

**ISSN 1127-8579**

**Publicato dal 31/03/2015**

**All'indirizzo <http://www.diritto.it/docs/36963-implementation-issues-on-entrepreneurship-international-contracts-in-the-republic-of-albania>**

**Autori: Teuta Hoxha, Mustafaj Ilir**

## **Implementation issues on entrepreneurship international contracts in the republic of Albania**

**TOPIC           IMPLEMENTATION ISSUES ON ENTREPRENEURSHIP INTERNATIONAL CONTRACTS IN THE REPUBLIC OF ALBANIA**

**Teuta HOXHA**

PhD Candidate, Albania Faculty of Social Sciences, University of Tirana, Albania

Judge District Court Tirana

**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

1.Introduction. 2.International entrepreneurship contract validity 3. Content of international entrepreneurship contract.4.Aspects of the interpretation of entrepreneurship international contracts . 5 Jurisdiction; 6) Aspects of the implementation of international entrepreneurship 7.Main types of non-fulfillment parties and their defining criteria. 8.Conclusions. Bibliography.

**Abstract.**

As a reflection of intensive use, incurrent trade exchanges of international entrepreneurship contract, has increased the interest on this contract legal regime analysis, by authors in the field of law, as well as by public or private organizations.

Studying international entrepreneurship contract represents an importance in terms of our country, presently committed to be an EU member of candidate country status and meanwhile, has ratified a number of international agreements as part of our internal legislation, in accordance with article 122 of the Constitution, from which derive specific rights and obligations to be taken into consideration in drafting and implementation of an international entrepreneurship contract by all its subjects, which especially should be considered by the courts in solving specific litigation.

Due to these circumstances is increased the number of court cases in domestic courts having international entrepreneurship contracts as subject to judgment, which calls for deepening the knowledge of all parties who directly and indirectly are interested on them.

**Keywords**

International entrepreneurship contract, foreign element, risk, applicable law.

**1.Introduction**

The term International contract in view of this treatment includes all contracts which are part of the entrepreneurship contract concept of Albanian legislation which have at least one foreign element such as the nationality of one of the parties, the country of facility construction and supplies destination or service performance.

International entrepreneurship contracts represent a legal mechanism ratified in a form accepted by the parties, representing their best interests and also civil legal main source of rights and obligations.

Definition of a foreign element in domestic legislation of the Republic of Albania is conducted by a law Nr.10428, dated 02.06.2011 "On Private International Law" Section 1 paragraph 2 according to which "foreign element", for purposes of implementation of this law means any legal circumstances relating to the subject, content or scope of a civil legal relationship and becoming the cause for concluding that relationship with a particular legal system.

When it comes to the citizenship, referring to legal persons it should be understood that citizenship, first, represents the country of incorporation of legal entities, so, the right which regulates the criteria of form, special legal requirements of registration and publication specific criteria. Citizenship legislation represents exactly the legislation that establishes the definition of validity of existence criteria and registration of legal entities. While for the legislation of the country of a legal person activity or its branch, the above criteria (form, validation and registration) refer to the law of the country where the legal entity operates its activity.

In view of concrete implementation in terms of our country, the international entrepreneurship contracts is only an entrepreneurship contract in terms of our current law, different from the notion of the entrepreneur in general terms or the merchant and it reflects its core values, integrated into a certain extent in a contract with foreign elements. Entrepreneurship contract regulated in the Albanian Civil Code, at first glance, does not show any specific problems, either in general but also in particular, as the regulation of the contract of entrepreneurship in our legislation is almost the same as the Italian and quite like the German and French ones. This feature makes it more flexible and tolerant of our legal system, since the system where it is based, is also integrated into the EU legal system, where we aspire to be part.<sup>1</sup>

To understand better and straight an international entrepreneurship contract, should be considered essential characteristics of a common entrepreneurship contract as defined in Civil Code, Article 850 and following, which specifically highlights: Entrepreneurship contract is an informal consensual contract; mutual; counter-compensating; balanced, risk contract; and independent. Entrepreneurship is among *intuitu personae* contracts and is repeatedly or periodically executed.

