

EFFECTS OF COMMERCIAL CONTRACT

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Abstract: The contract is a legal instrument used to organize economic and social life. International trade agreement has certain features in order to ensure the international exchange of goods and services between the Contracting Parties. In terms of commercial contract, there is a foreign origin element, that gives the parties the right to determine the law to govern the contract. A fundamental aspect of commercial contract, in addition to that of determining the law applicable to judicial report established between the parties, it is also the mechanism of interpretation of the contract in case of a conflict due to obscure or inaccurate contractual clauses. Effects of commercial contract are governed by two principles, namely the principle of the binding force of the contract and the principle of relativity of the contract.

Key words: contract , internationality, commerciality, customary, applicable law.

I. Fundamentals

External contract is a bilateral agreementm by which one party, usually the seller of a certain country, undertakes to deliver to the other party, usually the buyer, in another country, his material good, quantified and qualitatively determined, in a certain place at a certain time, under conditions agreed, for a price²¹.¹

So international contract is a mutually binding contract. In the international agreement appears the foreign origin element, an element that gives the parties the right to determine the law that will govern the contract. It may be the law of the seller's country, the law of the country of the buyer, the law of a third country, completed with rules arising from international conventions, rules and customary use of interpretation of international practice.

Most laws provide that, if the parties do not agree on the law that applies *lex voluntaris*, the contract is applied the law of the country in which it was concluded. Other laws provide that the contract is governed by the law of the land of the seller (*lex venditoris*). In case of international agreement, the entire assembly of normative regulations of the state and not a single act, or a single law shall be applied.

²¹ Contracte comerciale internaționale, Constantin Fota, Luminița Degeratu, Loredana Niță, Editura Reprografia Universității din Craiova 2001, pag. 9

Lex contractus governs all legal operations on training, effects, performance and extinction of contractual obligations, not having as object the ability of the parties, the establishment of real rights, the external form of the legal act²².

The capacity of the contracting parties is determined by the *lex patriae* (national law), even the establishment of real rights falls under the law of the place where the goods are situated (*lex rei screen*)

Contracting Parties in the virtue of freedom granted to them, determines the elements of the contract, assuming the mutual obligations and adopting customary uses and international practices by registration contract clauses referred to or by the formulation of type-clauses, embedded in the contract.

The contracting parties must have legal capacity and their consent shall not be vitiated .

No legal capacity for: minors, mentally insane and those placed under judicial interdiction.

Vitiation of consent can be done by: error, namely by presenting false reality when concluding the contract, fraud, consisting in deception of the contracting party using dishonest means, violence, meaning threat of the signer with an evil nature causing fear, eviction, exercise of rights by a Contracting Party who doesn't own these rights.

The contract must be lawful, to exist at the time of conclusion of the contract or to be established in the future, to be determined or determinable.

Also on the grounds of the conclusion of the contract must stand a legal and moral issue. Form of the contract, in most laws, takes the form of writing, but there are laws that also acknowledge the verbal form of the contract.

The commerciality and internationality of the contract

A contract may be commercial or civilian as would constitute a trade act²³.

The same contract can be civil or commercial, as the applying law for it, in accordance with shall determine the nature, qualifies it as an act of trade or not. A contract may be considered to be commercial in a country and as a civil in another.

The qualification of a contract as commercial or not is of great importance because it involves the application of a special legal regime.

Thus, on the commercial contract, we may distinguish the following special rules:

- Ability to contract. For a person to contract, that person must meet certain administrative activities required by law (special authorizations, registration at Trade Register, performance of certain forms of advertising, etc.)
- Commercial usage. Only within the commercial contract, the ommited clauses in the contract will be governed by the application of commercial usage.
- Probation of the contract. Probation of the contract can be made by any means not only by unique documents.

²² Contracte comerciale internaționale, Constantin Fota, Editura reprografia Universității din Craiova, 1998, pag. 11

²³ Fr. Lemeunier , Principes et pratiques du droit commercial, Paris, 1978, pg. 1

- Effects of contract. In case of the commercial agreement, the debtor is in default without prior notice and in the laws which require such notification, it can be done by any means.

