how the evolution from strict formalism toward consensualism influenced the treatment of defective legal transactions. Accordingly, the chapter first illustrates the formalism of archaic Roman law, paying particular attention to the process of strictly ritualised legal transactions being gradually superseded by simpler methods of acquiring ownership and by legal remedies provided by the *praetor*. Although Roman law did not recognise the institution of convalidation in the modern sense, it developed several mechanisms that, in certain instances, cured the legal consequences of formal defects.

Following an overview of the formalities governing legal transactions, this chapter examines selected institutions of Roman law. Some of these mechanisms are cited in legal theory as examples of '*convalescentia*' while others, not doctrinally classifiable as antecedents of convalidation in the modern sense, were nevertheless capable, in specific cases, of curing the legal consequences of invalidity.

Therefore, this chapter presents the institution of *ratihabitio*, which gave effect to legal transactions concluded without proper authorisation through the subsequent approval of the entitled party, then briefly outlines the concepts of *conversion*, partial

[54] *Ibid.*

invalidity, as well as cases illustrated by the maxims *morte Cincia removetur* and the *exceptio Senatus Consulti Macedoniani*. These examples demonstrate that, although Roman law lacked a general institution of convalidation, it permitted in certain exceptional instances the subsequent curing of defective transactions.

Finally, the chapter briefly addresses the canon law institution of *sanatio in radice* — particularly regarding marriages suffering from formal defects — which was explicitly founded on the concept of convalidation. An overview of this historical evolution helps clarify that convalidation in modern civil law did not stem from a single ancient legal institution. On the contrary, it emerged from a combination of dogmatically distinct Roman and canon law solutions, adapting to changes in the market economy and society in general.

2.1. Formalism in Archaic Roman Law and the Evolution Toward Consensualism through Praetorian Remedies

In Roman law, juridical acts were traditionally subject to strict formal requirements, where promises were only enforceable if performed in rigid ceremonial procedures.[55]

In the earliest times in Roman private law, the validity and enforceability of legal acts did not stem from mutual intention, but from the successful execution of a fixed, predetermined set of formal procedures.[56] These types of forms typically required spoken *formulae*, precise physical gestures, the presence of Roman citizens as witnesses, and, in most cases, the involvement of a *magistrate*.[57] In these circumstances, the external form of legal acts was valued above their inner content, because of the human tendency to trust the visible, tangible signs over intangible thought.[58]

As an example of such reliance on form over intention, the procedure of *in iure cessio* could be observed. The decisive factor during this ritualistic performance was

[55] Harvey, W. F. (1878) *A Brief Digest of the Roman Law of Contracts.* Oxford: James Thornton, High Street, p. 9. For more, see also: Hunter, W. A. (1903) *A Systematic and Historical Exposition of Roman Law in the Order of a Code.* 4th edn. London: Sweet and Maxwell, p. 459.

[56] Zimmermann, 1993, pp. 88-89; Jhering, R. von (1858) *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* [*The Spirit of Roman Law at the Various Stages of Its Development*]. Zweiter Theil, Zweite Abtheilung [Second Part, Second Division]. 1st edn. Leipzig: Breitkopf und Härtel, pp. 176–177.

[57] Sič, 2000, p. 60.

[58] Jhering, 1858, p. 176.

not the parties' intentions or understanding, but the flawless execution of the ritual itself; even if an error occurred, it was likely irrelevant to the validity of the transfer, since the form alone determined the legal effect.[59] This formalistic framework transitioned into property transactions and the creation of obligations in the *ius civile*.[60]

Before assessing the means of ownership acquisition, it should be noted that Roman law distinguished between the protection of ownership by the *ius civile* and the *praetor*. This distinction provided the basis for the separation between Quiritary ownership (*dominium ex iure Quiritium*) and bonitary ownership (*in bonis habere*). The former was protected under the *ius civile*, while the latter was protected by the *praetor*. Although Gaius refers to a dual system of ownership, classical Roman jurists used the term "property" only for ownership recognised by the *ius civile*.[61] T the right protected by the *praetor* was described as *in bonis habere*, indicating that the property was in the possession of the transferee, even though he had not yet acquired Quiritary ownership.[62]

The *Ius civile* recognised only a limited set of legal transactions: *mancipatio*, in *iure cessio*, and *sponsio* (later generalised as *stipulatio*).[63] For their performance, performative elements, such as ritualistic words and choreographed actions, were of key importance, tracing their heritage back to a pre-monetary, bronze-based economy.[64]

Obligations, too, emerged within the confines of strict formalism. The *sponsio*, a verbal contract between Roman citizens, was valid only if the promissory exchange occurred with the precise question and response exchanged in unbroken sequence.[65] The validity of the promise depended solely on the wording, so the contract remained binding even when the commitment was obtained through fraud, coercion, or mistake.[66] An even older form, *nexum*, represented a debt-based

[59] Buckland, W. W. (1921) *A text-book of Roman law from Augustus to Justinian.* Cambridge: University Press, p. 235.
[60] Zimmermann, 1993, p. 92.
[61] Malenica, A. and Deretić, N. (2011) 'Rimsko pravo' [Roman law], Novi Sad: Pravni fakultet, p. 263.
[62] *Ibid.*
[63] Sič, 2000, p. 59-60.
[64] *Ibid.*
[65] Anghel, E. (2021) 'The Evolution of Contracts in Roman Law'. *LESIJ - Lex ET Scientia International Journal.* 28(1). pp. 112-118, p. 113-114; Watson, A. (1991) *Roman Law and Comparative Law.* Athens: University of Georgia Press, p. 53.
[66] Watson, A. (1984) 'The Evolution of Law: The Roman System of Contracts'. *Law and History Review.* 2(1). pp. 1-20, p. 4.

obligation that similarly relied on physical form and symbols.[67] The debtor assumed his obligation by means of a solemn ritual involving copper and scales in the presence of witnesses, and he could release himself from this bondage only by performing another equally formal act.[68]

As to the conveyance of ownership, *mancipatio* and in *iure cessio* also represented methods of derivative acquisition of property rights, together with *traditio*. For these methods of derivative acquisition of rights, the division of things into *res mancipi* and *res nec mancipi* is of crucial importance. The distinction was made based on the formal requirements for their conveyance. In early Rome, *res mancipi* included assets considered to be of significant importance to the agrarian economy, including slaves, draft and pack animals, Italian lands, and rural praedial servitudes.[69] Ownership of such assets could only be acquired through formal acts of *mancipatio*; all other assets (*res nec mancipi*) could be transferred through the less formal method of *tradition,* while by *in iure cessio* all things could be transferred.[70]

Mancipatio and *in iure cessio* were abstract and strictly formal acts of transferring ownership over *res mancipi,* while *traditio* was causal and non-formal.[71] Namely, with *mancipatio* and *in iure cessio,* it was not clear why the transfer of ownership was taking place.[72] Contrary to these, *traditio* required a valid legal basis for transfer (*iusta causa*) for the conveyance of property rights to occur.[73]

These procedural forms served multiple functions. First, they had a protective role, enhancing certainty for Roman citizens.[74] Moreover, they operated as evidentiary tools in a mostly illiterate society and a legal system without detailed documentary practices.[75] Roman law thus prioritised visible and ritualised conduct over the internal agreement of parties' will, resulting in a legal framework where any formal error

[67] Zimmermann, 1993, p. 4.
[68] *Ibid*, p. 755.
[69] Domingo Oslé, R. (2017) 'The Law of Property in Ancient Roman Law'. SSRN Electronic Journal. Available at: https://ssrn.com/abstract=2984869 (Accessed: 5 July 2026). DOI: https://doi.org/10.2139/ssrn.2984869, p. 2. See also: Erdődy, J. (2006) 'Tulajdonszerzés pénzen, római jog szerint: Gondolatok a *mancipatio* margójára [Acquisition of Ownership over Money under Roman Law: Reflections on *Mancipatio*]', *Iustum Aequum Salutare*, 2(3–4), p. 75.
[70] Domingo Oslé, 2017, p. 2. See also: Malenica and Deretić, 2011, p. 280 *et seq*.
[71] Malenica and Deretić, 2011, p. 281-282.
[72] Erdődy, 2006, p.
[73] Malenica and Deretić, 2011, p. 283.
[74] Sič, 2000, p. 60.
[75] Buckland, 1921, p. 409.

typically led to invalidity, thus omitting the possibility of creating juridical acts with enforceable obligations.[76]

Importantly, Roman legal doctrine of the archaic period does not seem to have recognised curative doctrines for formal error. Based on the analysed literature, it can be concluded that there was no rule of essential compliance that could validate transactions retroactively on the basis of intent or partial execution.

This strictness explains the legal division observed between Quiritary and bonitary ownership.[77] Namely, when a *res mancipi* was transferred by mere *traditio* instead of the required *mancipatio* or in *iure cessio*, the transferee was not able to acquire Quiritary title and thereby hindered commercial transactions, to which the *praetor* responded.[78] The *praetor* applied equitable instruments, primarily the *exceptio rei venditae et traditae* and the *actio Publiciana*, which used legal fictions to protect the so-called bonitary owners who had a valid title in person but lacked a right of ownership.[79] These innovations, however, did not abolish civil law rules but allowed transferees, who acted in good faith, to claim possession both against the Quiritary owner and against third parties.[80]

Thus, the *actio Publiciana* represented an important instrument by which the *praetor* protected certain property acquirers using legal fiction. It protected the bonitary owner, who had purchased and received property but had not yet usucapted it, by allowing him to sue as if *usucapio* had already been completed.[81] As examples, two cases should be highlighted. Firstly, the case when Quiritary ownership could not be acquired due to a defect in form, for example, when ownership rights over a *res mancipi* had been acquired through *tradicio*.[82] Secondly, when ownership was acquired from a non-owner (*non-domino*).[83] However, the praetorian fiction did not remedy the defect regarding the form of the contract or the fact that ownership was acquired from a non-owner.

---

[76] Zimmermann, 1993, p. 587; Sič, 2000, p. 60; Buckland, 1921, p. 409.
[77] Giglio, F. (2022) 'Roman "dominium" and the Common-Law Concept of Ownership'. *Rabels Zeitschrift für ausländisches und internationales Privatrecht / The Rabel Journal of Comparative and International Private Law*, 86(1), pp. 91-118, p. 101.
[78] *Ibid,* p. 98.
[79] Díaz-Bautista Cremades, A.A. (2021) 'Actio Publiciana and Mancipatio', *Journal on European History of Law*, 12(2), pp. 142. See also: Giglio, 2022, p. 98.
[80] Giglio, 2022, p. 98.
[81] *Ibid*, p. 98-99.
[82] Díaz-Bautista Cremades, 2021, pp. 142.
[83] *Ibid*.

Furthermore, it did not exempt the parties from fulfilling the necessary conditions for acquiring Quiritary ownership based on *usucapio*. Therefore, four conditions of *usucapio*, the *res habilis, titulus, bona fides,* and *possession*, had to be fulfilled, while the *praetor* only fictionalised the fifth one: the passage of the given time (*tempus*).[84]

Still, the adherence to mandatory formal requirements in early Roman law should not be considered obsolete. When administrative documentation was modest, formalism provided seriousness and reliability, which supported certainty in contracts, even though it restricted the course of transactions.[85] Over time, however, new social needs led to the acceptance of real and consensual contracts, marking the gradual relaxation of strict formalism.[86]

Highly formal agreements of early Roman private law, where the prescribed procedures and rituals outweighed the actual consent of the parties, eventually evolved into less formal agreements and, ultimately, into consensual contracts. Thus, there was the appearance of *emptio-venditio*, *locatio-conductio*, *mandatum*, and *societas* as a result of economic and social need for flexibility while still preserving the evidentiary and cautionary functions of formal requirements.[87]

Two conclusions could be drawn. First, defective form in archaic Roman law rendered the act null and void, and it was not possible to remedy the flaw. On the other hand, praetorian instruments, by the application of the fiction regarding *tempus*, were aimed at protecting certain persons whose acquisition of ownership was affected by defective form or acquisition from a non-owner.

The changes over time in the methods of Roman legal property acquisition also reflect the changes in the role of formal requirements. In the archaic period, the ritualistic form was paramount, while the *iusta causa* was not decisive for the validity of the legal act. Nevertheless, in the case of *traditio,* instead of observing the strict form, the *iusta causa* of the underlying legal act was emphasised. The transfer of property was thus made possible by simple transfer.

[84] Petrak, M. (2012). 'Actio Publiciana in Classical Roman Law', *Zbornik Pravnog fakulteta u Zagrebu*, 62(5-6), Available at: https://hrcak.srce.hr/100049 (Accessed 2 July 2026), p. 1526.
[85] Abry, 2023, p. 34.
[86] Anghel, 2021, p. 114.
[87] Abry, 2023, p. 33.

Furthermore, in classical Roman law, Italian lands (*ager Italicus*), as *res mancipi*, could originally be transferred by *mancipatio* or *in iure cessio*.[88] However, Justinian's reforms abolished the distinction between *res mancipi* and *res nec mancipi*, so that from then on, ownership of real estate was also transferred by *traditio*, without the requirement of the observance of a special form for the validity of the transaction.[89]

This development of the methods of property acquisition reflects a gradual decline in the in the significance of strict and ritualistic formalism and shows that even in Roman law they had already moved towards prioritising the parties' existing legal transaction and their genuine contractual will over merely complying with formal requirements.

2.2. Selected Roman Law Institutions Preserving the Legal Effects of Defective Legal Transactions

Polignani explains that a juridical act lacking essential conditions for its validity — regarding parties, form, or content — cannot establish, modify, or extinguish legal relations; it is merely a factual occurrence with no legal force.[90] Consequently, such acts cannot be convalidated, even by subsequent consent or ratification, since, as he reiterates through Roman sources, *'quod initio vitiosum est non potest tractu temporis convalescere'*.[91] According to him, this foundational principle of Roman law justifies the exclusion of convalidation for acts that are null and void *ab initio*.[92]

Furthermore, he differentiates between acts that are absolutely null and void and those that are merely voidable, which may be convalidated if the entitled party does not exercise their right to challenge the act or explicitly waives that right.[93]

---

[88] Domingo, 2017, p. 2.
[89] Pugh, G. (1962) '*Traditio* in the Civil Law', *Louisiana Law Review*, 22(2), p. 422.
[90] Polignani, G. (1869) *La dottrina della ratihabitio [The Doctrine of Ratihabitio]*. Naples: Testa, p. 20.
[91] *Ibid*, p. 21.
[92] *Ibid.*
[93] *Ibid*, p. 23. This differentiation between null and void, and voidable juridical acts is also present in modern legal systems analysed in this research, which will be presented in the subsequent chapters of this thesis. In this part of the research, however, a brief clarification should be made regarding these two forms of contractual invalidity. Namely, in the legislation of the researched countries, these two forms of invalidity are referred to as absolute nullity and relative nullity. The significance of this differentiation for the present thesis is that the legal literature of the majority of the analysed countries ties the institute of convalidation to the so-called relative nullity cases where the validity of a juridical act is dependent on the parties' will. However, at the centre of this dissertation is the possibility of convalidation of null and void juridical acts (i.e., acts sanctioned with absolute nullity due to formal defects).

Convalidation is therefore only possible when the act was initially valid but subject to annulment (for instance, due to a defect in consent or lack of legal capacity).[94]

According to the Italian scholar, in cases of absolute nullity, convalidation is not possible, because the absence of formal or substantive legal requirements, or the lack of legal capacity or commercial transfer of the object of a respective contract, renders the juridical act irremediable.[95]

On the other hand, although Roman law is traditionally considered to reject the possibility of convalidating juridical acts that were defective *ab initio*, this principle may not be as exclusive as often assumed.[96] The aforementioned maxim is generally interpreted in the literature as a rejection of any form of convalescence.[97] However, Roman law established exceptions.

Namely, Roman law foresaw the general rule regarding the incurability of invalidity based on the so-called *regula Catoniana*[98] — a principle originating in the pre-classical era.[99] However, it should be noted that the *regula Catoniana* was originally intended to address a specific type of case concerning *legatum*. It stipulated that if the conditions for the validity of a legacy were not met at the time the will was executed, the legacy was invalid and would not become valid even if those conditions were satisfied by the time of the testator's death.[100] Sabinus and, subsequently, Paulus generalised this specific principle, which was later applied in the context of invalidity of contracts as well.[101]

While there are exceptions to this rule of incurability, it is well known that Roman law did not formulate a general rule regarding the curing of invalidity.[102]

Legal scholarship of Roman law distinguishes between two categories of cases involving the curing of invalid legal transactions. These are the *convalescentia* and

---

[94] Polignani, 1869, p. 23.
[95] *Ibid*, p. 20 and p. 25.
[96] Tellegen-Couperus, O.E. and Tellegen, J.W. (2024) *The regula as a rhetorical device in Roman law*. Leiden: Brill, p. 84.
[97] *Ibid.*
[98] Paul. D. 50,17,29: *"Quod initio vitiosum est, non potest tractu temporis convalescere."* See: Siklósi, 2014, p. 232; Wacke, A. (2000) 'Ex post facto convalescere en Derecho romano y Derecho alemán moderno [Ex Post Facto Convalidation in Roman Law and Modern German Law]', *Anuario de Derecho Civil*, 53(4), pp. 1375.
[99] Siklósi, 2014, p. 232.
[100] Siklósi, I. (2009) 'Néhány adalék a *convalescentia* kérdésköréhez a római jogi források tükrében [Some Remarks on the Concept of *Convalescentia* in the Light of Roman Law Sources]', *Jogtudományi Közlöny*, 64(10), p. 430.
[101] *Ibid.*
[102] *Ibid.*

conversio.[103] However, it is a matter of scholarly debate whether Roman law truly recognised these legal concepts as they are understood in the modern sense.[104] What can be stated with considerable certainty, however, is that the rules governing the remedying of invalidity through *convalescentia* and *conversio* were exceptional and casuistic in nature.[105]

As the central matter of analysis in this research is the institute of convalidation (or *convalescentia*), this chapter will examine selected cases categorised under *convalescentia*. There are a number of examples enshrined in Roman law sources regarding the remedying of invalidity.[106]

Zimmermann discusses *morte Cincia removetur* and the *exception senatus consulti Macedoniani* as examples of *convalescence* in Roman law.[107] However, it should be noted that he does not use the term *convalescence* as a synonym for the modern legal institute of convalidation. Rather, he applies it in its literal sense, which refers to curing (remedying) in general. Therefore, these examples should not be regarded as Roman law precursors of the modern doctrine of convalidation, but rather as evidence of the presence of curing mechanisms in Roman legal practice, in which cases they were classified in the group of *convalescentia*.

At the outset, Roman law strictly regulated agreements on donations through the *lex Cincia de donis et muneribus*, which prohibited donations exceeding a certain value.[108] However, since the *lex Cincia* was considered *lex imperfecta*, it did not render donations violating the prohibition null and void, nor did it directly sanction them.[109] Instead, the *praetor* granted the donor an *exceptio* (a legal defence), allowing the promise of a gift to be revoked.[110] Later, the principle of *morte Cincia removetur*

---

[103] Siklósi, 2014, p. 251.
[104] According to modern legal literature, *conversio* and *convalescentia* — as legal institutions understood today — do not originate in Roman law, because Roman jurists did not formulate general doctrinal concepts for the specific cases that correspond to these institutions. The modern legal scholarship retrospectively named these cases and classified them into these two groups. Nevertheless, it must be acknowledged that instances of what we now call *conversio* or *convalescentia* (*convalidation*) do appear in Roman legal sources, even though they did not constitute independent legal institutions. For more, see: Siklósi, 2014, pp. 250-251.
[105] Siklósi, 2014, p. 251.
[106] Zimmermann, 1993, p. 682.
[107] *Ibid,* pp. 682-683.
[108] Albertario, E. and Volterra, E. (1938) 'Donazione [Donation]', *Enciclopedia Italiana – I Appendice*, p. 139.
[109] *Ibid.*
[110] It should be noted, however, that this exception did not apply to gifts that had already been executed. See: Albertario, and Volterra, 1938, p. 139.

emerged, establishing that if the donor had not exercised the *exceptio* during their lifetime, their heirs could no longer invoke it after the donor's death.

Although legal literature considers this principle to be an example of *convalescentia,* it is obvious that the *morte Cincia removetur* is not consistent with the characteristics of the institute of convalidation in the modern sense. Even more so, the *lex Cincia* was considered to be *lex imperfecta*; therefore, the law did not foresee any legal consequences for acts not adhering to it. Since the *praetor* was the one who applied the legal defence of *exceptio,* the principle of *morte Cincia removetur* merely excluded the possibility of the application of the *exceptio.* Consequently, the *morte Cincia removetur* did not cure an invalid legal transaction; it rather prevented the revocation of the promise of donation.

In legal theory, the removal of the applicability of the *exceptio Senatus Consulti Macedoniani* is considered another example of *convalescentia*. In this case, the *pater familias* or the *sui iuris* son could remove the exception previously granted by the praetor by the ratification of the loan.[111] Similarly, the removal of the *exceptio Senatus Consulti Macedoniani* does not subsequently cure an invalid legal act, but rather omits the possibility of invoking the *exceptio*. Legal theory refers to these cases as *"situations where the obstacle to the validity of the transaction subsequently falls away"*[112].

Legal doctrine often categorises *ratihabitio* as an example of *convalescentia.*[113] The concept of ratification *(ratihabitio)* represents the retroactive approval of an unauthorised legal act. It was unknown in early Roman law, since its emergence is linked to the development of representation in court proceedings, particularly through the *cognitor* and *procurator*.[114] In such procedures, the need to validate acts performed without prior authority became a practical necessity.[115] In these cases, *ratihabitio* served to compensate for the lack of *mandatum*.[116]

Alongside *ratihabitio*, the idea that certain juridical acts — initially invalid due to lack of capacity, defective will, or formal irregularities — may later acquire legal

[111] Zimmermann, 1993, p. 683.
[112] *Ibid.*
[113] Siklósi, 2014, p. 252.
[114] Polignani, 1869, p. 1.
[115] *Ibid,* p. 2.
[116] Siklósi, 2014, p. 253.

effect appeared as well, since it was not unknown to postclassical interpretations of Roman law.

For instance, in the law of pledge, a pignus granted by a non-owner could later be convalidated if the pledged object subsequently entered the patrimony of the debtor and a prior pledge had been extinguished.[117] In the case of donations between spouses, a stipulation made in favour of the husband during marriage could convalesce upon the wife's death, thus validating the transaction posthumously.[118] Similarly, in testamentary succession, an institution of an heir who lacked testamentary capacity at the time of the drafting of the will could become valid if that heir had regained their capacity by the testator's death, as particularly acknowledged in the context of military wills.[119] Concerning *donatio mortis causa*, the legal validity of the gift remained suspended until the donor's death, at which point the transaction could convalesce and produce legal effects, unless it had been revoked in the meantime.[120]

After the assessment of the exemplary cases of *convalescentia,* two other legal institutions are worth mentioning, which are considered to be related institutions to *convalescentia*. Although they aim towards a similar purpose, the mitigation of causes of invalidity in legal transactions, they differ in their method of achieving it.

The first of these institutions is *conversio.* Similar to *convalescentia,* Roman law did not establish a general legal framework for this institution. It is rather enshrined in specific, individual cases. According to legal literature, the most frequently used example of *conversio* is the case of a soldier who was in the process of drawing up a will but died before he could finish it in the right form.[121] However, his formally deficient will was accepted as a valid soldier's will and did not require any formalities.[122]

This example clearly illustrates the characteristics and concept of conversion. It refers to a legal mechanism whereby an invalid legal act is reinterpreted as another, valid act that meets the requirements for legal validity.

The other related institution is partial invalidity, which has been present in contract law for centuries.[123] Legal scholarship traces the Roman law roots of partial

[117] Krueger, P. and Mommsen, T. (1889) *Corpus Iuris Civilis,* Berlin: Weidmann, p. 265.
[118] *Ibid*, p. 317.
[119] *Ibid*, p. 397.
[120] *Ibid*, p. 610.
[121] Zimmermann, 1993, p. 685.
[122] *Ibid*.
[123] Midorović, 2023, p. 20.

invalidity (*utile per inutile non vitiatur*) to a fragment by Ulpian found in the Digest (D. 45.1.1.5), which states that "*the useful part is not vitiated by the useless part*" (*neque vitiatur utilis per hanc inutilem*).[124]

The fragment arose in the context of a *stipulatio* (an oral contract). A condition for the validity of a *stipulatio* was that the content of the question and the answer had to match perfectly; however, in the case at hand, this did not occur.[125] At first glance, the discrepancy between the question and the answer would have rendered the entire *stipulatio* invalid; yet, by applying a legal fiction, Ulpian reasoned that two separate *stipulationes* had actually been created — one of which met the formal requirements and thus remained valid, while the other was invalid.[126] Crucially, the invalid part did not entail the invalidity of the valid part; in other words, one *stipulatio* survived while the other lapsed.[127]

The relaxation of initial strict formalism was already evident in Roman law, which also impacted the validity of contracts. Furthermore, while legal institutions enshrined in modern legal systems, such as convalidation, have roots in Roman law, the casuistic nature of the latter makes it impossible to single out any specific institution as the direct predecessor of modern convalidation.

Nevertheless, scholarly literature clearly demonstrates the existence of specific cases testifying to the fact that the aim of protecting genuine contractual intent, despite potential defects, was already present in Roman law, just as it is a common feature of modern legal systems.

2.3. Canon Law and the Moral Foundations of Convalidation

It should be emphasised that the concept of convalidation is not confined to Roman law, because it also appears within the Canon law tradition. Namely, Canon law not only absorbed and transformed Roman legal techniques but also operated within a fundamentally different intellectual framework. Medieval canon law represented the '*mutual penetration of two modes of thought*': legal reasoning and theological purpose.[128]

---

[124] Zimmermann, 1993, p. 683; Midorović, 2023, p. 34.
[125] Midorović, 2023, p. 34.
[126] *Ibid*.
[127] *Ibid*.
[128] Kuttner, 1960, p. 45.

The canonists did not draw sharp boundaries between legal reasoning and theological thought. They used Scriptural and patristic sources to support highly technical legal propositions, while also citing Roman civil law texts in defence of moral or sacramental doctrines.[129] Within this intellectual and legal tradition, mechanisms were developed to address impediments, defects in consent, or defects in canonical form in matrimonial law.

The mechanisms of validating invalid marriages have historical roots which predate the modern codification of Canon law. Namely, radical sanation (*sanatio in radice*) was present in the Middle Ages. Scholarly literature considers the *sanatio in radice* granted by Pope Boniface VIII in 1301 to be the first generally recognised instance.[130] The systematic and terminological distinction between simple convalidation and radical sanation was expressly recognised in the 1917 *Codex Iuris Canonici* and was maintained in the 1983 Code as well.[131]

The 1917 *Codex Iuris Canonici* addresses *convalidatione simplici* and *sanatione in radice* in Chapter XI, within canons 1133–1141[132], while the two mechanisms are enshrined in Chapter X, between canons 1156 and 1165[133].

Under the 1983 Codex *convalidatione simplici* and *sanatione in radice* constitute two different mechanisms pertaining to invalid marriages. Simple convalidation (*convalidatione simplici*) requires the removal or dispensation of the impediment and the renewal of consent by at least one party who was aware of the impediment.[134] The renewal of consent constitutes a new act of will regarding the marriage, which the party renewing the consent knows or believes to have been null from the beginning.[135] It is important to note that can. 1156 §2 expressly requires such renewal under ecclesiastical law for the validity of the convalidation even where both parties

---

[129] *Ibid.*

[130] Renken, J.A. (2010) 'Extraordinary convalidation: The radical sanation of an invalid marriage', *Periodica de Re Canonica*, 99, pp. 461–501. p. 497.

[131] Bartczak, A. (2017) 'Konwalidacja małżeństwa kanonicznego' [The Convalidation of Marriage in Canon Law], *Acta Universitatis Lodziensis. Folia Iuridica*, 81, pp. 5–15. https://doi.org/10.18778/0208-6069.81.01, p. 8.

[132] Codex Iuris Canonici 1917 – Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus. Romae: Typis Polyglottis Vaticanis. Available at: https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib4-cann998-1165_en.html#CHAPTER_X. Accessed 13 September 2026. Hereinafter referred to as 1917 Codex.

[133] Codex Iuris Canonici 1983 – Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus. Città del Vaticano: Libreria Editrice Vaticana. Available at: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_la.html. Accessed 13 September 2026. Hereinafter referred to as: 1983 Codex.

[134] Can. 1156 § 1. of the 1983 Codex.

[135] Can. 1157 of the 1983 Codex.

originally gave their consent and neither subsequently revoked it.[136] In the case of a marriage null because of a defect of form, such a marriage must, as a rule, be contracted again in canonical form in order to become valid.[137]

In contrast, radical sanation grants retroactive validity without renewed consent, through the Church's authority and necessary exemptions.[138] It entails a dispensation from an impediment, if one exists, and from the canonical form, if it was not observed, as well as the retroactive effect of canonical consequences to the time of the original celebration, unless otherwise expressly provided.[139]

The main difference between the two mechanisms concerns the role of matrimonial consent. Thus, when analysing both forms of convalidation, it should be noted that in the case of simple convalidation, a renewal of matrimonial consent is required while *sanatio in radice* the convalidation of the marriage occurs on the basis of the original marital consent that already exists.[140] For this reason, canon law—to designate this specific method of validating a legal act—aptly and deliberately employs the term *sanatio* rather than *validatio* or *convalidatio*.[141] Indeed, this institution signifies the healing or remedying of certain deficiencies in something that already exists in a sufficient and complete manner and does not involve creating something entirely new from scratch rather, it cures the legal legal defect affecting something that already exists in the objective reality of things (*in obiectiva rerum natura*).[142]

From the perspective of the present research, these mechanisms demonstrate the various forms that convalidation may assume. Although this thesis focuses primarily on the manifestations of convalidation in contract law, its function in Canon law provides a valuable comparative perspective on the institution under examination.

3. Convalidation in Classical Civil Law Codifications

The historical overview elaborated above has established that although early Roman law was typically absolute in its opposition to retroactive validation of invalid

[136] Can. 1156 §2 of the 1983 Codex.
[137] Can. 1160 of the 1983 Codex.
[138] Can. 1161 of the 1983 Codex.
[139] Can. 1161 of the 1983 Codex.
[140] Bartczak, 2017, pp. 9-10.
[141] *Ibid.*
[142] *Ibid.*

juridical acts, it nonetheless allowed some exceptions. Similarly, canonical jurisprudence preserved the concept of convalidation.

In this context, the question arises as to how these historical antecedents affect the systematic treatment of convalidation in modern civil law codifications. Thus, the following chapter analyses how these codifications have incorporated the legal institute of convalidation. By analysing the French Code civil, the Austrian ABGB, the German BGB, the Swiss Civil Code and Code of Obligations, and the Italian Codice civile, the chapter establishes how various legal traditions approach invalidity due to formal deficiencies of juridical acts. The question is whether convalidation is categorically codified, implied through interpretive practice, or entirely excluded.

3.1. Formal Requirements and the Transfer of Ownership in France

The French Civil Code[143] contains the principle of consensualism[144] which states that, in principle, contracts are consensual.[145] Therefore, a validly concluded contract is based on achieving consensus between the contracting parties. Furthermore, French legislation implemented the freedom of form as a general principle regarding contract law; thus, the law does not demand a specific form for contracts to be validly concluded[146].

However, there are exceptions to this rule.[147] In certain cases, the law may impose formal requirements which serve different functions. Among the purposes of these mandatory formalities are establishing the validity of the contract, evidence of the existence of the contract, and the assurance of its effectiveness against third parties.[148]

---

[143] Code civil [French Civil Code], version in force as of 31 August 2026.
[144] Although the principle is found in various European harmonisation instruments, it was not previously expressly stated in the Civil Code; it emerged only through an *a contrario* interpretation of the former provisions regarding the conditions for contract validity. See: François, C. (2016) *Présentation des articles 1172 à 1173 de la nouvelle sous-section 1 « Dispositions générales »*[Presentation of Articles 1172 to 1173 of the New Subsection 1 "General Provisions"]. In: *La réforme du droit des contrats présentée par l'IEJ de Paris 1*. Available at: https://iej.univ-paris1.fr/openaccess/reforme-contrats/titre3/stitre1/chap2/sect3/ssect1-forme-dispos-generales/ (Accessed: 11 July 2026).
[145] Art. 1172 para. 1 of the French Code civil: *"Les contrats sont par principe consensuels."*
[146] In this regard, see: Art. 1583 of the Code civil, which foresees that a contract of sale is formed by mere agreement on the thing and the price, whether the thing has passed or the price has been paid.
[147] Smits, 2021, p. 101.
[148] Catala, P. (ed.) (2007) *Proposals for Reform of the Law of Obligations and the Law of Prescription* [Avant-projet de réforme du droit des obligations et de la prescription]. Translated by J. Cartwright and S. Whittaker. Oxford, p. 42.

While written form is, for example, foreseen in the case of fixed-term contracts of employment, residential construction contracts, life insurance, and real estate or marriage agency contracts, for the validity of contracts of donation or matrimonial contracts it is necessary to conclude them in the form of a notarial deed.[149]

For the present research Article 1172 para. 2 of the French Civil Code is of particular importance. While paragraph 1 establishes the principle of consensualism as the general principle of French contract law, paragraph 2 provides exceptions from the rule. Namely, it stipulates that the validity of formal contracts is subject to compliance with formal requirements determined by law, failing which the contract is null and void, except for possible regularization.[150] The significance of this provision lies in the fact that the French Civil Code contemplates curing a form defect within its general rules on contractual form.

Regularization implies a direct intervention aimed at erasing the defect, and not simply at covering the risk of nullity.[151] The objective sought is therefore not to prevent one of the parties from invoking the nullity of an act that does not meet the required formalities, but rather to make this act retroactively valid by doing after the fact what was not done originally.[152] The risk of nullity for non-compliance with the proposed formalism can therefore only be eliminated through the signing of a new act bringing into regularization the one initially signed between the parties.[153]

For the purposes of this research, it is particularly important to distinguish between *régularisation* and convalidation. The two legal institutes are functionally close insofar as both mechanisms aims to prevent nullity to be a final consequence of formally deficient contracts. Nevertheless, they should not be equated since *régularisation,* as understood in connection with solemn contracts requires the subsequent fulfilment of the formality that was originally omitted. Therefore, *régularisation* constitutes a different curative mechanism (from convalidation) based

[149] Smits, 2021, p. 104 and p. 107.
[150] Art. 1172 para. 2 of the French Code Civil: *"Par exception, la validité des contrats solennels est subordonnée à l'observation de formes déterminées par la loi à défaut de laquelle le contrat est nul, sauf possible régularisation."*
[151] Congrès des notaires de France (2022) *Rapport du 118e Congrès des notaires de France: Les conséquences d'une solennité nouvelle* [Report of the 118th Congress of Notaries of France: The Consequences of a New Solemnity]. Available at: Congrès des notaires de France – Les conséquences d'une solennité nouvelle [Accessed: 7 September 2026].
[152] *Ibid.*
[153] *Ibid.*

on which the respective juridical act is rendered retroactively valid by the subsequent removal of the formal defect itself.[154]

The provisions pertaining to donations further illustrate the importance of distinguishing curative mechanisms from cases in which the prescribed form does not apply in the first place. Under Article 931 of the Code civil, all acts of *inter vivos* donation shall be signed before a public notary in the form of a notarial deed under the penalty of nullity in case the required form is not observed.[155] However, jurisprudence developed two exceptions to this provision: first, ordinary gifts, or so-called *'don manuel'*, i.e., objects that demand physical delivery and second, disguised or indirect donations.

In the case of *don manuel* the validity of the donation is contingent upon the actual delivery (*tradition*) of the gift to the donee, while a simple promise of a manual gift (*don manuel*) has no binding force. Delivery replaces the formality of the authentic instrument, so that "one solemnity is replaced by another".[156] In this case, therefore, the transfer of the object does not subsequently cure invalidity stemming from a previous formal defect but is a constitutive element necessary for the *don manuel* to exist as a valid transaction.

In the latter case, the donation does not appear as a contract of donation, but as a form of another legal transaction whose formal conditions meet the formal requirements of the legal transaction whose appearance is created.[157]

These cases therefore constitute recognised exceptions to the regulatory framework of the formal requirements provided for in Article 931 rather than examples of the subsequent curing of a defect of form. It is therefore of significant importance for the present research to distinguish these exceptions from convalidation. Namely, convalidation presupposes the existence of an initial defect of the respective juridical act which renders it invalid and a subsequent event capable of curing that defect. By contrast, when a *don manuel* or a valid *donation déguisée* is concerned, there is no

---

[154] French legal doctrine traditionally recognised the institute of *régularisation* of null and void juridical acts. Legal literature defines *régularisation* as a legal institute which concerns a substantial defect of the underlying juridical act requiring a remedial act (*acte réparateur*) for its validation. Additionally, *régularisation* is not considered as a general principle which is automatically applied to every invalid transaction, since its application depends on whether the particular defect is capable of being subsequently removed. For more see: Starck, B., Roland, H. and Boyer, L. (1998) *Droit civil: Les obligations. Tome 2, Contrat. [Civil Law: Obligations. Volume 2, Contract]*. 6th edn. Paris: Litec, pp. 370-371.

[155] Article 931 of the French Code civil.

[156] Starck, Roland and Boyer, 1998, p. 79.

[157] Case no. 23/50949 of the Paris Judicial Court from 12 April 2023.

initial invalidity stemming from a formal deficiency to be cured. Their validity therefore cannot serve as evidence of performance-based convalidation by in French law.

Another key distinction has to be drawn in connection with the former Article 1340 of the French Code civil. The provision foresaw that the confirmation, ratification or voluntary performance of a donation by the donor's heirs or successors after the donor's death entailed their waiver of the right to invoke defects of form or any other objection.[158] French legal doctrine considered this rule to be a specific derogation from the general rules on confirmation.[159]

It should also be emphasised, that even though the provision expressly referred to the voluntary performance of a formally defective donation, its legal effect was not the subsequent remedy of such defect. Rather, performance resulted in the heirs or successors losing the right to invoke invalidity based on the formal defect.[160] Case law further required that the heirs had knowledge of the defects affecting the donation and ether way intended to perform it.[161] Consequently, the mechanism should be classified as a form of confirmation or ratification rather than as performance-based convalidation in the strict sense adopted in the present research, since the underlying formal defect was not subsequently remedied.

This distinction also clarifies the the place of confirmation in French private law. Namely, confirmation is expressly codified as a general corrective mechanism for relative nullity in the applicable French Code civil.

The distinction provided in Article 1179 is of key importance for confirmation, as it differentiates between absolute nullity when the violated rule serves the protection of the general interest and relative nullity when it solely protects private interests.[162] Absolute nullity may be invoked by any person who can demonstrate a legal interest, as well as by the public prosecutor, whereas in the case of relative nullity only the party which considers their interest violated is authorised to subsequently agree to the

[158] Article 1340 of the former French Code civil. Available at: https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000006438160/1996-07-06?utm_source=chatgpt.com [Accessed: 7 Septtember 2026].
[159] Starck, Roland and Boyer, 1998, p. 368.
[160] Starck, Roland and Boyer, 1998, pp. 368-369.
[161] *Ibid.*
[162] Article 1179 of the French Code civil. *"La nullité est absolue lorsque la règle violée a pour objet la sauvegarde de l'intérêt général. Elle est relative lorsque la règle violée a pour seul objet la sauvegarde d'un intérêt privé."*

contract, thereby waiving the right to plead nullity and confirm the contract.[163] Confirmation can only occur after the contract has been concluded,[164] in the form of voluntary performance, with full knowledge of the cause of nullity, while in the event of duress, confirmation can only occur after it has ceased to exist[165].

Finally, the French Civil Code has provided the procedure for confirmation. Namely, according to the letter of the law, one of the contracting parties may request in writing that the other, who claimed nullity, either confirm the contract or initiate a court proceeding in order to invoke nullity within six months, failing to so, the action will be time-barred and the contract will be regarded as confirmed by the application of legal fiction that the cause of nullity must have ceased.[166]

It is thus apparent that the French Civil Code contains provisions pertaining to formal requirements of particular contracts. It also addresses the possibility of curing invalidity stemming from formal deficiencies[167].

One of the major exceptions to the informality of contracts in French law concerns real estate. Despite the close connection between these exceptions to the principle of freedom of form, a distinction must be drawn between the conclusion of the contract, its validity, its obligations-law effects, the transfer of ownership, registration in the land registry, and effects vis-à-vis third parties. This is particularly important because real estate contracts cannot be treated merely as a matter of the law of obligations. It is, therefore, essential to approach the issue from the perspective of property law as well.

The aforementioned principle of consensualism is extended to immovable property by Article 1196 of the Code civil, by foreseeing that in contracts whose object is the alienation of ownership or the assignment of another right, the transfer takes place upon conclusion of the contract.[168]

Article 1583 of the Civil Code builds further upon this principle by stipulating that ownership rights pass to the buyer as soon as there is an agreement on the object and the price, even if the object has not been delivered and the price has not been

[163] Article 1180 and Article 1181 of the French Code civil. See: Starck, B., Roland, H. and Boyer, L. (1993) *Obligations. Tome 2: Contrat* [Obligations. Vol. 2: Contract]. 4th edn. Paris: Litec, pp. 374-375.
[164] Article 1182 Sec 2 of the French Code civil.
[165] Article 1182 Sec 3 of the French Code civil.
[166] Article 1183 of the French Code civil.
[167] See the example of contracts on donations.
[168] Article 1196 of the French Code Civil.

paid.[169] Accordingly, no special mandatory form is required either for the transfer of ownership or the validity of the contract.[170] Indeed, even a verbal contract is sufficient to validly conclude a contract and convey ownership rights between the parties, without the requirement of any written record.[171]

Article 1583 therefore produces not merely obligations-law effects but, at the same time, it establishes proprietary effects as well, since ownership is transferred without any additional requirements regarding a separate act for the conveyance, delivery of the object of sale or payment of the purchase price.

Even though real estate contracts are subject to the principles of freedom of form and consensualism — meaning that the form does not affect the validity of the contract from the aspect of the law of obligations, nor does it impede the transfer of ownership under property law — specific regulations exist regarding registration in the land registry. Article 710-1 of the Code civil provides that any right or act entailing registration of land must be drawn up in the form of an '*acte authentique'* by a public notary in France, a judicial decision, or an authentic act from an administrative authority.[172] Moreover, Article 28(1)(a) of Decree No. 55-22 of 4th January 1955[173] expressly requires the registration of instruments transferring ownership of immovable property, which presupposes the production of specified authentic instruments as a condition for registration. Consequently, based on juridical acts that do not adhere to

[169] Article 1583 of the French Code Civil.

[170] One of the fundamental features of French civil law is that the transfer of ownership is, as a rule, carried out solely by the unanimous declaration of the parties' will. In the classical consensual system of the Code civil, the transfer of ownership does not require a separate act: if the parties agree on the object of their agreement and the price, ownership is transferred between the parties at the moment of the conclusion of the contract. This principle is expressed in several provisions of the Code civil, in particular Article 1583, according to which, upon the conclusion of the sale contract, ownership is transferred to the buyer even if the object of the transaction has not yet been actually transferred. With this solution, French law emphasises the consensual nature of the contract, that is, the essence of the legal transaction is given by the agreement of the parties' will, which directly triggers the legal effect. This feature was also intended to be maintained unchanged by the academic initiatives aimed at reforming French law. The reform proposals, drawn up under the leadership of Pierre Catala, expressly stated that they did not intend to modify the basic principle according to which the transfer of property occurs by the mere exchange of the consent of the parties. According to the justification of the reform draft, this solution did not cause any difficulties in practice and fit organically into the traditional structure and dogmatic foundations of the Code civil. The proposals therefore preserved the historically established consensual model of French private law and did not consider it necessary to modify it. For more details, see: Catala, 2007, p. 50.

[171] Kötz, 2017, p. 83.

[172] Article 710-1, para. 1 of the French Code Civil.

[173] Article 28(1)(a) of Décret n°55-22 du 4 janvier 1955 [Decree No. 55-22 of 4th January 1955].

these mandatory formalities, the entry in the land registry cannot be carried out, because '*publicité foncière*'[174] demands strictly formal acts.

Therefore, the purpose of the *acte authentique* is not to ensure the validity of the contract or the conveyance of ownership rights, because these have already occurred *ex lege* under Articles 1196 and 1583 of the Code civil. The function of the authentic form is rather to satisfy the formal requirements of the system of *publicité foncière,* since only an *acte authentique* could be entered into the land registry. Such publication ensures the opposability of the transfer of ownership against third parties.

Under Article 1199 of the Code civil, contractual obligations between the parties are restricted[175] unless opposability is obtained.[176] The enforceability of contracts against third parties is clearly distinguished from the relative effect[177] of contracts enshrined in Article 1199 of the Code civil. Therefore, a contract transferring ownership does not create obligations binding upon or benefiting a third party (thereby respecting the relative effect of contracts). However, it effects a transfer of ownership that third parties are required to respect, subject to the conditions set forth in Article 1198[178] of the Code civil.[179]

---

[174] *Publicité foncière* is the regime of rules ensuring publicity of rights related to immovable property. It aims at making such rights opposable to third parties through registration in order to provide legal certainty for real estate transactions. Although mainly concerned with real property rights, it extends to certain personal rights connected with immovables. It distinguishes between the publication of privileges and mortgages, and the publicity of other rights over immovables, but in either case the objective is the same: to warn third parties and secure property transactions. For more, see: Piédelièvre, J. and Piédelièvre, S. (2020) *La publicité foncière [Land Registration].* 2nd edn. Paris: Defrénois, pp. 7-8.

[175] Article 1199 of the French Code Civil.

[176] Article 1200 of the French Code Civil.

[177] The principle of the relative effect (*l'effet relatif*) of contracts, formerly found in Article 1165 (prior to the reforms of the Code civil in 2016), now appears in Article 1199. The former Article 1165 misleadingly stated that "agreements have effect only between the contracting parties"; however, contracts operate within the legal order and may therefore have effects vis-à-vis third parties (the principle of opposability enshrined in Article 1200 of the Code civil). The new Article 1199 adopts more explicit wording: the relative effect means that "the contract creates obligations only between the parties" — meaning the parties cannot create liabilities binding a third party, nor can they create rights for the benefit of a third party. The relative effect of contracts thus prevents the parties from making a third party a creditor or debtor regarding an obligation. This is, of course, merely a principle subject to exceptions. For more, see: François, C. (2019) *Présentation des articles 1199 à 1202 de la nouvelle sous-section 1 "Dispositions générales"* [*Presentation of Articles 1199 to 1202 of the New Subsection 1 "General Provisions"*]. In: *La réforme du droit des contrats présentée par l'IEJ de Paris 1*. Available at: https://iej.univ-paris1.fr/openaccess/reforme-contrats/titre3/stitre1/chap4/sect2/ssect1-effets-tiers-dispos-generales/ (Accessed: 11 July 2026).

[178] Pertaining to immovable property, the provision in Para. 2 states that in case two successive buyers of rights relating to the same item of immovable property derive their right from the same person, the one who first registered their deed of acquisition (drawn up in authentic form) in the land registry takes priority, even if their right is later in time, provided they acted in good faith.

[179] François, C. (2019) *Présentation des articles 1199 à 1202 de la nouvelle sous-section 1 "Dispositions générales"* [*Presentation of Articles 1199 to 1202 of the New Subsection 1 "General Provisions"*]. In: *La*

Case law illustrates the distinction: the *Cour de cassation* indicates that, without notarial form, a deed may still be a private deed binding upon the parties, yet ineffective against third parties.[180]

With such a model, the buyer is comparatively poorly protected.[181] According to Article 1583, transfer of ownership occurs at the moment a contract of sale is entered into.[182] The Notarial deed and registration are thus not required for contract validity or transfer of ownership from seller to buyer.[183] Their function is to make it public against third parties who became the owner of the respective immovable property.[184] Without registration, the buyer cannot insist on claiming their rights against third parties who, in good faith, purchased the same property and managed to register first.[185] Thus, if a seller sells or mortgages the property, preference will be given to the individual who had their notarial deed registered.[186] That is why, in practice, in French sales of real estate, notarial deeds are always signed and registered, even though, technically speaking, titles are transferred despite them.[187]

In conclusion, in the French legal system, consent alone is enough for the emergence of contractual obligations between the parties and to transfer ownership rights. However, the intended legal effect — opposability of the transfer of ownership against third parties — occurs only upon publication of the respective contract of the parties in the form of an authentic deed in the land registry.

In contrast, the Austrian Allgemeines bürgerliches Gesetzbuch of 1811, which remains one of the oldest civil codes still in force[188]provides a seemingly stricter example.

---

réforme du droit des contrats présentée par l'IEJ de Paris 1. Available at: https://iej.univ-paris1.fr/openaccess/reforme-contrats/titre3/stitre1/chap4/sect2/ssect1-effets-tiers-dispos-generales/ (Accessed: 11 July 2026).

[180] Case 19-17.549 of the Civil Chamber of the Court of Cassation, from 1st October 2020.

[181] Smits, 2021, p. 104.

[182] Article 1583 of the French Code Civil.

[183] Smits, 2021, p. 105.

[184] *Ibid.*

[185] As it is provided for by Art. 1198 para. 2 of the Code civil: When two successive purchasers of rights to the same immovable property derive their rights from the same person, the one who first registered their authenticated deed of acquisition in the land registry has priority, even if their right is later, provided they acted in good faith. See also: Kötz, 2017, p. 83.

[186] Kötz, 2017, p. 83; Smits, 2021, p. 105.

[187] Smits, 2021, p. 105.

[188] Brauneder, W. (2013) 'The "First" European Codification of Private Law: The ABGB'. *Zbornik PFZ*, (5-6)63, pp. 1019-1026, p. 1025.

3.2. The Principles of '*Formfreiheit*' and '*Eintragungsgrundsatz'* in Austrian Law

Austria's Allgemeines Bürgerliches Gesetzbuch of 1811, effective from 1 January 1812, is Europe's oldest civil code in continuous effect. Written under the influence of natural law theory and structured largely according to the institutional system, it was intended to endure and be less subject to revolutionary alteration through amendment.[189] This resilience allowed it to serve as the foundation of Austrian private law for over two centuries, with the majority of its initial provisions still in effect today.[190]

The ABGB has an impact that extends well beyond Austria. Translations into all the languages of the Habsburg Monarchy and adoption or adaptation in most jurisdictions, including the principality of Moldavia, Croatia, Slovenia, Serbia, Montenegro, a few cantons in Switzerland, and even Liechtenstein, made the code an actual European instrument of private law.[191]

Unlike the French Code civil (after the reforms of 2016), the ABGB does not foresee the principle of consensualism *expressis verbis*. However, it can be derived from the provision on the freedom of form of contracts (*Formfreiheit*).

The ABGB stipulates that contracts may be concluded orally or in writing, before or outside the courts, and with or without witnesses, with the form making no difference to the binding nature of the contract except where the law provides otherwise.[192]

However, there are some codified exceptions to the *Formfreiheit.* For example, the provisions on donations share some similarities with the provisions of the French Code civil. Namely, the ABGB foresees that from a purely oral contract of donation concluded without actual delivery, the donee acquires no right of action, which must be established by a written instrument.[193] The text does not declare the oral contract itself null and void; instead, it expressly denies the donee the so-called *'Klagerecht'* (right of action) arising from a purely oral promise unaccompanied by delivery or

[189] *Ibid,* pp. 1023-1024.
[190] Hamza, G. (2002). 'Civil Law and the Civil Law Codification in Austria from the Middle Ages to the End of the Twentieth Century'. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica*, 43, pp. 53-70, p. 65.
[191] Brauneder, 2013, pp. 1022-1023.
[192] § 883 of the ABGB.
[193] § 943 of the ABGB.

proper form. This wording implies a significant dogmatic distinction in which a promise of donation, given orally and without delivery, is not expressly declared null and void by the ABGB. Rather, the donee will not be able to bring an action to enforce the promise until actual delivery, or the promise is executed in the form of a notarial deed. Consequently, the promise may be considered valid but unenforceable, and the donor remains legally and morally free to perform it; if they do so voluntarily, the delivery perfects the transaction.

The cited provision enshrined in § 943 of the ABGB should be read in conjunction with § 1(1)(d) of the Notariatsaktsgesetz[194] which stipulates that contracts on donation without actual delivery (*wirkliche Übergabe*) require to be recorded in the form of a notarial deed. However, if actual delivery takes place, the form of a notarial deed is not required.[195] Although this mechanism should not be equated with the legal institute of convalidation, since it substitutes the mandatory form and not subsequently remedies a form-invalid juridical act. However, this possibility demonstrates that Austrian law attaches direct legal significance to performance in contracts on donation when determining the legal consequences of infringing on mandatory provisions foreseeing the necessary formal requirements.

An even closer analogue to convalidation in Austrian law is enshrined in § 1432 of the ABGB. The provision stipulates that payments made in respect of a time-barred debt, or a debt that is invalid solely due to a lack of formalities, or a debt for which the law merely denies a right of action cannot be reclaimed, nor can payments made in the knowledge that no obligation to pay existed.[196] Although, in this particular case, the performance does not result in the subsequent convalidation of a formally defective contract, Austrian legislation has granted legal consequences to it by foreseeing that what has been performed cannot be recovered merely on the ground of a formal defect.

The cited rule enshrined in § 1432 of the ABGB therefore constitutes a performance-based corrective mechanism which is connected to the consequences of

[194] Notariatsaktsgesetz [Notarial Deed Act] (1871) RGBl. Nr. 76/1871, as amended by BGBl. I Nr. 75/2009.
[195] See for example: Case No. 5 Ob 136/18p, ECLI:AT:OGH0002:2019:E122541 of the Supreme Court of Justice of Austria from 18 July 2018, in particular 4.2-4.4. See also: Legal principle No. RS0070844.
[196] § 1432 of the ABGB.

invalidity due to formal defects and represents the closest functional ABGB analogue to convalidation in the sense examined in this dissertation.[197]

It could, therefore, be observed that Austrian law recognises legal mechanisms the purpose of which is to mitigate the harsh consequences of infringing statutory formal requirements. Additionally to the aforementioned, in Austrian judicial practice the prohibition of *Rechtsmissbrauch*[198] is present, on the basis of which, among other cases, invoking nullity due to a formal defect could also be ruled out.[199] However, this mechanism does not remedy a formal defect which causes the invalidity of the underlying juridical act. Rather, it exceptionally precludes contracting parties to invoke invalidity due to a formal defect where it would amount to an abuse of richts.

Austrian private law adheres to the general principle of freedom of form (*Formfreiheit*), which provides that contracts are binding regardless of whether they are concluded orally, in writing, before or outside the courts, and with or without witnesses, unless the law prescribes otherwise.[200]

Furthermore, Austrian law differentiates between absolute and relative nullity, although the ABGB does not formulate this in a systematic and dogmatic way. However, Austrian doctrine and judicial practice clearly distinguish between cases of nullity that arise from a violation of norms protecting the public interest and can therefore be invoked by everyone (absolute nullity) and those that arise from a violation of rules protecting a specific contracting party and can therefore only be enforced by the party concerned (relative nullity).[201]

---

[197] The provision is significant besause of another reason as well. As it will be assessed in the chapter pertaining to Slovenia § 1432 ABGB, together with § 424 and § 425 of the ABGB formed part of the historical doctrinal background from which Slovenian *teorija realizacije* developed.

[198] In English translation: abuse of rights.

[199] See for example: Case No. 6 Ob 66/23h of the Austrian Supreme Court from 21 February 2024. According to the Court a defect of form could be disregarded on the grounds of impermissible exercise of rights only in exceptional cases, because the general interest in compliance with mandatory formal requirements takes precedence over the principle of adherence to contracts. Consequently, as such exceptional circumstances the cases of an intentional frustration of the formal requirement contrary to good morals, or a deceitful misleading of the contractual partner regarding the necessity of the form could be considered.

[200] § 883 of the ABGB.

[201] Posch, W. (2015) *Contract Law in Austria*. Alphen aan den Rijn: Kluwer Law International, p. 108.

The former category includes, for example, contracts that are contrary to law or morality, whereas, in cases of relative nullity – for example, in usurious contracts – the contract becomes invalid only if challenged by the party entitled to do so.[202,203]

In connection with contracts for the conveyance of ownership over immovable property and considering the principle of *Formfreiheit,* it can be concluded that a contract for the sale of real property may be validly concluded without complying with any specific form unless the law requires otherwise. Consequently, a concluded real estate contract, regardless of its form, is validly created and results in mutual rights and obligations between the contracting parties. These effects of the obligations-law nature should be distinguished from the rules pertaining to proprietary acquisition of ownership, regulated by a different set of rules of Austrian property law.

It should also be noted that the rights and obligations stemming from a validly concluded contract arise irrespective of the rules governing the acquisition of ownership. These rules resemble the ones from the French legal system analysed above.

The difference between the French and Austrian legal systems becomes apparent in the case of the conveyance of ownership. Contrary to French law, in Austrian private law, the contract does not transfer ownership of immovable property by itself. Regarding ownership transfer, Austrian legislation opted for the distinction between *titulus* and *modus*. The former is usually a contract, while the latter is an entry in the *Grundbuch* (land registry).[204] According to § 431 ABGB, ownership of real property can only be acquired through registration in the land registry.[205] This is the so-called '*Eintragungsgrundsatz'*[206], under which the constitutive act of ownership transfer is not the contract, but the entry in the land registry.

The prerequisite for registration is compliance with the foreseen documentary requirements, which comprise, first and foremost, a valid title, which must be drawn up in the form required for its validity.[207] Importantly, the signatures on this deed must

---

[202] *Ibid.*

[203] An observation seems pertinent here. Namely, Austrian legal literature distinguishes between absolute and relative nullity on the basis of the protective purpose behind the nullity rules. This view corresponds with the dogmatic approach generally accepted in the modern continental private law systems analysed in this work.

[204] Posch, 2015, p. 52.

[205] § 431 of the ABGB; Posch, 2015, p. 52.

[206] Gschnitzer, F. (1968) *Sachenrecht* [Property Law], Wien: Springer, pp. 34-35.

[207] § 26 Para. (1) of the Bundesgesetz vom 2. Feber 1955 über die Grundbücher (Allgemeines Grundbuchsgesetz 1955) [Federal Law of 2 February 1955 on Land Registries (General Land Registry Act 1955 – GBG. 1955)], hereinafter referred to as: GBG.

be either notarised or certified by a court.[208] *Argumentum a contrario*, this requirement ensures that purely private deeds without authentication are insufficient for registration and thus incapable of effecting the transfer of ownership.

Accordingly, Austrian law distinguishes between the conclusion of the contract, the obligations-law effects stemming from it, the formal and documentary requirements necessary for the transfer of ownership rights and, finally, the transfer of ownership itself. While the contract may be validly concluded regardless of its form, ownership is conveyed only upon registration in the land registry, which requires adherence to a stricter regime of formalities than the validity of the contract.

Until the registration has been successfully carried out, the buyer has not yet acquired ownership rights and, therefore, is not sufficiently protected against competing claims by third parties, since prior to registration he/she has only contractual claims against the other contracting party.[209] Austrian legal scholarship emphasises several reasons why entry in the land registry is of key importance. Firstly, it makes the '*dingliche Verfügungsakte'* (proprietary disposition) effective vis-à-vis third parties.[210] Secondly, it guarantees that the party requesting the entry in the land registry has priority over the claims of another person.[211] As further arguments in favour of registration, legal literature also states that the advantage of registration is that everyone can rely on the accuracy and completeness of the real estate register, and that, in contrast to other registration systems, *"the entry in the Austrian Land Registry strengthens public confidence in its correctness and legal validity".*[212]

As to the institute of convalidation, the ABGB does not explicitly codify it, similarly to the French Code civil. Furthermore, the general contractual freedom and the principle of consensualism, which are also applicable to contracts for the conveyance of ownership over immovable property, do not seem to make it necessary.

In the specific case of real estate contracts, the issue of convalidation generally does not arise because the formal requirements necessary to land registry entry do not affect the validity of the respective contract. Namely, failure to comply with formal requirements for entry in the land registry does not render the underlying contract invalid; it merely prevents the successful conveyance of ownership rights until the

[208] § 31 Para. (1) of the GBG.
[209] Posch, 2015, p. 52.
[210] *Ibid.*
[211] *Ibid.*
[212] *Ibid.*

statutory requirements for registration are satisfied. The subsequent fulfilment of these requirements results in the successful transfer of ownership, but it does not convalidate an otherwise invalid juridical act.

However, as it has already been assessed, Austrian law recognises mechanisms in other contexts that attach legal consequences to performance—consequences that also affect the legal implications of invalidity arising from a formal defect, but it has to be emphasised that these mechanisms constitute different categories from performance-based convalidation.

From the perspective of the specific cases of real estate contracts in Austrian legal framework, like in the French system, the practical relevance of convalidation is limited, since contracts are valid regardless of their form. Like the French system, the Austrians also impose stricter requirements for land registry registration, where the legal title, i.e., the form of the contract, is an important condition. However, if a certain formal requirement is not complied with, that does not affect the validity and binding legal effects of the contract; it merely hinders the registration and the emergence of its legal consequences until the formal error is eliminated.

Following the assessment of the French and Austrian legal systems, the German legislation will be analysed.

3.3. The '*Heilung*' of Invalidity of Real Estate Contracts due to Formal Defects in Germany

The German Civil Code[213] entered into force on 1 January 1900, and functions as a monumental achievement in the European codification movement.[214] Unlike the more accessible and socially oriented French Code civil or the systematically concise ABGB, the BGB reflects a highly technical, abstract, and conceptual legal framework deeply rooted in the Pandectist tradition of 19th-century German legal scholarship.[215] Drawing on Roman law sources as interpreted by the historical school, particularly the

[213] German Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515). Available in English translation at: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf. Hereinafter referred to as: BGB.
[214] Mousourakis, 2015, p. 295.
[215] *Ibid.*

Pandectists such as Friedrich Carl von Savigny and Bernhard Windscheid, the BGB exemplifies the methodical construction of law as an autonomous, logical system.[216]

Its longevity lies in its openness to judicial interpretation and academic elaboration, which makes it flexible enough to accommodate changing situations regardless of the time period.[217] While praised for its systematic precision, the BGB has also been criticised on the grounds of formalism, remoteness from society, and anachronistic legal solutions, especially in tort law and law pertaining to prescription.[218] Despite this, the BGB has had a significant influence on the legal systems in Europe and beyond.[219]

This conceptual and systematic methodology of the BGB is particularly evident in its treatment of requirements of form and legal validity of juridical acts. The Code draws a sharp distinction between different grounds of invalidity and lays down the consequences of defects of form. The following analysis takes into account selected provisions of the BGB that govern the form of contracts, the legal consequences of defects in form, and the distinction between nullity *(Nichtigkeit)* and voidability *(Anfechtbarkeit)*.

The German Civil Code does not appear to envisage the general principle of freedom of form of contracts explicitly, as the French and Austrian Civil Codes do. However, it generally does not require a specific form for juridical acts, which facilitates legal transactions and supports individual autonomy.[220]

However, the BGB differentiates between nullity and voidability, where, in the latter case, the contract remains in force until it is avoided.[221] Failure to comply with required forms of obligations, however, does not fall under voidability; rather, it leads to nullity. The BGB has a specific provision pertaining to cases of legal transactions lacking in form. § 125 provides that legal transactions which fail to fulfil a prescribed form are null and void.[222]

According to historical sources, nullity was conceived as the natural and effective sanction for non-compliance, and its general formulation served rational

---

[216] Mousourakis, 2015 p. 292; Zimmermann, 2006.
[217] Zimmermann, 2006.
[218] *Ibid.*
[219] *Ibid.*
[220] Boemke, B. and Ulrici, B. (2009) *BGB Allgemeiner Teil [BGB General Part]*. 1st ed. Berlin-Heidelberg: Springer-Lehrbuch. Springer. https://doi.org/10.1007/978-3-642-01610-3_10, p. 161.
[221] § 142 of the BGB.
[222] § 125 snetence 1 of the BGB.

legislative technique by restraining the need to restate the consequence in each provision.[223] Yet, as the history of the lawmaking practice indicates, provisions from the earlier legislation, which correspond to §125 BGB, were not exclusive.[224] However, the omission of the clause in the earlier draft did not eliminate the possibility of deviation through special provisions.[225] Nullity was chosen as the standard sanction, not because it was logically inevitable, but because the historical legislator regarded it as the most effective instrument for enforcing form.[226] Legal literature explains the normative purpose (*Normzweck*) behind the formal requirement with a combination of several functions.

The original purpose of the rule was primarily to protect the party alienating the property. The 19th-century legal concept considered land ownership an asset of outstanding economic and social importance; therefore, the formal requirement served the purpose of preventing reckless or hasty transfers of property.[227] So, the form primarily had a warning function and a function of ensuring the alienating party reflected on his or her involvement in the transaction. This was intended to guarantee the seriousness of the alienating party's decision.[228]

The development of curative mechanisms, particularly in the context of immovable property under §311b(1) BGB, demonstrates that the sanction of nullity, although strict, remains enshrined within a broader system capable of accommodating flexibility once the substantive transfer of rights has been carried out.[229]

---

[223] Heiss, H. (1999) Formmängel und ihre Sanktionen *[Defects of Form and Their Sanctions].* Tübingen: Mohr Siebeck, p. 11.

[224] In the first draft of the BGB, the provision corresponding to § 125 contained an additional clause, *"sofern nicht ein Anderes bestimmt ist"*, i.e., "unless otherwise specified". For more, see: Heiss, 1999, p. 11.

[225] Heiss, 1999, p. 11.

[226] Heiss, 1999, p. 11.

[227] Schumacher, R. (2012) '§ 311b Verträge über Grundstücke, das Vermögen und den Nachlass [Contracts concerning immovable property, assets and inheritance]', in: von Staudinger, J. (ed.) *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen* [J. von Staudinger's Commentary on the German Civil Code with the Introductory Act and Supplementary Statutes]. Buch 2: *Recht der Schuldverhältnisse* [Book 2: Law of Obligations]. Berlin: Sellier – de Gruyter, pp. 18-19.

[228] Schumacher, 2012, pp. 18-19.

