

CONVENTION FOR INTERNATIONAL SALE OF GOODS AND THE INTERNAL LAW

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Abstract

Vienna Convention is one of the most important conventions on trade of goods. It is one of the unified conventions on transport of goods from a country to the other. This convention had a unification effect towards unifying the obligatory law in the entire world. It has directly influenced the international trade and the transport of goods as well as the relationships between countries on the trade and the transport. It had influenced a lot the interstate relationships related to the free market and the customs and their unification, especially those between neighboring states that aspire membership in various international organizations. Hence it has achieved to unify the civil law in the entire world which was not achieved by drafting a Civil Code in Europe even though it was an attempt. Vienna Convention has its structure which is divided into several articles that are part of most of the domestic legislations in the countries of Europe. The author using methods of comparison analysis, systemic analysis and the historical analysis tries to analyze the impact of Vienna convention in the Kosovo positive domestic legislation.

Keywords: convention, law, sale, trade, goods, norm.

JEL Classification: K22, K33

1. Introduction

Sale and purchase of goods is a phenomenon through which the property is gained. Sale and purchase of goods is done through delivery of item from seller to the buyer and through paying the price from the buyer to the seller. By the end of this procedure, the property is gained. The contract of international sale of goods describes the item as goods including a considerable number of items as are: food, clothing, equipment, means for construction, etc.

Property is gained in various ways. This procedure is developed through the contract of sale. The contract of sale is one of the most frequent contracts. It is concluded between persons of the same citizenship and between persons who do not live in the same state. Contract of sale which is concluded between two persons who stand in different states and in this case the circulation of goods happens from a state to the other one. Contract which is concluded between persons that live in different states has managed to be regulated by the Convention for International Sale of Goods. This convention was approved in Vienna in 1980 year, and that is why it is named the Vienna Convention. It is one of the most ratified convention by the parliaments of various countries of the world.

Convention for international sale of goods is one which has overcome all predictions towards unification of law, but this convention has not been ratified by Great Britain. The convention has been ratified by all countries of BE with the exception of two of them.

Paper through the method of analysis, has analyzed norms of this convention, then through the method of comparison has compared it with the norms of Kosovo positive legislation.

In the paper the offer has been analyzed in sense of when it is considered as offered or proposed and when the offer has been accepted. Interpretation of contract for international sale of goods, its conclusion and the duties of the seller and buyer have been analyzed as well. The subject of contract for international sale of goods are goods and the price.

2. Implementation of the Vienna Convention

Vienna Convention is an international convention adopted by the UN in 1980 in Vienna. It entered into the force in 1988. Since it is the biggest international organization it adopts conventions which as resources are to be used by a big number of states. UNO currently is consisted of 193 states. As the subject of the international law, UNO is considered the biggest and most typical and without

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a doubt the most important international political organization.² Therefore based on the fact of who has adopted this convention it clearly comes up the importance of the convention. Vienna Convention is called also as the international convention for international sale of goods and through this convention efforts were made to unify the international sale of goods in the world. Attempts were made for a long time for the unification of civil law, but it was not achieved. It could be said freely that the Vienna Convention is a good step related to unification of the law, towards codification. Always it was alluded that state could not have the same law. States have their own law and laws adopted by their parliaments. According to Kelsen Norm is consisted of material and formal elements. International law norms usually determine only material element, and in this meaning they are not full norms.³ According to him they are completed with the legal norms of states. Internal law is applied within a territorial, personal and time sphere determined by the international law order and thus it is subject by the international law.⁴

This convention is used in the civil law, in the international private law, in the law on obligations and in the trade law. All these laws are developed for the development of the trade and circulation of goods. Trade acts are special acts as: purchase with the aim of re-selling, sale which derives from the previous purchase as well as entirely every act of exchange.⁵

Convention for international sale of goods is used in the cases when goods are to be sold from a state to the other. When parties have different citizenship, seats in different countries and when in addition to this they fulfil contractual obligations, then the object of the transaction overcomes the state borders, the contract of sale is considered international and in the field of law it is called the contract with the international element.⁶

Vienna Convention is used in all cases as well if the international private law, in the cases of international sale of goods requires the use of the domestic positive law of any of the countries that concluded the sale contract. It is important to be said that this contract is used depending on how the international private law asks for and it is not at all important the nationality or the citizenship of parties.