The principle of internationality results from the fact that such contract contains elements that objectively establish the connection with multiple systems of law.

II. Conclusion of contracts.

Regarding the conclusion of contracts, most international trade agreements are concluded based on standard contracts (which often contain general contract conditions) based on forms or models with standard clauses .

The parties may freely determine the content of the contract under limits imposed by imperative regulations, morals and public order. Also according to statutory provisions of private international law, the parties are free to choose the applicable law. This choice must be expressed or demonstrated in contractual terms or by the circumstances of the case. By their choice, the parties can select the law applicable to the whole or only a part of the contract. Parties may agree to subject the contract to a law, other than that which previously governed. Any changes made by the parties regarding the applicable law, which occurred after the conclusion of the contract, shall not prejudice the formal validity of the contract. Failing for a choice, when the applicable law can not be established neither by framing the contract in one of the specified types nor as the law of the country where the party who must perform the characteristic performance of the contract has his habitual residence, the contract should be applied the law of the country which is most closely connected. At the training of the contract, parties should respect the obligation of fairness and information.

The parties of the contract shall be obliged to inform correctly about any act or fact regarding the validity of the contract.

III. Effects of international contract/ agreement

The effects of international trade agreements are reflected in the rights and obligations arising from any such contract for the benefit and respectively, to the parties. Commercial contracts, as well as civil contract is governed by two large main principles: principle of the binding force of the contract and the principle of relativity effects of the contract.

The research on the effects of commercial contract requires addressing the following issues:

- Interpretation of the contract in order to determine the content according to the will of the contracting parties
- Binding force of the contract in relations between the Contracting Parties
- Effects of commercial contract on third parties
- Specific effects of mutually binding contract

1. Interpretation of commercial contract

Interpretation of the contract is a transaction by which the judicial body tries to determine its actual content.

Interpretation of the contract is required if the contract terms are incomplete, unclear or contradictory, or if the terms do not express the real intention of the parties.

Contradictory statements and conflict between parties happen to arise during and in relation to the performance of the contract having its origin in the different interpretation of certain contractual stipulations.

The need to interpretate the contract arises most often because formulations of contractual clauses are obscure or inadequate in relation to the specific of legal relationship between the parties.

Another reason for the necessity of interpreting the contract is the insufficiency of contractual clauses and the difficulty caused by the collision between the legal systems.

2. Binding force of contract of international trade.

Binding force of international trade contract has the following key issues:

- Parties are required to execute each other the face of assumed benefits
- Parties can not cancel the contract unilaterally
- Execution of contractual obligations must be carried out in good faith

In the international commercial law, the obligativity and irrevocability of contracts has a particular importance, given the purpose of concluding such contracts namely to secure as a main legal mechanism, the participation of the persons from one country to the world economic cycle.

Another requirement of the principle of the binding force of the contract is the impossibility to unilaterally change the international commercial contract by one of the parties. Like the revocation of the contract, its changing can only take place by agreement of the parties .

Given principles of international trade are manifested either by restricting or by strengthening the effects. Thus in terms of strengthening the effects of binding force and irrevocability, we mention that the specific of international commercial contract is that they are usually concluded on medium or long term and a manifestation of these principles is that the intervention of a force majeure does not result in immediate termination of effects of the contract and contractual risk occurrence, as it happens in common law, results in temporarily suspending the binding force of the contract thus offering the possibility of continuing legal relationships initiated. Cessation of international commercial contracts as a result of causes *intuitu personae* are much less common than in common law.

But a case of termination of contract as a result of causes *intuitu personae* may, for example, be the death of a natural person or reorganization of legal entity contractor. In terms of limiting principles above stated principles, we mention that the effects are often restricted or limited by parties especially in the medium and long term contracts, in order to include clauses leading to insurance against currency risks. The obligativity under the international commercial among the opportunity to be limited by the will of the parties may be restricted by law or by court or by commercial arbitration.