[229] According to German judicial practice, the convalidation of a contract lacking the required form does not necessarily automatically extend to all provisions of the contract. According to the Federal Supreme Court, the entire contract is only cured if all obligations that independently require specific formalities are fulfilled. If the contract contains several obligations that are subject to formality, the fulfilment of a single obligation does not result in the convalidation of the entire contract. In contrast, clauses that are not independently subject to formality but require formality due to their connection with the main obligation that is subject to formality may be convalidated together with the performance of the main transaction. The decisive aspect is therefore whether the given obligation also qualifies as a legal transaction subject to formality independently. For more, see: Pohlmann, P. (1992) *Die Heilung*

In the course of legal development, the function of the prescribed form gradually changed. According to modern legal literature and judicial practice, the notarial form no longer serves exclusively to protect the seller but also ensures the security and transparency of the entire real estate transaction.[230] The notarial procedure provides a warning function, as it forces the parties to carefully consider the significance of the legal transaction. On the other hand, it has an advisory and control function, since the notary is obliged to inform the parties about the legal consequences of the transaction and check the content of the contract.[231] Finally, it also performs an evidentiary function and the purpose of providing legal certainty, since the notarial deed authentically records the content of the contract and thus contributes to the stability of real estate transactions.[232]

As the codifications analysed above, the BGB also envisages rules pertaining to the form of a promise of donation, adopting a similar solution. §518 foresees that for a contract, by which performance is promised as a donation, to be valid, notarial recording of the promise is required.[233] However, if the required form is not observed, such a defect could be cured by rendering the performance promised.[234]

As already noted, the general principle is that contracts do not require a particular form unless expressly prescribed by statute. This negative formulation explains why the BGB does not seem to contain a provision equivalent to Art. 1172 of the French Code civil or § 883 ABGB but relies on express form requirements throughout the BGB.

The dogmatic foundation is enshrined in the provision, which provides that legal transactions not concluded in the prescribed form are null and void.[235] The consequence seems to be that defects of form are not merely a matter of entry in the land registry (as in Austrian law) but concern the substantive validity of the contract itself. Form is thus treated as an essential condition of validity, rather than a mere evidentiary requirement.

---

formnichtiger Verpflichtungsgeschäfte durch Erfüllung [The Remedy for Formally Void Obligations by Performance]. Berlin: Duncker & Humblot, p. 114.
[230] Schumacher, 2012, pp. 18-19.
[231] *Ibid.*
[232] *Ibid.*
[233] § 518 sentence 1 of the BGB.
[234] § 518 Para. (2) of the BGB.
[235] § 125 of the BGB.

In modern German law, the formal requirements for contracts for the transfer of ownership of real estate are defined in Section 311b(1) of the BGB, according to which such contracts must be recorded by a public notary.[236] Interpreting this provision in conjunction with §125 BGB, a conclusion can be drawn that a contract concluded disregarding the prescribed form is considered null and void.[237] Therefore, the consequence of the formal defect is that the contract is null and void regarding its obligations-law effects, meaning it cannot give rise to mutual obligations between the contracting parties. Accordingly, one of the parties cannot be validly obliged to transfer ownership, while the other party cannot be obliged to pay the purchase price. However, these obligations-law effects of the contract should be differentiated from its proprietary effects, which are governed by specific provisions pertaining to property law. It can therefore be said that a contract relating to real estate is not completed by conclusion of the contract, but by the registration of the new ownership.[238]

German contract law is based on a principle that dogmatically separates contractual and *in rem* transactions.[239] According to §873 (1) BGB, the acquisition of ownership of immovable property requires a valid declaration of conveyance and an entry in the land registry.[240] A special form of declaration of conveyance in real estate transfer is the *Auflassung*, which is defined by §925 BGB as an unconditional agreement[241] on the transfer of ownership made in the simultaneous presence of the parties[242].[243] Therefore, during the procedure of *Auflassung,* the buyer and the seller of

[236] § 311b(1) sentence 1 of the BGB.
[237] § 125 of the BGB.
[238] Suzuki-Klasen, A.K. (2022) *A Comparative Study of the Formation of Contracts in Japanese, English, and German Law*. Recht in Ostasien, Vol. 18. 1st edn. Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG. https://doi.org/10.5771/9783748911777, p. 304.
[239] In German legal doctrine, this distinction is referred to as the so-called *Trennungsprinzip*, which differentiates between the obligation transaction (*Verpflichtungsgeschäft*), which creates the obligation to transfer a right from the disposition transaction (*Verfügungsgeschäft*), which directly effects a change in that right. In this case, the latter is generally legally independent from the underlying obligation transaction, which reflects the *Abstraktionsprinzip*. For more see: Kreutz, P. (2009) 'Der Begriff der Verfügung im BGB und das Trennungs- und Abstraktionsprinzip' [The Concept of Disposition in the BGB and the Principles of Separation and Abstraction], *Zeitschrift für das Juristische Studium (ZJS)*, 2/2009, pp. 135–141, p. 140.
[240] § 873 of the BGB.
[241] § 925 (2) of the BGB.
[242] § 925 (1) of the BGB.
[243] See also: Kötz, 2017, p. 83.

the immovable property in question, being present at the same time, declare their consent to the transfer of ownership before a "competent agency"[244].[245]

It should be emphasised that the conclusion and validity of the contract must be distinguished from the transfer of ownership rights. Although the contract constitutes the legal basis for the transaction, ownership is conveyed (acquired) only by the completion of *Auflassung* and entry in the land registry (*Eintragung*). Only then do the acquired ownership rights *vis-à-vis* third parties become effective.

In a significant part of the analysed legal systems, the acquisition of ownership requires that the entry in the land registry be carried out based on a valid legal title. In these systems, the valid legal title as the prerequisite for registration is usually a contract; therefore, if the real estate purchase contract is null and void due to a formal defect, the nullity constitutes an obstacle to the transfer of ownership. Based on this logic, the question arises: how can a land registry registration be established in a case where the contract itself is null and void?

The answer lies in the German construction of *Auflassung*. Additionally, during registration in the land registry, the land office does not examine the validity of the underlying contract, but whether a valid *Auflassung* has been created and whether the formal conditions for the entry in the land registry are met.[246] This can lead to a situation where the initial contractual agreement is void due to formal defects, but the transfer of ownership is still implemented through the valid *in rem* transaction (*Auflassung*) and registration. This structural solution creates the possibility of the subsequent healing of the formal defect based on the second sentence of Section 311b(1).

However, from the separation between the obligation and disposition transactions a reverse situation may also arise. Namely, in cases of *Fehleridentität*, the same cause of invalidity may independently affect both transactions.[247] A specific

[244] The English translation of the text of the BGB uses the term "competent agency", therefore in order to maintain terminological consistency the same term was used in this thesis as well. The English version of the text is available at: https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p0354.
[245] Suzuki-Klasen, 2022, p. 301, fn. 1544.
[246] Hofer, J. B. and Jäger, J. (2020) 'Formlose Änderung eines Grundstückskaufvertrags nach Auflassung?', *Juristische Ausbildung*, 42(2), https://doi.org/10.1515/jura-2019-2238, p. 106.
[247] Staudinger, J. (1978) *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen [J. von Staudinger's Commentary on the German Civil Code with the Introductory Act and Supplementary Statutes].* München: Schweitzer, p. 77.

issue is where the obligations transaction which contains an *Auflassungsvollmacht*[248] is invalid due to a formal defect.[249]

Namely, the BGB recognises the need for curative measures to be not overly harsh in cases provided for by legislation. A specific feature of German law is that a violation of a formal requirement does not necessarily lead to the final invalidity of the legal transaction.

For this reason, the BGB has a series of curative provisions, so-called *'Heilungsvorschriften'*, which retroactively cure contracts initially null and void due to a lack of form.[250] The relevant provision is enshrined in the second sentence of Section 311b(1) of the BGB, which stipulates that a real estate purchase and sale contract that suffers from a formal defect is subsequently remedied if the material acts necessary for the transfer of ownership over the immovable property – i.e., the declaration of transfer of ownership (*Auflassung*) and the entry of the change of ownership in the land registry (*Eintragung*) – are carried out.[251]

The German approach is therefore marked by a sharp dogmatic distinction between a contract being void and voidable. Where form is required, non-compliance renders a contract void unless and until the legal system expressly allows it to be remedied.

The historical justification for the introduction of the old § 313 second sentence BGB (now § 311b (1) second sentence BGB) shows that the legislator did not approach the relationship between the formal requirement and the rule pertaining to the healing mechanism from a dogmatic, but primarily from a legal policy perspective. The notarial form of real estate purchase was originally justified by the outstanding social and economic importance of land ownership and the protection against hasty alienation.[252]

The introduction of the rule of the remedy, however, arose from the recognition that the reversibility of a transfer of ownership already carried out by the land registry

[248] Power of attorney for the transfer of property ownership.
[249] See Decision no. XII ZR 107/17 of the Federal Court of Justice from 27 May 2020. According to the Court, where an obligations transaction rendered invalid due to a defect in form contains an *Auflassungsvollmacht,* its invalidity may, pursuant to § 139 BGB, also entail the invalidity of the power of attorney. An *Auflassung* declared on the basis of such a power of attorney sanctioned with invalidity cannot provide the basis for the application of the remedy enshrined in § 311b(1) sentence 2 BGB, since the curative effect itself presupposes a valid *Auflassung*.
[250] Pohlmann, 1992, p. 78.
[251] § 311b(1) sentence 2 of the BGB. See also: Schumacher, 2012, pp. 18-19.
[252] Pohlmann, 1992, p. 78.

entry would seriously jeopardise the security of real estate transactions.[253] Therefore, the legislator consciously assumed that the purposes of the form would not be fully achieved, and deliberately gave priority to legal certainty in property transactions over the strict and complete enforcement of formal requirements.[254] Consequently, the remedy is not based on fulfilling the purpose of the form, but on protecting the legal certainty of the transaction already concluded on the property-law level.[255]

Furthermore, once the entry into the land registry is carried out based on a valid *Auflassung*, a legal presumption takes effect, which assumes that the registration is correctly completed. Thus, the acquirer is entitled to his or her ownership right.[256] This additionally provides legal certainty to the acquirer of the ownership rights.[257]

Compared to French and Austrian law, German law provides for a stricter regime at the obligations-law level and the property-law level as well. While French and Austrian systems allow for the valid conclusion of a real estate contract regardless of form, German law requires the form of a notarial deed for the sales contract to be valid. Furthermore, at the property-law level, German law adopts a more rigorous regime for the transfer of ownership, i.e., it requires a valid *Auflassung* and entry in the land registry. On the other hand, it connects a curative effect to the validly carried out *Auflassung* and registration in the land registry.

Accordingly, the curing mechanism under § 311b(1) sentence 2 BGB differs from performance-based convalidation in the strict sense as it is assessed in this dissertation. In the specific context of contracts for the transfer of ownership over immovable property performance of the contractual obligations does not cure the defect in form. Rather, § 311b(1) sentence 2 BGB requires a valid *Auflassung* and the subsequent registration of the change of ownership in the land register.

German law, nevertheless, recognises performance-based remedies in other cases, such as the performance of a promised donation under § 518(2) BGB.[258] Thus,

---

[253] *Ibid*, p. 79.
[254] *Ibid*, p. 81.
[255] *Ibid*.
[256] Suzuki-Klasen, 2022, p. 304.
[257] *Ibid*.
[258] More examples are enshrined in § 766 sentence 3 BGB concerning suretyship, stipulating that for the valid conclusion of the contract of suretyship written form of the declaration of suretyship is necessary, however in case such a contract lacks in form the defect is remedied to the extent the surety discharges the main obligation; § 494(2) BGB concerning consumer credit agreements, which prescribes a mandatory written form for credit agreements, however at the same time it stipulates that a formally deficient consumer credit agreement is valid to the extent that the borrower receives the loan or draws on it.

German law links the cure of formally defective real-estate contracts specifically to the completely carried out conveyance of ownership rather than to the performance of the contractual obligations.

After the examination of the French, Austrian, and German approaches, the following subchapter turns to Swiss law. The analysis will be carried out taking into account the aforementioned aspects, namely, the formal requirements applicable to contracts for the conveyance of ownership over immovable property, their effect on the validity of the contract, the transfer of ownership, the role of the land registry and the possible curing of invalidity due to formal defects.

3.4. Formal Requirements and the Principle of Consensualism in Switzerland

The codification of Swiss private law culminated in the adoption of the Swiss Civil Code, which entered into force on 1 January 1912.[259] With the adoption of the Code, there was a transition from a fragmented system of cantonal civil codes to a uniform federal code, ensuring legal unity across Switzerland.[260]

The beginnings of codification work in Switzerland date back to the early 19th century, when several cantons adopted their own civil codes, often inspired by the ABGB or the French Code civil.[261] A decisive step towards unification was the Federal Constitution of 1874, which extended federal competence over certain areas of private law.[262] This led to the adoption of the Code of Obligations in 1881, which introduced federal regulation of contracts, torts, commercial law, and negotiable instruments.[263]

The decisive breakthrough came with the constitutional reform of 1898, which granted the Confederation full legislative power over private law.[264] On this basis, Professor Eugen Huber was commissioned to compose a comprehensive civil code.[265] Based on comparative research and influenced by German and Austrian legal

[259] Pichonnaz, P., (2023) 'The Civil Codes of Switzerland from a Historical and Comparative Perspective: Some Reflections Based on the Swiss Experience' in M. Graziadei & L. Zhang (eds.), *The Making of the Civil Codes,* Singapore: Springer, pp. 295–299, p. 307.
[260] Lewandowicz, M. (2016) 'On the Universalist Heritage in the Codification of Private Law in Poland and Switzerland in the 19th and 20th Century'. *Jurnal on European History of Law*, 7(1), pp. 115-124, p. 116.
[261] *Ibid,* p. 115.
[262] Pichonnaz, 2023, p. 303; Schuster, 1923, p. 217.
[263] Pichonnaz, 2023, p. 303.
[264] Lewandowicz, 2016, p. 119.
[265] Lewandowicz, 2016, p. 120; Schuster, 1923, p. 217.

scholarship, Huber produced a code that was characterised by clarity, simplicity, and flexibility.[266] It unified Swiss civil law into four books (Persons, Family, Inheritance, and Property), while the Code of Obligations was integrated as its fifth part.[267]

The principles of freedom of form of contracts and consensualism lie at the very centre of Swiss contract law and are codified in Articles 2 and 11 of the Swiss Code of Obligations[268]. A contract is validly concluded once the parties have reached agreement on all essential terms, and reservations concerning secondary terms do not, as a rule, prevent contractual binding force.[269] Furthermore, contracts are valid and binding when mutual consent is reached, regardless of form, unless a specific form is required by law.[270]

However, when the law does prescribe a formal requirement, compliance is a condition of validity unless otherwise stated. Thus, failure to observe the prescribed form leads to the nullity of the contract, regardless of whether there was agreement between the parties on its substantial elements.[271] In such cases, form is not merely probative or evidentiary, but also constitutive.

When the law does not impose a formal requirement, but the parties voluntarily agree to adhere to one, Article 16(1) OR establishes a rebuttable presumption that they do not intend to be legally bound until the form is fulfilled.[272] This is particularly relevant in real estate transactions, where preliminary agreements or letters of intent are sometimes mistakenly assumed to be binding. Where the parties refer generally to a written form, the OR clarifies that the requirements for legally prescribed written form shall apply.[273]

Similar to Austrian and German legislation, Swiss law is particularly strict in cases pertaining to the alienation of real estate. Under Article 216(1) OR, contracts for the sale of real property are only valid if executed in the form of a notarial deed *(öffentliche Beurkundung)*.[274] Moreover, the same article extends this formal

[266] Lewandowicz, 2016, p. 120.
[267] Schuster, 1923, p. 218-219.
[268] Bundesgesetz vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht) [Federal Act of 30 March 1911 on the Supplementation of the Swiss Civil Code (Fifth Part: Code of Obligations)]. Hereinafter referred to as: OR.
[269] Art. 2 of the OR.
[270] Art. 11(1) of the OR.
[271] Art. 11(2) of the OR.
[272] Art. 16(1) of the OR.
[273] Art. 16(2) of the OR.
[274] Art. 216(1) of the OR.

requirement to preliminary agreements and contracts establishing pre-emption, purchase, or repurchase rights over immovable property.[275]

In cases of corporate restructuring or asset transfers under the Swiss Merger Act[276], Article 70(2) mandates that any portion of the transfer agreement concerning real estate must be notarised, even if the rest of the agreement requires only written form.[277] This provision also highlights the special protection afforded to immovable property.

This strict formalism is enshrined in the Swiss Civil Code[278] as well, where Article 657(1) explicitly states that a contract for the transfer of ownership of real property is binding only if it is notarised by a public notary.[279] Therefore, in the Swiss legal system, the prescribed form constitutes a condition for the validity of the respective contract for the conveyance of ownership rights over immovable property.

Similar to the Austrian ABGB and the German BGB, the Swiss Civil Code provides for a two-tiered system for the acquisition of ownership over immovable property. Firstly, at the obligations-law level, only a notarised contract for the conveyance of ownership can give rise to corresponding obligations between the contracting parties.

On the other hand, at the property-law level, in order to successfully convey ownership rights over immovable property, registration in the land registry is necessary.[280] Therefore, registration completes the transfer of ownership.

Furthermore, the purpose of registration in the land registry is to achieve *erga omnes* effect against third parties.[281] The principle of publicity states that registration of rights pertaining to real estate has to be properly carried out in the land registry in order to be recognised and legally enforceable.[282] Additionally, the principle of publicity ensures that the registered person may "rely on a presumption of right and

---

[275] Art. 216(2) of the OR.
[276] Bundesgesetz vom 3. Oktober 2003 über Fusion, Spaltung, Umwandlung und Vermögensübertragung [Federal Act of 3 October 2003 on mergers, divisions, conversions and asset transfers]. Hereinafter referred to as: the Swiss Merger Act.
[277] Art. 70(2) of the Swiss Merger Act.
[278] Schweizerisches Zivilgesetzbuch vom 10. Dezember 1907 [Swiss Civil Code from 10th December 1907]. Hereinafter referred to as: Swiss Civil Code.
[279] Art. 657(1) of the Swiss Civil Code; See also: von Segesser, G. and Caleff, J. (2019) *Property and Trust Law in Switzerland*. (2nd edn). International Encyclopaedia of Laws: Property and Trust Law. Alphen aan den Rijn: Kluwer Law International (Stämpfli Publishers), p. 25.
[280] von Segesser, G. and Caleff, J., 2019, p. 25.
[281] In scholarly literature, this is referred to as the 'principle of publicity'. See: von Segesser, G. and Caleff, J., 2019, p. 22.
[282] von Segesser, G. and Caleff, J., 2019, p. 22.

bring an action for the recovery of possession".[283] Therefore, the purpose of registration is not merely to achieve the publicity function, but also to give rise to *erga omnes* effects to the ownership registered.

Based on the analysed provisions of the OR and the Swiss Civil Code, it can be concluded that the Swiss legal order foresees the formal requirements of real estate contracts as a condition for their validity. Except for the expectation of adherence to the prescribed form, the Swiss legislator does not seem to have explicitly incorporated a curing mechanism, since neither the OR nor the Swiss Civil Code contain regulations regarding situations where the formal requirements are not observed.

Although the Swiss legislator has not developed an explicit convalidation mechanism for violations of mandatory formal requirements, judicial practice in certain cases still applies a corrective instrument based on the general principle of good faith. Accordingly, Swiss courts may classify the invocation of a formal defect as a manifest abuse of rights under Article 2(2) of the Swiss Civil Code, particularly if the contract has already been performed by the parties in whole or in its preponderant part.[284] In such cases, the court may reject the claim of the party invoking the formal defect.[285] However, Swiss law does not s respond to these cases by formally curing the

---

[283] *Ibid.*

[284] Kötz, 2017, p. 87.

[285] This approach is well illustrated by the decision of the Swiss Federal Court of Justice, BGE 92 II 323. In the case, the parties had concluded a contract for the sale of real estate, in which the purchase price stated in the public deed was lower than the price actually agreed and paid. However, the contract was performed by the parties, since the buyer paid the full purchase price, acquired ownership, and the seller subsequently carried out work on the property sold on behalf of the buyer. The seller later requested a declaration of nullity of the contract and the cancellation of the land registry entries. He invoked a formal defect in the contract, but the court found that such an assertion of a claim constituted a manifest abuse of rights in the circumstances. According to the interpretation of the court decision, the price difference could lead to a formal deficiency. However, the Federal Court emphasised in the analysed case that the security of real estate transactions requires the maintenance of legal situations that have already been definitively established by the common will of the parties and whose subsequent reversal would lead to significant legal uncertainty. In its ruling, the court explained that there are several reasons why the legal consequences of the nullity of real estate purchase and sale contracts suffering from formal defects cannot be applied without restriction and conditions. If the traditional civil law consequences related to the nullity of such contracts were to be recognised in all cases, without any time limit, this would lead to serious practical difficulties and an unacceptable level of legal uncertainty for real estate transactions. In the field of real estate law, the stability of established legal situations is particularly important, which is why the courts limit the possibility of relying on nullity in certain cases, for example, by referring to the prohibition of abuse of rights.
The original text of the decision of the Federal Supreme Court of Switzerland no. BGE 92 II 323 from 1 November 1966 is available at: http://relevancy.bger.ch/php/clir/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&from_year=1964&to_year=2026&sort=relevance&insertion_date=&from_date_push=&top_subcollection_clir=bge&query_words=BGE+92+II+323&part=all&de_fr=&de_it=&fr_de=&fr_it=&it_de=&it_fr=&orig=&translation=&rank=1&highlight_docid=atf%3A%2F%2F92-II-323%3Ade&number_of_ranks=9&azaclir=clir [Accessed: 3 March 2026]. For more details ee also: Kötz, 2017, p. 87.

formally defective contract, but rather limits the possibility of invoking invalidity due to formal defect by relying on the principle of good faith. By prohibiting the possibility of invoking invalidity, the court does not heal the invalidity of the contract but keeps the legal consequences of the formally deficient contract in effect.[286]

This corrective mechanism appears to be analogous to the one observed in German law which recognises a functionally comparable limitation provided for by § 242 BGB[287], while a functional counterpart appears in Austrian law as well through *Rechtsmissbrauch*.

Therefore, Swiss legislation and judicial practice do not recognise the institute of convalidation when it comes to formally deficient real estate contracts in the strict sense analysed in this research. Instead, it prevents a party from invoking the formal defects if it would result in the abuse of rights contrary to Article 2(2) of the Swiss Civil Code.

Swiss law, nevertheless, attaches significant importance to compliance with the prescribed formal requirements. As a general rule, notarial form is required for the validity of a real estate purchase contract and, therefore, only a formally intact contract can serve as the basis for registration in the land registry.

Accordingly, the transfer of ownership of real estate can lead to the acquisition of ownership only if the contract meets the prescribed formal requirements and the transfer is completed by registration in the land registry.

However, if the obligations arising from such a contract have already been fulfilled by the parties, and one of the parties subsequently tries to enforce nullity of the contract by citing a formal defect, the court may refuse to enforce the claim based on nullity, relying on the prohibition of abuse of rights. This is particularly the case if the economic (financial) aspect of the contract has already been realised, the parties have consistently acted in accordance with the contract, and a subsequent change of the existing legal situation would lead to significant legal uncertainty.

In such cases, the court does not establish the validity of the contract retrospectively; it simply excludes the possibility of the parties reversing the consequences of the transaction by invoking invalidity due to a formal defect.

---

[286] In contrast, according to the German legal system, in this case, the fulfilment of the obligation included in the contract would have cured the invalidity of the contract. For more, see: Kötz, 2017, p. 87.

[287] See: Subchapter 6.2.3. Germany of this dissertation.

Furthermore, if the contract is indeed invalid, Swiss law allows this error to affect the entry in the land registry.[288] The transfer of ownership of real estate is subject to registration in the land registry, but the validity of the registration is not entirely independent of the legal title on which it is based. Therefore, if the contract on the basis of which the transfer is carried out is void, the entry in the land registry can also be challenged and annulled, since an error in the legal title of obligations can also have an impact on the real legal situation.

This solution shows that in Swiss law, although the elements of obligations law and property law are separately treated, the validity of the transfer of ownership is in some cases still linked to the validity of the underlying transaction. This approach appears to be inconsistent with the *'Heilung'* mechanism of the German legal system, since here, if the valid *Auflassung* and registration in the land registry are carried out, it can subsequently cure the invalid contract. The key difference lies in the institution of *Auflassung* in German law. Here, the registration is carried out based on a second document, independent of the validity of the main contract. Thus, legal certainty and the reliability of the land registry in German law are not jeopardised if the transfer of ownership arises from a transaction in which the contract is invalid due to a formal defect. In Swiss law, the land registry entry is based on the contract, so if the underlying transaction is indeed invalid, legal certainty also requires the cancellation of the entry. However, the excessive legal uncertainty resulting from unconditional and immediate invalidity is counterbalanced by the prohibition of abuse of rights, which may limit the possibility of relying on invalidity.

Swiss law does not provide for an equivalent statutory mechanism whereby registration itself cures the formally deficient underlying contract. This difference should not, however, obscure an important functional convergence between the two systems. German law, alongside statutory *Heilung*, also subjects reliance on formal invalidity to the requirements of good faith under § 242 BGB. This corrective mechanism is therefore functionally comparable to the Swiss prohibition of abuse of rights under Article 2(2) of the Swiss Civil Code as it is to the so-called *Rechtsmissbrauch* in Austrian law.

[288] von Segesser, G. and Caleff, J., 2019, p. 25.

These provisions collectively illustrate that, in the Swiss legal order, form in the field of real estate is immensely important. However, the legislator left room for leniency through the prohibition of abuse of rights and the protection of good faith.

3.5. Formal Requirements, Nullity and Functional Equivalents of Convalidation in Italy

Similar to the legal systems already analysed, Italian law also foresees the principle of consensualism. Furthermore, it follows the principle of consensual transfer of ownership, as in the French Code civil. Namely, Article 1376 of the Codice civile stipulates that where a contract has as its object the transfer of ownership of a specific thing, the creation or transfer of a right *in rem* or the transfer of another right, the ownership is transferred and acquired by virtue of the legitimately expressed consent of the parties.[289] This principle originates in the Napoleonic Code civil.[290] Interestingly, despite the identical scope of application, this principle does not receive such explicit recognition in the French Code civil as it has been established in the subchapter pertaining to France.[291]

The principle of freedom of form, analysed in the legal systems of the researched countries above, does not appear explicitly in the Codice civile. However, it can be derived from Articles 1325 and 1350. Namely, Article 1325 lists the essential elements for the validity of contracts and explicitly stipulates that, among others, form is necessary to the validity of a contract when it is required by law under penalty of nullity.[292] Additionally, Article 1350 foresees the contracts that require a specific form

[289] Article 1376 of the Codice civile, Testo del Regio Decreto 16 marzo 1942, n. 262 aggiornato con le ultime modifiche legislative apportate, da ultimo, dal D.L. 8 agosto 2025, n. 117, convertito, con modificazioni, dalla L. 3 ottobre 2025, n. 148, dalla L. 23 settembre 2025, n. 132, dalla L. 2 dicembre 2025, n. 182 e dal Decreto del Ministero dell'economia e delle finanze 10 dicembre 2025 [Civil Code, Text of Royal Decree No. 262 of March 16, 1942 updated with the most recent legislative amendments, most recently introduced by Decree-Law No. 117 of 8 August 2025, as converted, with amendments, by Law No. 148 of 3 October 2025, as well as by Law No. 132 of 23 September 2025, Law No. 182 of 2 December 2025, and by the Decree of the Ministry of Economy and Finance of 10 December 2025]. Hereinafter referred to as: the Codice civile.

[290] Azzarri, F. (2013) '*Il principio consensualistico e le regole della circolazione patrimoniale*' [The Principle of Consensual Transfer and the Rules Governing the Circulation of Property]. In: Sirena, P. (ed.) *L'atto pubblico notarile come strumento di tutela nella società dell'informazione* [The Notarial Authentic Instrument as a Means of Protection in the Information Society]. *I Quaderni della Fondazione Italiana del Notariato*, Vol. I. Available at: http://www.elibrary.fondazionenotariato.it (Accessed: 14 July 2026).

[291] For a more detailed elaboration, see: Azzarri, 2013.

[292] Article 1325 Para. 1 Sec. 4 of the Codice civile.

for their validity.[293] *Argumentum a contrario*, contracts not listed under Article 1350 of the Codice civile concluded in any form are valid.

Furthermore, in Italian law, the intent to be bound by contract is an essential element of legal transactions, although the law may require its expression in specific forms.[294] While traditional formalism was primarily tied to the content of the juridical act, contemporary legal scholarship usually links formal requirements to functional considerations, such as the nature of the protected interests, the circumstances of the contract's conclusion, and the position of the parties.[295]

The general framework is laid down in the Codice civile, which differentiates sharply between nullity (*nullità*)[296] and voidability (*annullabilità*)[297] and assigns distinct legal consequences to each category.[298] This systematic distinction is decisive for understanding the limited role of convalidation in Italian law and its exclusion in cases of nullity.

The different legal foundation of nullity, compared to voidability, is often used to explain why, as a general rule, a null and void contract cannot be subjected to convalidation.[299] This distinction is reflected in the well-known consequences traditionally associated with nullity: absolute standing to bring an action, *ex officio* judicial review, imprescriptibility, and incurability.[300]

Nullity represents the most severe form of contractual invalidity in Italian law. According to Italian legal literature, nullity indicates a contract is invalid because of a fundamental defect in its structure.[301] This may happen if an essential element of the contract, such as agreement, form, object, or cause, is lacking, or if the contract itself, or one of its essential elements, conflicts with a mandatory rule, public order, or good morals.[302]

---

[293] Article 1350 of the Codice civile.
[294] Bocchini, 2016, p. 331.
[295] Plaia, A. (2022) *Le patologie del contratto [Contract Pathologies]*. Torino: Giappichelli. pp. 22-23. See also: Bocchini, 2016, p. 331.
[296] Art. 1418 of the Codice civile.
[297] Chapter 12 of the Codice civile.
[298] Camilletti, F. (2018) 'Invalidità civilistica, invalidità giuslavoristica e nullità di protezione' [Civil Law Invalidity, LAbpur Law Invalidity, and Invalidity of Protection]. *Lavoro, Diritti, Europa***,** 1/2018, p. 4.
[299] Mantovani, M. (2006) Le nullità e il contratto nullo [Nullity and the void contract], in Gentili, A. (ed.), Rimedi [Remedies], vol. IV, t. I, in Roppo, V. (ed.), Trattato del contratto [Treatise on Contracts], Milan: Giuffrè, p. 135.
[300] *Ibid.*
[301] Plaia, 2022, p. 4.
[302] *Ibid.*

This definition of nullity is also reflected in the provisions of the Codice civile. According to Article 1418, a contract is null when it is contrary to mandatory rules, unless the law provides otherwise.[303] As a general sanction, nullity concerns the contract as such and operates objectively, targeting legal transactions that are unlawful or immoral, or that lack one of the essential elements imperatively laid down by Article 1325 of the Codice civile.[304] A contract is also null in all other cases expressly specified by law.[305]

The sanction of nullity focuses on the objective profile of the contract, understood both as its content and its objectively identifiable function.[306] Therefore, a contract is null in Italian law when, judged by its content and real economic function, it conflicts with mandatory legal standards. This assessment is independent of the parties' intentions, conduct, or later performance.

Italian case law has clarified that not every violation of mandatory rules leads to contractual nullity, but only those infringements that affect the inherent structure or content of the contract. Accordingly, breaches of mandatory rules governing pre-contractual information duties, particularly in the banking and financial sector, do not as such entail nullity but may give rise to pre-contractual liability under Article 1337 of the Codice civile.[307]

An action for nullity may be brought by any contracting party, including the party responsible for the defect, and by third parties with a concrete and current interest. Moreover, nullity may also be raised *ex officio* by the court where it emerges from the facts of the case.[308]

The consequences of nullity are governed by Articles 1421–1423 of the Codice civile. Most importantly, Article 1423 of the Codice civile expressly provides that a null and void contract cannot be convalidated unless otherwise provided by law.[309] Namely, the final clause of the provision expressly leaves room for legislative exceptions. This formula indicates that, while nullity is in principle incurable, the legal

[303] Art. 1418 par. 1 of the Codice civile.
[304] Art. 1418 par. 2 of the Codice civile.
[305] Art. 1418 par. 3 of the Codice civile.
[306] Camilletti, 2018, p. 4.
[307] *Ibid*, p. 6.
[308] Vulpiani, G. (2022) 'La nullità del contratto nel diritto civile italiano tra frammentazione, recupero e nuove tecnologie' [Voidness of contract in Italian Civil Law: Fragmentation, Confirmation and New Technologies]. *Actualidad Jurídica Iberoamericana,* 16/2022, p. 414.
[309] Art. 1423 of the Codice civile. For more, see: Vulpiani, 2022, p. 414.

system does not exclude *ex ante* the possibility that the legislature may provide for specific corrective mechanisms in narrowly defined cases.

Statutory exceptions from the harsh consequences of nullity are enshrined among the provisions of the Codice civile. Article 799 is of particular importance since it stipulates that the nullity of a donation, regardless of the cause of nullity, may not be asserted by the donor's heirs or successors who, being aware of the cause of nullity, have—after the donor's death—confirmed the donation or voluntarily carried it out.[310]

Since the legislator uses the phrase *"da qualunque causa dipenda"* in Article 799, this can be interpreted to include defects of form as well. This is particularly significant given that Article 782 requires a public deed (*atto pubblico*) for the validity of contracts on donations.

Therefore, it can be stated that, although the Code uses the terms *conferma* (confirmation) and *esecuzione* (performance), these concepts represent analogous legal mechanisms to convalidation. However, it is important to note that these statutory exceptions designed to remedy nullity differ from performance-based convalidation insofar that they do not retroactively validate a legal transaction that was null and void due to a formal defect; rather, they preclude the heirs or successors who have confirmed or voluntarily performed it, with knowledge of the cause of nullity, from subsequently relying on that nullity.

A similar rule is enshrined in Article 590 of the Codice civile in connection to void testamentary dispositions. Namely, it stipulates that the nullity of a testamentary disposition, regardless of the cause, cannot be asserted by a person who, knowing the cause of the nullity, has—after the testator's death—confirmed the disposition or voluntarily carried it out.[311] This provision shows particular relevance when read together with Article 606, which expressly provides for the nullity of a will in specific cases of certain formal defects including the absence of handwriting or signature in the case of a holographic will and the absence of the prescribed written record or signature in the case of a notarial will.[312] Other defects of form may render the will voidable.[313]

Consequently, the mechanism enshrined in Article 590 may also be applied in cases of nullity due to formal defects. However, as in the case od Article 799

[310] Art. 799 of the Codice civile.
[311] Art. 590 of the Codice civile.
[312] Article 606 Para. 1 of the Codice civile.
[313] Article 606 Para. 2 of the Codice civile.

confirmation or voluntarily execution does not aim to remedying an originally null and void testamentary disposition, rather, it precludes a person who, with knowledge of the cause of nullity, has confirmed or voluntarily executed the disposition from subsequently challenging it.

Article 799 of the Codice civile is particularly significant for another reason as well. Namely, its importance stems from a comparative perspective, since it belongs to the same family of rules as former Article 1340 of the French Code civil and Article 1010 of the Romanian Civil Code, all of which attach legal consequences to confirmation or voluntary performance by the donor's successors after the donor's death.

Furthermore, convalidation is expressly regulated in relation to voidable contracts. The relevant provisions of the Codice civile allow the party entitled to challenge a voidable contract to confirm it, either expressly or implicitly, thereby definitively eliminating the right to avoidance.[314] Voidability thus concerns defects affecting individual interests and remains subject to private disposition.[315]

Although freedom of form is the general rule in Italian contract law, the legislator has gradually increased the number of transactions that must meet formal requirements, thereby reducing the scope of informal agreements.[316] This restrictive tendency becomes particularly evident in contracts concerning immovable property.

Under Article 1350 of the Codice civile, contracts for the transfer of ownership or the establishment of other rights *in rem* over immovable property must be concluded in written form *ad substantiam.*[317] Failing to adhere to this rule renders the contract

[314] Art. 1444 of the Codice civile.
[315] Foti, G. (2021) 'Convalida e governo dell'atto invalido nella prospettiva dei valori costituzionali' [Validation and Governance of Invalid Acts from the Perspective of Constitutional Values], *dirittifondamentali.it [Online]*, 1/2021, p. 576. Accessed: 26th January 2026.
[316] Bocchini, 2016, p. 331.
[317] *Ibid.*

null and void.[318,319] Pursuant to Article 1418[320], not complying with the prescribed form results in nullity, and Article 1423 expressly provides that a null and void contract cannot be convalidated unless the law explicitly allows otherwise.[321] Form therefore constitutes an essential element of validity, not merely an evidentiary requirement.

For the rights on the obligations-law level, compliance with the prescribed form is a prerequisite for the validity of the contract and the emergence of the contractual obligations intended by the parties. However, if the contract is not concluded in the prescribed form under Article 1350 of the Codice civile, it is null and void and therefore incapable of producing the intended obligations-law effects usually arising from a contract for the conveyance of ownership rights over immovable property.

Italian doctrine and jurisprudence gradually attributed a constitutive and protective function to the written document and the public deed required by Article 1350.[322] These formalities are considered as means of safeguarding legal certainty, transparency, and the reliability of transactions involving immovable property. Consequently, contracts lacking the prescribed form are null and void *ab initio* and cannot be cured by subsequent performance or registration.

Although ownership is transferred once the contracting parties reach consensus under Article 1376 of the Codice civile, registration (*trascrizione*) serves a different purpose. It is not a requirement for the transfer of ownership, but serves the function

---

[318] Art. 1350, para. 1 (1)-(2) of the Codice civile.

[319] Already in the first Italian Civil code, i.e., the *Codice Civile del Regno d'Italia* of 1865, the princip of consensualism and the translative effect of contracts can be observed in its Art. 1125 foreseeing that, in contracts whose subject is the transfer of ownership or other rights, the ownership or right is transferred and acquired by the legally expressed agreement of the parties, (...), even if the object itself has not been transferred. See: Art. 1125 of the *Codice civile del Regno d'Italia (1865) Codice civile*. Torino: Stamperia Reale. Available at: https://moodle2.units.it/pluginfile.php/296183/mod_resource/content/2/Codice%20civile%201865.pdf . [Accessed: 9 March 2026]. The adoption of these principles clearly reflects the influence of the French Civil Code; however, the Italian lawmaker seems to have established a stricter standpoint regarding immovable property. Nevertheless, the Codice civile of 1865 already foresaw some exceptions to these principles. Namely, in Art. 1314, the Codice provided that contracts pertaining to the transfer of ownership of immovables have to be concluded in the form of a public notarial deed or a written private instrument under the sanction of nullity. Although it foresaw the possibility of confirmation/ratification of a juridical act sanctioned with nullity (Art. 1309), in Art. 1310 it seems as though this provision excluded contracts for the conveyance of ownership of real estate by stipulating that „*Non si possono sanare con verun atto con fermativo i vizi di un atto nullo in modo assoluto per difetto di formalità*" [The defects of an act that is absolutely null due to a formal deficiency cannot be remedied by confirmation]. Therefore, Italian legislation had, from the outset, excluded the possibility of convalidation of formally deficient real estate contracts.

[320] Art. 1418 par. 1 of the Codice civile.

[321] Art. 1423 of the Codice civile.

[322] For more about the protective function, see: Vulpiani (2022), p. 419 et seq.

of publicity and opposability against third parties.[323] Italian law conceptualises registration not in relation to the formal classification of the act, but in relation to the juridical effect it produces.[324] Articles 2643 and 2645 of the Codice civile make clear that registration concerns the change in real rights over immovable property caused by an act, rather than the act itself.[325]

Therefore, registration presupposes that a valid transfer or modification of a real right has already taken place.[326] Thus, where a contract is null and void for lack of the mandatory form required by Article 1350, no transferable real effect arises. A null and void contract cannot serve as a legal basis for registration, since it produces no legally recognisable modification of rights *in rem*. The primary function of registration is not to complete the transfer of ownership, but to ensure opposability of the already valid transfer against third parties.

Consequently, in the case of a null and void real estate contract due to formal defects, neither payment of the purchase price nor delivery of possession is capable of curing invalidity. Furthermore, since registration cannot be carried out on an invalid legal basis, entry in the land registry is likewise excluded from being considered a curing mechanism. Accordingly, in the specific case of contracts for the transfer of ownership rights over immovable property, neither performance of the contractual obligations nor subsequent registration operates as a general mechanism for curing the formal invalidity of the underlying contract. Nullity affects the very existence of the contract and cannot be neutralised by subsequent conduct of the parties.

However, Italian law allows the parties to choose between a public deed and an authenticated private instrument when concluding contracts subject to mandatory form.[327] While this choice does not affect validity *inter partes*, it becomes decisive for evidentiary purposes and for the contract's opposability, since registration may only be effected on the basis of a judgment, a public deed, or a private instrument with authenticated or judicially verified signatures.[328]

Although Article 1423 of the Codice civile generally foresees that null and void contracts cannot be convalidated, Italian law nevertheless recognises certain

[323] Nelson, A.C. (2012) *La trascrizione immobiliare*. Milan: Giuffrè Editore, p. 13.
[324] *Ibid,* p. 13.
[325] *Ibid.*
[326] *Ibid,* p. 17.
[327] Bocchini, 2016, p. 333.
[328] *Ibid.*

mechanisms which, in practice, may mitigate the harsh consequences of nullity. Articles 799 and 590 are particularly significant in this regard since they expressly attach legal consequences to voluntary performance of null and void juridical acts. However, these mechanisms have to be differentiated from performance-based convalidation in the strict sense even though their purpose is similar, i.e., they aim to avoid the invalidity of defective contracts, they do not convalidate invalid juridical acts, rather preclude the possibility to invoke nullity.

Another mechanism with a similar purpose is observable in Italian law, which should be mentioned as a functional counterpart of the mechanisms described in subchapters about Austria, Germany and Switzerland is the general prohibition of abuse of rights (*abuso del diritto*). In the Italian legal system, the prohibition of abuse of rights is an unwritten principle, essentially derived from legal scholarship and case law.[329] Its most significant manifestation for the present research is the *exceptio doli generalis* which in practice, refers to denial of protection to the abusive exercise of an otherwise formally available right.[330] The scope of its application, however, should not be generalised since it may be limited in cases when the legal system attaches particular importance to formalities.[331]

Article 1424 of the Codice civile enables the conversion of a null contract into a different valid contract *(conversione del contratto nullo)*, provided that the requirements of the latter are fulfilled and that the hypothetical intent of the parties can reasonably be reconstructed.[332] However, in this case, conversion as the remedy does not cure the original defect but replaces the null and void act with a different type of juridical act.

[329] Caringella, F. (2023) 'Buona fede e divieto di abuso del diritto: i limiti all'esercizio del diritto' [Good Faith and the Prohibition of Abuse of Rights: Limits on the Exercise of Rights]. Extract from Manuale Ragionato di Diritto Civile [Reasoned Manual of Civil Law]. Dike Giuridica. [Online] Available at: Dike Giuridica [Accessed: 13 September 2026].
[330] *Ibid.*
[331] The rules governing entry into the land registry serve as sufficient example in this regard. The cited Italian legal literature emphasizes that the formal strictness of the public registration system cannot be set aside by invoking the *exceptio doli generalis*, as doing so would undermine legal certainty and the security of transactions—values the system is designed to protect. While this does not in itself imply that the same restriction applies to contracts rendered null and void due to an infringement of rules mandating formal requirements for validity of contracts (*ad substantiam*), it clearly illustrates that the corrective function of good faith is not unlimited. See: Caringella, 2023.
[332] Art. 1424 of the Codice civile.

Based on the aforementioned, Italian law separates the issue of acquisition of ownership from its enforceability against third parties *(opponibilità)*.[333] While the method of acquisition of ownership is, as a rule, consensual, it is limited in certain cases. For example, in the case of a subsequent sale, the law does not protect the party who acquires ownership first, but the party who first complies with the publicity requirements prescribed by law and primarily completes registration in the land registry.[334] In such cases, the logical consequences of the principle of consensualism are limited in the interest of the security of immovable property transactions.[335]

Furthermore, pertaining to real estate contracts the Italian legislator did not foresee the possibility of performance-based convalidation, since neither the performance of contractual obligations nor registration in the land registry is foreseen to heal invalidity stemming from formal defects.

3.6. Comparative Summary

Although it has practical application, the institution of convalidation does not seem to be codified as a distinct legal institution. Instead, it tends to be derived from more generic legal regimes on the validity of contracts, form requirements, and legal consequences of defects in juridical acts. This comparative analysis of the relevant legislation in the French, Austrian, German, Swiss, and Italian legal orders illustrates that convalidation of formally deficient real estate contracts is distinctively present in the German legal order under the name of *'Heilung'*.

Under French law, the principle of consensualism and *liberté de forme* (freedom of form) governs contractual relations as a general rule. However, the Code civil subjects certain solemn contracts to mandatory formal requirements prescribed for their validity. Article 1172 para. 2 of the French Code civil is of particular importance in this regard, which foresees that failure to comply with such formal requirements renders the contract null and void, but at the same time provides for the possibility of regularisation *(sauf possible régularisation)*.

French legal literature distinguishes this mechanism from confirmation: whereas confirmation constitutes a waiver of the right to invoke relative nullity, the purpose of

[333] Azzarri, 2013.
[334] *Ibid.*
[335] *Ibid.*

régularisation is to eliminating the defect itself by subsequently fulfilling the requirement that was omitted when the transaction was originally concluded rendering the act valid retroactively.[336] Therefore, considering its function, *régularisation* constitutes a curative mechanism relevant to the concept of convalidation examined in this thesis, although it should not be equated with performance-based convalidation.

Donations further illustrate the importance of maintaining this distinction. Article 931 prescribes notarial form under penalty of nullity, but French case law has introduced exceptions, with *don manuel* and disguised donations being recognised. However, they should not be regarded as examples of convalidation rather, they constitute recognised exceptions to the scope of the formal requirement laid down in Article 931.

Furthermore, French law also recognises confirmation as a mechanism concerning relative nullity, but this likewise must be distinguished from *régularisation*, since it constitutes the waiver of the right to invoke nullity rather than the cure of the original defect.

In Austrian law, the ABGB technically acknowledges the principle of freedom of form, subject to exceptions primarily concerning donations and wills. Similarly to the French Civil Code, the ABGB does not provide for the institute of convalidation. As has already been established, there is no need to include it in the ABGB since the form of the real estate contract is significant during its registration in the land registry.

The doctrine of the so-called *Rechtmissbrauch* should also be addressed which may limit the possibility of invoking nullity based on a formal defect if it would mean an abuse of right.

By comparison, German law, as codified in the BGB, is more formalistic and systematic in its approach based on the Pandectist method. Although the BGB otherwise allows juridical acts to be concluded without form, § 125 BGB states legal transactions to be null and void where prescribed form is lacking. However, German law recognises that such form defects are curable through full performance, as the Federal Court of Justice held. In cases pertaining to the conveyance of ownership rights on real estate, § 311b(1) BGB and corresponding case law show that registration and declaration of conveyance can remedy a defect in form, thereby rendering the contract valid. Equivalently, according to § 518, an unnotarised donation promise can be

[336] Starck, Roland and Boyer, 1998, p. 371.

convalidated by performance. The BGB thus recognises convalidation not as a theoretical structure but as an applicable mechanism embedded in rules in connection with performance and registration.

German law also recognises a distinctive mechanism which affects the legal consequences of invalidity due to formal defects. Namely, based on the principle of Treu und Glauben under § 242 BGB the reliance on a formal defect may constitute as an inadmissible exercise of rights and may therefore be precluded.

Swiss law, codified in the OR and the Swiss Civil Code, combines the principle of consensualism with strict formality regarding immovable property. Article 11 OR enshrines the principle of consensualism, making contracts valid upon mutual agreement unless the law requires a specific form. Where form is prescribed, compliance is constitutive of validity, and if parties voluntarily stipulate a form, the law presumes that they are not bound until it is observed.

The Swiss Merger Act reinforces this by requiring notarisation of contract parts dealing with immovables even when the transaction is otherwise subject to mere written form. Likewise, the Swiss Civil Code states that ownership transfers require public notarisation to be binding and ensures that the content of building rights is binding on future acquirers once duly recorded.

Furthermore, although Swiss law does not provide for statutory performance-based convalidation of form-defective real estate contracts in the strict sense, the consequences of invalidity due to formal defects may in exceptional circumstances be mitigated through the prohibition of abuse of rights under Article 2(2) ZGB.

Therefore, it may be restricted to invoke invalidity due to formal defects when, in the particular circumstances, it would constitute an abuse of rights. This possibility, however, does not cure a formally deficient juridical act, it merely precludes the parties to invoke invalidity. Importantly, this approach is not unique to Swiss law, its functional analogues can be identified in other legal systems examined in this research.

Within this comparative analysis, Italian law occupies a distinctive and particularly restrictive position. Italian private law is characterised by a clear and traditionally strict differentiation between nullity (*nullità*) and voidability (*annullabilità*), with different legal consequences attached to each category. This systematic distinction is decisive for understanding the limited role, and general exclusion, of convalidation in cases of nullity. Pursuant to Article 1423 of the Codice

civile, a null and void contract cannot, as a general rule, be convalidated, although the provision leaves room for specific statutory exceptions.

This rule is reflected in the classic consequences of nullity under Italian law: absolute standing to bring an action, judicial review *ex officio*, imprescriptibility, and the general prohibition of convalidation.

Pursuant to Article 1418 of the Codice civile, a contract is null and void where it conflicts with mandatory rules, lacks an essential element under Article 1325, or is otherwise expressly sanctioned with nullity by law. The consequences of nullity governed by the provisions of the Codice civile expressly provide that a null contract cannot be convalidated. However, the norm also contains a legislative reservation, leaving room for narrowly defined statutory exceptions.

Furthermore, Italian law recognises the judicially developed prohibition of abuse of rights (*abuso del diritto*), stemming from the protection of good faith, which may operate through the *exceptio doli generalis* to deny protection to the abusive exercise of an otherwise formally available right.

Taking into account all five regimes, some common characteristics emerge. First, each jurisdiction has a general rule of freedom of form or consensualism, but all impose strict requirements for certain categories, especially in donations and immovable property. Second, Italy appears restrictive particularly in the case of formally deficient real estate contracts, while in other cases the Codice civile contains statutory exceptions which recognise legal effects arising from performance. Swiss law likewise does not provide for statutory convalidation of form-defective real estate contracts, Germany on the other hand, provides for the possibility of curing formally deficient real estate contracts, while in France and Austria the validity of such contracts is not conditioned by formality.

The comparative analysis nevertheless reveals a significant aspect of curative mechanisms which stems from the distinction between remedying invalidity and the possibility of invoking it. Namely, Swiss law, through Article 2(2) ZGB, and Italian law, through the judicially developed doctrine of *abuso del diritto* and *exceptio doli generalis*, demonstrate that the harsh consequences of invalidity may in cases when invoking nullity is prohibited be affected without the underlying transaction being convalidated. Functionally convergent corrective mechanisms can also be identified in Austrian law through the doctrine of *Rechtsmissbrauch* and in German law through the principle of *Treu und Glauben* under § 242 BGB.

The aformentioned remarks suggest that the role of convalidation in modern civil law is moderately applied in the field of immovable property transactions. In this regard, it can be concluded that the notion of curing defective legal acts, traditionally rooted in Roman and Canon law, has slightly responded to the demands of commercial flow and private intent. Furthermore, the economic importance of immovable property and the publicity of the land registry seem to prevail over party autonomy and freedom of form.

In the specific field of immovable property transactions, the comparative situation becomes even more revealing.

In French law, Article 1583 of the Code civil reaffirms consensualism, providing that ownership is transferred between the parties as soon as there is agreement on the thing and the price, even without delivery or payment. Such a purely consensual transfer is not sufficient for opposability to third parties. Article 710-1 of the Code civil establishes the so-called *acte authentique* (notarial deed) as the basis for *publicité foncière*. The sale of immovable property without notarial form is thus valid *inter partes* but cannot be registered and enforced against third parties. French law, therefore, adopts a quasi-consensual but functionally solemn approach: contracts transfer ownership between parties by consent, but only observance of the notarial and registration formalities achieves the publicity necessary for third-party effect. The remedy of defective form is therefore not retroactive validation, but subsequent compliance with the publicity regime.

In Austrian law, the ABGB maintains the principle of *titulus–modus*. The sales contract is valid as a consensual obligation, but ownership is transferred only with land registry entry according to the GBG. The contract is not subject to notarial form for validity, but registration requires authenticated or notarised signatures. If this procedural requirement is not met initially, the defect can be cured by subsequent compliance and registration. The Austrian Supreme Court has consistently refused to recognise ownership without registration as inconceivable, apart from statutory exceptions. Consequently, Austrian law does not let the form requirement invalidate the underlying contract but merely suspends its applicability until the transfer is carried out by registration.

By comparison, German law relies more on the principle of formalism. Under § 311b(1) BGB, a promise to convey land must be notarised. Although, the BGB allows the freedom of form of contracts, § 125 BGB stipulates that legal transactions that lack

the form prescribed by statute are void. However, there are specific statutory provisions enshrined in the BGB which allow such formal defects to be cured. The conditions of the application of the respective remedy depend on the particular type of transaction. In the case of contracts for the transfer of ownership over immovable property, § 311b(1) sentence 2 BGB provides that the formal defect is cured upon *Auflassung* and registration in the land register. However, this mechanism should be differentiated from performance-based convalidation in the strict sense, because the formally deficient contract is not remedied by the payment of the purchase price, by delivery of possession, or other performance of the contractual obligations. On the other hand, some performance-based remedies could be observed in German legislation: under § 518(2) BGB, for example, the defect in form of a promise of donation is cured by rendering the performance promised; § 766 sentence 3 BGB concerning suretyship; and § 494(2) BGB concerning consumer credit agreements.

Italian legislation shows rigidity evident in immovable property transactions. Article 1350 of the Codice civile requires contracts transferring ownership or creating real rights in immovable property to be concluded in written form as a private agreement or public deed under the penalty of nullity. Consequently, form-defective real estate contracts cannot be cured by subsequent performance or registration.

In Swiss law, the alienation of real estate is subject to the strict provisions of the OR and the Swiss Civil Code. According to Article 216(1) OR, contracts for the sale of immovable property are valid only if executed in the form of a public notarial deed. The Swiss Civil Code reinforces this strict approach: under Article 657(1), a contract transferring ownership of real property is binding solely if it has been notarised.

After the comparative analysis of the selected modern civil law codifications and their provisions regarding general rules on contract validity and special rules on the validity of contracts for the conveyance of immovable property and the institute of convalidation, a similar assessment of the selected Central-Eastern European countries will follow in the subsequent chapters of this thesis.

4. General Frameworks of Convalidation in Central-Eastern Europe

4.1. Theoretical Treatment of Convalidation in the Doctrine

The doctrinal structure of invalidity in Central-Eastern European legal systems reflects a complex historical layering of Roman law concepts, French, Austrian, German, Swiss and Italian codification models, and socialist legislative transformations. In order to assess the scope and limits of performance-based convalidation in this region, it is first necessary to clarify how invalidity itself is conceptualised within these systems.

A fundamental distinction across most of the examined jurisdictions is between absolute nullity and relative nullity (or voidability), which demonstrates the influence of modern European codifications.[337] Although terminology varies, the structural logic remains comparable. Absolute nullity generally applies to legal acts that violate mandatory rules protecting public order, the legal system, or third-party interests. Such acts are treated as void *ab initio* and may typically be invoked by any interested party, sometimes even *ex officio* by the court. By contrast, relative nullity is designed to protect specific interests of the parties, usually in situations of defective consent, mistake, or incapacity. In such cases, the contract remains valid unless the protected party invokes the defect.

This structural difference mitigates the strict legal consequences of nullity and allows for the application of various corrective mechanisms. This distinction is

[337] See, for example, on the distinction between absolute and relative nullity in Central-Eastern European doctrine: Hungary – Wellmann, Gy. (2021) in: Wellmann, Gy. (ed.) *'Polgári Jog: Kötelmi jog: A Ptk. magyarázata V/VI.'* [Civil Law: Law of Obligations: Commentary of the Civil Code V/VI], *4th edn.*, Budapest: HVG-ORAC Lap- és Könyvkiadó Kft., p. 199; Romania – Fazakas, Z. J. (2021) „A szerződés semmissége és megtámadhatósága a magyar és a román polgári törvénykönyvekben" [Nullity and Contestability of the Contract in the Hungarian and the Romanian Civil Codes], *Erdélyi Jogélet*, (2), doi: 10.47745/ERJOG.2021.02.06. p. 109; Serbia – Dolović Bojić, K. (2021) *Pravno nepostojeći ugovori [Legally Non-existent Contracts]*, Beograd: Pravni fakultet Univerziteta u Beogradu, p. 50, 64; Croatia – Gorenc, V. (ed.) (2014), *Komentar Zakona o obveznim odnosima* [Commentary of the Obligations Act], Zagreb: Narodne novine, p. 531; Slovenia – Polajnar-Pavčnik, A. (1980) 'Neobstoječe pogodbe [Non-Existant Contracts]', *Zbornik Znanstvenih Razprav*, 40, p. 433; Czech Republic – Dudás, et al., 2022, p. 258; Slovakia – Jakúbeková, D., D. (2020) 'Neplatnosť právnych úkonov–jej slabé miesta a perspektívy' [Invalidity of legal acts – its weak spots and perspectives] *Paneuropean Law Journal,* 3(2); Poland – Grzybowski, S., (1974) 'O rzekomej konwalidacji nieważnej czynności prawnej' [On the Alleged Convalescense of the Void Juridical Act], *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 36(3), p. 47. The terminology differs across jurisdictions (e.g., semmisség/megtámadhatóság in Hungary; ništavost/rušljivost in Serbian; ništetnost/pobojnost in Croatian law; nične/izpodbojne in Slovenia; nulitate absolută/nulitate relativă in Romanian law; absolutní/relativní neplatnost in Czech law; absolútna/relatívna neplatnosť in Slovak law; względnie nieważne/bezwzględnie nieważne in Polish doctrine).

significant for convalidation. A performance-based remedy is conceptually more plausible where the defect concerns relative invalidity (where the purpose of the provisions pertaining to invalidity is to protect the interests of the contracting parties) or form requirements serving primarily evidentiary or cautionary functions. By contrast, where absolute nullity is attached to violations of public order or mandatory registration rules, the scope for healing defective juridical acts narrows considerably.

The modern concept of invalidity in civil law dogmatics can be traced back to the systematic work of the 19th-century Pandektist jurisprudence. The Pandektists defined invalidity (*Ungültigkeit*) as a comprehensive category that included nullity (*Nichtigkeit*) on the one hand and challengeability (*Anfechtung*) on the other.[338]

According to the classical view, a null and void legal transaction is without legal effect and has to be regarded as if it had never been concluded.[339] However, modern legal development has gradually moved away from this rigid concept.[340] Judicial practice and jurisprudence increasingly recognise that nullity does not always mean a complete lack of legal effect. In certain circumstances, the legal order may apply different corrective mechanisms that strive for the same goal of preserving contractual relationships despite their defects, for example, partial invalidity, conversion, and *convalescence*.[341] This trend suggests that invalidity in modern private law is not merely a means of completely annulling a legal transaction but a flexible legal dogmatic category enabling just and functional settlement of contractual relations.[342]

In connection with contract formalism, as indicated above, the analysed classical civil law codifications have somewhat deviated from the rigid formalism of Roman law and the Pandectist theory. Alongside them, many Central-Eastern European legal

[338] Zimmermann, 1993, p. 682.
[339] *Ibid.*
[340] *Ibid,* p. 683.
[341] *Ibid.*
[342] According to available legal literature, this trend in contract law can also be interpreted as the legislators' efforts to follow the principle of *favor contractus*. The purpose of this principle is to ensure the existence of the contractual relationship by limiting, as much as possible, the cases in which the formation, validity, or further existence of the contract can be questioned. The principle of *favor contractus* is based on the assumption that in most cases the maintenance of the contract serves the interests of both parties, since the complete invalidity or premature termination of the contract may force the parties to seek a new contractual partner or to return the obligations fulfilled up to the point of declaring the respective juridical act null and void. For more, see: Kornet, N. (2011) *Evolving General Principles of International Commercial Contracts: The UNIDROIT Principles and Favor Contractus*. M-EPLI Working Paper No. 2011/07. Maastricht: Maastricht European Private Law Institute, Faculty of Law, Maastricht University. Available at: https://ssrn.com/abstract=1756751 [Accessed: 7 August 2026].

systems under their influence seem to have developed a nuanced doctrine of nullity as well, which is less rigid than earlier strict constructions.

The relaxation of the strict formalist concept of invalidity can also clearly be observed in the development of legal consequences related to the violation of formal requirements. As established, in several continental legal systems, the approach has gradually developed according to which the nullity of a form-defective contract does not necessarily lead to the complete lack of legal effect of the legal transaction.

The development of Swiss law of obligations accepted the idea early on that if the parties have mutually fulfilled the contract, it may be justified to maintain the actual effects of the legal relationship despite the formal deficiency. This solution can be linked to the Swiss regulatory models of the law of obligations.[343] The regulations had an impact on other continental legal systems as well. Hungarian private law has also adopted this approach[344], although some modifications are apparent regarding Swiss law. According to Hungarian legal literature, a contract sanctioned with nullity due to a lack of form can be maintained if the parties have mutually fulfilled their respective obligations.[345] Accordingly, an infringement of a formal requirement does not always lead to the complete loss of the legal effect of the respective juridical act, but rather, under certain conditions, allows the stabilisation of the contractual relationship that has already been completed.

Hungarian legal literature explicitly highlights the example of violation of the essential formality (*forma ad solemnitatem*). In this case, an otherwise null and void contract can be convalidated if the parties have mutually performed their obligations in full or in preponderant part, unless convalidation of such juridical acts is contrary to the purpose of the mandatory formality prescribed by law or other legal regulation.[346] For example, if the mandatory form is aimed at the protection of public interest, mutual performance cannot lead to convalidation. However, if the purpose of the mandatory form is the protection of the private interest of the parties, then the informal contract can be convalidated through mutual performance.[347]

---

[343] Szalma, J. (2023) A szerződés hatályáról – az európai és a magyar jogban [Condition and Effect of the Legal Transaction According to Hungarian and European Law]. *Miskolci Jogi Szemle*, 18(3), special issue, p. 131.
[344] *Ibid*.
[345] Szalma, 2023, p. 131. See also: Szalma, J. (2011) 'A jószokások (jóerkölcs) és a közrend megsértésének jogi következményei a magyar polgári jogban [Legal Consequences of Violating Good Morals and Public Order in Hungarian Private Law]', *Magyar Jog*, 58(7), p. 397.
[346] Szalma, 2011, p. 397.
[347] *Ibid*.

Serbian legal scholarship explicitly addressed the problem of contracts for the transfer of immovable property lacking the prescribed written form, questioning whether such contracts should be treated as non-existent or merely null and void, and whether subsequent performance may justify their legal recognition.[348]

Although in the context of legal provisions, contracts lacking prescribed form are often described as null and void, legal scholarship in Yugoslav and post-Yugoslav systems was reluctant to treat nullity as an incurable annulment of a formally deficient juridical act.[349] The doctrine of convalidation was allowed in the Yugoslav legal system with respect to formally deficient contracts in general, and this regulation was applied to immovable property contracts as well. Courts accepted that a contract lacking the prescribed written form could produce legal effects if it had been performed in whole or in its preponderant part and if protected public interests were not infringed by such cases of performance-based convalidation.[350]

Judicial reasoning distinguished between the formal invalidity and the consequences of its execution.[351] Convalidation is not treated as an automatic remedy by the application of statutory provisions, but as judicial recognition of an executed transaction to preserve legal certainty and prevent unjust enrichment.

The influence of classical civil law codifications can also be observed in other Central-Eastern European legal systems, although the historical sources of the assessed doctrines differ significantly. Romanian private law historically developed under the strong influence of the French Code civil, adopted the dogmatic distinction between absolute and relative nullity and interprets the legal consequences of the violation of formal requirements primarily in connection with these categories. Polish private law likewise recognises a doctrinal distinction between absolute and relative invalidity whereby a stricter understanding of absolute nullity prevails, especially in the field of real estate transfer contracts, where compliance with legal form is crucial.

The developments of Czech and Slovak law have historically been under different codification and legal policy influences. In the territory of the present-day Czech Republic, the ABGB was of decisive importance for private law within the

[348] Dolović Bojić, 2021, p. 161.
[349] Karamarković, L. (2004) 'Konvalidacija ugovora o prometu nepokretnosti kojima nedostaje forma' [Convalidation of Form-defective Contracts on the Conveyance of Real Estate] in: *Rasprave iz ugovornog, odštetnog i procesnog prava*, Beograd: Glosarijum, pp. 26–37, p. 27.
[350] *Ibid*, p. 31.
[351] *Ibid*, p. 33.

framework of the Habsburg Monarchy.[352] In contrast, in the territory of present-day Slovakia, Hungarian law and its codification traditions prevailed, and the ABGB also came into force.[353] After the establishment of Czechoslovakia in 1918, the legal legacies of the two countries were retained, and the process of legal unification began only later.[354] As a result, the developments of Czech and Slovak private law simultaneously reflected the influence of Austrian, Hungarian, and later socialist codification, which resulted in the existence of a specific, parallel dogmatic structure in the interpretation of formal requirements and the doctrine of invalidity.