## **2.International entrepreneurship contract validity**

International entrepreneurship contract represents first a legal action, thus the validity criteria are those that govern legal action in general. For the purposes of this article we can say that our legislation<sup>2</sup> has determined that this contract is considered that the validity meets the criteria of form, under state law, which is performed at legal action; or criteria set by law, which regulates

---

<sup>1</sup>Law No. 10 428, dated 02.06.2011 "On Private International Law" in Article 3 paragraph 2 provides that "The rules of private international law of another state does not apply in respect of:

a) the status of legal persons; b) the applicable choice of law; c) the form of legal action; d) alimony; d) contractual obligations; f) Non contractual liabilities "

<sup>2</sup> Law 10428/2011 "On private international law"

the content of legal action. So if an international entrepreneurship contract is concluded in Albania its validity criteria are defined by Article 79 and as well as Article 850 and following as the Civil Code.

But if such a contract is concluded between persons who are in different states, then we have a valid form contract if it meets the criteria of at least one of these countries<sup>3</sup>. This type of contract often encountered applied to SNC services.

Referring to a concrete object of SNC, if we are dealing with real estate, the validity of the contract is determined by the location of this property, this rule constitutes a form of expressing the principle of *lex rei sitae*.

### **3.Content of international entrepreneurship the contract.**

The scope of entrepreneurship international contracts in the Republic of Albania includes the public sphere of circulation of goods and services as well as the private one. The question of these contracts applicable law, in the absence of parties express anticipation is required in regulatory legal framework of legislations contracting parties and in the case when one of the contracting parties is a member of the EU, relevant legal regulation, and provisions of the Convention of Rome.

In our practice court, there were cases of allegations regarding entrepreneurship implementation of international contracts in the field of construction of public roads, private industrial complexes etc. In these processes is determined that there are cases when the issue of citizenship of subjects except one of the elements of formal legitimacy is related with other stages of the trial where the legal settlement of the issue has to do with the selection of regulatory law legal facts to which the parties may eventually attract the right is to have certain legal consequences.

In a court case where one of the parties (the entrepreneur) is a citizen of an EU member state, while the other party is of Albanian citizenship, the content of the court decision, has analyzed the claim of the party with foreign citizenship, reasoning among other:<sup>4</sup>

“(..)Signing the contract is performed by the representative of the company (foreign company; note of the author) that under the law of its establishment, it represents the company in dealings with third parties, and in formal terms the contract bears the stamp of the company. This presupposes that the contract is binding on the company. Article 9 of the EU Directive first, on Law of Commercial Companies expressly provides that: "The actions carried out by the company are legally binding even if these actions are not within the scope of the company, unless such acts exceed powers that the law confers or allows these bodies. ".

In this court case, Albanian court has analyzed the claim of the party, legal entity with foreign citizenship for the aspects related to legal status and effects of the actions of the governing bodies of the company, on the basis of regulatory law of his nationality, and not on the basis of the Albanian law.

---

<sup>3</sup>Article 18 of the law nr.10428 / 2011.

<sup>4</sup>Decision nr.9952, dated 07.11.2013 of the Tirana District Court.

Applying the above method except that in conformity with the law nr.Nr.10428, dated 02/06/2011, respects also the Article 4.2 of the Rome Convention, which declares the law of nationality of the party that has undertaken the obligation to perform work specified in the contract, as one of the criteria applied in the law. Rome Convention<sup>5</sup>, within the European Union, has made the unification of criteria of conflict of law relating to contracts thus serving as a powerful instrument and of mandatory application for contracts entered by operators within the EU market as well as those cases where there is a connector element of EU legislation, such as the above court case. Rome Convention is substituted by Regulation (EC) no 593/2008 of the European Parliament and of the council of 17 June 2008 on the “ Law applicable to contractual obligations (Rome I)”.

In another case the court, subject to fulfillment of the contract with the international entrepreneurship in the public domain, where the entrepreneur is a legal entity with foreign citizenship, Tirana District Court, the decision nr.3169, dated 03.04.2012 has decided:

"Accepting the petition partially". In the content of the decision the court found that the plaintiff's actions are carried out in conformity with Article 853 of the Albanian Civil Code, by reasoned that: "The original project has included many flaws and may not serve to the implementation of contractual works, according to the required criteria. Its implementation in the original form would not guarantee the construction of a road, according to the standards required and will be destroyed soon.

Despite that finding new solutions to modify the defects found in the project, has not Been a plaintiff's obligation, he has taken all possible measures to eliminate them and to find possible alternatives within the economic value and contractual terms. These modifications allowed the defendant to save considerable amounts of money, because the implementation of the project in its original form would have required more money and would have given less protection and consistency ;

At the same time, all these changes brought about significant delays in the execution of works, allowed damage to the certain parts of the road, which had ended, and denied the plaintiff to reckon the profit as a normal building activity ".

