

LEGAL AND ECONOMIC ASPECTS OF VIOLATIONS OF INTERNATIONAL AGREEMENTS ON THE SALE OF GOODS AND SERVICES

Ivan Kostadinović, Danijela Krasić, Dragana Nešović¹

¹ Faculty of Law, Security and Management „Constantine the Great“ Nis,
University Union „Nikola Tesla“

Primljeno: 01.06.2023; Prihvaćeno: 17.10.2023

Rewiev

Korespodencija: ivan.kostadinovic@konstantinveliki.edu.rs

Abstracts: Sales have achieved huge dimensions worldwide under the current business environment brought about by the processes of globalization, deregulation, and liberalization. Sales contracts are crucial in today's global trade because of these factors. The spectrum of commodities that are the subject of commercial transactions and, by extension, agreements has greatly expanded as a result of the growth of industry, the economy, and multinational and transnational corporations. Sales contracts have distinct collision standards, quandaries, and treatments in addition to their consequences on the economy and law. Given the importance of pricing in all economic domains and the vast scope of international trade, sales contracts hold great relevance in today's international commerce. The range of goods subject to commercial transactions has expanded significantly with the growth of industry, the economy, and multinational and transnational corporations. The sales contract has implications for the economy and law, and its fundamental components have been treated differently in legal science. The growth and development of all company activities have been facilitated by the existence of international legal regulation.

Keywords: sales contract, legal and economic aspects, ethics, Serbia

1. Introduction

Broadly observed, there is no unity in international legal doctrine regarding the emergence of international law. Since international law is a result of the development of international relations, and international relations are conditioned by a complex system of interactions among various social factors, some scholars associate the origin of international law with the period before the creation of the first states, while others link it to the period that followed (Đorđević, Dimitrijević, 2011).

In contemporary business conditions, due to the processes of globalization, deregulation, and liberalization of markets, foreign trade has reached enormous proportions worldwide (Dašić, et al., 2022). For these reasons, sales contracts in international trade are of great importance today. The development of industry and the economy, as well as the growth of multinational and transnational companies, has led to a vast expansion of the range of goods that become subjects of commercial transactions and, consequently, agreements, given that sales contracts have both economic and legal effects (Kovinić, 2018).

From an economic perspective, sales represent an exchange process, i.e., a business transaction of goods in exchange for money. From a legal standpoint, the sales transaction encompasses the entire legal regulation of the economic relationship between both parties involved in the exchange. In economic life, the sales contract results from the agreement of the parties, followed by numerous other business transactions and contracts, forming a unique system in the exchange of goods. Different types of goods necessitate different methods of contract conclusion. The purchase and sale agreement is the most illustrative example, and its characteristics are shaped by specific conditions in each case. These conditions influence the varying regulation of relationships between contracting parties. Seller and buyer obligations, the manner of contract conclusion and execution show greater or lesser deviations from the rules applicable in the case of the basic, classical form of the sales contract (Šipovac, Bojić, 2010).

The purchase and sale agreement has always been the subject of interest and study in our legal science. Therefore, there was a need to thoroughly and deeply address the most important legal issues related to sales contracts in accordance with

the current state of legal science, legal practice, and legislation. All of this is intended to be of great benefit to our everyday economic and legal practice, both domestically and internationally (Pavlović, 2021).

Globalization of the economy and society increasingly inaugurates openness, freedom, and liberalization of all flows, thus producing a global process leading to closer connections between society and its economic entities, implying a high level of trust among them (Dašić, 2014). The entire process of creating a global economic system, whose subjects are connected in a multidimensional network of economic, social, and political ties, today, despite all the dilemmas it faces, raises the question of the relationship between economics and ethics (Pricartz, Staudinger, 2019). In such an environment, business systems must align their operations and mission with the rules governing the horizon of modern economics for survival and further development. They can only acquire their business positions through a strong international orientation, rather than relying on traditional forms of business and the support of the nation-state.

The coronavirus has significantly impacted the global economy, espe-

cially the execution of contracts in international sales of goods. Based on judicial practice related to the application of the Vienna Convention on Contracts for the International Sale of Goods, we can determine whether the recent epidemic is considered force majeure, automatically releasing parties from liability in international sales contracts under Article 79 of the Convention.

