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Ksenija DŽIPKOVIĆ, LL.M.*

COMPARATIVE VIEW OF PUBLIC PROMISE OF REWARD

A public promise of reward occurs when an individual publicly promises a reward to an unspecified number of people, achieving a certain outcome. Nevertheless, further discussion is limited without considering the applicable law. Legislators address in different ways the arousal of promisor's obligation, its nature, and the mechanisms of protection for the performer's interests. The cause of these drastic differences lies in the legislator's (dis)approval of a unilateral declaration of intent as a source of obligation. If it is acknowledged that a unilateral declaration of intent can obligate the declarant, a public promise of reward is considered a unilateral legal act. This interpretation is upheld in Germanic, Swiss, and Italian law. Conversely, in legal systems where this view is not accepted, the public promise of a reward is treated as an offer to form a contract. Notable examples of such legal systems are the English and French laws.

Key words: *Promise*. – *Unilateral declaration of intent*. – *Offer*. – *Contract theory*. – *(Unilateral) promise theory*.

* Teaching Assistant, University of Belgrade Faculty of Law, Serbia, *ksenija@ius.bg.ac.rs*, ORCID iD: 0000–0002–8115–4030.

1. INTRODUCTION

In common parlance, a promise is perceived as an assurance that something will be realized. In this regard, the promise creates an obligation, but only in the moral sphere. If a promisor does not fulfil what they had promised, such omission implies the betrayal of the promise's trust. Thus, the promisor will be exposed to moral judgement. However, if certain conditions are fulfilled, the promise not only has moral implications but also carries some legal consequences. Therefore, when the promisor publicly announces that they will reward anyone who fulfils a certain assignment, finds themselves in the particular position, or especially achieves a defined result, we are referring to the public promise of reward.

Public promise of reward (*Auslobung*, *promesse publique*) is a legal institution and a specific technique that can be used in various situations. Although legal theory mostly provides only a single example – promising a reward for locating the missing pet and/or its safe return, this legal institute can potentially be used in a variety of situations and different professions. For example, the public promise of a reward may be an effective technique in various police investigations, when a reward may be promised to anyone who reveals information about a missing person, a fugitive hiding to avoid prosecution, or the whereabouts of stolen items.[1]

A person becomes entitled to the reward as soon as they achieve the desired outcome. It is a kind of the *„prize for virtue*" (Guilhermont 2010, 1475), which is one of the peculiarities of this legal institution. The notion of the public promise of a reward is built on the premise that a certain person, at a certain time and place, will be able to perform the described act, achieve the defined result, or find themselves in the desired situation. The promisor is unable to do it themselves for any variety of reasons. Hence, they are willing to encourage others to undertake such a step. The incentive lies precisely in promising a reward in return. Also, the promisor has no

[1] In North America, Quebec, the UK and Germany, the public promise of a reward is often used in police investigations (see *England v. Davidson* (1840); *Glasbrook Bros v. Glamorgan County Council* (1925) (Guilhermont 2010, 1474; Furmston 2012, 204). However, until recently such practice was considered immoral in France. Nevertheless, in 2007, the French police, by publicly promising a reward, encouraged witnesses to reveal information about the shooters that were targeting police officers during the autumn riots. Publicly promised rewards increase the likelihood that lost or stolen items will be returned to their owner. An organization based in Quebec, which runs advertising campaigns for missing persons cases, reports that 33% of reward cases are solved using this technique (Guilhermont 2010, 1474, 1478–1479).

knowledge of know that neither can they find out who will be the one in the right place, at the right time, able to perform the required act. Furthermore, it is uncertain whether such an individual even exists. It „hinges solely on potential" (Guilhermont 2010, 1478–1479, translated by author). For that reason, negotiating and contracting is not a feasible alternative. Through the act of publicly promising the reward, the promisor aims for a result that is difficult, unprofitable, or even impossible to achieve through the conclusion of a contract.

Evaluated through the lens of law and economics (economic analysis of law), the public promise of reward is a technique that increases the chances of the promisor to achieve the result they are aiming for in the economically efficient manner (Guilhermont 2010, 1478–1479). Namely, the promisor values the worth of acquiring the result defined in the promise more than the worth of the award they promised to give. Otherwise, they would have no economic incentive to promise such a reward.[2] The promisor's economic interest is relevant in in an additional context, as it may serve as the criteria to distinguish public promise of reward from betting (see Fervers 2020, 1263).[3]

Despite serving the same purpose, the public promise of a reward is a legal institution that is regulated in fundamentally different ways in comparative law. Notwithstanding, it receives inadequate attention from legal theory. The

[2] The technique of publicly promising a reward is effective when the desired result has a greater value for the promisor than the value offered as a reward. Let's take for example the case of an owner who promised a reward for person who finds their missing cat. If the cat is worth EUR 2,000 to them, and EUR 50 to the finder, the promise of a reward will be economically efficient if the amount of the reward is between EUR 50.01 and EUR 1999.99. Within such a reward range, the well-being of the owner will increase, as will the well-being of the finder, which also results in the increase in social well-being. Since these are voluntary market transactions, there was an efficient allocation of goods according to the both Pareto improvement and Kaldor-Hicks efficiency (see Begović, Jovanović, Radulović 2019, 17–21).

[3] The lottery, or game of chance, does not constitute the public promise of reward. If the organizer of lottery promises EUR 100 to one of the 500,000 participants, it is not considered a public promise of a reward. How does a prize game differ from a public promise of a reward? First, the participants in a prize game are known to the organizers; they know their information and addresses (Dessemontet 2003, 52). A public promise is directed at an unspecified number of people, making it impossible for the promisor to predict who might be a potential performer. Second, participation in a game of chance requires payment. An interested party must pay a certain amount to participate in the lottery or buy a specific product or ticket. Third, the prize in the game of chance must not depend on the knowledge or skills of its participants, but solely on chance or an uncertain event; if the performance can be fulfilled in a straightforward manner, it is considered a lottery (Pieck 1996, 161–162).

author will present an overviewfrom the general to the specific, starting with the overall view and common traits. The following part of the paper will focus on the origins of these differences, along with the underlying theories that substantiate them. Subsequently, the approaches of French, English, German, Austrian, Swiss, Italian and Serbian law will be presented, followed by the European law. In the concluding section of the paper, the author will analyse of the presented approaches.

2. THE OVERALL VIEW OF PUBLIC PROMISE OF REWARD: NOTION AND CONDITIONS

Regardless of the specific legal system to which a jurist belongs, they will refer to the public promise of a reward when an individual (the promisor) publicly promises a reward to an unspecified number of people (the promisees) for performing a certain action, finding themselves in a certain situation, or achieving a certain result or success. It is a publicly announced promise „for some beneficial work" (Bago 1990, 71). However, the notion of the public promise of a reward is fundamentally different in comparative perspective, which will be discussed in more detail later in the paper, while in this section the author will focus on its universal characteristics.

The person who promises the reward is called the promisor. The promisor can be either natural or a legal person. Nevertheless, they must have the required legal capacity. Some authors (e.g. Milošević 1970, 192; Radišić 2017, 360) state that the promisor must have the full legal capacity, since they are the one disposing of the assets. Even so, the author believes that the requirement of legal capacity should be interpreted in each specific case considering the promised reward. There is no reason why, for example, a twelve-year-old boy could not make a promise to give a football ball to whomever finds his lost bag containing his favourite football dress and shoes. Furthermore, the promisor who has no legal capacity (e.g. a minor) will be able to promise a reward if such a reward falls under the pocket money rule (*Taschengeldparagraph*).[4]

[4] The pocket money rule is sourced from Germanic law (see Art. 110 Bürgerlichen Gesetzbuchs, and Art. 170 para. 3 Allgemeine bürgerliche Gesetzbuch). The rule allows minors to independently undertake legal transactions of small value that are proportionate in complexity to their intellectual maturity and correspond to their understanding of things. Such allowance has significant economic, social, and educational importance because it enables younger minors to independently satisfy

The promisor must make the promise publicly and to an unspecified number of people – the public announcement is required. Publicity necessitates that the promise be communicated in a way that ensures those who are expected to respond are likely to notice it. The promise can be communicated through various media channels such as radio, television, or the press (Karanikić Mirić 2024, 706), as well as through electronic media. Additionally, it may be displayed as a poster on a notice board, lamp post, bus stop, or distributed as leaflets to passersby by the promisor or a third party. The author believes that the announcement is deemed published only when it is made accessible to the public, i.e. when newspapers are released for sale, broadcasts are aired on the radio, shown on television, or posted on a notice board.[5] The promise may also be made public by posting it on a social media profile, as long as such profile is public. The condition regarding the unspecified number of people logically arises from the concept of a public promise of a reward, since the public implies a group of individuals who are not individually identified and whose number cannot be determined. It may be to the members of a certain group formed based on a certain criteria, such as age, profession, education, interest, or even members of an association (Fervers 2020, 1264). The actual number of individuals who have been informed of the announced promise is not relevant. It does not have to be announced „to everyone" (Fervers 2020, 1263). However, the ability for everyone to be informed about the promise is crucial. The emphasis is therefore placed more on the inability to identify individuals to whom the promise is addressed, rather than on the actual number of people who have noticed it.