In the case above, Albanian court has implemented exactly Albanian law, due to the fact that the place of the works and the building site is in Albania, which is also the law that the parties have chosen the contract.

International contracts entrepreneurship, are generally characterized by large volume of text ratified, sometimes exaggerated. Because of the size of these contracts it is recommended a close collaboration of professional technicians with lawyers in drafting contracts text of in order that every word and sentence is selected and approaching their parties intent and avoid noncompliance to a subsequent phase to its implementation.

As a need to avoid incompatibilities, but also need recognition from a wide range of interested entities (commercial entities, lawyers, engineers, judges, arbitrators) Many professional organizations have published the standard text of contracts that aim to minimize inconsistencies

---

<sup>5</sup>Rome Convention, (EC Convention on the Law Applicable to Contractual Obligations (Rome 1980), constitutes the legal framework based on legal criteria discipline as regards the law applicable to contracts in the enterprise with the foreign element.

between interpretations of the parties . Specifically, the contract published by FIDIC contains a standard text of about 40 -50 printed page. On the basis of these models contracts have been completed many public roads in Albania as the "Kamza Overpass ", of "Levan-Fier", "Dames-Tepelene".

FIDIC model contracts are widely applied in international contracts in the private sphere, because they offer ease of avoiding the differences between the different legal systems in contracts with foreign elements (such is the complex building construction "Tirana Business Park") and because they are published, they create a good understanding of the parties prior to the relevant text.

Consequently, these published standard contracts have significantly contributed to the creation of a consolidated practical knowledge and their interpretation by the mediator, chambers of international arbitration or the courts, but also the best experts that assist lawyers legal consultancy, about disputes arising from their execution. All this has contributed to the emancipation of mentality in the treatment of these contracts, noting the importance of their study by law users.

Results of studies conducted on international contracts have consolidated the conclusion that the legal treatment of international entrepreneurship contract varies depending on whether it is public or private contract.

Legal regulation of the contract of international entrepreneurship in the public domain in the Republic of Albania, primarily adhere to constitutional principles, embodied in the provisions of Law No 9643 dated 20.11.2006 "On Public Procurement" (as amended).

In Article 2 of Law No 9643 dated 20.11.2006 "On public procurement" have been declared general principles of selecting the winners of public contracts, (subcategory of which are international community contracts) and respectively the non-discrimination and treatment equivalent of bidders; ii) transparency in procurement procedures iii) equity in the treatment of claims and obligations that were imposed on the bidders or the candidates.

The comparative analysis of different legal systems, (not only the common law and continental law, but also among themselves continental law systems) is ascertained that they can not speak of a unique pattern of these contracts, despite essentially broke are based on the same principles. Depending on concrete object of entrepreneurship, in those legal systems, these principles are materialized in international contracts of public entrepreneurship, unifying: 1. The essential requirements that must contain the invitation to bid (for competition) 2. The same possibility of taking part of more competitors that meet the criteria, (number needed asking the participants) and 3) the competitiveness of the comparison between the bids, referred the price best offered.

In conditions when you can not come on a unique arrangement of international entrepreneurship contract, especially in the public sphere of law, in cases of contracts with foreign elements, a great importance gets the recognition and interpretation of the legislation of these countries on subjects practicing these contracts but also third parties, lawyers, judges, lawyers and arbitrators.

On this basis it can be said that the philosophy of these adjustments in public contracts to international entrepreneurship, is based on application of the general principles based on public contracts, namely of freedom, equality, fairness and the right of choice of contracting parties<sup>6</sup>.

From commercial practices in Albania (as well as in many European countries and beyond) it is determined that the international contracts of entrepreneurship, in public, prefer to be ratified by the model contracts approved by a recognized professional organization. These standard texts of national and international contracts serve as a reference point for entrepreneurs, but also lawyers and courts, as references to international market standards such as FIDIC - (Fédération Internationale des Ingénieurs Conseils, whose member is also Albania). These types of contracts usually represent a registered trademark and own the copyright in published format of contract

#### **4.Aspects of the interpretation of entrepreneurship international contracts.**

Above is treated the international contracts of entrepreneurship when it comes to strictu sense represents a higher form of perfecting the agreement and interests of the parties, and consequently their correct interpretation requires appropriate skills other than theoretical and practical experience necessary even with problems the execution and their consequences. Our legislation has clearly established that foreign law is interpreted and applied in accordance with the criteria for interpretation and implementation of country of origin. Albanian legislation has declared position that the criteria of interpretation of contracts as a rule defined by applicable law, so if the law applicable to a contract is the Italian, interpretation criteria may not be those of the Albanian law. In the same way the issues of fulfillment or non-fulfillment of obligations, their termination or invalidity consequences of the legal (because there are considered material or of basic nature lawsuits), adjusted by applicable law, chosen by the parties or the designated as such by the authority (court or tribunal).