The question arises whether the coronavirus can be considered force majeure under the Vienna Convention on Contracts for the International Sale of Goods, allowing one of the parties to an international sales contract to be relieved of liability if it fails to fulfill its contractual obligation. The United Nations Convention on Contracts for the International Sale of Goods from 1980, ratified by Serbia in 1984 and in force since 1988 (ratified by over 100 countries, including all major ones), commonly known as the Vienna Convention, does not recognize the term "force majeure." This is because the Convention aims to establish an international source of law and to avoid confusion of terms, as different countries use the term "force majeure" in their national legislations for various situations, which may not be identical (Cvjetičanin, 2023).

The adoption of the Vienna Convention achieved the goal of unifying international sales, unifying at least the contractual law for contracting states. The Convention provides a relatively uniform legal framework for the business relationships of contracting parties from different countries. The Convention's dispositive provisions are adapted to the contracting parties, allowing them to freely regulate their contractual relationship beyond what is provided in the Convention.

However, it is advisable to include essential elements of the sales contract in accordance with the rules of the Vienna Convention to ensure clarity, security, and predictability in fulfilling contractual obligations and to avoid the invalidity of the sale. Judicial and arbitral practice provides essential support in defining essential elements, eliminating uncertainties, and defining terms not covered by the Vienna Convention. The advisory council of the Vienna Convention also provides crucial support with its expert scientific analysis of the Convention and its provisions.

The Vienna Convention is a key international instrument for regulating sales contracts. Although its application has shown shortcomings

over time, it certainly facilitates international sales of goods and is essential to understand its provisions and familiarize oneself with judgments that constitute significant judicial practice. Its application expedites the conclusion and execution of sales contracts, making it crucial for the present and future world where international sales are constantly expanding economically.

2. Concept and Importance of Sales Contracts

In the modern society of the 21st century, where globalization has taken hold and interconnected almost the entire world, there is a need for legal regulation in international trade that will be universal. The ideal scenario is a world in which legal entities entering into sales contracts for goods apply the same rules, whether they are located in China or Italy. The demand is for legal certainty and predictability that can only be provided by a standardized legal framework for the conclusion and execution of contracts worldwide.

The purchase and sale agreement is the most illustrative example, the features of which are shaped by specific conditions in each particular case. These conditions influence the different regulation of relationships

between contractual parties. Seller and buyer obligations, the manner of contract conclusion and execution, show greater or lesser deviations from the rules applicable in the case of the basic, classical form of the sales contract (Guzman, 2005). The purchase and sale agreement has always been more or less the subject of interest and study in our legal science. Hence, there was a need to thoroughly and deeply address the most important legal issues related to sales contracts according to the current state of legal science, legal practice, and legislation (Šipovac, Bojić, 2010). All of this is intended to be of great benefit to our everyday economic and legal practice, both domestically and internationally.

The acceptance of international standards, conventions, customs, and other international norms, along with domestic conflict-of-law norms regarding the interpretation and demarcation of essential elements of sales contracts, necessitates the inevitability of collaboration and interdisciplinarity among various legal disciplines (Coetzee, 2015). This is particularly true when it comes to price, as the treatment of price in this context varies across business law, contractual law, civil law, comparative

law, property law, international private law, international public law, judicial law, international conventions, agreements, and customs.

International contracts for the sale of goods and services form the foundation of global economic cooperation, enabling traders from different countries to establish business relationships and exchange goods or services (Bijl, 2009). However, in such transactions, various legal and economic challenges may arise, including the violation of international agreements. The legal and economic aspects of these violations are complex and require careful consideration.

Legal Aspects of Violating International Contracts for the Sale of Goods and Services involve issues related to legal liability, sanctions, and dispute resolution. Legal norms applied in this context are often established by relevant international conventions, such as the UN Convention on Contracts for the International Sale of Goods and the UN Convention on the International Carriage of Goods. Violating these norms can lead to various legal consequences, including damage claims, contract termination, or the imposition of sanctions.

The economic aspects of violating international contracts can have

significant consequences for trade relations between parties. Non-compliance with contractual obligations can result in both material and reputational losses. Costs related to returning goods, loss of profits, penalties, and legal proceedings are just some of the economic challenges parties face in case of contract breaches. These consequences are particularly pronounced in international trade, where distance, different legal systems, and cultural differences are additional complicating factors in problem resolution.

Preventing violations of international contracts can be achieved through careful drafting of contracts, clearly defining the parties' obligations, thorough study and understanding of applicable legal norms, and using dispute resolution mechanisms such as mediation or arbitration. It is also important for parties to regularly monitor changes in legislation and rules that affect their transactions.