It is important that this convention is used always in cases when state are contracting parties for sale where seller and buyer do not sale goods for personal or family use. This convention is not used in the cases of: auctions, sale or purchase of ships, planes, capital and shares, letters of value, electricity, etc.

Vienna Convention regulates the way of establishing the contract and all obligations and rights of parties. Obligations of seller and buyer as always come as a consequence of this contract.

For the conclusion of this contract it is no said that the form is a condition for concluding it. It may be non-written or written if the parties agree. Vienna Convention doesn't mean that it should be handed in written as evidence---it could be proved as concluded also by the evidence given by two witnesses proving it was concluded.⁷

It would be more than secure if the contract would have been concluded in written if form determined by the law. If it had the codified form it would have been used in the entire world and by all states in special form. Parties, in order to present their free will in the legal relations, are free to use any suitable form which releases their will.⁸

The model of contract contains rules of contract for international sale and the most important parts of it are the rights and obligations of the contract parties: basic conditions which will be used by both parties.⁹

² Ksenofon Krisafi, *E Drejta e Organizatave Ndërkombëtare*, Onufri, Tiranë, 2015, p. 294.

³ Hans Kelsen, *Teoria e Përgjithshme e shtetit dhe së drejtës*, Prishtinë, 2017, p. 404.

⁴ Zejnullah Gruda, *E drejta Ndërkombëtare Publike*, Universiteti i Prishtinës, Prishtinë, 2009, p. 20-21.

⁵ Valentina Kondili, *E Drejta Civile I*, Pjesa e përgjithshme, Geer, 2008, p. 28.

⁶ Zvonimir Slakoper, *Pravo medunarodne kupoprodaje*, Narodne Novine, Zagreb, 2020, p. 1.

⁷ United Nations Convention on contracts for the International Sale of Goods, United Nations Publications, New York, November 2010, article 11.

⁸ Ardian Nuni & Ilir Mustafaj & Asim Vokshi, *E drejta e Detyrimeve I*, universiteti i Tiranës, Tiranë, 2008, pp. 54-55.

⁹ International Trade Centre, *Modle contracts for small firms*, 2010, p. 1.

Written contract obliges both parties, seller and buyer, to think about the details of sale.¹⁰ It would be more easy for parties if the contract is concluded in written form. A written contract also reminds parties on the rights and obligations which they might have forgotten. So, they, with the written contract they are reminded on the rights and the obligations.

This convention has been ratified by 94 states, member of UN and the last states who have signed the convention are Ghana and Venezuela in 2020.

The Republic of Kosovo as a new state, has inherited this convention from former Yugoslavia who has been one of the states that ratified this convention.

Some states of the world use the convention as the law resource. Some consider them as the primary resources that precede laws whereas some do not put them in such order. To some states the principle of equal implementation of the international law exists. It is important to be said that in some states the international law has the priority compared to the domestic law. In some states the international law acts in a selective way.

The Republic of Kosovo has embraced the system of direct implementation of international agreements and their superiority on before the domestic law.¹¹

This convention has been translated in all languages of the states who have ratified it.

3. The objective of convention

The main objective of the convention is sale or the conclusion of the sale contract in which case goods are transferred from a person to the other. This convention always is used when seller and buyer belong to different states. Through this convention the sale of goods is unified and thus all misunderstandings are overcome regarding which law is going to be used. By selling the transfer of property from a person to the other is done. The contract of sale has as the object transfer of property over an item or transfer against what a price is to be paid.¹² With the convention of sale which derives from the Vienna Convention the property is gained. The contract of sale is a formal agreement where a person or a subject agree to sell something to the buyer in the future and the buyer agree to buy it.¹³

With the contract of sale seller is obliged to deliver goods/item to the buyer and to transfer the property to him whereas buyer is obliged to pay the price and to receive the item.¹⁴ This contract is massively implemented.¹⁵ As the contract it is the most frequent contract within states but also between subjects from different states. By fulfilling obligations, buyer becomes the owner of buy. He gains the absolute right over the item. Property is the right to use and dispose freely the items/goods within the determined borders by the law.¹⁶ By gaining the property, buyer can transfer himself in the role of seller and thus to sell the item, which makes him to conclude again a new contract of sale.