The announcement of a public promise of a reward must clearly specify the act to be performed, the success to be achieved, or the situation in which a person must find themselves to be entitled to the reward (Karanikić Mirić 2024, 706). The required outcome must be determined, possible, and lawful, otherwise, the public promise of a reward is not enforceable – the promisor is not obligated to grant the reward to a person who has performed an action that is undefined, impossible, or unlawful.

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their daily needs and help their parents (e.g. shopping in a bookstore, market or supermarket) (Stanković 1982, 1224). In addition, minors develop their personality this way (Đurđević 2010, 89).

[5] For different opinion see Milošević (1970, 192), which states that the promise is considered published at the moment the promisor's statement is handed over to the newspaper, radio, or television editorial office, or to the person responsible for posting it on a notice board.

Upon announcing the promise, the promisor's duty to grant the reward does not yet exist. The obligation is born as soon as an individual undertakes the defined act, find themselves in the situation described in the announced promise or achieve the required success. Thus, their identity is initially unknown, but unveiled later (Milošević 1970, 191). It is indeed possible that such a person might not appear at all. The author will refer to them as „the performer" or „the undertaking person". We emphasize that the public promise of a reward does not create an obligation for the performer to fulfil the task set forth in the promise, achieve the success or find themselves in a certain situation (Radišić 2017, 360). They perform such an action not because they are obligated to, but mainly because they want to and are able to help the promisor. Guillermo calls the performer a „good Samaritan" (*bon samaritain*) (Guilhermont 2010, 1481). In return, by undertaking the action that the promisor had laid out in the publicly announced promise, they become entitled to the award. Therefore, the promisor is the debtor, and the performer is the creditor in their relationship of obligation (Karanikić Mirić 2024, 705).

The legal capacity required on the performer's side depends on the way one understands the legal nature of the announced promise, which will be thoroughly discussed in the following section. If a public promise is understood as a unilateral declaration of intent (*negotia unilateralia*), the action undertaken by performer is considered as a material, not a legal act. Therefore, they are entitled to the reward even if they did not know about the promise, and there is also no requirement regarding the appropriate legal capacity. However, if doing so is understood as a tacit acceptance of the offer, the appropriate legal capacity must exist. In that case, what is stated for the promisor also applies to the promisee.

Finally, yet significantly, the reward must be specified in the announced promise, otherwise the promise does not obligate the promisor (e.g. stating that the one who finds the lost wallet will receive a „valuable reward"). Whether the reward is monetary or non-monetary,[6] the rules for monetary

[6] Does the reward need to have monetary value? Opinions in jurisprudence are divided. For instance, Bago (1990, 63) argues that the reward must have monetary value, while Đorđević and Stanković (1987, 331) state that this is not necessarily the case. The author agrees with the first standpoint. A reward with monetary value may be expressed by its „measurability in money" (Radišić 1998, 11, translated by author). Such a reward is potentially of interest to anyone, as it would increase their assets, either by itself or through the value obtained from its sale (general suitability of assets for satisfying certain needs) (Radišić 1998, 12). On the other hand, non-monetary goods cannot be expressed in such way (e.g. life, body, integrity, personal data), and therefore, are only relevant to their owners (or maybe their family and friends), but not the public as such.

or non-monetary obligations apply. If the reward is non-monetary (e.g. the delivery of a specific item or some other performance), the performer cannot demand the monetary equivalent of the promised reward. While the outcome that qualifies for the reward must be clearly defined, the reward itself can be determinable (e.g. the album by an artist who has won a Grammy Award in 2025). Additionally, the reward must be possible and lawful. The rules of contract law are applicable if the award has a defect (Fervers 2020, 1264).

3. THE LEGAL NATURE OF PUBLIC PROMISE OF REWARD

3.1 Underlying Debate

The understanding of the legal nature of the public promise of reward depends on the moment we consider that the promisor's obligation arises. Two opinions have been formed in legal theory, which have evolved into theories: contract theory and (unilateral) promise theory. Therefore, supporters of these perspectives can be labelled as „the contractualists" and „the unilateralists" (Vicente 2021, 264). The applicable law in each country varies based on theory the legislator has opted for. In a broad and imprecise manner, it could be stated that the Anglo-American approach is the contractual one, while the Civil Law applies the unilateral approach. However, there are exceptions on both sides. In this section the author will explain the emergence of the theories, their postulates, and the practical consequences.

Why is the doctrine on the legal nature of a public promise of reward divided? The study of its legal nature demonstrates the legislator's response to a more complex and comprehensive question: can an individual bind themselves through unilateral declaration of intent (*negotia unilateralia*)?

Prior to the 19th century, there the prevailing opinion was that the declaration of intent itself cannot create a binding obligation for its declarant (see Hogg 2010, 461–462; Terré *et al*. 2019, 94). Therefore, it was believed that an obligation can only be created when the intentions of two different parties align (an offer and an acceptance), both aiming to form the desired contract. As the requirements of the capitalist economy evolved, the idea of binding declaration of intent appeared. Initially, the concept was implemented by issuing securities (Đorđević, Stanković 1987, 320). The idea about the unilateral declaration of the will as a source of obligations emerged in doctrinal terms in Germany in the 19th century, as the outcome of an abridged reading of Hugo Grotius's work (Buciuman 2016, 25). As a starting point, German jurists stated that expressed intent, as opposed to

internal intent, has an objective value and therefore is a source of obligation (Hogg 2010, 463). Thereby, such a premise was a deviation from the classification of obligations provided in *Corpus Iuris Civilis* (Buciuman 2016, 21).[7] The idea that the unilateral expression of will has the power to create an obligation encountered strong opposition, primarily by French jurists (see Porchy-Simon 2021, 23–24). This debate that has spanned centuries „has its origins in the deepest philosophical and ethical foundations" (Orlić 1993, 215, translated by author).

However, it is important to note that the idea of the unilateral declaration of intent is not universally accepted, not even in the Germanic countries where it originated. Despite the 19th century glorification, the unilateral declaration of intent has an exceptional character (Vicente 2021, 256).[8] Hence, in countries that recognize this source of obligation, one can bind themselves only when it is explicitly prescribed by law. For example, the Italian Civil Code states that „the unilateral promise of a performance does not produce binding effects outside the cases permitted by law".[9] The German law considers public promises of rewards, the establishment of foundations, and the issuance of bonds as binding unilateral declarations of intent (Buciuman 2016, 27).[10] There is, therefore, the *numerus clausus* system of unilateral declarations of intent (*einseitiges Rechtsgeschäft)* (Vicente 2021, 256).

3.2. Contract Theory and (Unilateral) Promise Theory

Legal systems that do not recognize the unilateral declaration of intent as the source of obligations attempt to categorize public promises within the contract framework. Consequently, the theory explaining such understanding has been termed contract theory. On the contrary, legal systems that accept

[7] The Institutes of Justinian established a four-part division of obligations: *ex contractu*, *quasi ex contractu*, *ex maleficio*, and *quasi ex maleficio*.

[8] Although Franz von Kübel, one of the principal drafters of the BGB's contract provisions, sought general recognition for unilateral promises, his view did not ultimately prevail (Hogg 2010, 463).

[9] See Art. 1987 of the Italian Civil Code, translated by author.

[10] German law distinguishes between declarations of intent that need to be addressed to another party (*empfangsbedürftige Willenserklärungen*, e.g. offers and acceptances of offers) and declarations of intent that produce legal effects regardless of the existence of an addressee (*nicht empfangsbedürftige Willenserklärungen*). A prime example of the latter is the public promise of a reward (Suzuki-Klasen 2022, 223).

that an individual can bind oneself through unilateral declaration of intent, consider the public promise as a unilateral legal act. We define a unilateral legal act as a declaration of intent that can produce a specific legal effect – the creation, alteration, or termination of a legal relationship. Thus, the theory that clarifies this concept is named the (unilateral) promise theory.