3. International Agreements and Their Implementation in Serbia

International agreements represent agreements between two or more states, which can regulate various areas, including trade, diplomatic relations, human rights protection,

and many others. When a state signs an international agreement, it commits to respecting its provisions.

Domestic law in its legal acts contains provisions on international agreements. Provisions of domestic law dedicated to international agreements (Constitution of the Republic of Serbia) contain solutions regarding:

- the procedure for concluding international agreements,
- parliamentary confirmation and publication of international agreements,
- the place of international agreements in the hierarchy of norms of domestic legal order, etc.

The application of provisions of domestic law relating to:

- international agreements,
- the procedure for their conclusion, and
- their execution.

In the legal system of the Republic of Serbia, apart from Article 18, paragraph 3 of the Constitution and certain articles of the law that are relevant for the interpretation of international agreements and which will be presented at the appropriate place, there are no explicit provisions on the interpretation of international agreements. Therefore, the issue of interpreting an international agree-

ment in the domestic law of the Republic of Serbia must encompass questions of jurisdiction for interpreting international agreements. Finding the true meaning of norms of an international agreement is an integral part of its application and execution. In this sense, in the Republic of Serbia, as well as in comparative law, the interpretation of an international agreement is carried out by the authorities applying it, or executing it, so that any state body that comes into contact with an international agreement within its scope of work may appear in the capacity of an interpreter.

In the case of Serbia, international agreements are applied in accordance with the Constitution. According to Article 10 of the Constitution of the Republic of Serbia, international agreements that have been signed and ratified and have entered into force are part of the domestic legal order and prevail over laws. Therefore, if there is a conflict between the provisions of an international agreement and domestic law, the international agreement is applied.

The procedure for ratification of an international agreement in Serbia involves signing by the state representatives, followed by adoption by the assembly (National Assembly of

the Republic of Serbia). After that, the president of the state carries out the ratification procedure, formally confirming the state's readiness to commit to the provisions of the agreement.

The competent authorities in Serbia monitor the implementation of international agreements, and citizens can use legal remedies before domestic courts if they believe that their rights have been violated in accordance with the provisions of the international agreement.

It is important to note that international agreements are part of a complex legal system, and their implementation may depend on the specificities of each individual agreement and domestic legislation. For accurate information on specific agreements and their implementation in Serbia, I recommend consulting experts in the field of international law or relevant legal authorities in the country.

4. Ethical Aspects of International Business

Globalization, characteristic of our era, extends beyond business or economic aspects; it encompasses other significant dimensions as well. Primarily, the enormous advancement in technology has led to a tremendous increase in interdependence,

not only in the unprecedented expansion of opportunities that international collaboration brings but also in terms of risks and dangers that transcend national borders.

It is to be expected that business in such a complex context will be fraught with moral dilemmas and issues (Schwenzer, Leisinger, 2007). The subject of business ethics in this context encompasses all actions and practices that uniquely and typically appear in making business decisions and their execution concerning international business (Babić, 2020).

Business ethics can be national, international, or global, just like business itself, which does not confine to arbitrary geographical boundaries. Business ethics dictate that business is conducted in an appropriate manner and that responsibility is taken for the success or failure of that business endeavor. Violating business ethics can lead even the largest, most reputable, and successful business systems to act recklessly and unlawfully, thereby exposing themselves to significant material and other liabilities (Vuković, et al., 2023). Consequences of this include increased operating costs, loss of reputation in a particular industry or territory, as well as questioning further business

operations. Work is a generic feature of business ethics since labor-based business is the cornerstone of the entire social life (Radovanović, et al., 2016).

It's important to distinguish legal norms from moral norms as they differ in nature and application of sanctions. The application of sanctions in the case of violating moral norms is not organized and predetermined. Conscience, for example, also serves as a form of sanction. Morality can serve as a corrective in the interpretation and application of law and as a basis for creating missing legal norms.

International business poses complex challenges for companies, both in terms of market competition and in terms of the various cultural, legal, and economic norms prevailing worldwide (Stanković, 2023). In this context, ethical aspects play a crucial role in shaping a company's reputation, maintaining relationships with stakeholders, and achieving sustainable business growth (Dašić, Jeličić, 2016). Here are several key ethical aspects of international business:

- Respect for human rights: Companies operating on a global scale face different value systems and standards regarding human rights. An ethical app-

- roach entails actively advocating for respect for human rights in all aspects of business, including working conditions, fair wages, and the elimination of any forms of discrimination.
- Environmental responsibility: International companies often operate in different ecosystems with various environmental challenges. An ethical approach involves responsible behavior towards the environment, reducing greenhouse gas emissions, preserving natural resources, and developing environmental innovations.
 - Combatting corruption: Corruption is a serious ethical problem that can seriously undermine the integrity of business. Companies operating internationally must adhere to high ethical standards and actively work to prevent corruption at all stages of business.
 - Social responsibility: An ethical approach involves recognizing social challenges and contributing to the communities in which companies operate (Dašić, 2014). Corporate Social Responsibility (CSR) programs may include supporting local communities, education, healthcare initiatives, and other activities that con-

tribute to social welfare (Jelenković, et al., 2014).