The socialist period left a distinct effect on the understanding of form and property. In centrally planned economies, land and immovable property were subject to heightened regulatory control. Formal requirements served not merely private evidentiary purposes but also administrative supervision and public allocation policies. As a result, formal compliance was closely tied to state oversight.[355]

During the transition to a market economy after 1990, the Central and Eastern European states underwent comprehensive property law reforms. In many countries, private ownership was re-established or restored, while extensive restitution and privatisation programs were launched.[356] With the transformation of the property structure, the land registration and property registration systems suffered from deficiencies. In order to meet the requirements of the emerging market economy, they also had to be reformed.[357] During the transition period, courts were often confronted with contracts that were still created within the framework of the previous economic and legal system or concluded under different formal and substantive legal requirements.[358] The need to stabilise property relations was therefore of paramount importance.[359]

---

[352] Glos, G. E. (1986) 'The Czechoslovak Civil Code of 1964 and Its 1982 Amendment Within the Framework of Czechoslovak Civil Law', *New York Law School Journal of International and Comparative Law*, 6(2), pp. 222–223.
[353] *Ibid*.
[354] *Ibid*.
[355] Dime-Ilijevska, P. (1988) 'Konvalidacija ugovora o kupoprodaji nepokretnosti' [Convalidation of Contracts for the Sale of Immovable Property], in Đekić, D. (ed.), *Zakon o obligacionim odnosima 1978–1988* [Law on Obligations 1978–1988], Beograd: Savez udruženja pravnika SR Srbije, p. 320.
[356] Verdery, K. (2003) *The Vanishing Hectare: Property and Value in Postsocialist Transylvania*. Ithaca, NY: Cornell University Press, p. 77.
[357] Cartwright, A. (2000) 'Reforming Property Law in Eastern and Central Europe', in Bright, S. and Dewar, J. (eds.) *Modern Studies in Property Law, Volume 1: Property 2000*. Oxford: Hart Publishing, pp. 350–351.
[358] *Ibid.*
[359] In the transitional period following the change of regime, the practical significance of convalidation was presumably relegated to the background. In many cases, the parties concerned did not have adequate

Based on the research conducted, from a dogmatic point of view, the role of performance in curing formal defects should be interpreted in accordance with the regional model of transfer of ownership. In contrast to the abstract system of *Auflassung* in German law, most Central-Eastern European legal systems seem to follow the causal model of transfer of ownership. That is, in these systems, the validity of the acquisition of ownership depends on the validity of the underlying juridical act. In this system, the defect in the contract directly affects the legal effects *in rem*. Therefore, it is important to assess whether a contract suffering from a formal defect can still be considered legally effective. If the transfer of ownership presupposes the existence of a valid underlying juridical act, then the possibility of convalidation directly affects the legal fate of the acquisition of ownership and the realisation of the legal effects *in rem.*[360]

Furthermore, most of the analysed systems recognise the constitutive effects of registering the new owner of the purchased immovable property in the land registries. In these cases, registration is required for the acquisition of ownership, even if the contract is valid *inter partes*.[361] In this way, contracts for the conveyance of ownership over immovable property combine contractual validity, enforceability, and registration in the land registry. In such systems, performance alone may validate the contractual relationship but cannot independently produce proprietary transfer without compliance with registration requirements.[362]

Another important doctrinal consideration is the qualification of formal requirements. Some legal systems have gradually reclassified certain formal requirements as evidentiary rather than constitutive. Where form serves primarily

documentary evidence with which they could credibly prove their ownership rights or the legal basis of previous legal transactions. In such circumstances, the widespread application of convalidation could easily have given rise to abuse of the law and could have jeopardised legal certainty. The presumed restrained approach can be partly explained by the fact that, in this period, the land registry and property registration systems in many countries were still being developed or were undergoing reform, and partly by the fact that transactions from the previous period were often not accompanied by adequate written documentation. For more, see: Cartwright *op. cit.*

[360] As the research shows, in countries such as Switzerland, Germany, Croatia, and Slovenia, there is a possibility for a formally deficient real estate contract to have legal effects *in rem* after its validation; however, the other analysed countries seem to exclude such healing through performance of the mutual contractual obligations.

[361] For example, in France, where a real estate contract could be validly concluded even orally, its legal effects would bind only the contracting parties. Whereas, against third parties, such a juridical act would only produce legal effects upon entering the new owner in the land registry, which requires the contract to be submitted for registration in the form of an authentic notarial deed.

[362] In Croatia, for example, where convalidation is allowed. However, by the mere declaration of a formally deficient contract as valid, ownership conveyance would still require land registry entry and, with it, a suitable *titulus*.

proof or publicity purposes, performance may be treated as an alternative evidentiary confirmation of the parties' agreement. In contrast, where the law explicitly defines form as a condition of validity in order to protect public order, room for leniency towards possible remedies for invalidity due to formal defects is significantly narrowed.

The legal systems of Central-Eastern Europe cannot be divided into two groups: those that prohibit and those that allow performance-based convalidation. These legislations show a gradual transition. Thus, among the legal systems analysed, some allow performance-based convalidation by a general statutory provision but exclude it in the context of real estate contracts, others allow it in the latter cases, and some provide for convalidation solely to eliminate the legal consequences of voidability (relative nullity) but exclude it in the context of contracts rendered absolutely null.

From a theoretical perspective, therefore, performance-based convalidation in the region cannot be seen as a mere exceptional departure from formal requirements, but rather as a dogmatic response within the broader framework of the doctrine of invalidity. This approach is an attempt by the legal order to reconcile the enforcement of three competing requirements: the normative authority of the form prescribed by law, the protection of legal transactions already performed, and the structural requirements of land registry systems.

This doctrinal typology highlights that the question is not simply whether the Central and Eastern European legal systems recognise the institution of convalidation, but also under what structural conditions they allow performance to influence the legal consequences of formal errors. The answer in each case depends on the dogmatic classification of invalidity, the function attributed to the prescribed form for contracts, and the relationship between the law of obligations and the law of property in the given legal system. The exploration of these dogmatic foundations is essential for the comparative analysis to be conducted in the following subsections.

Although the solutions of the individual legal systems differ in detail, they share the fact that, with the adoption of classical civil law codification models, an interpretative practice has gradually developed that seeks to harmonise the enforcement of formal requirements with the requirements of the stability and legal certainty of contracts already performed. Accordingly, the following subsections of the dissertation will feature a more detailed examination of these legal systems in order

to reveal the dogmatic means by which individual countries manage the problem of formal legal transactions arising during real estate transactions.

4.2. Historical Influence of Classical Civil Law Codifications on the Development of Private Law in the Region

The historical development of private law of the researched countries was not shaped by a uniform codification pattern, but rather by successive layers of legal influence, including, among others, the French Civil code, the ABGB, the BGB, the Swiss OR and ZGB, and the Italian Codice civile the complex codification history in each of the countries, and the considerable impact of socialist and post-socialist legal reforms.

For understanding the historical development of Central-Eastern European legal systems, the fact that two dominant codification trends emerged within the continental civil law tradition, the Romanist-Latin and the Germanic model, is of particular importance. The former developed primarily under the influence of the French Code civil, which combined the Roman legal tradition with the natural law ideas of the Enlightenment to create a relatively short, clear, and casuistically free codification.[363] The French model had a significant impact on many European and non-European legal systems, especially during the codification movements of the 19th century.[364]

The development of the Germanic legal family was primarily determined by German pandectist jurisprudence and the creation of the *Bürgerliches Gesetzbuch*, which implemented a highly systematic and dogmatically sophisticated codification based on the scientific interpretation of Roman law.[365]

The differences between the two codification models are not only reflected in the structure of the codes, but also in the legal thinking of the respective law-making authority in each of the countries analysed. Most legal systems in Central-Eastern Europe developed under the influence of a specific combination of these two traditions.[366] In some states in the region, French codification was decisive, while

[363] Mousourakis, 2015, p. 298.
[364] Petrak, M. (2022) 'Kodificiranje građanskog prava u jugoistočnoj Europi [Codification of Civil Law in South-Eastern Europe]', in Tot, I. and Slakoper, Z. (eds) *Hrvatsko obvezno pravo u poredbenopravnom kontekstu: Petnaest godina Zakona o obveznim odnosima [Croatian Law of Obligations in Comparative Perspective: Fifteen Years of the Law of Obligations]*. Zagreb: Ekonomski fakultet Sveučilišta u Zagrebu, p. 109. See also: Mousourakis, 2015, p. 298.
[365] Mousourakis, 2015, p. 298.
[366] *Ibid.*

elsewhere German jurisprudence and the German and Austrian codification models played a dominant role.[367]

Across the analysed countries of Central-Eastern Europe, the effect of the classical civil law codifications is also apparent.

A significant part of the development of Hungarian private law was the temporary application of the ABGB. The ABGB was introduced in Hungary by the Imperial Patent of 29 November 1852 and entered into force on 1 May 1853.[368,369] Its entry into force was part of a broader transformation of Hungarian private law which took place during the 1850s. For the purposes of this research the development of property law was of particular importance.

Namely, under the provisions of the ABGB, the acquisition of rights in rem on immovable property was contingent upon registration in the land registry, by which it established registration as a constitutive element of the acquisition of ownership rights.[370]

A fundamental change was brought on by the judex-Curial Conference (*Országbírói Értekezlet*) in 1861, which restored Hungarian private law and brought the general application of the ABGB in Hungary to an end.[371] However, it did not mean the complete disappearance of the institutions and rules introduced during the period of the effectiveness of the ABGB. The continued application of certain Austrian rules was linked to the maintenance of the land registry regulations.[372] Namely, the Austrian land registry system—with its fundamental principles (such as public authenticity and constitutive effect)—remained essentially unchanged until 1973, while its main features persist in Hungary to this day as well.[373]

---

[367] *Ibid.*

[368] Képessy, I. (2025) 'Az ABGB hatálybaléptetése Magyarországon' [The Entry into Force of the ABGB in Hungary], *JOG.történet*, VI, 25 August. Available at: mtajogtortenet.elte.hu/blog/kepessy-imre-abgb-hatalybaleptetese [Accessed: 14 September 2026], p. 2.

[369] It was at the same time introduced also in Croatia, Slavonia, the Serbian Vajdaság, and the Banat of Temes—territories that had become independent crown lands in 1849. In Transylvania, the same measure was implemented via a separate imperial patent, thus the ABGB came into force there on September 1, 1853. See: Vékás, L. (2025) 'Az ausztriai magánjog az Országbírói Értekezlet utáni magyar magánjogban' [The Austrian ABGB in Hungarian Private Law after the Provisional Rules for the Judicature of 1861], *Erdélyi Jogélet*, pp. 9–20. doi: 10.47745/ERJOG.2025.01.02. p. 11.

[370] Kurucz, M. (2003) 'A telekkönyv és az ingatlan-nyilvántartás, mint a jogi látszat, a formai legitimáció közvetítésének instrumentuma' [The Land Registry and Real Estate Registry as Instruments of Legal Appearance and Formal Legitimation], *Közjegyzők Közlönye*, 2003(7–8), pp. 14–20, p. 14.

[371] Vékás, 2025, p. 13.

[372] *Ibid.*

[373] Vékás, 2025, p. 13, fn. 30.

The time when the ABGB was applicable in Hungary, therefore, marked a significant stage in the development of Hungarian private law. In Hungary, aside from French and Austrian, the Swiss Civil Code and OR greatly influenced the development of private law.[374]

The 1928 Draft already contained the principle of consensualism by stipulating that a contract can be concluded in any form.[375] However, the text contained provisions which appear to provide exceptions to the aforementioned general principle. Namely, the second sentence of the cited provision foresees nullity as a consequence of the violation of the rules regarding statutory form.[376]

On the other hand, the 1928 Draft envisaged a remedial provision for cases of nullity due to the lack of formalities. As already mentioned, according to Hungarian legal theory, the possibility of subsequent validation of invalid contracts is a result of the influence of Swiss private law.[377] The text foresaw that a contract not concluded in the required form, unless the law stipulates otherwise, becomes valid by the acceptance of performance.[378] In the same sentence, it is further foreseen that if a land registry entry is also required, subsequent validation occurs by performance confirmed by the entry into the land registry.[379, 380] The 1928 Draft addressed another specific situation regarding the healing of invalid contracts when the reasons which invoked nullity cease to exist. In the part of the act pertaining to nullity and voidability, it

[374] Vékás, L. (2014) 'A magánjogi kodifikációk néhány tanulságáról [A Few Lessons of Private Law Codifications]', in Csehi, Z., Koltay, A., Landi, B., Pogácsás, A. (eds.) *(L)ex Cathedra et Praxis: Ünnepi kötet Lábady Tamás 70. születésnapja alkalmából*. Budapest: Pázmány Press, pp. 257–266., p. 257.

[375] Para. 960 of 1928. évi magánjogi törvényjavaslat Magyarország Magánjogi Törvénykönyve [1928 Draft on the Hungarian Private Law Code], accessible on the following link: https://net.jogtar.hu/ezer-ev-torveny?docid=92800000.TVJ&searchUrl=/ezer-ev-torvenyei?pagenum%3D52, [Acessed: 11 March 2026]. Hereinafter referred to as: 1928 Draft .

[376] Para. 960, sent. 2 of the 1928 Draft.

[377] Szalma, 2023, p. 131.

[378] Para. 961 of the 1928 Draft. See also: Darázs, L. (2009) 'Az "érvényessé válás" jogintézményének szükségességéről a polgári jogban' [On the necessity of the legal institution of "becoming valid" in civil law], Magyar Jog, 56(8), p. 452.; Szitás, E. and Dudás, A. (2023) 'Validation of Form-Defective Contracts in Hungarian and Romanian Law: A Comparative Analysis with Special Regard to Contracts on the Conveyance of Real Estate', *Acta Universitatis Sapientiae, Legal Studies*, 12(2), https://doi.org/10.47745/AUSLEG.2023.12.2.11, p. 187.

[379] Para. 961 of the 1928 Draft.

[380] Even though Hungarian legal scholarship emphasises the significant impact of Swiss private law in matters of subsequent validation of invalid contracts, the solution which can be observed in the 1928 Draft shows more resemblance to the German concept of *Heilung.* This is because the letter of the law foresees a completed land registry entry as a condition for subsequent validation.

reflected the widely accepted *ius catonia* principle in Hungary.[381] The Draft foresaw that if the parties confirm a null and void contract after the cause of nullity has ceased to exist, they are entitled and obligated to each other as if the contract had been valid from the beginning.[382] However, the confirmation has no retroactive effect against third parties.[383]

Comparing the two means of remedying null and void contracts, it can be observed that the former method of healing (remedying formal deficiencies by the acceptance of performance) bears a closer resemblance to performance-based convalidation. On the other hand, Para. 1010 foresaw that the curing of contracts sanctioned with nullity is possible by confirmation, given that the reason for nullity was eliminated at a later time. Taking into account these characteristics of the remedy, it appears that it does not fall under the qualifications of performance-based convalidation assessed in this research.

Turning to Poland's civil law codification, it has a long tradition of reliance on a comparative law approach. Following the partitions of Poland in the late 18th century, it was brought under Austrian, German, Russian, and even French law and was greatly influenced by these legal systems for over one hundred years, i.e., until the state regained independence in 1918.[384, 385]

For the purposes of this dissertation, one of the most significant pieces of legislation from this period, the 1933 Code of Obligations[386] can be mentioned, which was heavily influenced by Swiss, French, German, Austrian, and even Franco-Italian

[381] Darázs, L. (2009) 'Az "érvényessé válás" jogintézményének szükségességéről a polgári jogban' [On the Necessity of the Legal Institution of "Becoming Valid" in Civil Law], Magyar Jog, 56(8), pp. 449-458, 452.
[382] Para. 1010, sent. 2 of the 1928 Draft.
[383] Para. 1010, sent. 3 of the 1928 Draft.
[384] Rajski, J. (2008) 'European Initiatives and Reform of Civil Law in Poland', *Juridica International*, 14/2008, pp. 151-155, p. 151.
[385] During the Napoleonic wars, French legal influence, most significantly the Napoleonic Civil Code, extended over the central parts of the Polish Republic, shaping local law in its image. On the other hand, the eastern regions fell under Russian legislation.[385] The western areas came under the domain of German law, with its Civil Code being predominant, while the southern territories were mostly regulated by Austrian law through the ABGB, except for the territories where Hungarian law continued to apply. For more, see: Lavický, P. and Hurdík, J. et al., (2014) *Private law reform*. Brno: Masaryk University, Faculty of Law, p. 197.
[386] Kodeks Zobowiązań [Code of Obligations]. Rozporządzenie Prezydenta Rzeczypospolitejz dnia 27 października 1933 r. Kodeks Zobowiązań Dz. U. R. P. z 1933 r., nr 82, poz. 598 [Regulation of the President of the Republic of Poland of 27 October 1933 Code of Obligations Journal of Laws of the Republic of Poland, 1933, No. 82, item 598].

drafts.[387] One of the most important codification achievements of the Second Polish Republic was the Code of Obligations.[388]

The Code of Obligations resembles classical civil law codifications with regard to the freedom of form and the principle of consensualism. Namely, it stipulates that a contract is concluded by a unanimous declaration of will between two parties, one of whom undertakes an obligation to perform and the other accepts this obligation.[389]

Furthermore, the Code of Obligations foresees that, with a sales contract, the seller undertakes to transfer ownership of the object or other rights *in rem* to the buyer, who undertakes to pay a specified price.[390] This provision reflects a different approach from the French legal tradition. Since the cited rule provides the obligation of the separate conveyance of ownership rights, it appears more in line with the Swiss, Austrian, and German legal orders, which do not recognise the translative effect of contracts.

As to the regulatory framework pertaining to convalidation, it can be observed that the Code of Obligations does not explicitly contain it as a general legal curing mechanism. The provisions regarding declarations of will were laconic when it comes to the possibility of remedying formal defects that render an act invalid. However, although it did not provide a remedy in case of formal defects, the Code enshrined the principle of freedom of form for contracts.[391] This approach showed that the classical civil law approach to the principle of freedom of form of contracts was already present in 20th-century Polish legislation.

Although the provisions of the Code of Obligations appeared laconic in connection with the legal institute of convalidation in general and in the particular case of real estate contracts, they foresaw a remedial solution regarding formally deficient contracts of donation. Under Art. 358 of the Code of Obligations, if the statutory form was not observed in the initial agreement of the parties, but was subsequently established, the respective juridical act was considered valid. This provision therefore allowed a defect in form to be remedied with an *ex tunc* effect, contingent upon the parties' subsequent performance of the omitted mandatory form.[392] This way of

[387] Rajski, 2008, p. 151. See also: Stec, 2024, p. 526.
[388] Stec, P. (2024) *Codification of the Civil Law in Poland.* In: Codification of Civil Law: Assessment, Reforms, Options. Legal Heritage. Central European Academic Publishing, Miskolc–Budapest, p. 526.
[389] Art. 50 of the Code of Obligations.
[390] Art. 294 Para. 1 of the Code of Obligations.
[391] Art. 109 of the Code of Obligations.
[392] Art. 358 of the Code of Obligations.

'curing' the formal deficiency could be regarded as an example of convalidation as it is defined in Polish legal literature, since it effectively removes the invalidity caused by the formal defect once the required form is subsequently observed.[393] However, in the sense of convalidation as assessed in this dissertation, this curative mechanism cannot be regarded as convalidation, as the remedy does not cure the initial invalid contract, but rather replaces it with a new one in which the required form is observed.

Unfortunately, the Code of Obligations does not seem to encompass other provisions pertaining to the acquisition of ownership or the formal requirements of specific contracts. The second part of the code regulates various types of contracts. Since labour law had not yet become an independent branch of law, it also included the regulation of employment contracts.[394] However, other major areas of civil law, especially property law, family law, and the law of persons, were never codified into separate acts because further codification work was interrupted by the German and Soviet invasions of 1939 and the occupation during the Second World War.[395]

The following paragraphs assess the legislative solutions of Slovakia and the Czech Republic. These two independent countries formed a single state, Czechoslovakia, after the First World War.[396] In the Czech lands, the Austrian ABGB remained in force, while in the territory of today's Slovakia, Hungarian private law continued to apply, which enshrined elements of customary law, resulting in a dual legal structure that posed considerable challenges for unification.[397]

Furthermore, a small region called Hlučínsko, incorporated into Czechoslovakia under Act No. 76/1920 Coll., brought elements of the German legal system, creating a temporary situation in which three different legal traditions coexisted within the same state.[398] However, this legal particularism could not be maintained for long. Namely, a series of government regulations was enacted with the purpose of assimilation, through which the differences between the rules in Hlučínsko, influenced by German law, and the rest of Czechoslovakia were gradually eliminated.[399] In a one-year period,

---

[393] For example, see: Grzybowski, 1974, p. 37. He defined convalidation as a legal institute that allows an invalid juridical act to subsequently become valid once the defect that caused its invalidity in the first place has ceased according to statutory provisions.
[394] Stec, 2024, p. 526.
[395] *Ibid.*
[396] Veress, 2023, p. 208.
[397] *Ibid.*
[398] Gábriš, T. (2022) 'Slovak share in the unification and codification efforts in interwar Czechoslovakia', *Krakowskie Studia Z Historii Państwa I Prawa*, 15(2), pp. 307–323. https://doi.org/10.4467/20844131ks.22.021.15724, p. 311.
[399] *Ibid.*

the Czechoslovak legal system re-established its dualistic structure. However, the dualism proved difficult to overcome in practice. Consequently, interwar Czechoslovakia failed to unify its fragmented private law system in a comprehensive manner; thus, the country entered the Second World War with its dualistic legal order.[400] In 1964, the Civil Code of Czechoslovakia entered into force, which will be examined in the following subchapter of this thesis. In this part of the dissertation, the analysis turns to the Romanian legal system.

Romanian private law, like the other legal systems analysed in this work, developed under various historical influences. In the early period, the law of the Romanian principalities was strongly influenced by Byzantine-Greco-Roman law, in addition to customary law, which was especially prevalent in family law, property law, and inheritance law.[401] From the 17th to the 19th century, several law books and collections of laws were created in Wallachia and Moldavia. These partly reflected local customary law, Byzantine legal tradition, and Western European codification patterns.[402]

The Moldavian *Codul Calimach* of 1817 was particularly significant as it was written based on Byzantine customary law and influenced by the ABGB and the French Code civil.[403] The *Codul Calimach* differed from the other codification adopted around the same time in Walachia[404] because it encompassed only civil law regulations.[405]

The first unified Romanian Civil Code was created under the significant influence of the French Code civil[406] and was adopted in 1864.[407] Scholarly literature specifies that the creation of the Romanian Civil Code was closely linked to the establishment of national unity and the program of state modernisation.[408]

---

[400] *Ibid.*
[401] Hamza, G. (2004b). A magánjog fejődése és kodifikációja Romániában [Development and Codification of Private Law in Romania]'. *Magyar Jog*, 8, 477.
[402] For a detailed elaboration see: Hamza, 2004b, p. 477 et seq.
[403] Veress, 2023, p. 201.
[404] Caragea's Codex from 1818. For more see: Veress, 2023, p. 201.
[405] Hamza, 2004b, p. 478. Codul Civil din 26 noiembrie 1864 as amended. Available at: https://legislatie.just.ro/Public/DetaliiDocument/131185 [Accessed: 9 March 2026]. Hereinafter referred to as: Codul Civil 1865.
[406] Besides French influence, the Romanian Civil Code also carried the imprint of the *travaux préparatoires* of the Italian Codice civile and Belgian mortgage law. See: Toader, C. (2010) 'Contract Law in Romania' in Jessel-Holst, C., Kulms, R. and Trunk, A. (eds) *Private Law in Eastern Europe - Autonomous Developments or Legal Transplants?*. Tübingen: Mohr Siebeck, p. 112.
[407] Toader, 2010, p. 112.
[408] Hamza, 2004b, p. 479.

At this point of the thesis the territorial scope of the Codul Civil 1865 should be clarified. Although the Codul Civil 1865 entered into force in the Old Romania[409], in Transylvania the ABGB, which was enacted 1 September 1853[410], remained in force even long after the unification with Hungary in 1868 (even though in Hungary by that time the ABGB had already been discontinued in 1861)[411].

The ABGB was applicable in Transylvania even at the time of its incorporation into Romania following the First World War.[412] However, this incorporation did not immediately result in the unification of private law. The Codul Civil 1865 became applicable in Southern Transylvania in 1943, while in Northern Transylvania it was enacted in 1945.[413] The introduction of the Codul Civil 1865 in the former territory was carried out by Law No. 389/1943 which extended the application of the Code over the Carpathians.[414]

Importantly, the legal unification did not exclude the historically established land-registry system. Therefore, two historically different systems continued to exist in parallel. Namely, in the territories, including Transylvania, which adhered to the land registry system, Austro-Hungarian legal tradition was reflected. At the same time, in the Old Romania, rules governing real estate followed the publicity system of *transcripțiuni* and *inscripțiuni,* derived from French law, which was referred to as 'French-system'.[415] This system operated based on the concepts of consensualism and priority whereby publicity did not have constitutive effect.[416]

The legal particularism pertaining to the land registry system was not eliminated even with the coming into force of Law No. 389/1943. Namely, in Art. 3 it maintained the regulatory framework pertaining to *cărţile funciare* () by stipulating that laws, regulations, or ordinances regarding land registries, as well as provisions from laws,

---

[409] Veress, 2023, p. 204.
[410] Veress, E. (2025) 'Miért is maradt „alkalmazásban" az Optk. Erdélyben a kiegyezés után?' [Why Did the Austrian General Civil Code Remain "in Application" in Transylvania After the Compromise?], Erdélyi Jogélet, 2025(2), pp. 5-20. doi: 10.47745/ERJOG.2025.02.01., p. 9. See also: Vékás, 2025, p. 11.
[411] Veress, 2025, p. 11.
[412] Veress, 2025, p. 18.
[413] *Ibid.*
[414] Veress, 2025, p. 18; Legea nr. 389/1943 pentru extinderea legislaţiei civile şi comerciale a Vechiului Regat în România de peste Carpaţi [Law No. 389/1943 on the Extension of the Civil and Commercial Legislation of the Old Kingdom to Romania Beyond the Carpathians]. Republished 26 June 1943. In force from 22 June 1943.
[415] Herlea, A. (1985) *Studii de istorie a dreptului. Dreptul de proprietate* [Studies in Legal History. The Right of Property]. Edited by V. Șotropa. Cluj-Napoca: Editura Dacia, p. 161.
[416] *Ibid.*

regulations, or ordinances concerning central land registries for railways and canals shall remain in force.[417] Furthermore, Art. 4 provided that the creation, transfer, modification, or extinguishment of rights *in rem* over immovable property shall be effected through registration in the land registry.[418] The same regulation even foresaw the mandatory written form and in cases provided for by statute, the authentic form for the aforementioned acts.[419]

The legal particularism described above is particularly important for this research, since it helps to explain why the acquisition of rights *in rem* by entry into the land registry persisted alongside the legal framework of the Codul Civil 1865, which was significantly influenced by French law.

The Romanian Codul Civil 1865 thus resembles the French model and the Italian general rule of consensualism and the translative effect of contracts. In Art. 971, the code provides that ownership of the object of the transaction is conveyed at the moment of reaching mutual consent of the parties.[420]

Regarding real estate, it can be observed that the Codul Civil 1865 reflected the French tradition. Namely, Art. 1295 Para. 1 of the Codul Civil 1865 in connection with Art. 971 foresaw the freedom of form of sales contracts and the principle of consensualism.[421] The subsequent paragraph of the same article, similar to the French Code civil, enshrined specific provisions on opposability against third parties. The provision stipulates that rights arising from a legally 'perfectly concluded' sales contract pertaining to the conveyance of ownership over immovable property become opposable against third parties upon *'transcriptiunea actului'*[422].[423] The French influence is also observed in the freedom of form of sales contracts, the principle of

[417] Art. 3 Para. 1 Sec. 3 of Law No. 389/1943.
[418] Art. 4 Para. 1 of Law No. 389/1943.
[419] Art. 4 Para. 3 of Law No. 389/1943.
[420] Art. 971 of the Codul Civil 1865.
[421] Art. 1295 Para. 1 of the Codul Civil 1865 stipulates: *„Vinderea este perfecta între părţi şi proprietatea este de drept strămutată la cumpărător, în privinţa vânzătorului, îndată ce părţile s-au învoit asupra lucrului şi asupra preţului, deşi lucrul încă nu se va fi predat şi preţul încă nu se va fi numărat."* [The sale is considered perfect between the parties, and ownership is transferred by the force of law to the buyer against the seller as soon as the parties have agreed on the object and the purchase price, even if the object has not yet been delivered and the purchase price has not yet been paid.].
[422] The term reflects the fragmented real estate registration practice that preceded the development of the modern land registry system. In this system, legal certainty was not ensured by a single register, but by keeping several books in parallel. According to the literature, at least three separate registers operated simultaneously: a land registry protocol (*protocol funduar*) for recording the cancellation of rights, a land registry (*carte funduară*) for registering mortgage contracts, and a separate book for summarising sales and mortgage transactions, thus infusing the data from the first two books. In more detail, see: Herlea, 1985, p. 71.
[423] Art. 1295 Para. 2 of the Codul Civil 1865.

consensualism, and the provision granting opposability against third parties upon registration. As a result, corrective mechanisms would be unwarranted in these cases, just as in French legislation.

As it has already been assessed, a different model was in function in the territories applying the land registry system. A few pieces of legislation were enacted that contained specific provisions regarding the acquisition of ownership rights over immovables. Namely, Art. 17 of Act 115/1938 foresaw that ownership rights over immovable property shall be acquired upon registration in the land registry.[424] Romanian legislation has departed from the implemented French tradition regarding the translative effect of contracts, at least in the context of the acquisition of ownership over immovable property. The shift towards contemporary Romanian real estate law regulation is evident in the cited provision.

Subsequent regulation also confirms the land registry acquisition and opposability rules. Art. 4 of the Act no. 242/1947 states that rights whose publicity is achieved exclusively by means of registration (intabulation) or recording in the land registry – including rights arising from enforcement orders or from seizures regulated in Articles 481 and 496 of the Code of Civil Procedure – shall only become effective against third parties acting in good faith if they have been entered in a public registry and if these persons have acquired and retained their right to the property.[425] Furthermore, the subsequent provision, Art. 5, provides a temporal scope of the cited regulation by stipulating that real estate rights acquired before the date specified in Article 2 of Act no. 242/1947 shall continue to be assessed, both in terms of their continuation and termination, in accordance with the provisions of the Civil Code and the Civil Procedure Law relating to transcription and inscription registers.[426]

Accordingly, Romanian property law reflected two parallelly coexisting models of ownership transfer over immovable property stemming from the different historical and legal traditions of the territories which constituted Romania.

Significant influence of the ABGB can be observed in the member states of the former Yugoslavia. Similar to the Czechoslovak legal system, the Yugoslav legal order

[424] Art. 17 of *Decret-Lege Nr. 115 din 27 aprilie 1938 (Monitorul official nr. 95 din 27 aprilie 1938)* [Act no. 115 of 27 April 1938 (Official gazette no. 95 of 27 April 1938)]. Available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/25. Accessed: 9 March 2026.
[425] Art. 4 of the Lege nr. 242 din 12 iulie 1947 (Legislatia civila uzuala vol. II) [Act no. 242 of 12 July 1947 (Common Civil Law vol. II no. 242 of 12 July 1947)]. Available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/44#?. Accessed: 9 March 2026.
[426] Art. 5 of Act no. 242/1947.

was characterised by so-called legal particularism, because no single comprehensive piece of legislation governed all branches of civil law across the state.[427] Specific branches of civil law, such as contract law, inheritance law, family law, and property law, were regulated by a combination of federal law and state laws.[428]

Different regulatory frameworks were applied in various parts of the common territory, such as the provisions stemming from Austro-Hungarian, Ottoman, and Serbian legal traditions.[429] Consequently, the ABGB, with its modifications, the so-called *Teilnovellen,* was in application in Dalmatia and the Slovenian territories.[430] Furthermore, private law in Bosnia and Herzegovina was governed by a combination of canon law, customary law rules established by judges based on the ABGB, and Sharia law, which mostly governed family and inheritance law.[431] In the regions of Međimurje County, Prekmurje, and Vojvodina, Hungarian customary and judicial law was in force, with an exception applied to the jurisdiction of the District Court in Pančevo and the municipal courts in Banatski Karlovac, Bela Crkva, Kovin, Titel, and Žabalj, which covered areas formerly part of the Military Frontier.[432] The ABGB was applicable as a form of particular law in these territories.[433] On the other hand, in Montenegro the General Property Code of 1888[434] was applicable, while in Serbia and present-day North Macedonia the Serbian Civil Code of 1844[435] was in force.[436]

---

[427] Dudás, A. (2013) 'A polgári jog kodifikációjának történeti áttekintése Szerbiában' [Historical overview of the codification of civil law in Serbia]. *Jogtörténeti Szemle,* 1/2013, p. 10.
[428] Veress, E. (2023) 'Private Law Codifications in East Central Europe' in Pál Sáry (ed), *Lectures on East Central European Legal History*. Miskolc: Central European Academic Publishing, p. 183. See also: Dudás, A. and Király-Szitás, E. (2026) 'The Evolution of the Legal Institute of Convalidation of Null and Void Contracts in the Yugoslav Legal Tradition: Historical Influences and Legal Legacy', *Pravni vjesnik*, 42(1). pp: 25-48. https://doi.org/10.25234/pv/38233, p. 31.
[429] Karčić, F. (2020) *A Study on Legal Formalism in the Former Yugoslavia and its Successor States*, Centre for Integrity in the Defence Sector, p. 5.
[430] Nikolić, D. (2011) 'Dva veka Austrijskog građanskog zakonika (1811-2011) [Two Centuries of the Austrian Civil Code (1811-2011)]' *Zbornik Matice Srpske Za Društvene Nauke,* 135/2011. pp. 313-327. Available at: https://doi.org/10.2298/zmsdn1135113n. pp. 320-321. For more, see also: Drakić, G. (2013) 'Građansko parvo na vojvođanskom pravnom području u Kraljevini Srba, Hrvata i Slovenaca [Civil Law in the Territory of Vojvodina in the Kingdom of Serbs, Croats and Slovenes]' *Zbornik radova Međunarodnog naučnog skupa „Harmonizacija građanskog prava u regionu"*, pp. 107-109.
[431] *Ibid.*
[432] *Ibid.*
[433] *Ibid.*
[434] Opšti imovinski zakonik za Knjaževinu Crnu Goru 1888. Hereinafter referred to as: GPC 1888.
[435] Official title in Serbian: Zakonik građanskij za knjažestvo Srbije, enacted on 11 March 1844. Available at: https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/srbija/Srpski_gradjanski_zakonik_1844.pdf. [Accessed: 17 March 2026]. Hereinafter referred to as: SrbCC 1844.
[436] Nikolić, 2011, p. 321.

Of the eight Central-Eastern European countries analysed in this research, Croatia, Slovenia, and Serbia were member states of the former Yugoslavia. Therefore, the pieces of legislation in effect in the territories of the present-day countries will be analysed.

The ABGB was introduced in the Kingdom of Croatia and Slavonia in 1853. Legal scholars saw it as a means of modernisation and a break from archaic legal structures.[437] However, the reality was much more complex. The individualistic approach of the ABGB contrasted with the traditional system of rural society based on collective property and customary law.[438]

The introduction of the code did not occur simultaneously and uniformly. Parts of the ABGB had already entered into force in certain parts of the Croatian territories: in Istria and Dalmatia in 1815 and 1816, then in the territory of the former Illyrian Kingdom in 1820, when it finally entered into force in 1853 in the Kingdom of Croatia and Slavonia, at the same time as in Hungary, Vojvodina, and the Banat of Temes.[439]

As a result, the introduction of the ABGB cannot be considered a sudden and complete legal turnaround, but rather a long-term, conflict-ridden modernisation process based on the coexistence of individualistic civil law and collectivist customary law.[440] The civil law paradigm could only gradually become dominant, while normative pluralism persisted in legal and social reality for a long time.[441]

However, the significance of the ABGB was not limited to the period of its introduction. In present-day Croatia, the ABGB formed the basis of private law from the mid-19th to the mid-20th century, and its influence continued to prevail in later legal developments.[442] After World War II, some of its provisions continued to be applicable

---

[437] Čepulo, D. (2020) 'The ABGB and the House-Community in the Croatian Legal System: Legal Irritant and Normative Plurality', in Kohl, G., Neschwara, C., Olechowski, T., Pauser, J., Reiter-Zatloukal, I. and Vec, M. (eds.) *Festschrift für Thomas Simon zum 65. Geburtstag: Land, Policey, Verfassung*. Wien: Verlag Österreich, p. 35.

[438] *Ibid.*

[439] Čokolić, A. (2013) '200 Years of the General Austrian Civil Code – Sources, Creation and Entering into Force of the General Civil Code with Special Emphasis on the Croatian Legal Areas', *Glasnik Advokatske komore Vojvodine,* 84(12)*,* p. 659.

[440] Čepulo, 2020, p. 35.

[441] According to contemporary legal scholarship, this process can be illustrated through the theories of legal transfer, "legal irritants" and normative pluralism. The ABGB was not simply introduced but, as an alien system of norms, it "irritated" existing legal and social structures, which gradually transformed in response. This triggered a process of mutual adaptation between law and society, which led to a new equilibrium as a result of a longer coexisting dynamic. For more detailed elaboration, see: Čepulo, 2020, p. 37 *et seq*.

[442] Kačer, H. (2011) '200 godina OGZ-a [200 Years of the ABGB]', *IUS-INFO*. [Online]. Available at: https://www.iusinfo.hr/aktualno/u-sredistu/200-godina-ogz-a-9497. [Accessed: 17 March 2026].

as legal rules, provided that the area was not regulated by new legislation and they did not contradict the new constitutional order.[443]

In the development of Croatian law, the ABGB can therefore be assessed not only as a historical codification, but also as a lasting dogmatic and practical reference basis that influenced both judicial practice and the development of new legislation.

In Slovenia, civil law is not regulated by a single code, but by separate laws for specific areas of law. This situation is the result of historical development. Until 1991, the country was part of the Austro-Hungarian Monarchy, then Yugoslavia, and the last comprehensive codification of civil law was the Austrian ABGB of 1811.[444] After the dissolution of the Monarchy, the ABGB remained a decisive source of law, applied by the courts as long as it did not conflict with the constitutional order until 2002, and in property law until 2003.[445] The ABGB thus had a decisive influence on the development of Slovenian civil law. It determined not only the legal rules but also the legal language, since a significant part of Slovenian legal terminology is derived from the translation of the ABGB.[446] Its influence on legal practice and legal thinking was long-lasting.

As concluded above, the ABGB was in force in the territories of present-day Croatia and Slovenia, while in Serbian territories the Serbian Civil Code of 1844 and the General Property Code of 1888 were in force. Accordingly, these three pieces of legislation will be analysed.[447]

In the available text of the ABGB from that period, the application of the term ’convalidation’ cannot be observed, nor are general provisions observable that would indicate that contracts with formal defects could still be valid under certain conditions.[448] However, the ABGB foresaw the principle of freedom of form. According to its relevant provisions, unless otherwise mandated by law, a contract may be concluded verbally or in writing, in front of or outside a court, with or without

---

[443] *Ibid.*
[444] Juhart, M. (2024) *Civil Law Codification in Slovenia.* In: Codification of Civil Law: Assessment, Reforms, Options. Legal Heritage. Central European Academic Publishing, Miskolc–Budapest, p. 340.
[445] *Ibid.*
[446] *Ibid.*
[447] Regarding the ABGB, it should be noted that in this chapter the text of the ABGB will be analysed as adopted in 1811, available at: http://digital.onb.ac.at/OnbViewer/viewer.faces?doc=ABO_%2BZ224537502, while in subchapter 3.2., the provisions of the ABGB currently in effect are studied.
[448] Dudás and Király-Szitás, 2026, p. 31.

witnesses, and these variations in form typically have no bearing on the legally binding nature of the agreement.[449]

Interestingly, although the principle of freedom of form is in the provisions of the ABGB, rules on the possibility of convalidating contracts that violate provisions stipulating mandatory formal requirements or provisions pertaining to the legal consequences of not adhering to statutory form are not apparent.[450]

After the assessment of the relevant provisions of the ABGB, the focus turns to the Serbian Civil Code of 1844 which is considered a significant source of law in the region with a considerable influence on subsequent legislative developments.

Under the significant influence of the ABGB, among the provisions of the SrbCC, a broader approach to contract validity and convalidation can be observed, particularly regarding formal deficiencies.[451]

Firstly, under Art. 13, the principles of contractual freedom and party autonomy are established, but with statutory limitations. Namely, the provision stipulated that while individuals had the freedom to enter into agreements, such agreements could not contravene public order or morality.[452]

Secondly, regarding the validity of contracts, Art. 540 enshrined the principle of freedom of form of contracts as well as the basic principle of contract law that agreements must be kept.[453] The aforementioned article stated that once a contract is concluded, it holds equal legal force, whether oral or written, and regardless of whether it is made before a judicial authority.[454] Consequently, if the genuine contractual will of the parties aimed at the establishment of a legally binding agreement, formal deficiencies such as the lack of a written instrument or witnesses did not always render a contract invalid.[455]

Furthermore, the SrbCC foresaw the possibility of establishing a mandatory form of contracts by the will of the contracting parties. Namely, Art. 541 foresaw that if the parties explicitly agreed to a written contract, it was valid only with the addition

[449] § 883 of the ABGB as adopted in 1811.
[450] Dudás and Király-Szitás, 2026, p. 31.
[451] Dudás and Király-Szitás, 2026, p. 31.
[452] Art. 13 of the SrbCC of 1844.
[453] Salma, J. (2004) 'Srpski građanski zakonik (SGZ, 1844) i obligaciono pravo [Serbian Civil Code (SCC of 1844)
and the Law on Obligations]'. *Zbornik radova Pravnog fakulteta u Novom Sadu.* 38(2). p. 320.
[454] Art. 540 of the SrbCC.
[455] Dudás and Király-Szitás, 2026, p. 32.

of a signature.[456] The significance of signatures in formalising agreements is apparent in this provision, but the legislation lacks a sanction or remedy for cases of failure to comply with such formalities.[457]

As opposed to the ABGB, the SrbCC explicitly regulated the issue of the mandatory formal requisites for contracts for the conveyance of ownership rights over immovable property. In Art. 294, the SrbCC established the requirement for the transferor to personally appear before the court or be represented by an authorised person[458] and the necessity to identify precisely the immovable property which was subjected to transfer[459].

On the other hand, Art. 297 allowed for provisional registration if certain formalities were initially overlooked, which could later be mitigated by presenting the necessary documentation.[460] However, in the event of failure to provide sufficient evidence of rights, the registration would have been deleted.[461] Even though these provisions appear to provide a temporary remedy for formal deficiencies, they cannot be regarded as convalidation. Their purpose was rather to mitigate the technical deficiencies during the registration process of rights that were being transferred. Interestingly, this assessment suggests that the SrbCC has already differentiated between the obligations and property law effects of real estate contracts.

Turning to the assessment of the General Property Code for the Principality of Montenegro[462], it can be stated that it enshrined provisions that addressed the validity of contracts, reflecting a pragmatic approach to mitigating formal defects and ensuring that agreements aligned with both legal requirements and the parties' intentions.[463]

The General Property Code for the Principality of Montenegro was officially enacted by Prince Nikola I Petrović-Njegoš through a decree, as he held legislative

[456] Art. 541 of the SrbCC.
[457] Dudás and Király-Szitás, 2026, p. 32.
[458] Art. 294 of the SrbCC.
[459] Art. 295 of the SrbCC.
[460] Art. 297 of the SrbCC.
[461] *Ibid.*
[462] Opšti imovinski zakonik za Knjaževinu Crnu Goru (1888), Cetinje: Državna štamparija [General Property Code for the Principality of Montenegro (1888), Cetinje: Državna štamparija]. Hereinafter referred to as: GPC.
[463] Dudás and Király-Szitás, 2026, p. 33.

power at the time.[464] The Code was praised because it harmonised modern legal principles with Montenegro's customary law and social needs.[465]

Among its many progressive features, for example, Art. 498 emphasised the principle of consensualism by stipulating that formalities are generally unnecessary for the validity of contracts unless specifically required by law.[466] However, according to para. 2 of the same article, when formal criteria were not met, the contract was unenforceable in court.[467] This legislative solution resembles the relevant provisions of the ABGB, since the law deprives the formally deficient contract of enforceability but does not render it null and void.

Therefore, as opposed to the provisions of the ABGB and the SrbCC, the legislator in the General Property Code established a sanction for cases in which mandatory formal requirements were not observed.[468] Nevertheless, similar provisions are observable in the GPC, the ABGB and the SrbCC as the GPC likewise does not seem to have provided a remedy for cases where either convalidation or enforceability could have been achieved by the application of a curing mechanism.[469]

Furthermore, similar to the SrbCC, Art. 500 foresaw circumstances in which the parties voluntarily agreed to specific formalities not required by law. Namely, the article stipulated that if the parties agreed on a specified form but initially failed to achieve it, the contract was considered completed only upon the observance of the stipulated requirements.[470]

What is particularly significant about this provision is that, at first glance, it may appear to provide the possibility of convalidation of formally deficient contracts, since essentially it describes the situation in which a formally deficient contract is able to give rise to certain legal effects upon the occurrence of a later event (in this case, the completion of the agreed form). However, strictly adhering to the notion of performance-based convalidation as assessed in this research, the case described by the cited provision of the GPC cannot be considered convalidation. The GPC stipulated incompletion in case of formal deficiencies instead of providing for a sanction of

[464] Luković, M. D. (2009), *Bogišićev Zakonik: Priprema i Jezičko Oblikovanje [Bogišić's Code: The Process of Preparing and Linguistic Shaping]*. Beograd: Balkanološki institut SANU., pp. 11-12.
[465] *Ibid.*
[466] Art. 494, para. 1 of the GPC.
[467] Art. 494, para. 2 of the GPC.
[468] Dudás and Király-Szitás, 2026, p. 33.
[469] *Ibid.*
[470] Art. 500 of the GPC.

invalidity.[471] It appears that the legislator considered these contracts to be on hold with regard to their legal effects until the agreed form is established.

The foregoing assessment of the relevant provisions of the selected legislations shows that the regulatory framework pertaining to the consequences of the infringement of mandatory formal requirements and the possible application of curative mechanisms was laconic at the time. However, the legal and political changes brought by the Second World War initiated new developments, since comprehensive recodifications of private law took place in several Central-Eastern European legal systems. The following chapter therefore examines to what extent the former rules were kept, modified, or replaced.

4.3. Legal Evolution and Socialist Codifications of Civil Law (1950–1990)

The first Hungarian Civil Code[472] was adopted during the socialist era, as it entered into force on 1 May 1960.[473] The significance of the 1959 HunCC was that it created a unified, codified framework for civil law for the first time in Hungary, ending the previous legal development based largely on customary law and partial regulation.[474] The code comprehensively regulated property, contractual and personal legal relations, as well as legal relations between socialist economic organisations and citizens.[475] In this way, the code ensured the uniform and systematic regulation of private law relations, and it can be considered a milestone in the development of Hungarian private law.

Although enacted during the socialist era, the 1959 HunCC provide for the principle of consensualism as well as the principle of freedom of form of contracts. Namely, § 205 of the 1959 HunCC stipulated that a contract is created by the mutual

[471] Dudás and Király-Szitás, 2026, p. 33.
[472] The legislation was enacted in 1959. IV. Törvény a Magyar Köztársaság Polgári Törvénykönyvéről [Act IV of 1959.on the Civil Code of the Republic of Hungary]. Hereinafter referred to as: 1959 HunCC.
[473] Szikora, V. (2012) 'Az új magyar Polgári Törvénykönyv kodifikációja és társasági jogi összefüggései (nemzetközi kitekintéssel) [The Codification of the New Hungarian Civil Code and its Corporate Law Implications (with International Perspective)]', in Szalma, J. et al. (eds) *A Magyar Tudomány Napja a Délvidéken 2012*. Újvidék: Vajdasági Magyar Tudományos Társaság, p. 133.
[474] Mádl, F. (2022) *Magyarország első Polgári Törvénykönyve – Az 1959. évi IV. törvény – a polgári jogi kodifikáció történetének tükrében* [*Hungary's First Civil Code – Act IV of 1959 – in the Light of the History of Civil Law Codification*]. 2nd edn. Budapest: Mádl Ferenc Összehasonlító Jogi Intézet. https://doi.org/10.47079/mf.ptk.2022ve, p. 34.
[475] *Ibid.*

and unanimous expression of the parties' will.[476] Furthermore, § 216 of the 1959 HunCC foresaw that unless otherwise provided by law, a contract may be concluded orally or in writing, and contractual intent may also be expressed by conduct that indicates it.[477]

However, the 1959 HunCC provided for an exception to these fundamental principles. It foresaw that the legislation may stipulate a specific form for contracts.[478] In these cases, in the event of not observing the required form, the contracts were sanctioned with nullity.[479] Nevertheless, the 1959 HunCC recognised the curative effects of performance which approach was the opposite of the adopted rule in the applicable HunCC.

Namely, § 217(2) of the 1959 HunCC foresaw that when the parties themselves had stipulated a particular form for their contract, the contract became valid through the acceptance of performance or part-performance even if the agreed form had not been observed.[480] By contrast, where the law prescribed a mandatory form, performance did not constitute a general possibility of remedying a formal defect. It occurred only where a specific statutory provision expressly provided for it. For example, § 418(2) of the 1959 HunCC concerning agricultural product sales contracts stipulated that these contracts were subject to mandatory written form, but failure to comply with the required form did not prevent the contract from being valid if either party had performed their respective contractual obligations.[481]

This distinction is particularly important from the perspective of convalidation. Namely, it could be observed that the 1959 HunCC provided for the general performance-based rule applicable to formal requirements stipulated by the parties themselves, while formal defects concerning statutory form could be cured through performance only if the legislature expressly provided for such a possibility. Interestingly, he current HunCC reversed this regulatory framework in § 6:94(1) of the HunCC.

The 1959 HunCC, however, eventually transferred the right to validate a contract subsequently to the courts.[482] Consequently, it deprived contracting parties of the

[476] § 205 (1) of the 1959 HunCC.
[477] § 216 (1) of the 1959 HunCC.
[478] § 217 (1) of the 1959 HunCC.
[479] *Ibid.*
[480] § 217 (2) of the 1959 HunCC.
[481] § 418 (2) of the 1959 HunCC.
[482] Darázs, 2009, p. 452.

possibility to remedy their contract by mutual agreement through the elimination of the causes of invalidity or confirmation of the contract.[483]

Almost two decades later, the amendments to the 1959 HunCC brought changes with the enactment of Act IV of 1977 on the amendment and Uniform Text of Act IV on the Civil Code of the Hungarian People's Republic[484]. The amendments introduced the general concept of declaration of validity by the court[485] into Hungarian law and reflected the influence of socialist ideological ideas in private law as well.[486]

Judicial validation in Hungarian law reflects the rendering of a constitutive court decision with retroactive effect, wherein the court actively intervenes in the parties' contract, essentially possessing the authority to modify the agreement.[487] In the course of such a procedure, the court possesses the right to administer changes to the contract with the purpose of mitigating the harsh consequences caused by the nullity of the contract to the interests of one of the parties.[488,489]

In available judicial practice and legal literature, a broader conceptualisation of the legal institute of convalidation can be observed, since it refers to cases in which the causes of invalidity cease to exist, but also to events in which the parties eliminate them.[490] Although under the regulatory framework of the former Hungarian Civil Code

---

[483] *Ibid.*

[484] 1977. évi IV. törvény a Magyar Népköztársaság Polgári Törvénykönyvéről szóló 1959. évi IV. törvény módosításáról és egységes szövegéről [Act IV of 1977 on the amendment and Uniform Text of Act IV on the Civil Code of the Hungarian People's Republic].

[485] Darázs, 2009, p. 453.

[486] *Ibid.*

[487] Menyhárd, A. (2021) „A szerződés érvénytelensége mint jogvédelmi eszköz" [Invalidity as a means of legal protection], Miskolci Jogi Szemle. Miskolc, Magyarország, 16(3). doi: 10.32980/MJSz.2021.3.1015, p. 15.

[488] Kemenes, I. (2016) 'Az érvénytelenség jogkövetkezményeinek szabályozása a Polgári Törvénykönyvben I. rész' [Regulation of the legal consequences of invalidity in the Civil Code Part I], Gazdaság és Jog, 1, pp. 4-5.

[489] According to contemporary Hungarian private law scholarly literature, the modification of the contract by the court can be problematic, because in such cases the court creates a contract (with the modified content) that at least one of the parties would not have originally entered into. If the amended content had been acceptable to both parties, they could have renegotiated the contract themselves, and there would have been no need for court proceedings. The mere salvaging of the contract cannot therefore be the goal, since the existence of the contract itself is not a value to be protected. In such a case, it would be more reasonable for the court to return the parties to the situation prior to the conclusion of the contract, giving them the opportunity to renegotiate the contract. For more, see: Menyhárd, 2021, p. 15. This approach seems convincing from the perspective of Hungarian private law. The author therefore shares the view that the primary function of convalidation should not be to maintain the defective contract at any cost and in all cases, but to restore the legal situation prior to the conclusion of the contract, giving the parties the opportunity to renegotiate. In such cases, the Swiss method seems to be a sufficient remedy. Namely, to heal the contract only in cases where striking the agreement by invalidity would be a result of the abuse of rights.

[490] 1/2010. (VI. 28.) PK vélemény az érvénytelenség jogkövetkezményeiről [1/2010. (VI. 28.) Opinion of the Civil Department on the legal consequences of invalidity]; Kemenes, 2016, p. 5.

parties were limited to subsequently convalidating a contract affected with nullity, they had the option to renegotiate and re-enter into a contract which would be formally intact.[491] However, such a contract would form a new juridical act separate and independent from the previous one rendered invalid.[492]

As to contracts for the conveyance of ownership rights over immovable property, the 1959 Civil Code foresaw that for the validity of such contracts it was necessary to record the parties' respective agreement in a written instrument.[493] The contract therefore had to adhere to mandatory written form in order to be validly concluded.[494] Consequently, *argumentum a contrario,* a contract that was not concluded in the proper form was considered null and void.

Turning to Polish legislation during the socialist era, the research demonstrated that, similarly to the Code of Obligations of 1933, the solution applied to the mentioned invalid contracts of donations was retained in the later *Kodeks cywilny* of 1964, where the relevant provision has been the subject of debate in Polish scholarly literature. Two contradictory standpoints exist in scholarly literature as to whether the rule in 1964 actually amounts to convalidation or should be interpreted as a separate, *sui generis* legal effect that only takes on the appearance of convalidation.[495] It appears, therefore, that the 1964 *Kodeks cywilny* has established a much richer body of doctrinal commentary, while the rule enshrined in Article 358 of the 1933 Code has remained largely an isolated example, but did not lead to the development of a generally codified concept of convalidation in Polish civil law at the time.

---

[491] Menyhárd, 2021, p. 15.
[492] *Ibid.*
[493] Szitás and Dudás, 2023, p. 189.
[494] § 365 (3) of the 1959 HunCC.
[495] The question of the legal nature of convalidation arose in connection with the donation contract regulated by § 890(1) of the 1964 Polish Civil Code, on the basis of which two opposing opinions were expressed in the literature. The question was whether the remedy of a lack of form by performance can be considered convalidation. According to the aforementioned provision, the donor's declaration must be recorded in a notarial deed; however, a contract concluded in the absence of the prescribed form becomes valid if the promised service has been performed. Polish legal literature differentiates two opposing standpoints in the dogmatic qualification of this provision. That is, Szer and Wolter see it as convalidation, while Czachórski and Rejman interpret it more cautiously, only as a statutory exception to the formal requirement and the general rule of nullity. According to the latter view, there is no need to apply convalidation, since in theory the legal validity of the originally invalid obligation and the service subsequently performed on the basis of it can be separated.
The same question arose in relation to § 14(2) of the 1964 Polish Civil Code, according to which a minor transaction of everyday life concluded by a person lacking legal capacity may become valid upon performance. However, the literature more clearly considers this to be the application of the legal institute of convalidation, since the letter of the law expressly provides for the subsequent "validation" of an originally invalid legal transaction. For a more elaborate description, see: Grzybowski, 1974, p. 47 *et seq.*

Interestingly, prior to the enactment of the Polish Civil Code, Polish law contained another exceptional statutory mechanism resembling convalidation in the field of real estate contracts. Under Article 19 of the Property Law Act (*Prawo rzeczowe*)[496], if the validity of a disposition of a right *in rem* is contingent upon the observance of the form of a notarial deed, then, the objection that the deed failed to qualify as a public document due to violations of notarial law could no longer be raised once the transfer had been entered into the land registry, except where the instrument had not been drawn up by a notary at all.[497] According to legal scholarship, in this specific case, the entry in the land registry had the effect of curing the invalidity of the formally deficient act.[498] However, this exceptional provision regarding formally deficient real estate contracts was not retained in the Civil Code of 1964, which introduced a stricter regime regarding real estate transactions.

Therefore, similarly to other civil codes analysed so far, the Polish Civil Code of 1964[499] does not contain a general provision explicitly regulating the legal institute of convalidation of defective legal acts.[500] The Code provides no rule for remedying defects in otherwise invalid legal acts; instead, the legal institute of convalidation applies only in specific circumstances explicitly provided by statutory provisions.[501] Polish legal doctrine traditionally distinguishes between relatively invalid acts *(względnie nieważne)*, which may be convalidated under certain conditions, and absolutely invalid acts *(bezwzględnie nieważne)*, which remain invalid unless an exception is clearly set out by law.[502] In this context, as has already been noted, according to Polish legal literature, convalidation is understood as the subsequent removal of the defect affecting a previously defective legal act through the occurrence of a legally relevant event that cures the defect — for example, fulfilment of the promised performance in the case of a formally defective contract of donation.[503]

---

[496] Dekret z dnia 11 października 1946 r. - Prawo rzeczowe [Decree of 11 October 1946 – Property Law]. Hereinafter referred to as: the 1946 Decree.
[497] Article 19 of the 1946 Decree.
[498] Grzybowski, 1974, p. 46.
[499] Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny [Act of 23 April 1964 – Civil Code], Dz. U. 1964 Nr 16, poz. 93 [Journal of Laws], consolidated text: Dz. U. 2025, poz. 1071, 1172, 1508. Hereinafter referred to as: the Polish Civil Code.
[500] Grzybowski, 1974, p. 37.
[501] *Ibid.*
[502] *Ibid.*
[503] *Ibid.*

This nuanced approach means that while the 1964 Polish Civil Code does not systematically codify convalidation, its application was possible within the boundaries set by specific provisions and the broader framework of private autonomy.

Following the political and territorial ferment of the Second World War, Czechoslovakia faced the task of eliminating its fragmented private law system. The socialist state, however, introduced a blanket recodification in the form of the Civil Code of 1950 that replaced both the Austrian ABGB in the Czech lands and the residual Hungarian law in Slovakia.[504] This Code represented a complete break with the earlier liberal tradition, bringing private law into conformity with socialist economic and ideological objectives.[505, 506]

A key feature of the 1950 Civil Code was its structural order, which reorganised the classical institutions of civil law to apply socialist ideals.[507] Part IV of the Code dealt with the law of obligations.[508] This section reshaped contract law to emphasise state control, plan-based economic relationships, and the subordination of private autonomy to collective interests by restricting the traditional civilian idea of contractual freedom.[509]

Similar to the 1933 Polish Code of Obligations, in the Czechoslovak Civil Code of 1950, no explicit provisions establishing the legal mechanism of convalidation can be observed. However, it did foresee the general principle of freedom of form of contracts.[510] At the same time, it prescribed that agreements transferring rights to

---

[504] Falada, D. (2009) 'Codification of Private Law in the Czech Republic', *Fundamina: A Jurnal of Legal History*, 15(1), pp. 38-68, p. 59.
[505] Kuklík, J. and Skřejpková, P. (2020) 'Frost Comes out of Kremlin: Changes in Property Law and the Adoption of the Civil Code in 1950,' Právněhistorické studie, 49(2), pp. 10–19. https://doi.org/10.14712/2464689x.2019.28, pp. 15-16.
[506] Similar to the situation in Romania, in the Czechoslovak communist system, property rights were a central issue of socialist ideology and therefore the Civil Codes of 1950 and 1964 placed them on substantially new fundamentals. The aim was not only to regulate property relations, but also to transform society's relationship to property. The traditional, individualistic concept of property originating in Roman law was rejected by the Marxist-Leninist approach and socialist property was put in the centre instead. The 1964 Code made an even more radical break with traditional private law concepts by abolishing several classical institutions or ideologically reinterpreting them. The issue of land ownership was particularly problematic as there was a significant tension between political objectives and economic reality. The study points out that such an ideological transformation of property rights caused numerous difficulties in practice and ultimately contributed to the weakening of the legitimacy of the system. For more, see: Bělovský, P. (2019) 'Ownership and Property in Communist Civil Codes of Czechoslovakia', *Acta Iuris Stetinensis*, 27(3). doi:10.18276/ais.2019.27-02. pp. 24-25.
[507] Falada, 2009, p. 59, see also: Kuklík and Skřejpková, 2019, p. 15 and Veress, 2023, p. 213.
[508] Kuklík and Skřejpková, 2019, p. 18.
[509] *Ibid.*
[510] § 38 Občanský Zákoník [Civil Code], Sbírka zákonů republiky Československé (24. 8. 1948 — 31. 12. 1959) [Collection of Laws of the Czechoslovak Republic (24 August 1948 — 31 December 1959)] nr. 141/1950 Coll. Hereinafter referred to as: 1950 Civil Code.

immovable property had to be concluded in written form, yet it did not address the effects of non-compliance with this formal requirement.[511] Finally, it can be noted that the Roman law maxim *'utile per inutile non vitiatur'* reappeared in the provisions of the Code, allowing a legal act to remain valid in part when the ground for invalidity affects only one part of it. In legal literature, this rule is considered to serve to mitigate the strictness of the invalidity regime,[512] but does not amount to convalidation in the sense in which this study analyses the term.

Furthermore, in the early 1960s, Czechoslovakia underwent considerable legal and political transformation in line with its declared goal of achieving socialism, which resulted in the adoption of the 1964 Civil Code.[513] The new code was designed to break with abstract legal concepts inherited from traditional civil law, with the aim of representing a departure from the European or continental civil law tradition.[514] It emphasised the perception that relations under civil law were not limited to contracts between private individuals but involved obligations towards society in general.[515] From this perspective, the socialist organisations' relations with individuals were not explained in terms of contractual freedom, but as the provision of services.[516] Furthermore, the Code made clear that citizens' rights could not be exercised in ways that conflicted with the principles of social coexistence or harmed collective interests.[517] Individuals were prohibited from abusing their rights to the detriment of society or other citizens, and the provisions of the Civil Code were to be applied consistently with these principles.[518]

With regard to the institute of convalidation, the 1964 Czechoslovak Civil Code went a step further by expressly introducing the sanction of invalidity for non-compliance with formal requirements.[519] It clarified the legal consequences of defects in form, although without expressly providing for the possibility of curing such defects; however, it did not explicitly exclude that possibility either.

---

[511] § 40 of the 1950 Civil Code.
[512] For more on the maxim and its consideration, see: Zimmermann, 1993, p. 683.
[513] Veress, 2023, p. 214.
[514] Falada, 2009, p. 62.
[515] Veress, 2023, p. 214.
[516] *Ibid;*
[517] Falada, 2009, p. 62.
[518] *Ibid.* See also: Rudzinski, A. W. (1965) 'New Communist Civil Codes of Czechoslovakia and Poland: A General Appraisal', *Indiana Law Journal*, 41(1), pp. 33–68, p. 42.
[519] § 40 (1) Občanský Zákoník [Civil Code], Zbierka zákonov Slovenskej republiky (01.04.1964 - 30.06.1969) [Collection of Laws of the Slovak Republic (1 April 1964 — 30 June 1969)] nr. 40/1964 Zb. Hereinafter referred to as: 1964 Czechoslovak Civil Code.

Moreover, the Roman law maxim '*utile per inutile non vitiatur'* — which ensures that a legal act remains valid in parts unaffected by a defect — is also explicitly reflected similarly to the former Civil Code.[520]

This legal framework, established by the 1964 Czechoslovak Civil Code with only minor modifications, remained in force until the political transformation of 1989.[521] This was the year when, similar to Poland, the legal system underwent systematic changes due to the political shift towards a market economy.[522]

However, the dissolution of Czechoslovakia in 1992 brought an additional layer of complexity to this transformation. With the creation of two independent states — the Czech Republic and the Slovak Republic — each jurisdiction faced the challenge of adapting the inherited civil code to its own evolving legal and economic context.[523] Although the 1964 Civil Code, with its roots in the socialist system, initially remained in force in both successor states, each began to amend and reinterpret its provisions to align with democratic principles, private autonomy, and EU harmonisation requirements.[524]

Regarding Romania, during the 1950s, the communist regime implemented a mass nationalisation of housing (especially with Decree No. 92 of 1950), during which many owners lost their properties.[525] Although legal action was severely limited, those affected tried to regain their rights through petitions for a long time, which meant both resistance and adaptation to the socialist legal order.[526]

The process shows that the transformation of legal consciousness was complex, because former owners continued to rely on the classical, constitutional concept of property while state officials followed a socialist, class-based justice approach.[527]

Throughout the Soviet-type dictatorship in Romania, the above-analysed Codul Civil of 1864 was in force, but with limitations, especially regarding private ownership.[528]

---

[520] § 41 of the 1964 Czechoslovak Civil Code.
[521] Falada, 2009, p. 64.
[522] *Ibid.*
[523] Elischer, D., Frinta, O. and Pauknerová, M. (2012) 'Private Law', *The Lawyer Quarterly*, 2(1), pp. 69-107, p. 78.
[524] Veress, 2023, p. 225; Lavický and Hurdík, 2014, p. 257; Falada, 2009, p. 64.
[525] Şerban, M. (2014) 'The Loss of Property Rights and the Construction of Legal Consciousness in Early Socialist Romania (1950–1965)', *Law & Society Review*, 48(4), p. 773.
[526] *Ibid.*
[527] *Ibid.*
[528] Veress *et al.*, 2022, p. 191.

The focus of the analysis now turns to the three remaining countries: Croatia, Slovenia, and Serbia, which will be assessed in parallel since they historically constituted one country at first, as part of the Kingdom of Serbs, Croats, and Slovenes, then as member states of the former Yugoslavia.

As legal particularism characterised the whole country, the enactment of the 1978 Obligations Act marked a significant cornerstone in the development and unification of private law in the former Yugoslavia.[529] With the entry into force of the ZOO, legal particularism was put to an end, since the 1978 Obligations Act established a unified and coherent regulatory framework, especially with regard to contractual and non-contractual obligations.[530]

Although the 1978 Obligations Act was enacted in the specific political and socio-economic atmosphere of the former socialist Yugoslavia, it did not express the socialist ideologies of the time. Available legal literature from the socialist era emphasised that during the course of drafting the ZOO, the legislator had to take into account the development of comparative private law and include solutions that meet the requirements of modern contract law.[531] Accordingly, the regulation reflected significant comparative legal influences, drawing primarily from Swiss law, but also from the German and French private law traditions that contributed to the formation of its dogmatic foundations.[532]

From the perspective of the present research, the significance of the 1978 ZOO lies primarily in the fact that it established a comprehensive regulatory framework and a systemic link between the form of contracts, invalidity, and the maintenance of formally deficient contracts through curative mechanisms.

