

ISSN 1127-8579

Publicato dal 18/02/2014

All'indirizzo <http://www.diritto.it/docs/35965-issues-of-the-contract-of-sale-according-to-the-albanian-legislation>

Autori: Mustafaj Ilir , Arben Lloja

Issues of the contract of sale, according to the Albanian legislation

"Issues of the contract of sale, according to the Albanian legislation".

Prof. Asoc. Dr. Ilir Mustafaj

Member of Albania Higher Council of Justice

Judge of Tirana District Court,

External Lecturer at the Faculty of Law, University of Tirana

Dr. Arben Lloja.

Dean of the Faculty of Law, University "Kristal"

Contract of sale

Contract of sale is one of the most important contracts provided by our Civil Code whereby realized turnover of property from one person to another. According to Article 705 of the Civil Code sales contract has as its object the transfer of ownership of an object or the passage of a right against payment of a price.

So, by the contract of sale is made possible the transfer of ownership of a movable or immovable object , or transfer of a right if this is real or a loan right (eg: credit assignment) for a fee.

From the content of Article 705 of the Civil Code it results that the contract of sale is a contract with a reward because it realizes the transfer of ownership of a thing or right against payment of a sum of money, called the price. So in exchange for a sum of money acquired the ownership of a certain thing or right. Characteristic that distinguishes the contract of donation and exchange it where both these contracts as sales contracts intended transfer of ownership but as to the contract of sale the transfer of ownership is done on payment of a sum of money to contract donation transfer of ownership is done without compensation, but because of the spirit of generosity and to exchange contracts, the transfer of ownership is done against mutual transfer of ownership over goods or other rights from one contractor to another so we do mutual transfer of ownership.

On the basis of the contract of sale is carried out a double function:

First: On the one hand it is possible to circulation of goods or rights in general;

Second: On the other hand it is possible to cash flows.

Sales contract like any other contract that has the object of the transfer of ownership or of any other right, is a contract where the real effects on immovable property or rights are transferred from the seller to the buyer as a result of expression of the free will of the parties . Also, the sales contract binding legal effect because it is a source of liability for the seller and the buyer where the duties for the buyer will highlight:

- The buyer has the obligation to pay the price, which can be determined by the parties to the contract or the parties to the contract may have believed pricing a third person named in the contract or may be appointed later.

- The buyer's obligation to pay the price includes taking measures and the observance of the formalities required by the contract or by special provisions to carry out the payment.

- In the event that the buyer is not bound to pay the price in a place designated by the parties to the contract, he must pay it to the place of residence or registered office of the seller, or where payment must be made at the time of delivery of the items or documents, in the place of delivery. He must pay the price on the date fixed or determinable under the contract or the law, without any need for the seller to make a request for payment of the price.

Interesting is the situation where a third person appointed by agreement of the parties to the contract does not accept this duty (Article 707, paragraph 4 of the Civil Code). Of resolving such a situation our Civil Code is silent.

In the above case would apply these rules:

a) if the object contract were items which stock exchange or market price, the price will be determined on the basis of lists of domestic market which would be effected, or those of the country that is closest to him;

b) if it is a vendor who sells items usually then it is presumed that the parties should refer to the price normally implemented by the vendor at the time of conclusion of the contract;

c) if the price could not be determined in any of the ways mentioned above, then the price will be determined by the court based on the evaluation of experts appointed for this purpose. In the absence of an agreement of the parties in the contract, the price by the buyer must be paid in the time of delivery of the thing sold, when it comes to the items specified in the genre, and in the time of conclusion of the contract for individually specified items. where the same rule will apply in cases where the subject of the contract of sale are the rights.

2. Also the buyer is obliged to take delivery of the item or items he bought. The buyer's obligation to take delivery of the items purchased by his means performing all actions that can be expected from him in a reasonable manner, to allow the seller to make delivery and the buyer to withdraw the items.

It really would be raised as a question whether the buyer could be anyone:

In fact, such an inquiry response gives article 709 Civil Code which reads can not buy directly, by means of another, or the auction:

a) persons who manage or maintain foreign stuff under the law or appointed by the state, the items that manage or store;

b) officials who are tasked to do compulsory execution sale, the items that they sell;

c) judges, prosecutors, bailiffs, notaries and lawyers, the items for which there are contentions before the court in which are part or exercise their functions, unless they are co-owners on them.