- Fair competition: Companies should operate in accordance with principles of fair competition, suppressing unethical practices such as cartels, monopolies, or abuse of market dominance.

Cultural and linguistic respect: Operating on a global scale often involves working with different cultures and languages. An ethical approach involves respecting and understanding cultural differences, avoiding stereotypes, and actively investing in inclusive work environments (Dašić, 2018).

5. Conclusion

Today's economy operates in a new environment and a new geoculture, which increasingly, alongside knowledge and standards in economic terms, respects and develops knowledge for new ethical norms and forms of corporate culture that significantly change business policies, organizational behavior of employees, and the life of the modern business person, influencing them. One of the oldest human activities is the trade of goods, services, money and other property values both within a country and abroad. Foreign trade business has an exceptional importance for socio-economic

relations between countries. Each state independently regulates the trade of goods and services. However, no state economy is self-sufficient, so its need to join the international markets is quite justified (Praštalo, Đurđev, 2020).

The legal and economic aspects of international contracts for the sale of goods and services require careful management to avoid negative consequences for all parties involved. Willingness to cooperate, while respecting legal norms and economic discipline, are key factors for successfully managing international business relationships. Adhering to high ethical standards in international business not only contributes to social responsibility but can also contribute to the long-term success of companies by creating a favorable business environment and building trust among all stakeholders. Ethically oriented companies often achieve sustainable growth and build long-term relationships with their clients, partners, and the communities in which they operate. Possible examples of violations of international agreements may include situations where a state fails to implement provisions of an international agreement in accordance with its obligations, where human rights are violated, or

where provisions on trade, the environment, or any other area.

References

- Babić, J. (2020) Etika međunarodnog biznisa. DOI:10.13140/RG.2.2.21550.25925 .
- Bijl, M. (2009) Fundamental Breach in Documentary Sales Contracts The Doctrine of Strict Compliance with the Underlying Sales Contract. *European Journal of Commercial Contract Law* (1) 19-28. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ejcc1&div=6&id=&page=>
- Coetzee, J. (2015) The role and function of trade usage in modern international sales law . *Unif. L. Rev.*, Vol. 20, 243–270 doi:10.1093/ulr/unv011
- Cvjetičanin, N. (2023) Obaveza izvršenja međunarodnih ugovora tokom vanrednog stanja, <https://www.sam.org.rs/storage/news/28361/obaveze-izvršenja-medunarodnih-ugovora-tokom-vanrednog-stanja-.pdf>
- Dašić D., (2014) Etički aspekti marketing miksa neprofitnih organizacija. *Poslovna ekonomija*, god 8, br. 2/2014- 315-330, COBISS.SR-ID 512347482, doi: 10.5937/PosEko1402315D