Proponents of contract theory perceive a public promise of reward as a (general) contract offer, as undertaking the act described in the announced promise constitutes its acceptance (Hogg 2010, 463–464). When parties' intentions align – a contract arises. The intention of the promisor is expressed explicitly, by announcing the promise, and the intention of the performer is the implicit one, made by completing the assigned task, finding themselves in a particular situation, or achieving the set result. Even in the absence of a formal contract, legal principles resembling contractual obligations apply (Lerner 2004, 68). Both parties' declarations of intent must fulfil the general conditions required for any declaration of intent (legal capacity, intent, voluntariness) (Lerner 2004, 68). As a result: 1) the performer must know about the public promise and consciously perform the act envisaged in the announced promise with the aim of concluding a contract with the promisor,[11] and 2) the performer must have legal capacity. Thus, a performer who was unaware that the public promise had been made or lacked the appropriate legal capacity cannot claim the right to the reward. Both the obligation for the promisor and the contractual relationship are created at the moment of performing the act specified in the promise announcement, achieving defined success, or finding oneself in the appropriate situation. The promisor's obligation and the performer's right arise simultaneously, in accordance with the traditional understanding of the contractual relationship. In fact, proponents of contract theory deny a public promise as a source of obligation, viewing it as contract by any means necessary (Bago 1990, 47). Contract theory is accepted by French law, English law, and the law of most US states.[12]

[11] American case law relativizes this requirement. Thus, in some cases, judges have required the knowledge of the publicly made promise, while in other cases reliance on the promise or even the intention to claim the reward was necessary, e.g. *Slattery v. Wells Fargo Armored Services* (1979), *Otworth v. The Florida Bar* (1999), *Braun v. Northeast Stations and Services Inc*. (1983), *R. Price Jr. et al. v. The City of East Peoria* (1987) (Lerner 2004, 79 fn. 164–166).

[12] Contract theory is not accepted in Louisiana. The Louisiana Civil Code uses the term „offer of reward", but the performer's awareness of the announced promise is not required (see Louisiana Civil Code Art. 1944). Furthermore, no mutual consent is necessary (Lerner 2004, 61–62).

(Unilateral) promise theory, on the other hand, implies that the obligation for the promisor arises as soon as they announce the promise to the public. Publicly declared unilateral will is considered a unilateral legal act (*negotia unilateralia*). Its acceptance is not required, since there is no fiction of a contract (see Carić 1980, 595; Karanikić Mirić 2024, 705). As a matter of course, a unilateral declaration of intent only creates an obligation for the person who declares it, but never for others. (Unilateral) promise theory is built upon the distinction between internal will and declared (externalized) will. The former is not suitable to create rights and obligations, but the latter is. Some German authors, inspired by the teachings of naturalists, deducted that by (publicly) expressing the promise, the will of the promisor is separate from its source and produces a legal effect. If the promise is expressed in such a manner that others can find out about it, they can acquire legitimate hopes and expectations towards them, which are be protected by the legislator (Buciuman 2016, 25–26). The idea of the unilateral promise as a source of obligation was established by Austrian jurist Heinrich Siegel. Siegel differentiated between two obligations: to keep the promise, i.e. not to revoke it (*Die Gebundenheit an's Wort*), and to fulfil the promise, i.e. grant the award. The first one is an obligation of non-action, and the second is an obligation of action. The former can be established in favour of an unspecified person, while the latter requires the certain promisee. These two obligations do not always exist together. Hence, the promisor may be obliged only to honour a promise, but not necessarily to fulfil it, e.g. if nobody performs the required act (Orlić 1993, 212–214). Therefore, by saying that the unilateral promise binds the promisor, the author refers to his obligation to uphold their word for a certain period. The obligation to fulfil the promise will arise only if someone finds themselves in a specified situation or performs an act determined by the promisor. The promise and its fulfilment are two separate and independent acts (Bago 1990, 136). Contrary to the promise, performing the specified act is considered as a material, not a legal act. Accordingly, the general conditions that any declaration of intent must meet are not mandatory here (Karanikić Mirić 2024, 705). It is irrelevant whether the performer acted with a view to the promise or does not know that a reward is due to them (Markesinis, Unberath, Johnston 2006, 350).[13] Therefore, even a performer who achieved the desired outcome before the promise

[13] Some authors believe that there is implicit consent, since the performer acts entirely according to the instructions and intent of the promisor (see Suzuki-Klasen 2022, 248, 448). The author believes that such attempts to explain the formation of an obligation through mutual consent are unnecessary, as in German law the public promise of a reward is based on a unilateral declaration of intent. Therefore, the consent of the performer (explicit or implicit) is not necessary.

was announced will be entitled to the reward. In that case, their right to the reward arises at soon as the promise is announced. This is the only instance where the obligation and the right arise simultaneously according to the unilateralist approach. Following the example of Germany and Austria, the theory of declaration was accepted in Switzerland, Italy, Spain, and Serbia, and it is noted that China, Japan, Egypt, Syria, Mexico, and Brazil also link the creation of an obligation to a unilateral promise, rather than to a contract (Guilhermont 2010, 1484).

3.3. Supporting and Opposing Arguments

The main criticism of the contractualists' approach considers the unenviable position of the performer. The undertaking person who did not act „on faith of the advertisement" (Vicente 2021, 264) will leave empty-handed, although they achieved the desired outcome. Thus, the application of rules regulating contracts appears unfair. The severest critics deemed contract theory as advantageous solely for promisors seeking to avoid awarding (Lerner 2004, 64). Due to this criticism, even the proponents of this approach strive to indirectly mitigate such a solution by employing various methods, as will be demonstrated below.

The unilateralists are also not immune to criticism. First, at the moment of declaring the intent (which is also the moment of the emergence of the obligation), there is no right that corresponds to the newly created obligation. Thus, such an idea deviates from the traditional understanding of the obligation as a legal relationship between two parties where at least one party has a duty to perform, while the other one has the corresponding right to demand performance (Porchy-Simon 2021, 24). Both the duty and the right are supposed to arise at the same time, and, according to the critics, any exception to this rule undermines the essence of the obligation. On the other hand, unilateralists stress that the gradual emergence of obligation itself produces the practical advantage of *negotia unilateralia* (Đorđević, Stanković 1987, 321).

Furthermore, it is pointed out that a unilateral declaration of intent cannot constitute a right in favour of a person without their consent, because perhaps that person does not want to become a rights owner for various reasons. This objection can be readily countered. Particularly, a person who does not want to be a creditor does not have to exercise their right, i.e. demand performance (Terré *et al*. 2019, 95). In other words, if the performer does not want to be the owner of the newly created right, they can simply not claim the award from promisor; they cannot be compelled

to assert their right (Orlić 1993, 201–203). This theory is also challenged on the grounds that an obligation cannot exist without a creditor. However, there are obligations where the creditor is temporarily unidentified, such as in a stipulation made for the benefit of an unspecified or future individual (Terré *et al*. 2019, 95).

Moreover, it is stated that if they debtor is allowed to oblige themselves through unilateral declaration of intent, they should also be allowed to release themselves from the obligation they undertook in that respect (Porchy-Simon 2021, 24). Such a release could threaten the interests of the performer. However, the promisor must have the required legal capacity (as mentioned above), and the legislator must prescribe means to preserve the interests of the performer in the event of revocation of the public promise, e.g. reimbursement of expenses to a performer who acted in good faith, unaware of the revocation. It is noted that individuals of sound mind typically do not take on obligations without a valid reason (Von Bar *et al.* 2008, 178).

4. LEGAL SYSTEMS THAT ABIDE BY CONTRACT THEORY

4.1. French Law

The *Code Civil* (CC) does not address public promises of rewards (*la promesse de récompense*). Moreover, it is emphasized that the French legislator has never considered the regulation of this institution to be essential (Guilhermont 2010, 1473). Until 2016, the CC did not even recognize *negotia unilateralia* as such, but a reform encompassed provisions regarding the sources of obligations. According to the applicable French law, obligations may arise from legal acts, legal facts, or exclusive statutory authority.[14] During the reform, a provision stating that obligations may also arise from voluntary performance or promises to fulfil duties of conscience towards others[15] was implemented, through which the legislator affirmed the previous practice of the Court of Cassation (Buciuman 2016, 24).[16] In

[14] Art. 1100 para. 1 CC.

[15] Art. 1100 para. 2 CC.

[16] This refers to natural obligations that lack the enforceability of civil obligations. Namely, the Court of Cassation took the position that a natural obligation can be converted into a civil obligation through novation, although this solution was not theoretically consistent (François 2016), since novation implies that there is no legal continuity between the old and the new obligations. Novation also entails that there is no transformation; rather, by mutual agreement of the parties, the existing obligation is extinguished, and a new one takes its place.

an attempt to define the concept of legal acts, the CC additionally stipulates that legal acts are manifestations of will aimed at producing certain legal effects, and they can be unilateral or bilateral, to which the rules governing contracts are applied.[17] *Negotia unilateralia* is not referenced elsewhere in the CC.[18] Therefore, the French legislator did recognize the idea of a unilateral declaration of intent as a legal act, but did not extend it further (Terré *et al*. 2019, 99–100). By stipulating that the rules of contracts govern all legal acts, both unilateral and bilateral, and by not establishing any specific rules for unilateral legal acts, the legislator effectively ensured that the entire legal framework for contracts also applies to unilateral acts, without introducing any distinct regulations for them. Buciuman (2016, 25) states that the legislator acted with excessive caution here, perceiving that the issue of unilateral would as a „minefield". Therefore, the issue of the legal qualification of a public promise of reward in French law remains unresolved. Unilateral acts undoubtedly produce various legal effects (as prescribed), but the question of whether the creation of obligations is among those effects remains unresolved, which remains the „blind spot" of French civil law (Terré *et al*. 2019, 99–101). The CC neither explicitly denies nor affirms the possibility for an individual to create an obligation through a unilateral declaration of intent (Porchy-Symon 2021, 23). To explain what this „minefield" consists of, we will refer to the views of French jurisprudence and case law.