Due to the provision of the above-mentioned results that the law has set restrictions on certain categories of persons connected with the right to be the buyer, what is related to the function or task they perform, for example: in the case of non-fulfillment of obligations by voluntarily debtor then start procedures for compulsory execution of duty where the object of this execution in order to make possible the realization of the right of the creditor may be the sale of the assets of the debtor which is realized through the sale through auction by the office staff of the bailiff. In such a case the persons who have been charged with the sale of these assets may not be buyers for the simple fact that not only that it would be contrary to the task they perform, but it will affect the interests of the owner of that is put on sale because the purchase price could be many times lower than the real value of the property subject to sale.

In case of violation of such a provision, that in case of confirmation of any of the cases cited above, then performed legal action would be null and void because it would come in conflict with a mandatory provision of the law (Article 92 point ae Civil Code).

In practice, it happens that persons who by law are not allowed to be a buyer, use a third party in order to realize their interests, namely the purchase of items for sale, management or maintenance of which they have been charged. Even in the case of confirmation of such a case would have to do with legal action null and void because it is against the law. However, such a case would be very difficult to prove in practice. In order to test such a case will be taken into consideration first the time in which the transfer of property made by a third person to the person who is legally forbidden to be where the buyer if the time would be shorter then that will serve as evidence to prove the true intention of the parties which was the transfer of ownership of the item subject to sale to a person who by law was prohibited to be buyers, second from gender relations, Affinity or friendship between the third party buyer and the person who was in charge of maintaining, administering or selling the item purchased, third from the price of the item.

Of course, the absolute nullity of these legal actions can be requested by any interested person, including the people who were interested in buying the item.

On the other hand sales contracts it is bound not only to the buyer but the seller, whose duties are laid down in Article 710 of the Civil Code, namely they are:

1. To submit property buyers. This obligation is subject to an item that already belongs to the buyer, who has become the owner as a result of immediate real impact of the sales contract, whenever it comes to individually specified items where the buyer becomes the owner at the time of signing of the contract between him and retailers, and when the object of the sale are items defined in gender ownership passes at the time of delivery by the seller to the buyer because at that moment becomes the individualization of items purchased by the buyer. Of course, this obligation applies in cases where the subject of the contract of sale are the items set out in the genre. Items must be submitted by the vendor in the condition they are in the moment of concluding the contract to be delivered along with accessories, add-ons and fruits from the date of completion of the contract.

a) In fact, the manner of delivery of the goods from the seller in the Civil Code provides special rules. Thus, if the seller is not obliged to deliver the the items to another place designated by agreement between the parties, he shall pay the obligation to submit items by giving the items first carrier to get past buyers always where the contract of sale involves carriage of items. If the contract does not include transportation and items referred to individually specified items, or in kind or amount to be drawn by a certain amount or to be manufactured or produced, and if in the time of concluding the contract, the parties knew that the items were either should fabrikoheshin or produced in a certain place, the seller is obliged to make the the items available to buyers in the country. In other cases, the seller is obliged to make the the items available to buyers in the place where the items were in the time of sale as and when such a place can not be determined at the place where the seller had his place of residence or his own activity center. Over the seller burdens not only the obligation to submit items but he must:

b) deliver to them in the date specified in the contract or that is determined under the contract;

c) at any point of the period of time that is assigned or is assigned under the contract, except when it arises from the circumstances that the buyer can choose the date;

d) in any other case within a reasonable time from the end of the contract.

2. When gaining ownership of property or real rights it is not immediate consequence of the contract, the seller must submit all relevant documents for the acquisition of their property, under the conditions provided by the contract or by law.

In such a case the seller is discharged from the obligation to submit items sold, giving buyers the sales document and other documents specified in the contract or by law. Of course, in such cases it is about selling the items individually specified where the seller is bound to deliver over documents relating to these items buyers at the time, in place and in the form provided in the contract.

3. Guarantee the buyer by clearance, habits and item attributes mismatch with the contract. The obligation of the seller to ensure the purchaser, by the clearance of property ownership, is known as an obligation to ensure the buyer by eviction, where eviction is when after-sales, a third person revendicates successfully the ownership of the property and therefore, the buyer loses the ownership of the property purchased. e.x: The person A sells an apartment to the person B, but during a trial between C and B, C fails to prove that the person is the owner of the apartment that the person A has sold to the person B and get an a decision forcing the person B who is the current owner of the apartment, hand it over to the person C. The seller has the obligation to guarantee the buyer on the ownership of or the right of the item he sells, and if the buyer is cleared by the ownership of the purchased item (*always about a lawful release of such property can be a final court judgment, etc.*) then the seller is bound to refund to the buyer the sale price and the damage suffered with the condition that the buyer have made known to the seller claims of third parties on an object by specifying their nature within a reasonable time from the moment he was aware or ought to get aware of them, otherwise loses the right to ask for the price paid and the damage caused. E.x : in cases where the buyer is sued in court by a third person who has claims on property that is owned by the buyer then the latter shall immediately notify the seller for such a claim seeking to begin trial included the seller in the same position with the procedure.