At a time when international entrepreneurship contract, is drafted in the absence of a law determining, is suggested that the process of reaching agreement and drafting the text of the contract, the parties should exercise utmost care (prudentium Interpretation) to avoid the disadvantages and avoid the risk of failure or bankruptcy of the entrepreneurship.

#### **5.Jurisdiction**

Along with the rules of interpretation, our legislation has set some criteria for the jurisdiction of the Albanian courts. Exactly the law set forth three types of jurisdiction.

- a) General international jurisdiction; is one where the respondent is domiciled in the territory of Republic of Albania;
- b) Exclusive jurisdiction. This jurisdiction is determined according to a concrete object of the dispute. For example if the object is a real estate property, Albanian court jurisdiction is exclusive under the principle of *lex rei sitae* .

---

<sup>6</sup>See Chapter 10 of NAFTA-s establishing Treaty

c) Jurisdiction specified by agreement (It is effective when the agreement is concluded in writing or verbally, but the latter to be confirmed in writing, or to comply with international trade practices, which are known or considered to be known by the parties)

d) Special jurisdiction is the kind of jurisdiction that represents an object or a direct connection with the element of public law; such disputes to declare the disappearance and death of a person; Jurisdiction for marriage; Jurisdiction for relations between spouses; parents and children, maternity, paternity; Jurisdiction for adoption; Jurisdiction for the removal or restriction of the ability to act; jurisdiction for custody.

e) International exceptional jurisdiction. Are those cases which are not included in the above categories, but due to the relatively high connection with the territorial aspect of the trial, the Albanian courts have full and clear jurisdiction. Such are the following:

- When sued at the same time some people together and one of them has his residence in the Republic of Albania;
- the legal entity accused has his headquarters in the country;
- when the lawsuit is subject to a contract or claims arising from a contract and the place in which the obligation has been fulfilled or should be fulfilled, in the Republic of Albania; if the subject to the trial are claims arising from causing damage and the place where it was committed or occurred the action that caused the damage, is in the Republic of Albania;
- when the lawsuit is subject to dispute, arising from the operation of a branch or subsidiary of a legal person residing in the Republic of Albania;
- The lawsuit derived from the obligation of sustentation that has a person against another person, who has his habitual residence in the Republic of Albania;
- lawsuits arising from the legal and testamentary inheritance where; testator had his residence at the time of death, in the Republic of Albania;
- hereditary estate or most of it is situated in the Republic of Albania;

In judicial practice has been a lot of discussion, where it is raised a debate, if the Albanian courts have jurisdiction to measures of securing a lawsuit in the international contracts. These debates are supported by the Supreme Court attitudes and later adjustments to this law have determined that despite the primary jurisdiction, Albanian courts have jurisdiction to consider taking the measure of securing a lawsuit when they should be executed in the Republic of Albania or if the Albanian courts have international jurisdiction subject to the trial.

## **6.Aspects of the implementation of international entrepreneurship.**

International contracts of entrepreneurship in essence constitutes a contract of entrepreneurship in terms of our domestic legislation. The essential feature the entrepreneurship contract, with or



without foreign element is the "risk". The risk is part of the object of the contract and the responsibility for this risk is not balanced but moved towards entrepreneurs.

Because we are dealing with a risk contract, the problems encountered in the implementation of these contracts are numerous and varied and adding the foreign element, we can say that we are dealing with a contract as difficult, as well as flexible and pragmatic one . Changes and differences between legal systems are even more evident in the terminal or final stages of execution of the contract. This is understandable because at this moment are verified the effects of the contract and thus verified the expectations of the parties who have concluded the contract. During the implementation phase of the contract, but especially in its final phase, international practices have found solutions including services offered at banks or financial institutions. So often happens that banks offer guarantees issued to the entrepreneurs in favor of the client, called advance payment bond, guarantee that receive a special importance because these guarantees are paid to "first demand" .