From the relevant provisions of the 1978 ZOO, Article 67 should be assessed first. This provision enshrined the fundamental principle of freedom of form of contracts by stipulating that the conclusion of a contract is not subject to any specific

[529] Zakon o obligacionim odnosima (Sl. SFRJ 29/1978) [Obligations Act (Official Gazette of the SFRY, No. 29/1978)]. Hereinafter referred to as: ZOO.
[530] Đurović, R. and Orlić, M. (1978) 'Od Opšteg imovinskog zakonika do Zakona o obligacionim odnosima' [From the General Property Code to the Obligations Act], *Anali Pravnog fakulteta u Beogradu*, 26(3-5), pp. 245–266, p. 245.
[531] *Ibid*, p. 259.
[532] Tot, I. (2022) 'Poredbenopravni utjecaji na Zakon o obveznim odnosima' [Comparative Law Influences on the Obligations Act] in Tot, I. and Slakoper, Z. (eds), *Hrvatsko obvezno pravo u poredbenopravnom kontekstu: Petnaest godina Zakona o obveznim odnosima [Croatian Law of Obligations in Comparative Perspective: Fifteen Years of the Obligations Act]*, Zagreb: Ekonomski fakultet Sveučilišta u Zagrebu, p. 23.

form unless the law provides otherwise.[533] Furthermore, while Article 69 acknowledged the autonomy of contracting parties to stipulate a specific form by mutual agreement, Article 70 provided the regulatory framework pertaining to the consequences of infringing on the rules mandating statutory formal requirements.

The former Article stipulated that contracting parties are free to agree that a specific form shall be a condition for the validity of their respective contract.[534] On the other hand, the latter provision foresaw that a contract not concluded in the prescribed form has no legal effect unless otherwise follows from the purpose of the regulation that determines the form.[535] The same legal consequence was prescribed for non-observance of the agreed form.[536] It can be detected from both the wording and structure of the provision (since the law supplemented the provisions with the statement: "if from the purpose of the prescribed form, nothing else arises") that the law did not treat all formal requirements as a general category. Instead, the legal consequences of their violation could also depend on the function and purpose of the particular formal requirement.[537]

The law, however, provided for statutory exceptions to this rule. One of these exceptions constituted the central issue of this research – performance-based convalidation. For the purpose of performance-based convalidation, Article 73 of the ZOO was of decisive importance. This provision stated that a contract for which a written form was required was valid despite the lack of form, provided that the parties had fulfilled their obligations in full or in preponderant part, unless otherwise followed from the purpose of the prescribed form.[538] The provision thus created an exceptional mechanism according to which the original formal error did not necessarily and definitively determine the legal fate of the legal transaction.

The specificity of convalidation in this case lay in the fact that the formal defect was not remedied by subsequent replacement, i.e., by concluding a completely new formally valid contract. The parties did not subsequently enter the contract in the prescribed form, nor was the missing formal element subsequently complemented. Instead, the law attributed legal significance to the performance of contractual

[533] Article 67 of the ZOO.
[534] Article 69 of the ZOO.
[535] Article 70 (1) of the ZOO.
[536] Article 70 (2) of the ZOO.
[537] See in detail: Karamarković, 1993, p. 883.
[538] Article 73 of the ZOO.

obligations. If the legal conditions were met, performance mitigated the legal consequence that would otherwise be associated with a breach of the prescribed form.[539] In this sense, Article 73 is a particularly clear example of what this dissertation defines as performance-based convalidation: the maintenance of a juridical act suffering from a formal defect is not a consequence of subsequent correction of the form, but of the conduct of the parties after the conclusion of the contract.

This legislative solution, however, did not surface in the 1978 ZOO without any historical background.[540] One of the most significant historical foundations of the 1978 ZOO was the Draft of the Code of Obligations and Contracts by Mihailo Konstantinović, which is in Serbian legal literature referred to as the Sketch.[541]

The Sketch already recognised the possibility of remedying a formally deficient contract by performance; however, it foresaw stricter conditions than the later regulation enshrined in the 1978 ZOO.[542] Namely, Article 44 of the Draft required full performance by both parties, while Article 73 of the ZOO, which was later adopted, extended the possibility of convalidation to cases where the contractual obligations had been fulfilled in preponderant part. The adopted legal solution in the 1978 ZOO can therefore be interpreted as a broader version of the mechanism already envisaged by Professor Konstantinović.

As to contracts for the conveyance of ownership over immovable property, the application of the general rule of convalidation has become significantly more complex. These legal transactions have traditionally been subject to stricter formal requirements (governed by legislation of the member states), which has raised the question of whether the general mechanism established by the 1978 ZOO can be applied even when specific legislation on real estate transactions requires a stricter form. The tension between the general rule of the law of obligations and the *lex specialis* on real estate transactions became one of the defining issues in the development of convalidation in Yugoslav and later Serbian law.

---

[539] Dudás and Király-Szitás, 2026, p. 37.
[540] See in detail: Petrović, 1993, pp. 870–874.
[541] After the completion of the draft, Professor Mihailo Konstantinović titled it *"Skica"*, a term that accompanied the draft throughout history, and it is still referred to by this name in legal literature today.
[542] Art. 44 (1) of the Sketch. See: Konstantinović, M. (1996) *Obligacije i ugovori: Skica za zakonik o obligacijama i ugovorima* [Obligations and Contracts: Draft Code on Obligations and Contracts]. In: Perić, Ž. (ed.) *Klasici jugoslovenskog prava* [Classics of Yugoslav Law], Vol. 3. Beograd: Službeni list SRJ, p. 54.

Therefore, in relation to the countries analysed above, the legal order of Yugoslavia was in a specific position, given that the ZOO was in effect at the federal level while the member states had the authority to regulate legal issues in connection with *in rem* rights, including real estate transactions, through *lex specialis*, which acts had been in force prior to the enactment of the ZOO.

In this respect, the rules provided for in the Land and Building Transactions Act[543] are relevant as far as the former member state of Croatia is concerned. This law was originally passed as a federal law in 1954 but was subsequently adopted into republican legislation. Namely, in 1973 the Croatian legislator expressly retained the Land and Building Transactions Act, as amended, in force as republican legislation.[544]

For this research, Article 9 of the Land Transaction Act of 1973 is of significant relevance. It provided that the contract on the basis of which the right of use or ownership of land or a building was transferred must have been concluded in writing.[545] The same article also provided for a sanction in the event of failure to comply with the aforementioned rule, thus stipulating that a contract not concluded in writing does not produce any legal effect.[546] Interpreting the aforementioned rule, it can be concluded that the *lex specialis* not only explicitly provided for a mandatory written form for contracts for the transfer of real estate, but also provided for a sanction. The mandatory character of the legal form was strengthened by the fact that the law foresaw that courts and other state authorities were obliged *ex officio* to monitor the nullity of contracts under the Act.[547]

---

[543] Zakon o prometu zemljišta i zgrada ("Službeni list FNRJ" br. 26/54., 19/55., 48/58., 52/58., 30/62., 53/62., "Službeni list SFRJ" br. 15/65., 43/65. - službeni pročišćeni tekst, 57/65., 17/67., "Narodne novine" br. 52/73., "Službeni list SFRJ" br. 11/74., "Narodne novine" br. 27/91., 91/96.) Land and Building Transactions Act [Official Gazette of the Federal People's Republic of Yugoslavia, Nos. 26/54, 19/55, 48/58, 52/58, 30/62, 53/62; Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 15/65, 43/65 – official consolidated text, 57/65, 17/67; Official Gazette of the Socialist Republic of Croatia, No. 52/73; Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 11/74; Official Gazette of the Republic of Croatia, Nos. 27/91, 91/96]. Hereinafter referred to as: Land Transaction Act of 1973.

[544] Art. 1 of Zakon o dopuni zakona o preuzimanju saveznih zakona kojima se uređuju odnosi o kojima po ustavnim amandmanima xx. do xli. na ustav sfrj odlučuju republike [Act Amending the Act on the Adoption of Federal Laws Regulating Matters Which, Pursuant to Constitutional Amendments XX to XLI to the Constitution of the SFRY, Fall within the Competence of the Republics], no. 3527-1973 form 28 December 1973.

[545] Art. 9 (1) of the Land Transaction Act of 1973.

[546] Art. 9 (2) of the Land Transaction Act of 1973.

[547] Art. 46 of the Land Transaction Act of 1973.

A similar situation could be observed with regard to Slovenian legislation, where the Property Transactions Act[548] constituted the *lex specialis*. Similar to the Croatian regulation, the ZPN stipulated in Article 5 that the contract by which the right of use or ownership of real estate was transferred must have been concluded in writing.[549] The law also stipulated a sanction for violation of this rule by foreseeing that a contract concluded in violation of the previous paragraph was null and void.[550] Therefore, the Slovenian legislator opted for a similar regulatory framework as the Croatian one, prescribing a written form and a sanction of nullity for contracts concluded contrary to the prescribed form.

At that time, the Real Estate Transactions Act[551] from 1974 was in force in Serbia, which, in Article 10, stipulated a mandatory form for contracts transferring rights to real estate. Thus, the law stipulated that the contract on the basis of which the right of use or ownership of real estate is transferred must be drawn up in writing, and the signatures of the contracting parties must be certified by the court.[552] The SrbZPN of 1974 also provided for a sanction for violation of the rule on mandatory form, stipulating that a contract not concluded in accordance with this article does not produce legal effect, unless otherwise provided by law.[553]

After analysing the aforementioned provisions of the laws from Croatia and Slovenia, it can be concluded that the Serbian legislator opted for the strictest form for contracts on the transfer of real estate. Therefore, Serbia already included the state authority in the contractual relationship by prescribing mandatory certification of the signatures of the contracting parties before the court.

On this legal basis, the ZOO was established in 1978, which introduced the institution of convalidation into the legislation.[554] Consequently, the 1978 ZOO and the *lex specialis* were both in effect.

---

[548] Zakon o prometu z nepremičninami (ZPN) [Propertz Transactions Act], Uradni list SRS, št. 19/76, 42/86 in Uradni list RS, št. 44/97 – ZSZ [Official Gazette of the Socialist Republic of Slovenia, Nos. 19/76, 42/86, and Official Gazette of the Republic of Slovenia, No. 44/97 – Building Land Act (ZSZ)]. Hereinafter referred to as: ZPN.
[549] Art. 5 of the ZPN.
[550] Art. 10 of the ZPN.
[551] Zakon o prometu nepokretnosti [Real Estate Transactions Act] (Službeni glasnik SRS, br. 15/74 i 14/77) [Official Gazette of the Socialist Republic of Serbia, Nos. 15/74 and 14/77]. Hereinafter referred to as: SrbZPN of 1974.
[552] Art. 10 Para. 1 of the SrbZPN of 1974.
[553] Art. 10 Para. 2 of the SrbZPN of 1974.
[554] Dudás and Szitás, 2024, p. 1005.

Croatia and Slovenia have retained the legal rules established by the Land Transaction Act of 1973 and the ZPN, since the Land Transaction Act of 1973 ceased to exist with the entry into force of the Act on Ownership and Other Real Rights in 1996[555]. In Slovenia, the ZPN was in force until its repeal in 1997 with the entry into force of the Building Land Act.[556]

Unlike the aforementioned countries, Serbia introduced a new act on the transfer of real estate earlier, in 1981[557], which was in force until 1998, i.e., the entry into force of the Real Estate Transactions Act of 1998[558].

Regarding the parallel effectiveness of the *lex generalis* and *lex specialis*, a specific situation arose in the Serbian legal system. Namely, because real estate transaction regulations required contracts for the transfer of ownership or use of real estate to be in writing and the signatures of the contracting parties to be certified by a court, a breach of these requirements resulted in the contract being null and void. However, the subsequent adoption of the 1978 ZOO, particularly its general rule of convalidation based on performance, therefore necessarily raised the question of whether Article 73 could also be used to maintain a real estate transaction contract that did not meet these specific formal requirements.[559]

A significant judicial answer to this question was given at the joint session of the Federal Court, the Supreme Military Court and the civil and civil-economic chambers of the supreme courts of the member republics and autonomous provinces in September 1983.[560] The position adopted at that time interpreted the possibility of convalidation relatively broadly. In this regard, convalidation was not necessarily limited to written contracts that lacked the required authentication of signatures: if

[555] Art. 394 of Zakon o vlasništvu i drugim stvarnim pravima [Act on Ownership and Other Real Rights], no. 01-96-1736/1 form 17 November 1996.
[556] Art. 56 of Zakon o stavbnih zemljiščih (ZSZ) [Building Land Act], no. 001-22-82/97, 21 July 1997.
[557] Zakon o prometu nepokretnosti [Real Estate Transactions Act] (Službeni glasnik SRS, br. 43/81, 24/85 – dr. zakon, 28/87, 6/89 – dr. zakon, 30/89 – dr. zakon i 40/89, Službeni list SFRJ, br. 55/90 – odluka USJ i Službeni glasnik RS, br. 53/93 – dr. zakon, 67/93 – dr. zakon, 48/94 – dr. zakon i 53/95 – dr. zakon) [Official Gazette of the Socialist Republic of Serbia, No. 43/81, 24/85 – other Act, 28/87, 6/89 – other Act, 30/89 – other Act and 40/89; Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 55/90 – Decision of the Constitutional Court of Yugoslavia; and Official Gazette of the Republic of Serbia, Nos. 53/93 – other Act, 67/93 – other Act, 48/94 – other Act and 53/95 – other Act]. Hereinafter referred to as: SrbZPN of 1981.
[558] Zakon o prometu nepokretnosti [Real Estate Transactions Act] (Službeni glasnik RS, br. 42/98 od 18.11.1998. godine) [Official Gazette of the Republic of Serbia, No. 42/98 of 18 November 1998]. Hereinafter referred to as: SrbZPN of 1998.
[559] Dudás and Szitás, 2024, p. 1005.
[560] *Ibid.*

certain conditions were met, even an oral contract for the transfer of real estate could be convalidated as a result of subsequent performance.[561]

Subsequent legislation in Serbia demonstrated a specific approach, different from the Croatian and Slovenian legal systems. The aforementioned SrbZPN of 1981, its amendment from 1987, and the SrbZPN 1998 as *lex specialis* provided for the possibility of convalidation, specifying precisely the necessary conditions for its application.[562] Contrary to the broad interpretation of the judicial position from 1983, the legal provisions enshrined in the aforementioned regulations made convalidation contingent upon the existence of a written contract.[563] If the prescribed legal conditions were met, the court could recognise the legal effects of a written contract in which the parties' signatures were not properly authenticated, provided that the contract was performed entirely or in preponderant part.

However, the conditions specified in the *lex specialis* also show that performance alone was not sufficient for convalidation. Based on the 1987 amendments to the SrbZPN of 1981, it was necessary to perform the contractual obligations in full or in preponderant part, to comply with the statutory restrictions on the acquisition of real estate, to fulfil the tax payment obligation, to respect pre-emptive rights, and to ensure that no other protected social interest was harmed.[564] The 1998 regulation partially modified these conditions but preserved its essence. Namely, it foresaw that full or partial performance could only result in the remedying of the formal defect if the pre-emptive rights of third parties or mandatory statutory provisions were not violated.[565]

Judicial practice following the aforementioned legislative changes also shows a departure from the previous broad interpretation adopted in 1983. According to the prevailing judicial position after 1987, convalidation pertained to a written contract lacking formal requirements, while an agreement concluded verbally could no longer be subjected to performance-based convalidation.[566] Therefore, the minimum

[561] See in this regard: Szalma, J. (2009) *Obligaciono pravo* [Law of Obligations]. Novi Sad: Pravni fakultet u Novom Sadu – Centar za izdavačku delatnost, pp. 323-324 and Vujović, I. (2012) *Konvalidacija ugovora o prometu nepokretnosti* [Convalidation of Real Estate Transactions Contracts]. Beograd: Službeni glasnik, pp. 99-101. See also: Dudás and Szitás, 2024, p. 1005.
[562] Dudás and Szitás, 2024, p. 1005.
[563] *Ibid*, p. 1006.
[564] Karamarković, 1993, pp. 886-889. See also: Dudás and Szitás, 2024, p. 1005.
[565] Art. 4 Para. 3 of the SrbZPN of 1998.
[566] Vujović, 2012, p. 92 *et seq*.

condition for convalidation was the existence of a written record of the parties' agreement.

The role of the judiciary is of particular significance in this system, since convalidation did not occur automatically *ex lege* upon the performance of the parties' contractual obligations. A judicial procedure was required, in which the court examined whether the statutory conditions necessary for recognising the legal effects of a formally deficient juridical act existed.[567] However, this mechanism cannot be considered judicial validation, whereby the court created a new juridical act, replaced the missing declaration of intent or substituted the formally deficient contract with a decision. The jurisdiction of the court is limited to determining whether the statutory conditions for convalidation were met. When the court declared the contract valid, the respective juridical act remained the title for the subsequent registration of ownership in the land registry.[568] Therefore, legal scholarship considers such judicial decisions to be of declaratory and constitutive legal nature as well.[569]

This distinction between performance-based convalidation and judicial validation is of particular importance for the differentiation of convalidation from other curative mechanisms in the dissertation. Considering the participation of the court in the contractual relationship, it can be observed that it does not make the curative mechanism a judicial declaration of validity.

In the Yugoslav legal system described in this subchapter of the dissertation, the legal basis for maintaining formally deficient contracts was performance and the statutory provision prescribing the possibility of convalidation. As observed, the task of the court was to determine whether the statutory conditions for the application of convalidation were met. Therefore, this mechanism is closer to the notion of performance-based convalidation than to validation by court, where the competent judicial body itself modifies the agreement of the parties.[570]

The historical development therefore shows that Article 73 of the 1978 ZOO created a relatively broad general basis for performance-based convalidation. However, in the field of real estate contracts, the protective function of the prescribed statutory form led to the establishment of limits on the application of convalidation.

---

[567] Karamarković, 1993, p. 889. See also: Dudás and Szitás, 2024, p. 1005.
[568] Karamarković, 1993, p. 891.
[569] *Ibid.*
[570] See, for example, the relevant provisions of the 1959 HunCC in this subchapter of the thesis.

The transition from the broad judicial interpretation adopted in 1983 to the stricter special statutory provisions suggests that the legislation provided for performance-based convalidation as a means of maintaining formally deficient contracts for the conveyance of ownership rights over immovable property, but its application was contingent upon the purpose of the formal requirements and the interests protected by stipulating them. This issue gained even greater importance after the breakup of Yugoslavia, when the successor states inherited the regulatory framework of the 1978 ZOO while gradually developing different solutions in their application and modification.

These relevant provisions of contemporary national legislation form the subject of analysis in the following chapters.

4.4. Contemporary National Rules on Convalidation

After the analysis of the historical background presented in the previous chapter, the next chapter explores the regulation of convalidation in the provisions of general contract law of the selected countries.

Since the possibility of remedying invalid contracts cannot be examined independently of the general rules on validity and the formal requirements, each country chapter first presents the relevant principles of contract law, the legal consequences of formal defects, and the distinction between absolute and relative nullity where relevant. Based on these analytical aspects, the research examines whether the given legal system recognises the institution of convalidation as a mechanism capable of remedying the invalidity of a formally defective contract, and if so, under what conditions.

4.4.1. Hungary

A significant stage in the codification process prior to the enactment of the applicable Hungarian Civil Code was Act CXX of 2009 on the Civil Code [571]. Although the Act was adopted and promulgated, it never entered into force and was

[571] 2009. évi CXX. törvény - a Polgári Törvénykönyvről [Act CXX of 2009 on the Civil Code]. Hereinafter referred to as: Act CXX of 2009.

eventually repealed by Act LXXIII of 2010[572]. Accordingly, it did not constitute positive law, but it is of great importance from a codification-historical perspective. Particularly because several of its solutions concerning contractual form and invalidity were subsequently incorporated into the Hungarian Civil Code[573] in force.

In its adopted text, Act CXX of 2009 reflected the principle of consensualism by providing that, in the absence of a different provision of the law, a declaration of will may be made orally, in writing, or by conduct implying intent.[574] However, the text limited this freedom by requiring that if the law or one of the parties to the agreement stipulates a written form of the contract, at least the essential content of the contract must be drawn up in written form.[575]

The adopted text also addressed the consequences of failure to comply with statutory form of the contract. § 5:75 (1) provided the possibility for the legislator to foresee a mandatory form for certain contracts.[576] In these cases, the Act CXX of 2009 envisaged the penalty of nullity for failure to comply with the prescribed form in the absence of a legal provision that stipulates otherwise.[577] Furthermore, in subsequent provisions of the legal text also provided for corrective regulation in the event that the mandatory form is not observed. Namely, it foresaw that by accepting performance of the contractual obligation, a formally defective contract becomes valid, unless otherwise stated by law.[578]

The Act CXX of 2009 also envisaged the possibility of validation by the court with *ex tunc* effect as well.[579] In this case, the acting court had the authority to remedy the faulty legal transaction by drawing up a contract in line with the statutory formal requirements.[580]

Several of these codification solutions were subsequently reflected in Act V of 2013 on the Civil Code, which entered into force on 15 March 2014 and constitutes the effective HunCC. Parties have autonomy to engage in contractual agreements

[572] 2010. évi LXXIII. törvény a Polgári Törvénykönyvről szóló 2009. évi CXX. törvény hatályba nem lépéséről, valamint az ezzel összefüggő törvénymódosításokról [Act LXXIII of 2010 on the Non-Entry into Force of Act CXX of 2009 on the Civil Code and on Related Amendments to Acts].
[573] 2013. évi V. törvény a Polgári Törvénykönyvről [Act V of 2013 on the Civil Code]. Hereinafter referred to as: HunCC.
[574] § 5:57 of the Act CXX of 2009.
[575] § 5:58 of the Act CXX of 2009.
[576] § 5:75 (1) of the Act CXX of 2009.
[577] *Ibid.*
[578] § 5:75 (3) of the Act CXX of 2009.
[579] § 5:86 (3) of the Act CXX of 2009.
[580] Siklósi, 2014, p. 283.

freely, select their respective counterparties, and determine the content of their contract. Deviations from the statutory regulations governing the rights and obligations of the parties within contracts are admissible, provided they are mutually agreed upon and not prohibited by law.[581] This provision upholds the principle of contractual freedom, i.e., that parties possess the freedom to shape their contractual relationship within the boundaries determined by law.

The assumption of the Hungarian legislation is that individuals engaged in transactions are owners of assets, enabling them to assert and safeguard their proprietary rights.[582] Thus, the legislation suggests minimal legal intervention in their mutual juridical relationships, emphasising limited interference only under specific circumstances.[583]

Another basic principle can be observed among the provisions of the HunCC: the concept of consensualism. It provides the freedom to determine the form of contracts, since it stipulates that a contract is formed through the mutual and unanimous expression of the parties' will[584]. Thus, observing a certain form is not always a mandatory legal requirement for the valid formation of a contract.

However, this does not mean that in all cases in which a contract is declared invalid, there is a possibility of validation.[585] Hungarian contemporary legislation still incorporates the already mentioned principle of *regula Catoniana* from Roman law, stating that the passage of time alone cannot validate an initially invalid juridical act.[586] Hungarian law, influenced by this regulation, traditionally precluded the remedy of invalidity.[587] However, some exceptions to this rule could still be observed.[588] For instance, it was possible to validate an initially invalid contract due to a change in circumstances or even by approval of the parties.[589]

As already clarified, case law and legal literature, under the term validation, understand events in which the causes of invalidity cease to exist, or the parties

[581] HunCC Para. 6:59.
[582] Vékás, L. (2006) „Hungary", *European Review of Contract Law*, 2(1), pp. 112-123, p. 115.
[583] Ibid.
[584] HunCC Para. 6:63, Bodzási, B. (2014), 'A szerződéskötés általános szabályai az új Ptk.-ban I.' [General Rules on Formation of Contracts in the New Civil Code], Céghírnök, 5, pp. 3-5, p. 3.
[585] Siklósi, 2014, p. 283.
[586] *Ibid.*
[587] *Ibid,* p. 232.
[588] Weiss, E. (1964) 'A szerződés érvénytelenségének kérdései a római jogban' [The Questions of Invalidity of Contracts in Roman Law], Eötvös Lóránd Tudományegyetem Állam- és Jogtudományi Karának actái, 6(1), pp. 135-164, p. 146.
[589] Ibid.

eliminate them.[590] Although, under the regulation of the 1959 Civil Code, parties were not able to validate posteriorly a contract sanctioned with nullity, they were provided the option to renegotiate and re-enter into a contract in a valid form, constituting a new agreement, which was practically a new juridical act independent of the previous, invalid one.[591]

The HunCC, however, allows parties to retroactively validate an invalid contract as of the time of its conclusion onward.[592] It regulates cases in which the reason for invalidity ceases at the will of the parties because they later eliminate it, or when the cause of invalidity ceases for other reasons, and the parties confirm their contractual intent.[593] The convalidation of a contract at the will of the parties generally has retroactive (*ex tunc*) legal effect. However, the law also allows the parties to agree to eliminate the reason for invalidity only with effect to the future (*ex nunc*).[594]

The legislative intent is discernible from these rules: a commitment to maximising individual private autonomy, in accordance with the restricted application of written form in contract law within the HunCC.[595] However, according to the legal literature, documenting legal declarations in writing is becoming more frequent, even when not mandated by law, since it provides stronger proof.[596] Nevertheless, in these cases, the failure to observe the stipulated form does not render the juridical act null and void.[597]

The HunCC contains a specific case of subsequent validation in cases of formal deficiencies, the wording of which corresponds to the solution previously envisaged in Act CXX of 2009. Namely, HunCC Para. 6:110 foresees that the court may declare an invalid contract valid with retroactive effect, i.e., from the date of conclusion of the contract, if the harm caused by the invalidity can be eliminated by appropriate

---

[590] 1/2010. (VI. 28.) PK vélemény az érvénytelenség jogkövetkezményeiről [1/2010. (VI. 28.) Opinion of the Civil Department on the Legal Consequences of Invalidity]; Kemenes, 2016, p. 5.
[591] Menyhárd, A. (2021) „A szerződés érvénytelensége mint jogvédelmi eszköz" [Invalidity as a Means of Legal Protection], Miskolci Jogi Szemle. Miskolc, Magyarország, 16(3), o. 7–23. doi: 10.32980/MJSz.2021.3.1015, p. 15.
[592] Ibid., p. 15
[593] Osztovics, A. (2014) in Osztovics, A. (ed.) A Polgári Törvénykönyvről szóló 2013. évi V. törvény és kapcsolódó jogszabályok nagykommentárja [Grand Commentary of Act V. of 2013 and Related Regulations]*, 3rd edn.,* Budapest: Opten Informatikai Kft. 6:107.§ -6:121.§, p. 282.; For example, parties are able to validate their mutual agreement, which had been rendered invalid, by concluding it in a sufficient form, procuring missing official consent, etc.
[594] HunCC Para. 6:111 sec. (3)
[595] Benke, J. – Nochta, T. (eds.) (2018) *'Magyar polgári jog: Kötelmi jog I.'* [Hungarian Civil Law: Law of Obligations I.], Budapest Pécs: Dialóg Campus, p. 97.
[596] Wellmann in Wellmann, 2021, p. 219.
[597] Ibid.

amendment of the contract or the reason for the invalidity has subsequently ceased to exist.[598] However, from the wording of the two texts, it can be observed that they refer to cases in which the cause of invalidity is either eliminated by amending the invalid contract, or the cause of invalidity ceases to exist. Since, in these cases, the court validates the formally deficient contract, they cannot be considered as convalidation in the classical sense of the term. The issuing of the judicial decision presupposes that the remedy of the given contract has already occurred; thus, the court merely declares the already existing validity of the contract.

Furthermore, Hungarian law, among the general rules on contracts, addresses the legal consequences of formal defects. It provides special regulations for remedying such juridical acts by stipulating that a contract, null and void due to a lack of formal requirements, may still become valid, to the extent of the performed obligations, upon acceptance of performance.[599] This provision is connected to the general rules of obligations in the HunCC regarding the formal requirements for the declaration of will.[600]

In these cases, the contractual intent usually does not suffer from any defect; rather, it is the inadequacy in the means of declaration of intent that causes the invalidity of the contract.[601] Thus, as a general rule, a defect leading to invalidity can be rectified through performance of the obligation.[602] Particularly within the sphere of commercial contracts, it may be reasonable for an otherwise well-functioning contract to remain in effect despite its invalidity.[603]

4.4.2. Poland

Although drafted under socialism, the 1964 Civil Code retained much of Poland's earlier private law tradition, which made it possible to modernise the system gradually after 1989 instead of drafting an entirely new code.[604] However, despite

[598] HunCC Para. 6:110; § 5:86 of the Act CXX of 2009.
[599] HunCC Para. 6:94.
[600] Wellmann in Wellmann, 2021, p. 218.
[601] Juhász, Á. (2022) *'A szerződéses akarat és annak egyes értelmezési kérdései, különös tekintettel a szerződés részleges érvénytelenségére' [The Contractual Intention and its Interpretation with a Focus on the Partial Invalidity of the Contract],* Miskolci Jogi Szemle, 17, pp. 189-197, DOI: https://doi.org/10.32980/MJSz.2022.2.2008, pp. 191-192.
[602] Ibid.
[603] Weiss, E. (1969) *'A szerződés érvénytelensége a polgári jogban' [*Invalidity of Contracts in Civil Law*]*, Budapest: Közgazdasági és Jogi Könyvkiadó, pp. 438-439.
[604] Slakoper and Tot, 2022, p. 6.

extensive updates, debate continues about whether incremental reforms are enough or whether a full recodification is needed.[605]

The shift to a market economy led to significant amendments, especially removing socialist distinctions favouring state property over private ownership and restoring a unitary concept of ownership equal for all.[606] Systematic change was brought on by Poland's transition to a market economy in 1989.[607] It was not simply a matter of changing laws overnight, but rather a complex process of institutional adaptation and gradual reform.[608]

In the early 1990s, extensive reforms across the civil law system accompanied the dismantling of the communist regime.[609] One important factor that made this possible was Poland's ability to reconnect with its pre-war legal traditions. The first wave of reforms began in 1990 and focused on removing distinctly socialist elements from private law, especially in the area of property.[610] Special rules and institutions that had governed transactions between state-controlled economic entities were abolished while the principle of freedom of contract was restored as a central tenet of private law.[611] The 1964 Civil Code remained the backbone of private law, being progressively modified through a series of amendments steered by the Commission for Civil Law Reform, established by the Minister of Justice in 1989.[612]

In the law of obligations, the changes were particularly important: special rules for state-run enterprises were repealed, and the principle of freedom of contract was reinstated alongside provisions revived from the pre-war Code of Obligations.[613] Poland's obligations law has since absorbed elements from modern European instruments such as CISG, UPICC, and PECL, while EU consumer directives have been partly incorporated within the Civil Code and partly through separate statutes.[614]

Building on this historical evolution, this section explores the contemporary provisions of the Polish Civil Code, focusing on whether they contain rules on the institute of convalidation, and assesses the standpoint of Polish legal doctrine.

---

[605] *Ibid*, p. 7.
[606] Lavický and Hurdík, 2014, p. 199.
[607] Lavický and Hurdík, 2014, p. 197.
[608] Rychard, 1993, p. 163.
[609] Lavický and Hurdík, 2014, p. 197.
[610] Rajski, 2008, p. 152.
[611] *Ibid.*
[612] *Ibid*.
[613] *Ibid*, p. 200.
[614] Slakoper and Tot, 2022, p. 7. For more, see also: Lavický and Hurdík, 2014, p. 201-203.

In Polish civil law, the idea of convalidation must be understood within the broader framework of formal requirements and the general consequences of defects in legal acts.[615] The Polish Civil Code explicitly recognises the principle of freedom of form, unless the law or the parties require a specific form under the sanction of nullity.[616] Polish legal doctrine recognises a number of special forms as exceptions to the principle of freedom of form. These are documentary form, written form[617], electronic form, written form with a certified date, written form with notarised signatures, and the form of a notarial deed.[618] While oral declarations of will remain the general rule regarding form, the purpose of foreseeing formal requirements is to enhance legal certainty and the security of transactions in matters considered particularly important.[619] The approach of the legislator reflects the tradition that form should primarily serve as a means of legal certainty and evidence.

Depending on the legal purpose of prescribing mandatory formal requirements, failure to comply with these provisions may result in different consequences. Namely, it may affect only the admissibility of evidence (*ad probationem*), result in the invalidity of the legal act (*ad solemnitatem*), or merely prevent certain legal effects from arising (*ad eventum*).[620]

As to the institute of convalidation, the Polish Civil Code, like most other civil codes, does not contain a general provision governing the issue of convalidation (or convalescence) of defective legal acts.[621] This legal lacuna has not, of course, prevented the issue from being generally addressed by legal scholarship.[622] Nevertheless, according to the Polish legal literature, the notion of convalidation has not been sufficiently developed.

---

[615] Wolak, G. (2008) 'O formie czynności prawnych w ogólności' [About the Form of Juridical Acts in General] *Przegląd Prawno-Ekonomiczny,* 4(3), pp. 58-73, pp. 58-59.
[616] Art. 60 of the Polish Civil Code; Wolak, 2008, p. 59.
[617] Which is referred to in legal doctrine as 'ordinary written form' *(zwykłą formą pisemną).* See: Nazaruk, P. (2024) 'Article 73', in Bajor, B. *et al. Kodeks cywilny. Komentarz aktualizowany* [*Civil Code. Updated Commentary*]. Gdańsk: Wolters Kluwer Polska, LEX/el. Available at: https://sip.lex.pl/#/commentary/587857816/772278/nazaruk-piotr-red-kodeks-cywilny-komentarz-aktualizowany(Accessed: 25 June 2026).
[618] Nazaruk, 2024, Art. 73.
[619] *Ibid*.
[620] Sadomski, J. (2021) 'Article 73', in Gudowski, J. (ed.) *Kodeks cywilny. Komentarz. Tom I. Część ogólna, cz. 2 (art. 56–125) [Civil Code. Commentary. Volume I. General Part, Part 2 (Articles 56–125)]*. Warsaw: Wolters Kluwer Polska. Available at: https://sip.lex.pl/#/commentary/587851890/649330/gudowski-jacek-red-kodeks-cywilny-komentarz-tom-i-czesc-ogolna-cz-2-art-56-125 (Accessed: 25 June 2026). See also: Nazaruk, 2024, Art. 73.
[621] Grzybowski, 1974, p. 37.
[622] *Ibid*.

Despite this, several definitions of convalidation are enshrined in available legal sources. It is generally defined as a legal event, upon the occurrence of which the error in a legal act is removed.[623] In a broader sense, convalidation has also been described as a range of exceptional and diverse regulations aimed at mitigating the discrepancy between legal status and factual situations that are inconsistent with the law due to invalid or defective legal acts.[624]

It is also emphasised that, when examining convalidation, legal scholarship has traditionally relied on brief assessments, made in the context of particular types of invalidity and the interpretation of specific statutory provisions, rather than on a detailed justification.[625]

This approach is reflected in Article 73 § 2 of the Polish Civil Code. Article 73 § 2 of the Polish Civil Code foresees that a legal act for which the law prescribes a special form is, as a rule, null and void if that form is not observed.[626] This provision establishes the general rule that where the law prescribes a special form, failure to comply with the mandatory formal requirements results in invalidity.[627]

Furthermore, Article 73 provides for an exception by recognising that certain special forms may be prescribed for producing specific legal effects (*ad eventum*). In these cases, non-adherence to the prescribed form does not necessarily invalidate the juridical act, but merely prevents its intended legal effect from arising.[628]

The dominant view in Polish doctrine is that absolute nullity cannot be retroactively remedied, except in narrowly defined cases provided for by statute.[629,630] An example of such an explicit statutory exception is Article 890 § 1 of the Polish Civil Code, which governs contracts of donation. According to this provision, a donation that fails to meet the required notarial form is, in principle, null and void, but it becomes valid if the promised performance is delivered.[631]

---

[623] *Ibid*. p. 38.
[624] Antas, M. (2021) *Czynności prawne przysporzające w prawie polskim [Legal Acts Conferring Benefits under Polish Law]*. PhD dissertation. Kraków: Krakowska Akademia im. Andrzeja Frycza Modrzewskiego, Wydział Prawa, Administracji i Stosunków Międzynarodowych, p. 36.
[625] Grzybowski, 1974, p. 37.
[626] Art. 73 § 2 Sent. 1 of the Polish Civil Code.
[627] Sadomski, 2021, Article 73.
[628] Art 73 § 2 Sent. 2 of the Polish Civil Code. See also: Sadomski, 2021, Article 73.
[629] Skorupa, P. (2010) 'Normative Models of Sanctions of Absolute Nullity and Non-Existent Juridical Acts', *Studia Prawnicze*, 1(183), 2010, pp. 43-44.
[630] However, Polish legal doctrine questions whether these cases could suffice as convalidation at all. See: Antas, 2021, p. 37.
[631] Art. 890 of the Polish Civil Code; For more, see also: Wolak, 2008, p. 66.

By prescribing this rule, the legislator expressly allowed a contract that was invalid due to a formal defect to become valid through performance. The doctrine explains that the reason for foreseeing this exception is that performance proves the donor's serious intention to give the gift, thereby fulfilling the evidentiary and warning function of the prescribed form.[632] On the other hand, the rule also protects the donee, since he/she can legitimately trust that the donor wanted to definitively and unequivocally express his/her intention to make a gift by performing it.[633]

Another case that Polish legal doctrine considers an example of convalidation is enshrined in Article 14 sec. 2 of the Civil Code.[634] The provision states that where a person lacking legal capacity has entered into a contract of the type commonly concluded in minor, day-to-day matters, such a contract becomes valid upon performance, unless it entails gross detriment to the person lacking legal capacity.[635] Scholarly literature confirms this provision to be an exception to absolute invalidity and categorises it as an example of performance-based convalidation. When the foreseen conditions (that the contract is of a type commonly concluded in minor, day-to-day matters[636]; it has been performed[637]; it does not entail gross detriment to the

[632] Trzaskowski, R. 'Article 890', in Gudowski, J. (ed.) *Kodeks cywilny. Komentarz. Tom V. Zobowiązania. Część Część szczegółowa, wyd. II*, *[Civil Code. Commentary. Volume V. Obligations. Special Part, 2nd edition*. Warsaw: Wolters Kluwer Polska. Available at: https://sip.lex.pl/#/commentary/587729308/526748/gudowski-jacek-red-kodeks-cywilny-komentarz-tom-v-zobowiazania-czesc-szczegolowa-wyd-ii, Article 890.

[633] *Ibid*.

[634] Antas, 2021, p. 36.

[635] Article 14 sec. 2 of the Polish Civil Code.

[636] It must be emphasised that Art. 14 Sec. 2 applies only to contracts, since the legislature has excluded unilateral legal acts from its scope. Furthermore, the contract must fall within the category specified by the legislature — that is, it must be a contract commonly concluded in the minor, routine matters of everyday life. Examples include small purchases such as school supplies or food and the purchase of a cinema ticket or a tram fare. It is also rightly held that, when assessing whether a contract belongs to the category specified in Art. 14 Sec. 2, particular importance attaches to the contract's typicality within existing social relations, the subject matter of the contract, its value, and the simplicity of the procedure for its conclusion or performance. See: Balwicka-Szczyrba, M. (2026), 'Art. 14', in Sylwestrzak, A. (ed.), *Kodeks cywilny. Komentarz aktualizowany* [*Civil Code. Updated Commentary*]. Gdańsk: Wolters Kluwer Polska. Available at: https://sip.lex.pl/#/commentary/587922800/823508/balwicka-szczyrba-malgorzata-red-sylwestrzak-anna-red-kodeks-cywilny-komentarz-aktualizowany (Accessed: 25 June 2026), art. 14.

[637] A second condition required for the validity of a contract involving a person lacking legal capacity to act is the performance of the contract. Performance is understood as, firstly, performance by both parties and, secondly, complete performance. Partial performance does not constitute performance of the contract. See: Balwicka-Szczyrba, 2026, Art. 14.

incapacitated person [638]) are fulfilled cumulatively, the contract is convalidated at the moment of its performance.[639,640]

This illustrates that the Polish legal order tends to keep legal acts in effect if performance has been rendered, rather than automatically invalidating them, because while formal requirements protect against fraud and misunderstandings, they should not frustrate genuine transactions when the intended contractual will has already been fulfilled. This provision thus embodies a clear, narrowly defined form of statutory convalidation that operates automatically upon fulfilment of the donor's promise, reflecting the protection of legitimate expectations and the principle of good faith.

However, the Polish approach remains highly selective and does not extend convalidation beyond explicit cases set out in the Civil Code. The general framework of the law of obligations maintains strict requirements of form and validity, reserving any exceptions for situations where the stability of transactions and the genuine will of the contracting parties clearly justify curing a formal defect.

4.4.3. Czech Republic

The Czech law of obligations was governed by the Czechoslovak Civil Code of 1964.[641] However, Czech private law has undergone notable transformations. The Civil Code of 1964 placed a strong emphasis on property relations, while providing only limited coverage for status matters or personal injury compensation. Furthermore, a general framework for legal entities was lacking, and many provisions were mandatory, reflecting an outdated system that relied on absolute invalidity as a

[638] A third condition for the validity of a contract is that the concluded contract must not entail gross detriment to the person lacking legal capacity to act. Thus, only gross detriment to such a person precludes the contract from becoming valid. However, detriment lacking this qualified character may result in the sanction of absolute invalidity under other provisions (e.g., Article 58 Sec. 1). See: Balwicka-Szczyrba, 2026, Art. 14.
[639] Nazaruk, 2024, Art. 14.
[640] The aforementioned provision is a subject of debate in Polish legal literature. According to the representatives of the traditional standpoint, this provision allows for the convalidation of an absolutely null and void legal transaction. The representatives of this view refer in particular to the fact that the incapacitated person is able to make a null and void legal transaction valid (convalidate it) by his/her own conduct at the will of the legislator. In contrast, according to a more recent interpretation, Art. 14 Sec. 2 does not regulate a case of convalidation, but grants incapacitated persons limited and conditional legal capacity to perform the types of legal transactions specified in this provision. Although these two positions can be considered the most decisive in the legal literature, other interpretations have also appeared, and the scientific debate on the issue cannot be considered closed to this day. See: Balwicka-Szczyrba, 2026, Art. 14.
[641] Veress, 2023, p. 225; Lavický and Hurdík, 2014, p. 257; Falada, 2009, p. 64.

universal sanction for defects in juridical acts.[642] This rigidity often created legal uncertainty, since it was not always clear when the Commercial Code or the Civil Code should apply.[643]

Serious reform began around 2000, when Professor Karel Eliáš and Associate Professor Michaela Zuklínová were appointed to prepare a new Civil Code.[644] They worked alongside the Private Law Recodification Commission, which included legal scholars, judges, and practitioners.[645] The draft was discussed, commented on, and gradually refined through a transparent process involving multiple conferences and consultations until the legislative proposal was published in 2005.[646] After further rounds of revision, the Code[647] was eventually passed and came into force on 1 January 2014.[648]

The New Civil Code foresees freedom of form of contracts; however, at the same time, restricts it by stipulating that it can be limited based on the agreement of the parties or by statutory provisions.[649] Czech law appears different from the other legal orders analysed with regard to the principle of consensualism. Although the freedom of form of contracts is evident, the principle of consensualism is not placed in the Code explicitly.

Furthermore, the Code seems to have fundamentally changed the landscape by replacing the dominance of absolute invalidity with relative invalidity as a default, and by allowing certain defects to be remedied when they do not violate public order or good morals.[650] Namely, §582 of the New Civil Code of 2014 provides that if a juridical act is not made in the form agreed by the parties or required by law, it is invalid unless the parties subsequently remedy the defect.[651] Paragraph (2) further clarifies that if the required form agreed by the parties is not respected, the invalidity can be invoked only if performance has not already taken place.[652] This means that

[642] Lavický and Hurdík, 2014, p. 133.
[643] *Ibid.*
[644] Veress, 2023, p. 221; Lavický and Hurdík, 2014, p. 138.
[645] Lavický and Hurdík, 2014, p. 138.
[646] *Ibid.*
[647] Zákon č. 89/2012 Sb. Zákon občanský zákoník [Law no. 89/2012 Sb. Civil Code] from 1st January 2014. Hereinafter referred to as: New Civil Code of 2014.
[648] Veress, 2023, p. 221; Lavický and Hurdík, 2014, p. 138.
[649] Art. 559 of the New Civil Code of 2014.
[650] In the case law of the Supreme Court of the Czech Republic, it is apparent that the previous Civil Code, which was established under the significant influence of socialist ideologies, did not foresee the possibility of convalidation. See, for example: case no. 24 Cdo 2749/2020.
[651] §582 (1) of the New Civil Code of 2014.
[652] §582 (2) of the New Civil Code of 2014

once the contract is performed, the possibility of invoking invalidity due to lack of form is lost. The rule does not seem to foresee that the contract automatically becomes valid; rather, the possibility of invalidity is effectively excluded if the defect is not challenged before performance occurs.

This rule does not constitute a direct example of convalidation as understood in this research. Rather, it reflects the differentiation between absolute and relative nullity as observed in the other countries analysed in this research.[653] In particular, the juridical act is not treated as initially invalid and subsequently convalidated. Instead, performance results in the act being regarded as valid from the outset. This reflects a model of the convalidation of voidable contracts: a defective act is not necessarily invalid unless the defect is invoked in time. If both parties fulfil their obligations, the act is treated as valid, thereby promoting legal certainty and respecting the principle of party autonomy.

Furthermore, §586 of the New Civil Code of 2014 provides that if the invalidity of a legal act is determined to protect the interests of a certain person, only that person may raise an objection to invalidity.[654] If this person does not object to the invalidity of the legal act, the legal act shall be deemed valid.[655] However, absolute nullity still applies in cases where the defect affects fundamental legal order and good morals.[656]

4.4.4. Slovakia

As already noted above, Slovakia and the Czech Republic shared the same socialist legal framework, culminating in comprehensive post-socialist reforms in 1991.[657] Following the dissolution of the Czechoslovak Federation in 1993, the Slovak Republic retained the dualistic codification model introduced in 1991, which consisted of the amended 1964 Civil Code and the Commercial Code, both of which remain in force today.[658]

[653] *Relativní neplatnost* refers to voidability, while *absolutní neplatnost* indicates that a juridical act is null and void. For more, see: Dudás, et al, 2022, p. 258.
[654] §586 (1) of the New Civil Code of 2014.
[655] §586 (2) of the New Civil Code of 2014.
[656] Dudás, et al, 2022, p. 258.
[657] Slakoper and Tot, 2022, p. 10.
[658] *Ibid.*

The law of obligations is primarily regulated by the Civil Code, while the Commercial Code supplements it by regulating commercial contracts and related matters.[659]

As in the Czech Republic, the principles of freedom of form and consensualism are enshrined in the provisions of Slovak private law. Although neither principle is explicitly codified, the existence of both can be derived from relevant provisions of the Slovak Commercial Code and Civil Code. Namely, § 272 of the Commercial Code stipulates that a contract requires a written form for its validity only in cases provided for by law, or when at least one party, during negotiations on the conclusion of the contract, expresses the will for the contract to be concluded in writing.[660]

However, where the law requires, or the parties stipulate a specific form, compliance with the mandatory formal requirements becomes a condition of validity.[661] Consequently, if the legal transaction was not performed in the required form, it is subject to invalidity under the provisions of the SkCC and the SkCom.

An important aspect of the Slovak legal system is that neither the Commercial Code nor the Civil Code seems to contain any explicit general rule on convalidation. However, whether a defective legal act may be cured depends on the distinction between absolute and relative nullity. The core principle is that absolute nullity *(absolútna neplatnosť)* operates *ex lege* and cannot be cured by subsequent conduct or ratification; by contrast, only defects leading to relative nullity *(relatívna neplatnosť)* can be remedied if the entitled party invokes or waives the defect under specific conditions.[662]

From the analysed provisions, it can be inferred that the law does not foresee the possibility of convalidation, since failure to observe the statutory or stipulated form renders the contract absolutely invalid.[663] Therefore, such a juridical act cannot give rise to rights or obligations intended by the contracting parties.[664]

---

[659] *Ibid.*
[660] § 272 Sec. (1) Zákon č. 513/1991 Zb. Obchodný zákonník [Act No. 513/1991 Coll., Commercial Code as amended]. Hereinafter referred to as: SkCom.
[661] § 40 Zákon č. 40/1964 Zb. Občiansky zákonník [Act No. 40/1964 Coll., Civil Code]. Adopted 26 February 1964. Promulgated 5 March 1964. Version effective from 1 January 2026 to 30 July 2026. Hereinafter referred to as: SkCC.
[662] Jakúbeková, 2020.
[663] Decision no. 4 Obo 192/2007 – Písomná forma zmluvy [Written Form of a Contract] of the Supreme Court of the Slovak Republic from 28 May 2008.
[664] *Ibid.*

Slovak private law therefore upholds the principle that defects resulting in absolute nullity of a juridical act render it impossible to convalidate, ensuring legal certainty and protecting good morals and public order.

4.4.5. Romania

Similar to the legislation already analysed, Romanian private law is also based on the principles of freedom of form and consensualism.[665] The RoCC stipulates that a contract is concluded by the simple agreement of the parties, unless the law imposes a certain formality for its valid conclusion.[666]

Furthermore, the principle of consensualism is enshrined in the provision pertaining to the division of contracts. Article 1174 stipulates that a contract may be consensual, solemn, or real; a contract is consensual when it is formed by the simple agreement of the parties.[667] Additionally, relevant provisions of Romanian legislation foresee that contractual will may be expressed verbally, in writing, or manifested by conduct.[668]

Although Romanian contract law is based on the principles of freedom of form and consensualism, in certain cases, the law prescribes specific formal requirements for different contractual arrangements under the sanction of nullity.[669] Thus, legal doctrine differentiates between three ways of the expression of contracting will on the basis of the legal consequence of non-compliance with the rule mandating a specific form[670]: form *ad probationem*, which does not serve as a requirement for the validity of the juridical act, but merely serves evidentiary purposes and may be important in relation to juridical acts of greater importance between the contracting parties or in the event of a dispute before a court[671]; form *ad validitatem*, which is necessary for the validity of the contract and a requirement stipulated by law[672]; and form *ad*

[665] Article 1174 Lege nr. 287/2009 privind Codul civil [Act no. 287/2009 on the Civil Code]. Hereinafter referred to as: RoCC. See: Fazakas, Z. J. (2021) „A szerződés semmissége és megtámadhatósága a magyar és a román polgári törvénykönyvekben" [Nullity and Contestability of the Contract in the Hungarian and the Romanian Civil Codes], *Erdélyi Jogélet*, (2), pp. 103-117. doi: 10.47745/ERJOG.2021.02.06. p. 107.
[666] Article 1178. See: Boroi, G. (2012) *Curs de drept civil: partea generală* [Course of Civil Law: General Part], București: Editura Hamangiu, p. 176.
[667] Article 1174 of the RoCC.
[668] RoCC Article 1240.
[669] RoCC Article 1242 sec. (1).
[670] Boroi, 2012, p. 177.
[671] Boroi, 2012, p. 182; Dudás, *et al.*, 2022, p. 270.
[672] Dudás *et al*., 2022, p. 270; RoCC Article 1179 sec. (3).

opposabilitatem, which are formalities that do not affect the validity of the respective contract, but they are essential to make it opposable against third parties.[673] By the provisions of the RoCC, juridical acts not concluded in the form required for their validity are considered absolutely null (*nulitatea absolută*).[674]

It should also be emphasised that the RoCC expressly codifies the differentiation between absolute and relative nullity and their respective legal consequences. Namely, *nulitatea absolută* protects the public interest; therefore, any interested person may invoke it, as well as the court *ex officio.*[675] On the other hand, *nulitatea relativă* is established for the protection of a particular interest (private interests of the contracting parties); thus, it may be invoked only by the person whose interests were violated.[676] This differentiation serves as the basis for curative mechanisms in the RoCC. As a general rule, confirmation is foreseen as a remedy in cases of relative nullity[677]while contracts sanctioned with absolute nullity may only be remedied in specific cases where the law stipulates it[678].

However, the RoCC does not consider nullity to be the final stage for an invalid contract. Although the RoCC does not seem to codify the institute of convalidation, it provides for possible remedies for invalid juridical acts.[679] Moreover, it dedicates a special subsection to remedies for null and void contracts. The RoCC stipulates that a contract affected by a cause of nullity can be validated if they are remedied by confirmation or in other ways specifically provided for by law.[680] According to the available literature, the reason behind foreseeing the remedies of nullity lies in the intention of the legislator to follow the general tendency to save juridical acts from invalidity if they reflect the genuine will of the parties to be bound by the contract.[681]

After the assessment of the provisions of the RoCC, it can be observed that the legislation does not appear to have codified the legal institute of convalidation as a

[673] Boroi, 2012, p. 183; Dudás, *et al.*, 2022, p. 270.
[674] Article 1242 sec. (1) in connection with Article 1179 of the RoCC.
[675] Article 1247 of the RoCC.
[676] Article 1248 of the RoCC.
[677] Article 1248 Sec. (4) of the RoCC.
[678] Article 1247 Sec. (4) of the RoCC.
[679] Beleiu, G. (2005) *Drept civil român: introducere în dreptul civil: sublectele dreptului civil* [Romanian Civil Law: Introduction to Civil Law: Lessons on Civil Law], București: Universul Juridic, p. 240.
[680] Article 1261 of the RoCC.
[681] Urs. I. R. (2014) 'Validarea Contractului (art. 1261 – 1265)' [Validation of Contracts (art. 1261 – 1265)] in Uliescu, M. (coord.) Noul Cod Civil. Studii și Comentarii. Volumul III. Cartea V-a (art. 1164 - 1649). [New Civil Code. Studies and Comments. Volume III. Book V (art. 1164 - 1649)], București: Universul Juridic, p. 170.

curing mechanism for invalid juridical acts. The letter of the law, however, explicitly foresees the validation of contracts (*validarea contractului*).[682]

Furthermore, the analysis of the provisions in the aforementioned subsection suggests that the concept of validation includes not only confirmation but also other legal means of remedying invalidity.[683] However, in the respective subsection "*validarea contractului*", the RoCC seems to have explicitly codified the institute of confirmation as a remedy for invalidity.[684]

According to the provisions of the RoCC, confirmation of a voidable contract results from the will, expressed or tacit, to waive the right to invoke nullity.[685] It should be emphasised that the wording of the provision confirms the aforementioned Article 1248 of the RoCC, according to which confirmation serves to remedy relative nullity. This is confirmed by the fact that Article 1262 of the RoCC applies to "*contract anulabil*", i.e., contracts subject to relative nullity.[686]

In addition to confirmation, the RoCC expressly codifies the institute of conversion (*conversiunea contractului nul*) and partial nullity (*nulitatea partiala*) as mechanisms with the aim of keeping an invalid juridical act in effect. Pertaining to the former legal institute, the law stipulates that a contract rendered absolutely null shall nevertheless produce the effects of the legal act for which the substantive and formal conditions provided for by law are met.[687] In connection with the latter legal institute, the law foresees that the valid parts of the contract shall be preserved while the incorrect clause shall be eliminated or replaced by a statutory rule.[688] These provisions reflect the influence of the principle of *favor contractus* on Romanian private law.

Turning to the provisions pertaining to formally deficient contracts, it has already been mentioned that the legislator attached the most severe sanction to cases in which a contract is concluded that does not adhere to mandatory formal requirements. However, it has been foreseen that in specific cases, when the law provides for it, contracts declared absolutely null due to formal defects can be remedied.

---

[682] Subsection 4 of the RoCC.
[683] Szitás and Dudás, 2023, p. 193.
[684] Article of the 1262 of the RoCC.
[685] Article of the 1262 RoCC.
[686] Article of the 1262 of the RoCC.
[687] Article 1260 of the RoCC.
[688] Article 1255 of the RoCC.

After the examination of Article 1262 sec. (1) in conjunction with Article 1248 sec. (4) and Article 1247 sec. (4) of the RoCC, it can be observed that the rule on validation primarily pertains to relative nullity, except in specific cases where the law allows confirmation for contracts affected by a cause of absolute nullity.[689]

In the available legal literature, for example, the provisions pertaining to gratuitous contracts are mentioned, which stipulate the right of a universal successor or successor under universal title to waive the right to invoke defects in form or any other grounds for nullity, without prejudice to the rights of third parties and thus confirming the juridical act.[690]

Therefore, from the analysed provisions, it can be concluded that the law foresees, in specific provisions of individual juridical acts, whether it is possible to validate in the event of their nullity.[691] A*rgumentum a contrario,* the conclusion could be drawn that if validation through confirmation or other means was not explicitly foreseen in provisions that prescribe a mandatory form for a juridical act, such an act cannot be remedied.[692]

Although the possibility of confirmation is not generally foreseen for the cases of absolute nullity, conversion appears to serve this purpose precisely by stipulating that a contract rendered absolutely null and void shall nevertheless produce the effects of the legal act for which the substantive and formal conditions provided for by law are met.[693] Therefore, it can be concluded that if a contract rendered absolutely null due to formal defects meets the substantive and formal requirements of another contract, such a juridical act shall be valid in that form. In the Romanian legal system, this mechanism for remedying formally deficient contracts is often used in the field of real estate transactions, which will be elaborated in the subchapter pertaining to contracts for the transfer of ownership rights over immovable property in Romanian law.

Based on the analysed legal provisions, the research did not confirm that the Romanian legal system prescribes and applies the legal institution of performance-based convalidation. However, it can be confirmed with complete certainty that the analysed legal system contains institutions that are intended to eliminate the legal

[689] Article 1261. Para. (1) of the RoCC. See: Szitás, and Dudás, 2023, p. 194.
[690] Article 1010 of the RoCC. See in this regard: Urs, 2014, p. 173 in Szitás, and Dudás, 2023, p. 194.
[691] Szitás and Dudás, 2023, p. 194.
[692] *Ibid.*
[693] Article 1260. Para. (1) of the RoCC.

consequences of invalidity of contracts, which shows that the possibility of keeping an invalid contract valid is also present in Romanian private law, if it is in line with the genuine contractual will of the contracting parties.

After the assessment of the relevant provisions of Romanian private law, the focus now turns to the general regulations enshrined in Slovenian contract law regarding convalidation, which will be presented in a similar structure to the previously analysed legal systems.

4.4.6. Slovenia

Similar to the legal systems analysed above, Slovenian contract law is founded on the basic principles of freedom of form of contracts and consensualism. Accordingly, contracts are concluded when the parties reach a consensus regarding their essential elements irrespective of form. These principles are explicitly enshrined in the Obligations Code of Slovenia[694].

Article 15 of the SloOC provides for the principle of consensualism by stipulating that a contract is concluded when the contracting parties agree on its essential elements.[695] Furthermore, the freedom of form is foreseen by Article 51, Sec. (1) of the SloOC, which stipulates that no form is required for the conclusion of a contract unless the law provides otherwise.[696] Consequently, formal requirements are exceptions to the general principles of freedom of form and consensualism, since they are imposed only where the legislator has considered them necessary for the protection of interests of greater significance.

Therefore, the Obligations Code of Slovenia contains provisions regarding the sanction in cases when a contract is not concluded in the mandatory form. Namely, the SloOC foresees the sanction of nullity for not adhering to statutory formal requirements by stipulating that a contract not concluded in the prescribed form is null and void, unless the purpose of the regulation that specifies the form indicates otherwise.[697]

---

[694] Obligacijski zakonik [Obligations Code], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 83/01, 28/06, 40/07, 97/07 (official consolidated version) and 64/16. Hereinafter referred to as: SloOC.
[695] Art. 15 of the SloOC.
[696] Art. 51. Sec. (1) of the SloOC.
[697] Art. 55. Sec. (1) of the SloOC.

Similar to the Romanian legal system assessed above, Slovenian legal theory differentiates between the different purposes for which a certain formal requirement has been prescribed by law or envisaged by the parties.[698] Therefore, not adhering to provisions foreseeing a specific form will not necessarily cause the nullity of the contract. The sanction depends on the interpretation of the purpose the legislator intended to achieve by prescribing the required form. Thus, if a certain formal requirement serves evidentiary purposes (*forma ad probationem*), the lack of form will not result in the sanction of nullity.[699] However, if a specific formal requirement constitutes a condition for the validity (*forma ad valorem*) of the respective contract or is required for the protection of public interests, a formal defect will render the contract null and void.[700]

However, the Slovenian Obligations Code falls among those legal systems that, following the principle of *favor contractus*, foresees and explicitly codifies the legal institute of convalidation in a form that is the central issue of this dissertation. The Obligations Code of Slovenia, in Article 58, stipulates that a contract for which a written form is required is valid even if it was not concluded in the prescribed form if the contracting parties have fulfilled their respective contractual obligations arising from it in whole or in preponderant part, unless something else clearly follows from the purpose for which the form is prescribed.[701] The legal institute of convalidation in Slovenian legal literature and judicial practise is also referred to as convalidation by realisation (convalidation by performance)[702], the rule of realisation[703] or the theory of realisation[704].

---

[698] Dudás and Szitás, 2024, p.1001.
[699] *Ibid.*, p. 1002.
[700] Možina, D. in Možina, D. and Vlahek, A. (2019) *Contract law in Slovenia*, Alphen aan den Rijn: Cluwer Law International B.V, p. 70. See also: Plavšak in Juhart, M., Plavšak, N. (2003), *Obligacijski zakonik: Splošni del, s komentarjem* [Obligations Code: General Part – with commentary], Book 1, Ljubljana: GV Založba, p. 183.
[701] Art. 58 of the SloOC.
[702] Možina in Možina and Vlahek, 2019, pp. 70–71.
[703] Polajnar Pavčnik in Juhart and Plavšak, 2003, p. 374; Borlinič Gačnik, D. and Jakšić, J. (2022) 'The Formality of Real Estate Transactions in the Law of Slovenia and Croatia in the Light of New Technologies' in Slakoper, Z., Tot, I. *The Law of Obligations in Central and Southeast Europe – Recodification and Recent Developments*, London and New York: Routledge – Taylor & Francis Group, p. 180.
[704] Slovenian courts in their rulings often refer to the institute of convalidation as '*teorija realizacije*'. See, for example: Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije), Judgment II Ips 158/2015, ECLI:SI:VSRS:2015:II.IPS.158.2015, 16 July 2015; Ljubljana Higher Court (Višje sodišče v Ljubljani), Judgment II Cp 2027/2017, ECLI:SI:VSLJ:2018:II.CP.2027.2017, 17 January 2018; Ljubljana Higher Court (Višje sodišče v Ljubljani), Judgment II II Cp 1201/2023, ECLI:SI:VSLJ:2023:II.CP.1201.2023, 6 October 2023.

In the subchapter pertaining to convalidation of real estate contracts, the possibility of applying the aforementioned remedy will be assessed in greater detail. At this stage of the research, the focus will turn to Croatia to examine whether convalidation appears among the general provisions of obligations law. The results will be presented structurally, as the aspects of the research have been examined so far.

4.4.7. Croatia

Similarly to the legal systems analysed so far, Croatian private law rests on the basic principles of freedom of form of contracts and consensualism. Article 286 Sec. (1) of the Croatian Obligations Act foresees that a contract may be concluded in any form, unless otherwise provided by law.[705] In relation to the principle of consensualism, the CroOA stipulates that a contract is concluded when contracting parties reach consensus regarding the essential elements of the contract.[706]

According to these provisions, it can be observed that Croatian contract law considers a contract validly concluded when the respective parties reach a mutual agreement regarding the essential elements of the underlying contract, irrespective of the form in which their contractual will is communicated. However, the legislator explicitly provides statutory exceptions stipulating that a particular form is required only when prescribed by law.[707] In these cases, the observance of a specific form constitutes a condition for the validity of the respective contract.[708]

Therefore, the CroOA stipulates that a contract not concluded in the prescribed form has no legal effect, unless otherwise follows from the purpose of the regulation that determines the form.[709] The law derives the sanction of invalidity from the fact that a formally defective contract violates the legal requirements relating to form[710], which state that a contract is null and void if it violates the Constitution of the Republic of Croatia, mandatory regulations or good morals of society, unless the purpose of the

[705] Article 286 Sec. (1) Zakon o obveznim odnosima [Obligations Act], NN 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23, 69/26. Hereinafter referred to as: CroOA.
[706] Article 247 of the CroOA.
[707] Article 286 Sec. (1) of the CroOA.
[708] Gorenc in Gorenc, 2014, p. 442.
[709] Article 290 of the CroOA.
[710] Jelušić, D. (2018) 'Konvalidacija ugovora nesklopljenih u zahtijevanoj pisanoj formi' [Convalescence of Contracts not Concluded in the Required Written Form], *Hrvatska pravna revija*, 3-4, p. 27.

violated rule does not lead to any other legal consequence or the law in a given case does not prescribe anything else.[711]

As a consequence of the violation of the rules prescribing mandatory formal requirements, the law foresees the sanction of nullity, as a result of which the respective contract does not give rise to the intended legal effects.[712] However, similar to the Slovenian one, the Croatian legal system does not consider the sanction of nullity to be of an absolute nature. Therefore, the tendency to follow the general principle of *favor contractus* can be observed in Croatian contract law as well.[713] Namely, the CroOA, although not explicitly using the term convalidation, foresees the possible remedy for formally deficient contracts. Article 294 of the CroOA stipulates that a contract, for the conclusion of which written form is required, is considered valid, even if it was not concluded in such form, provided the contracting parties have fulfilled their obligations, entirely or in preponderant part, unless the purpose for which the form is prescribed does not clearly imply otherwise.[714] Although the applicable legislation does not explicitly refer to this curing mechanism as convalidation but uses the term '*osnaženje ugovora'*, the assessment of the relevant provision nevertheless refers to the institute of performance-based convalidation. This is also confirmed by available scholarly literature, which already uses the term convalidation.[715]

Scholarly literature addresses the stipulated conditions of convalidation. Therefore, regarding performance, it states that in order for a contractual obligation to be considered fulfilled, both parties shall perform their obligations in full or at least in preponderant part.[716] Furthermore, whether the contractual obligations have been performed in preponderant part is a question of fact that should be assessed on a case-by-case basis.[717]

As to the other condition of convalidation, it can be observed that Croatian literature connects it to the differentiation of the interests protected by the provisions foreseeing mandatory formal requirements. Scholarly literature distinguishes between

[711] Article 322 CroOA.
[712] Nikšić, S. (2022). 'Pisani oblik ugovora i drugih pravnih poslova' [Written Form of Contracts and Other Legal Transactions], *Zbornik pravnog fakulteta u Zagrebu,* 72(1-2), pp. 299–328. https://doi.org/10.3935/zpfz.72.12.08, p. 322.
[713] Gorenc in Gorenc, 2014, p. 455.
[714] Article 294 of the CroOA.
[715] In this regard, see, for example: Gorenc in Gorenc, 2014, p. 455; Klarić, P. and Vedriš, M. (2014) *Građansko pravo* [Civil Law], Zagreb: Narodne novine, p. 178.
[716] Gorenc in Gorenc, 2014, p. 455.
[717] *Ibid.*

the purpose of protecting public interests and the purpose of protecting the parties' private interests.[718] Accordingly, performance-based convalidation is possible only if no public interests are violated by the infringement of provisions foreseeing mandatory form.[719] This question should also be assessed on a case-by-case basis, since convalidation can infringe the same public interest in one case but not in another.[720]

Furthermore, Croatian legal literature conveys a standpoint similar to the one already observed in the previous subchapter pertaining to Slovenian law. Namely, Croatian scholarly literature emphasises that the legal effects of formal defects in a contract should also be analysed from the aspect of the principle of good faith and fair dealing, on the one hand, and the principle of prohibition of abuse of rights, on the other.[721] Accordingly, invoking nullity based on a formal defect in the contract may be contrary to these legal principles if the party invoking it previously considered the contract valid, performed on its basis, or obtained benefits from it.[722]

The relevance of these principles is assessed in terms of convalidation, as well.[723] There may be cases where the legal conditions for convalidation are not met but a contract cannot be declared null and void because invoking nullity would itself violate the principles of good faith or constitute an abuse of rights. [724] However, this does not mean the rules for convalidation could become redundant, but simply that it is much more difficult to establish whether someone acted in bad faith or abused their rights than whether the contract was performed. [725] Therefore, these two institutions do not replace each other.