Since the French legal system uses public promises of rewards in practice, in the absence of its formal regulation, the legal theory has sought to address two questions: a) is the promisor obligated to fulfil the promise, and b) on what legal basis might this occur (Guilhermont 2010, 1475)? It should be noted that these two questions cannot be separated, as the answer to whether the promisor has an obligation to pay the reward largely depends on how the public promise itself is understood.

The stance that a public promise of a reward obligates the promisor to fulfil their promise has been accepted in France (Guilhermont 2010, 1481). The latter question, on the other hand, is the subject of intense debate in the jurisprudence (Porchy-Simon 2021, 23). Part of the French legal theory considered the public promise merely as an offer to form a contract, while

[17] Art. 1100–1 para. 1 CC.

[18] Article 1124 of the CC regulates the so-called unilateral promise (*la promesse unilatérale*), which should not be mistaken for a public promise of reward. The unilateral promise is a contract. The French legislator defines a unilateral promise as a contract by which one party (the stipulant) authorizes the other party (the beneficiary) to decide on the conclusion of a contract whose essential elements are determined, since the contract's formation only requires the beneficiary's consent.

the others argued that it constituted a binding unilateral declaration of intent (Guilhermont 2010, 1481). The first opinion is the dominant one and supported by case law, placing French law in the group that abides by contractual theory (Terré *et al*. 2021, 98). Nevertheless, the ambiguous position taken by the legislator is criticized by authors who, inspired by German legal teachings, emphasize the advantages of understanding a public promise of a reward as a unilateral legal act.

Traditionally, French authors view a promise of reward as a bilateral contract – when a person has provided the requested service or even begun the effort knowing about the promise, they have implicitly accepted the offer in their favour (Terré *et al*. 2021, 98). It seems that this perspective is supported by the silence of the legislator.[19] The promisor is obligated to award the promisee who produced the desired outcome because, by fulfilling the goal described in the advertisement, the performer accepted the offer to conclude a contract. An offer made to an unspecified number of people is binding in the same way as an offer made to a specific person. This means that such an offer is not revocable (Gordley 2004, 301). Potier had already emphasized that the creation of an obligation involves two aligned wills, as well as the promisor cannot promise something to the promisee against their will (Buciuman 2016, 23). Thus, the promise as such must be accepted to become enforceable.

What are the legal consequences if the performer is unaware of the existence of the announced promise, or they lack the required legal capacity? The author has explained that the proponents of contract theory believe that, in such cases, no contract has been concluded. Hence, the performer does not become entitled to the reward. However, French legal theory seeks to mitigate these legal consequences and thus avoid criticism from supporters of (unilateral) promise theory. It is emphasized that in such a case, the promisor may be obligated according to the rules of unjust enrichment[20] or *negotiorum gestio*[21], both considered quasi-contracts in French law (Porchy-

[19] If the authors of the 2016 reform intended to generally recognize unilateral commitments as a source of obligations, it is difficult to understand why they remained completely silent on this issue (Terré 2021, 100).

[20] By performing the assigned action, the performer conferred a certain benefit to the promisor. However, the promisor is not obligated to pay under the promise of a reward (viewed as a contract) because the performer lacks the legal capacity/was unaware of the promise.

[21] Indeed, in both instances, we are dealing with a unilateral act by the gestor or performer. However, the reward constitutes a unilateral promise, whereas in *negotiorum gestio*, there is no „promise" involved; instead, an obligation arises based on the gestor's intention to seek compensation from the principal. The gestor's

Simon 2021, 483–484). For example, the court held that the organizers of lotteries who promise prizes to consumers are obligated to pay out those prizes based on a quasi-contractual obligation (Porchy-Simon 2021, 483).[22] To apply quasi-contract rules, it is essential that the necessary conditions for these legal institutions have been fulfilled. In that case, however, the „reward" given would not be regarded as such, since a different legal basis is involved (Guilhermont 2010, 1481). Namely, the promisor may only be obligated to reimburse the damages incurred by the performer while performing the act specified in the announcement of promise. French courts may apply the rules of *negotiorum gestio* even when the person did not achieve the result required in the advertisement but incurred certain expenses in the attempt to accomplish it. Only necessary and useful expenses are considered, but not the luxury ones (Gordley 2004, 301).[23] Moreover, it is emphasized that the community interest should not always be monetized, i.e. the act performed should not necessarily be converted into financial compensation (Guilhermont 2010, 1481–1482). Acting out of empathy and helping those in need is more important, regardless of the offered reward and its value.

Recently, it appeared that part of French jurisprudence[24] has been abandoning contract theory and has recognized unilateral declaration of intent as a source of obligations, following the example of German law (Guilhermont 2010, 1483; Terré *et al*. 2021, 95).[25] Guilhermont emphasizes that this reasoning is more adequate and familiar to the Court of Cassation. The French law acknowledges the existence of unilateral declarations of will, thus such an understanding better corresponds to the essence of a public promise with all its peculiarities, in contrast to the constrained perspective

action is grounded in law, which presumes an express or implied agreement with the principal. Thus, establishing the gestor's intention is crucial for the claim. In contrast, with a reward, the existence of an express promise eliminates the need to establish any „implicit agreement" (Lerner 2004, 72).

22 For example, Civ. V, 23 June 2011, No. 10–19.741. It is noted that this judicial practice has blurred the definition of a quasi-contract in French law (see Porchy-Symon 2021, 483).

23 Article 1301–5 of the CC stipulates that the *dominus negotii* is obliged to reimburse the costs to the gestor, even if the actions of the gestor do not meet the conditions for *negotiorum gesitio*, provided they benefit the *dominus negotii*.

24 Siegel's theory was favored by Raymond Saleilles, René Worms, René Demogue, Elias Costiner, and Marie-Laure Mathieu-Izorche, emphasizing that such a concept benefits those who performed the act described by the promise without knowing about the promise's existence (Guilhermont 2010, 1483).

25 The Belgian legislator also does not address the legal nature of a public promise, but legal theory views it as a unilateral declaration of intent that creates an obligation for the promisor (Guilhermont 2010, 1484).

of viewing it as a contract (Guilhermont 2010, 1485). The Court of Appeal in Toulouse accepted the (unilateral) promise theory in 1996 in a case where the performer did not have to make any effort to receive the promised reward (Gordley 2004, 301).[26] The Court of Cassation has also frequently relied on the approach of unilateral promises to explain the transformation of a natural obligation into a civil one (before the reform, see fn. 16). This approach was used mainly to compel persistent advertisers to fulfil their imaginative promises or to oblige an employer to fulfil promises made to a labour union (Bénabent 2017, 30). Despite the judiciary recognizing the advantages of this approach, it seems that the French legislator chose to favour tradition over feasibility. Nonetheless, Bénabent (2017, 30) concludes that French law is slowly establishing the groundwork for the (unilateral) promise theory.

What are the legal implications if the promisor revokes their promise? Since the promise is considered as an offer, the rules that regulate offers apply. Until the 2016 reform, offers in French law were revocable, but this rule was discretionary.[27] As the CC did not include provisions on the contract formation, this rule was developed through jurisprudence and case law. Cases where a performer incurred certain expenses, in an attempt to perform the act stated in the promise that had been revoked in the meantime, were rare in practice. Compensation for damages was only granted to such performer if the revocation of the promise was deemed unreasonable and indicated a compulsive change of mind or a breach of an explicit promise (Gordley 2004, 301). On the other hand, the applicable law prescribes that an offer can be withdrawn but not revoked until the expiration of the period specified in the offer, or until the expiration of a reasonable period (applies if no period is specified in the offer).[28] However, if the offeror does revoke the offer, the contract does not come into existence, but the offeror is obliged to compensate damages in the form of negative contractual interest.[29] Applied to public promises of rewards, if the promisor revokes the promise and the performer has incurred certain costs trying to perform the act or had already performed it before the revocation, the promisor is not obliged to pay the promised reward. However, the promisor is obligated to reimburse the costs incurred by the promisee while attempting to perform the act envisaged in the promise.

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[26] See Cour d'appel, Toulouse, 14 February 1996, Bull. Civ., 1 July 1996, IR No. 433.

[27] For further details about offers in French law before the reform, see Orlić 1993, 191–206.

[28] Art. 1116 para. 1 CC.

[29] Art. 1116 paras. 2 and 3 CC.