3.1. Offer for concluding the contract

Before concluding the contract, the expression of will precedes where the will of one party is an offer given to the other party for concluding contract. Offer can be considered as the proposal – contract or pre-contract which contains all essential elements of the future contract.¹⁷

Person who issues the offer is called bidder. Meanwhile the other party who gives consent is called receiver and his positive declaration for concluding contract is called admission.¹⁸

This contract could be considered as offered if a person addresses request to one or more

¹⁰ David Noah, *Understanding International Sales Contracts*, Shipping solutions, 2020.

¹¹ Arsim Bajrami, *Sistemi Kushtetues I Republikës së Kosovës*, Kolegji AAB, Prishtinë, 2014, p. 180.

¹² Kodi Civil i Shqipërisë, i vitit 1994, Fletorja Zyrtare e Republikës së Shqipërisë, Tiranë, art. 705.

¹³ Cambridge Dictionary, Meaning of contract to sell, <https://dictionary.cambridge.org/dictionary/english/contract-to-sell>, accessed on 08.04.2021.

¹⁴ Ligji për Marëdhëniet e Detyrimeve, Gazeta Zyrtare e Republikës së Kosovës, Prishtinë, art. 438.

¹⁵ Georges Vermelle, *E Drejta Civile – Kontratave*, Pjesa posacme, Papirus, Tiranë, 2006, p. 12.

¹⁶ Kodi Civil i Shqipërisë, i vitit 1994, Fletorja Zyrtare e Republikës së Shqipërisë, Tiranë, art. 50.

¹⁷ Mazllum Baraliu, *E drejta Biznesore*, universiteti I Prishtinës, Prishtinë, 2010, p. 477.

¹⁸ Mariana Tutlani-Semini, *E Drejta e detyrimeve dhe e Kontratave, pjesa e përgjithshme*, Skanderbegbooks, Tiranë, 2006, p. 70.

persons to conclude the contract. It will be considered as admitted if the other party accepts it. There are cases when the goods are directly or indirectly presented and the price is either determined or predicted for the offered goods. Offer may be successful when it is given to the person whom it is addressed.

Offer may be revoked until the contract is not concluded. Offer may be revoked by delivering revocation of the offer to the person whom the offer was addressed.

Every day goods are traded in the entire world between seller and buyer from different countries of the world by using different jurisdictions.¹⁹

Structure of convention. Vienna Convention is the most successful convention of international sale. It is ratified by the majority and by most industrialized countries of the world and it is an example to serve on how the international treaties should be drafted.²⁰

It has 101 articles. It is agreement and the biggest achievement on the unification of the civil law, in general. Kosovo has inherited this convention since it has been a part of former Yugoslavia and after the Kosovo Independence it has been classified as the main resource after the constitution. Thus, international agreements after entering into the force in an automatic way become the part of internal law, even directly if applicable.²¹

It should be noted that the international resources in Kosovo are treated as primary resources of the law. International instruments which are applicable directly in Kosovo have the priority before the internal laws, but not also regarding the constitution.²²

Vienna Convention is divided into specific parts and they are:

Drafting and implementation includes articles from 14 to 24 of the convention.

Second part includes the sale of goods which is regulated with the articles 25 to 88. The last-final part is consisted with the articles from 89 to 101.

3.2. Sale of good according to the Vienna Convention

The most important part of the Vienna Convention is the sale of goods. Sale is realized just the contract obligations are fulfilled. Contract is concluded after the conditions for its conclusion are fulfilled.