In summary, convalidation and the principles of good faith and prohibition of abuse of rights are two different legal mechanisms. Convalidation can be applied automatically if the statutory conditions are met, while the principle of good faith and the prohibition of abuse of rights act as an exceptional corrective tool even where the conditions for convalidation are not met, but invoking a lack of formality would itself be unfair.[726]

---

[718] Klarić and Vedriš, 2014, p. 136.
[719] Gorenc in Gorenc, 2014, p. 456
[720] Gorenc in Gorenc, 2014, p. 456. See also: Dudás and Szitás, 2024, p. 1001.
[721] Dudás and Szitás, 2024, p. 1000.
[722] Nikšić, 2022, p. 322.
[723] Dudás and Szitás, 2024, p. 1001.
[724] Nikšić, 2022, pp. 322–323.
[725] Ibid., p. 324.
[726] This approach is reminiscent of the standpoint adopted in Swiss law, discussed in the chapter on Switzerland, where there is a similar prohibition on invoking formal defects if doing so would violate the principles of good faith and the prohibition of abuse of rights.

To conclude, Croatian obligations law in its general provisions foresees the institute of performance-based convalidation and prescribes it explicitly. However, the observance of statutory conditions is assessed on a case-by-case basis. Furthermore, similar to Swiss law, Croatian law foresees a corrective mechanism for cases in which invoking formal deficiencies would infringe the principles of good faith and the prohibition of abuse of right.

The assessment of performance-based convalidation in Croatia will be continued in the chapter pertaining to real estate contracts. In this part of the thesis, the analysis of relevant provisions regarding the general framework of convalidation in Serbia follows.

4.4.8. Serbia

As observed in the previous subchapters, the legislators of the analysed countries generally provide for the principles of freedom of form and consensualism, either by codifying them, in explicit or general terms, or by leaving their existence to be derived from the relevant provisions. The Serbian legislator has opted for explicit codification since both principles are expressly enshrined in the provisions of the Obligations Act of Serbia[727]. Namely, Article 67 of the SrbOA stipulates that the conclusion of a contract is not subject to any form, unless otherwise provided by law.[728] Additionally, the principle of consensualism is enshrined in Article 26 of the SrbOA, which foresees that a contract is concluded when the contracting parties have agreed on the essential elements of the contract.[729]

Although Serbian contract law rests on the fundamental principles of freedom of form and consensualism, the provisions pertaining to the former also prescribe that, if otherwise provided by law, an exception can be made regarding the formal requirements for the validity of a contract.[730] In these exceptional cases, the condition for the validity of a contract should derive from the provisions of the law, but it can be

[727] Zakon o obligacionim odnosima [Obligations Act] ("Sl. list SFRJ", br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 – Ustavna povelja i "Sl. glasnik RS", br. 18/2020) [Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 29/78, 39/85, 45/89 – Constitutional Court Decision and 57/89; Official Gazette of the Federal Republic of Yugoslavia, No. 31/93; Official Gazette of Serbia and Montenegro, No. 1/2003 – Constitutional Charter; Official Gazette of the Republic of Serbia, No. 18/2020]. Hereinafter referred to as: SrbOA.
[728] Article 67 Sec. (1) of the SrbOA.
[729] Article 26of the SrbOA.
[730] Dudás and Szitás, 2024, p. 997.

contingent upon the intent of the contracting parties.[731] In such cases, if the mandatory form is not observed, a contract is rendered null and void due to lack of formal requirements; thus, it cannot give rise to the intended legal effects unless the mandatory form has been observed.[732]

In Serbian legal theory, similarly to some of the already analysed legal systems, a distinction has been made between absolute and relative invalidity. A contract that is contrary to mandatory rules, public order, or good morals is absolutely null if the purpose of the violated rule does not refer to some other sanction or if the law in a particular case does not prescribe something else.[733] However, recognising the severity of the sanction of absolute nullity, the legislator also prescribes two exceptions to this rule: the contract will not be null and void if the purpose of the violated rule does not refer to some other sanction or if the legislator does not prescribe otherwise in a specific case.[734] On the other hand, relative nullity refers to cases in which a contract produces legal effects until it is annulled, particularly when it is a contract that may be subsequently enforced.[735]

Convalidation, or declaring a contract valid regardless of its defect, is an institute regularly applied in connection with voidability (relative nullity).[736] However, similar to Croatian law, Serbian law also foresees that, in exceptional cases, null and void (absolutely null) contracts can be convalidated.

One example is the convalidation of null and void contracts due to formal defects, since their content is often lawful regardless of the form in which they are concluded.[737] The relevant provision that foresees this exemplary solution is enshrined in the SrbOA, which stipulates that a formal contract is null and void if it is not concluded according to all required formal prerequisites unless something may be implied from the purpose for which the formalities have been prescribed.[738] It can be observed that, in the case of these contracts, the legislator has raised the mandatory form to the level of a condition of validity.

[731] Article 69 of the SrbOA.
[732] Dudás and Szitás, 2024, p. 997.
[733] Dolović Bojić, 2021, pp. 76-77.
[734] *Ibid.*
[735] *Ibid.,* p. 55.
[736] Dudaš in Pajtić, Radovanović, Dudaš, 2018, p. 398.
[737] Dudás, 2022a, p. 275.
[738] Article 70 of the SrbOA.

Nevertheless, a contract that was rendered null and void due to a lack of form shall regardless be considered valid, provided that both parties have fulfilled their obligations, entirely or in preponderant part, unless the purpose for which the formalities have been instituted implies something else.[739] Serbian law, therefore, sharing a legal and historical background with Croatia, foresees two conditions for convalidation. One of the conditions is that both parties performed their respective obligations, entirely or in preponderant part. Given that the mandatory formal requirement usually serves a protective function, such as protecting the parties from concluding a contract hastily or without all the information necessary, and the parties nevertheless fulfil their obligations arising from the contract, the protective purposes of the form can no longer serve their primary function.[740] However, if the parties still have a meaningful part of their contractual obligations to perform, the function of the formal requirement has not yet been exhausted; thus, convalidation would not be possible.[741]

However, it is not sufficient to merely assess whether the parties have performed their respective contractual obligations, since the law also stipulates the purpose of the form as the other statutory condition for the convalidation of a null and void contract due to a formal defect. If the purpose of prescribing the mandatory formal requirements would be to protect public interests, i.e., compulsory private law rules or coercive public law norms, performance of the parties' obligations would not result in convalidation of the contract, because such a contract would violate rules that are of significant social importance; thus, the application of the sanction of nullity is justified.[742] Similar to Croatian legal scholarship, Serbian doctrine emphasises that the assessment of whether the purpose of the mandatory form was to protect public interests, and whether those interests were infringed by the omission of the prescribed form, has to be carried out on a case-by-case basis.[743] Therefore, similarly to the legal system previously analysed, Serbian legislation did not foresee convalidation as an automatic reaction to the performance of the parties' obligations arising from their respective agreement. Even if performance has been carried out, the court has to take

[739] Article 73 of the SrbOA.
[740] Dudás and Szitás, 2024, p. 998.
[741] For a more detailed elaboration, see: Loza in Blagojević and Krulj, 1980, p. 220–221.
[742] Antić, 2014, p. 418.
[743] Salma, 2009, p. 323.

into account the purpose of the mandatory form, the interests it is protecting, and whether they allow performance-based convalidation in the particular case.

On the other hand, if the purpose of foreseeing the statutory formal requirement was mainly to protect the private interests of the parties, a contract concluded by not adhering to the rules providing for the mandatory form could still produce a legal effect if mutual performance of the parties' respective obligations has occurred, entirely or in preponderant part.[744]

However, even in these cases, the court may reject convalidation if it assesses that the interests of one of the parties would be jeopardised by it.[745] Therefore, the decision on the convalidation of the contract due to a lack of formal requirement is made by the court, taking into account all the circumstances of the specific case, when it determines what the purpose of prescribing that formal requirement was.[746]

Since Serbia is the last country under assessment in this part of the thesis, it should be noted that the foregoing observations have been made in connection with the general regulatory framework and the possibility of convalidation of formally deficient contracts. However, convalidation of contracts for the conveyance of ownership rights over immovable property is governed by the general rules of obligations law and by special legislation pertaining to property law as well. Therefore, convalidation of such contracts is discussed in the following chapter.

5. Convalidation of Real Estate Contracts in Central-Eastern Europe

As mentioned, real estate contracts require special attention since they combine provisions of obligations law and property law. This is because in the legal systems of the examined countries, stricter regulations apply to contracts for the conveyance of ownership rights over immovable property. One reason for this is the importance of real estate transactions, as mentioned in the introduction of this thesis, and the fact that the formal requirements of real estate contracts are closely related to property law regarding the land registry system. As a result, the mitigation of invalidity arising from formal defects is often influenced by the principles of property law, especially the

[744] Vujović, 2012, p. 120: Dudás, 2022b, p. 57.
[745] Dudás and Szitás, 2024, p. 999.
[746] Ibid., p. 399.

relationship between the underlying contract, the transfer of ownership and the entry in the land registry.

The central issue of this chapter is therefore the possible convalidation of real estate contracts sanctioned with nullity due to formal defects in the private law systems of selected Central-Eastern European countries. The specificities of each examined legal system will be considered from four perspectives. The research will first examine the rules of formal requirements, then describe the legal consequences of not adhering to these rules, the accessibility and limitations of the institute of convalidation, and finally the role of entry in the land registry in connection with real estate transactions.

Within the institute of convalidation, special attention will be paid to the method of curing formal defects, i.e., whether convalidation is linked to the mutual performance of contractual obligations, to entry in the land registry or possibly to other acts with remedial effect.

5.1. Hungary

Hungarian private law traditionally attaches particular importance to formal requirements in contracts concerning the transfer of ownership of immovable property. While the general principle of freedom of form prevails in Hungarian contract law, transactions involving real estate constitute a significant exception due to their economic significance, their impact on third parties, and the need to ensure the reliability of land registry records.

Under the HunCC, a contract for the transfer of ownership of immovable property must be concluded in writing.[747] Beyond the requirement of written form, Hungarian law imposes further formal conditions connected to land registration. The juridical act, serving as the legal basis for registration, must contain all data necessary for registration, including precise identification of the property, the parties, and the legal title of acquisition.[748] Accordingly, paper-based public and private deeds are acceptable for land registration purposes only if they are transformed into electronic form by the drafting attorney-at-law, registered in-house legal counsel, or a notary public, which constitutes a prerequisite for registration rather than a condition of

[747] HunCC Para. 6:215 Sec. 2.
[748] §35 and §46 of 2021. évi C. törvény az ingatlan-nyilvántartásról [Act C of 2021 on the Land Registry]. Hereinafter referred to as: LR Act.

contractual validity.[749] This requirement reflects the function of legal professionals in real estate transactions, aiming to reduce the risk of invalidity, fraud, and later disputes.

Accordingly, compliance with the mandatory formal requirements constitutes a condition for the validity of the contract for the conveyance of ownership rights over immovable property. At the obligations-law level, only a contract that adheres to mandatory form can produce the contractual rights and obligations intended by the contracting parties. However, these obligations-law effects have to be differentiated from the acquisition of ownership, which is regulated by the rules of property law.

Thus, Hungarian law distinguishes between the validity of the contract as an obligatory relationship and the acquisition of ownership as a right *in rem*. The formal requirements imposed on real estate contracts therefore operate at two distinct levels: contractual validity and derivative acquisition of ownership through registration in the land registry.

The written form of the contract thus does not serve merely evidentiary purposes between the parties. Furthermore, the contract concluded with the observance of mandatory form also constitutes a prerequisite for the subsequent registration of ownership in the land registry. Without a document that satisfies the statutory requirements concerning formalities and content, registration cannot take place, and ownership cannot be acquired.

The current HunCC explicitly foresees the sanction of nullity[750] for formally deficient contracts and, at the same time, recognises the possibility of 'curing' the null and void juridical act through the acceptance of performance.[751] Under § 6:94(1) HunCC, a contract that is null and void due to a violation of formal requirements becomes valid to the extent of the performance rendered upon acceptance of such performance.[752] This means of remedy is, however, explicitly excluded in three cases: when the a statute requires that the contract be recorded in a public deed (*közokirat*), or a private document with full probative force (*teljes bizonyító erejű magánokirat*), or if the contract aims at the transfer of ownership of immpvable property, performance

[749] §35 (3) of the LR Act.
[750] HunCC Para. 6:94 Sec. (1).
[751] HunCC Para. 6:94. Although Hungarian law does not employ the term convalidation as a distinct doctrinal category, the Hungarian Civil Code regulates the phenomenon under the concept of remedying invalidity resulting from a defect of form. From a functional and dogmatic perspective, this description corresponds to the notion of convalidation as used in this dissertation, insofar as it refers to the subsequent restoration of legal validity of a juridical act that was initially null and void due to non-compliance with prescribed formal requirements.
[752] HunCC Para. 6:94 Sec. (1) Sentence 1.

does not remedy the invalidity resulting from the failure to observe the mandatory formal requirements.[753] A similar solution had already been envisaged in Act CXX of 2009.[754]

This rule reflects a pragmatic approach to contract formalism. Rather than insisting on nullity in all circumstances, Hungarian law allows the legal system to take into account performance of the contract, and the manifest will of the parties.[755] Convalidation through the acceptance of performance thus functions as a corrective mechanism that mitigates the harsh consequences of invalidity due to formal defects.

However, out of the three aforementioned statutory exclusions, the third is of particular importance for the present research, since it pertains to contracts for the transfer of ownership rights over immovable property. Hungarian legislation intentionally denies any possibility of subsequent cure in these cases, where the preservation of legal certainty prevails over the application of corrective mechanisms.[756] Although the legislator foresaw a simple written form for a contract for the conveyance of ownership rights of real property, such juridical acts are still excluded from the general provisions pertaining to the validation of formally deficient real estate contracts.[757,758]

---

[753] HunCC Para. 6:94 Sec. (1) Sentence 2.

[754] See: § 5:85 of the Act CXX of 2009.

[755] More precisely, in the 'Concept of the New Hungarian Civil Code' drafted by the Editorial Committee for the Codification of Civil Law, a proposal was made to remedy a contract caused by a formal defect. This was based on the assumption that the formal defect of a legal declaration of will – unless an exception is provided for by law – is remedied by performance. The proposal attributed a similar curative effect to a judicial decision, stipulating that the court's decision eliminates all formal deficiencies. The proposal aimed to eliminate unnecessary legal obstacles to economic transactions, especially because the trend towards this has already been partially observed in judicial practice. The proposal also covered the issue of the transfer of ownership of real estate. It states that the proposed solution does not cause any difficulties even in contracts aimed at the transfer of ownership of real estate. In such transactions, performance is carried out by transferring ownership, and for this, according to the principle of constitutivity, registration in the real estate register is necessary, for which a formally intact contract must be submitted to the Land Registry. However, the proposal does not seem to assess specifically whether this rule applies to formally deficient real estate contracts as well; at the same time, it does not exclude this possibility either. See: Az új Polgári Törvénykönyv koncepciója [Concept of the New Civil Code]. Magyar Közlöny, 2002/15, p. 105; Siklósi, 2014, p. 283. The case shows continuity in its substance with the mechanism envisaged in Act CXX of 2009. Namely, in theory, it would be possible for the court to declare an invalid juridical act valid. However, the same question emerges, as it has been mentioned in the part regarding the general provisions on convalidation. The problem is that this process would not suffice as convalidation in the classical sense.

[756] Menyhárt, Á. (2018) in Fazekas, J., (ed.) *'Kötelmi jog - Általános rész'* [Law of Obligations – General Part], Budapest: Gondolat Kiadó, p. 112. For more, see: Szitás and Dudás, 2023, p. 190.

[757] HunCC Para. 6:94 Sec 1 in connection with Para. 6:215 Sec. 2. See also: Szitás and Dudás, 2023, p. 190.

[758] Under the solution envisaged in Act CXX of 2009, contracts for the conveyance of ownership rights over immovable property were also excluded from the possibility of subsequent validation by accepting performance of the obligations stemming from the given contract.

Furthermore, § 6:94(2) HunCC extends the approach from § 6:94(1) HunCC to the cases the amendment, termination, and rescission of contracts as well. Namely, the general rule stipulates that the amendment, termination, or rescission of a contract without observing mandatory formalities is nonetheless valid if the actual state of affairs corresponding to such action was brought about by the mutual intent of the parties.[759] However, the exclusions provided for in § 6:94(1) HunCC apply to these cases as well. Thus, if legislation requires the agreement to be embodied in a public document or a private document with full probative force, or if the contract concerns the transfer of ownership of real property, then any amendment, termination, or rescission made without observing the mandatory formalities is null and void, even if the actual state of affairs corresponding to such action was brought about by the mutual intent of the parties.[760]

The strict formal requirements of contracts for the conveyance of ownership of immovable property serve functions that cannot be substituted by subsequent performance, such as ensuring reliability of land registry records and safeguarding third-party interests. Therefore, registration serves the purpose of the conveyance of ownership rights, but also ensuring the reliability of data entered into the land registry and the protection of third parties relying on its content.

Hungarian property law adheres to the principle that ownership of immovable property may be acquired exclusively through registration in the land registry.[761] Registration, therefore, has constitutive effect, in that the acquisition of ownership — whether in respect of movables or immovable property — presupposes the existence of two distinct juridical acts: an obligatory transaction providing the legal title, typically a contract such as sale or donation, and a separate dispositive act of a proprietary nature, by which ownership is actually transferred.[762] Consequently, payment of the purchase price and delivery of possession cannot result in the transfer of ownership; thus, the legal effects of a contract and the acquisition of ownership must be clearly distinguished.

[759] HunCC Para. 6:94 Sec. 2 Sentence 1.
[760] HunCC Para. 6:94 Sec. 2 Sentence 2.
[761] HunCC Para. 5:38 Sec 2. For more, see: Réfi, B. (2025) 'Az ingatlan-nyilvántartási bejegyzési engedélyhez kapcsolódó kérdésekről' [On Issues Relating to the Land Registry Entry Permit], *Magyar Jog*, pp. 46–50. https://doi.org/10.59851/mj.72.01.8.
[762] *Ibid.*

In this framework, any potential curing of formal defects — where permitted at all — can only affect the obligatory relationship between the parties. Even if the contractual relationship were to be regarded as effective at the level of obligations law, this would not dispense with the requirement of a formally adequate document capable of serving as a basis for registration. A written instrument meeting statutory requirements of formality and content remains indispensable for the acquisition of ownership.

This structure demonstrates a fundamental limitation of performance-based convalidation in the context of real estate transactions. Although § 6:94 Sec. (1) of the HunCC generally provides for the possibility of curing formal defects by acceptance of performance, it explicitly excludes this mechanism in relation to contracts concerning the transfer of ownership over immovable property. By doing so, the legal order draws a clear boundary between contractual flexibility and the demands of legal certainty inherent in property law, prioritising the protection of third parties and the integrity of the land registration system over corrective mechanisms.

Although the HunCC excludes performance-based convalidation of formally defective contracts for the transfer of ownership over immovable property, parties remain free to subsequently conclude a new contract in the prescribed form.[763] However, this solution raises the question already elaborated in the part on the general rules of convalidation: the subsequently concluded contract would represent a new, individual juridical act independent from the previous informal contract rendered null and void.[764] This possibility shall be distinguished from the rule enshrined in § 6:94 Sec. (2) as well, which pertains the amendment, termination or rescission of an existing contract and subjects these juridical acts to the same formal requirements and exclusions from performance-based remedy. The subsequent conclusion of a formally intact contract, by contrast, does not cure the original transaction invalid due to formal defects. It rather constitutes a new juridical act, separate and independent from the invalid one. Accordingly, such subsequent conclusion cannot be considered as performance-based convalidation in the sense as it is under study in this research.

[763] Fazekas, 2018, p. 112.
[764] Menyhárd, 2021, p. 15.

In connection with the general rules of the HunCC, regarding real property, the Act CXXII of 2013 on the Transfer of Agricultural and Forest Land[765] and the Act CCXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act[766] should also be assessed[767]. By entering into force, the Land Transfer Act introduced a new, stricter formal requirement for the validity of contracts pertaining to the conveyance of *in rem* rights on agricultural lands[768] by stipulating that the transfer of ownership rights of agricultural and forestry land or any other juridical act affecting land ownership must be documented in a paper-based deed equipped with security elements as specified in the regulation issued for the implementation of this law.[769]

However, the Land Transfer Act does not specify the legal ramifications when a contract is not formed in the mandatory form stipulated by law. In this case, the general provisions of the HunCC apply.[770] Under these rules, such a contract would be rendered null and void if not concluded in the mandatory form, without the possibility of subsequent validation by acceptance of performance because of the exception instituted regarding real property.[771]

The curative effect of acceptance of performance under § 6:94(1) HunCC functions as a general rule in connection to formal defects, but it is explicitly limited in cases where legislation requires a public deed or a private deed with full probative force, as well as in contracts for the transfer of ownership over immovable property. Whereby the latter exclusion is particularly noteworthy because Hungarian law requires only a simple written form for the validity of a contract for the transfer of

[765] 2013. évi CXXII. törvény a mező- és erdőgazdasági földek forgalmáról [Act CXXII of 2013 on the Transfer of Agricultural and Forest Land]. Hereinafter referred to as: Land Transfer Act.
[766] 2013. évi CCXII. törvény mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról [Act CXXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act]. Hereinafter referred to as: Implementation Land Act.
[767] Szilágyi, J. E. (2022) 'Hungary: Strict Agricultural Land and Holding Regulations for Sustainable and Traditional Rural Communities' in Szilágyi, J. E. (ed.) *Acquisition of Agricultural Lands: Cross-border Issues from a Central European Perspective.* Miskolc–Budapest: Central European Academic Publishing. pp. 145–197. https://doi.org/10.54171/2022.jesz.aoalcbicec_7, p. 148.
[768] Anka Márton, T. (2015) 'A földforgalmi csodák csodája, a biztonsági okmány' [The Outstanding Wonder of the Land Transfer Wonders, the Security Document], Magyar Jog, 62(6), pp. 371-380, p. 371.
[769] Land Transfer Act Para. 8; Decree No. 47 of 2014 (II. 26.) Korm. of the Government laying down Security Requirements and Rules of Issuance of Paper Format Documents Concerning the Transfer of Property Rights of Land or containing other kind of Written Legal Transaction Affecting Property Rights of Land Para. 1 and 2.
[770] Anka Márton, 2015, p. 371.
[771] *Ibid.*

ownership over immovable property.[772] Nevertheless, real estate contracts are by the letter of the law excluded from performance-based convalidation.[773] In such transactions, performance is completed not only by paying the purchase price, but also by transferring ownership of the real estate, i.e., an entry in the land registry.[774] Such registration is contingent upon compliance with the statutory formal requirements governing the validity of the contract subject to registration in the land registry.[775] However, if compliance with the prescribed formal requirement is part of the performance itself, then in the absence of such formality, executed performance cannot occur; therefore, the curative effect of performance is conceptually excluded.[776]

It can be observed that Hungarian private law distinguishes between the conclusion of a contract, its validity, the obligations-law effects arising from it, the transfer of ownership through constitutive entry in the land registry, and the protection of third parties. In this regard, the exclusion of performance-based convalidation for real estate contracts logically follows from the distinction between the obligations-law effects and the property-law effects of the respective contract.

5.2. Poland

Polish private law is traditionally based on the principle of consensual contracting.[777] However, in the field of real estate transactions, this principle is decisively limited by strict statutory form requirements. Namely, Article 73 sec. 2 of the Polish Civil Code provides that where the law requires a specific form (*forma szczególna*), a legal act performed without observing that form is invalid, unless the form was required merely to produce specified legal effects.[778]

This provision constitutes the doctrinal basis of absolute nullity. Absolute nullity in Polish law is understood not as factual non-existence but as a normative denial of legal effect: the legal system refuses to attach the intended consequences to the defective juridical act.[779] The sanction operates *ipso iure* and eliminates the intended

[772] Wellmann in Wellmann, 2021, p. 219.
[773] HunCC Para. 6:94 (1) Sentence 2.
[774] Wellmann in Wellmann, 2021, p. 219.
[775] *Ibid.*
[776] *Ibid.*
[777] Art. 60 of the Polish Civil Code.
[778] Art. 73 § 2. of the Polish Civil Code.
[779] Skorupa, 2010, p. 31.

legal effects *ab initio*.[780] Article 74 of the Polish Civil Code, by contrast, concerns form required solely for evidentiary purposes. Failure to observe such form does not invalidate the act but limits the admissibility of certain forms of evidence in litigation.[781]

Furthermore, Article 158 introduces a mandatory formal requirement for both the contract creating an obligation to transfer ownership of immovable property and the contract which aims to transfer ownership in fulfilment of a pre-existing obligation.[782] Article 158 of the Polish Civil Code provides that a contract transferring ownership of immovable property must be concluded in the form of a notarial deed (*akt notarialny*).[783] The same form is required for a contract transferring ownership in performance of a prior obligation, and the former obligation must be specified in the deed.[784] According to scholarly literature, the purpose of prescribing the notarial deed as a mandatory form is the need to ensure the security of civil law transactions.[785]

The sanction applicable in the event of failure to observe the mandatory form is not expressly stated in Article 158 of the Polish Civil Code. Instead, it must be derived from a systemic interpretation of Article 158 in conjunction with Article 73 §2 of the Polish Civil Code.

Since the notarial deed constitutes a special form[786] within the meaning of Article 73 §2, non-observance of that form results in absolute nullity *ex lege*, unless the statute indicates that the form is required solely to produce specific legal effects. Article 158 contains no such limitation.[787] Consequently, a real estate transfer concluded without the required notarial deed is invalid *ab initio* and incapable of producing either obligatory or proprietary effects. The sanction of nullity thus follows

[780] *Ibid,* p. 34.
[781] Art. 74 of the Polish Civil Code. For more, see: Nazaruk, 2024, Art. 73.
[782] Balwicka-Szczyrba, M. (2026), 'Art. 158', in Sylwestrzak, A. (ed.), *Kodeks cywilny. Komentarz aktualizowany* [*Civil Code. Updated Commentary*]. Gdańsk: Wolters Kluwer Polska. Available at: https://sip.lex.pl/#/commentary/587922800/823508/balwicka-szczyrba-malgorzata-red-sylwestrzak-anna-red-kodeks-cywilny-komentarz-aktualizowany (Accessed: 25 June 2026), art. 158.
[783] Art. 158 sent. 1 of the Polish Civil Code.
[784] Art. 158 sent. 2 of the Polish Civil Code.
[785] Balwicka-Szczyrba, 2026, Art. 158.
[786] This conclusion is derived from the fact that the form of a notarial deed is not explicitly mentioned in Art. 73 § 1. of the Polish Civil Code. Furthermore, it is supported by legal theory. For a more detailed elaboration, for example, see: Balwicka-Szczyrba, 2026, 'Art. 158' and Ciszewski, J. and Ciszewski, M. (2024), 'Art. 158', in Nazaruk, P. (ed.), *Kodeks cywilny. Komentarz aktualizowany* [*Civil Code. Updated Commentary*]. Gdańsk: Wolters Kluwer Polska. Available at: https://sip.lex.pl/#/commentary/587857909/772371/nazaruk-piotr-red-kodeks-cywilny-komentarz-aktualizowany (Accessed: 26 June 2026), Art. 158.
[787] Art. 158 of the Polish Civil Code.

not from an explicit clause in Article 158, but from the general mechanism established by Article 73 §2 of the Polish Civil Code.

Based on the analysed provisions and the available legal literature, it can be concluded that Polish doctrine does not recognise a general principle allowing convalidation of absolutely null acts. However, it is enshrined in provisions pertaining to specific contracts, as described in connection with Art. 14 and Art. 890 of the Civil Code in section 4.4.2. of this dissertation.

Concerning the specific case of contracts for the conveyance of ownership rights over real estate, convalidation, although not explicitly excluded by the Polish Civil Code, is effectively unavailable, since the consequence of not adhering to mandatory form results in absolute nullity. Legal scholarship emphasises that instances described as convalidation in legal literature must be carefully examined, as they often involve only the exclusion of the sanction of nullity or a statutory restructuring of validity, rather than a genuine transformation of a null and void act into a valid one.[788]

Furthermore, legal scholarship notes that Article 158 has a 'dual nature' as, in addition to regulating the form of the agreement, it also embodies the principle of so-called formal causality. This principle applies to an agreement transferring ownership based on '*causa solvendi*', that is, an agreement concluded to perform a pre-existing obligation to transfer ownership of real estate, which entails a requirement to disclose, within the text of the notarial deed, the obligation constituting the basis for the transfer of ownership. Failure to specify in the notarial deed the obligation in performance of which the agreement transferring real estate ownership is concluded results in absolute invalidity.

This strict approach should be read against the structural features of the Polish property law. As emphasised in comparative scholarship, the Polish land registry system is characterised, as a rule, by the declarative character of entries. Namely, registration does not constitute ownership but merely discloses changes in the legal status of real estate, and acquisition itself is not contingent upon registration.[789] Nevertheless, although the entry is formally declaratory, ownership acquired prior to registration remains incomplete in its effectiveness against third parties until the

[788] Grzybowski, 1974, p. 46.
[789] Blajer, P. (2022) 'The effect of registration in the land registry in the framework of real estate sale (comparative study)', *European Property Law Journal*, 11(1–2). https://doi.org/10.1515/eplj-2022-0005, p. 29.

moment of registration.[790] Thus, the Polish system combines the so-called translative effect[791] of the respective contract with the principle of publicity of the land registry system that substantially shapes the *erga omnes* effectiveness of the right.

From the perspective of convalidation, this structure is significant. Because ownership transfers upon execution of the notarial deed, and registration merely strengthens its opposability, there is no intermediate stage in which subsequent factual performance could heal a defect in form. If the contract lacks the notarial form required by Article 158, which invalidates the contract, no transfer of ownership occurs at all. In this respect, the Polish model differs fundamentally from systems where registration itself has constitutive effect and where curative doctrines may operate at the level of entry.

Since ownership of immovable property in Poland is generally understood to transfer upon execution of the notarial deed,[792] the notarial deed therefore serves both as a validity condition and as the standard documentary basis for registration. This strict approach excludes the possibility of convalidation.

5.3. Czech Republic

As can be observed from the analysis of the relevant provisions assessed in the subchapter pertaining to the general framework of convalidation in the Czech Republic, the new Civil Code of 2014 foresees the principle of freedom of form and the principle of consensualism, although the latter is not explicitly stipulated.

However, both principles are restricted in cases specified by statutory provisions. Among others, contracts for the conveyance of ownership rights over immovable property constitute an example of statutory restrictions on the principle of freedom of form and consensualism.

Under the new Civil Code of 2014, the transfer of ownership of immovable property is governed by a causal structure combined with constitutive registration.[793] Therefore, Czech private law differentiates between the validity of the contract at the obligations-law level and the transfer of ownership rights at the property-law level.

---

[790] *Ibid,* p. 50.
[791] Which means that ownership rights are acquired upon validly concluding the contract in question.
[792] Art. 155 of the Polish Civil Code.
[793] Blajer, 2022, p. 60; § 560 and § 2128 of the New Civil Code of 2014.

The validity of the legal basis (the contract that serves as the title upon entry in the land registry) and the entry in the land registry are cumulatively required for the ownership transfer.

Pursuant to § 560 of the new Civil Code of 2014, a juridical act must be made in written form if it pertains to the establishment or transfer of *in rem* rights over immovables.[794] In relation to this provision, § 2128 explicitly provides that a contract for the transfer of ownership of immovable property must be concluded in writing.[795] Consequently, only a validly concluded contract in the prescribed written form is capable of producing the intended obligations-law effects, i.e., to give rise to rights and obligations between the parties. These obligations-law effects have to be distinguished from the acquisition of ownership at the property-law level.

At the same time, § 1105 stipulates that ownership of immovable property entered in the public registry is acquired by registration.[796] This provision confirms the constitutive effect of entry. Therefore, the contract itself does not transfer ownership: acquisition occurs only upon registration in the cadastral register.[797] Registration therefore constitutes the mode of acquisition of ownership rights over immovable property, ensures priority in favour of the registered owner against third parties[798] and, at the same time, provides the publicity of rights and legal certainty for third parties relying on the land registry[799].

According to § 17 of the Czech Cadastral Act, the cadastral office assesses whether the submitted document satisfies the requirements of the written form of registration, including the absence of obvious reasons for invalidity.[800] If the contract fails to satisfy the written form requirement under § 2128 of the Civil Code or lacks any reason for the proposed registration, the registration shall be refused. The cadastral office carries out a legality check that connects the constitutive registration under §

[794] § 560 of the New Civil Code of 2014.
[795] § 2128 of the New Civil Code of 2014.
[796] § 1105 of the New Civil Code of 2014.
[797] Interestingly, the Kingdom of Bohemia (the territory of today's Czech Republic) established the first national land registry, as opposed to the other territories that later fell under the rule of the Habsburg Monarchy. This land registry system, which was already functional between the 13th and 14th centuries, was based on the principle of the constitutive effect of the land registry entry. Thus, ownership of immovable property could have been acquired strictly by entry into the land registry. See: Izsó, K. (2007) 'A jóhiszemű szerzés' [Acquisition in good faith], Polgári Jogi Kodifikáció, 2007/2, p. 17.
[798] § 981 of the New Civil Code of 2014.
[799] § 980 of the New Civil Code of 2014.
[800] § 17 Zákon č. 256/2013 Sb., o katastru nemovitostí (katastrální zákon) [Act No. 256/2013 Coll., on the Cadastre of Real Estate (Cadastral Act)]. Hereinafter referred to as: the Czech Cadastral Act.

1105 with the validity of the contractual basis. Thus, registration cannot eliminate defects in the validity of the legal act underlying the registration.

Accordingly, registration in the land registry is contingent upon the existence of a valid, formally intact contract, and it cannot remedy defects affecting the validity of the contract for the conveyance of ownership rights over immovable property. Therefore, in the Czech Republic, convalidation of formally deficient real estate contracts by fulfilling the rights and obligations intended by the contracting parties or entry into the land registry as a means of performing the contractual obligation of transferring ownership rights over immovable property would not be possible.

As can be observed in previously examined legal orders, the requirement of a valid written contract and constitutive registration connects the obligations and property law aspects of the respective contract. A form-defective contract cannot serve as a valid legal ground for registration. Conversely, registration cannot cure the absence of a valid contractual basis. The Czech legal system therefore rejects any notion of proprietary transfer independent of the validity of the underlying juridical act.

At the same time, the new Civil Code of 2014 provides for a remedy in cases where defects of form are observed.[801] Namely, under § 582, sec. (1), if a juridical act is not made in the form agreed by the parties or foreseen by a statutory provision, it is invalid, unless the defect is subsequently remedied by the parties.[802]

The cited provision appears to be vague with regard to the explanation of how exactly the parties are able to subsequently remedy the formal defect. In available Czech legal literature, a supplementation of the defective juridical act with a formally intact one is apparent.[803] However, the same question arises in the case of Hungarian legislation: whether remedying a formally deficient juridical act by the subsequent conclusion of a new act in which the mandatory form is observed would constitute a completely new agreement independent of the originally formally deficient one. Czech legal scholarship chose a different standpoint in the explanation of convalidation by subsequently concluding a formally correct real estate contract. Thus, in the available scholarly literature, this problem is explained through the intent of the contracting parties, by clarifying that in the case of convalidation, contracting parties, instead of

[801] § 582 of the New Civil Code of 2014.
[802] § 582, sec. (1) of the New Civil Code of 2014.
[803] Beran, 2019, cited in Růžička, 2025, p. 40.

expressing a will to renegotiate, express their intention to merely draw up a formal document, the absence of which prevents the validity of the negotiations for the time being.[804]

Nevertheless, the eventual outcome of this procedure of convalidation would either way be a new agreement. Although contracting parties may express their will to substitute the form of their existing agreement, they would need to include in their written instrument at least the elements necessary for the valid conclusion of a contract, which would result in a new agreement existing in parallel with the previous contract, in which the mandatory form was omitted. However, the available Czech legal literature and case law appear laconic in this regard, since a specific description of this procedure seems to be lacking.

On the other hand, when exploring the possibility of convalidation, another approach should be assessed as well: the correlation of convalidation and the differentiation between absolute and relative nullity.

The new Civil Code of 2014 does not elaborate in detail on the circumstances of invalidity of formally deficient contracts. The letter of the law uses the term '*neplatné*'[805], without the specification if it refers to '*relativní neplatnost*' or '*absolutní neplatnost*'.

Legal doctrine provides clarification in this regard. According to legal scholarship, when the prescribed or agreed form is merely of a warning nature, the defect of form may be cured by subsequent performance if all parties to the contract comply with their obligations.[806] However, this is without prejudice to cases of absolute nullity or to the constitutive requirement of registration of the contract of alienation of immovable property.[807]

The interaction between these provisions is decisive for understanding the limits of convalidation. The Czech model differentiates between absolute and relative nullity, while convalidation pertains to the latter, thus to the cases when convalidation is contingent upon the parties' decision to keep their respective agreement in effect. On the other hand, legal theory emphasises that the required written form protects values that go beyond the parties' mutual interests. This is especially so because not only

[804] Handlar, 2022, cited in Růžička, 2025, p. 40.
[805] The term would translate to invalidity. The English translation of the new Civil Code of 2014 is available at: http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf [Accessed: 27 March 2026].
[806] Dudás et al, 2022, p. 259.
[807] *Ibid.*

contractual certainty and transparency, but the successful registration in the land registry (with it the conveyance of ownership rights) depend on the existence of a valid contract.

5.4. Slovakia

Similar to the Czech Civil Code, Slovak private law is based on the principles of freedom of form and consensualism. According to the general rule, contracts have to be concluded with the observance of a specific form only when it is prescribed by law or stipulated by the agreement of the parties. As for real estate contracts, Slovak law classifies them among the exceptions to the principle of freedom of form and consensualism.

Under Slovak private law, the transfer of ownership of immovable property is subject to strict formal requirements that directly affect the validity of the underlying contract transferring ownership rights. The system consists of three interdependent components: mandatory written form, a causal system of acquisition, and constitutive registration in the cadastral register.[808] Accordingly, Slovak law differentiates between the contractual relationship stemming from the obligations-law effects of the contract and the acquisition of ownership as a property-law effect, where the latter is contingent upon an entry in the land registry. Therefore, as in previous chapters of this thesis, real estate transactions in the Slovak legal system have to be assessed from the aspect of obligations-law and property-law effects.

The central formal requirement is foreseen in § 46(1) and (2) of the SkCC. Paragraph (1) requires written form for contracts transferring ownership of immovable property[809]while paragraph (2) establishes a rule according to which the declarations of will of both parties must appear on the same document.[810] This rule constitutes a classical form *ad solemnitatem*. Compliance with written form is not merely evidentiary, but it is a condition of validity.[811] Consequently, only a contract concluded with observance of mandatory written form is sufficient to produce rights and

[808] §133 (2) of the SkCC; § 31 (1) and (2) Zákon č. 162/1995 Z. z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam (katastrálny zákon) [Act No. 162/1995 Coll., Cadastral Act]. Version effective from 1 April 2025. Hereinafter referred to as: the Slovak Cadastral Act.
[809] §46 (1) of the SkCC.
[810] §46 (2) of the SkCC.
[811] Dudás et al, 2022, p. 284.

obligations intended by the contracting parties.[812] However, these obligations-law effects have to be treated separately from the acquisition of ownership regulated by Slovak property law.

Ownership acquisition is regulated by §132 and §133 of the SkCC. The former provision stipulates, among others, that ownership may be acquired by a sales and purchase contract.[813] Additionally, the law foresees that if an immovable is transferred on the basis of a contract, ownership is acquired by entry in the land registry in accordance with special regulations, unless otherwise provided by a special law.[814] In the case of immovables, the contract alone does not transfer ownership. Slovak law follows a causal system combined with a constitutive land registry.[815] The contract constitutes the legal title, while ownership arises only upon registration in the land registry. Thus, entry in the land registry constitutes the proprietary mode of acquisition of ownership rights, but it also ensures publicity of rights and legal certainty regarding the data contained in the land registry.[816]

Non-compliance with the mandatory form is governed by § 40(1) of the SkCC, according to which a legal act not performed in the form required by law is invalid.[817] As already observed in the subchapter pertaining to the general framework of convalidation in Slovakia, Slovak legal doctrine traditionally understands invalidity as either absolute or relative, even though the SkCC employs a unified terminology.[818] Absolute invalidity arises *ex lege* and is taken into account *ex officio*.[819] By contrast, relative invalidity operates on the basis of a rebuttable presumption of validity: the legal act produces effects unless the entitled party invokes its invalidity.[820]

Because a formally deficient contract pertaining to the conveyance of ownership over immovable property is considered absolutely null, it cannot give rise to rights and obligations intended by the contracting parties.[821] Thus, the contract is unable to give rise to obligations-law effects. On the other hand, it cannot produce property-law

[812] Decision no. 4 Obo 192/2007 – Písomná forma zmluvy [Written Form of a Contract] of the Supreme Court of the Slovak Republic from 28 May 2008.
[813] §132 Sec. (1) of the SkCC.
[814] §133 Sec. (2) of the SkCC.
[815] Blajer, 2022, p. 60.
[816] §2 of the Slovak Cadastral Act.
[817] §40 (1) of the SkCC.
[818] Jakúbeková, 2020.
[819] *Ibid.*
[820] *Ibid.*
[821] Decision no. 4 Obo 192/2007 – Písomná forma zmluvy [Written Form of a Contract] of the Supreme Court of the Slovak Republic from 28 May 2008.

effects either, since the law requires that the contract which serves as the legal title for registration in the land registry and for the transfer of ownership right be concluded in the mandatory form.[822] Furthermore, the land registry, during the process of registration, among other conditions, assesses whether the contract submitted for registration fulfils the formal requirements.[823,824] If the contract does not meet the required conditions, the land registry is entitled to reject the submission for registration.[825]

Moreover, in connection with the performance of obligations stemming from real estate contracts, it can be observed that performance cannot be reduced merely to payment of the purchase price and delivery of possession. A complete performance necessarily includes the transfer of ownership rights as well. However, because registration requires a valid written contract (meaning it adheres, among other conditions, to mandatory formal requirements), a completed registration cannot occur. This also follows from the fact that the land registry assesses whether the contract meets the required form, and if it does not, the registration will be rejected. Thus, an invalid contract due to formal deficiencies can produce neither obligations-law nor property-law effects.

In conclusion, even if rights and obligations were performed, a formally deficient contract would not be able to create valid contractual rights and obligations, since such a juridical act would be absolutely null. Thus, the performance of contractual obligations cannot heal the formal defect. Furthermore, taking into account that the land registry would reject the entry of a contract not meeting the required formalities, registration as a possible cure for formal defects would be rendered impossible.

[822] §31 of the Slovak Cadastral Act.
[823] §31 Sec. (1) of the Slovak Cadastral Act.
[824] Interestingly, §31 Sec. (2) of the Slovak Cadastral Act foresees that if the contract for the transfer of ownership rights of immovable property, subject to registration, was drawn up in the form of a notarial deed or authorised by a lawyer, the land registry assesses the contract only from the perspective of whether it is consistent with the land registry and whether the procedural conditions for permitting the entry are met. This provision shows that the Slovak legislator attaches special importance to public documents or documents authorised by an attorney at law during the procedure of entry in the land registry. In the case of such documents, the procedural authority limits the verification to the land registry and the conditions of the registration procedure, provided that the notary or the attorney at law (legal professionals) has already carried out the preliminary verifications. Based on this standpoint of the Slovak legislator, the question arises as to why it has formally bound the validity of real estate contracts to a simple written form, given that it accords a higher degree of trust to public documents or documents authorised by an attorney.
[825] §31 Sec. (3) of the Slovak Cadastral Act.

Therefore, it can be observed that Slovak law does not provide the possibility of remedying formally deficient real estate contracts.

After the examination of the relevant provisions of Slovak legislation, the following subchapter assesses Romanian law, which adopts a slightly different framework of regulation.

5.5. Romania

As already observed, Romanian private law rests on the foundations of the principles of freedom of form and consensualism regarding contracts. According to these principles, contracts are concluded upon reaching consent between the contracting parties, regardless of the form of their declaration of will to be bound by the contract.

However, with regard to contracts for the transfer of ownership rights over immovable property, Roman legislation provides a stricter regulatory framework, i.e., these contracts are exempt from the aforementioned principles. According to the relevant rules of the RoCC, contracts concerning the transfer of ownership over immovable property are considered validly concluded upon the agreement of the contracting parties expressed in the form of an authentic notarial deed.[826] It also follows from this provision, in conjunction with Article 885 of the RoCC, that the form of the authentic notarial deed is considered to be the form *ad validitatem*, i.e., it constitutes a mandatory requirement for the validity of such contracts.[827] Namely, Article 1244 RoCC foresees that agreements that transfer or constitute real rights to be registered in the land registry must be concluded by authentic instrument, under penalty of absolute nullity, while Article 885 confirms that contracts for the conveyance of ownership over immovable property are classified as contracts necessary to be entered into the land registry in order to transfer ownership.[828]

Available legal literature confirms that the prescribed *ad validitatem* form for real estate contracts stems from the fact that the purpose of contracts for the transfer of ownership rights is not reduced merely to give rise to obligations-law effects, while

[826] Article 1244 of the RoCC.
[827] See in this regard: Dudás *et al.,* 2022, p. 271.
[828] Article 885 of the RoCC stipulates that rights *in rem* over immovables entered in the land registry are acquired, both between the parties and vis-à-vis third parties, only by their registration in the land registry, on the basis of the juridical act or legal fact that justifies the registration.

property-law effects are closely connected to them as well. Therefore, the validity of such contracts cannot be assessed only from the aspect of obligations law, but it has to adhere to provisions governing property law as well.[829]

Once the contract is validly concluded, it gives rise to reciprocal contractual rights and obligations between the contracting parties. Additionally, an entry in the land registry is possible only based on a valid juridical act.[830] However, rights and obligations emerging from the contract as a legal relationship should be distinguished from the stage of acquisition of ownership rights, which constitutes a separate procedure regulated by Romanian property law.

The relevant provisions of the RoCC stipulate that, particularly in the context of the sale of immovable property, the transfer of ownership and its effects vis-à-vis third parties are contingent upon adhering to land registry regulations.[831] Therefore, as observed in previously analysed legal systems, Romanian private law also distinguishes between the obligations-law and the property-law effects of the respective contract for the transfer of immovable property.

Taking into account the provisions analysed, it is necessary to note that the regulatory framework for ownership acquisition provided for by the RoCC, as discussed in this chapter, is not yet fully operational in Romania.[832] This is supported by the applicable legal provisions and the available scholarly literature. Namely, Article 56 Sec. (1) of Act No. 71/2011 provides that the constitutive power of registration will be fully applicable only after the systematisation of the cadastral registry is comprehensively completed in all territorial-administrative units of Romania.[833] Until then, registration merely serves to render the acquisition opposable against third parties[834], while the ownership right itself is transferred between the contracting parties by conclusion of the respective contract executed in the required form.[835] However, this transitional regulatory system does not affect the requirement of authentic form for the validity of contracts for the transfer of ownership over

[829] Fazakas, 2021, p. 111.
[830] Dudás *et al.,* 2022, p. 271.
[831] Article 885 in conjunction with Article 1676 of the RoCC.
[832] Bîrsan, C. (2015) *Drept civil: drepturile reale principale* [Civil Law: Main In-rem Rights], Bucureşti: Editura Hamangiu, pp. 115.
[833] Article 56 Sec. (1) of Lege nr. 71 din 3 iunie 2011 pentru punerea în aplicare a Legii nr. 287/2009 privind Codul civil [Act no. 71 of June 3, 2011, on the implementation of Act no. 287/2009 on the Civil Code]. Hereinafter referred to as: Act 71/2011; See also: Bîrsan, 2015, pp. 126-127.
[834] Article 56 Sec. (2) of Act 71/2011.
[835] Bîrsan, 2015, pp. 115.

immovable property; it only postpones the constitutive effect of entry in the land registry.

As already observed in the subchapter pertaining to the general framework of convalidation in Romania, the RoCC does not recognise performance-based convalidation. The same conclusion appears to apply in connection with contracts for the conveyance of ownership, as according to the analysed provisions, formal defects render such agreements absolutely null.

Hypothetically, if the contractual obligations are performed, convalidation could not be applied within the meaning of the RoCC, since it can be concluded from the relevant legal norms, that in the case of real estate contracts, performance necessarily encompasses the transfer of ownership, so that, as in the case of the countries analysed earlier, which also require constitutive registration, it cannot be limited to the payment of the purchase price and the transfer of possession. However, if the parties do not comply with the mandatory form, as a result of which the contract is absolutely null, the entry in the land registry cannot be carried out; therefore, complete performance cannot occur, meaning that performance-based convalidation would also be excluded.

However, if we consider the specific situation in Romania, where currently, due to the incoherence of the land registry, the law temporarily provides that a contract concluded in the notarial form transfers ownership at the moment of its conclusion, the question may arise as to what happens if, on the basis of an oral contract or an agreement contained in a private document, the buyer pays the purchase price while the seller does not want to conclude the contract for the transfer of ownership over immovable in the required authentic form, so ownership does not transfer either.

In this case, Romanian private law, instead of considering the remedy of the underlying contract by performance (through payment of the purchase price), may preserve the legal consequences of a formally deficient transaction by recognising it as preliminary contract rather than by curing the invalid juridical act. Therefore, Romanian law may treat a contract lacking in form as a pre-contract *'antecontract'* (which can be concluded in any form, even if it concerns the conclusion of a real estate contract).[836]

Under Article 1279 Sec. (3) of the RoCC if the promisor refuses to conclude the promised contract, the court may, at the request of the party who has performed their

[836] Veress *et al*, 2022, pp. 97-98.

respective obligations, issue a judgment serving as the contract, provided the nature of the contract permits this and the statutory requirements for its validity are met.[837]

The cited provision could be analogously applied to the specific case of real estate contracts as well. Namely, if the seller refuses to conclude a notarial deed, the injured party can apply to the court for a court judgment to replace the notarial deed.[838] In this way, by rendering a judicial decision that takes the place of a contract concluded in the required authentic form, ownership can also be transferred to the buyer, who previously paid the purchase price.

Furthermore, Article 1669 Sec. (1) applies this rule to bilateral promises of sale by stipulating that when one of the parties who performed a bilateral promise of sale refuses, unjustifiably, to conclude the promised contract, the other party may request the pronouncement of a decision to take the place of the contract, if all other validity conditions are met. However, the judicial substitution of the final contract is not an automatic reaction of the court to the fact that one of the parties has performed their respective obligations stemming from a bilateral promise of sale. Namely, performance of obligations must be rendered, the validity requirements of the promised contract must be satisfied at the time when the court renders its judgment, and the action must be brought within the six-month period.[839]

Regarding the curative mechanism (confirmation) recognised in the RoCC, the law neither foresees nor forbids its application. However, following the logic based on the assessment of the general provisions in the subchapter pertaining to the general framework of convalidation in Romania, the conclusion could be drawn that formally deficient contracts for the transfer of ownership rights could not be subjected to confirmation, because the law prescribes absolute nullity without foreseeing exceptions.[840]

In conclusion, performance-based convalidation cannot be observed among the provisions analysed in this research. However, Romanian private law applies other

[837] Article 1279 Sec. (3) of the RoCC.
[838] High Court of Cassation and Justice of Romania, Decision No. 23/2017 on the request submitted by the Alba County Tribunal – First Civil Division, in Case No. 173/191/2016, concerning the delivery of a preliminary ruling. Official Gazette of Romania (Monitorul Oficial al României), Part I, No. 365, 17 May 2017. The case concerned Articles 1279 Sec. (3) and 1669 (1) of the RoCC. The question which arose before the Court was if authentic form is required for a promise to sell immovable property in order for the court to render a judgment taking the place of the contract for the sale of immovable property in authentic form. See: Subchapter 6.4.5. of this thesis.
[839] Article 1669 Sec. (1) and (2) of the RoCC.
[840] Szitás and Dudás, 2023, p. 195.

curative mechanisms which have to be differentiated from convalidation in the sense assessed in this thesis.

Furthermore, the institute of conversion is successfully applied to real estate contracts, especially given the situation regarding the establishment of a coherent land registry. Although conversion falls outside the scope of this research, it deserves brief separate mention here. Given the transitional status of the land registry system, Romanian law applies the institute of conversion as an alternative mechanism for keeping invalid contracts in effect, rather than recognising performance-based convalidation. Thus, an exception was made.

After the assessment of Romanian regulation, the focus now turns to three countries with a significant historical legal background stemming from their status as member states of the former Yugoslavia: Slovenia, Croatia, and Serbia. Slovenian legal system will be the first to be analysed.

5.6. Slovenia

As observed in the subchapter discussing the general framework of Convalidation in the Slovenian Obligations Code, contract law is based on the principles of freedom of form of contracts and consensualism. Thus, a contract is concluded when consensus is achieved between the parties about its essential elements, regardless of the form in which their respective contractual will is expressed.

However, the SloOC leaves room for exceptions when the law so requires. Namely, Article 51 stipulates explicitly that no particular form shall be required for the conclusion of a contract, unless otherwise provided by statute.[841] Contracts for conveyance of ownership of real property constitute an example of the aforementioned statutory exceptions, since the SloOC prescribes a mandatory written form as a condition of their validity.[842] Accordingly, written form is a condition for the validity (requirement *ad valorem*) of contracts for the transfer of ownership over immovable property.

Once the contract is validly concluded, it gives rise to mutual rights and obligations between the parties. Similar to the legal systems already analysed, the obligations-law effects in Slovenia should also be treated separately from the property-

[841] Art. 51 SloOC.
[842] Art. 52 SloOC.

law effects of the contract, since the transfer of ownership rights occurs upon entry in the land registry.[843] Furthermore, upon registration, the acquired ownership becomes effective against third parties and ensures the publicity principle.[844] Therefore, Slovenian law adheres to the '*Trennungsprinzip*', i.e., the separation between the obligatory and the dispositive legal transaction.[845] The former refers to the legal transaction under obligations law regulation and, being relative in nature, produces effects only between the contracting parties, where the creditor acquires merely the right to require the debtor to transfer ownership.[846] The actual transfer is thus completed through a separate dispositive legal transaction governed by property law and, being of an absolute nature, this transaction also produces effects *erga omnes*.[847]

Therefore, the rules pertaining to the acquisition of ownership rights should also be assessed. The transfer of ownership constitutes a separate stage in the process of ownership acquisition, governed by the provisions of the Slovenian property law regime. According to the letter of the law, the transfer of ownership rights requires two conditions: the first being a binding legal transaction – *iustus titulus* for the transfer of property rights[848] and second, a land registry permit or intabulation clause[849].

Therefore, it can be observed that Slovenian property law is based on the distinction between the obligatory and the dispositive legal transaction. Accordingly, to register the ownership right in the land registry, the law requires that the owner of the immovable property issue a valid land registry permission ('registration clause')[850][851]. The *zemljiškoknjižno dovolilo* is an explicit and unconditional written

---

[843] Toplak Bohinc, S. (2016) '*Preventivna funkcija notariata pri prometu z nepremičninami*', [Preventive Function of the Notary's Office in the Transfer of Property Public in Real Estate Transactions], Maribor: Pravna fakulteta, LeXonomica. Available at: https://dk.um.si/IzpisGradiva.php?lang=slv&id=64902 (Accessed 19 July 2026).

[844] Article 6 of Zakon o zemljiški knjigi [Land Registries Act] (Uradni list RS, št. 58/03, 37/08 – ZST-1, 45/08, 28/09, 25/11, 14/15 – ZUUJFO, 69/17, 11/18 – ZIZ-L, 16/19 – ZNP-1, 121/21 in 100/25 – ZS-1) [Official Gazette of the Republic of Slovenia, Nos. 58/03, 37/08 – ZST-1, 45/08, 28/09, 25/11, 14/15 – ZUUJFO, 69/17, 11/18 – ZIZ-L, 16/19 – ZNP-1, 121/21 and 100/25 – ZS-1]. Hereinafter referred to as: Land Registries Act.

[845] Supreme Court of the Republic of Slovenia (Vrhovno sodišče Republike Slovenije), Judgment II Ips 158/2015, ECLI:SI:VSRS:2015:II.IPS.158.2015, 16 July 2015.

[846] *Ibid.*

[847] *Ibid.*

[848] Article 40 of Stvarnopravni zakonik [Property Code], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 87/02, 91/13 and 23/20. Hereinafter referred to as: the Slovenian Property Code.

[849] Article 23 of the Slovenian Property Code.

[850] In the Slovenian-language text of the SloOC, this is referred to as *'zemljiškoknjižno dovolilo'*. See: Article 23 of the Slovenian Property Code.

[851] Article 49 Sec. (2) of the Slovenian Property Code.

statement by the person whose right is being transferred, modified, encumbered, or terminated, authorising the entry in the land registry.[852]

The *zemljiškoknjižno dovolilo* could be contained in the contract itself or in a separate document, but in the latter case it must be attached to the land registry permission.[853] Although the land registry permission may be incorporated into the underlying contract for the transfer of ownership rights over immovable property, Slovenian legal doctrine considers it as a separate dispositive legal act.[854] Nevertheless, in practise, both legal acts are usually enshrined in the same document.[855]

As already established, contracts are free of form in principle, but contracts for the conveyance of ownership rights constitute an exception, with the requirement of mandatory written form. An even stricter requirement of formality applies to the land registry permit, as, according to the relevant rule, the transferor's signature must be certified.[856] However, when the land registry permission is drawn up as a notarial deed, the formal requirements are considered to have been met.[857]

Although the SloOC foresees stricter requirements regarding the form of contracts for the transfer of ownership rights over immovable property, it also provides for a curing mechanism for cases in which statutory form is not observed, but the contracting parties have fulfilled their mutual obligations arising from the underlying contract. This mechanism is performance-based convalidation, or, as it is referred to in Slovenian legal doctrine and judicial practise, the theory of realisation.[858]

Therefore, according to the provisions of the SloOC, it is possible to apply performance-based convalidation to formally deficient contracts for the conveyance of ownership of real property. Although the Obligations Code prescribes a written form, it also stipulates in the general rules that contracts not concluded in such form can be declared valid by convalidation.

The concept of performance in these cases should be understood as the performance of obligations stemming from the obligations-law effects of the

[852] Toplak Bohinc, 2016, p. 8.
[853] Article 36, Sec. 1 of the Land Registries Act in conjunction with Article 49 of the Slovenian Property Code.
[854] Toplak Bohinc, 2016, p. 8.
[855] *Ibid.*
[856] Article 23 Sentence 2 of the Slovenian Property Code; Article 41 Sec. (1) of the Land Registries Act. See also: Toplak Bohinc, 2016, p. 8.
[857] Article 41 of the Land Registries Act.
[858] In this regard, see subchapter: 4.4.6. Slovenia.

respective contract.[859] Thus, it refers to a factual situation in which the contracting parties have performed their respective obligations and have conducted themselves in a manner which demonstrated that they have realised their obligatory relationship.[860]

However, convalidation remedies the formally deficient contract only at the obligations-law level; thus, through the theory of realisation, the transfer of ownership does not yet occur. Since Slovenian law differentiates between the obligations-law and property-law effects of the contract, the transfer of ownership remains subject to entry in the land registry, which also requires specific formality, that is, the existence of a valid *zemljiškoknjižno dovolilo*. However, once the court declares a formally deficient contract valid, it may at the same time order the *zemljiškoknjižno dovolilo* to be issued enabling the subsequent registration of ownership in the land registry.[861]

Accordingly, Slovenian law foresees the institute of performance-based convalidation, although it refers to it as the theory of realisation even in the scope of contracts for the conveyance of ownership rights over immovable property. However, this curative mechanism is limited by the purpose of the existence of statutory formal requirements. Namely, there are interests of greater significance that do not allow the application of convalidation. This is the case with contracts for the transfer of ownership over agricultural land.

The Slovenian legal system places the sale of agricultural land within strict public law restrictions, which are regulated by the provisions of the Agricultural Land Act[862]. The restriction manifests in the provisions that foresee the sale of agricultural land, forest, and farm is carried out within the framework of a formalised procedure subject to official control.[863] Accordingly, the seller is obliged to submit their intention to sell to the competent administrative body of the territory where the property is located, which publishes the offer publicly, thus ensuring the possibility of participation for potential buyers.[864]

---

[859] Case no. ECLI:SI:VSRS:1999:II.IPS.22.99 of the Supreme Court of Slovenia.
[860] *Ibid.*
[861] Case no. ECLI:SI:VSLJ:2017:I.CP.508.2017 of the Higher Court in Ljubljana.
[862] Zakon o kmetijskih zemljište [Agricultural Land Act] as amended by Zakon o spremembah in dopolnitvah Zakona o kmetijskih zemljiščih – ZKZ-H (Uradni list RS, št. 100/25 z dne 4. 12. 2025) [Act amending and supplementing the Agricultural Land Act – ZKZ-H (Official Gazette of the Republic of Slovenia, No. 100/25 of 4 December 2025)]. Hereinafter referred to as: the Agricultural Land Act Slo.
[863] Art. 20 of the Agricultural Land Act Slo.
[864] Art. 20 Para. 1 of the Agricultural Land Act Slo.

Although the acceptance of the offer results in the conclusion of a contract between the parties, this legal transaction is effective only subject to a suspensive condition, since its final validity depends on official approval.[865] During the approval, the administrative body examines whether the procedure has met the requirements set out in the law, especially the observance of the order of pre-emptive rights specified in the Agricultural Land Act.[866]

If the prescribed procedural rules, including the public offer, the acceptance mechanism, and the exercise of pre-emptive rights, are not observed, the legal transaction cannot be approved by the authorities. As a result, the contract is declared null and void and is not suitable as a legal title for the transfer of ownership.[867] Consequently, in the case of transactions concerning agricultural land, the validity of the contract depends not only on private law conditions but also on the fulfilment of public law requirements.

This regulatory structure has a direct impact on the possibility of convalidating contracts with formal defects. While Slovenian contract law allows the remedy of formal defects in certain cases based on the theory of realisation, in the event of a violation of the mandatory administrative procedure prescribed by the Agricultural Land Act, the invalidity of the contract is considered to protect the public interest, and performance cannot remedy it. Therefore, the theory of realisation cannot be applied in these cases, which clearly demonstrates the different regulatory methods of property transfer if it aims to protect private or public law interests.

5.7. Croatia

As already concluded in the subchapter pertaining to the general framework of convalidation, the Croatian legal system rests on the foundational principles of freedom of form and consensualism. However, the law foresees statutory exceptions to them. Contracts for the transfer of ownership rights over immovable property constitute such exceptions. Namely, Article 377 of the CroOA expressly stipulates that a contract for the sale of real property must be concluded in writing.[868] According to

[865] Art. 23 Para 4 of the Agricultural Land Act Slo.
[866] Art. 22 Para 2 in conjunction with Art. 23 of the Agricultural Land Act Slo.
[867] Decision of the Supreme Court of Slovenia ECLI:SI:VSRS:2013:II.IPS.791.2009, Registration number: VS0015920, 21 February 2008. Available at: https://sodnapraksa.si. [Accessed 18 March 2026].
[868] Article 377 CroOA.

Croatian legal literature, the statutory written form is closely connected with the land registration system, since the transfer of ownership over immovable property is carried out through entry in the land registry. Therefore, legal scholarship considers this connection one of the reasons for prescribing mandatory written form.[869]

The aforementioned provision does not refer to another statute, nor does it foresee the sanction for not adhering to the rule established by it or the possibility of the application of performance-based convalidation. Thus, *in lieu* of a specific regulation, Article 290 of the CroOA applies, which foresees the legal consequences of not adhering to the provisions stipulating mandatory form. Accordingly, a contract not concluded in the prescribed form is not able to give rise to legal effects, unless otherwise follows from the purpose of the regulation that determines the form.[870] Therefore, the mandatory form constitutes a condition for the validity of such contracts.[871]

Once a contract is validly concluded, it gives rise to obligations-law effects, i.e., it establishes reciprocal rights and obligations between the contracting parties. However, similarly to the previously analysed legal systems with a constitutive effect of entry in the land registry, the obligations-law effects should be distinguished from the property-law effects of the contract. That is, the seller assumes the obligation to transfer ownership, and the buyer undertakes to pay the purchase price, but, with the performance of these obligations alone, ownership is not transferred.