4.2. English Law

Before explaining how English jurists understand the public promises of rewards (advertisements of rewards, advertisements of unilateral contracts), the author deems it necessary to elucidate the relevant principles of English contract law. First, English law recognizes contracts, torts, and unjust enrichment as sources of obligations (Burrows 2015, 8). The unilateral declaration of intent, on the other hand, is not a source of an obligation. Therefore, the public promise of a reward as such does not create an obligation for the promisor.[30] Unilateral transactions are unfamiliar concept (Vicente 2021, 256). Second, the notion of a contract in English law is narrower than in Continental law, as English law recognizes only synallagmatic (bilateral) agreements as contracts. The idea of contract where only one party assumes the role of creditor while the other serves as debtor is not accepted. Hence, an agreement that obliges only one party (e.g. a gift) is not legally enforceable (Farnsworth 2004, 4). Such understanding arises from the doctrine of consideration and the principle of equality between contracting parties. Mutual assent is not enough for the contract to be concluded, but an exchange of mutual promises, actions, omissions, or forbearances must exist as well.[31] This exchange is referred to as *consideration* – one party provides or pledges something to the other in return for what the other party has pledged in exchange (Peel 2015, 3–004). Furthermore, the counter-promise can be fulfilled simultaneously with the performance of the first party (present consideration) or in the future (future or executory consideration) (Furmston 2006, 9). Third, public promises of rewards are considered within the framework of contract law, since the obligation of the promisor to fulfil the promise to the performer is understood as a contractual obligation (contract theory). Finally, English

[30] Common law includes the notion of promise, but it bears no resemblance to the public promise of a reward as the subject of this paper. In civil law the agreement of two wills (an offer and the acceptance) is the cornerstone of every contract. However, this function is carries out by the promise in common law. A promise, from the perspective of English (and most American) jurists, represents the agreement of two wills – the promisor's and the promisee's. It cannot become enforceable without the explicit or at least implicit acceptance by the promisee. Therefore, a promise is understood as an accepted promise (Lerner 2004, 58–59). Speaking of the difference between an offer and a promise in common law, their relationship is such that the offer precedes the promise. An offer becomes a promise once it is accepted by the promisee, meaning a promise is an accepted offer (Lerner 2004, 60).

[31] The principle was first stated in the case of *Stone v. Wythipol* (1588) (Furmston 2006, 8).

contract law recognizes the doctrine of promissory estoppel.[32] Promissory estoppel occurs when a promisor makes a promise that should reasonably expect to cause the promisee to take action or refrain from acting in a significant way, and if the promisee does so, the promise becomes binding if enforcing it is the only way to prevent injustice (Peel 2015, 3–079; Farnsworth 2004, 174). While the rule it outlines lacks exact precision, four key requirements stand out: 1) there must be a promise; 2) the promisor must have had a reasonable expectation that the promise would be relied upon; 3) the promise must have actually led to such reliance; 4) the situation must be such that enforcing the promise is the only way to prevent injustice (Farnsworth 2004, 174).

Since contract theory and its principles have already been discussed, the author will next explain the specificities related to public promises of rewards in English law. Considering the established principles on which English contract law is founded, the question arises as to how a public promise of reward meets the requirements of mutual assent and consideration, both necessary for the formation of a contract.

A public promise of a reward is considered as an offer to conclude a „unilateral contract".[33] This qualification is explained in legal theory by the fact that after the promise is publicly announced, there are no further possibilities for negotiations between the promisor and the performer (Peel 2015, 2–010). In this context, a public promise of a reward is a final proposal for concluding a contract. Along with conclusiveness, another important attribute of the offer is the offeror's intention to be bound by the future contract.[34] The promisor's intention must be expressed in such a way that a reasonable person would understand the promise as an offer to conclude

[32] The leading case recognising this doctrine is *Hughes v. Metropolitan Railway Co* (1877). In this case, a landlord gave a tenant six months to complete repairs, but the tenant asked if the landlord wanted to buy his lease instead, leading to negotiations. When those negotiations failed, the landlord tried to end the lease, but the House of Lords ruled that the six-month deadline was paused during negotiations and only resumed after they broke down, protecting the tenant from forfeiture (McKendrick 2017, 149).

[33] On the other hand, the advertisements of bilateral contracts are not considered an offer, but rather an invitation to treat (e.g. a restaurant menu or a catalogue of promotional products). The reason is that the interested party must first ensure that the issuer of such advertisements is indeed capable of performing the service or delivering the advertised goods. Additionally, in many cases, further negotiation and modification of the initially stated contract terms are possible (Peel 2015, 2–011).

[34] The intention to be bound is presumed in commercial contracts, but the presumption is rebuttable (Furmston 2006, 148).

a contract. Courts apply an objective criterion – would a reasonable person interpret the promise as an offer to conclude a contract – rather than a subjective criterion, i.e. how the performer themselves understood the advertisement (Furmston 2006, 39). This position was confirmed in the case of *Carlill v. Carbolic Smoke Ball Co* (1893), where the court affirmed that an offer can validly be addressed to an indefinite number of people as long as it meets the stated conditions (Furmston 2006, 39–40).[35]

Conversely, undertaking the envisaged act or finding in a certain situation is considered an acceptance of the offer. The promise of the reward has to be present in the performer's mind when they act in accordance with the announced promise, regardless of the motive for undertaking such an act (Furmston 2012, 73).[36] On the other hand, if they have never heard of the reward or the reward „has passed out of [their] mind," they are not entitled to claim it (see Furmston 2012, 73).[37] It is not necessary for the person intending to undertake the defined act to notify the promisor of their intention beforehand (Burrows 2015, 221).[38] Thus, merely performing is considered a tacit acceptance of the offer. Moreover, partial performance is also considered acceptance, thus revocation of the promise at this stage would be regarded as a breach of contract unless the promisor reserved the right to revoke the promise until the action is fully performed (Burrows 2015, 221). To what extent must partial performance be completed to be considered acceptance of an offer – whether merely beginning the performance is sufficient or whether it must be certain that the performer would be able to achieve a specific result? Case law considers that merely beginning the performance is

[35] The manufacturer of the Carbolic Smoke Ball advertised their product as a preventive measure against influenza. The advertisement stated that anyone who used the smoke ball as directed and still contracted influenza would receive £100, and it was mentioned that £1000 had been deposited in the bank for this purpose. Mrs. Carlill used the ball according to the instructions, but it did not prevent her from getting sick. Consequently, she sued the manufacturer and demanded the „promised" £100. The defendant argued that the advertisement could not be considered an offer. However, the court ruled in favour of the plaintiff. The key argument for this reasoning was the money deposited in the bank, which led the public to conclude that it was indeed an offer to conclude a unilateral contract (Oughton, Davis 2000, 26–28).

[36] See *Williams v. Carwardine* (1833) (Furmston 2012, 73).

[37] See *Fitch v. Snedaker* (1868) and *R v. Clarke (1927)* (Furmston 2012, 72).

[38] In the case of *Carlill v. Carbolic Smoke Ball Co*., the plaintiff argued that a contrary decision would defy common sense, as it would mean that in the event of advertising a reward for finding a lost dog, every police officer or the person who finds the dog would need to notify the owner of their acceptance of the offer to be entitled to the reward (Furmston 2006, 43).

sufficient,[39] but the performer must prove „an unequivocal beginning of the performance“ (Furmston 2012, 78).[40] However, they will not be entitled to the reward until they complete the action as specified in the promise, even if the revocation is unjust (Burrows 2015, 221).

The second requirement that a public promise of a reward must meet to obtain legal protection is the consideration. The promisor promises to give the reward, and in return, receives the performance of a certain act or the achievement of a specified success. The performer, on their part, fulfils the task from the advertisement to win the reward. This is an example of executed consideration, where the consideration is given in exchange for the completion of a specific action (Furmston 2012, 109).[41] In other words, both contracting parties undertake a certain obligation to receive the fulfilment of the obligation from the other party, ensuring that reciprocity undoubtedly exists.

Can a performer who has fulfilled the required task, but faces the promisor revoking or refusing to deliver the promised reward for any reason, invoke the doctrine of promissory estoppel? All the conditions are met: there is a „clear and unequivocal“ promise announced; the promisor must have been relied on the promise; the injustice can be avoided only by enforcement of the promise (McKendrick 2017, 150; Peel 2015, 3–080). The response is positive, but the performer cannot rely on this doctrine as a basis for initiating an action (Peel 2015, 3–079). They will have to sue for breach of contract

[39] See *Daulia Ltd v. Four Millbank Nominees Ltd.* (1978) (Burrows 2015, 221). Daulia Ltd. sought to purchase a property from Four Millbank, who promised to complete the sale if Daulia secured the necessary funds. After Daulia obtained the funds and began the required steps to finalize the purchase, Four Millbank attempted to revoke the offer. The court held that in unilateral contracts, once the offeree begins the required performance, the offeror cannot revoke the offer, thus protecting Daulia's position.

[40] This solution is the result of numerous debates, as the application of the general rule that an offer remains revocable until performance is completed is not acceptable in this context. However, even this solution is subject to debate. It is emphasized that strict alternatives should not be set, such as making offers revocable until completion of the performance or irrevocable as soon as performance begins. On the contrary, intermediate situations are possible where the offeror may revoke the offer after performance has begun but is obliged to compensate the offeree for their effort (Furmston 2012, 77).