Contract is considered concluded at the moment when parties agree that it is concluded. With this convention it is determined that the contract shall be considered as concluded in the moment when parties determine the rights and the obligations. Seller according to this contract is obliged to deliver item and needed documentation related to the item which is the object of the contract. Item shall be delivered in the place determined by contract as parties agreed. Through delivery of goods the property is gained. The property rights and other rights over the goods are transferable except in cases when forbidden by law or by the nature of the law.²³ By concluding the contract of sale and by its realization we came to the transfer of property from the seller to buyer. Property is transferred only if the obligations and the rights of seller and buyer are fulfilled and in this case we have the transfer of property.

Sale is realized by the deliverance of goods from seller to buyer and by paying the price from buyer to the seller in the place and the determined time, determined by the contract of international sale of goods.

Apart of this, it may happen that contract is not going to be realized. Failure of contract fulfillment leads towards extinguishment of the contract. According to this the contract can be annulled. Party who finds out that contract deprives him of a right, the right which he didn't know if it would happen and by which he would have been undermined, then he has the right to annul by asking the other party for annulment. Contract can be extinguished when both parties agree. It is also

¹⁹ Andrea Lista, *International Commercial Sales: The sale of goods on shipment terms*, Routledge CRC Press, London, 2020.

²⁰ Gillette B Clayton & Steven D. Āalt, *The CISG: History, methodology and construction*, Cambridge University Press, 2016, p. 1.

²¹ *Ibid.*, p. 180.

²² Arsim Bajrami & Florent Mućaj, *E Drejta Kushtetuese*, Kolegji AAB, Prishtinë, 2018, p. 90.

²³ Valentina Kondili, *E Drejta Civile II*, pjesa e posacme, GEER, 2008, p. 82.

extinguished by the death of any party of the contract.

3.3. Object of the Vienna Convention

Object is one of the basic conditions for concluding contract. Object of the contract of sale are items (goods) or right and the price.

Item is the essential element for concluding the contract of sale. According to the concept, in the legal-law doctrine, item in legal understanding is the part of nature which could be under the power of a human.²⁴ Items are considered movables, immovable and the incorporeal rights.²⁵ Items are divided into: movable and immovable, principal and secondary (accessory), simple and composite, divisible and non-divisible, consumable and non-consumable, bodily and incorporeal, replaceable and non-replaceable, in circulation and out of circulation.²⁶ All types of items can be sold and bought with the contract of sale. In this case they can be sold within a state and outside border of a state. Parties of the contract of sale who belong to different states for this contract use the Convention for international sale of goods.

3.4. Parties (subjects) of the contract in Vienna Convention

Subjects as contract parties could private-physic and also judicial public persons, domestic and foreigners, as well as state itself.²⁷ According to the convention for international sale of goods subjects/parties are seller and buyer. They are private or judicial persons of different states. According to the convention both contract parties have determined rights and obligations by the contract.

Obligations of seller. If parties have agreed that the obligation of seller ends with the delivery of item then the obligation is fulfilled when the delivery is done by handing the item to the transporter. With the delivery to the transporter who then sends and delivers the item to the buyer it is considered that the obligation of seller before the buyer is finished. There are cases when parties agreed that seller have to deliver the item to the seat of the buyer at the time when the contract is concluded. Seller is obliged to deliver item to transporter and if by the contract it was specified that he was obliged to inform the buyer for the moment of delivery to the transporter, then his obligation ends with the delivery to the transporter. If seller is obliged to organize also the transport of item-goods, then he is obliged to conclude additional contract with the other persons so he fulfils the obligation of transport in favor of buyer. In addition to this, he is obliged to organize specific transport based on some specific goods as: meat, ice cream, milk products, etc., and this transport has to be done with the means of cooler.