These kind of principally they should be used, if on the work proceedings do not start, but if the site is set up, the works have started and are at an important stage these kind of guarantees become reality in a dangerous instrument in the hands of an unreliable contractor, as they would be used as a very effective tool to change the contractor without any obstruction in the case of the first difficulty<sup>7</sup>.

In practice this happens, because in these cases the bank is not legitimate to draw any sort of obstacle essential nature, for example, if there really is a failure on the part of entrepreneurs, whether the clauses of the contract are observed on advance notification, and similar to those . But the bank may raise claims only formal nature, eg, if the request for execution of the guarantee is made by the legal representative or the person who has the powers necessary to do so.

Below we are addressing specifically one of court case where the court relate in the following:

(...) “The litigants are involved in one of contractual relationship entrepreneurship, formalized with a contract dated 22.05.2012 which along with the relevant annexes constitutes the legal basis for the settlement of disputes between them.

According to the content of the contract, the company "A", undertakes the construction of buildings ... in the first phase of the project works and supporting infrastructure at the request of company "B" in the quality of the ordering party, against payment of the price for the work done.

The perpetrator of work (entrepreneurs) is obliged to realize the design, perform works and submit them in full operational condition, (lump sum), turnkey, while the employer is obliged to pay the contract price which will be paid in basic bills certifying volume of works carried out. Fulfillment of contractual obligations is insured guarantee no. 01 / DGB / 2012 dated 22.08.2012 issued by the "Raiffeisen Bank" JSC in favor of the company "B".

Referring to the contents of the written contract and acts presented at trial, the above-mentioned bank guarantee, it became enforceable within 7 days upon submission of the official of the

---

<sup>7</sup> See Ziggardi , Fabbio Emilio, L'appalto internazionale”, Page 89.

company "B", accompanied by a statement declaring that A is in default contractual obligations dated May 22, 2012.

In contractual clauses the parties have provided the method and procedures to be followed by them to resolve disputes and competent jurisdiction for their review...

Claiming that he has performed works by installments, but not paid unjustifiably price for the work performed, "A", sent to the company "B" a letter dated June 15, 2013, "Notice of appeal no.5 , unjustified refusal by the customer to the contractor situations under Article 14.3 in the last part of the letter "a" states that: "We hereby inform you in accordance with Article 20.1 (complaints of contractor) our intention to claim: a) extension of time termination under Article 8.4 (c) the terms of the contract and (b) payment of all costs that we have or will face, plus reasonable profit under section 20.1 of the contract.

In terms of the above "B" addressed to "Raiffeisen Bank" JSC dated 25.06.2013 the request for delivery of bank guarantee for reasons of non contractual obligations.

After that "A" has filed petition in the District Court of Tirana to claim insurance and suspension of delivery of bank guarantee cited above before filing basic claim .

Tirana District Court, by decision No. 609 , Act of 24.07.2013 has decided :

- “Acceptance of the request.
- Taking measure of the lawsuit insurance by ordering the suspension of the execution of the guarantee No. 01 / DGB / 2012 dated 22.08.2012 issued by Raiffeisen Bank sh.a in favor of third person company "B up to final resolution of contractual disputes between the applicant A and B....”

In the content of Decree it is stated that: “ The applicant shall submit for review the lawsuit initially on Dispute Adjudication Board and then to the Court of Arbitration against the company B by subject "fulfillment of contractual obligations, namely payment by the defendant of the value of the performed works, or indemnity due to the delay in the execution of the payment, contract termination and release of bank guarantee”.

This court case in my opinion is a clear example of the case where one of the parties, in this case the customer protected by a consolidated bank guarantee, in the case of the first difficulty, without taking into consideration the type or cause of the failure of the other party and without taking into account the extent of failure, requires execution of the guarantee (which in reality is a credit contract to another company).

In this case the entrepreneurial party is before two kinds of difficulties because, firstly: It failed to provide payment of next estimate to a significant value and facing eventual damages caused by late payment and secondly: the difficulty caused by immediate execution of the guarantee by the other party, which will bring facing higher interest and bank loan immediately. Each of these options brings the chain effect on employees, sub-venture contracts, suppliers etc.

But, on the other hand, possibilities he has to avoid each of these difficulties are limited; since the contract signed by him has left as the only option the Decree issued by International Arbitration and thus this company has "accepted" to be exposed to the possibility of immediate execution of the bank guarantee by the consequences described above.