[41] If A offers £5 to anyone who returns his lost cat, B's act of returning the cat immediately constitutes both the acceptance of the offer and the performance of the required consideration; B has earned the reward through their actions, leaving only the offeror's promise to be fulfilled (Furmston 2012, 101). On the contrary, there is an executory consideration, where when the defendant's promise is given in exchange for a counter-promise from the plaintiff (Furmston 2012, 101).

instead, since the promissory estoppel doctrine „acts as a shield but not as a sword" (McKendrick 2017, 150). Namely, the application of this doctrine requires the existence of a prior legal relationship between the parties (contractual relationship here), and it can only be used as a supplement to that basis to ensure that the promise is fulfilled or to prevent injustice (Peel 2015, 3–079). However, this does not mean that only defendant may rely on it. The plaintiff can invoke the promissory estoppel as well, as long as there is an independent cause of action – „may be used either as a minesweeper or a minelayer, but never as a capital ship" (Furmston 2012, 134).

English legal theory does not address the scenario where multiple individuals fulfil the required action or achieve a certain result. Who, then, has the right to the reward? It is possible that the promise itself makes it clear that each performer will receive a reward (e.g. in the case of *Carlill v. Carbolic Smoke Ball*). However, for other cases, neither theory nor case law provides an answer. If the promise does not specify otherwise, the author believes that the reward should go to the first performer, as it is considered that they were the first to accept the offer. Once accepted, the offer ceases to exist and is transformed into a contract upon meeting the performer's intent. If multiple individuals simultaneously achieve the desired result, it is suggested that the rules of German law could be applied (see below). A similar position was held by the American courts.[42]

Prize competitions (contests) in English law are also subject to the contractual regime, and the aforementioned principles apply to them as well (Vicente 2021, 265). Contests may create legal relations between the organizer and participants, as seen in competitions regularly featured in national newspapers, e.g. *O'Brien v. MGN Ltd* (2002) (McKendrick 2017, 167). Nevertheless, the announcement for the competition must clearly demonstrate the intention to create certain legal consequences. For example, in *Lens v. Devonshire Social Club* (1914), the judges stated that the winner of a competition organized by a golf club could not sue for the prize because none of the participants intended for legal consequences to arise from entering the competition (McKendrick 2017, 167).

[42] In *Reynolds v. Charbeneau* (1988) the judges stated: „When the evidence shows that no one of the claimants fully met the requirements of the offer of reward, but that their efforts combined fully complied with its terms ... they may receive a division of the reward in proportion to their services" (Lerner 2004, 100).

5. LEGAL SYSTEMS THAT ABIDE BY (UNILATERAL) PROMISE THEORY

5.1. German Law

The German Civil Code (*Bürgerliches Gesetzbuch*, BGB) and the Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB) recognize public promise of a reward (*Auslobung*).[43] Namely, in German law, the idea that a unilateral declaration of intent may create an obligation for the promisor (unilateral promise theory) was accepted in the latter half of the 19th century. Since the provisions of German and Austrian law regarding the public promise of a reward vary only slightly, we will address them in the same section, noting any differences in Austrian law when they arise.

Article 657 of the BGB stipulates that anyone who publicly offers a reward for undertaking an action, especially for achieving a result, is obliged to pay the reward to the person who undertook the action, even if that person did not act with the intention of receiving the reward.[44] The ABGB emphasizes that the promise binds the promisor from the moment of the public announcement.[45] The promisor must have the full legal capacity in order to make an enforceable promise, as well as the intention to create a legal relationship (Fervers 2020, 1263). When examining whether such an intent exists, an objective criterion is applied (Fervers 2020, 1263).

If multiple people undertake the required action or achieve the desired result, the reward belongs to the person who undertook it first – the principle of priority (*Prioritätzprinzip*). The first performer must prove their precedence (Fervers 2020, 1266). If the action was undertaken simultaneously by multiple people, the reward is divided equally.[46] The theory

[43] See Art. 657–661a BGB, and Art. 860 ABGB.

[44] The approach that exists in German law has been implemented in many countries. For example, the Spanish legislator was inspired by Article 657 BGB. If a person makes a public promise of a reward, whether for a specific act or achieving a certain result, the person who fulfils it may claim the reward – the acceptance of the promise is not necessary. Furthermore, they will be entitled to the reward even if they were unaware of the public promise. The promise can be revoked the way it was made (Gordley 2004, 304). Portuguese law holds the same view (Article 459 of the Civil Code). A public promise of a reward represents a case where an obligation arises from a unilateral declaration of intent (Gordley 2004, 305). The Japanese legislator also followed the example of Article 657 of the BGB (see Article 529 of the Civil Code of Japan) (Suzuki-Klasen 2022, 448).

[45] Art. 860 ABGB.

[46] Art. 569 paras. 1 and 2 BGB; Art. 860b ABGB.

suggests that the reward should be distributed among the performers who jointly contributed to the fulfilment of the obligation in proportion to their contribution (Pieck 1996, 161). The rule of division applies if the division itself is possible. The German legislator prescribes a solution for cases where the reward is indivisible. In such cases, the recipient is determined by drawing lots.[47] This provision is unique, distinctive to German law. However, if multiple individuals assisted in producing the required outcome, the promisor has the discretion to reasonably divide the reward. It is essential to emphasize that in any case the promisor is obliged only to pay the reward once (Fervers 2020, 1265–1266).

When it comes to the revocation of a public promise, it is revocable until the act has been performed. The revocation takes legal effect only if it is communicated to the public in the same manner as it was published or through a special announcement.[48] The revocability of the public promise is cited as a key element distinguishing it from an offer (Markesinis, Unberath, Johnston 2006, 67). If a revocation occurs, the promisor is no longer obliged to pay the reward. Additionally, the promisor will not be required to reimburse the performer for any expenses incurred while undertaking the action. It is considered that such an obligation would limit their right to revoke (Gordley 2004). Specifically, the revocation of the promise does not infringe a right, but merely an „expectation of a right" (Bago 1990, 78). The promisor may waive the possibility of revocation in the promise itself, and in case of doubt, it is considered that they have waived the possibility of revocation for the period during which the act is expected to be performed.[49] Therefore, revocation is not considered possible if a deadline is specified in the promise. The ABGB further stipulates that revocation has no effect on the performer who proves that they were unaware of the revocation at the time of performing the act, providing that they were acting in good faith.[50]

In addition to the general case of a public promise of a reward, German law also acknowledges the promise of reward trough a prize competition. The prize competition (contest, *Preisausschreiben*, *Preisbewerbung*) is a form of public promise, where the awarding of prizes is decided by expert juries, i.e. experts in the specific field of the competition. Simply achieving the defined outcome is not enough – the performer's result must surpass the

47 Art. 659 para. 2 BGB.

48 Article 658 para. 2 BGB. Similarly, Article 860a para. 1 ABGB adds that the promise can also be revoked in a manner that is equally reliable as the way the public promise was made.

49 Art. 658 para. 2 BGB.

50 See Art. 860a ABGB.

results of other performers regarding the defined criteria. The principle of quality, rather than priority, applies here. Unlike the general case of a public promise of a reward, the announcement of prize competition must include a timeframe within which the action may be completed (Pieck 1996, 161), otherwise, such competition is not valid.[51] The decision made by the expert juries are final and binding on all participants.[52] The content of the decision cannot be reviewed by the state courts (Fervers 2020, 1266). Additionally, the BGB stipulates that the promisor may require transfer of ownership of the work only if such provision was stipulated in the promise.[53]

5.2. Swiss Law

Until the 19th century, it was believed that a public promise of a reward was not binding since the promisee was not known at the moment of its announcement. This understanding was abandoned in the 19th century, and *ad incertas personas* offers became accepted in Switzerland (Dessemontet 2003, 52). Today, the notion of a public promise of a reward in the Swiss Code of Obligations (*Code des obligations*, CO) encompasses two cases: a promise of a reward made to an unspecified number of people in exchange for a specific performance (e.g. a promise to pay a reward to anyone who finds a stolen wallet) and participation in a competition, i.e. a contest (e.g. sports competition or art contest) (Dessemontet 2003, 52). Regarding the latter, Swiss legal theory[54] aligns with German legal theory, thus it will not be addressed it in the paper.

The public promise of a reward in the CO is covered by only one provision, indicating that its detailed regulation is mainly shaped by legal theory and judicial practice. According to the CO, when a person makes a public promise of a reward in return for the performance of an act, the reward must be paid in accordance with the promise.[55] Unlike Austrian law, the Swiss legislator did not emphasize that the promise creates an obligation for the promisor as soon as it is communicated. Nevertheless, most legal scholars support the (unilateral) promise theory, emphasizing its advantages regarding the

51 Art. 661 para. 1 BGB.

52 Art. 661 para. 2 BGB.

53 Art. 661 para. 4 BGB.

54 See Dessemontet 2003, 53.

55 Art. 8 para. 1 CO.

safeguarded position of the performer.[56] Although the federal court does not comment on the legal nature of the public promise of a reward, it recognizes that even the performer who did not know about the promise can still claim the reward (Dessemontet 2003, 52).