Acquisition of ownership rights over immovable property is regulated by the provisions of the Property and Other Real Rights Act. When it comes to the acquisition of *in rem* rights, Croatian property law follows the "traditional principle", thus requiring a valid legal title and the mode of acquisition provided for by law. [872]

[869] Nikšić, 2022, p. 325 and fn. 110.
[870] Article 290 of the CroOA.
[871] Article 115 Sec. (3) of Zakon o vlasništvu i drugim stvarnim pravima [Property and Other Real Rights Act], Narodne novine Republike Hrvatske [National Gazette of the Republic of Croatia], No. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 15 2/14, 81/15, 94/17. Hereinafter referred to as: CroProperty Act. See also: Klarić and Vedriš, 2014, p. 150.
[872] Gavella et al., cited in Babić, M. (2017). 'Zemljišno-knjižni upis kao preduvjet za promet nekretnina i investicijska ulaganja' [Land Registry Entry as the Condition for Real Estate Transactions and Investments], *Acta Economica Et Turistica*, 3(2), pp. 161–181. https://doi.org/10.1515/aet-2017-0016, p. 172.

Accordingly, a valid contract constitutes the *iustus titulus,* while ownership is acquired upon registration in the land registry.[873]

The letter of the law provides that the ownership of real property is acquired through registration in the land registry.[874] At the same time, the provision foresees that the legal title on the basis of which the transfer of ownership rights shall be carried out, regarding its form and content, has to adhere to statutory rules governing the land registry regime.[875] The referred rules are enshrined in the Land Registry Act[876]. The relevant provision of the Land Registry Act stipulates that registration will be allowed only based on public documents or private documents on which the authenticity of the signatures of the parties is certified in the manner prescribed by *lex specialis*.[877]

In this case, the piece of legislation referred to as *lex specialis* is the Act on Public Notaries, which requires a stricter form: a notarial deed for the transfer of real property in explicitly foreseen cases. Therefore, the form of notarial deed as a condition for the validity of the respective juridical act is required for contracts on the disposal of property of minors or persons deprived of legal capacity, contracts on donation without delivery of the object of donation into the immediate possession of the donee, and all *inter vivos* juridical acts personally undertaken by deaf people who cannot read or mute people who cannot write. In these cases, an additional requirement is provided for regarding a threshold of the value of the contract (greater than HRK 50,000[878]).[879] In cases where this provision is applied to contracts on the sale of real property, the form of notarial deed is required[880] while, in other cases, Article 57 of the Land Registry Act is applicable, i.e., the notarisation of the signatures of the parties suffices.[881]

---

[873] Babić, 2017, p. 174. Regarding the entry in the land registry, see also: Klarić and Vedriš, 2014, p. 304.
[874] Article 120 Sec. (1) of the CroProperty Act.
[875] Article 120 Sec. (2) of the CroProperty Act.
[876] Zakon o zemljišnim knjigama [Land Registries Act], Narodne novine Republike Hrvatske [National Gazette of the Republic of Croatia], No. 63/19, 128/22, 155/23, 127/24. Hereinafter referred to as: the Land Registries Act.
[877] Art. 57, Sec. 1. Zakon o zemljišnim knjigama [Land Registries Act].
[878] As of 1 January 2024, Croatia changed its currency from HRK to Euros; however, the legislation does not seem to have amended the rule accordingly. The value of the amount expressed in HRK corresponds to approximately 6,636 EUR at the time of the research.
[879] See: Ernst, H. and Josipović, T. (2009). 'Javni bilježnici i javni registri' [Notaries Public and Public Registers], *Zbornik Pravnog fakulteta u Zagrebu,* 59(6), pp. 1117–1152, p. 1120.
[880] Dudás and Szitás, 2024, p. 1009.
[881] *Ibid.*

Based on the aforementioned, it can be observed that the acquisition of ownership becomes effective *erga omnes* upon registration in the land registry[882] which establishes additional formal requirements for the juridical act subject to registration.

In this context, the question legitimately arises whether a formally deficient contract for the conveyance of ownership rights over immovable property may be remedied through performance-based convalidation. Available legal literature shows that the Croatian legal system, like most modern legal systems, sanctions the violation of the formal requirements prescribed by law with nullity (*ništetnost*), following the tradition of Roman law.[883] However, the literature reports that the question has arisen as to what justifies the application of nullity instead of voidability in contemporary law, in which the contractual form no longer has the same significance as in Roman law.[884] Although most modern legal systems still sanction formal errors with the strictest penalties, there is a tendency to mitigate the harsh consequences of nullity by allowing the application of convalidation of legal transactions lacking formality under certain conditions.[885] However, this is an exceptional solution, since null and void legal transactions, as a rule, cannot be convalidated.[886]

Null and void contracts are generally considered incurable, since the law, following the Roman law principle of *regula Catoniana*, stipulates that a contract sanctioned with nullity does not become valid when the cause of its invalidity subsequently ceases.[887]

However, contracts for the conveyance of ownership rights over immovable property are an exception to this rule.[888] Therefore, the provisions pertaining to convalidation, as discussed in the subchapter about the general framework of convalidation in Croatia, are applicable to formally deficient contracts for the transfer of ownership rights over immovables.

Thus, to recapitulate, Article 377 of the CroOA prescribes a mandatory written form and, if it is not observed, Article 322 in conjunction with Article 290 of the

[882] Ernst, H., and Josipović, T. (2024). 'Functions of Land Registration Entries and the Protection of Personal Data', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 45(1), pp. 46-46. https://doi.org/10.30925/zpfsr.45.1.2, pp. 23-24.
[883] Nikšić, 2022, p. 306.
[884] *Ibid.*
[885] *Ibid.*
[886] *Ibid.*
[887] Article 326 of the CroOA. See also: Klarić and Vedriš, 2014, p. 178.
[888] Gorenc in Gorenc, 2014, p. 455.

CroOA renders the contract null and void. However, Article 294 of the CroOA foresees the possibility of remedying it through performance-based convalidation under two conditions: if obligations stemming from the contract are fully or in preponderant part performed and the purpose for which the form is prescribed does not imply otherwise. The same observation made in the subchapter concerning the general framework of convalidation applies here as well. The two conditions of convalidation are assessed on a case-by-case basis, so there is no generally accepted threshold for performance in preponderant part, as there is none for the assessment of the purpose of the mandatory written form.[889]

In this context and given the constitutive nature of entry in the land registry, performance should be understood as the realisation of mutual obligations arising from the agreement of the contracting parties at the obligations-law level (the seller undertakes to hand over possession to the buyer, and the buyer undertakes to pay the purchase price)[890]. Accordingly, performance-based convalidation applies in connection with the obligations-law effects of the contractual relationship, rather than the property-law effects. Therefore, it can be observed that registration in the land registry does not constitute an element of performance under Article 294 of the CroOA.

Accordingly, convalidation under statutory conditions remedies the formally deficient contract at the obligations-law level, while the acquisition of ownership is still subject to the relevant property-law regulations. Thus, the question arises whether ownership acquisition is possible based on a convalidated formally deficient contract. Although the Land Registry Act prescribes a formal requirement for such contracts (the certification of the signature of the parties)[891] as a condition for registering the ownership of the buyer in the land registry, a positive conclusion can be drawn in connection with the possibility of aquiring ownership based on a convalidated act.[892] Therefore, if a contract sanctioned with nullity has been remedied by convalidation based on a court decision in accordance with the provisions of the CroOA, consequently it would produce legal effect.[893]

[889] Gorenc in Gorenc, 2014, pp. 455-456.
[890] Article 376 of the CroOA; See also: Case no. Gž-1343/2017-2 of the County Court in Rijeka from 27 September 2017.
[891] Ernst and Josipović, 2009, p. 1122.
[892] Dudás and Szitás, 2024, p. 1009.
[893] Jelušić, 2018, p. 31.

However, the question remains what constitutes the *iustus titulus* when performance-based convalidation occurs. The answer lies in the judgment of the County Court of Zagreb no. Gž-5638/2024-2 from 28 January 2025[894]. The state of affairs of the case was based on an oral agreement between the parties regarding the sale and purchase of an ownership share. The buyers fulfilled their obligations arising from the agreement and paid the purchase price, set at 25,000 German marks, in full, and subsequently took possession after the sellers moved out. The second-instance court found that the oral purchase and sale contract was performed fully, or at least in its preponderant part, and therefore, despite the formal defect, it was capable of producing legal effects.

Accordingly, the court upheld the first-instance judgment, which found that the plaintiff had obtained a valid legal title for acquiring ownership and obliged the sellers to issue a tabular instrument suitable for registration. The judgment also stated that, in the event of failure to issue the tabular document, it would be replaced by the final judgment itself, and the defendants would be obliged to tolerate the registration of the plaintiff's ownership right in the land registry.

Therefore, based on the decision, it can be observed that a contract convalidated as a result of performance does not directly convey the ownership rights over the property in question, but it does, however, create a valid title on the basis of which ownership could be acquired. Based on this legal title, the buyer may demand the issuance of the tabular instrument necessary for registration, which may be replaced by the court judgment in the event of the seller's refusal. The acquisition of ownership is then completed by the registration in the land registry.

To conclude, it could be observed that, in Croatian contract law, convalidation, similar to Slovenia, is applicable to formally deficient real estate contracts, whereby contracting parties remedy their otherwise invalid contract due to formal defects through performance of their reciprocal obligations stemming from the obligations-law effects of the contract. However, although convalidated, such contracts do not convey ownership upon convalidation. This requires the issuance of a specific tabular document, which the buyer could request from the seller. However, if the seller does not comply, a final court decision could replace the requested document and act as the title, based on which the *modus acquirendi* is carried out.

[894] Case no. Gž-5638/2024-2 of the County Court of Zagreb from 28 January 2025.

Subsequently, the remaining legal system, Serbia, will be the focus of analysis following a structurally similar assessment.

5.8. Serbia

As already observed, Serbian contract law is based on the principles of freedom of form and consensualism. However, there are cases in which the legislator made an exception to these principles and prescribed a form *ad solemnitatem* for certain legal transactions. The failure to meet the formal requirement in these cases generally results in the nullity of the contract, since the form *ad solemnitatem* is prescribed for the protection of both public and private interests.[895]

In Serbian law, contracts for the transfer of ownership rights over immovable property constitute an example, as the law prescribes the form *ad solemnitatem* for their validity.

The relevant provisions governing the aforementioned formal requirements are enshrined in the SrbOA as *lex generalis* and in the Act on the Conveyance of Real Property as *lex specialis*. The former applies to all contracts in general, including those for the conveyance of ownership of real property to which a separate article in the SrbOA is dedicated. Namely, Article 455 of the SrbOA stipulates that a contract for the sale of real property must be concluded in the form prescribed by a special statute, under the sanction of nullity.[896]

This provision is applicable since the amendments to the SrbOA in 2020. Before the enactment of the aforementioned amendments, the Obligations Act specified that a contract on the sale of real property should be concluded in simple written form under the threat of absolute nullity.[897] The Draft Law on Amendments to the Obligations Act from 2020 provides an explanation of this change. After the Law on Obligations entered into force, special laws on the transfer of real estate were passed, which stipulated that every contract for the transfer of real estate must be concluded in a stricter form, whether it is in the form of a signature certified in court or in the form of a notarised (solemnised) document. These amendments were made in order to achieve

[895] Đorđević, 1995, p. 426.
[896] Article 455 of the SrbOA.
[897] Predlog zakona o izmenama i dopuni Zakona o obligacionim odnosima – Obrazloženje [Draft Law on Amendments to the Obligations Act – Explanatory Memorandum from 22 November 2019 of the Government of the Republic of Serbia, published in the Official Gazette of the Republic of Serbia no. 18/20. Hereinafter referred to as: Draft LawOA.

greater legal certainty in the important economic and social area of real estate transactions, while the prescribed simple written form of real estate contracts remained unchanged under Article 455 of the SrbOA.[898] According to the explanatory memorandum, this created a problem of a derogatory conflict of laws in practice, which was resolved by applying the principle *lex posterior derogat lege priori*. However, by amending Article 455 of the SrbOA as currently applicable, it was harmonised with the special laws regulating the form of contracts for real estate transactions. This amendment also avoided the need to revise its provisions every time the laws regulating real estate transactions or notary activities are changed.[899] Consequently, the SrbOA has not adopted the norms from the applicable Act on the Conveyance of Real Property[900], or the Notaries Act Srb of 2011[901], but rather the form of a contract for the sale of immovable property is regulated by referring to special laws that regulate the form of legal transactions involving the sale of immovable property.[902]

According to the currently applicable SrbOA, Article 455 refers to Article 4 of the Srb Property Transfer Act of 2014, which stipulates that the contract on the conveyance of real property must be confirmed by the notary public (solemnised).[903][904,905] Therefore, in order for such contracts to be validly concluded,

---

[898] *Ibid.*
[899] *Ibid.*
[900] Zakon o prometu nepokretnosti [Act on the Conveyance of Real Property], Službeni glasnik RS, No. 93/2014, 121/2014 and 6/2015. Hereinafter referred to as: Srb Property Transfer Act of 2014.
[901] Zakon o javnom beležništvu [Act on Notaries Public], Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 31/2011, 85/2012, 19/2013, 55/2014 – other statute, 93/2014 – other statute, 121/2014, 6/2015 and 106/2015 and 94/2024. Hereinafter referred to as: the Notaries Act Srb of 2011.
[902] Draft LawOA.
[903] Article 4 Sec. 1 of the Srb Property Act of 2014; Article 93 Sec. 2 p. 1) of the Notaries Act Srb of 2011.
[904] Solemnisation or confirmation of the contract means that the parties draft the contract themselves (or an attorney at their mandate), the public notary reads it out to the parties, warns them of certain consequences of the conclusion of the contract, monitors the observance of mandatory rules, after which the parties sign the contract in the presence of the public notary. See: Dudás and Szitás, 2024, p. 1003; Article. 6, 93–93đ of the Notaries Act Srb of 2011.
[905] Initially, the Srb Property Act enacted in 2014 prescribed that a contract on the conveyance of ownership of real property must be concluded in the form of a notarial deed, i.e., when the notary public drafts the text of the contract according to the expectations and interests of the parties communicated to the notary or in simple written form, which was subject to solemnisation. However, the Draft Law of on Amendments to the Act on the Conveyance of Real Property – Explanatory Memorandum from 17 January 2015 of the Government of the Republic of Serbia, published in the Official Gazette of the Republic of Serbia no. 6/15 – stated that the need to make real estate transactions more efficient without compromising the level of legal certainty necessitated that contracts for the transfer of ownership rights over immovable property be concluded in the form of a notarised (solemnised) document. Thus, by the 2015 amendments to the Act, the formal requirement for contracts for the conveyance of ownership of real property has been relaxed from a notarial deed to solemnisation. See: Draft Law on Amendments to the Act on the Conveyance of Real Property – Explanatory Memorandum from 17 January 2015 of

the notary public has to solemnise the respective contract. Only then does the contract give rise to the intended contractual obligations. That is, the seller takes on the obligation to transfer ownership and deliver possession, while the buyer is obliged to pay the purchase price.[906]

Although the validly concluded contract gives rise to rights and obligations at the obligations-law level, it does not transfer ownership. Serbia belongs to the group of countries where ownership over immovable property is acquired based on a valid sales contract upon entry in the land registry.[907] Therefore, Serbia also provides for the constitutive effects of land registry entry, whereby the valid contract constitutes the *iustus titulus*, while registration is considered to be the *modus acquirendi*.[908] Consequently, the validly concluded sales contract gives rise to property-law effects *erga omnes* upon registration.

Taking into account the aforementioned, performance should be further clarified. It cannot be reduced merely to payment of the purchase price and delivery of possession, since performance of a contract for the transfer of ownership over immovable property necessarily also includes the conveyance of ownership itself. Consequently, a formally deficient real estate contract cannot serve as a valid legal basis for registration; thus, complete performance cannot occur.

This conclusion makes even more sense considering the current system of real estate registration procedures. According to the Act on the Procedure for Registration in the Real Estate Cadastre and the Infrastructure Cadastre[909], the notary is obliged to forward the solemnised contract to the real estate registry *ex officio*, electronically, within twenty-four hours of its authentication, for the purpose of registering the

---

the Government of the Republic of Serbia, published in the Official Gazette of the Republic of Serbia no. 6/15; Dudás Szitás, 2024, p. 1004.

[906] Article 454 of the SrbOA.

[907] Article 33 Zakon o osnovama svojinskopravnih odnosa [Basic Property Relations Act] ("Sl. list SFRJ", br. 6/80 i 36/90, "Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br. 115/2005 - dr. zakon) [Official Gazette of the SFRY, Nos. 6/80 and 36/90; Official Gazette of the FRY, No. 29/96; Official Gazette of the RS, No. 115/2005 – other law]. Hereinafter referred to as: Srb Property Law Act. See also: Cvetić, R.M. (2015) 'A Reach of the Principle of Entry and the Principle of Reliability in the Real Estate Cadastre in our Court Practice', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 49(3), pp. 1017–1036, p. 1021.

[908] Stanković, O. and Orlić M. (1999) *Stvarno pravo* [Property Law], Beograd: Nomos, pp. 64-65. See also: Cvetić, 2015, p. 1021.

[909] Zakon o postupku upisa u katastar nepokretnosti i katastar infrastrukture [Act on the Procedure for Registration in the Real Estate Cadastre and the Infrastructure Cadastre] ("Sl. glasnik RS", br. 41/2018, 95/2018, 31/2019, 15/2020 i 92/2023) [*Official Gazette of the Republic of Serbia*, Nos. 41/2018, 95/2018, 31/2019, 15/2020 and 92/2023].

contract.[910] As a result, the registration procedure begins automatically after the conclusion of the contract[911], i.e., the parties do not have to separately contact the land registry office in order to register the ownership right. This significantly narrows the situations in which the parties perform the contract while the registration of the ownership right is delayed for a longer period of time. As a result, the practical significance of performance-based convalidation also decreases.

As to the possibility of convalidation of formally deficient contracts for the conveyance of ownership of real estate, it can be observed that even though the SrbOA foresees it generally, the *lex specialis,* i.e., the effective Srb Property Transfer Act of 2014, does not provide for the possibility of the convalidation of a contract for the conveyance of ownership of real property not concluded in the form prescribed by statute, though it does not explicitly forbid convalidation either. One possible interpretation of this provision would be that by abolishing the special rules on the convalidation of a form-defective contract for the conveyance of ownership of real property, the prohibition itself has been abolished. Hence, such a contract could be convalidated on the grounds and under the conditions specified in the general rules on convalidation of the SrbOA.[912] Another interpretation could be that the aim of the legislature was to abolish not only the special rules on convalidation, but also to exclude the possibility of the convalidation of form-defective contracts for the conveyance of ownership of real property altogether.[913] Legal scholarship seems to take the standpoint that these rules, without referring to convalidation, express the intent of the legislator to exclude the possibility of convalidation of form-defective contracts for the conveyance of ownership of real property.[914]

Furthermore, since performance-based convalidation in Serbian law is possible only in relation to the requirement of simple written form, contracts for which a stricter form of written instrument is prescribed would certainly not meet the conditions for convalidation.[915] According to available legal literature, the fact that these changes

[910] Article 22-23 of the Act on the Procedure for Registration in the Real Estate Cadastre and the Infrastructure Cadastre.
[911] Article 24 of the Act on the Procedure for Registration in the Real Estate Cadastre and the Infrastructure Cadastre.
[912] Dudás and Szitás, 2024, p. 1006.
[913] *Ibid.*
[914] Dolović Bojić, 2021, p. 213.
[915] Višnjić, I. (2025) 'Posledice nedostatka forme ugovora u evropskom pravu i pravima evropskih zemalja [The Consequences of the Lack of Form in European Law and the Laws of European Countries]', *Revija za evropsko pravo*, 27, pp. 33–53. https://doi.org/10.56461/rep270125.02.V, p. 44.

were made at the same time as the notarial forms of contracts were introduced indicates a logical connection, i.e., the intention of the legislator to eliminate the possibility of valid conclusion of contracts where the participation of a notary as a holder of public authority is mandated by statutory provisions.[916]

Although the current state of legal doctrine holds that convalidation of formally deficient contracts for the conveyance of immovable property is not possible, the Supreme Court of Cassation of Serbia, in its legal position adopted at the session of its Civil Department held on 2 November 2018,[917] affirmed the continued relevance of performance-based convalidation.[918] The Court stated that the Srb Property Transfer Act of 2014, in its transitional and final provisions, does not prescribe retroactive effect, nor does it prohibit the convalidation of contracts for the transfer of ownership over immovable property concluded during the applicability of earlier statutes and performed entirely or in preponderant part. This means that the validity of a contract and all legal relationships arising from it are evaluated according to the rules in force at the time of the conclusion of the respective contract; thus, the conditions for convalidation are assessed according to the same rules. The Court consequently took the standpoint that a contract on the conveyance of ownership of real property may be convalidated if the other conditions for convalidation prescribed by the law in force at the time of the conclusion of the formally deficient contract had been met. This argumentation supports that the courts construe the rules of the 2014 Act as prohibiting the convalidation of a form-defective contract for the conveyance of ownership of real property.[919]

Recently, in the Serbian legal system, a new legal institute has been established, which is also referred to as convalidation, more precisely "targeted convalidation". However, it appears to operate primarily within the framework of registration in the land registry rather than contract law. Therefore, it is assessed separately in the following subchapter.

---

[916] Miščević, N. (2022) *Javnobeležnička forma obligacionih ugovora [The Notarial Form of Contracts in the Law of Obligations]*. PhD thesis. University of Novi Sad, Faculty of Law, p. 319. See also: Višnjić, 2025, p. 44.
[917] Legal position adopted at the session of the Civil Department of the Supreme Court of Cassation of Serbia held on November 2, 2018. https://www.vk.sud.rs/sr/2018 (accessed on 19 July 2026).
[918] Dolović Bojić, 2021, p. 213.
[919] Dudás and Szitás, 2024, p. 1006.

5.8.1. Targeted Convalidation in Land Registry Law (2026 Reform)

A significant recent development was introduced to Serbian property law by the entry into force of the Act on Amendments to the Act on State Survey and Cadastre[920], applicable since 1 January 2026. The change introduced a system referred to as "targeted convalidation" (*ciljana konvalidacija*)[921], allowing the registration of certain rights previously denied on the basis of formal deficiencies related to historical documents.

However, this reform is to be distinguished from the traditional doctrine of convalidation developed under the 1978 Obligations Act and the former Land Transfer Act. While traditional convalidation addressed the validity of a contract that lacked prescribed form, the 2026 reform is a matter of land registration law. It does not aim at the elimination of nullity in the strict civil law sense, nor does it have the effect of retroactively validating form-defective contracts. Rather, it sets up a procedurally structured administrative process by which certain long-standing factual property cases are to be regularised in the cadastral system.

The reform mainly affects historical documentation prior to certain dates, which may include contracts without a clear *clausula intabulandi*, mortgages older than thirty years without permission for deletion, discrepancies between contract and cadastre descriptions, lack of permits for older constructions, or judicial and administrative decisions without a finality clause.[922] In these cases, registration may be allowed, subject to administrative control by the Republic Geodetic Authority, through a digitalised procedure aimed at facilitating access and institutional control.

From a doctrinal standpoint, targeted convalidation represents a shift in corrective mechanisms. As already concluded, under the applicable Srb Property Transfer Act of 2014, performance-based convalidation of form-defective contracts has been excluded. The 2026 reform, however, acknowledges that maintaining

---

[920] Zakon o izmenama i dopunama Zakona o državnom premeru i katastru [Act on Amendments and Supplements to the Law on State Survey and Cadastre], Official Gazette of the Republic of Serbia, No. 91/2025.

[921] Ciljana konvalidacija – Lakše do upisa sa starim ispravama. Available at: https://www.rgz.gov.rs/ciljana-konvalidacija---lakše-do-upisa-sa-starim-ispravama (Accessed: 23 February 2026).

[922] Art. 88b Zakon o državnom premeru i katastru [Law on State Survey and Cadastre], Official Gazette of the Republic of Serbia, Nos. 72/2009, 18/2010, 65/2013, 15/2015 (Constitutional Court Decision), 96/2015, 47/2017 (authentic interpretation), 113/2017, 27/2018, 41/2018, 9/2020, 92/2023 and 91/2025. Hereinafter referred to as: the Serbian Cadastre Act.

historical formal defects and not allowing registration based on them no longer necessarily serves legal certainty.

This development is of significant importance. Targeted convalidation does not deny the existence of the initial defect in form but acknowledges that the reason for the form requirement, such as publicity, legal certainty, and the protection of third parties, after such a long period of time may not be a priority, especially where no competing interests are present.

Targeted convalidation does not eliminate the structural difference between the binding and the real effect of a contract. In Serbia, the acquisition of property continues to require constitutive registration. The reform does not allow for informal property transfers in future transactions, nor does it weaken the mandatory nature of the solemnised form for contracts for the transfer of ownership rights. The amendment seems to be of a temporary and corrective nature.

The Serbian legislature refers to this mechanism as "targeted convalidation", but it should be examined more closely whether it constitutes convalidation in the classical sense, as assessed in this research. From the perspective of contract law, the cure for formal defects in real estate transfer contracts remains limited under the regulations in force. However, concerning the land registry, the 2026 reform introduces a new corrective mechanism in order to bring cadastral registration into line with existing facts.

The essence of traditional convalidation, as it is studied in this research, is that an initially null and void contract – due to the occurrence of subsequent events – becomes valid. However, Serbian targeted convalidation does not eliminate the original formal defect, remedying its validity at the obligations-law level. It rather allows the registration of such defective contracts under specific historical and procedural conditions.

In this respect, the mechanism can be more accurately described as administrative regularisation than as convalidation in the sense in which it is considered in this research. The contract itself does not subsequently become valid; instead, the cadastral authority is empowered to accept the registration of certain rights.

However, this difference should not be exaggerated. From a functional point of view, the effect of targeted convalidation can be very similar to that of classical convalidation. Following registration, the economic and legal situation of the parties

is stabilised, and a *de facto* state that has existed for a longer period is formally recognised.

The reform raises the question of whether, despite its aim of resolving long-standing *de facto* situations and increasing the reliability of the land registry, registrations based on documents with historical formal deficiencies are in fact an effective way of addressing them. Since the subject of targeted convalidation is contracts dating back several decades, they require a carefully designed procedural process suitable for preventing abuse of rights and protecting the rights of third parties.

So far, the applicable legal regulatory framework has been presented. However, the practical significance of these rules only becomes fully apparent through judicial practice. The next section therefore analyses the relevant case law from the legal systems of the analysed countries.

6. Judicial Practice and Case Study Analysis

6.1. Methodology of Case Selection

The selection of judicial decisions for comparative analysis was based on a purposive strategy aimed at capturing the doctrinal reach and practical effects of convalidation and functionally equivalent mechanisms within civil law systems. Since the dissertation focuses on contracts involving the transfer of ownership of immovable property, the primary filtering factor was whether a given case addressed the legal consequences of non-compliance with statutory form requirements, particularly in situations where subsequent conduct of the parties, intervening circumstances, or (partial or full) performance raised questions of enforceability and legal effect despite the initial defect.

The comparative analysis was structured into two groups: first, the classical civil law codifications of continental Europe — Austria, France, Germany, Switzerland, and Italy — as foundational reference systems; and second, Central-Eastern European jurisdictions influenced by the aforementioned models, which are examined in the following chapters. For the purposes of this chapter, decisions of supreme or cassation courts were selected for France, Austria, Germany, Switzerland, and Italy, as these courts perform a central role in doctrinal clarification and, through their interpretative authority, shape the operative meaning of form requirements in private law.

In each jurisdiction, particular emphasis was placed on cases that directly addressed formal requirements under national civil codes (such as notarisation or written form), clarified the legal consequences of formal deficiencies, and offered reasoning relevant to the main research question of this dissertation, namely whether, and under what conditions, formally defective real estate contracts may nonetheless produce legal effects.

6.2. Decisions from France, Austria, Germany, Switzerland, and Italy

6.2.1. France

In the particular case of France, the doctrinal basis laid down in subchapter 3.1. is illustrated by two cases elaborated in the following.

Case no. ECLI:FR:CCASS:2018:C101227[923] of the first Civil Chamber of the Court of Cassation concerned the attempted sale of a property donated in 1982 with a *clause d'inaliénabilité* (inalienability clause), which prevented the donee from selling or mortgaging the property without the donors' consent. After the donee went bankrupt in 2010, the court-appointed liquidator sought to sell the property. The donors formally waived the inalienability clause in the form of a notarial deed, but this waiver was not registered in the land registry.

The Court of Appeal rejected the liquidator's request, holding that the clause remained effective and enforceable, as the waiver had not been made opposable through proper publication (because of the omission of registration). The court also stated that only the donee could ask the court for permission to remove the inalienability clause under Article 900-1 of the Civil Code, and that the liquidator was not entitled to act in her place.

The Court of Cassation overturned the decision, pointing out that the liquidator had not requested judicial authorisation but had acted on the basis of the donors' voluntary waiver. The Court held that the waiver, since it was made in an authentic notarial deed, was substantively valid. The lack of registration affected only its enforceability against third parties, not its legal effect between the parties.

[923] Case no. ECLI:FR:CCASS:2018:C101227 of the 1st Civil Chamber of the Court of Cassation from 19 December 2018.

The decision reaffirmed the principle provided for by Article 710-1 of the French Civil Code, which foresees that rights relating to immovable property have to be registered in the form of an authentic notarial deed in the land registry in order to be opposable to third parties.

This case illustrates a critical distinction in French property law: a formal defect does not necessarily invalidate a juridical act. Thus, under Article 710-1, the act remains valid and binding between the parties, even if not enforceable against third parties.

A similar issue arose in the other analysed judicial decision. Namely, in case no. ECLI:FR:CCASS:2018:C100958[924], the Court of Cassation examined the validity of a private agreement (*acte sous seing privé*) signed between two former cohabitants regarding jointly owned real estate.

The agreement transferred full ownership of several properties, valued between €214,000 and €227,000, to Mr X, while Ms Y received only €6,000. She later challenged the agreement, claiming she had made a fundamental mistake regarding her ownership rights.

The Court of Appeal annulled the agreement, holding that such a large discrepancy indicated an error concerning not only the value, but also the existence of Ms Y's rights. The court stressed that the agreement was not concluded in authentic form, had not been registered, and was therefore not enforceable against third parties under Article 710-1 of the Civil Code.

However, the Court of Cassation overturned this decision. It held that an error leading to annulment under Article 887 must relate to a mistake about legal rights or ownership shares and cannot be based solely on an imbalance in value. The Court explained that although the agreement lacked the required form and registration, these defects alone were not sufficient grounds for annulment without proof of a legal error.

This decision also confirms the distinction in French real estate law between validity and opposability. Under Article 710-1, an act concerning immovable property that is not made in authentic form or not published may not be enforceable against third parties, but it remains valid between the parties.

These judicial decisions support the preliminary conclusions mentioned above: formally defective real estate agreements may still be valid in their substantive part

[924] Case no. ECLI:FR:CCASS:2018:C100958 of the 1st Civil Chamber of the Court of Cassation from 17 October 2018.

between contracting parties, and formal requirements primarily affect the possibility of making them public by registering in the land registry and, that way, acquiring opposability. This doctrinal foundation and its judicial reinforcement show the existence of the European tendency which prioritises contractual validity when possible, as opposed to declaring it absolutely null and void when deficiencies occur.[925]

6.2.2. Austria

In case no. 5 Ob 266/99z[926], the Austrian Supreme Court decided on a gift of real property offered in the form of a notarial deed but accepted without the observance of authentic form. The Court emphasised that the formal requirement serves to protect the donor by ensuring they carefully consider the decision before disposing of their real property without receiving anything in return. This requirement of protection is fulfilled if the donor's promise is in the statutory form; notarisation of the donee's acceptance is, however, unnecessary. Non-formal acceptance does not invalidate the promise but merely postpones enforceability pending delivery or registration.

Additionally, in case no. 5 Ob 82/05b[927], the Austrian Supreme Court emphasised that both proper delivery and registration in the land registry are required for enforcement. In that case, the donation contract of a part of immovable property lacked explicit evidence of delivery. *Ex post* confirmations by the donees and an administrator of the property were considered insufficient. The Court held the declaration of delivery by the donor essential in order to achieve the protective purpose of § 943 ABGB. The non-documentation of delivery constitutes an obstacle to registration and enforcement but does not automatically render the contract invalid.

This approach differs from the notion of convalidation specified in this research. In this sense, convalidation occurs when an initially null and void juridical act becomes valid upon the occurrence of a subsequent event. Under Austrian donation rules, however, the contract does not seem invalid from the outset. It simply lacks enforceability until the donor delivers the gift or the donor complies with the required

[925] For more on the topic, see: Hellwege, P. (2012) 'Invalidity', in Basedow, J., Hopt, K.J. and Zimmermann, R. (eds.) *Max Planck Encyclopedia of European Private Law*. Oxford: Oxford University Press, p. 993.
[926] Case no. 5 Ob 266/99z of the Austrian Supreme Court from 20 October 1999.
[927] Case no. 5 Ob 82/05b of the Austrian Supreme Court from 21 June 2005.

formality. Subsequent delivery does not retroactively heal invalidity but rather seems to create the procedural condition for enforcement.

Regarding the form of contracts for the conveyance of ownership in real estate, case no. 5 Ob 91/13p[928] should be analysed. In this case, the Austrian Supreme Court clarified the rigidity of the '*Eintragungsgrundsatz*' within Austrian property law. The dispute began when an owner's association filed a claim for unpaid condominium fees against a transferee who claimed to have acquired the late co-owner's apartment share in accordance with a transfer agreement signed only hours before the former died. The transferee asserted that she was already owner '*außerbücherlich*' (outside the land registry) pursuant to this contract and thus liable for property-related charges.

The Supreme Court rejected this understanding, holding that Austrian law does not recognise *'außerbücherliches Eigentum'* (unregistered ownership). It is only the person registered in the land registry, or the person entered simultaneously or pre-noted, who may be the subject of entries such as annotations of claims. Therefore, a mere contractual transfer with delivery cannot effectuate a transfer of ownership of immovable property. It only constitutes a valid legal title, which, if not registered, remains unenforceable at the level of real estate rights.

The Court restated its established case law that only three situations support exceptions to the registration principle: compulsory auction transfer of ownership, universal succession by way of merger of legal persons, and acquisition by heirs. In all other cases, including private *inter vivos* conveyances, entry in the land registry is necessary for acquisition of ownership.

The Court thus clearly rejected the presumption that delivery or possession would substitute for registration in real property transfers.

This judgment also illustrates the publicity and protective function of the land registry. It ensures that third parties can acquire ownership reliably and prevents secret transfers of real rights from taking place. By withholding legal effect from unregistered ownership, the Court protected legal certainty and harmonised Austrian practice with the rule that formality and registration are substantive conditions for constitutive ownership acquisition.

[928] Case no. 5 Ob 91/13p of the Austrian Supreme Court from 6 July 2012.

6.2.3. Germany

Case No. V ZR 178/03[929] from 8 October 2004 of the German Federal Court of Justice is particularly significant insofar it addressed the necessary connection between a formally deficient contract and statutory cure linked to the completion of the transfer of ownership in order for *Heilung* to occure based on § 311b(1) sentence 2 BGB.

The plaintiff was the owner of a plot of land measuring approximately 8,300 m², while the defendant intended to acquire part of the respective property. The plaintiff therefore made him two purchase offers recorded in the form of a notarial deed for a total of DM[930] 4.6 million.

The acceptance periods were extended twice by means of declarations certified by notary. However, prior to this, the defendant had assumed additional payment obligations based on two simple private documents based on which he paid DM 60,000 and DM 110,000. The Court accepted that these supplementary agreements were also subject to the mandatory notarial form because they formed part of the modification of the offers and exerted economic pressure on the defendant to accept the offer. Therefore, in the absence of notarial form, they were considered invalid due to formal defect.

The defendant did not accept the contract offers himself. Instead, he introduced A. GmbH to the plaintiff as the purchaser. The company bought the plots—and received the *Auflassung*—under a notarized contract from 2001 and was entered in the land register as the owner in 2002. The question therefore arose if a subsequently properly concluded and performed real estate contract between the plaintiff and a third party could cure the previous formal agreements between the plaintiff and the original defendant.

The Court held that *Heilung* did not occur. The Court examined what justifies the *Heilung* in the first place. The question of legal certainty (*Rechtssicherheit*) arose. In other words, if the change of ownership has already taken place, everything cannot be reversed due to the nullity of the contractual transaction after a longer period of time has passed. However, according to the Court, this in itself did not provide a satisfactory explanation.

[929] Case no. V ZR 178/03 of the German Federal Court of Justice from 8 October 2004.
[930] *Deutsche Mark* – It was the official currency in Germany until the adoption of the Euro in 2002.

It also took into account the protective purpose of the formal requirement, in particular protection against hasty decisions (*Schutz vor Übereilung*) and notarial information, but in its opinion neither of these fully explains the rule.

Finally, the Court concluded that the concept of *Erfüllungsgedanke* (the concept of performance) fundamentally underlies the curative effect provided for in § 311b(1) sentence 2 of the BGB. The curative effect under § 313 sentence 2 BGB (old version)—now § 311b(1) sentence 2 BGB—presupposes that the *Auflassung* and *Eintragung* constitute performance of the underlying obligation contract, which was initially invalid due to a failure to observe formal requirements. The same applies to the remedy of a preliminary contract—otherwise invalid due to formal defects—through the valid conclusion of the main contract (*Hauptvertrag*). However, such a connection based on performance is absent if the seller—without any intention to establish an obligation to do so—sells the property to a third party through the intermediation of the contractual partner and transfers ownership of the sold property to that third party.

Therefore, from the perspective of the present research, the most important view of the Court is that the *Heilung* according to § 311b(1) sentence 2 BGB is not merely related to the fact of the subsequent *Auflassung* and entry into the land registry (*Eintragung*), but that these must constitute the performance of the obligation from the formally deficient contract (*Erfüllungszusammenhang*).

A further case of the Federal Court of Justice No. V ZR 265/14[931] is a sufficient addition to the previous case. In 2006, the plaintiff decided to buy an apartment in a condominium that needed renovation. He made an offer of EUR 81,279 before the notary. However, there was a separate agreement (*Eigenprovisionsvereinbarung*) according to which EUR 13,004.64 of the purchase price would have been returned to him, however this agreement was not included in the notarial deed.

According to the offer, the buyer was bound by his offer until July 2006. Although the deed contained a clause according to which the offer would remain in effect until the buyer withdrew it, this was a general contractual condition that the Court considered invalid on the basis of § 308 No. 1 BGB. The seller only accepted the offer in August 2006, i.e. after the acceptance period had expired. Nevertheless, the *Auflassung* and *Eintragung* occurred and the buyer became the registered owner.

[931] Case no. V ZR 265/14 of the German Federal Court of Justice from 13 May 2016.

The significance of this decision is that it differentiates between defects of form and other issues affecting the validity or formation of a legal transaction. The court ruled that the formal requirements foreseen by § 311b(1) sentence 1 apply to all agreements that constitute a part of the real estate transaction by the will of the parties, and thus in this specific case also to the agreement on the repayment of part of the purchase price under the so-called *Eigenprovision*. Since the purchase price actually negotiated by the parties differed from that stated in the notarial deed, the actually intended transaction was null and void due to a formal defect under § 311b(1) sentence 1 and § 125 BGB.

However, another, separate problem arose in this particular case. The offer had in the meantime lapsed (*erloschen*) in July 2006, so its subsequent acceptance in August 2006 could no longer result in the formation of a contract. The remedy under § 311b(1) sentence 2 presupposes the existence of a contract that has already been concluded (*geschlossener*), i.e. a corresponding agreement of will (*Willensübereinstimmung*) of the parties is required. The *Auflassung* and the subsequent *Eintragung* can therefore only remedy a contract that has already been concluded but is invalid due to a formal defect. The *Heilung* mechanism consisting of *Auflassung* and *Eintragung* cannot create a contract that was not concluded according to the rules of general contract law.

In line with this, the court emphasised that the remedy under § 311b(1) sentence 2 applies only to the formal defect and does not eliminate other causes of invalidity, such as lack of capacity to act, infringement of § 134[932] or § 138 BGB[933] or the lack of the necessary authorisation. The aim of the rule is therefore not to remedy all legal defects affecting the respective legal transaction, but to ensure that a contract that has otherwise been concluded does not remain invalid after the transfer of ownership has been completed merely because of an infringement of a formal requirement. It is also particularly important that, according to the court, as a result of *Heilung*, underlying obligation—which was previously invalid—becomes fully effective *ex nunc*.[934]

---

[932] Statutory prohibition: *"A legal transaction that violates a statutory prohibition is void, unless the statute leads to a different conclusion."*

[933] Legal transaction offending common decency; usury.

[934] This position was confirmed by the German Federal Court of Justice in its decision No. V ZR 59/24 from 13 March 2025. In this particular case, the parties had concluded a real estate contract, which was recorded in the form of a notarial deed, but the defendant argued that the parties had also agreed orally to a renovation obligation that was not included in the notarial deed. The court concluded that if this agreement had indeed constituted part of the contract, the failure to record it in the form of a notarial deed could have resulted in the invalidity of the entire contract due to formal defect under § 311b(1)

The decision demonstrates the limits of the curative mechanism provided for by § 311b(1) sentence 2 BGB. However, the strict legal consequences of the infringement of provisions mandating formal requirements may be mitigated through a different mechanism as well. Namely, German case law has exceptionally restricted reliance on formal invalidity on the basis of *Treu und Glauben* under § 242 BGB. This distinction is illustrated in Case No. V ZR 332/94[935] of the Federal Court of Justice. Namely, the Court held that the consequences of nullity resulting from a violation of the provisions prescribing formal requirement in § 313, Sentence 1 of the BGB (old version—now § 311b(1) sentence 1 BGB) must yield where, given the circumstances of the particular case, such nullity would be entirely irreconcilable with the principle of good faith *(Treu und Glauben)*—for instance, because it would jeopardize the existence of the other contracting party or because invoking it would constitute a particularly serious breach of the duty of good faith.

This mechanism, however, does not constitute a remedy for a formal defect and should therefore be distinguished from *Heilung* under § 311b(1) sentence 2 BGB. Namely, it exceptionally restricts reliance on the legal consequences of invalidity due to formal deficiencies.

6.2.4. Switzerland

Contracts for the sale of immovable property are subject to a strict requirement of public notarisation pursuant to Article 216 of the Swiss Code of Obligations. Failure to comply with the prescribed form generally results in nullity under Article 11 in connection with Article 216 OR.

In this regard, decision BGE 112 II 330[936] of the Swiss Federal Supreme Court should be analysed. The dispute arose from a publicly notarised real estate sale contract

---

Sentence 1 and § 125 BGB. The Court expressly stated that such a formal defect could only be remedied *ex nunc* by *Auflassung* and *Eintragung* under § 311b(1) Sentence 2 BGB. Consequently, the *Auflassungsvormerkung* (priority notice securing the claim to transfer ownership) relating to the formally defective contract could not have given rise to legal effects for the period before the formal defect was subsequently cured. Eventhough the main subject of the case was not the *Heilung* (as it concerned the infringement of the defendant's right to be heared under Art. 103(1) GG, the question of *Heilung* was examined by the Court in the context of determining whether the result of the omitted evidence could have influenced the decision on the merits of the case. See: Case No. V ZR 59/24 of the German Federal Court of Justice from 13 March 2025 –in particular Rn. 7.

[935] Case no. V ZR 332/94 of the German Federal Court of Justice from 29 March 1996.

[936] Case no. BGE 112 II 330 of the Federal Supreme Court of Switzerland of 24 September 1986. Available at: http://relevancy.bger.ch/php/clir/http/index.php?highlight_docid=atf%3A%2F%2F112-II-330%3Ade&lang=de&type=show_document (Accessed: 24 February 2026).

concluded in December 1981 between a cooperative as seller and a private purchaser. The buyer paid the agreed purchase price in full, including an additional amount for a servitude, and was duly registered as owner in the land registry.

The notarised deed, however, contained a formal defect in that it inaccurately identified the person who acted as the cooperative's representative at the notarisation. While the cooperative was validly represented in substance and did not contest the authority of the acting representative, the public deed named a different person as representative. From a formal point of view, this discrepancy concerned the correct description of the representation relationship, which is part of the required minimum content of public notarisation in real estate transactions.

After the formation and performance of the contract, the buyer acted for more than two years as the owner of the property and actively participated in efforts to develop the land in accordance with the contractual agreement. When the envisaged infrastructure development was delayed, the buyer declared withdrawal from the contract and initiated proceedings seeking restitution of the purchase price against retransfer of ownership. It was only in the course of appellate proceedings that she additionally invoked the formal invalidity of the contract due to defective notarisation. The cantonal court accepted this argument and considered the contract null on formal grounds, notwithstanding the completed performance. The seller appealed to the Federal Supreme Court.

In its reasoning, the Federal Supreme Court first reaffirmed the strict nature of the form requirement under Article 216 OR. It emphasised that public notarisation of a real estate sale must include all legally relevant facts and declarations necessary to create a reliable basis for land registration, including the accurate identification of the parties and, where applicable, the correct indication of the representation relationship. An incorrect statement regarding the identity of the representative therefore constitutes a formal defect at the level of federal law. The Court thus confirmed that the contract suffered from a form defect capable, in principle, of leading to formal invalidity.

At the same time, the Court did not definitively decide the broader doctrinal issue of whether such formal invalidity always leads to absolute nullity that must be considered *ex officio*, regardless of later performance. The judgment recognises that there is considerable criticism of a rigid concept of absolute nullity in cases where the contract has already been performed. It suggests some openness to more flexible solutions, but without clearly departing from the traditional doctrine.

The decisive part of the judgment concerned the application of Article 2(2) ZGB as well. The Court interpreted its established case law according to which the admissibility of relying on a formal defect depends on the concrete circumstances of the case and cannot be determined by abstract rules. Particular importance was attached to the fact that the contract had been fully and voluntarily performed by both parties and that the buyer had been registered as owner for a considerable period without contesting the validity of the transaction. Although the buyer was unaware of the formal defect at the time of performance, the Court found no evidence that knowledge of the defect would have affected her willingness to conclude the contract and perform the obligations stemming from it. On the contrary, her subsequent conduct, including her active involvement in development, demonstrated an intention to uphold the contractual arrangement as long as it corresponded to her economic expectations.

The Court further analysed the nature and purpose of the form requirement in light of the specific defect at issue. The defect did not affect the buyer's declaration of intent, the essential terms of the contract, or the balance of the exchange. It concerned only the incorrect recording of the cooperative's representative. This aspect of the form requirement mainly protects the represented party and ensures clarity about who is legally bound. In this case, however, the cooperative clearly accepted the acts of its representative and wanted to maintain the contract. Allowing the buyer to rely on this technical defect would therefore have gone beyond the purpose of the form requirement and turned it into a tool for avoiding the contract.

In addition, the Court emphasised that the classic protective functions of public notarisation had already been fulfilled. A public deed had in fact been drawn up, the transaction had been registered in the land registry, and the legal situation had remained stable and uncontested for a prolonged period. In such circumstances, the interest in preserving legal certainty and the reliability of the land registry outweighed a strict insistence on formal invalidity. The Court thus concluded that the buyer's reliance on the formal defect constituted an abuse of rights and could not be upheld.

Although the Federal Supreme Court did not characterise its approach as convalidation or healing of the formally deficient contract, the practical effect of the decision was to mitigate the harsh legal consequences of the formal defect. The judgment therefore illustrates how Swiss law, in the absence of an explicit statutory

doctrine of convalidation, achieves functionally equivalent results through the flexible application of law.

6.2.5. Italy

In case no. 8765 Cass. civ., Sez. II[937], the *Corte di Cassazione* examined whether subsequent agreements modifying certain contractual terms of a real estate transaction had to comply with the same written form *ad substantiam* required for the original contract. The dispute concerned a contract subject to mandatory written form, where the parties had later altered specific clauses without the observance of the required form for the validity of the main contract.

The legal issue was whether all subsequent agreements relating to a contract requiring *forma ad substantiam* must themselves observe the same formal requirement, or whether a distinction should be drawn between essential elements and accessory provisions.

The Court held that the requirement of written form *ad substantiam* applies only to the essential elements of the contract, namely the parties' consent, the object of the transaction, and the price. Modifications affecting merely accessory elements, such as secondary obligations or non-essential terms, do not require written form in order to be valid.

From a doctrinal point of view, the judgment shows that Italian formalism, which appears particularly strict in real estate contracts, is selective. Although written form is essential for the core elements of the transaction, the Court allows some flexibility regarding non-essential elements. In this way, it reduces the disruptive effects of nullity without weakening the principle of formality.

In another case, Decision no. 28762 Cass. civ., Sez. II[938] concerned an option agreement (*patto di opzione*) granting one party the right to conclude a future contract for the sale of immovable property. The agreement had not been concluded in the required written form provided for by the provisions of the Codice civile, specifically Articles 1350 and 1351.

[937] Case no. 8765 Cass. civ., Sez. II, of 30 March 2021 of the Court of Cassation of Italy.
[938] Case no. 28762 Cass. civ., Sez. II of 30 November 2017 of the Court of Cassation of Italy.

The central legal question was whether an option agreement relating to immovable property must comply with the same formal requirements as a preliminary contract for sale.

The Court reaffirmed that an option agreement producing an obligation to conclude a future contract transferring rights on immovable property is subject to written form *ad substantiam*. The Court emphasised that the immovable property, which, as the object of the agreement, must be clearly and precisely identified in the written document itself; otherwise, the agreement is null and void.

The ruling aligns option agreements with preliminary contracts in terms of formal requirements and confirms the Court's strict approach to contracts generating future effects on real estate. Doctrinally, it illustrates the extension of formalism not only to dispositive contracts but also to obligatory arrangements that directly prepare or predetermine a real transfer.

Furthermore, in case no. 20114 Cass. civ., Ord.[939], the Court addressed the distinction between the mandatory form for the validity of a definitive contract for the transfer of ownership rights over immovable property and the form which is necessary for its entry into the land registry (*trascrizione*). The case concerned a sales agreement concluded in the form of a '*scrittura privata*'. The fact that the respective contract was concluded in the form of a *scrittura privata* was not considered as a defect of form since according to Article 1350 of the Codice civile a *scrittura privata* is the prescribed form *ad substantiam*. However, it prevented the contract from being used for the purposes of *trascrizione*.

The claimant sought that a judgement to be rendered under Article 2932 of the Codice civile to acquire the necessary conditions for the registration of the transfer.

However, the Court by referring to its already established case law (3rd Chamber, Judgment No 26136/2022; 2nd Chamber, Judgment No 1553/2013) held that the parties have concluded the final contract of sale of immovable property in the form of a non-authenticated private instrument (*scrittura privata non autenticata*), the interest of the party in having a document of the legal transaction in the form necessary for its *trascrizione* is not protected by the remedy provided for in Article 2932 of the Codice civile. The cited article concerns the specific performance of an obligation to conclude a contract and presupposes the prior conclusion of a preliminary contract.

[939] Case no. 20114 Cass. civ., Ord. of 13 July 2023 of the Court of Cassation of Italy.

However, the Court stated that the *trascrizione* could instead be ensured by rendering a judgment which verifies the authenticity of the signatures *(accertamento dell'autenticità delle sottoscrizioni)*.

Accordingly, the established Italian case law confirms the observations made in the part of this research pertaining to the assessment of the relevant provisions of the Codice civile that the validity of the underlying contract and the administrative requirements for its *trascrizione* constitute different questions under Italian law. Furthermore, judicial ascertainment of the authenticity of the signatures of the contracting parties does not cure an invalid contract but enables an already valid transaction to satisfy the requirements necessary for *trascrizione*.

Taken together, these decisions demonstrate that Italian case law applies a strict but internally differentiated approach to form requirements in real estate contracts. While the written form *ad substantiam* remains indispensable for contracts that aim to produce *in rem* rights or merely prepare the establishment of legal effects, the Court distinguishes carefully between essential and non-essential elements and between requirements of validity and those governing *trascrizione*, subsequent performance of contractual obligations or entry into the land registry does not constitute a general means of curing formally deficient real estate contracts. Even though Italian law foresees a stricter regulatory framework when it comes to convalidation of formally deficient real estate contracts, in other cases it recognises statutory exceptions from which aim to mitigate the harsh consequences of nullity.[940]

6.3. Case Law from Central-Eastern European Countries

6.3.1. Hungary

The selected cases of Hungarian case law show that Hungarian courts follow the doctrinal basis laid down in the 1959 HunCC and HunCC.

In decision no. Pfv. VI. 20.448/2013[941], the Curia of Hungary confirmed the statutory formal requirements for a contract for the conveyance of real estate. According to the contract concluded on 24 January 2005, the plaintiff purchased real

[940] For examples see: Chapter 3.5 of this thesis.
[941] Case no. Pfv.VI.20.448/2013/4 of the Curia.

estate from the defendants. In the additional agreement included in the contract, the plaintiff waived his ownership of the real estate in favour of one of the defendants and intended to use the subsidy received to pay the purchase price due to the other two defendants.

Based on this contract, the land registry did not register the ownership of one of the defendants in the real estate registry. The decision of the land registry also stated that, in its view, the deed was manifestly invalid.

In his claim, the plaintiff (referring to the decision of the land office) requested that the purchase and sale contract be declared invalid and that the original condition be restored. He submitted that the purchase and sale contract contained the wrong topographic number and did not indicate the legal title of the change of ownership. He also referred to the fact that the contract itself was not concluded in accordance with the procedural rules of the Land Registry Act, because the lawyer who acted was not present when the plaintiff signed it, and therefore was not entitled to countersign the document.

The defendants requested that the claim be dismissed on the grounds that a distinction should be made between the invalidity of the contract and its suitability for registration in the real estate registry, and that the purchase and sale contract was validly concluded in the case at issue.

In its decision, the Curia stated that the plaintiff's position regarding the countersignature is incorrect, because a purchase and sale agreement recorded in the form of a public deed or in a private document with full probative force is not a condition for its validity. The Curia further clarified that, according to Section 365 (3) of the 1959 HunCC, a purchase and sale agreement relating to real estate must be recorded in writing. This provision does not bind the validity of a purchase and sale agreement to a qualified documentary form, and Section 29 of the Land Registry Act, as the text of the law itself states, stipulates that the document serving as the basis for the registration of rights and the recording of facts must be prepared and submitted in the form specified therein. The Curia also referred in its decision to Section II of Civil Decision no. XXV[942], which states that the validity of a contract in written form does

[942] XXV. számú Polgári Elvi Döntés – az ingatlan-átruházási szerződés érvényességéről [XXV. Civil Law Decision of Principle – On the Validity of Contracts for the Conveyance of Ownership on Real Property]. Hereinafter referred to as: Civil Decision no. XXV.

not require the parties to record their agreement in a public deed or a private document with full probative force, unless otherwise required by separate legislation.

According to the Curia, the plaintiff consistently ignored the fact that the invalidity of the contract and whether the contract allows the transfer of the change of right to the real estate registry are different concepts, even though the defendant explained this in his counterclaim and the first and second instance courts explained it in the reasons for their judgments. An invalid contract, one that is contrary to good morals, usurious, strikingly disproportionate in value, etc., may still be suitable for registration in the real estate register. However, when the legal consequences of invalidity are drawn up, the right registered on its basis must be cancelled. This is also true the other way around: a validly concluded contract may not yet necessarily comply with the requirements of the Land Registry Act and be suitable for registration in the real estate register.

The case no. Pfv.I.21.133/2017/9[943] reached a similar decision. As in the first case cited above, the Court stated that the validity of the purchase and sale of real estate requires that the contract be in writing. The Court also quoted the Civil Decision no. XXV, stating that, in terms of content requirements, it is necessary and sufficient for the validity of a real estate contract that the document drawn up under the contract, in addition to indicating the parties, contain a declaration of intent to transfer the ownership of the real estate, a description of the real estate (as the object of the transaction) and the purchase price. The Curia followed the Civil Decision no. XXV regarding the form of the real estate contract, according to which a contract for the transfer of ownership of real estate can be considered recorded in writing if each contracting party has signed their own copy of the contract. The validity of the contract is not affected if the same document does not contain the contractual declaration of all parties, but, rather, the mutual and consistent expression of the parties' will is established through the declaration of each contracting party in a separate document.

The judgment of the *Kúria* in Pfv.I.21.145/2022/11[944] concerned an action for the deletion of rights from the land registry in which the claimant (seller) and the defendant (buyer) concluded a real estate sale contract (2 June 2015). In the set of documents submitted to the land office, the first page of the two-page contract was allegedly not signed by the seller, and one version of the contract contained a mistaken

[943] Case no. Pfv.I.21.133/2017/9 of the Curia.
[944] Case no. Pfv.I.21.145/2022/11 of the Curia.

cadastral identifier. Despite these documentary issues, the cadastral office registered the buyer's ownership. The seller subsequently brought an action for deletion of the ownership rights of the buyer, arguing, among other grounds, that no valid sale contract existed because the submitted document was not signed by the plaintiff on the first page and that the data identifying the real estate was fictitious, and, therefore, the registration lacked a valid contractual basis.

Consequently, the Curia stated that, according to Section 6:63. (1)-(2) of the HunCC, if the parties have agreed on the essential elements, their contract is concluded by the mutual and unanimous expression of their will. It further confirms that, according to Section 6:6. (1) of the HunCC, if the law prescribes or contracting parties stipulate a specific form for a legal declaration of will, the legal statement is valid in that prescribed form.

Furthermore, Section 6:215 (2) of the HunCC provides that if the object of the contract is real estate, the purchase and sale contract must be recorded in writing. According to Section 6:7 (1) of the Civil Code, a declaration of will that is subject to written form is valid if at least its essential content is drawn up in writing.

From the cited legal provisions, the Curia concluded that the condition for the validity of a real estate purchase and sale contract can be met by recording its essential elements in any kind of written instrument.

In this case as well, the Curia referred to Civil Decision no. XXV and confirmed that the fulfilment of the requirements specified in the provisions pertaining to entry in the land registry is not a condition for the validity of a contract whose registration is requested.

The Curia reached a final conclusion that the court of second instance correctly confirmed that the real estate purchase and sale contract in question, which contained the declaration of will of the defendant, was existing and valid.

The Curia took a similar standpoint in case no. Gfv.VII.30.206/2019/12[945] and stated that pursuant to Section 6:215(2), Section 6:6(2) and Section 6:7(1) of the Hun CC, a contract for the transfer of ownership of real estate, as well as a modification of the contract, must have its essential content recorded in writing in order to be valid. This requirement, as the court of second instance correctly stated, can also be met by recording it in the form of a simple private document. The Curia also concluded that

[945] Case no. Gfv.VII.30.206/2019/12 of the Curia.

Section 32(3) of the Land Registry Act does not specify the formal requirements for the validity of the contract, but the formal requirements for registration in the land registry.[946]

The analysed cases show that judicial practise adhered to the letter of the law regarding the form and validity of contracts for the conveyance of ownership rights over immovable property enshrined in the rules of the 1959 HunCC and the applicable HunCC.

6.3.2. Poland

The judicial practice in Poland adheres to the letter of the law with regard to the absolute nature of nullity. Namely, available case law shows that courts strictly follow the rules on the mandatory form of contracts for the conveyance of ownership rights over immovable property.

In case no. Sygn. akt II CSK 77/11 of the Supreme Court of Poland, the plaintiff and the defendant concluded a real estate purchase contract on 4 January 2007 in a simple written form. According to the contract, the defendant undertook to complete the partially completed apartment and eventually transfer ownership of it to the plaintiff, together with the attached plot of land, for a total purchase price of PLN 150.000[947]. Under the contract in question, the plaintiff paid a total of PLN 70,000[948] in advance in several instalments, while the remaining purchase price was to be paid before the conclusion of the final contract, recorded in a notarial deed.

After the conclusion of the contract, the defendant demanded the payment of an additional PLN 70,000 from the plaintiff, citing changes in market conditions and increased costs. After the plaintiff did not accept this, the defendant withdrew from the contract and refunded the amount already received, together with interest thereon. The plaintiff then brought a claim for damages, stating that, due to the failure of the

[946] See also: Sztiás and Dudás (2023), p. 191.
[947] At the time of the conclusion of the contract, the stated amount was approximately equivalent to 39.178 euros, according to the reference exchange rate published by the ECB for 2 January 2007. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2007/001/02&from=ET [Accessed: 7 April 2026].
[948] At the time of the conclusion of the contract, the stated amount was approximately equivalent to 18.283 euros, according to the reference exchange rate published by the ECB for 2 January 2007. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2007/001/02&from=ET [Accessed: 7 April 2026].

contract, he lost the advantage he could have obtained by acquiring the apartment at a more favourable price.

During the proceedings, the courts qualified the contract differently. The lower courts assessed it as a development contract in the broad sense, while the Supreme Court, on the other hand, concluded that the agreement between the parties could in fact be classified, due to a lack of formality, as a preliminary contract, which was aimed at concluding a later, final contract.

Nevertheless, the Court confirmed that the first sentence of Art. 158 of the Polish Civil Code provides that a binding contract for the transfer of ownership of immovable property has to be concluded in the form of a notarial deed. The Court further specified that this formal requirement foreseen by the same provision applies to all contracts through which the parties aim to convey ownership rights over immovable property, regardless of their classification or compliance with specific statutory conditions[949,950]

In a more recent case, the Court reaffirmed the same rule, further stating the statutory formal requirements of contracts when ownership transfer of real estate is tied to them.[951]

Polish judicial practice thus strictly adheres to mandatory provisions regarding formal requirements. Namely, judicial practice and statutory provisions do not show leniency towards foreseeing the possibility of subsequently healing a formally deficient real estate contract.

However, the tendency to salvage as much of the existing agreement as possible can be observed in the above-analysed case. The Supreme Court of Poland in the cited

[949] Case no. Sygn. akt II CSK 77/11 of the Supreme Court of Poland.

[950] Interestingly, Polish judicial practice also shows that the cited provision does not apply to all forms of real estate agreements. The exception is the so-called '*ekspektatywa'*, which refers to cases where the beneficiary has a reasonable chance of acquiring full rights upon the occurrence of a future condition. In case II CSKP 166/23, the Supreme Court ruled that an agreement on the division of inheritance is not subject to Article 158 of the Polish Civil Code. According to the Court, the same applies to a property transfer agreement concluded for the purpose of fulfilling a previously existing obligation to transfer ownership of real estate. The Court emphasised that an agreement on the division of inheritance has a specific nature, because its subject matter is not only the transfer of ownership of real estate included in the inheritance, but, above all, a comprehensive settlement between the heirs, which, as a rule, leads to the termination of the community of property in the estate. The court further stated that, since there is no specific legal provision that would require that the contract for the transfer of separate ownership of the immovables from the inheritance case be subject to formal requirements, including a notarial deed, the general rule set out in Article 78 sec. 1 of the Polish Civil Code had to be applied to the given estate division contract. According to this provision, in order to maintain the written form of the legal declaration, it is sufficient to sign the document containing the content of the legal declaration in person. Therefore, Polish legislation and judicial practice seem to apply a more relaxed rule to cases where the acquisition of ownership of immovable property is expected, as opposed to cases where acquisition occurs by concluding a real estate sales contract.

[951] Case no. Sygn. akt III CZP 108/22 of the Supreme Court of Poland.

case stated that the formally deficient agreement of the parties could suffice as a preliminary contract to conclude a future main contract. However, this method of saving the existing part of a formally deficient contract by requalification resembles the solution that offers the legal institutes of partial invalidity of conversion.

6.3.3. Czech Republic

As in the countries analysed so far, Czech judicial practice adheres to the letter of the law regarding formal requirements for contracts for the conveyance of ownership rights over immovable property and the consequences of formal deficiencies.

First of all, recent case law confirms the conclusions drawn from the previous legal framework pertaining to convalidation. It emphasises that, according to the former legal provisions, contracts for the sale of real estate not concluded in the mandatory written form were absolutely null and void, without the possibility of remedying such defects. In the case at hand, the Court assessed the temporal frame for the applicability of convalidation provided for by the new Civil Code of 2014.

In case no. 24 Cdo 2749/2020 from 31 May 2022 [952], the Supreme Court of the Czech Republic addressed the question of whether a defect in the required legal form of a juridical act (specifically, an oral agreement concluded in 2000) could be remedied under § 582(1) of the New Civil Code 2014. The plaintiff sought to enforce a pre-emption right to purchase land based on an oral agreement, claiming that said agreement had been subsequently convalidated in 2019.

However, the Supreme Court held that the validity of such a juridical act must be assessed under the law in force at the time of its conclusion. Since the agreement was concluded before the enactment of the New Civil Code of 2014 (i.e., before 1 January 2014), the applicable law was the old Civil Code, under which absolute nullity due to the lack of form could not be remedied. The Court emphasised that § 3028(3) of the new Civil Code stipulates that legal relationships formed before its effective date must be governed by previous legislation. Accordingly, the oral agreement, which lacked the required form, remained absolutely null and void. The Court also highlighted that convalidation under §582 is not retroactive (*ex tunc*) but rather

[952] Case 24 Cdo 2749/2020 from 31 May 2022 of the Supreme Court of the Czech Republic; Achour & Partners, 2022.

operates *ex nunc* (from the moment of remedying by performance) and cannot be applied to acts concluded under the previous regime. Thus, the claim for recognition of the pre-emption right failed.

Furthermore, in case no. 27 Cdo 1550/2023-867[953], the Supreme Court confirmed that even in the event of non-compliance with the statutory form of a juridical act, the contract is invalid pursuant to § 582(1) sent. 1 of the new Civil Code of 2014, only if the meaning and purpose of the legal norm governing the form of the juridical act so require. If the meaning and purpose of the legal norm governing the form of a juridical act require that failure to comply with it be subject to invalidity, then the same meaning and purpose of the legal norm must be taken into account when assessing whether the consequence is relative or absolute invalidity (i.e., whether the court must take it into account only upon objection by an entitled person or *ex officio*).