What is important to be discussed is the fact that who would be considered reasonable period within which the buyer must notify the seller claims of third parties on the item purchased.

Reasonable term shall be deemed reasonable period within which the buyer must enable retailers be protected from claims of third persons on the property. Starting reasonable time relates to the time of notice to the buyer for these claims, or the moment that the latter should take notice. ex: the beginning of term reasonable for the buyer shall be deemed to be the moment when he notified sheet - call the officer of the court or by post to the lawsuit filed by a third person by means of which requires revendicate item purchased from the buyer because it claims to be in its possession. However, the seller can be cleared from the obligation to guarantee the buyer by clearing the ownership of the item purchased when the parties to the contract with their free will have anticipated such a condition so when the contract is made with buyers risk condition (Article 719 Civil Code). In such a case the buyer assumes the risk in case of exposure from ownership of property purchased afford losses themselves without the right to ask the seller refund the amount received which represents the price of the item purchased.

Other obligation of the seller, as quoted above is that of guaranteeing the buyers from vices, secret or hidden deficiencies of the item. deficiencies or defects of item purchase should be such as to make it incapable object to the use for which it is intended, or reduce to a valuable measure its value. Also these faults or vices should be faulty or hidden vices or they must be such that the buyer did not know at the time of signing the contract or that can not be easily distinguished. Such, for example: defects or hidden vices of a building which make consistently unstable because it can be built on unstable ground. Faulty or secret vices of the thing even those which, although not preclude its use, reduce significantly the value of the property have made it difficult or inappropriate use. for example: such drawbacks would be

the failure of the items by the seller in the capacity to which the parties have agreed in the contract thus making inappropriate their use.

By law and in particular by Article 717 of the Civil Code, to the buyer is a known short term, to counter the shortcomings of the secret of the item, where it must oppose them to the seller specifying the nature of them within 10 days of their discovery unless the parties or the law have set a different period. In any case, the buyer loses the right to challenge for the shortcomings of the item if it does not exercise this right within 2 years from the date when the items have been delivered to him, if this deadline is not contrary to the duration of a contractual guarantee.

However period of 10 days, which is known to the buyer, to counter the hidden flaws of the item is more than enough to realize his own right, but what is worth to be noted is the fact that the seller can not benefit exercising the right of the buyer to counter the shortcomings of the item within 10 days of their disclosure, if the shortcomings deal with the facts to which he is aware or not may not even know and has not announced buyers.

Depending on the non-fulfillment of obligations by the seller within 10 days the buyer has the right to demand:

1. in the case when delivery of faulty items is a significant failure of the contractual obligations:

- a) delivery of items in addition to or as a substitute;
- b) elimination of defects by the correction;
- c) reduction in the price;
- d) to declare the termination of the contract.

In any case, the buyer may assign to the seller within a reasonable time for the fulfillment of each of the above mentioned obligations, where during this time the buyer can not use any remedy for failure, unless it is informed by the seller that this will not fulfill his obligation within the deadline. In such a case the the buyer has the right to request compensation from the seller.

2. in the case when delivery of faulty items is a trivial failure contractual obligations:

- a) the removal or correction of defects of the items submitted;
- b) reduce the price.

Even in such a case the the buyer can designate the vendors a reasonable time to fulfill their obligations within which he can not use any remedy for this failure unless it is informed by the seller that it will fulfill its obligations in due time.

May be that only a fraction of the items delivered by the seller are not in accordance with the contract.

Even in such a case for the part which is not in accordance with the terms of the contract by the buyer will use the same rules cited above .

In each of the cases of non-contractual important even unimportant, the buyer has the right to require the seller compensation of the damages suffered, which reward may extend beyond ordinary damages arising from the termination of the contract for failure to damage resulting from the shortcomings of the item so for example: if the building falls as a result of construction defect, the seller owes for damages or those items that are caused as a result of the collapse of the building.

Termination of the contract of sale.

As mentioned above the contract of sale was subject to transfer ownership of a thing or right against payment of a price which the seller had the obligation not only to deliver the items but he must deliver them in time, quantity, location and quality for which the parties

had agreed in the contract as the and guarantee buyer from doing or the shortcomings of the item and the buyer must pay the price in the currency, time and place to which the parties had agreed in the contract.

Naturally default by either of the parties under this type of failure can bring about the termination of the contract.