### **7. The main types of failures of the parties and their defining criteria.**

Responsibilities of entrepreneur in the entrepreneurship contract are traditionally grouped into two main aspects:

Failure of time (delay). In the context of time, the comparability is made referred to the contract terms and to determine these deadlines, the parties consider the objectives set out in the estimate of the works. To the conditions when entrepreneurship is considered as one of "risk" contracts recognized and regulated in the legislation of many countries, the failures related to the term are the most encountered form, due to unpleasant surprises from the simplest to the most complicated reasons during the contract execution (natural state of emergency, unusual rains, state of war, etc.).

For minimizing these delays, the practice of these contracts has progressed in such a way that besides the request for submission of the schedule of works, in cases of great works all work be partial by realizing that work will start in its various segments so that delays occurred in a segment x not affect the final terms of the work, as in other segments the works have continued by an independent process work (in such a way, it is executed "Rruga e Kombit", and that of Levan-Tepelene). Specifically, whether a road segment implementation of works is made according to the principle "back to back", in other segments starts the construction of bed road, art works, tunnels, etc.

Execution of the international entrepreneurship Contract appears complicated especially in the final phase or roadworthines, because at this stage all the claims of the parties are tested and verified to the terms of how the contract is fulfilled.

At this terminal stage of the contract, which follows the physical delivery in the case when the scope of the contract is the construction of a work, the other ordering party, by its acceptance and execution of payment, basically concluded even the acceptance of the work. Acceptance of work, unlike delivery which constitutes a factual aspect, constitutes a legal fact, therefore presupposes acceptance of the work or of the order, and therefore marks the final phase of the normal and regular execution of an international entrepreneurship contract.<sup>8</sup>

Material failure (defects) which in their entirety may be quantitative, qualitative, and functional. Issues related to material failure refer to the classification or type of responsibility and depending on this, it is also determined the referring legal system. Specifically, the responsibility of entrepreneur versus ordering party for defects and damages caused by them are classified as contractual liability, but this liability to third parties is categorized as extra contractual liability and is governed by the principle of private international law *lex loci commissi delicti*, or the law

---

<sup>8</sup> See "Entrepreneurship Contract in the Albanian legislation", T. Hoxha, edit. "Revista Juridike", an edition of School of Magistrates; September 2014.

of the country where damage is caused (in the case of international entrepreneurship contract, we can say also the country where site is established or *lex rei sitae*).

In some legislation including our legislation sometimes liability for damage is of designer and not of entrepreneur, or of the person who performs works.

In a court case where the plaintiff was a subject of foreign citizenship and subject to judgment was the implementation of an international entrepreneurship contract, Tirana District Court, by relevant Decree decided: *“Accepting in part the lawsuit”*.

In Decree content, the court reasoned that: “The Court has estimated that the plaintiff argued based on evidence, simultaneously informing the defendant that:

The original project included many defects and may not serve for the implementation of contractual works, according to the required criteria. Its implementation in the original form would not guarantee the construction of a road, according to the standards required and will be destroyed soon.;

Despite that finding new solutions to modify the defects found in the project, was not an obligation of plaintiff, he has taken all possible measures to eliminate them and to find possible alternatives within the economic value and contractual terms. These modifications allowed the defendant to save significant amounts of money, because the implementation of the project in its original form would have required more money and would have given less security and durability;

At the same time, all these changes led to significant delays in the execution of works, allowed damage to certain parts of the road, which had ended, and denied to the plaintiff for calculating *the profit as a normal construction activity.*”<sup>9</sup>.

In this case the court has analyzed in detail the causes and consequences that led to the failure of the nature of time and in order to solve the consequences of delays and concrete decision making.

Criteria for determining the responsibility for defects in international entrepreneurship contract, in principle expressly provided in the contract and in their absence, as well as other contracts expressly regulated or not these criteria are classified into objective and subjective ones.

Objective criteria are those expressly provided by the parties to the contract text on concrete contractual object (the thing, work) or contractual actions and functionality. For example, in the case of construction of a hospital, the criteria of functionality are closely related to special ordering’s party requirements. So, in this case the criteria required by a comparison of results obtained with the special provisions stipulated in the contract content ratified by the parties.