Seller has to deliver the item at the determined time with the contract. With the delivery of item at the determined time by the contract he fulfils his immediate contractual obligation, like it is always the case with the determined item when the buyer becomes the owner from the moment when the contract was signed form both: seller and buyer.²⁸ Roman lawyers framed the property right in two meanings: first, as the power of the owner over the item known as *dominium* and second, as a report of ownership of the owner over the item known as *proprietas*.²⁹

Determined time by the contract are counted to be hours, days, months and the year of delivery. It is a little bit more problematic when these issues are not determined by the contract. If the seller doesn't deliver the item on time, contract is considered unfulfilled. If seller does not deliver goods according to the contract based on the deadline, contract is abolished by the law itself.³⁰

But the time of delivery could be determined and undetermined by what seller himself could determine the day and the date of delivery. Obligation of seller is finished by the delivery of goods

²⁴ Nerxhivane Dauti, *Kontratat, Universiteti i Prishtinës*, Prishtinë, 2012, p. 131.

²⁵ *Ligji për pronësinë dhe të drejtat e tjera sendore*, Gazeta zyrtare e Republikës së Kosovës, Prishtinë, 2009, art. 8.

²⁶ Abdulla Aliu, *E Drejta Sendore (Pronësia)*, Universiteti i Prishtinës, Prishtinë, 2009, p. 33.

²⁷ Mariana Tutulani Semini, *E Drejta e Detyrimeve dhe e Kontratave, pjesa e posacme*, Skanderbeg books, 2006, p. 2.

²⁸ Ardian Nuni, Ilir Mustafaj, Asim Vokshi, *E Drejta e Detyrimeve II*, Universiteti i Tiranës, Tiranë, 2008, p. 13.

²⁹ Ardian Nuni&Luan Hasneziri, *E Drejta Civile (Pronësia)*, Universiteti i Tiranës, Tiranë, 2010, p. 11.

³⁰ Armand Krasniqi, *E Drejta Kontraktore Biznesore*, CSARA, Pejë, 2015, p. 97.

in every other case within a reasonable time after the contract was concluded.³¹

Apart from the goods or of the item, seller is obliged to deliver also the appropriate documentation, if they have both agreed upon this. Documentation shall be delivered together with the goods; it may be delivered before the delivery but it may require additional time so the documentation is regulated within the determined deadline. With the delivery of goods and documentation the obligation of seller determined by the contract is fulfilled.

Goods shall be delivered of the quantity and quality as determined by the contract. Goods and items shall be covered and packed based on the request or based on the agreement between parties. Goods and/or items shall be covered or packed also based on the nature of goods. They should also be packed and covered in such a way so they will not be damaged, if parties have agreed that the goods have to be transported.

Before concluding the contract seller shall present to the buyer samples or models of goods which are bought by the buyer.

There are cases when item can be delivered before the deadline determined by the contract. In this case seller delivers goods and makes preparations to fill in the documents if the documentation is not ready.

Seller shall deliver goods to which third parties have no pretensions.

According to the convention after the seller delivers goods, buyer may examine goods in order to find out if goods are as agreed. Seller may personally control goods, this may be done by his employee or by the third person.³²

If goods are not according to the agreement the buyer shall inform seller and to ask for replacement, for compensation or for the reward.

Buyer may annul the contract if goods are not of the quantity and quality as determined by the contract. If seller doesn't deliver goods at the determined deadline by the contract or after additional deadline given by the buyer, buyer has the right to annul the contract. If the goods are delivered within the extra deadline given by buyer, buyer has no right to annul the contract. Buyer could require reward for damage or compensation but not to ask for annulment of the contract. Buyer could decrease the price in relation to the price established by the contract, if goods are not of the same quality and quantity. He cannot do this, if seller makes the compensation of damage for the delivered goods not in accordance with the contract.

If seller delivers goods before the deadline determined by buyer, buyer can either receive them or refuse to receive them.³³

There are cases when seller delivers goods to buyer by delivering goods that are different from the contracted goods. In such a case according to Vienna Convention the deliverance is called *aluid* deliverance. Buyer in this case should inform seller that the delivered goods are different but they are delivered on time and on the exact quantity. Buyer loses the right to call on in the non-confirmed deliverance if he doesn't inform the seller about the non-conformity of goods,³⁴ e.i. in this case the deliverance is consisted of corn deliverance instead of wheat deliverance that was needed to be done, based in the contract.