The court further stated that the first sentence of § 588 of the new Civil Code of 2014 provides that the court shall take into account the invalidity of a legal act that contravenes the law only if public order is manifestly disrupted. If the written form required by law is not established to protect the public interest, its non-compliance cannot (in itself) be a reason for concluding that a legal act that was made in violation of this provision is absolutely invalid.[954] If a provision requiring a written form of legal action has the purpose of protecting private interests (it serves only an evidentiary function), its non-compliance with § 586 of the new Civil Code of 2014 results in, at most, relative invalidity. Relative invalidity may be raised only by a person whose interests the law seeks to protect by declaring the legal act invalid according to § 586(1) of the new Civil Code of 2014.

In the analysed case the Court thus interpreted § 586(1) of the new Civil Code of 2014 as the remedy of relative invalidity, which would confirm the standpoint of legal theory according to which the invalidity of formally deficient real estate contracts is of absolute nature rather than relative, thus, such contracts could not be remedied in light of § 586(1) of the new Civil Code of 2014.

Regarding the question of absolute nullity of formally defective real estate contracts analysed above, a clear standpoint was taken in case no. 33 Cdo 554/2023[955].

---

[953] Case 27 Cdo 1550/2023-867 from 25 January 2023 of the Supreme Court of the Czech Republic.
[954] In this regard, see also: Case no. 27 Cdo 935/2022 from 30 November 2022 of the Supreme Court of the Czech Republic; Case no. 28 Cdo 568/2024 from 23 April 2024 of the Supreme Court of the Czech Republic.
[955] Case 33 Cdo 554/2023 from 12 February 2025 of the Supreme Court of the Czech Republic.

The Supreme Court of the Czech Republic established that the parties concluded an oral agreement and a written real estate purchase and sale contract. In this regard, the court determined that the written real estate sales contract did not reflect the genuine will of the parties, especially regarding the purchase price of the immovable property, but constituted a mere simulated legal transaction to which the law does not attach any legal effects.

According to the Court, the agreement of the parties was not concluded with the content stipulated in the written contract, but with a different, hidden agreement, which the court identified as an oral purchase and sale contract.

The court ruled that the real legal transaction (the real estate purchase and sale agreement concluded orally) did not, however, comply with the mandatory written form required by law for the transfer of ownership of real estate in light of the provision enshrined in § 2128 of the new Civil Code of 2014. Consequently, due to the violation of the statutory formal requirement, the sham legal transaction was classified as absolutely invalid (null and void).

The Court emphasised that the reason for declaring the juridical acts in question absolutely invalid is the fact that these acts are contrary to the provisions of the law and violate public order, which serves to ensure the reliability of the real estate registry and the transparency of the acquisition of ownership. As a result, the court ruled that neither the sham nor the written contract is suitable for the valid transfer of ownership.

Based on the analysed case law, it can be observed that Czech judicial practise shares the standpoint of legal doctrine with regard to the convalidation of contracts for the conveyance of ownership rights over immovable property. Czech legislation provides for the possibility of convalidation; however, legal doctrine and case law show that convalidation applies only to cases of relative invalidity, as opposed to absolute invalidity. Since both legal theory and judicial practice qualify formal deficiencies in real estate contracts as a reason for absolute invalidity, convalidation, although not explicitly forbidden by law, is excluded in such cases.

Legal theory and judicial practice tie the penalty of absolute invalidity to reasons that go beyond the mutual interests of the parties. These reasons derive from the recognition that non-adherence to statutory form is contrary to public interests and good morals, especially because of the acquisition of ownership rights by entry into the land registry.

As the first country in the region to establish a coherent national land registry system, and given the constitutive nature of the land registry entry, the Czech Republic still places great value on the public reliability and transparency of the land registry, thus protecting it through contract validity as well.

6.3.4. Slovakia

Slovak jurisprudence on real estate transactions adheres to the rules established by the SkCC. Judicial interpretation of §40 and §46 of the SkCC reveals that courts do not diverge from the statutory rules autonomously in order to keep a null and void real estate contract in effect.

In case no. 3 Sžo 64/2010, the Court addressed the question of formal requirements for contracts for the conveyance of ownership rights over immovable property. The Court cited § 40, Paragraph 1 of the SkCC, according to which, if a legal act has not been performed in the form required by law or by agreement of the parties, it is invalid.

Contracts for the transfer of ownership rights over real estate, as well as other contracts for which this is required by law or by agreement of the parties, must be in written form.

The court further stated that in order to conclude a contract in writing, it is sufficient if a written proposal exists, as well as its written acceptance. However, in the case of a contract for the transfer of ownership rights over real estate, the statements of the parties must be on the same document according to § 46 Paragraph 2 of the SkCC.

In this procedure, the Court also referred to the rules of the administrative procedure for the land registry entry of ownership rights. It stipulated that according to § 31, Paragraph 1 of the Cadastral Act No. 162/1995 Coll. (as amended until 31 August 2009), the cadastral administration shall examine the validity of the contract, in particular the authorisation of the transferors to dispose of the real estate, whether the act is performed in the prescribed form, whether the expressions of will are genuine, whether they are sufficiently certain and understandable, and whether the contractual freedom or the right to dispose of the real estate is not restricted.

In the analysed case, the parties were in dispute over the interpretation of the provision of § 46, paragraph 2, sentence two of the Civil Code in connection with the

opinion of the Supreme Court on the legal nature of the technical unity of the document in relation to the given factual situation.

According to the published opinion of the Supreme Court of the Slovak Republic, file no. Cpj 33/01 of 3 October 2001 (published in the Collection of Opinions of the Supreme Court and Decisions of the Courts of the Slovak Republic under number 69/2001), a contract for the transfer of real estate must be concluded in writing, while the expressions of the will of the parties, including their signatures, must be on the same document (§ 46, paragraph 1, paragraph 2 of the Civil Code); if such a contract, including its indivisible annexes, consists of more than one sheet, all these individual sheets must be firmly connected (stitched) so as to form the technical unity of the document, even before its signing.

A contract forms the technical unity of the document if its individual sheets containing essential requirements are firmly bound. The legal issue – the technical unity of the real estate transfer contract as a juridical act concluded under the regulation of the SkCC – was not assessed by the Court of Appeal as a condition for the validity of the contract, but as a deficiency which the competent cadastral authority must invite the participant in the administrative proceedings to eliminate. The conditions for the validity of the real estate transfer contract are established by a substantive law regulation (the Civil Code), rather than by the Cadastral Act. The Cadastral Act is a legal regulation of administrative law, from which the procedural provisions relating to the cadastral procedure applicable in a given case are drawn.

The technical unity of the real estate transfer contract (and annexes submitted under the Cadastral Act) can only be considered as the form required by the cadastral administration for submitting proposals for registration and their annexes to the real estate cadastre. The Court of Appeal identifies this form of submitting proposals for deposit and annexes. However, the existence of possible deficiencies in the technical unity of the document is a legal reason for interrupting the cadastral procedure under § 31a letter a. of the Cadastral Act, for the purpose of calling on the participant in the administrative proceedings to eliminate the defects in the application for entry.

The court concluded that the proceedings on the application for entry shall be stopped if the participant has not eliminated the defects in the application for entry or its annexes within the specified period.

According to the reasoning of the court, it follows from the provision of § 31, paragraph 1 of Act No. 162/1995 Coll. that the legislator has entrusted the cadastral

administration, as a state administration body in the cadastral sector, with the power to examine the validity of the contract in the proceedings on the permission to enter a right into the real estate cadastre based on a contract. The criteria on the basis of which the cadastral administration examines the validity of the contract are given in the cited provision as an example, including the form of the contract.

Where the cadastral office examined whether the legal conditions for authorising the entry of ownership rights into the cadastre based on a sale and purchase contract were met and rejected the application after concluding that the contract was invalid because it had not been correctly drawn up prior to signing, its assessment of the matter was incorrect.

The above facts lead to the conclusion that if the contract is not technically uniform, it constitutes a deficiency that the competent cadastre authority may request to be remedied. However, it should be emphasised that where the contract itself is disputed, the entry of which was rejected by the cadastre administration, this dispute belongs to a different procedure than the procedure governing the application for entry.

It can be observed that the Slovak judicial practice adheres to the regulation established by the SkCC regarding the form of real estate contracts and the exclusion of the possibility of convalidation.

Furthermore, the Slovak legislation provides strict technical conditions regarding the form of the *titulus* for land registry entry, thus establishing a legal order that provides a high level of legal security and accuracy.

6.3.5. Romania

After the assessment of the available scholarly literature, it can be observed that Romanian private law is characterised by a high degree of formalism in transactions involving the transfer or constitution of rights pertaining to immovable property. The requirement of authentic notarial form is not merely evidentiary but operates as a constitutive condition for producing effects *in rem* and for registration in the land registry. Consequently, agreements lacking the prescribed form are, as a rule, incapable of establishing ownership rights.

At the same time, Romanian law does not entirely exclude corrective mechanisms. In exceptional situations, there are a few possibilities to overcome formal

deficiencies. The decisive question, however, is under what conditions and through which institutional channels such corrections are permissible.

This connection between strict formalism and the possibility of correction is clearly reflected in the case law of the High Court of Cassation and Justice, in particular in Decision no. 23/2017 and Decision no. 1/2022.

In Decision no. 23/2017[956], the High Court of Cassation and Justice addressed the legal nature and effects of judicial decisions substituting the authentic form required for real estate transactions. The Court reaffirmed the rule from the RoCC that contracts for the conveyance of ownership rights over immovable property cannot be convalidated without the observance of the required formalities.

However, the court, in its decision, provides another solution for keeping the respective juridical act of the parties in effect. Therefore, the court did not conceptualise convalidation as a retroactive curing of a null and void or form-defective contract; however, it confirmed the legal regulation of the RoCC, which foresees conversion. It stated that although the contract concluded by the parties was not concluded in the mandatory form, the agreement may remain in force in the form of a promise to conclude a future contract.

Furthermore, in decision no. 1/2022[957], the Court addressed the question of the form of the *titulus* for land registry entry of a contract for the conveyance of ownership rights over immovable property. The Court also took a stance regarding the formal requirements of real estate contracts.

In this regard, the Court noted that, according to art. 888 of the RoCC, the registration of rights *in rem* in the land registry can be carried out on the basis of an authentic instrument, a final court judgment, a certificate of inheritance, or another document issued by administrative authorities, if the law so provides. Furthermore, the Court emphasised that, according to art. 1244 of the RoCC, only juridical acts concluded in the form of an authentic (notarial) deed (subject to the situation in which the law expressly provides otherwise) are capable of transferring or constituting real rights that can be registered in the land registry.

Taken together, Decision no. 23/2017 and Decision no. 1/2022 suggest that Romanian judicial practice strictly adheres to the rules provided by the RoCC. Thus,

[956] Case no. 3996/2016, Decision No. 23/2017 of the High Court of Cassation and Justice.
[957] Case no. 2905/1/2021, Decision No. 1/2022 of the High Court of Cassation and Justice.

neither Romanian legislation nor the judiciary foresee the possibility of convalidation of null and void real estate contracts.

Although convalidation is excluded for these contracts, legislation and judicial practice do not reject it by softening the strict formality rules. In the Rocc and in judicial practice, the institute of conversion is present. That is, Romanian legislation foresees that, in case a contract on the conveyance of ownership rights over immovable property is rendered null and void due to the omission of the mandatory formal requirements, the parties' respective agreement could still produce legal effects in a form to which the formal condition adheres (for example, a pre-contract).

This solution shows that the Romanian legal order, although adhering to the strict statutory formal requirements, still strives to keep parties' agreements in effect to the extent permitted by law.

6.3.6. Slovenia

Slovenian private law offers a particularly instructive example of how the doctrine of convalidation of form-defective contracts has evolved through continuity. Unlike systems in which statutory formal requirements for real estate transactions are treated as an almost insurmountable barrier to validity, Slovenian case law has consistently approached form defects through a functional, performance-oriented methodology.

This approach is historically rooted. Before the Yugoslav Law on Obligations entered into force, Slovenian courts already relied on general civil-law principles inherited from the Austrian Civil Code, especially §424, §425, and §1432. These provisions, interpreted in light of legal thought from the nineteenth century, emphasised that delivery of possession and actual performance could prevail over formal defects, particularly where the parties' intent was clear, and the transaction had been fully carried out. The later codification of Article 73 of the Yugoslav Law on Obligations did not introduce a novel concept but rather formalised an already established judicial technique, commonly referred to as the theory of realisation (*teorija realizacije).*

The Slovenian Supreme Court has therefore never treated convalidation as an exceptional or marginal mechanism. Instead, it has consistently regarded it as an

instrument for reconciling legal certainty with substantive justice, particularly in the context of immovable property.

A crucial doctrinal clarification was provided in II Ips 406/96[958]. The case concerned a chain of oral contracts transferring ownership of land, all of which had been fully performed but did not comply with the statutory written-form requirement prescribed by land-transfer legislation. The defendant argued that such contracts could not be convalidated because the form requirement served the protection of social interests (*družbeni interes*), including public control of land transactions, taxation, and agricultural policy.

The Supreme Court rejected this argument. While explicitly acknowledging that statutory form requirements in land transactions protect not only the parties but also broader public interests, the Court held that public interest cannot operate as an abstract veto against convalidation. Convalidation may be excluded only if it is established that the lack of form has actually impaired those protected interests in a concrete and non-remediable way.

This decision is significant for two reasons. First, it firmly embeds *favor contracti* into Slovenian contract law, explicitly linking convalidation to principles of good faith, prohibition of abuse of rights, and contractual stability. Second, it introduces a burden-of-proof logic: the party invoking nullity must demonstrate specific public-interest harm, rather than relying on general references to regulatory objectives.

The approach based on the theory of realisation was further developed in II Ips 22/99[959]. The dispute concerned an oral contract for the sale of immovable property, concluded in the early 1960s. The buyer had paid the full purchase price, taken possession, and exercised ownership rights openly, peacefully, and in good faith for several decades. No written contract existed, nor had registration been completed. The Supreme Court held that ownership had nevertheless been acquired.

In the Court's reasoning, the decisive elements were the existence of contractual consensus, full performance, delivery of possession, and long-term exercise of ownership. Registration was treated as a technical requirement that could be judicially substituted once substantive ownership had crystallised through realisation.

[958] Case no. ECLI:SI:VSRS:1997:II.IPS.406.96 of the Supreme Court of Slovenia.
[959] Case no. ECLI:SI:VSRS:1999:II.IPS.22.99 of the Supreme Court of Slovenia.

A closely related pattern appears in case no. II Ips 452/99[960]. There, a written land sale contract omitted certain parcels due to a drafting error, which was later corrected by an annex that itself failed to satisfy statutory form requirements. The seller was illiterate, which further complicated the formal validity of the documents. Nevertheless, the Court held that the parties' actual performance, possession, and long-term enjoyment of the land justified convalidation. The formal defects did not negate the existence of a valid contractual relationship once realisation had occurred.

These cases demonstrate that Slovenian courts treat performance of contractual obligations as capable of producing property law effects, not merely obligational ones, even in a field traditionally dominated by formalism.

However, Slovenian jurisprudence has consistently drawn a clear doctrinal boundary: convalidation cannot replace contract formation itself. This limit was clearly stated in case no. III Ips 14/94[961] where the Supreme Court denied convalidation because the alleged agreement had never been concluded. The case involved the use of business premises based on a unilateral internal decision, without agreement on essential contractual elements.

The Court clarified that the institute of convalidation enshrined in Article 73 ZOO applies exclusively to contracts that are both concluded and performed but suffer from a defect of form. Mere factual use or unilateral declarations cannot be elevated to contractual status through realisation (performance). This decision is essential for preserving the conceptual integrity of convalidation and preventing its misuse as a substitute for consensus.

The most recent evolution of Slovenian doctrine is reflected in III Ips 24/2022[962]. The case concerned a written land sale contract signed by a company's manager with legal signing authority *(Prokurist)* without written authorisation, as required by law. Lower courts adopted a strictly formalistic view, holding that both authorisation and any subsequent ratification had to comply with the same written form as the contract itself.

The Supreme Court rejected this categorical approach. Drawing on its established case law on convalidation of form-defective land sale contracts, it held that where convalidation is admissible in principle, legal relevance may also be attributed

[960] Case no. ECLI:SI:VSRS:2000:II.IPS.452.99 of the Supreme Court of Slovenia.
[961] Case no. ECLI:SI:VSRS:1994:II.IPS.14.94 of the Supreme Court of Slovenia.
[962] Case no. ECLI:SI:VSRS:2023:II.IPS.24.2022 of the Supreme Court of Slovenia.

to form-defective authorisation and even to ratification expressed through conclusive conduct. Acceptance of the purchase price, fulfilment of tax obligations, and delivery of possession could, depending on the facts, constitute valid ratification under Articles 75 and 73 of the Slo OC.

Rather than affirming the contract outright, the Court remitted the case for further factual assessment, emphasising that the decisive question was whether the representative's conduct genuinely expressed an intention to ratify. This judgment illustrates a teleological and contract-affirmative interpretation of form requirements, extending the theory of realisation into the sphere of representation as well.

Slovenian judicial practice also includes cases pertaining to the question of the validity and the remedy of contracts for the conveyance of ownership rights of agricultural land, forest, and farm, which adhere to a stricter regulatory structure than other kinds of immovable property.

The Slovenian Supreme Court, in case no. II Ips 791/2009[963], examined whether a purchase and sale contract for agricultural land could be enforced based on a preliminary agreement that did not comply with the mandatory procedural rules for the transfer of agricultural land. The plaintiff requested that the court oblige the defendant to conclude the sale contract or replace it with a judgment. The case concerned several plots of land returned during denationalisation.

The court proceeded from the fact that the rules for the transfer of agricultural land are mandatory. Such land may only be sold in accordance with the procedure laid down by law (public offer, formal acceptance of the offer, consideration of those entitled to pre-emption, and then approval by the competent administrative body). This procedure is not merely technical but serves the public interest, as it places the circulation of agricultural land under public law control in order to preserve the agricultural function of the land and ensure food security.

The Supreme Court ruled that if the parties circumvent this procedure, the sale contract could be sanctioned with nullity. Not only may a clear infringement of the law lead to nullity, but so may the parties' attempt to circumvent the mandatory rules. Although the plaintiff's claim later attempted to formally adjust the claim to the statutory requirements, according to the court, this did not change the fact that essential elements of the mandatory procedural rules were still missing, in particular the legal

[963] Case no. ECLI:SI:VSRS:2013:II.IPS.791.2009 of the Supreme Court of Slovenia.

way of accepting the offer, the protection of those entitled to pre-emption, and the approval of the authorities.

The court also emphasised that the purpose of the procedural rules applicable to agricultural land is to protect the public interest, and, therefore, their violation cannot be remedied simply by maintaining the contract. The freedom of contract in this area is severely limited by public law restrictions.

As a legal consequence of invalidity, the defendant was obliged to return what he received under the null and void contract. The court therefore ordered only the repayment of the amount the plaintiff had proven to have transferred as the purchase price but rejected his further claims.

In case II Cp 1306/2013[964], the court ruled similarly to the first case that the purchase and sale contract for agricultural land was null and void because the mandatory procedure prescribed by law (public offer, acceptance, and official approval) was not followed. Due to the circumvention of mandatory rules, the contract is not valid and does not establish the obligation to issue a land registry permit required for the registration of ownership. The court also emphasised that actual performance or the agreement of the parties cannot override mandatory public interest legislation regarding agricultural land transactions.

In another relevant case, the Ljubljana Higher Court[965] confirmed the theory of realisation and also its exemption if the question of convalidation emerges in connection with formally deficient contracts on the sale of agricultural or forestry land. Namely, the merits of the case pertained to a claim seeking the issuance of a land registration document *(zemljiškoknjižno dovolilo)* based on an alleged oral contract for the sale of co-ownership shares in immovable property. The court held that the first-instance court incorrectly rejected the claim solely based on the fact that the part of the co-ownership in question was not included in the written agreement of the parties.

The Higher Court emphasised that Article 52 of the SloOC foresees a mandatory written form for contracts for the conveyance of ownership over immovable property. However, it also held that Article 58 of the SloOC provides for the possibility of convalidation of such contracts if the parties performed their respective obligations stemming from such agreement in whole or in preponderant part. Therefore, the Court

[964] Case no. ECLI:SI:VSLJ:2013:II.CP.1306.2013 of the Supreme Court of Slovenia.
[965] Decision of the Ljubljana Higher Court ECLI:SI:VSLJ:2017:I.CP.508.2017, Registration number: VSL00005380, 11 October 2017. Available at: http://www.sodnapraksa.si [Accessed 18 March 2026].

concluded that it should be assessed as a legally relevant circumstance if the parties had concluded an oral contract and its subsequent realisation through the performance of their respective obligations stemming from the agreement, particularly the transfer of possession. The Higher Court concluded that the first-instance court failed to assess these circumstances; therefore, it set aside the judgment and ordered a retrial. The Court also stipulated that the theory of realisation cannot be applied in cases where the nullity of the contract is caused by the violation of mandatory legal provisions protecting public interests, particularly rules concerning contracts for the transfer of ownership rights over agricultural land.

Based on the judgments analysed, it can be observed that Slovenian law has elevated the sale and purchase of agricultural land to the level of public law due to the importance of these properties for society. Thus, circumventing mandatory procedural rules serving the public interest results in the nullity of the contract.

6.3.7. Croatia

The jurisprudence of the Croatian Supreme Court demonstrates a structurally different approach to form-defective real estate contracts, shaped by three main characteristics. These characteristics are the classical *titulus–modus* distinction in property transfer and the doctrine of performance-based convalidation under the Obligations Act. The examined decisions show that Croatian courts do not adhere to a strict approach of absolute nullity. Instead, they adjust the consequences of formal defects based on the purpose of the form requirement and the broader legal context.

Historically, a foundational expression of the classical proprietary structure appears in case no. Rev 1225/1991[966]. In this case, the claimant sought judicial recognition of ownership based on a contract of sale and requested a judgment which would have substituted for a tabular document enabling land registration. The Supreme Court reaffirmed the traditional doctrinal distinction between the legal basis (*titulus*) and the mode of acquisition (*modus*). Under Article 33 of the Law on Basic Ownership Relations, ownership of immovable property is acquired by registration in the land registry. Even a valid contract constitutes merely the legal basis for transfer, whereas registration remains the constitutive act through which ownership arises. Because the

[966] Case no. Rev 1225/1991-2 of the Supreme Court of the Republic of Croatia.

contractual documentation did not validly encompass the disputed parcel, the declaratory claim failed.

This decision thus shows that proprietary effects cannot arise independently of the registration system, as is the case with *'Auflassung'* in German legal order, which at the same time forms the basis for remedying formal deficiencies in Germany. Consequently, convalidation, even if possible at the obligatory level, cannot circumvent the constitutive character of land registration.

A more flexible approach can be observed in case no. Rev 2268/1990[967]. In this case, the Supreme Court addressed an oral contract for the sale of immovable property, although statutory provisions required written form. The factual basis showed that the seller had transferred possession and received the full purchase price. The lower courts applied Article 73 of the ZOO, which provided that a contract lacking prescribed form may be deemed valid if performed in whole or in substantial part, provided that public interests are not jeopardised. The Supreme Court upheld this reasoning and clarified that the rule on convalidation applies even where the formal requirement stems from special legislation governing real estate transactions, unless the special statute explicitly excludes the application of Article 73 of the ZOO. The Court further emphasised that convalidation remains conditioned upon the absence of harm to societal or public interests. In this reasoning, performance operates as a functional substitute for form at the obligatory level. The judgment reflects openness of the doctrine toward performance-based convalidation, provided that the social function of the form requirement is not undermined.

In case no. Rev 1441/1993[968], the court also addressed performance-based convalidation. The Court elaborated that the general provisions of the Obligations Act regulate the specific issue of the effect of a contract that has been executed in its entirety or in its preponderant part, but lacks a mandatory written form. The convalidation of such a contract is enshrined in the provisions of Article 73 of the Obligations Act, so according to this regulation, a contract for the conclusion of which a written form is required is considered valid even if it was not concluded in that form, provided that the contracting parties have performed their respective obligations stemming from it in full or in its preponderant part, unless the purpose for which the form was prescribed clearly indicates otherwise.

[967] Case no. Rev 2268/1990-2 of the Supreme Court of the Republic of Croatia.
[968] Case no. Rev 1441/1993-2 of the Supreme Court of the Republic of Croatia.

When it comes to a contract for the sale of real estate, as the Court stressed, the first condition is the performance of the contractual obligation that is the subject of the contract; thus, the seller is obliged to hand over the object to the buyer, and the buyer to pay the agreed price.

In the legal matter in question, the courts established that the plaintiff paid the defendant the agreed purchase price and the defendant paid the sales tax on the basis of such a contract but did not transfer the disputed real estate into the plaintiff's possession, but only temporarily enabled the plaintiff to use the property in question.

Accordingly, and regardless of the amount of the purchase price, the prescribed sanction for the lack of written form was not removed even by the application of the provision of Article 73 of the ZOO, since the contractual obligations of the parties were not performed. The Court stated that even if the agreed price was paid, that obligation in itself, even with the fulfilment of the defendant's obligation by paying sales tax, did not meet the legal requirement for the validation of a contract that lacks written form when the defendant's obligation to transfer possession of the real estate was not established during the procedure.

More recent case law proves that convalidation is still present in judicial practice in Croatia. According to the Supreme Court, not even the requirement of simple written form under the Obligations Act is necessary as a bare minimum condition to have the form-defective contract for the sale of real property convalidated. The Court, in a decision from 2019[969], pointed out that, according to the provisions of Art. 377 of the Obligations Act, a contract for the sale of real property must be concluded in writing; otherwise, it does not produce any legal effect. In the case at court, the validity of an orally concluded contract for the sale of real property was the subject matter of the dispute. The Supreme Court held that the contract is not null and void because, according to the decision of the lower courts, it was convalidated in terms of the provisions of Art. 294 of the Obligations Act, given that the contracting parties have fulfilled their contractual obligations in this specific case. Thus, the plaintiff performed their obligations as the seller while the respondent also performed their obligations as the buyer, and it was not established that they had done so because of unlawful motives. The Court considered the provisions of Art. 119 of the Ownership and Other Real Rights Act as well, stating that ownership of real property is acquired by

[969] Case no. Rev. 2937/2016-2 of the Croatian Supreme Court.

registering the acquirer's ownership in the land registry based on the validly expressed will of the previous owner aimed at transferring his ownership to the acquirer, unless otherwise specified by law. Therefore, the Court confirmed the decision of the lower courts by which the contract between the parties was convalidated because the contracting parties reached an agreement on the essential elements of their contract (the object and the price) and had performed their contractual obligations.

Furthermore, case Gž-1353/2019-2[970] is significant regarding the convalidation of formally deficient real estate contracts in Croatia. In the case, the plaintiff alleged that the defendant had purchased 1/4 of two properties from his mother based on an oral agreement. On this basis, he requested the court to determine that he had acquired a valid legal title for the registration of the ownership right. He also requested that the defendant, as an heir, issue the document necessary for the registration of the ownership right or, failing to do so, that the judgment serve as the basis for registration.

It was not disputed that a written sales contract had not been concluded, but only an oral agreement had been reached. However, under Croatian law, a written form is required for the validity of a real estate purchase. The plaintiff could have relied on the rule of convalidation, according to which a contract may become valid despite a formal defect if the parties have fulfilled it in whole or in its preponderant part.

However, the court found that the plaintiff had not proven either the payment of the purchase price, or the taking of possession, or that the seller had voluntarily transferred the ownership share. Since the performance was not proven, the oral contract was not validated, and therefore no valid title to ownership was created. The claim was therefore dismissed with final judgment.

Even though the outcome of the case did not result in the convalidation of the respective juridical act, the case is significant because, based on the court's ruling, it can be concluded that Croatian court practice does not oppose convalidation. This can be argued because the court did not declare the contract null and void due to a lack of formality but ruled that the contract did not come into existence because there was no evidence of performance.

Consequently, it can be observed that Croatian judicial practice, similar to Slovenian jurisprudence, follows the letter of the law pertaining to convalidation. Therefore, court practice based on the relevant legal provisions allows for

[970] Case no. Gž-1353/2019-2 of the County Court of Osijek.

performance-based convalidation of formally deficient contracts for the conveyance of ownership rights over immovable property.

6.3.8. Serbia

The jurisprudence of the Serbian Supreme Court demonstrates a highly structured and legally disciplined approach to the problem of form-defective contracts concerning immovable property. The case law reflects a careful balance between three elements: the mandatory form requirements of real estate transactions, the historically recognised doctrine of judicial convalidation, and the strict constitutive role of registration in the land cadastre. The examined decisions illustrate how Serbian courts distinguish between obligatory validity, proprietary acquisition, and the temporal applicability of convalidation rules.

A central doctrinal reference point is the statutory framework governing contracts on transfer of immovable property. Earlier Laws on Transfer of Immovable Property allowed for performance-based convalidation of contracts lacking the law-required form, provided specific cumulative conditions were fulfilled. These conditions included substantial or full performance, absence of violation of pre-emption rights, and compliance with mandatory norms. The Supreme Court's adopted legal position confirms that such contracts may still be convalidated if they were concluded during the validity of those earlier statutes, regardless of the time of filing the claim.[971] This interpretative standpoint establishes the temporal boundary of convalidation doctrine in Serbian law.

The judgment in case no. Rev 22096/2022[972] clarifies the scope of judicial convalidation under the 1998 Law on Transfer of Immovable Property. The Court explicitly referred to Article 4 of that statute, according to which a written contract lacking court certification of signatures may be recognised as legally effective if the contract has been performed in whole or in substantial part and no mandatory rule or pre-emption right has been violated. The Court emphasised that convalidation applies only to contracts concluded in written form. A juridical act in which the parties'

[971] Legal position adopted at the session of the Civil Department of the Supreme Court of Cassation of Serbia held on November 2, 2018. https://www.vk.sud.rs/sr/2018 (accessed on 26 February 2026).
[972] Case no. Rev 22096/2022 of the Supreme Court of Cassation of the Republic of Serbia.

signature was missing, or which was otherwise structurally incomplete, cannot be convalidated.

The court therefore made a clear distinction between convalidation, which can remedy errors in authentication, and the complete absence of a written contract. If the contract was concluded in writing, as the court emphasised in this case, i.e., the basic formality required by law was met, but its form is defective or incomplete, then it is only an additional, technical formal deficiency. In such a case, the will of the parties is fixed, the contract exists in terms of content, and convalidation may be suitable for remedying this deficiency under certain conditions.

On the other hand, if the written contract itself was not concluded, there is not a mere authentication error, but a complete absence of the form prescribed by law. In such a case, there is no document on which the legal effect could be based and, therefore, there is nothing to heal. Convalidation is therefore not able to subsequently replace a contract that was not concluded in the prescribed form in the first place.

Similarly, case no. Rev 4845/2020[973] illustrates the limitations of informal agreements. The dispute arose from an oral agreement concerning agricultural land, followed by the payment of the purchase price and the transfer of possession. The second-instance court dismissed the action for a declaration of ownership, and the Supreme Court upheld this argument. The actual performance of the oral agreement was not sufficient in itself to acquire ownership, since the formal requirements for property transfer contracts are mandatory. The judgment highlights that mere performance does not produce a material legal effect in the absence of a valid written contractual title capable of convalidation under the applicable statute.

In case no. Gž 1813/19,[974] the Appellate Court in Niš addressed the question of formal requirements and performance-based convalidation in connection with an allegedly concluded real estate sale and purchase contract from 2007. The court stated that a contract for the transfer of ownership rights over immovable property is a highly formal juridical act which is, in that particular case, governed by the relevant provisions of the Act on the Conveyance of Real Property applicable at the time of the conclusion of the contract in question. The court further emphasised that, according to the aforementioned provisions, convalidation may occur only in cases where the formal defect is not observed insofar as at least a written instrument had been drawn

[973] Case no. Rev 4845/2020 of the Supreme Court of Cassation of the Republic of Serbia.
[974] Case no. Gž 1813/19 of the Appellate Court in Niš.

up, but the parties' signatures were not authenticated. In such a case, if the parties performed their respective contractual obligations fully or in preponderant part, provided that no pre-emption right nor other mandatory provision has been infringed, convalidation may occur.

Case no. Rev 5432/2021[975] examined the relationship between earlier agreements and subsequent formally valid transfers. The claimant challenged subsequent, formally correct contracts and based his ownership rights on earlier agreements. The Supreme Court rejected the request for review, confirming that the acquisition of ownership presupposes both a valid title (*titulus*) and a registration in the land registry. Earlier, informal, or defective transactions cannot override a subsequent contract that was duly concluded and registered. This confirms the constitutive nature of the registration in Serbian property law.

Case No. Rev 12809/2022[976] concerned an oral exchange transaction concluded in 1982, which the plaintiff relied on as the basis for the acquisition of ownership based on performance and possession. The court did not recognise the acquisition of ownership based on such an informal agreement, despite the long-standing possession. The judgment confirms that neither possession nor an oral agreement can replace the fulfilment of the mandatory formalities, unless the statutory conditions for convalidation are fully met.

Case no. Rev 16627/2022[977] deals with a claim alleging that a formally valid contract was simulated and that the claimant was the true buyer. The Court of Cassation rejected the attempt to circumvent formal requirements through allegations of simulation combined with performance. The decision demonstrates judicial reluctance to destabilise formally valid, registered transactions absent clear legal grounds.

Finally, the adopted legal position[978] of the Civil Chamber of the Supreme Court clarifies the broader dogmatic framework. It acknowledges that contracts concluded under previous legislation – which still allowed for convalidation – may become valid if the statutory conditions existing at the time of conclusion were met. However, the 2014 Real Estate Transfer Act no longer contains the possibility of convalidation.

[975] Case no. Rev 5432/2021 of the Supreme Court of Cassation of the Republic of Serbia.
[976] Case no. Rev 112809/2022 of the Supreme Court of Cassation of the Republic of Serbia.
[977] Case no. Rev 16627/2022 of the Supreme Court of Cassation of the Republic of Serbia.
[978] Legal position adopted at the session of the Civil Department of the Supreme Court of Cassation of Serbia held on 2 November 2018.

Accordingly, contracts concluded in a deficient form after the entry into force of the Act do not produce legal effect and cannot be made valid in court.

Overall, the judicial practice of the Serbian Supreme Court reflects a structurally coherent model, characterised by the strict enforcement of the observance of at least the written form required as a prerequisite for the transfer of real estate and the firm adherence to the constitutive role of the entry in the land registry.

In the case of contracts concluded under previous legislation, however, a conditional acceptance of judicial convalidation can be observed. Furthermore, it can be stated that purely oral agreements are not recognised by judicial practice, regardless of performance.

In comparative perspective, Serbia thus represents a system in which performance-based convalidation existed as a transitional doctrinal mechanism but has been progressively restricted. Contemporary Serbian law moves toward a strict formalistic regime in which legal certainty and registration prevail over the possibility of validation of formally defective juridical acts.

6.4. Observed Similarities and Differences

Based on the comparative analysis, the examined legal systems do not show isolated, country-specific solutions, but can be arranged into well-defined structural groups according to how they relate to formal requirements, the role of registration, and the legal effects of formally defective real estate transactions.

First, systems in which the prerequisite for land registry registration is a valid legal title (*titulus*) can be distinguished. This group includes legal orders in which the acquisition of ownership is dogmatically based on a valid legal title, and formal errors are, as a rule, an obstacle to the transfer of ownership. This includes Hungary and Austria in particular, where registration is constitutive in nature, and the transfer of ownership cannot take place in the absence of a valid legal title. A similar logic applies in Italy and Romania, where the form is *ad substantiam* in nature, and the missing public document form, as a rule, results in the invalidity of the transaction. In these systems, performance alone cannot cure the formal deficiency. In Romania, for example, the replacement of the form is conceivable only through an act issued by a state authority (typically a court judgment).

In contrast, a second group can be distinguished, in which the function of form is primarily related to the effect against third parties or the registration effect. This group includes France and Poland in particular, where the requirements of contract formalities and entry in the land registry often do not concern the validity of the transaction but its effect against third parties (opposability). The contract may remain valid between the parties, while the lack of registration limits the *erga omnes* effect. In this model, form is not necessarily a condition for the conclusion of the transaction, but a means of transactional safety and publicity.

A third, dogmatically specific group consists of systems in which the separation of the contractual and real transaction means that the acquisition of ownership need not be based solely on a valid contractual title. In this respect, Germany forms a dogmatically specific group, where the contractual agreement of the parties and the real transaction are separated from each other. Acquisition of ownership is achieved through the real agreement (*Auflassung*) and registration; so, in principle, a situation can arise where the contract is void because of formal deficiencies, while the transfer of ownership nevertheless occurs on the basis of the real act. This structural solution creates the dogmatic basis for the classic German convalidation – the subsequent healing of the form defect – which serves to stabilise the already implemented real state.

A fourth group consists of those legal systems that apply corrective mechanisms against formal deficiencies. In the cases of Slovenia and Croatia, the judicial practice recognises the validating effect of performance under certain conditions, if the existence of the contract and the reached consensus of the parties can be proven. In the case of Serbia, a similar convalidation practice existed historically but is applied to a narrower extent under the current regulation.

This also includes Switzerland, where a formal deficiency can in principle lead to nullity, but legal practice may limit the reference to nullity by referring to the prohibition of abuse of rights (Art. 2(2) ZGB), in particular if it would violate the legitimate expectations of the parties or transactional security.

Finally, Slovakia and the Czech Republic should be mentioned, where judicial practice distinguishes between genuine formal deficiencies and purely technical, administrative imperfections. In these systems, the sanction of nullity does not automatically apply to all formal deviations. The courts examine whether the will of the parties and the essential content of the contract can be clearly established.

Overall, the differences between the countries examined do not stem solely from national characteristics, but from the way in which the given legal system interprets the function of form: as a condition of validity, a constitutive condition for registration, a means of opposability, or a corrective instrument linked to performance. The assessment of the legal effects of formally defective real estate transactions becomes systemically comparable along these structural starting points.

6.5. Limits of Judicial Convalidation in Real Estate Transactions

Although the judicial practice of many continental legal systems clearly shows a reluctance to apply nullity without reservations, convalidation is far from unlimited. Comparative case law shows that courts operate within identifiable structural boundaries. However, they are not contradictions but reflect the legislator's functional assessment of formal requirements.

The first and most obvious boundary occurs where the legislator explicitly attaches nullity to the absence of form in mandatory provisions. In such cases, the statutory text itself indicates that form is not merely a means of evidence, but a condition of validity of a juridical act. In these systems, courts interpret the remedies narrowly. They may refuse to recognise convalidation even in the event of performance if it would be contrary to the express wording or purpose of the legislation. The stronger the legislator's will to declare nullity, the narrower the scope for judicial correction.

A second structural constraint is public policy and interests that must be protected. In some legal systems, the formal requirements of real estate transactions are linked to broader regulatory objectives, such as land use control, fiscal transparency, combating money laundering, or protecting the economically weaker party. Where such public interest considerations are involved, courts are considerably more cautious in accepting a performance-based remedy. Convalidation cannot be used to eliminate regulatory guarantees consciously built into formal procedures.

This limitation is particularly clear in the cases of fraudulent or abusive conduct. Where the parties deliberately circumvent formal requirements – for example, to avoid tax, deceive third parties, or conceal the true nature of the transaction – courts should reject performance-based convalidation. In such cases, the formal defect is not a mere technical omission but part of the unlawful conduct. Allowing cure would encourage

strategic infringement. Judicial abstention should therefore be based on preventive logic.

A further limit arises from the protection of vulnerable parties. Real estate transactions often involve significant information and bargaining asymmetries. Notarial intervention and other formal guarantees serve precisely to mitigate this imbalance. If one party seeks to enforce a formally defective agreement that was disadvantageous to the other party by relying on performance, the courts usually conduct an enhanced examination. Where form serves a protective function, the willingness to convalidate is reduced.

The limits of convalidation also emerge in disputed situations, especially when only one party invokes performance while the other opposes enforcement. Courts often distinguish between bilateral, consistent performance and unilateral, partial or disputed performance. If both parties have acted in accordance with the contract for a long period of time, judicial tolerance for formal defects is stronger. In contrast, uncertain or partial performance does not provide a sufficiently stable basis for recognising cure.

A further structural constraint is the land registry system. In legal systems where acquisition of ownership is subject to constitutive registration, convalidation cannot operate independently of the logic of the land registry system. Courts may recognise the stability of the contractual relationship between the parties, but they cannot disregard the requirement of registration without undermining the reliability of the registration. The structural integrity of the law of property therefore constitutes a systemic constraint on judicial creativity.

Comparative case law also shows that courts often do not speak explicitly of convalidation but rather mitigate the consequences of nullity through related doctrines such as the prohibition of abuse of rights, good faith, unjust enrichment, or the protection of trust. In this way, the remedy is often achieved indirectly. The limits of the doctrine are partly determined by the alternative remedies provided by the given legal system.

The existence of constraints, however, does not contradict the tendency towards flexibility in practice. On the contrary, it demonstrates that convalidation operates in a structured normative field. Courts weigh competing values: stability in legal transactions, private autonomy, third-party protection, public interest enforcement, and legal certainty. When the balance tips in the direction of stability and legitimate expectations, performance-based remedies may become acceptable; however, when

formal discipline and regulatory protection take precedence, convalidation is relegated to the background.

From a comparative perspective, then, judicial convalidation in real estate transactions is neither arbitrary nor unlimited. It is always determined by the hierarchy of interests and values prevailing in a given legal system. The doctrine operates most freely when the formal error primarily affects the internal relationship between the parties. However, it faces strong resistance when the error affects public order, the protection of third parties, or the structural reliability of the registration system. These limitations reinforce the general conclusion that convalidation is an intermediary mechanism and not a means of eliminating formal requirements.

7. Conclusions and Recommendations

7.1. Summary of Key Findings

The comparative analysis shows that the assessment of formal contracts for the conveyance of ownership over immovable property depends on three main factors:

(1) classification of invalidity in legal doctrine (absolute or relative nullity),

(2) the function of the formal requirements (evidence, warning, publicity, or control purpose), and

(3) how the given legal system relates to the relationship between the binding contract and the transfer of ownership (or registration).

In all the legal systems examined, convalidation can only be accepted within certain limits. Performance can justify the healing of the contract if the protective purposes of the formal rules have been essentially achieved and neither the public interest nor the trust of third parties is harmed. At the same time, none of the legal systems allows mere performance to trigger the constitutive land registry procedure necessary for the registration of ownership.

The research concludes that convalidation is not primarily about eliminating formal requirements. It is about ensuring that obligations, stemming from formally deficient contracts, that have already been performed do not become unreasonably null and void. Convalidation should therefore create a balance between the actual, genuine will of the parties, their contractual freedom, and economic needs, on the one hand, and legal certainty and transparency, on the other.

7.2. Evaluation of the Hypotheses

The main hypothesis of the dissertation was that in continental legal systems, performance-based convalidation can reconcile the enforcement of formal requirements with the protection of the genuine will of the parties, without disproportionately compromising legal certainty. The research focused on the extent to which convalidation can mediate between public interest objectives and the contractual autonomy of the parties in the event of formal deficiencies.

The analysis confirmed that the application of the institute of convalidation is closely linked to the dogmatic model of transfer of ownership. In systems that separate the contractual and real transactions, there is more room for manoeuvre at the contractual level, since the transfer of ownership is structurally separated from the validity of the contract. In contrast, in systems where acquisition of ownership depends on the validity and registration of the contract, the possibility of convalidation is more limited.

The research also demonstrated that the acceptance of convalidation is related to the functional interpretation of the formal requirements. If the form primarily serves a probative or warning role, performance is more likely to be considered a possible cure of the formal defect. However, if the purpose of the form is to protect public interests, judicial flexibility is significantly limited.

In the analysed five classical civil law codifications (French, Austrian, German, Swiss, and Italian), convalidation of formally deficient contracts on the conveyance of ownership over immovable property does not appear as an independent, codified legal institution in the sense analysed in this research, with the exception of Germany, where the healing (*Heilung*) of a formally deficient real estate contract is subsequently remedied by *Auflassung* and entry into the land registry.

As to contracts for the transfer of ownership rights over immovable property, the Central and European legal systems examined in this thesis do not follow a generally accepted regulatory framework of performance-based convalidation. Namely, same of the analysed legal systems explicitly excluded the possibility of convalidation of form defective real estate contracts, while others derive the same rule from the applicable legislative solutions without expressly excluding this curative mechanism. On the other hand, case law and legal literature of certain examined countries reveal that

performance-based convalidation may be applied to formally deficient real estate contracts despite the absence of an explicit statutory provision foreseeing it. The comparative analysis therefore shows that, despite their certain shared historical and political experiences, the examined countries treat performance-based convalidation differently when it comes to its application in the sphere of real estate contracts.

Of the legal systems examined, performance-based convalidation of formally deficient real estate contracts can be observed specifically in Croatia and Slovenia as a solution accepted in both doctrine and judicial practice. The other Central and Eastern European countries – although the legal institute under study may appear among the general provisions of obligations law – do not allow for the application of performance-based convalidation in the event of infringing of formal requirements foreseen for the validity of contracts for the transfer of ownership rights over immovable property.

Consequently, even where performance-based convalidation of formally deficient real estate contracts is recognised, its application is still subject to the mandatory formal and land registry requirements of the respective legal system.

Overall, the study confirmed that performance-based convalidation may provide a means of protecting the genuine will of the contracting parties and preserving legal transactions that have already been performed, but its application in the field of immovable property remains limited by the requirements of legal certainty, publicity, third-party protection, and the requirements of the respective land registry system.

7.3. Implications for Legal Doctrine and Practice

It would be useful for legal science to distinguish more clearly between the concepts of validity, enforceability, and effects against third parties (opposability) when analysing transactions which validity requires adhering to a specific form.

From the perspective of judicial practice, the research highlights the importance of transparency of reasoning. When a contract is formally defective, courts do not always proceed solely from a violation of the mandatory rule but also take other principles into account in order to maintain the transaction that has already been completed. Courts often refer to good faith or the prohibition of abuse of rights in such cases. Although these arguments may be convincing in terms of content, it is justified to base them dogmatically on the structural relationship between contract law and

property law. Greater conceptual clarity would probably increase legal certainty and predictability as well.

The comparative results further confirm that, despite their promising features, relying on performance-based remedies could also impose risks. Even in legal systems that recognise convalidation, its scope is limited. Full compliance with the formal and land registry entry requirements prescribed by law remains the safest option.

7.4. Recommendations for National Legislators and the EU

At the national level, legislators should strive for dogmatic transparency. If convalidation is accepted, its scope and conditions should be clearly defined at the statutory level. The German model – which explicitly regulates a remedy based on registration – provides a structurally coherent example. In contrast, if the legal order relies solely on judicial interpretation, this can easily lead to uncertainty.

It is also necessary for legislators to ensure consistency between the rules on invalidity (or the rules for eliminating invalidity) and the land registry system. Although, convalidation functions primarily on the obligations-law level of a contract, its application to contracts for the conveyance of ownership over immovable property may also have consequences at the property-law level of the respective juridical act. If the entry into the land registry has a constitutive effect, the legislation should clearly regulate how convalidation affects the registration process and transfer of ownership based on the healed juridical act.

At the European Union level, this research does not recommend harmonisation of convalidation. Despite the great impact of the analysed five classical civil law codifications on the eight Central-Eastern European legal systems, there is still a diversity that stems from deeper structural differences in property law traditions.

Harmonisation would be a difficult task to achieve for several reasons. First of all, the significant differences between the legal traditions of the Member States would cause a shortage. On the other hand, the limitations resulting from the current division of powers between the European Union and the Member States would also make it difficult to achieve the establishment of a coherent regional regulatory framework.

There are also examples in European Union legislation which show the EU refraining from interfering with national legislation concerning the existing regulatory framework of property law. For example, Article 345 of the TFEU stipulates that: “the

Treaties shall in no way prejudice the rules in Member States governing the system of property ownership".[979] However, this provision shall not be interpreted as meaning that the property law of the Member States would be completely outside the scope of EU law. Namely, legal literature points out that Article 345 TFEU does not constitute a general exclusion of property law from the European legal order, however it has to be interpreted in the context of the wider scope of the Treaties and the division of competences between the Union and the Member States.[980]

This interpretation is also supported by the case-law of the Court of Justice of the European Union. Namely, in the SEGRO and Horváth cases, the Court emphasised that, although Article 345 TFEU expresses the fundamental principle of neutrality of the Treaties with regard to the system of property ownership in the Member States, national provisions governing that system are not exempt from the application of the rules of the TFEU.[981] Consequently, Article 345 TFEU does not prevent the effects of EU law on national rules on immovable property when other Treaty provisions are applicable.[982]

EU law may, therefore, indirectly affect certain aspects of real estate transactions where another competence (provided for in the Treaties) establishes an appropriate legal basis. Such a link may arise, for example, in the areas of the internal market, free movement of capital, and the rules of non-discrimination.[983] The importance of the free movement of capital is particularly evident in the Court's case-law on national legislation on rights pertaining to immovable property. Namely, in Commission v Hungary, the Court examined national legislation on usufruct rights in connection with agricultural and forestry land located in Hungary in the light of the provisions on the free movement of capital.[984] Therefore, national rules governing property ownership

[979] Article 345 of the Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences, Official Journal C 326 , 26/10/2012 P. 0001 – 0390. Hereinafter referred to as: TFEU.
[980] Akkermans, B. and Ramaekers, E. (2010) 'Article 345 TFEU (ex Article 295 EC), its meanings and interpretations', *European Law Journal*, 16(3), pp. 292–314, p. 293.
[981] Paragraph 51 of the Judgment of the Court of Justice of the European Union (Grand Chamber) of 6 March 2018. 'SEGRO' Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala and Günther Horváth v Vas Megyei Kormányhivatal. Joined Cases C-52/16 and C-113/16.
[982] *Ibid.*
[983] *Ibid.*
[984] Judgment of the Court (Grand Chamber) of 21 May 2019. European Commission v Hungary. Case C-235/17.

cannot be regarded as rules isolated from the effect of EU law simply because they concern immovable property.

However, taking into account, the existence of such indirect EU effect does not in itself establish the need for the development of a single European regulatory framework that would comprehensively regulate the validity of contracts in light of their mandatory formal requirements, convalidation and legal effects *in rem* of real estate transactions.

From the point of view of practical feasibility, the differences between the legal systems of the Member States also argue against comprehensive substantive harmonisation. The differences concern not only the formal requirements for contracts, but also the relationship between the respective contract, the entry into the land registry and the acquisition of ownership. Instead of harmonising these substantive rules, a more realistic objective at EU level could therefore be to facilitate cross-border real estate transactions by developing cooperation between national land registries. Legal scholarship points out that the significant differences in national land register systems constitute a serious obstacle to their harmonisation, while technological developments and the interconnection of registers could offer a more practical means of facilitating cross-border access to land register information.[985]

The results of the dissertation therefore support the justification for legislative intervention in the field of convalidation primarily at national, rather than EU level. The comparative analysis shows that convalidation in real estate transactions cannot be separated from the broader structure of each national legal system, in particular the relationship between the validity of the contract, registration in the land registry and the means of ownership transfer. Despite the fact that the five classical civil law codifications examined in the dissertation have had a significant historical impact on the legal systems of the Central and Eastern European countries, the remaining differences stem from the deeper structural features of the respective national obligations law and property law.

Consequently, increasing the clarity and internal coherence of national regulations seems to be a more appropriate solution, both in terms of practical feasibility and legal dogmatics, than the harmonisation of the relevant regulatory

[985] Gołaczyński, J. and Kaczorowska, M. (2023) 'Interconnecting land registers at the European level: Technological progress and harmonization aspects', *Review of European and Comparative Law*, 55(4), pp. 29–68. doi: 10.31743/recl.16593, p. 30.

frameworks at the EU level. At the European level, the aforementioned solution of encouraging cross-border cooperation and interoperability seems to be a more realistic approach than the establishment of a regional legal standard governing convalidation and acquisition of ownership.

7.5. Perspectives for Future Research

Based on the conducted research, several further directions of investigation emerge.

First, a more detailed, even empirical, analysis of the judicial practice of individual legal systems would be justified, which could also reveal from a quantitative perspective the frequency with which performance-based convalidation is applied in practice.

Second, further theoretical research is needed on the temporal dimension of convalidation, in particular to clarify whether the remedy is retroactive (*ex tunc*) or prospective (*ex nunc*) and how this affects the rules of limitation and the rights of third parties.

Third, interdisciplinary research could also be conducted, linking the theory of property law with economic analysis. It could examine whether convalidation increases the efficiency of transactions.

Finally, comparative research beyond Europe – especially in mixed or common law systems – could shed light on whether functionally similar solutions exist outside continental law and how they relate to, for example, the doctrines of estoppel or part performance.

Convalidation therefore remains a potential area of research, both from a dogmatic and comparative perspective. Studying it contributes not only to a more precise understanding of the law of real estate transactions, but also to a deeper understanding of how private law is able to reconcile formal requirements with economic and social reality.

Bibliography

1. Abry, K. (2023) *The construction, sources, and implications of consensualism in contract, Studies in the history of law and justice.* Cham: Springer Nature Switzerland.
2. Achour & Partners (2022) *Nejvyšší soud: Absolutní neplatnost právního úkonu (právního jednání) v režimu právní úpravy účinné do 31. 12. 2013 nelze dodatečně zhojit ani konvalidací podle § 582 odst. 1 občanského zákoníku [Supreme Court: Absolute invalidity of a legal act under the legal regime effective until 31 December 2013 cannot be remedied even by convalidation under § 582(1) of the Civil Code]* [Online]. Available at: https://www.achourpartners.com/nejvyssi-soud-absolutni-neplatnost-pravniho-ukonu-pravniho-jednani-v-rezimu-pravni-upravy-ucinne-do-31-12-2013-nelze-dodatecne-zhojit-ani-konvalidaci-podle-§-582-odst-1-obcanskeho-zakoniku/ (Accessed: 16 July 2025).
3. Akkermans, B. and Ramaekers, E. (2010) 'Article 345 TFEU (ex Article 295 EC), its meanings and interpretations', *European Law Journal*, 16(3), pp. 292–314.
4. Albertario, E. and Volterra, E. (1938) 'Donazione [Donation]', *Enciclopedia Italiana – I Appendice.*
5. Anghel, E. (2021) 'The Evolution of Contracts in Roman Law'. *LESIJ - Lex ET Scientia International Journal.* 28(1). pp. 112-118.
6. Anka Márton, T. (2015) 'A földforgalmi csodák csodája, a biztonsági okmány' [The Outstanding Wonder of Land Transfer Wonders, the Security Document], Magyar Jog, 62(6), pp. 371-380.
7. Antas, M. (2021) *Czynności prawne przysporzające w prawie polskim* [Legal Acts Conferring Benefits under Polish Law]. Unpublished PhD dissertation. Kraków: Krakowska Akademia im. Andrzeja Frycza Modrzewskiego, Wydział Prawa, Administracji i Stosunków Międzynarodowych.
8. Antić, O. (2014). *Obligaciono pravo* [Law of Obligations], Beograd: Dosije studio.
9. Azzarri, F. (2013) '*Il principio consensualistico e le regole della circolazione patrimoniale*' [The Principle of Consensual Transfer and the Rules Governing the Circulation of Property]. In: Sirena, P. (ed.) *L'atto pubblico notarile come*

strumento di tutela nella società dell'informazione [The Notarial Authentic Instrument as a Means of Protection in the Information Society]. *I Quaderni della Fondazione Italiana del Notariato*, Vol. I. Available at: http://www.elibrary.fondazionenotariato.it.

10. Babić, M. (2017). 'Zemljišno-knjižni upis kao preduvjet za promet nekretnina i investicijska ulaganja' [Land Registry Entry as the Condition for Real Estate Transactions and Investments], *Acta Economica Et Turistica*, 3(2), pp. 161–181. https://doi.org/10.1515/aet-2017-0016.
11. Bajor, B. *et al.* (2024) *Kodeks cywilny. Komentarz aktualizowany* [*Civil Code. Updated Commentary*]. Gdańsk: Wolters Kluwer Polska.
12. Bartczak, A. (2017) 'Konwalidacja małżeństwa kanonicznego' [The Convalidation of Marriage in Canon Law], *Acta Universitatis Lodziensis. Folia Iuridica*, 81, pp. 5–15. https://doi.org/10.18778/0208-6069.81.01.
13. Beale, H., Feuvarque-Cosson, B., Rutgers, J., Vogenauer, S. (2019) *Cases, Materials and Text on Contract Law,* 3rd edn., Oxford, UK; Portland, Oregon: Hart Publishing.
14. Beleiu, G. (2005) *Drept civil român: introducere în dreptul civil: sublectele dreptului civil* [Romanian Civil Law: Introduction to Civil Law: Lessons on Civil Law], București: Universul Juridic.
15. Bělovský, P. (2019) 'Ownership and Property in Communist Civil Codes of Czechoslovakia', *Acta Iuris Stetinensis*, 27(3). doi:10.18276/ais.2019.27-02. pp. 23-68.
16. Benke, J. – Nochta, T. (eds.) (2018) *'Magyar polgári jog: Kötelmi jog I.'* [Hungarian Civil Law: Law of Obligations I.], Budapest Pécs: Dialóg Campus.
17. Bîrsan, C. (2015) *Drept civil: drepturile reale principale* [Civil Law: Main In-rem Rights], Bucureşti: Editura Hamangiu.
18. Blagojević, B., Krulj, V. (eds.) (1980), *Komentar Zakona o obligacionim odnosima* [Commentary of the Obligations Act], Beograd: Savremena administracija.
19. Blagojević, T. B. (1978), 'Zakon o obligacionim odnosima u svetlosti svog vremena' [Obligations Act in Light of Its Time], *Anali Pravnog fakulteta u Beogradu*, 26(3-5), pp. 227 - 243.
20. Blajer, P. (2022) 'The Effect of Registration in the Land Register in the

framework of Real Estate Sale (comparative study)', *European Property Law Journal*, 11(1–2), pp. 29–61. https://doi.org/10.1515/eplj-2022-0005.

21. Bocchini, F. (2016) *Le vendite immobiliari. Vol. 1: Contratto e pubblicità [Real Estate Sales. Vol. 1: Contract and Publicity]*. Milan: Giuffrè.
22. Bodzási, B. (2014), 'A szerződéskötés általános szabályai az új Ptk.-ban I.' [General Rules on Formation of Contracts in the New Civil Code], Céghírnök, 5, pp. 3-5.
23. Boemke, B. and Ulrici, B. (2009) *BGB Allgemeiner Teil [BGB General Part]*. 1st ed. Berlin-Heidelberg: Springer-Lehrbuch. Springer. https://doi.org/10.1007/978-3-642-01610-3_10.
24. Borlinič Gačnik, D., Jakšić, J. (2022) 'The Formality of Real Estate Transactions in the Law of Slovenia and Croatia in the Light of New Technologies' in Slakoper, Z., Tot, I. *The Law of Obligations in Central and Southeast Europe – Recodification and Recent Developments*, London and New York: Routledge – Taylor & Francis Group, pp. 175–191.
25. Boroi, G. (2012) *Curs de drept civil: partea generală* [Course of Civil law: General Part], București: Editura Hamangiu.
26. Brauneder, W. (2013) 'The "First" European Codification of Private Law: The ABGB'. *Zbornik PFZ*, (5-6)63, pp. 1019-1026.
27. Buckland, W. W. (1921) *A text-book of Roman law from Augustus to Justinian.* Cambridge: University Press.
28. Burián, L. (2014) *'Szokásjog versus kodifikált jog a magyar magánjog történetében, különös tekintettel a magyar magánjog bevezetésére Észak-Erdélyben [Customary Law versus Codified Law in the History of Hungarian Private Law, with Particular Regard to the Introduction of Hungarian Private Law in Northern Transylvania]'*, in Quaerendo et Creando. Budapest: Szent István Társulat az Apostoli Szentszék Könyvkiadója, pp. 69–83.
29. Camilletti, F. (2018) 'Invalidità civilistica, invalidità giuslavoristica e nullità di protezione' [Civil Law Invalidity, Labour Law Invalidity, and Invalidity of Protection**].** *Lavoro, Diritti, Europa,* 1/2018, pp. 1–33.
30. Cartwright, A. (2000) 'Reforming Property Law in Eastern and Central Europe', in Bright, S. and Dewar, J. (eds.) *Modern Studies in Property Law, Volume 1: Property 2000*. Oxford: Hart Publishing, pp. 341–356.

31. Catala, P. (ed.) (2007) *Proposals for Reform of the Law of Obligations and the Law of Prescription* [Avant-projet de réforme du droit des obligations et de la prescription]. Translated by J. Cartwright and S. Whittaker. Oxford.
32. Čepulo, D. (2020) 'The ABGB and the House-Community in the Croatian Legal System: Legal Irritant and Normative Plurality', in Kohl, G., Neschwara, C., Olechowski, T., Pauser, J., Reiter-Zatloukal, I. and Vec, M. (eds.) *Festschrift für Thomas Simon zum 65. Geburtstag: Land, Policey, Verfassung*. Wien: Verlag Österreich, pp. 25–72.
33. Čokolić, A. (2013) '200 Years of the General Austrian Civil Code – Sources, Creation and Entering into Force of the General Civil Code with Special Emaphasis on the Croatian Legal Areas', *Glasnik Advokatske komore Vojvodine,* 84(12), pp. 639-668.
34. Cvetić, R.M. (2015) 'A Reach of the Principle of Entry and the Principle of Reliability in the Real Estate Cadastre in our Court Practice', *Zbornik radova Pravnog fakulteta u Novom Sadu*, 49(3), pp. 1017–1036.
35. Darázs, L. (2009) 'Az "érvényessé válás" jogintézményének szükségességéről a polgári jogban' [On the Necessity of the Legal Institution of "Becoming Valid" in Civil Law], Magyar Jog, 56(8), pp. 449-458.
36. Díaz-Bautista Cremades, A.A. (2021) 'Actio Publiciana and Mancipatio', *Journal on European History of Law*, 12(2), pp. 138–144.
37. Dime-Ilijevska, P. (1988) 'Konvalidacija ugovora o kupoprodaji nepokretnosti' [Convalidation of Contracts for the Sale of Immovable Property], in Đekić, D. (ed.), *Zakon o obligacionim odnosima 1978–1988* [Law on Obligations 1978–1988] (Beograd: Savez udruženja pravnika SR Srbije, pp. 320-324.
38. Dolović Bojić, K. (2021) *Pravno nepostojeći ugovori* [Legally Non-existent Contracts], Beograd: Pravni fakultet Univerziteta u Beogradu.
39. Domingo Oslé, R. (2017) 'The Law of Property in Ancient Roman Law'. SSRN Electronic Journal. DOI: https://doi.org/10.2139/ssrn.2984869.
40. Domingo, O. R. (2017) 'The Revival of Roman Law and the European Legal Tradition'. Emory Legal Studies Research Paper. Available at: https://ssrn.com/abstract=2989080 or http://dx.doi.org/10.2139/ssrn.2989080.
41. Đorđević, M. (1995) 'Snaga volje mortis causa iz ništavih pravnih poslova' [Mortis causa willpower from void juridical acts], *Anali Pravnog fakulteta u Beogradu*, 43(4), pp. 424–435.

42. Drakić, G. (2013) ’Građansko parvo na vojvođanskom pravnom području u Kraljevini Srba, Hrvata i Slovenaca [Civil Law in the Territory of Vojvodina in the Kingdom of Serbs, Croats and Slovenes]’ *Zbornik radova Međunarodnog naučnog skupa „Harmonizacija građanskog prava u regionu“*, pp. 107-118.
43. Dudás, A. (2013) ’A polgári jog kodifikációjának történeti áttekintése Szerbiában’ [Historical overview of the codification of civil law in Serbia]. *Jogtörténeti Szemle,* 1/2013, p. 10.
44. Dudás, A. (2013) ’A polgári jog kodifikációjának történeti áttekintése Szerbiában’ [Historical overview of the codification of civil law in Serbia]. *Jogtörténeti Szemle,* 1/2013, pp. 9-17.
45. Dudás, A. (2022), ‘General Rules on Invalidity of Contracts in Serbia’, *Review of European and Comparative Law*, 49(2), pp. 51–70. https://doi.org/10.31743/recl.13441 Reffered to as ‘Dudás, 2022b’.
46. Dudás, A. and Király-Szitás, E. (2026) ’The Evolution of the Legal Institute of Convalidation of Null and Void Contracts in the Yugoslav Legal Tradition: Historical Influences and Legal Legacy’, *Pravni vjesnik,* 42(1). pp: 25-48. https://doi.org/10.25234/pv/38233.
47. Dudás, A. and Szitás, E. (2024) ‘Convalidation of Form-Defective Contracts on the Conveyance of Ownership of Real Property in Serbian, Croatian, and Slovenian Law’ in Tomislav Karlović and Elizabeta Ivičević Karas (eds), *Legatum pro anima: Zbornik radova u čast Marku Petraku*, Pravni fakultet Sveučilišta u Zagrebu, pp. 993-1015.
48. Đurović, R. and Orlić, M. (1978) ‘Od Opšteg imovinskog zakonika do Zakona o obligacionim odnosima’ [From the General Property Code to the Obligations Act], *Anali Pravnog fakulteta u Beogradu*, 26(3-5), pp. 245–266.
49. Dziadzio, A., (2008). ’The Constitution of the Duchy of Warsaw 1807. Some remarks on occasion of 200 year anniversary of its adoption’. *Krakowskie Studia z Historii Państwa i Prawa, Tom 2*, pp. 163-174.
50. Elischer, D., Frinta, O. and Pauknerová, M. (2012) ’Private Law’, *The Lawyer Quarterly*, 2(1), pp. 69-107.
51. Erdődy, J. (2006) ‘Tulajdonszerzés pénzen, római jog szerint: Gondolatok a *mancipatio* margójára [Acquisition of Ownership over Money under Roman Law: Reflections on *Mancipatio*]’, *Iustum Aequum Salutare*, 2(3–4), pp. 73–84.
52. Ernst, H. and Josipović, T. (2009). ‘Javni bilježnici i javni registri’ [Notaries

Public and Public Registers], *Zbornik Pravnog fakulteta u Zagrebu,* 59(6), pp. 1117–1152.