While subjective criteria are those other criteria, although not expressly provided in the contract, are such that do not provide or do not allow the object usability established in appropriate limits according to its purpose and destination, criteria which are explicitly recognized by our legislation.<sup>10</sup>

---

<sup>9</sup>Decree No.3169 date 03.04.2012 of Tirana District Court.

<sup>10</sup>Article 865 of the Albanian Civil Code.

In court practice of the trial of disagreements about those contracts, judges refer to two types of the above criteria, whether the claims of the parties relating to the circumstances mentioned above.

The figure of international contract entrepreneur of entrepreneurship, is presented quite complex, even in different contracts, coordinated with the figure of sub-contractor. However should bear in mind that the sub-contractor represents a figure autonomous or independent of leading entrepreneur. In international entrepreneurship contract of public works, mainly due to the large volume of work is required to be achieved and the limited time available to it, in many cases appear forms of Joint- Venture, which are temporary unions of companies, in view of the performance of a particular of public work. (In the case of Albania such a form is applied to joining Bechtel-Enca , in the case of construction of National Road). Basically in joint- venture arrangements, the joint companies (Venturer) are jointly responsible for all the work, regardless of the manner of execution of the contract or construction work.

### **Conclusions.**

The study of international entrepreneurship contract is important especially in terms of increasing the intensity of its application in modern trade exchanges and market. To the conditions of Albania, interest on debate about this contract is even higher due to the need of the national economy for investment, and our country's intention to be part of the European Union, which means among other things market and integrated economy and legislation.

International entrepreneurship contract is duly governed by the law that the parties have determined on its content. In their absence regulatory law will be that of the EU, if one of the parties is a member, while in other cases according to the principles of private international law where EU legislation can serve as reference.

Legal systems have differences between them and this has created the need to minimize the divergences, through the preparation and publication of contractual texts that create optimal opportunities to avoid these differences between legislation and creating an archive for recognition and the best possible implementation of these contracts by interested parties.

Interpretation of International Entrepreneurship Contract, in principle as a rule is made under the criteria set forth in the applicable law, but because of their large volume, it is important good knowledge of the content of the contract.

The practice of execution of these contracts as a rule has highlighted the importance of the criteria for identifying the responsibilities of the parties, criteria which can not be required unless the applicable law chosen by the parties or designated as such by the competent authority.

### **Bibliography**

- Constitution of the Republic of Albania.
- Rome Convention (EC Convention on the Law Applicable to Contractual Obligations (Rome 1980).
- German Civil Code (BGB)

- Law No. 04-L-077 dated May 10, 2012 "On Obligatory Relations" of the Republic of Kosovo
- Fabio Emilio Zigardi "L'appalto internazionale".
- Establishing Treaty of NAFTA
- Law No. 10 428, dated 02.06.2011 "On Private International Law"
- Law no 9643 dated 20.11.2006 "On public procurement"
- Albanian Civil Code adopted by law nr.7850 dated 29.07.1994  
Civil Code of the Republic of Albania adopted by Law nr.6341 dated 27.06.1981  
Italian Civil Code  
French Civil Code  
Swiss Obligations Code.
- Maurizio de Tilla ,” L’Apalto Privato” Seconda Edizione , Editions Giuffre` year 2007.
- Jerome Huet, “Traite de DROIT CIVIL”, “Les principaux contrats speciaux” page 1129, year 1996
- Francesco Gazzoni- Manuale di diritto Privato, Edizion Scientifiche Italiane, Napoli 2004 fq 3- 4.
- LAURIA Felicetta, “*I pubblici appalti*” – Disciplina comunitaria e giurisprudenza italiana”, Milano, Giuffré, 1998 .
- Mariana TUTULANI-SEMINI, « Law of Obligations and Contracts ”, Special Part, Skanderbeg books, Tirana 2006 .
- Pierre Engel, « Contrats de droit suisse », 2-e édition, Staempfli Edition SA Berne, Berne 2000 .
- George VERMELE, Civil Law “Contracts, Special Part ”, translation, papyrus Tirana 2008
- Andre Torrente- Piero Schlesinger, “Manual of private law” edition 13 Giuffre Ed.
- Girolamo Strozzi, “Diritto Dell Unione Europea”. G. Giappichelli Editore- Torino 2001.
- Decree No.9952 date 07.11.2013 of Tirana District Court
- Decree No.3169 date 03.04.2012 of Tirana District Court
- Decree No.609 Act date 24.07.2013 of Tirana District Court