Obligations of the buyer. The main obligation of the buyer is paying the price for goods (items). Apart from paying the price, buyer has the obligation to receive delivered goods from the seller through the transport or directly from seller. Price is determined by the contract by both contracting parties. Buyer shall pay the price at the time and in the place as determined by the contract. Payment could be done also through e-payment ways which are especially developed in during the pandemic period. It could happen that parties have agreed that the price should be paid at the same date when the deliverance of goods is executed. It could also happen that contracting parties have

³¹ Konventa art. 33, par. 3 c.

³² Ratko Brnabic, *Duznost pregleda robe prema konvenciji UN o medunarodnoj prodaji robe (Becka Konvencija)*, Sveuciliste, 2008, p. 541.

³³ Konventa art. 52, par 1.

³⁴ Majlinda Belegu, *Përgjegjësia e shitësit për dorëzimin e mallit në të drejtën vendore dhe ndërkombëtare*, Punimi i doktoraturës, UET, 2016, p. 135.

agreed to have the buyer execute the payment along with the deliverance of documentation or the last/final document of goods. If buyer doesn't execute payment then seller could determine additional deadline for execution of payment. If the price is not paid even during this additional deadline then seller can annul the contract. This means that the annulment is being done due to the non-fulfillment of the contract.

Price. One of the obligations of buyer is the execution of payment according to the determined price. Price is the monetary equivalence for the goods which seller sells to the buyer.³⁵ Price is paid at the monetary value as determined by contract. Price is paid in the place and at the time as determined by contract. It could be paid at once, it could be paid in cash, it could be paid in installments and it could be paid in an electronic way through e-banking. By paying the price buyer fulfils its obligation according to the contract of sale.

Receiving goods. This is the second obligation of the buyer. He shall receive the delivered goods. Goods shall be received either from the transporter, or by the depo where the goods can be received but goods can be received directly and physically from the seller to buyer.

4. Conclusions

Convention for International Sale of Goods has been approved in Vienna in 1980. It is also known as the Vienna Convention. This convention regulates the sale of goods. It regulates the international sale of goods. It regulates the sale contract when seller and buyer are from different states and when goods are to be delivered from a state to the other one. This convention has been approved by the UN and it has been adopted by all EU countries.

It should be noted that the contract before it is concluded, it is preceded by the offer from seller. By being accepted by the buyer, it is considered that the contract is concluded by both parties.

For concluding the contract there are needed several conditions to be fulfilled. Form is not as a condition in order to conclude the contract. It could be concluded even without any specific form which would make it more secure or more specific. States did not agree regarding the form of the contract so it remains to the contract parties to decide about whether it is going to be of a special form. In most cases it is concluded between the buyer and seller even though seller could be obliged to conclude also other contracts in order to fulfil its obligation of deliverance.

Seller and buyer conclude the contract by determining their obligations in addition to the price and deliverance of goods. Obligation of deliverance of goods belong to the seller whereas execution of payment belong to the buyer.

Place of deliverance of goods is determined by the contract. Obligation of deliverance belongs to seller as well as the covering and packing of goods which depend on the nature of goods. Depending on the type of goods, he shall prepare the transport as well. In this case seller shall conclude additional contract of transport and the contract of deposit so the goods are delivered at the normal and regular condition.

Item shall be delivered also at the quantity and quality as per contract and it could happen that the goods are delivered of the different type. In this case such deliverance is known as *aluid* deliverance, e.i deliverance of corn instead of wheat.

Goods shall be delivered at the time and in the place as determined by contract. If the goods are delivered by delays seller shall inform the buyer. If item is not delivered within the determined deadline, buyer should require an extension. If seller doesn't deliver goods within the additional deadline given by the buyer, buyer has the right to annul the contract due to the non-fulfillment of contract.

Obligation of buyer is to execute price for the bough item at the time and in place as well as on the determined way. Price could be paid in installments, in cash or through e-banking.

The obligation of buyer is to receive the goods at the time and place as determined by the contract. Good may be received also by buyers employee or by any other authorized person.

³⁵ Armand Krasniqi, *E Drejta Biznesore*, Dukagjini, Pejë, 2014, p. 359.

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