53. Ernst, H., and Josipović, T. (2024). 'Functions of Land Registration Entries and the Protection of Personal Data', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 45(1), pp. 46-46. https://doi.org/10.30925/zpfsr.45.1.2.
54. Ernst, U. (2012) *Max Planck Encyclopedia of European Private Law* [Online]. Available at: https://max-eup2012.mpipriv.de/index.php/Polish_Civil_Code (Accessed: 11 July 2025).
55. Falada, D. (2009) 'Codification of Private Law in the Czech Republic', *Fundamina: A Jurnal of Legal History*, 15(1), pp. 38-68.
56. Fazakas, Z. J. (2021) „A szerződés semmissége és megtámadhatósága a magyar és a román polgári törvénykönyvekben" [Nullity and Contestability of the Contract in the Hungarian and the Romanian Civil Codes], *Erdélyi Jogélet*, (2), pp. 103-117. doi: 10.47745/ERJOG.2021.02.06.
57. Foti, G. (2021) ' Convalida e governo dell'atto invalido nella prospettiva dei valori costituzionali' [Validation and Governance of Invalid Acts from the Perspective of Constitutional Values], *dirittifondamentali.it [Online]*, 1/2021, p. 565-622.
58. François, C. (2016) *Présentation des articles 1172 à 1173 de la nouvelle sous-section 1 « Dispositions générales »*[Presentation of Articles 1172 to 1173 of the New Subsection 1 "General Provisions"]. In: *La réforme du droit des contrats présentée par l'IEJ de Paris 1*. Available at: https://iej.univ-paris1.fr/openaccess/reforme-contrats/titre3/stitre1/chap2/sect3/ssect1-forme-dispos-generales/.
59. Frýdek, M. (2011) 'Influence of Roman Law on the Law of Obligations according to ABGB – The Comparison of Selected Contract Types', *Journal on European History of Law*, 2(1), pp. 156–159.
60. Gábriš, T. (2022) 'Slovak share in the unification and codification efforts in interwar Czechoslovakia', *Krakowskie Studia Z Historii Państwa I Prawa*, 15(2), pp. 307–323. https://doi.org/10.4467/20844131ks.22.021.15724.
61. Giglio, F. (2022) *'Roman "dominium" and the Common-Law Concept of Ownership'* Rabels Zeitschrift für ausländisches und internationales Privatrecht / The Rabel Journal of Comparative and International Private Law, 86(1), pp. 91-118.

62. Glos, G. E. (1986) ‘The Czechoslovak Civil Code of 1964 and Its 1982 Amendment *Within* the Framework of Czechoslovak Civil Law’, *New York Law School Journal of International and Comparative Law*, 6(2), pp. 215–273.
63. Gołaczyński, J. and Kaczorowska, M. (2023) ‘Interconnecting land registers at the European level: Technological progress and harmonization aspects’, *Review of European and Comparative Law*, 55(4), pp. 29–68. doi: 10.31743/recl.16593.
64. Gorenc, V. (ed.) (2014), *Komentar Zakona o obveznim odnosima* [Commentary of the Obligations Act], Zagreb: Narodne novine.
65. Grzybowski, S., (1974) ’O rzekomej konwalidacji nieważnej czynności prawnej’ [On the Alleged Convalescense of the Void Juridical Act], *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 36(3), pp. 37-49.
66. Gschnitzer, F. (1968) *Sachenrecht* [Property Law], Wien: Springer.
67. Gudowski, J. (2021) (ed.) *Kodeks cywilny. Komentarz. Tom I. Część ogólna, cz. 2 (art. 56–125) [Civil Code. Commentary. Volume I. General Part, Part 2 (Articles 56–125)]*. Warsaw: Wolters Kluwer Polska.
68. Hamza, G. (2002). ’Civil Law and the Civil Law Codification in Austria from the Middle Ages to the End of the Twentieth Century’. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica*, 43, pp. 53-70.
69. Hamza, G. (2004). ’The Development of Private Law and the Codification of Private Law in Germany’. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eotvos Nominatae: Sectio Iuridica*, 44, pp. 61-82.
70. Hamza, G. (2004b). A magánjog fejődése és kodifikációja Romániában [Development and Codification of Private Law in Romania]’. *Magyar Jog*, 8, pp. 477-485.
71. Harsági, V. (2015). *Evidence in Civil Law – Hungary.* [Online]. Maribor: Institute for Local Self-Government and Public Procurement Maribor. Available at: http://www.lex-localis.press/index.php/LexLocalisPress/catalog/book/31. (Accessed: 23 January 2024), doi: 10.4335/978-961-6842-51-8.
72. Harvey, W. F. (1878) *A Brief Digest of the Roman Law of Contracts.* Oxford: James Thornton, High Street.
73. Heiss, H. (1999) *Formmängel und ihre Sanktionen [Defects of Form and Their Sanctions].* Tübingen: Mohr Siebeck.

74. Hellwege, P. (2012) ‘Invalidity’, in Basedow, J., Hopt, K.J. and Zimmermann, R. (eds.) *Max Planck Encyclopedia of European Private Law*. Oxford: Oxford University Press, pp. 990-994.
75. Herlea, A. (1985) *Studii de istorie a dreptului. Dreptul de proprietate* [Studies in Legal History. The Right of Property]. Edited by V. Șotropa. Cluj-Napoca: Editura Dacia.
76. Heumann, H. G. (1926) *Heumanns Handlexikon zu den Quellen des römischen Rechts [Heumann's Handbook of the Sources of Roman Law]*. 2nd edn. Jena: Gustav Fisher.
77. Hofer, J. B. and Jäger, J. (2020) ‘Formlose Änderung eines Grundstückskaufvertrags nach Auflassung?’, *Juristische Ausbildung*, 42(2), pp. 103–109. https://doi.org/10.1515/jura-2019-2238.
78. Houin, R. (1955) ’Reform of the French Civil Code and the Code of Commerce’. *The American Journal of Comparative Law.* 4(4). pp. 485-505.
79. Hunter, W. A. (1903) *A Systematic and Historical Exposition of Roman Law in the Order of a Code.* 4th edn. London: Sweet and Maxwell.
80. Izsó, K. (2007) ’A jóhiszemű szerzés’ [Aquisition in good faith], Polgári Jogi Kodifikáció, 2007/2, pp. 15-21.
81. Jakúbeková, D., D. (2020) ’Neplatnosť právnych úkonov–jej slabé miesta a perspektívy’ [Invalidity of legal acts – its weak spots and perspectives] *Paneuropean Law Journal,* 3(2) [online]. Available at: https://www.paneuropskepravnickelisty.sk/index.php/ppl/article/view/78 (Accessed: 16 July 2025).
82. Jelušić, D. (2018) ‘Konvalidacija ugovora nesklopljenih u zahtijevanoj pisanoj formi’ [Convalescence of Contracts not Concluded in the Required Written Form], *Hrvatska pravna revija*, 3-4, pp. 23–31.
83. Jhering, R. von (1858) *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* [*The Spirit of Roman Law at the Various Stages of Its Development*]. Zweiter Theil, Zweite Abtheilung [Second Part, Second Division]. 1st edn. Leipzig: Breitkopf und Härtel.
84. Jójárt, E. (2014), ’Diszpozitivitás a régi és az új Polgári Törvénykönyvben - elméleti alapvetés’ [Dispositive Rules in the Old and New Civil Code - Theoretical Introduction], Magyar Jog, 12, pp. 673-685.
85. Juhart, M., Plavšak, N. (2003), *Obligacijski zakonik: Splošni del, s komentarjem*

[Obligations Code: General Part – with commentary], Book 1, Ljubljana: GV Založba.

86. Juhart, Miha (2024) *Civil Law Codification in Slovenia.* In: Codification of Civil Law: Assessment, Reforms, Options. Legal Heritage. Central European Academic Publishing, Miskolc–Budapest, pp. 339-366.
87. Juhász, Á. (2022) *'A szerződéses akarat és annak egyes értelmezési kérdései, különös tekintettel a szerződés részleges érvénytelenségére' [The Contractual Intention and its Interpretation with a focus on the Partial Invalidity of the Contract],* Miskolci Jogi Szemle, 17, pp. 189-197, DOI: https://doi.org/10.32980/MJSz.2022.2.2008.
88. Karamarković, L. (2004) 'Konvalidacija ugovora o prometu nepokretnosti kojima nedostaje forma' [Convalidation of Form-defective Contracts on the Conveyance of Real Estate] in: *Rasprave iz ugovornog, odštetnog i procesnog prava,* Beograd: Glosarijum, pp. 26–37.
89. Karanikić Mirić, M. (2015) 'Ugovorena forma ugovora o otuđenju nepokretnosti' [Agreed Form of Contracts for Conveyance of Real Estate], *Srpska politička misao*, 22(2), pp. 313–339.
90. Karčić, F. (2020) *A Study on Legal Formalism in the Former Yugoslavia and its Successor States*. Centre for Integrity in the Defence Sector.
91. Karlović T., (2012) 'Neka razmatranja o nastanku stipulacijske obveze' [Some Considerations on the Frmation of *Stipulatio*]. 62(3). *Zbornik Pravnog fakulteta u Zagrebu,* pp. 901–928.
92. Kemenes, I. (2016) 'Az érvénytelenség jogkövetkezményeinek szabályozása a Polgári Törvénykönyvben I. rész' [Regulation of the Legal Consequences of Invalidity in the Civil Code Part I], Gazdaság és Jog, 1, pp. 3-8.
93. Képessy, I. (2025) 'Az ABGB hatálybaléptetése Magyarországon' [The Entry into Force of the ABGB in Hungary], *JOG.történet*, VI, 25 August. Available at: mtajogtortenet.elte.hu/blog/kepessy-imre-abgb-hatalybaleptetese.
94. Kępiński, M. (1983) 'Orzeczenia stwierdzające obowiązek złożenia oświadczenia woli w obrocie nieruchomościami (art. 64 k.c., 1047 k.p.c.)' [*Judgments Establishing the Obligation to Make a Declaration of Will in Real Estate Transactions (Art. 64 Civil Code, Art. 1047 Code of Civil Procedure)], Ruch Prawniczy, Ekonomiczny i Socjologiczny*, XLV(2), pp. 59–74.

95. Kiss, G. – Sándor, I. (2014) *A szerződések érvénytelensége* [Invalidity of Contracts], Budapest: HVG-ORAC Lap- és Könyvkiadó Kft.
96. Klarić, P. and Vedriš, M. (2014) *Građansko pravo* [Civil Law], Zagreb: Narodne novine.
97. Klenova, V. (2023) 'Modus in the System of Causal Traditio (Is Modus a Separate Legal Act, Distinct from the Underlying Title?)', *Právny Obzor*, 106(4), pp. 302–320.
98. Konstantinović, M. (1969) *Skica za zakonik o obligacijama i ugovorima* [Draft/Sketch for a Code of Obligations and Contracts], reprinted in the series Klasici jugoslovenskog prava (1996), Perović, S. (ed.), Beograd: Službeni list SRJ.
99. Kornet, N. (2011) *Evolving General Principles of International Commercial Contracts: The UNIDROIT Principles and Favor Contractus*. M-EPLI Working Paper No. 2011/07. Maastricht: Maastricht European Private Law Institute, Faculty of Law, Maastricht University. Available at: https://ssrn.com/abstract=1756751 [Accessed: 7 August 2026].
100. Kötz, H. (2017) *European Contract Law*. 2nd edn. Oxford: Oxford University Press.
101. Kreutz, P. (2009) 'Der Begriff der Verfügung im BGB und das Trennungs- und Abstraktionsprinzip' [The Concept of Disposition in the BGB and the Principles of Separation and Abstraction], *Zeitschrift für das Juristische Studium (ZJS)*, 2/2009, pp. 135–141.
102. Krueger, P. and Mommsen, T. (1889) *Corpus Iuris Civilis,* Berlin: Weidmann.
103. Kuklík, J. and Skřejpková, P. (2020) 'Frost Comes out of Kremlin: Changes in Property Law and the Adoption of the Civil Code in 1950,' *Právněhistorické studie*, 49(2), pp. 10–19. https://doi.org/10.14712/2464689x.2019.28.
104. Kurucz, M. (2003) 'A telekkönyv és az ingatlan-nyilvántartás, mint a jogi látszat, a formai legitimáció közvetítésének instrumentuma' [The Land Registry and Real Estate Registry as Instruments of Legal Appearance and Formal Legitimation], *Közjegyzők Közlönye*, 2003(7–8), pp. 14–20.
105. Kuttner, S. (1960) *Harmony from Dissonance: An Interpretation of Medieval Canon Law*. Latrobe. PA: Archabbey Press.
106. Lavický, P. and Hurdík, J. et al., (2014) *Private law reform*. Brno: Masaryk University, Faculty of Law.

107. Lewandowicz, M. (2016) ‘On the Universalist Heritage in the Codification of Private Law in Poland and Switzerland in the 19th and 20th Century’. Jurnal on European History of Law, 7(1), pp. 115-124.
108. Luković, M. D. (2009), *Bogišićev Zakonik: Priprema i Jezičko Oblikovanje* [Bogišić's Code: The Process of Preparing and Linguistic Shaping]. Beograd: Balkanološki institut SANU.
109. Mádl, F. (2022) *Magyarország első Polgári Törvénykönyve – Az 1959. évi IV. törvény – a polgári jogi kodifikáció történetének tükrében* [*Hungary’s First Civil Code – Act IV of 1959 – in the Light of the History of Civil Law Codification*]. 2nd edn. Budapest: Mádl Ferenc Összehasonlító Jogi Intézet. https://doi.org/10.47079/mf.ptk.2022ve.
110. Malenica, A. and Deretić, N. (2011) ’Rimsko pravo’ [Roman law], Novi Sad: Pravni fakultet.
111. Mankowski, P. (2010) ’Formzwecke’ [Functions of Forms]. *JuristenZeitung,* 65(13), pp. 662-668.
112. Mantovani, M. (2006) Le nullità e il contratto nullo [Nullity and the void contract], in Gentili, A. (ed.), *Rimedi [Remedies]*, vol. IV, t. I, in Roppo, V. (ed.), *Trattato del contratto [Treatise on Contracts]*, Milan: Giuffrè.
113. Meder, S. (2009) *Ius non scriptum - Traditionen privater Rechtsetzung [Traditions of the Making of Private Law]*. 2nd edn. Tübingen: Mohr Siebeck.
114. Menyhárd, A. (2021) ‘A szerződés érvénytelensége mint jogvédelmi eszköz’ [Invalidity as a Means of Legal Protection], Miskolci Jogi Szemle. Miskolc, Magyarország, 16(3), o. 7–23. doi: 10.32980/MJSz.2021.3.1015.
115. Menyhárt, Á. (2018) in Fazekas, J., (ed.) *’Kötelmi jog - Általános rész’* [Law of Obligations – General Part], Budapest: Gondolat Kiadó.
116. Midorović, S. (2023) *Delimična ništavost ugovora* [Partial Invalidity of Contracts]. PhD thesis. University of Novi Sad, Faculty of Law. Available at: https://nardus.mpn.gov.rs/bitstream/handle/123456789/21298/Disertacija_13406.pdf?sequence=1&isAllowed=y.
117. Mirković, S. Z. (2022) 'Mihailo Konstantinović o radu na Građanskom Zakoniku u međuratnoj Jugoslaviji' [Mihailo Konstantinović on Working on the Civil Code in Inter-war Yugoslavia], *Anali Pravnog fakulteta u Beogradu*, Poseban broj u čast profesora Mihaila Konstantinovića/2022, Available at: https://doi.org/10.51204/anali_pfbu_22mk03a, pp. 79-91.

118. Miščević, N. (2022) *Javnobeležnička forma obligacionih ugovora [The Notarial Form of Contracts in the Law of Obligations]*. PhD thesis. University of Novi Sad, Faculty of Law.
119. Miskolczi Bodnár, P. (2023) Kógencia és diszpozitivitás a szerződési jogban [Cogency and Dispositivity in Contract Law], Gazdaság és Jog, 1-2, pp. 41-46.
120. Möllers, T.M.J. (2018). 'Working with Legal Principles – demonstrated using Private Autonomy and Freedom of Contract as Examples'. *European Review of Contract Law*, 14(2), pp. 101–137. doi:https://doi.org/10.1515/ercl-2018-1007.
121. Mousourakis, G. (2015) *Roman Law and the Origins of the Civil Law Tradition.* Cham-Heidelberg-New York-Dordrecht-London: Springer.
122. Možina, D. and Vlahek, A. (2019) *Contract law in Slovenia*, Alphen aan den Rijn: Cluwer Law International B.V.
123. Nelson, A.C. (2012) *La trascrizione immobiliare*. Milan: Giuffrè Editore
124. Nikolić, D. (2011) 'Dva veka Austrijskog građanskog zakonika (1811-2011) [Two Centuries of the Austrian Civil Code (1811-2011)]' *Zbornik Matice Srpske Za Društvene Nauke,* 135/2011. pp. 313-327. Available at: https://doi.org/10.2298/zmsdn1135113n.
125. Nikolić, Đ. (2014) *Obligaciono pravo* [Law of Obligations], Beograd: Organizacija za pravnu edukaciju i kulturu prava „Projuris".
126. Nikolić. D. (2005) 'Dva veka građanskog prava u obnovljenoj Srbiji (1804-2004)' [Two centuries of civil law in renewed Serbia (1804-2004)], *Glasnik Advokatske komore Vojvodine Časopis za pravnu teoriju i praksu,* 4/2005, pp. 277-309.
127. Nikšić, S. (2022). 'Pisani oblik ugovora i drugih pravnih poslova' [Written Form of Contracts and Other Legal Transactions], *Zbornik pravnog fakulteta u Zagrebu,* 72(1-2), pp. 299–328. https://doi.org/10.3935/zpfz.72.12.08.
128. Osztovics (2014) in Osztovics, A. (ed.) A Polgári Törvénykönyvről szóló 2013. évi V. törvény és kapcsolódó jogszabályok nagykommentárja [Grand Commentary of Act V. of 2013 and Related Regulations]. Budapest: Opten Informatikai Kft.
129. Pajtić, B., Radovanović, S., Dudaš, A. (2018) *Obligaciono pravo* [Law of Obligations], Pravni fakultet u Novom Sadu Centar za izdavačku delatnost.
130. Pantić D. (1983-1984) 'Privatnopravni Partikularizam i pokušaji unifikacije građanskog prava u Jugoslaviji između dva rata' [Private Law Particularism and

the Attempts of Unification of Civil Law in Inter-war Yugoslavia], 20/1983-1984, *Zbornik radova Pravnog fakulteta u splitu*, pp. 115-128.

131. Perović, S. (1964) *Formalni ugovori u građanskom pravu* [Formal Contracts in Civil Law], Beograd: Naučna knjiga.
132. Perović, S. (1986) *Obligaciono pravo: Opšta teorija ugovora* [Law of Obligations: General Theory of Contracts], Beograd: Naučna knjiga.
133. Petrak, M. (2012). 'Actio Publiciana in Classical Roman Law', *Zbornik Pravnog fakulteta u Zagrebu*, 62(5-6), pp. 1513-1535.
134. Petrak, M. (2022) 'Kodificiranje građanskog prava u jugoistočnoj Europi' [Codification of Civil Law in Southeast Europe], in Tot, I. and Slakoper, Z. (eds.) *Hrvatsko obvezno pravo u poredbenopravnom kontekstu: Petnaest godina Zakona o obveznim odnosima* [Croatian Law of Obligations in Comparative Perspective: Fifteen Years of the Law on Obligations]. Zagreb: Ekonomski fakultet Sveučilišta u Zagrebu, pp. 101–146.
135. Petrović A and Jukan E. (2019) 'Obavezna forma ugovora nakon presude U 2/16' *Zbornik radova Pravnog fakulteta u Tuzli* (No 1) 41-83.
136. Petrović, D. (1993) 'Forma ugovora o prometu nepokretnosti [Form of Contracts on the Conveyance of Real Estate], Pravni život, 42(9-10), pp. 869–880.
137. Pichonnaz, P., (2023), The Civil Codes of Switzerland from a Historical and Comparative Perspective: Some Reflections Based on the Swiss Experience,' in M. Graziadei & L. Zhang (eds.), *The Making of the Civil Codes*, Singapore: Springer, pp. 295–299.
138. Piédelièvre, J. and Piédelièvre, S. (2020) *La publicité foncière* [Land Registration]. 2nd edn. Paris: Defrénois.
139. Plaia, A. (2022) *Le patologie del contratto [Contract Pathologies]*. Torino: Giappichelli.
140. Pohlmann, P. (1992) *Die Heilung formnichtiger Verpflichtungsgeschäfte durch Erfüllung [The Remedy for Formally Void Obligations by Performance]*. Berlin: Duncker & Humblot.
141. Polajnar-Pavčnik, A. (1980) 'Neobstoječe pogodbe [Non-Existant Contracts]', *Zbornik Znanstvenih Razprav*, 40, pp. 429–444.
142. Polignani, G. (1869) *La dottrina della ratihabitio [The Doctrine of Ratihabitio]*. Naples: Testa.
143. Popov, D. (2012) *Građansko pravo (Opšti deo)* [Civil Law (General Part)],

Pravni fakultet u Novom Sadu Centar za izdavačku delatnost.

144. Posch, W. (2015) *Contract Law in Austria*. Alphen aan den Rijn: Kluwer Law International.

145. Pugh, G. (1962) '*Traditio* in the Civil Law', *Louisiana Law Review*, 22(2), pp. 418–334.

146. Rajski, J. (2008) 'European Initiatives and Reform of Civil Law in Poland', *Juridica International*, 14/2008, pp. 151-155.

147. Réfi, B. (2025) 'Az ingatlan-nyilvántartási bejegyzési engedélyhez kapcsolódó kérdésekről' [On Issues Relating to the Land Registry Entry Permit], *Magyar Jog*, pp. 46–50. https://doi.org/10.59851/mj.72.01.8.

148. Reimann, M. and Zimmermann, R. (2019) (eds) *The Oxford Handbook of Comparative Law*. 2nd edn. Oxford: Oxford University Press.

149. Renken, J.A. (2010) 'Extraordinary convalidation: The radical sanation of an invalid marriage', *Periodica de Re Canonica*, 99, pp. 461–501.

150. Rowan, S. (2017) 'The new French law of contract'. *International and Comparative Law Quarterly*. 66 (4). pp. 805-831.

151. Rudzinski, A. W. (1965) 'New Communist Civil Codes of Czechoslovakia and Poland: A General Appraisal', *Indiana Law Journal*, 41(1), pp. 33–68.

152. Růžička, D. (2025) Convalidation of a Legal Act Invalid for Failure to Observe the Prescribed Form. Diploma thesis. Brno: Masaryk University, Faculty of Law.

153. Rychard, A. (1993) *Reforms, adaptation, and breakthrough: The Sources of and Limits to Institutional Changes in Poland.* Warsaw: IFiS Publishers.

154. Salma J., (2004) 'Srpski građanski zakonik (SGZ, 1844) i obligaciono parvo [Serbian Civil Code (SCC of 1844) and the Law of Obligaations]'. *Zbornik radova Pravnog fakulteta u Novom Sadu*. 38(2). pp. 311-351.

155. Salma, J. (2009), *Obligaciono pravo* [Law of Obligations], Novi Sad: Centar za izdavačku delatnost Pravnog fakulteta u Novom Sadu.

156. Sáry, P. (2023) (ed.) *Lectures on East Central European Legal History (Second, Enlarged Edition)*. Miskolc-Budapest: Central European Academic Publishing. https://doi.org/10.54171/2023.ps.loecelh_8.

157. Schulz, F. (1961) *Classical Roman Law.* Oxford: Clarendon Press.

158. Schumacher, R. (2012) '§ 311b Verträge über Grundstücke, das Vermögen und den Nachlass [Contracts concerning immovable property, assets and inheritance]', in: von Staudinger, J. (ed.) *J. von Staudingers Kommentar zum*

Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen [J. von Staudinger's Commentary on the German Civil Code with the Introductory Act and Supplementary Statutes]. Buch 2: *Recht der Schuldverhältnisse* [Book 2: Law of Obligations]. Berlin: Sellier – de Gruyter.

159. Schuster, E.J. (1923) *The Swiss Civil Code: English Version with Notes and References*. Oxford: Clarendon Press.

160. Şerban, M. (2014) 'The Loss of Property Rights and the Construction of Legal Consciousness in Early Socialist Romania (1950–1965)', *Law & Society Review*, 48(4), pp. 773–805.

161. Shpresa Alimi-Memedi (2019) 'Formalism in Roman Contract Law'. 34(5). *Knowledge – International Journal* 1457–1463.

162. Sič, M. (2000) 'Posebna forma ugovora u antičkom Rimu-radi sigurnosti stranaka ili zaštite interesa države' [Special Form of Contract in Ancient Rome - for the Safety of the Parties or the Protection of the Interests of the State] in Popović, M. (ed.) *Rekonstrukcija pravnog sistema Jugoslavije na osnovama slobode, demokratije, tržišta i socijalne pravde II. [Reconstruction of the Legal System of Yugoslavia on the Basis of Freedom, Democracy, the Market and Social Justice II.].* Novi Sad: Pravni fakultet, pp. 59-71.

163. Siklósi, I. (2009) 'Néhány adalék a *convalescentia* kérdésköréhez a római jogi források tükrében [Some Remarks on the Concept of *Convalescentia* in the Light of Roman Law Sources]', *Jogtudományi Közlöny*, 64(10), pp. 430–438.

164. Siklósi, I. (2014) 'A nemlétező, érvénytelen és hatálytalan jogügyletek elméleti és dogmatikai kérdései a római jogban és a modern jogokban' [Theoretical and Doctrinal Issues of Non-existence, Invalidity and Ineffectiveness of Juridical Acts in Roman and Modern Law], Budapest: ELTE Eötvös Kiadó.

165. Skorupa, P. (2010) 'Normative Models of Sanctions of Absolute Nullity and Non-Existent Juridical Acts', *Studia Prawnicze*, 1(183), pp. 31–86.

166. Skorupa, P. (2018) 'Nieważność czynności prawnej z perspektywy systemów prawnych common law' [The Invalidity of Legal Acts in the Perspective of Common Law Systems] *Studia Prawnicze/The Legal Studies,* 4(216), pp. 7–88. doi:10.37232/sp.2018.4.1.

167. Slakoper, Z. and Tot, I. (2022) *The law of obligations in Central and Southeast Europe: Recodification and Recent Developments*. London and New York: Routledge.

168. Slakoper, Z., Mihelčić, G., Belanić, L., Tot, I. (2022) *Obvezno pravo – opći dio s uvodom u privatno pravo* [Law of Obligations – General Part with Introduction into Private Law], Zagreb: Informator
169. Smits, J. M. (2021) *Contract law: A Comparative Introduction.* 3rd edn. Cheltenham-Northampton: Edward Elgar.
170. Stanković, O. and Orlić M. (1999) *Stvarno pravo* [Property Law], Beograd: Nomos.
171. Starck, B., Roland, H. and Boyer, L. (1993) *Obligations. Tome 2: Contrat* [Obligations. Vol. 2: Contract]. 4th edn. Paris: Litec.
172. Starck, B., Roland, H. and Boyer, L. (1998) *Droit civil: Les obligations. Tome 2, Contrat. [Civil Law: Obligations. Volume 2, Contract]*. 6th edn. Paris: Litec.
173. Staudigl-Ciechowicz K. (2020) 'Die Teilnovellen als letzter Akt der österreichischen Zivilgesetzgebung in Mitteleuropa'. Beiträge zur Rechtsgeschichte Österreichs http://dx.doi.org/10.1553/BRGOE2020-2s286 286-294.
174. Staudinger, J. (1978) *J. von Staudingers Kommentar zum Bürgerlichen Gesetzbuch mit Einführungsgesetz und Nebengesetzen [J. von Staudinger's Commentary on the German Civil Code with the Introductory Act and Supplementary Statutes].* München: Schweitzer.
175. Stec, P. (2024) *Codification of the Civil Law in Poland.* In: Codification of Civil Law: Assessment, Reforms, Options. Legal Heritage. Central European Academic Publishing, Miskolc–Budapest, pp. 521-546.
176. Stocquart, E. (1907) "Marriage in Roman Law." *The Yale Law Journal*, 16(6). pp. 303–327.
177. Stojanović, D. (1974) 'Društvena svojina u novom Ustavu i osnovni instituti izvedeni iz nje' [Societal Property and Its Basic Institutes in the New SFRY Constitution], *Zbornik radova Pravnog fakulteta u Nišu,* 14/1974, pp. 51-62.
178. Suzuki-Klasen, A.K. (2022) *A Comparative Study of the Formation of Contracts in Japanese, English, and German Law*. Recht in Ostasien, Vol. 18. 1st edn. Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG. https://doi.org/10.5771/9783748911777.
179. Sylwestrzak, A. (2016) (ed.), *Kodeks cywilny. Komentarz aktualizowany* [*Civil Code. Updated Commentary*]. Gdańsk: Wolters Kluwer Polska.

180. Szalma, J. (2009) *Obligaciono pravo [Obligations Law].* Novi Sad: Pravni fakultet u Novom Sadu – Centar za izdavačku delatnost.
181. Szalma, J. (2011) 'A jószokások (jóerkölcs) és a közrend megsértésének jogi következményei a magyar polgári jogban [Legal Consequences of Violating Good Morals and Public Order in Hungarian Private Law]', *Magyar Jog*, 58(7), pp. 397–411.
182. Szalma, J. (2023) A szerződés hatályáról – az európai és a magyar jogban [Condition and Effect of the Legal Transaction According to Hungarian and European Law]. *Miskolci Jogi Szemle*, 18(3), special issue, pp. 127–154.
183. Szikora, V. (2012) 'Az új magyar Polgári Törvénykönyv kodifikációja és társasági jogi összefüggései (nemzetközi kitekintéssel) [The Codification of the New Hungarian Civil Code and its Corporate Law Implications (with International Perspective)]', in Szalma, J. et al. (eds) *A Magyar Tudomány Napja a Délvidéken 2012*. Újvidék: Vajdasági Magyar Tudományos Társaság, pp. 133–158.
184. Szilágyi, J. E. (2022) 'Hungary: Strict Agricultural Land and Holding Regulations for Sustainable and Traditional Rural Communities' in Szilágyi, J. E. (ed.) *Acquisition of Agricultural Lands: Cross- border Issues from a Central European Perspective.* Miskolc–Budapest: Central European Academic Publishing. pp. 145–197. https://doi.org/10.54171/2022.jesz.aoalcbicec_7.
185. Szitás, E. and Dudás, A. (2023) 'Validation of Form-Defective Contracts in Hungarian and Romanian Law: A Comparative Analysis with Special Regard to Contracts on the Conveyance of Real Estate', *Acta Universitatis Sapientiae, Legal Studies*, 12(2), pp. 183–199. https://doi.org/10.47745/AUSLEG.2023.12.2.11.
186. Tellegen-Couperus, O.E. and Tellegen, J.W. (2024) *The regula as a rhetorical device in Roman law*. Leiden: Brill.
187. Toader, C. (2010) 'Contract Law in Romania' in Jessel-Holst, C., Kulms, R. and Trunk, A. (eds) *Private Law in Eastern Europe - Autonomous Developments or Legal Transplants?.* Tübingen: Mohr Siebeck.
188. Toplak Bohinc, S. (2016) '*Preventivna funkcija notariata pri prometu z nepremičninami*', [Preventive Function of the Notary's Office in the Transfer of Property Public in Real Estate Transactions], Maribor: Pravna fakulteta, LeXonomica. Available at:

https://dk.um.si/IzpisGradiva.php?lang=slv&id=64902.

189. Tot, I. (2022) 'Poredbenopravni utjecaji na Zakon o obveznim odnosima' [Comparative Law Influences on the Obligations Act] in Tot, I. and Slakoper, Z. (eds), *Hrvatsko obvezno pravo u poredbenopravnom kontekstu: Petnaest godina Zakona o obveznim odnosima [Croatian Law of Obligations in Comparative Perspective: Fifteen Years of the Obligations Act]*, Zagreb: Ekonomski fakultet Sveučilišta u Zagrebu.

190. Urs. I. R (2014) 'Validarea Contractului (art. 1261 – 1265)' [Validation of Contracts (art. 1261 – 1265)] in Uliescu, M. (coord.) Noul Cod Civil. Studii și Comentarii. Volumul III. Cartea V-a (art. 1164 - 1649). [New Civil Code. Studies and Comments. Volume III. Book V (art. 1164 - 1649)], București: Universul Juridic.

191. Vékás, L. (2006) „Hungary", *European Review of Contract Law*, 2(1), pp. 112-123.

192. Vékás, L. (2013), 'Az új Polgári Törvénykönyvről' [On the New Civil Code], Jogtudományi Közlöny, 68(5), pp. 225-242.

193. Vékás, L. (2014) 'A magánjogi kodifikációk néhány tanulságáról [A Few Lessons of Private Law Codifications]', in Csehi, Z., Koltay, A., Landi, B., Pogácsás, A. (eds.) (L)ex Cathedra et Praxis: Ünnepi kötet Lábady Tamás 70. születésnapja alkalmából. Budapest: Pázmány Press, pp. 257–266.

194. Vékás, L. (2021) in: Gárdos, P., Vékás, L. (eds.) *Nagykommentár a Polgári Törvénykönyvhöz* [Grand Commentary for the Civil Code]*, 3rd edn.* Budapest: Wolters Kluwer Hungary.

195. Vékás, L. (2023) 'A magánjog kihívásai – Történeti visszapillantás és mérleg [The Challenges of Private Law – Historical Retrospect and Assessment]', *Magyar Jog*, 70(7–8), pp. 389–399.

196. Vékás, L. (2025) 'Az ausztriai magánjog az Országbírói Értekezlet utáni magyar magánjogban' [The Austrian ABGB in Hungarian Private Law after the Provisional Rules for the Judicature of 1861], *Erdélyi Jogélet*, pp. 9–20. doi: 10.47745/ERJOG.2025.01.02.

197. Verdery, K. (2003) *The Vanishing Hectare: Property and Value in Postsocialist Transylvania*. Ithaca, NY: Cornell University Press.

198. Veress, E. (2022) (ed.) *Contract law in East Central Europe, 1st edn.* Miskolc-

Budapest: Central European Academic Publishing. https://doi.org/10.54171/2022.ev.cliece.

199. Veress, E. (2025) ‘Miért is maradt „alkalmazásban” az Optk. Erdélyben a kiegyezés után?’ [Why Did the Austrian General Civil Code Remain “in Application” in Transylvania After the Compromise?], Erdélyi Jogélet, 2025(2), pp. 5-20. doi: 10.47745/ERJOG.2025.02.01.
200. Višnjić, I. (2025) ‘Posledice nedostatka forme ugovora u evropskom pravu i pravima evropskih zemalja [The Consequences of the Lack of Form in European Law and the Laws of European Countries]’, *Revija za evropsko pravo*, 27, pp. 33–53. https://doi.org/10.56461/rep270125.02.V.
201. von Segesser, G. and Caleff, J. (2019) *Property and Trust Law in Switzerland*. 2nd edn. International Encyclopaedia of Laws: Property and Trust Law. Alphen aan den Rijn: Kluwer Law International (Stämpfli Publishers).
202. Vujović, I. (2012) *Konvalidacija ugovora o prometu nepokretnosti* [Convalidation of Contracts on the Conveyance of Ownership of Real Estate], Beograd: Službeni glasnik.
203. Vujović, I. (2014) ‘Mogućnost konvalidacije ugovora o prometu nepokretnosti zaključenog u formi notarske isprave’ [Convalidation of the Contract of Real Estate Made in Notary Form], *Harmonius – Journal of Legal and Social Studies in South East Europe*, 3(1), pp. 350–359.
204. Vulpiani, G. (2022) ’ La nullità del contratto nel diritto civile italiano tra frammentazione, recupero e nuove tecnologie’ [Voidness of contract in Italian Civil Law: Fragmentation, Confirmation and New Technologies]. *Actualidad Jurídica Iberoamericana,* 16/2022, p. 412-451.
205. Wacke, A. (2000) ‘Ex post facto convalescere en Derecho romano y Derecho alemán moderno [Ex Post Facto Convalidation in Roman Law and Modern German Law]’, *Anuario de Derecho Civil*, 53(4), pp. 1369–1396.
206. Watson, A. (1984) ’The Evolution of Law: The Roman System of Contracts’. *Law and History Review.* 2(1). pp. 1-20.
207. Watson, A. (1991) *Roman Law and Comparative Law.* Athens: University of Georgia Press.
208. Weiss, E. (1964) ’A szerződés érvénytelenségének kérdései a római jogban' [The Questions of Invalidity of Contracts in Roman Law], Eötvös Lóránd Tudományegyetem Állam- és Jogtudományi Karának actái, 6(1), pp. 135-164.

209. Weiss, E. (1969) *'A szerződés érvénytelensége a polgári jogban*' *[*Invalidity of Contracts in Civil Law*]*, Budapest: Közgazdasági és Jogi Könyvkiadó, pp. 438-439.
210. Wellmann, Gy. (2014) 'A szerződés érvénytelenségének szabályozása az új Polgári Törvénykönyvben' [Regulation of Invalidity of Contracts in the New Civil Code], Jogtudományi Közlöny, 69(2), pp. 61-70.
211. Wellmann, Gy. (2021) in: Wellmann, Gy. (ed.) *'Polgári Jog: Kötelmi jog: A Ptk. magyarázata V/VI.'* [Civil Law: Law of Obligations: Commentary of the Civil Code V/VI], 4th edn., Budapest: HVG-ORAC Lap- és Könyvkiadó Kft.
212. Westerhoff, J. (1984) 'Wie begründen wir Formnichtigkeit?' [How do we justify formal invalidity?]. *Archiv für die civilistische Praxis*, 184, pp. 341-384.
213. Windscheid B. (1900), *Lehrbuch des Pandektenrechts [Textbook of Pandect Law]*, vol 2, 8th edn, Frankfurt a. M.: Rütten & Loening.
214. Wolak, G. (2008) 'O formie czynności prawnych w ogólności' [About the Form of Juridical Acts in General] *Przegląd Prawno-Ekonomiczny,* 4(3), pp. 58-73.
215. Zimmermann, R. (1993) *The Law of Obligations: Roman Foundations of the Civilian Tradition*. München: Beck.
216. Zimmermann, R. (2006) 'The German Civil Code and the Development of Private Law in Germany', Oxford U Comparative L Forum 1 at ouclf.law.ox.ac.uk [Online]. Available at: https://ouclf.law.ox.ac.uk/the-german-civil-code-and-the-development-of-private-law-in-germany/#fn0sym (Accessed: 1st August 2025).
217. Živković, M. (2022), 'Konvalidacija nevažećeg pravnog posla prema Zakonu o obligacionim odnosima [Convalescence of Invalid Legal Transactions according to the Code of Obligations] in Baretić, M., Nikšić, S. (eds.) *Zbornik treće regionalne konferencije o obveznom pravu*, Zagreb: Pravni fakultet Sveučilišta u Zagrebu, pp. 61–81.

Legal Sources

1. 1/2010. (VI. 28.) PK vélemény az érvénytelenség jogkövetkezményeiről [1/2010. (VI. 28.) Opinion of the Civil Department on the legal consequences of invalidity].

2. 1928. évi magánjogi törvényjavaslat Magyarország Magánjogi Törvénykönyve [1928 Draft on the Hungarian Private Law Code], accessible on the following link: https://net.jogtar.hu/ezer-ev-torveny?docid=92800000.TVJ&searchUrl=/ezer-ev-torvenyei?pagenum%3D52.
3. 1959. IV. Törvény a Magyar Köztársaság Polgári Törvénykönyvéről [Act IV of 1959.on the Civil Code of the Republic of Hungary].
4. 1977. évi IV. törvény a Magyar Népköztársaság Polgári Törvénykönyvéről szóló 1959. évi IV. törvény módosításáról és egységes szövegéről [Act IV of 1977 on the amendment and Uniform Text of Act IV on the Civil Code of the Hungarian People's Republic].
5. 2013. évi CCXII. törvény mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról [Act CXXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act].
6. 2013. évi CXXII. törvény a mező- és erdőgazdasági földek forgalmáról [Act CXXII of 2013 on the Transfer of Agricultural and Forest Land].
7. 2013. évi V. törvény a Polgári Törvénykönyvről [Act V of 2013 on the Civil Code].
8. 2021. évi C. törvény az ingatlan-nyilvántartásról [Act C of 2021 on the Land Registry].
9. 47/2014. (II. 26.) Korm. rendelet a föld tulajdonjogának átruházását, vagy a föld tulajdonjogát érintő más írásba foglalt jogügyletet tartalmazó papír alapú okmány biztonsági kellékeiről és kibocsátásainak szabályairól [Decree No. 47 of 2014 (II. 26.) Korm. of the Government laying down Security Requirements and Rules of Issuance of Paper Format Documents Concerning the Transfer of Property Rights of Land or containing other kind of Written Legal Transaction affecting Property Rights of Land].
10. Allgemeines bürgerliches Gesetzbuch from 1811.
11. Az új Polgári Törvénykönyv koncepciója [Concept of the New Civil Code]. Magyar Közlöny, 2002/15,
12. Bundesgesetz vom 18. Dezember 1987 über das Internationale Privatrecht (IPRG) [Federal Act of 18 December 1987 on Private International Law (IPRG)].

13. Bundesgesetz vom 3. Oktober 2003 über Fusion, Spaltung, Umwandlung und Vermögensübertragung [Federal Act of 3 October 2003 on mergers, divisions, conversions and asset transfers].
14. Bundesgesetz vom 30. März 1911 betreffend die Ergänzung des Schweizerischen Zivilgesetzbuches (Fünfter Teil: Obligationenrecht) [Federal Act of 30 March 1911 on the Supplementation of the Swiss Civil Code (Fifth Part: Code of Obligations)].
15. Code civil [French Civil Code], version in force as of 31 August 2026.
16. Codex Iuris Canonici 1917 – Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus. Romae: Typis Polyglottis Vaticanis. Available at: https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib4-cann998-1165_en.html#CHAPTER_X.
17. Codex Iuris Canonici 1983 – Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus. Città del Vaticano: Libreria Editrice Vaticana. Available at: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_la.html.
18. Codice civile del Regno d'Italia (1865) Codice civile. Torino: Stamperia Reale. Available at:https://moodle2.units.it/pluginfile.php/296183/mod_resource/content/2/Codice%20civile%201865.pdf.
19. Codice Civile, Testo del Regio Decreto 16 marzo 1942, n. 262 aggiornato con le ultime modifiche legislative apportate, da ultimo, dal D.L. 8 agosto 2025, n. 117, convertito, con modificazioni, dalla L. 3 ottobre 2025, n. 148, dalla L. 23 settembre 2025, n. 132, dalla L. 2 dicembre 2025, n. 182 e dal Decreto del Ministero dell'economia e delle finanze 10 dicembre 2025 [Civil Code, Text of Royal Decree No. 262 of March 16, 1942 updated with the most recent legislative amendments, most recently introduced by Decree-Law No. 117 of 8 August 2025, as converted, with amendments, by Law No. 148 of 3 October 2025, as well as by Law No. 132 of 23 September 2025, Law No. 182 of 2 December 2025, and by the Decree of the Ministry of Economy and Finance of 10 December 2025].
20. Codul Civil din 26 noiembrie 1864 as amended. Available at: https://legislatie.just.ro/Public/DetaliiDocument/131185
21. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the

Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences, Official Journal C 326 , 26/10/2012 P. 0001 – 0390.

22. Corte di Cassazione [Court of Cassation of Italy], Civil Joint Chambers [Sezioni Unite], judgment of 9 October 2017, no. 23601.
23. County Court in Dubrovnik, Gž-388/15 (10th February 2016).
24. Décret n°55-22 du 4 janvier 1955 [Decree No. 55-22 of 4th January 1955].
25. Decret-Lege Nr. 115 din 27 aprilie 1938 (Monitorul official nr. 95 din 27 aprilie 1938) [Act no. 115 of 27 April 1938 (Official gazette no. 95 of 27 April 1938)]. Available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/25.
26. Dekret z dnia 11 października 1946 r. - Prawo rzeczowe [Decree of 11 October 1946 – Property Law].
27. German Civil Code in the version promulgated on 2 January 2002 (Federal Law Gazette [*Bundesgesetzblatt*] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I p. 3515).
28. Juridical position adopted at the session of the Civil Department of the Supreme Court of Cassation of Serbia held on November 2, 2018.
29. Kaiserliche Verordnung vom 19. März 1916, R. G. Bl. Nr. 69, über die dritte Teilnovelle zum Allgemeinen Bürgerlichen Gesetzbuch: mit Materialien. Wien, K. u. K. Hof- und Staatsdruckerei 1916. III, 433 S.
30. Kodeks Zobowiązań [Code of Obligations] (Dziennik Ustaw Rzeczypospolitej Polskiej 1933, nr. 2, poz. 598) [Official Gazette of Poland 1933, nr. 2, item 598].
31. Legal position adopted at the session of the Civil Department of the Supreme Court of Cassation of Serbia held on November 2, 2018. https://www.vk.sud.rs/sr/2018.
32. Lege nr. 242 din 12 iulie 1947 (Legislatia civila uzuala vol. II) [Act no. 242 of 12 July 1947 (Common Civil Law vol. II no. 242 of 12 July 1947)]. Available at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/44#?.
33. Lege nr. 287/2009 privind Codul civil [Act no. 287/2009 on the Civil Code].
34. Lege nr. 71 din 3 iunie 2011 pentru punerea în aplicare a Legii nr. 287/2009 privind Codul civil [Act no. 71 of June 3, 2011 on the implementation of Act no. 287/2009 on the Civil Code].

35. Notariatsaktsgesetz [Notarial Deed Act] (1871) RGBl. Nr. 76/1871, as amended by BGBl. I Nr. 75/2009.
36. Občanský Zákoník [Civil Code], Sbírka zákonů republiky Československé (24. 8. 1948 — 31. 12. 1959) [Collection of Laws of the Czechoslovak Republic (24 August 1948 — 31 December 1959)] nr. 141/1950 Coll.
37. Občanský Zákoník [Civil Code], Zbierka zákonov Slovenskej republiky (01.04.1964 - 30.06.1969) [Collection of Laws of the Slovak Republic (1 April 1964 — 30 June 1969)] nr. 40/1964 Zb.
38. Obligacijski zakonik [Obligations Code], Uradni list RS [Official Gazette of the Republic of Slovenia], No. 83/01, 28/06, 40/07, 97/07 (official consolidated version) and 64/16.
39. Opšti imovinski zakonik za Knjaževinu Crnu Goru 1888.
40. Stvarnopravni zakonik [Property Code], Uradni list RS, No. 87/02, 91/13 and 23/20.
41. *Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny* [Act of 23 April 1964 – Civil Code], Dz. U. 1964 Nr 16, poz. 93 [Journal of Laws], consolidated text: Dz. U. 2025, poz. 1071, 1172, 1508.
42. Verordnung des Bundesgerichts vom 23. April 1920 über die Zwangsverwertung von Grundstücken [Ordinance of the Federal Court of 23 April 1920 on the compulsory sale of real estate].
43. XXV. számú Polgári Elvi Döntés – az ingatlan-átruházási szerződés érvényességéről [XXV. Civil Law Decision of Principle – On the Validity of Contracts on the Conveyance of Ownership on Real Property].
44. Zákon č. 162/1995 Z. z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam (katastrálny zákon) [Act No. 162/1995 Coll., Cadastral Act]. Version effective from 1 April 2025.
45. Zákon č. 256/2013 Sb., o katastru nemovitostí (katastrální zákon) [Act No. 256/2013 Coll., on the Cadastre of Real Estate (Cadastral Act)].
46. Zákon č. 40/1964 Zb. Občiansky zákonník [Act No. 40/1964 Coll., Civil Code]. Adopted 26 February 1964. Promulgated 5 March 1964. Version effective from 1 January 2019 to 29 January 2019.
47. Zákon č. 513/1991 Zb. Obchodný zákonník [Act No. 513/1991 Coll., Commercial Code as amended].

48. Zákon č. 89/2012 Sb. Zákon občanský zákoník [Law no. 89/2012 Sb. Civil Code] from 1st January 2014.
49. Zakon o dopuni zakona o preuzimanju saveznih zakona kojima se uređuju odnosi o kojima po ustavnim amandmanima xx. do xli. na ustav sfrj odlučuju republike [Act Amending the Act on the Adoption of Federal Laws Regulating Matters Which, Pursuant to Constitutional Amendments XX to XLI to the Constitution of the SFRY, Fall within the Competence of the Republics], no. 3527-1973 form 28 December 1973.
50. Zakon o državnom premeru i katastru [Law on State Survey and Cadastre], Official Gazette of the Republic of Serbia, Nos. 72/2009, 18/2010, 65/2013, 15/2015 (Constitutional Court Decision), 96/2015, 47/2017 (authentic interpretation), 113/2017, 27/2018, 41/2018, 9/2020, 92/2023 and 91/2025.
51. Zakon o izmenama i dopunama Zakona o državnom premeru i katastru [Act on Amendments and Supplements to the Law on State Survey and Cadastre], Official Gazette of the Republic of Serbia, No. 91/2025.
52. Zakon o javnim bilježnicima [Public Notaries Act], Narodne novine Republike Hrvatske [Official Gazette of the Republic of Croatia], No. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16 and 57/22.
53. Zakon o javnom beležništvu [Act on Notaries Public], Službeni glasnik RS [Official Gazette of the Republic of Serbia], No. 31/2011, 85/2012, 19/2013, 55/2014 – other statute, 93/2014 – other statute, 121/2014, 6/2015 and 106/2015 and 94/2024.
54. Zakon o kmetijskih zemljište [Agricultural Land Act] as amended by Zakon o spremembah in dopolnitvah Zakona o kmetijskih zemljiščih – ZKZ-H (Uradni list RS, št. 100/25 z dne 4. 12. 2025) [Act amending and supplementing the Agricultural Land Act – ZKZ-H (Official Gazette of the Republic of Slovenia, No. 100/25 of 4 December 2025)].
55. Zakon o notariatu [Act on Public Notaries], Uradni list RS, No. 13/94, 48/94, 82/94, 41/95, 83/01, 73/04, 23/05, 98/05, 4/06, 17/06, 115/06, 2/07 (official consolidated version), 33-07, 45/08, 91/13, 189/20 and 130/22.
56. Zakon o obligacionim odnosima ("Sl. list SFRJ", br. 29/1978, 39/1985, 45/1989 - odluka USJ i 57/1989, "Sl. list RBiH", br. 2/1992, 13/1993 i 13/1994 i "Sl. novine FBiH", br. 29/2003 i 42/2011) [Obligations Act (“Official Gazette of the SFRY”, Nos. 29/1978, 39/1985, 45/1989 – Decision of the Constitutional Court

of Yugoslavia, and 57/1989, “Official Gazette of the Republic of Bosnia and Herzegovina”, Nos. 2/1992, 13/1993 and 13/1994, and “Official Gazette of the Federation of Bosnia and Herzegovina”, Nos. 29/2003 and 42/2011].

57. Zakon o obligacionim odnosima ("Sl. list SFRJ", br. 29/1978, 39/1985, 45/1989 - odluka USJ i 57/1989 i "Sl. glasnik RS", br. 17/1993, 3/1996, 37/2001 - dr. zakon, 39/2003 i 74/2004) [Obligations Act (“Official Gazette of the SFRY”, Nos. 29/1978, 39/1985, 45/1989 – Decision of the Constitutional Court of Yugoslavia, and 57/1989, and “Official Gazette of the Republic of Serbia”, Nos. 17/1993, 3/1996, 37/2001 – other law, 39/2003 and 74/2004].
58. Zakon o obligacionim odnosima ("Sl. list SFRJ", br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 18/2020) [Obligations Act, Official Gazette of Socialist Federal Republic of Yugoslavia No. 29/78, 39/85, 45/89 – Decision of the Constitutional Court of Yugoslavia, and 57/89, “Official Gazette of the FRY”, No. 31/93, “Official Gazette of Serbia and Montenegro”, No. 1/2003 – Constitutional Charter, and “Official Gazette of the Republic of Serbia”, No. 18/2020].
59. Zakon o obligacionim odnosima [Obligations Act], Službeni list SFRJ [Official Gazette of Socialist Federal Republic of Yugoslavia], No. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, Službeni list SRJ [Official Gazette of Federal Republic of Yugoslavia], No. 31/93, Službeni list SCG [Official Gazette of Serbia and Montenegro], No. 1/2003 – Constitutional Charter and Službeni glasnik RS, No. 18/2020.
60. Zakon o obligacionim odnosima Službeni list SFRJ, br. 29/78 [Obligations Act**,** Official Gazette of the Socialist Federal Republic of Yugoslavia No. 29/78]**.**
61. Zakon o obveznim odnosima (NN 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23) [Obligations Act, Official Gazette of the Republic of Croatia Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23].
62. Zakon o obveznim odnosima, Narodne novine Republike Hrvatske, No. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21 [Obligations Act, Official Gazette of the Republic of Croatia Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21].
63. Zakon o osnovama svojinskopravnih odnosa [Basic Property Relations Act] ("Sl. list SFRJ", br. 6/80 i 36/90, "Sl. list SRJ", br. 29/96 i "Sl. glasnik RS", br.

115/2005 - dr. zakon) [Official Gazette of the SFRY, Nos. 6/80 and 36/90; Official Gazette of the FRY, No. 29/96; Official Gazette of the RS, No. 115/2005 – other law].

64. Zakon o prometu nepokretnosti [Act on the Conveyance of Real Property], Službeni glasnik SRS [Official Gazette of the Socialist Republic of Serbia], No. 15/74 and 14/77.
65. Zakon o prometu nepokretnosti [Act on the Conveyance of Real Property], Službeni glasnik SRS, No. 43/81, 24/85 - other law, 28/87, 6/89 – other law, 30/89 – other law and 40/89, Službeni list SFRJ, No. 55/90 - decision of the Constitutional Court of Yugoslavia and Službeni glasnik RS, No. 53/93 - other law, 67/93 – other law, 48/94 – other law and 53/95 - other law.
66. Zakon o prometu nepokretnosti [Act on the Conveyance of Real Property], Službeni glasnik RS, No. 42/98 and 111/2009.
67. Zakon o prometu nepokretnosti [Act on the Conveyance of Real Property], Službeni glasnik RS, No. 93/2014, 121/2014 and 6/2015.
68. Zakon o prometu z nepremičninami (ZPN) [Propertz Transactions Act], Uradni list SRS, št. 19/76, 42/86 in Uradni list RS, št. 44/97 – ZSZ [Official Gazette of the Socialist Republic of Slovenia, Nos. 19/76, 42/86, and Official Gazette of the Republic of Slovenia, No. 44/97 – Building Land Act (ZSZ)].
69. Zakon o prometu zemljišta i zgrada ("Službeni list FNRJ" br. 26/54., 19/55., 48/58., 52/58., 30/62., 53/62., "Službeni list SFRJ" br. 15/65., 43/65. - službeni pročišćeni tekst, 57/65., 17/67., "Narodne novine" br. 52/73., "Službeni list SFRJ" br. 11/74., "Narodne novine" br. 27/91., 91/96.) Land and Building Transactions Act [Official Gazette of the Federal People's Republic of Yugoslavia, Nos. 26/54, 19/55, 48/58, 52/58, 30/62, 53/62; Official Gazette of the Socialist Federal Republic of Yugoslavia, Nos. 15/65, 43/65 – official consolidated text, 57/65, 17/67; Official Gazette of the Socialist Republic of Croatia, No. 52/73; Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 11/74; Official Gazette of the Republic of Croatia, Nos. 27/91, 91/96].
70. Zakon o stavbnih zemljiščih (ZSZ) [Building Land Act], no. 001-22-82/97, 21 July 1997.
71. Zakon o vlasništvu i drugim stvarnim pravima [Act on Ownership and Other Real Rights], no. 01-96-1736/1 form 17 November 1996.

72. Zakon o vlasništvu i drugim stvarnim pravima [Property and Other Real Rights Act], Narodne novine Republike Hrvatske, No. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17.
73. Zakon o zemljiški knjigi [Land Registries Act] (Uradni list RS, št. 58/03, 37/08 – ZST-1, 45/08, 28/09, 25/11, 14/15 – ZUUJFO, 69/17, 11/18 – ZIZ-L, 16/19 – ZNP-1, 121/21 in 100/25 – ZS-1) [Official Gazette of the Republic of Slovenia, Nos. 58/03, 37/08 – ZST-1, 45/08, 28/09, 25/11, 14/15 – ZUUJFO, 69/17, 11/18 – ZIZ-L, 16/19 – ZNP-1, 121/21 and 100/25 – ZS-1].
74. Zakon o zemljišnim knjigama [Land Registries Act], Narodne novine Republike Hrvatske [National Gazette of the Republic of Croatia], No. 63/19, 128/22, 155/23, 127/24.
75. Zakon za obligacionite odnosi, SV RM 18/2001, 78/2001, 4/2002, 59/2002, 5/2003, 84/2008, 81/2009, 161/2009, 23/2013, 123/2013 i 215/2021.
76. Zakonik građanskij za knjažestvo Srbije, enacted on 11 March 1844 [Serbian Civil Code of 1844].

Case Law

1. Case 19-17.549 of the Civil Chamber of the Court of Cassation, from 1st October 2020.
2. Case 24 Cdo 2749/2020 from 31 May 2022 of the Supreme Court of the Czech Republic.
3. Case 27 Cdo 1550/2023-867 from 25 January 2023 of the Supreme Court of the Czech Republic.
4. Case 33 Cdo 554/2023 from 12 February 2025 of the Supreme Court of the Czech Republic.
5. Case 3Cdo 73/2009 from 25 November 2010 of the Supreme Court of the Slovak Republic.
6. Case III CK 382/03 from 23rd September 2004 of the Supreme Court of Poland.
7. Case no. 20114 Cass. civ., Ord. of 13 July 2023 of the Court of Cassation of Italy.
8. Case no. 2054/2020 of the First Civil Chamber of the High Court of Cassation and Justice of Romania 14th October 2020, accessible on the following link:

http://www.scj.ro/en/1093/Jurisprudence-details?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=176464#highlight=##%20Principiul%20conversiunii%20actului%20juridic.

9. Case no. 23/50949 of of the Paris Judicial Court from 12th April 2023.
10. Case no. 28762 Cass. civ., Sez. II of 30 November 2017 of the Court of Cassation of Italy.
11. Case no. 2905/1/2021, Decision No. 1/2022 of the High Court of Cassation and Justice.
12. Case no. 3 Sžo 64/2010 of the Supreme Court of the Slovak Republic.
13. Case no. 3 Sžo/64/2010 of the Supreme Court of the Slovak Republic.
14. Case no. 3996/2016, Decision No. 23/2017 of the High Court of Cassation and Justice.
15. Case no. *5* MCdo 11/2009 of the Supreme Court of the Slovak Republic.
16. Case no. 5 Ob 266/99z of the Austrian Supreme Court from 20th October 1999.
17. Case no. 5 Ob 82/05b of the Austrian Supreme Court from 21st June 2005.
18. Case no. 8765 Cass. civ., Sez. II, of 30 March 2021 of the Court of Cassation of Italy.
19. Case no. BGE 112 II 330 of the Federal Supreme Court of Switzerland from 24 September 1986.
20. Case no. BGE 92 II 323 of the Federal Supreme Court of Switzerland from 1 November 1966.
21. Case no. ECLI:FR:CCASS:2018:C100958 of the 1st Civil Chamber of the Court of Cassation from 17th October 2018.
22. Case no. ECLI:FR:CCASS:2018:C101227 of the 1st Civil Chamber of the Court of Cassation from 19th December 2018.
23. Case no. ECLI:SI:VSLJ:2017:I.CP.508.2017 of the Higher Court in Ljubljana.
24. Case no. ECLI:SI:VSRS:1994:II.IPS.14.94 of the Supreme Court of Slovenia.
25. Case no. ECLI:SI:VSRS:1997:II.IPS.406.96 of the Supreme Court of Slovenia.
26. Case no. ECLI:SI:VSRS:1999:II.IPS.22.99 of the Supreme Court of Slovenia.
27. Case no. ECLI:SI:VSRS:2000:II.IPS.452.99 of the Supreme Court of Slovenia.
28. Case no. ECLI:SI:VSRS:2013:II.IPS.791.2009 of the Supreme Court of Slovenia.
29. Case no. ECLI:SI:VSRS:2023:II.IPS.24.2022 of the Supreme Court of Slovenia.
30. Case no. Gfv.30206/2019/12 of the Curia.

31. Case no. Gž-1353/2019-2 of the County Court of Osijek.
32. Case no. Gž-5638/2024-2 of the County Court of Zagreb from 28 January 2025.
33. Case no. II CSKP 166/23 of the Supreme court of Poland.
34. Case no. IV. ÚS 15/2014-77 of the Constitutional Court of the Slovak Republik.
35. Case no. Kfv.VI.35.294/2024/5 of the Kúria.
36. Case no. Pfv.I.21.145/2022/11 of the Kúria.
37. Case no. Pfv.VI.20.448/2013/4 of the Kúria.
38. Case no. Rev 1225/1991-2 of the Supreme Court of the Republic of Croatia.
39. Case no. Rev 1441/1993-2 of the Supreme Court of the Republic of Croatia.
40. Case no. Rev 16627/2022 of the Supreme Court of Cassation of the Republic of Serbia.
41. Case no. Rev 22096/2022 of the Supreme Court of Cassation of the Republic of Serbia.
42. Case no. Rev 2268/1990-2 of the Supreme Court of the Republic of Croatia.
43. Case no. Rev 5432/2021 of the Supreme Court of Cassation of the Republic of Serbia.
44. Case no. Rev Rev 4845/2020 of the Supreme Court of Cassation of the Republic of Serbia.
45. Case no. Rev-x 473/2018-3 of the Supreme Court of the Republic of Croatia.
46. Case no. Rev-x 793/2015-2 of the Supreme Court of the Republic of Croatia.
47. Case no. Rev. 2937/2016-2 of the Croatian Supreme court.
48. Case no. Sygn. akt II CSK 77/11 of the Supreme court of Poland.
49. Case no. Sygn. akt III CZP 108/22 of the Supreme court of Poland.
50. Case no. Usž-1545/22-3 of the High Administrative Court of the Republic of Croatia.
51. Case no. XII ZR 107/17 of the Federal Court of Justice from 27 May 2020.
52. Case no. V ZR 59/24 of the German Federal Court of Justice from 13 March 2025.
53. Case no. V ZR 178/03 of the German Federal Court of Justice from 8 October 2004.
54. Case no. V ZR 265/14 of the German Federal Court of Justice from 13 May 2016.
55. Case no. V ZR 332/94 of the German Federal Court of Justice from 29 March 1996.

56. High Commercial Court of the Republic of Croatia, Pž-23/2024-2 (11th December 2024).
57. High Court of Cassation and Justice of Romania, Decision No. 23/2017 on the request submitted by the Alba County Tribunal – First Civil Division, in Case No. 173/191/2016, concerning the delivery of a preliminary ruling.Official Gazette of Romania (Monitorul Oficial al României), Part I, No. 365, 17 May 2017.
58. Judgment of the Court (Grand Chamber) of 21 May 2019. European Commission v Hungary. Case C-235/17.
59. Judgment of the Court of Justice of the European Union (Grand Chamber) of 6 March 2018. 'SEGRO' Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala and Günther Horváth v Vas Megyei Kormányhivatal. Joined Cases C-52/16 and C-113/16.
60. Supreme Court of Cassation of Serbia, Rev 29231/2023 (13 March 2025).
61. Supreme Court of Slovenia, ECLI:SI:VSRS:1994:II.IPS.402.93 (Registratioin number: VS00942) (17th March 1994).
62. Supreme Court of the Federation of BiH, 58 0 P 120081 20 Rev (13th April 2021).
63. Supreme Court of the Federation of BiH, Rev-531/04 (5th May 2005).
64. Supreme Court of the Republic of North Macedonia, Rev1.br.219/2021 (16th November 2021).
65. Supreme Court of the Republic of North Macedonia, Rev2.br.207/2022 (23rd November 2022).

Internet sources

1. Caringella, F. (2023) ‘Buona fede e divieto di abuso del diritto: i limiti all’esercizio del diritto’ [Good Faith and the Prohibition of Abuse of Rights: Limits on the Exercise of Rights]. Extract from Manuale Ragionato di Diritto Civile [Reasoned Manual of Civil Law]. Dike Giuridica. [Online] Available at: Dike Giuridica.
2. Ciljana konvalidacija – Lakše do upisa sa starim ispravama. Available at: https://www.rgz.gov.rs/ciljana-konvalidacija---lakše-do-upisa-sa-starim-ispravama.

3. Kačer, H. (2011) ‘200 godina OGZ-a [200 Years of the ABGB]’, *IUS-INFO*. [Online]. Available at: https://www.iusinfo.hr/aktualno/u-sredistu/200-godina-ogz-a-9497.
4. Tot I, 'The Yugoslav Law on Obligations of 1978 and the Legacy of Professor Mihailo Konstantinović (1897–1982): The Influence of the Interwar Period on Post-WWII Legal Transfers' (Private Law Theory, 9 March 2024). [Online]. Available at:https://www.private-law-theory.org/2024/03/09/the-yugoslav-law-on-obligations-of-1978-and-the-legacy-of-professor-mihailo-konstantinovic-1897-1982-the-influence-of-the-interwar-period-on-post-wwii-legal-transfers/.

Related Publications of the Author

1. Dudás, A. and Szitás, E. (2024) ‘Convalidation of Form-Defective Contracts on the Conveyance of Ownership of Real Property in Serbian, Croatian, and Slovenian Law’ in Tomislav Karlović and Elizabeta Ivičević Karas (eds), *Legatum pro anima: Zbornik radova u čast Marku Petraku*, Pravni fakultet Sveučilišta u Zagrebu, pp. 993-1015.
2. Szitás, E. (2024) ‘Historical Aspects of the Non-Translative Effect of Real Estate Contracts in Serbia. From the Serbian Civil Code to Current Legislation’, *Revista Română de Istoria Dreptului / Romanian Journal of Legal History*, 4/2024, pp. 27-44.
3. Szitás, E. and Dudás, A. (2023) ‘Validation of Form-Defective Contracts in Hungarian and Romanian Law: A Comparative Analysis with Special Regard to Contracts on the Conveyance of Real Estate’, *Acta Universitatis Sapientiae, Legal Studies*, 12(2), pp. 183–199. https://doi.org/10.47745/AUSLEG.2023.12.2.11.
4. Szitás, E. and Dudás, A. (2026) ’The Evolution of the Legal Institute of Convalidation of Null and Void Contracts in the Yugoslav Legal Tradition: Historical Influences and Legal Legacy’, *Pravni vjesnik,* 42(1). pp: 25-48. https://doi.org/10.25234/pv/38233.