However, Swiss Code of Obligations does not provide an answer for the situation where there are multiple performers. The author suggests that a possible solution is that the reward belongs to the person who performed the required act first, as is the case in Austrian and German law. Another possible solution is the one that exists in Italian law – the awarded performer is the one who first informed the promisor about their accomplishment. However, an alternative perspective suggests that all performers should receive the reward. This view is supported by the argument that unclear provisions in unilateral obligations should be interpreted in favour of the obligor (*in dubio mitius*) (Dessemontet 2003, 53).

In Swiss law, a public promise can be revoked as long as no one has yet performed the specified act. The manner of revocation must correspond to the manner used to make the promise. After the revocation, the obligation to give the reward no longer exists. However, an obligation to compensate any performer who relied on the promise and incurred expenses in the attempt to fulfil the task from the advertisement arises (Lerner 2004, 96). Moreover, such performer had to act „in good faith and in reliance upon the announcement" (Lerner 2004, 96). It is important to note that the promisor's obligation to cover expenses is value limited – the extent of the compensation cannot exceed the value of the reward itself.[57] The promisor can be released from this obligation if they prove that the performer in question could not have completed the required act.[58]

5.3. Italian Law

The Italian Civil Code (*Codice Civile*, CCI) regulates public promises of rewards (*promessa al pubblico*). The CCI stipulates that anyone who, addressing the public, promises an award in favour of someone who finds themselves in a specific situation or performs a specific action, is bound by

[56] According to Swiss legal theory, a public promise of a reward constitutes an offer (Dessemontet 2003, 52).

[57] See Art. 8 para. 2 CO.

[58] See Art. 8 para. 2 CO.

the promise as soon as it is made public.[59] Hence, the Italian law explicitly defines the unilateral promise as a source of obligation (Lerner 2004, 62). If no time limit is specified in the promise and such a period does not arise from the nature or purpose of the promise, the promisor ceases to be bound by the promise one year after its publication, if no one has informed them of the occurrence of the situation or the completion of the action specified in the promise.[60] Lerner (2004, 98) states that it remains uncertain whether this is an appropriate solution, alluding that this period might be too long.[61]

There are two specificities in the way the Italian legislator has regulated public promises of rewards. First, if multiple individuals perform the action separately, the reward belongs to the one who first informs the promisor (Article 1991 CCI). Bago (1990, 65) views this as a practical solution that considers the promisor's interest, as it is in their interest to learn about the performed action as soon as possible. The second distinct solution pertains to the circumstances under which the promise may be revoked. Namely, Article 1990 CCI prescribes that before the expiration of the one-year period, the promisor may revoke the promise *for a justified reason*, by revoking it in the same way they made it. Hence, the Italian law mandates the justification of revocation (Vicente 2021, 262), not allowing for free revocation (Lerner 2004, 94). However, the revocation cannot come into force if the action has already been performed or the situation required has already occurred.[62] It is considered that a justified reason for revocation exists when the objective that the promisor aims to accomplish becomes unattainable, the required action or situation becomes impossible, or possible but useless due to subsequent events. It is important to note that subsequent events must not be caused by the promisor's fault. A justified reason implies that the promisor's interest in revoking the promise outweighs the interest of the other party in having the promise maintained. A mere change of mind by the promisor is insufficient for revocation (Gordley 2004, 306).

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59 Art. 1989 para. 1 CCI.

60 Art. 1989 para. 2 CCI.

61 As an example, Lerner (2004, 98 fn. 266) states that the Uniform Commercial Code provides a three-month limit for irrevocable offers: An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months (Art. 2–205 Uniform Commercial Code).

62 Art. 1990 para. 2 CCI.

5.4. Serbian Law

The Serbian Law on Obligations (*Zakon o obligacionim odnosima*, ZOO) recognizes a unilateral declaration of intent as a source of obligation.[63] A public promise of reward is regulated in Articles 229–233, and two cases are distinguished: the general case of a public promise, and a prize competition. The provisions of the ZOO were largely adopted from the 1969 Draft Code of Obligations and Contracts (Draft Code), with the editors making primarily stylistic changes. The author of the Draft Code, Mihailo Konstantinović, primarily drew inspiration from the solutions found in German, Swiss, and Italian law. Thus, the obligation towards the public creates a binding obligation for the promisor from the moment the announcement is published (the declaration theory), while the right to claim the reward by the performer of the act arises later, at the time of fulfilling the performance stipulated in the announcement (Karanikić Mirić 2024, 705). It is irrelevant whether the undertaking person was aware of the published announcement or had legal capacity (Karanikić Mirić 2024, 705). The rules in cases where the result is achieved by multiple persons are the same as in German law (except from drawing lots),[64] as are the provision regarding prize competitions.[65]

The public promise of reward is revocable in Serbian law. To effectively terminate the promisor's obligation, the revocation must be carried out in a manner prescribed by law. The legislator provides two methods: the same way the promise was made, or revocation by personal notification.[66] Nevertheless, the promise cannot be revoked if a deadline for performing the act has been specified in the announcement.[67] A person who performed the act before the promise was revoked has the right to claim the reward.[68] This rule is prescribed by the legislator to protect the interests of third parties acting in good faith. The ZOO also states that individuals who incurred necessary expenses for the performance of the act stipulated in the public announcement before the revocation are entitled to reimbursement of those expenses.[69] They should not suffer the negative effects of the promisor's

[63] Obligations arise from contracts, causing damage, unjust enrichment, *negotiorum gestio*, unilateral declarations of intent, and other facts established by law (Art. 1 ZOO).

[64] Art. 231 para. 2 ZOO.

[65] Art. 232 ZOO.

[66] Art. 230 para. 1 ZOO.

[67] Art. 230 para. 2 ZOO.

[68] Art. 230 para. 1 ZOO.

[69] Art. 230 para. 1 ZOO.

decision to revoke the public promise. The provision is interpreted to apply not only to expenses incurred before the revocation but also the costs incurred after the revocation, if the interested parties performed the act without knowing or having the means to know about the revocation (Carić 1980, 596). Exceptionally, there is no right to reimbursement of incurred costs if the promisor proves that they were made in vain.[70] Thus, the burden of proving the futility of the incurred costs lies with the promisor.

Interestingly, the Serbian legislator adopted from the Italian law the provision on the duration of the promise if the promisor did not specify a deadline. The law prescribes that the promisor's obligation expires one year after the announcement is published, if no other deadline is specified in the announcement.[71] The more detailed examination of Serbian law regarding the public promises will be part of future research.

6. THE EUROPEAN LAW

The Principles of European Contract Law (PECL) stipulate that a „promise which is intended to be legally binding without acceptance is binding."[72] In this manner, PECL significantly distinguishes its obligation based on a promise from other contractual obligations, even though the article on promise further states in its second sentence that the rules on contracts apply to this obligation „with appropriate adaptations".[73] This provision represented a significant and noteworthy shift from the standard practice in most European jurisdictions, because the legal systems that acknowledge unilateral acts as a source of obligation do so only when explicitly specified, rather than as a general rule (MacQueen 2016, 531). However, the PECL does not further elaborate on this topic, because it only deals with contract law.

The Draft Common Frame of Reference (DCFR) reaffirms the Lando Commission's position on the binding nature of unilateral promises and further elaborates on it, prescribing conditions for its enforceability. The DCFR states that „a valid unilateral undertaking is binding on the person giving it if it is intended to be legally binding without acceptance."[74] The terminology is slightly different, since the term „unilateral undertakings"

[70] Art. 230 para. 1 ZOO.

[71] Art. 233 ZOO.

[72] Art. 2:107 (1) PECL.

[73] Art. 2:107 (3) PECL.

[74] Art. 1:103 (2) DCFR.

instead of unilateral promise is used. However, unilateral promises and unilateral undertakings shall be viewed as synonyms (Von Bar *et al.* 2009, 170).

A unilateral judicial act must fulfil certain conditions: (a) that the party doing the act intends to be legally bound or to achieve the relevant legal effect; (b) that the act is sufficiently certain; and (c) that notice of the act reaches the person to whom it is addressed or, if the act is addressed to the public, the act is made public by advertisement, public notice, or otherwise.[75] The first two conditions are similar to the ones necessary for contract (Von Bar *et al.* 2009, 366). Any expression that clearly demonstrates an intention to be legally bound will be adequate, such as „I undertake to", or „I bind myself to" or „I promise to" or „I hereby guarantee" (Von Bar *et al.* 2009, 178). On the contrary, if the intention is not expressed nor sufficiently apparent, the promise is not binding (e.g. secret promise) (Von Bar *et al.* 2009, 366). The third requirement was necessary because of the nature of the unilateral acts, as the general rule that a juridical act is made only when notice of it reaches the addressee, cannot apply here (Von Bar *et al.* 2009, 366–367). The intention of the promisor to be bound by a unilateral declaration is determined by applying an objective criterion „as they were reasonably understood by the person to whom the act is addressed."[76] The DCFR also takes into account the situation where the promisee may not want to become entitled to the right established in their favour – *invito non datur beneficium* (e.g. the performer does not want to receive the promised reward). The reasons may vary, e.g. they seek to avoid certain obligations or responsibilities of a public law nature, or the reasons are of the moral nature (Von Bar *et al.* 2009, 371). It is therefore stipulated that such person „may reject it by notice to the maker of the act, provided that is done without undue delay and before the right or benefit has been expressly or impliedly accepted."[77] The legal fiction that such right has never occurred applies.[78]

[75] Art. 4:301 DCFR.