3. The principle of relativity of effects of international trade agreements

This principle implies that international trade agreements have effect only between the contracting parties but not to third parties. The given principles require to determine the concept, third parties, successors of the parties.

Parties are also natural or legal persons that directly or through representation concluded the contract. It is assimilated to parties and the intermediary acting without representation concludes the contract in his own name but on behalf of the representative. In turn, third parties are people who did not participate neither directly nor indirectly (ie by proxy) at the conclusion of international trade contract and are completely foreign to this contract, the category of third parties also includes the intermediary acting in representation, remaining outside the legal obligational relationship.

The successors of parties are an intermediate group of people, who, although not directly or indirectly participated in preparing the contract, somehow incur its effects because of the fact that they are in certain legal relationships with the parties.

In legal doctrine, discussions were brought on the possibility to have as debtors people who have participated at the conclusion of the contract and also of those in quality of successors of rights; so it is established that it is possible to become a debtor of an obligation in international commercial contracts, but also that nothing precludes create rights in favor of a foreign person through international commercial contract by means of contract stipulation by the institution to another. This institution is an exception to the principle of relativity of effects of the contract and is quite common in insurance contracts of goods and of the international freight. The grant of rights to third parties by an agreement also gives them an opportunity to use a clause in the contract to limit or exclude its liability, such clauses are common in contracts for international freight and are a typical stipulation for another.

We have to mention that third parties may waive the rights that are established in international trade agreement, also parties may modify or revoke the rights granted to a third party until it has accepted them or acted in a manner prescribed by these.

IV. SPECIFIC EFFECTS OF SYNALLAGMATIC INTERNATIONAL TRADE CONTRACTS

1. Exception of non-performance

The exemption of non- performance of the contract is the right of a third party of the international trade report to refuse the performance of the contract as long as the other side its not performing the services for which it was employed, such as paying the price.

For the existence of non-performance exception, it is required to be fulfilled certain conditions:

- Mutual benefits should be simultaneous, ie none of them is affected by a term or condition precedent;
- Mutual obligations are interdependent, correlative, so that legal execution of one is dependent on the performance of the other;
- Nonperformance of the contract by the party to whom the contract is alleged, has to be significant;
- The party invoking the exception must be of good faith, that is the non-performance is not caused by the contract itself.

2. Termination of international trade contract

Referring to termination of the contracts of international trade, it has some particularities, namely : first, the termination is less encountered in practice in international commercial contracts, since they end in the medium and long run by successive benefits, secondly the termination occurs by the will of the parties as a final sanction when the contract can not be saved, in the latter case, the will of the parties is expressed by means of contract terms which give the court the ability to terminate the contract in extreme situations.

Thus, we can define the termination as the retroactive abolition of the contract on the grounds that the other part has not met his performance, by his guilt .

Effects of termination :

- The contract is canceled retroactively from the beginning of its conclusion, and operates both for the past and for the future.

The parties are restored to the previous situation;

- The contractor who executed the performance or who declared ready to execute and can prove this situation may claim compensation from the other party for non-performance of the contract.

Termination of the contract constitutes in the penalty materialized in the dissolution of effects only for the future (ex nunc) of the sinallagmatic contract of successive performance, that applies in case of culpable non-performance of the obligation by one of the parties.

Termination, as rescission, can operate either by right or under a compromise pact agreed by the parties.

Unlike rescission, termination excludes the retroactive effect accordingly, executed benefits until termination moment, are not subject to refund.

V.CONCLUSIONS

International trade agreement/contract is an important tool, by which the exchange of commodities, goods and services is performed.

The practical importance of this instrument depends on the required mechanisms providing the enforcement of the contractual and legal regulations and of contract relations between parties. Statutory provisions should establish mechanisms to ensure the proper development of contractual relations in international trade, proxies and measures that ensure timeliness execution of these relationships.

The commercial contract, as we have seen, has notable differences to civil contract, differences meant to regulate and ensure a certain speed in performing contractual obligations and benefits and maintaining international flows of goods and services exchange.

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