- Dašić, D., & Jeličić, G. (2016). Marketing of personality and/or sportsmen personal branding SPORTS, MEDIA AND BUSINESS, 2(2), 51–57. Retrieved from <https://www.smb.edu.rs/index.php/smb/article/view/90>
- Dašić, D. (2018) Glasine kao vid simboličke moći – mediji između istine i manipulacije, Nacionalni interes, br.2, 2018, str. 61-80
- Dašić, B., Trklja R., & Šaranović, J. (2022) Foreign trade as a lever for the stable development of serbia's economy. (2023). Srpska Akademska Misao, 7(1), 43 51. <https://www.sam.edu.rs/index.php/sam/article/view/5>
- Dorđević, S, & Dimitrijević, D. (2011) Pravo međunarodnih ugovora. Institut za međunarodnu politiku i privredu, Beograd.
- Guzman, A.T. (2005) The Design of International Agreements. European Journal of International Law, Volume 16, Issue 4, 579–612, <https://doi.org/10.1093/ejil/chi134>
- Jelenković, M., Stojanović, V., & Popović, P. (2014). Strategy development competence and sustainabl. SPORTS, MEDIA AND BUSINESS, 1(1), 21–25. Retrieved from <https://www.smb.edu.rs/index.php/smb/article/view/70>
- Kovinić, M. (2018) Transitional changes in industrial sector and reindustrialization opportunities in Serbia. Srpska Akademska Misao, 3(1), 43-60. <https://www.sam.edu.rs/index.php/sam/article/view/17>
- Pavlović, R. (2021) Ugovor o prodaji sa posebnim osvrtom na značaj tretmana cene: pravno-ekonomski osvrti, dileme i perspektive. Megatrend revija, Vol. 18, № 4. 169-188. DOI: 10.5937/MegRev 2104169P
- Prickartz, A.-C., & Staudinger, I. (2019) 'Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements' [2019] 3(1): 2. Europe and the World: A law review [23]. DOI: <https://doi.org/10.14324/111.444.ewlj.2019.12>
- Praštalo T. & Đurđev D. (2020) compensation for damages due to a failure to perform a contractual obligation in a purchase and sales contract in foreign trade operations. Pravo teorija i praksa, br 3, 27-43. DOI 10.5937/ptp2003027P
- Radovanović, V., Savić, Lj., & Bešić, C.(2016) Poslovna etika i korporativna kultura - determinante

- poslovne efikasnosti. Anali Ekonomskog fakulteta u Subotici, Vol. 52, broj 36/2016, 267-280.
- Raketić, N. (2022) Transformacija televizije i novinarstva u medijskoj industriji digitalnog doba. SPORTS, MEDIA AND BUSINESS, 8 (1), 171–174. <https://doi.org/10.58984/smb2201171r>
- Rajnović, R. (2021) Ugovori u privredi sa osvrtom na eksterne uticaje na ugovorni odnos. Institut za ekonomiku poljoprivrede Beograd.
- Stanković, M. (2023) Management through the focus of international management companies. Srpska Akademska Misao, 7(1), 23-42. <https://www.sam.edu.rs/index.php/sam/article/view/4>
- Schwenzer, I. & Leisinger, B. (2007) Ethical Values and International Sales Contracts. https://edoc.unibas.ch/14628/3/20110916171632_4e736850375bcPDFA27.pdf
- Šipovac, R., & Bojić, B. (2010) Međunarodni pravni promet i upotreba ugovora o franšizingu i faktoringu PRAVO – teorija i praksa Broj 9–10 / 120-128. <https://scindeks.ceon.rs/article.aspx?artid=0352-37131010120S>
- Vuković, M., Dašić, D., & Vuković, A. (2023) Ethical and legal aspects of public relations. Pravo teorija i praksa, 40(4), 93–111. <https://doi.org/10.5937/ptp2304093V>
- ZAKON O RATIFIKACIJI KONVENCIJE UJEDINJENIH NACIJA O UGOVORIMA O MEĐUNARODNOJ PRODAJI ROBE http://demo.paragraf.rs/demo/combined/Old/t/t2002_12/t12_0061.htm

PRAVNI I EKONOMSKI ASPEKTI KRŠENJA MEĐUNARODNIH SPORAZUMA O PRODAJI ROBE I USLUGA

Sažetak: Prodaja je dostigla ogromne dimenzije širom sveta pod trenutnim poslovnim okruženjem koje su doneli procesi globalizacije, deregulacije i liberalizacije. Ugovori o prodaji su ključni u današnjoj globalnoj trgovini zbog ovih faktora. Spektar robnih razmena koje su predmet komercijalnih transakcija i, produženjem, sporazumi su se u velikoj meri proširili kao rezultat rasta industrije, ekonomije i multinacionalnih i transnacionalnih korporacija. Ugovori o prodaji imaju različite standarde kolizije, nedoumice i tretmane pored njihovih posledica po ekonomiju i zakon. S obzirom na značaj cena u svim ekonomskim domenima i ogroman obim međunarodne trgovine, ugovori o prodaji imaju veliki značaj u današnjoj međunarodnoj trgovini. Raspon robe koja podleže komercijalnim transakcijama značajno se proširio rastom industrije, ekonomije i multinacionalnih i transnacionalnih korporacija. Ugovor o prodaji ima implikacije na ekonomiju i zakon, a njegove osnovne komponente tretirane su drugačije u pravnoj nauci. Rast i razvoj svih aktivnosti kompanija olakšani su postojanjem međunarodne pravne regulative.

Ključne reči: ugovor o prodaji, pravni i ekonomski aspekti, etika, Srbija