[76] Art. 4:302 DCFR.

[77] Art. 4:303 DCFR.

[78] Art. 4:303 DCFR.

7. COMPARATIVE LEGAL ANALYSIS

Based on the comparative legal solutions presented, several conclusions can be drawn. The author will first evaluate the legal systems that treat a public promise of a reward as an offer to form a contract and compare their differences. Subsequently, the author will analyse the approaches of legal systems that recognize a unilateral declaration of intent as a source of obligations. Finally, an analysis encompassing both groups will be conducted.

French and English law consider the public promise of a reward as an offer to conclude a contract. However, being part of the civil law system, French jurists have faced significantly greater pressure from proponents of unilateral declarations, primarily by the legal doctrine in neighbouring Germany. The critiques have led to a mitigation of the legal consequences arising from framing a public promise as an offer. The interests of the undertaking person are thus protected through some other legal institutions, such as unjust enrichment and *negotiourum gestio*. Through these indirect methods, French judicial practice endeavours to achieve equity. This hybrid solution is theoretically inconsistent and seems to represent a transitional phase towards a unilateralist approach. We emphasize that, following the reform of 2016, there is a basis for change, as the Code Civil now acknowledges the concept of unilateral legal acts. On the other hand, English law has consistently adopted the contractual approach with all its attendant legal consequences, boldly encompassing all criticism. Considering the entirety of English contract law, it appears that the notion of public promise of award has been implemented consistently. Since the concept of a unilateral legal act is unfamiliar in English law, jurists have simply placed this institution within the well-known framework of contracts.

German, Austrian, Swiss, Italian, and Serbian law are the presented legal systems that recognize the public promise of reward as a unilateral declaration of intent, as well as a unilateral legal transaction. Within the presented legal systems, the differences are not as pronounced as those between English and French law. The civil codes of these countries differ in the level of detail when regulating the public promise of a reward, but there are no significant theoretical disputes regarding legal gaps. German law, as the originator of the concept of unilateral declaration of intent, offers the most detailed and comprehensive approach. Therefore, it is unsurprising that its provisions have served as a model for other European countries. Nevertheless, some variations do exist among these legal systems. These differences mainly concern the possibility of revocation of the public promise and its legal consequences. German law is the strictest in this matter. If a revocation occurs, the promisor is neither obliged to pay the

reward nor required to reimburse the performer for any incurred expenses. In Swiss, Italian, and Serbian law, the performer will also not be entitled to the reward, but they will be entitled to reimbursement for the expenses incurred in reliance on the revoked promise. Italian law, on the other hand, also imposes the condition of justifiability for the revocation of the promise. The Italian legislator, unlike their German, Austrian, Swiss and Serbian counterparts, does not distinguish prize competitions as a separate type of public promises of reward, to which special rules apply.

When comparing the approaches of contractualists and unilateralists, it becomes evident that both perspectives present compelling arguments and counterarguments, as well as distinct advantages and disadvantages. However, the author observes that the arguments in favour of framing the public promise of a reward as an offer are predominantly theoretical in nature. They are focused on preserving the idea of an obligational relationship as one in which rights and obligations arise simultaneously and coexist throughout the duration of the relationship. Nonetheless, unilateralists prioritize theoretical considerations and tend to overlook the practical consequences. It is unjust for a performer who completes the required action to not receive the promised reward, regardless of their legal capacity or awareness of the promise. Furthermore, such an approach also regards prize competitions as an offer to conclude a contract, overlooking the specificities of this legal institution (e.g. the necessity of setting a specific deadline, the method of decision-making, and the binding nature of the decision). As previously stated in the introductory remarks, the public promise of a reward is a peculiar legal institute that will be resorted to precisely when contacting is not possible. This is the underlying rationale for the existence of this legal institution. There is no logical impossibility in recognizing the validity of unilateral obligations, as it is the law that serves as the source of obligations, creating them based on certain facts (Terré *et al.* 2021, 98). Unilateralists seem determined to view the public promise of a reward through the lens of a contract, disregarding the practical outcomes of such a stance.[79]

Finally, the PECL and the DCFR, as model legal instruments for European private law, recognize unilateral juridical acts as a source of obligations. By opting for this solution and highlighting its advantages (see Von Bar *et al.* 2009), they encourage legislators to adopt this approach.

[79] For the different opinion, see Lerner 2004.

8. CONCLUSION

The public promise of a reward emerged as a method to economically and efficiently serve the interests of both the promisor, who seeks the achievement of a specific outcome, and the performer, who may attain that result and get the reward in return. The promisor's aim is to reach a wide audience by publicly announcing the promise, thereby increasing the likelihood that someone will perform the required action, achieve success, or encounter a specified situation. On the other hand, the performer fulfils the required act and, thus, becomes entitled to the promised reward. Recognizing its practical importance, legislators have acknowledged the legal significance of the public promise of reward and rendered it enforceable, establishing it as an institution within the law of obligations.

Even though the function of a public promise of a reward is the same everywhere, legal systems approach it in different manners. Consequently, this legal institution, when observed comparatively, varies significantly, making it challenging to define it universally. The differences arise because the applicable law of some countries does not recognize the possibility of binding a person by a unilateral declaration of intent. In contrast, some legislations recognize unilateral transactions as a source of obligations when prescribed by the applicable law. The understanding of the legal nature of a public promise of a reward depends on the legal system's stance towards a unilateral declaration of intent as a source of obligation. Two distinct theories have arisen.

The first one is the contractual theory, traditionally associated with English and French law. Its proponents view a public promise as an offer to conclude a contract, while the performance of the envisaged act is considered as tacit acceptance. Contractualists thus reject public promise as a distinct legal concept. Therefore, the performance of the desired act, as tacit acceptance, must fulfil all the conditions for the validity of a declaration of intent. This is also the greatest shortcoming of this theory – to claim the right to the reward, the performer must have full legal capacity and be aware of the promise at the time of the performance. The promisor's obligation commences only when the desired outcome has been achieved, and their sole duty is to provide the reward to the person who performed the act. While English law consistently upholds this theory, French courts strive to mitigate its legal consequences and protect the performer through indirect means, i.e. quasi-contract. Considering the recent reform of the Civil Code and the perspectives of modern French theory, it appears that there are grounds to adopt a different approach.

The second theory is named the (unilateral) promise theory. The promise made publicly by the promisor is regarded as a unilateral legal act. Thus, from the moment of its announcement, the promisor is bound to uphold the promise. That is their first obligation. Their second obligation is to pay the reward and it arises as soon as the undertaking person performs the defined act. The performance is considered a material act, not a declaration of intent, and thus does not need to meet the conditions required for the validity of a declaration of intent under objective law. Consequently, the right to the reward is granted even to performers without legal capacity, those unaware of the announcement, and those who achieved the desired result before the promise was announced. This has been implemented in German, Austrian, Swiss, Italian, and Serbian law (as well as in many other European and non-European countries). The differences among the listed legal systems are generally minor, except for the rules regarding the legal consequences in the event of revocation of the promise. Revocation of a promise is possible in all these legal systems, but legislators protect the performer in various ways when this occurs. According to German and Austrian law, the promisor is neither obliged to pay the reward nor required to reimburse the performer for any incurred expenses. Under Swiss, Italian, and Serbian law, the performer is also not entitled to the reward, but they are entitled to reimbursement for expenses incurred in reliance on the revoked promise. Additionally, Italian law imposes the condition that the revocation of the promise must be justifiable. The model legal frameworks for European private law, PECL and DCFR, also accept the unilateral promise theory, encouraging legislators to recognize unilateral declarations of intent as a source of obligation.

The author proposes that the unilateral promise theory should adequately address practical needs. It is observed that public promises are utilized mainly when negotiating and contracting is unsuitable, because the other party is unknown. The individual capable of performing the intended act and willing to undertake will be motivated to do so by the promise of a reward. However, it is equally fair to reward an individual who was unaware of the promise or who performed the action before the promise was made, particularly because their actions were driven purely by altruistic intentions. Their legal capacity should also be irrelevant in this context. Attempting to fit public promises of reward into contract law appears forced and fails to serve the intended purpose of this institution. The main objective of a public promise of reward is to compensate the performer for their good act, ensuring that the promisor's obligation is not merely moral but grants the performer a subjective, enforceable right to the reward. Emphasizing the legal intent of the performer leads to unjust outcomes and disregards the fundamental principles of the institution.

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