Thus, if the parties have stipulated time of delivery of the goods from the seller as essential condition, when it is so delivered items within the period prescribed by the parties to the contract, the buyer may declare to resolve the contract if the seller does not deliver additional items within designated by the buyer or if the states that will not make delivery of items within this timeframe. But if the seller has delivered the items, the buyer loses the right to declare the contract resolved when:

1) in the case of delayed delivery the buyer did not request termination of the contract within a reasonable time, but not more than 15 days from the moment you became aware that delivery has been completed;

2) in case of failure different from delayed delivery within a reasonable time, but not more than 15 days

a) the moment when the party knew or ought to take knowledge of the failure;

b) after extra time eventually given him so after the expiration of 10 days.

In the case submitted by the vendor items such drawbacks that make it unusable for their function the buyer has the right in addition to the above mentioned alternatives require the resolution of the contract.

We would face with a case like this when the items purchased by the buyer have such drawbacks which make important failure of the contract that make it impossible to use them for the function for which they were purchased. Of course, the termination of the contract is the last option of the buyer because it within 10 days provided by law may require the seller to replace or repair them as well and the price reduction only if the seller will not provide any of the alternatives mentioned above then the buyer may request termination of the contract and damages compensation income as a result of non-fulfillment of obligations by the seller.

In cases where default by the buyer is irrelevant then the buyer may request termination of the contract, but only their repair or replacement and price reduction.

Also the buyer may declare the contract completely dissolved only if the partial delivery or not in accordance with the terms of the contract, constitutes a failure of special importance or essential. For example: the failure by the seller of a part of the machinery which is necessary for its operation or if it has such drawbacks that make it impossible for its normal functioning entitle the buyer to seek resolution of the contract.

In the case of termination of contract, the seller must refund the buyer the price and pay the buyer the costs and the payments made legally, even, the seller must refund the buyer the price if the item to be diminishing the value or be damaged unless its value is reduced or it has been damaged as a result of the actions of buyers that in such a case the seller has the right to deduct from the price benefits that issued the buyer.

As mentioned above the main obligation of the buyer was to pay the price to the seller, where in case of failure to comply with such an obligation the seller has the right to declare the contract dissolved. However the the seller before you take such an action can assign to the buyer an additional term for the fulfillment of his obligations unless the seller has received notice from the buyer that it will not perform within the period prescribed. During the period that the vendor has assigned to the buyer, he may not use any legal means to fulfill obligations. The seller has the right to declare the contract to resolved in those cases where:

1) if the breach of an obligation arising from contract or by law, by the buyer, is a failure particularly important or essential;

2) If the buyer fails to meet his obligations to pay the price or take delivery of the items in the additional time assigned by the the seller, or states that will not make it within this time.

But if the buyer has paid the price, the seller loses the right to declare the contract resolved if this does not require:

1) in the case of delayed fulfillment of obligations to the buyer, before they became aware of the execution of the obligation;

2) in the case of a default other than the failure of late, within a reasonable time:

a) from the time when it was aware or should have become aware of such a failure;

b) after the expiration of the additional designated by him, or after the buyer has declared that it will not fulfill its obligations within the additional period.

In any case, the the seller as well as the buyer has the right to ask for compensation of the damage eg: if the contract is settled and if the the seller within a reasonable time after the resolution of the the seller has resold the items that may require by the buyer as a compensation, the difference between the price stipulated in the contract and replacement sales price (Article 745 of the Civil Code).

Also the seller in the case of a contract of sale with partial deliveries, when the failure of the purchasing party to one of its obligations associated with a submission, constitutes a failure particularly important associated with this delivery contract the seller may declare the contract resolved with regard to this submission. The seller has the right to act in the same way when default by the buyer gives him reasonable grounds to judge will be a substantial failure by the buyer regarding future submissions he may declare the contract resolved for the future, it is sufficient to do so within a reasonable time.

In case of termination of contract the buyer is obliged to return the item vendors, if it has not lost or destroyed as a result of his addictions and when it is damaged as a result of careless use by the buyer then the latter will be obliged to compensate the damage suffered vendors.

Specific types of contract of sale.

1. Selling property with reserve.

The meaning of this contract is provided in Article 746 of the Civil Code which provides that the contract of sale with reservation of the property is a contract by which the buyer acquires ownership of the property to the payment of the last installment of the price, taking the risks at the time of delivery of the item.

Typical in this contract is the fact that the price of the item to which the parties have agreed shall be paid in installments by the buyer where the transfer of ownership under this condition should be reflected in the sales contract concluded between the parties.

This contract is based on three principles that make it distinct from the ordinary contract of sale which are:

1. The seller is obliged to deliver the item to the buyer immediately, the latter immediately wins the right to enjoy it. In such a case we derogation from the general principle of contract of sale where the seller delivers only item buyers as the latter has paid the sale price.

One such feature of this contract matter is not expressly provided for in the provisions that make mention of the reserve sale of property arising from the content of the article 749 of the Civil Code which provides that "Where the termination of the contract is the result of

non-fulfillment of obligations buyers seller has the right to seek compensation for the use of the item, ".

From the content of this provision, it is concluded that at the time of conclusion of the contract the seller is obliged to deliver to the buyer the item regardless of the latter is not all paid the price for which the parties have agreed in the contract.

2. the buyer becomes the owner of the property only at the time of payment of the final installment of the price.

This principle derives from the content of Article 746 of the Civil Code which gives the meaning of this contract.

3. Risks related to the thing sold - and in particular, the risk of loss or destruction of the thing pass from the seller to the buyer at the time of delivery. So the buyer who is not yet the owner, but merely has possession of the item weighs the risk that in the event of loss or destruction of the item before payment of all price when the property continues to be owned by the seller the buyer shall pay the sales price again.

What is worth mentioning is the fact that in the event that the buyer does not meet his obligations so he does not pay within the deadlines specified in the contract, the installments of the price, the seller may seek and achieve the termination of the contract, but one thing such can not be realized when the buyer has not paid only one installment, which does not exceed 1/8 (one eighth) part of the total price.

After termination of contract, the seller has the right to request the return of the item that was in possession of the buyer but that was his property but in turn must return collected installments but he reserves the right to hold a price as compensation for use of the property by the buyer.

When the contract provides that payments made to remain as compensation to the seller, the court according to the circumstances of the case at the request of the buyer can reduce the damages.

2. Sale of real estates.

Regarding the sale of real property are defined specific rules, so the sale of these items must be notarized and recorded otherwise it is invalid (Article 750 of the Civil Code refers to Article 83 of this Code).

These items can be sold with the unit of measurement and when such a case turns out that the effective size of real estate is lower than that shown in the contract then the buyer has the right to ask for a discount price, and if the dimensions of real estate result greater than those indicated in the contract, the buyer is obliged to pay the additional price but has the right to withdraw from the contract when the surplus exceeds 1/20 (one twentieth) part of stated size.

While in cases where the price is determined in relation to immovable property itself and not its size, although it is given, there is no discount or mark-up, unless the actual size of this object is greater or less than 1/ 20 (a twenties) part of that indicated in the contract, in which case the buyer can choose either payment or withdrawal from the contract or pay the extra price.

In cases where two or more items of property are sold by the same contract for a single price and the same, showing the size of each of them and it appears that the amount is less at each and largest to another, its compensation up to the right amount, the right to add or price reduction is done in accordance with the cases cited above.

What is worth to be noted is the fact that in such cases the right of seller to add the price and the buyer to reduce the price prescribed 2 (two) years after the delivery of real estate and the right of the buyer to counter the disadvantages of real estate prescribed in the course of 5

years from the moment of delivery of the item in the change from opposing movable shortcomings where buyers right prescribed in the course of 2 years.

LITERATURE

1. Istituzioni di Diritto Civile. Alberto Trabuchi. Cedam, 1989.
2. Manuale di Diritto Privato. Andrea Torrente, Piero Schlesinger. Giuffre Editore. 1994.
3. The Law of Contract. G.H.L. Fridman. The Carswell Company Limited Toronto, Canada, 1976.
4. Private Law. Francesco Galgano. Luarasi 2006.
5. Obligations Law (*general part*). Andon Sallabanda.
6. Civil Procedure (*Judgment at first instance and Compulsory Execution*). Asim Vokshi. Tiranë, 2007.
7. Contract Law in Hellas. Michael P. Stathopoulos. Kluwer/Sakkoulas, 1995.
8. Obligations and Contracts. Mehdi J. Hetemi. Tiranë, Luarasi 1998.
9. Obligations and contracts generally. Luarasi, 1998.
10. Book on Albanian Collateral Law. Yair Baranes, Ronald C.C. Cuming. 2001.
11. Comparative Legal Traditions (*second edition*). Mary Ann Glendon, Michael W. Gordon, Paolo G. Carozza.
32. Introduction to Civil Law. Andrija Gams. Pristina, 1986.
33. The Civil Rights of People's Republic of Albania (general part). Prof. Andrea Nathanaili. Tirana, 1974.
34. The Constitution of the Republic of Albania.
35. Civil Code of the Republic of Albania.