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INTERNATIONAL SCIENTIFIC CONFERENCE ON
TOURISM AND BUSINESS LOGISTICS - GEVGELIA

GOCE DELCEV UNIVERSITY OF STIP

FACULTY OF TOURISM AND BUSINESS LOGISTICS

PROCEEDINGS

THE 2ND INTERNATIONAL SCIENTIFIC

CHALLENGES OF TOURISM AND BUSINESS LOGISTICS IN THE 21ST CENTURY

Stip, September 13th, 2019

North Macedonia

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CHARACTERISTICS OF CONTRACTS FROM INTERNATIONAL TRADE – KEY LEGAL INSTRUMENT FOR SUCCESSFUL FOREIGN AND TRADE OPERATION

Drasko Atanasoski [1]; Aneta Stojanovska-Stefanova[2]; Marija Magdinceva-Sopova [3]

Abstract

In order the trade with goods and services, it is necessary to be normed with legal instruments. These instruments are contracts in the international trade which specify all activities of the entities that are part of the trade with goods and services. They are the most important instrument in the trade because all other instruments applied in the realization of the trade such as the customs; foreign currencies, administrative regulation instruments etc. are consequence of the contracts in the international trade.
With the appearance and development of the international exchange and development of the international economic relations, the conclusion of the contracts underwent a transformation from their beginning until today's dynamic development. That is completely logical due to reasons that the modern degree of international relations is consisted of dynamic and modern manner of conclusion and norming in comparison to the initial slow and symbolic contracts.
There are several concepts regarding what the conclusion of an contracts, i.e. conclusion of an international trade contracts is. We can divide them into groups which correspond to the degree of the development of the contractual relations.
According the classical conception, which roots back in to Roman law, a contract shall be concluded in accordance with the will of the contracting parties that exchange their consent regarding the subject-matter of the contracts having in min a specific goal. Therefore, this concept is based on the philosophy of autonomy of wills.
The concept of autonomy of will of the parties as a base for conclusion of contracts was highlighted during the liberal capitalism.

Key Words: *international relations, International law, trade, key instruments*
JEL classification: *B17*

Introduction

With the appearance and development of the international exchange and development of the international economic relations, the conclusion of the contracts underwent a transformation from their beginning until today's dynamic development. That is completely logical due to reasons that the modern degree of international relations is consisted of dynamic and modern manner of conclusion and norming in comparison to the initial slow and symbolic contracting. There are several concepts regarding what the conclusion of a contract, i.e. conclusion of an international trade contract is. We can divide them into groups which correspond to the degree of the development of the contractual relations.

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According the classical conception, which roots back in to Roman law, a contract shall be concluded in accordance with the will of the contracting parties that exchange their consent regarding the subject-matter of the contract having in min a specific goal. Therefore, this concept is based on the philosophy of autonomy of wills. The concept of autonomy of will of the parties as a base for conclusion of contracts was highlighted during the liberal capitalism.

During the period of monopoly and state capitalism comes to “restriction of the autonomy of will" in the area of conclusion of contracts having in mind that the economic legalities of the capitalist society are put first, where all forms that justify the profit are “allowed”. There was a third will during that period - will of the state and will of the economically powerful companies in terms of the international trade contracts. Therefore, the standard contracts as well as the creation of general contracting conditions are characterized for this period. In this case, the autonomy of will of the parties comes down to whether they will accept the conditions envisaged in the standard contracts, i.e. the general terms and conditions.

The modern period of development of the contractual relation in the international trade bring a trend of wide intervention by the state (national legislation) in the regulation of the international contractual relations. Each and every state, within the defined and adopted national economic policy, attempts to regulate the economic flows by adopting many positive regulations. These regulations strongly influence the international contractual relations of the economic entities, i.e. on the possibility the foreign economic entities to establish contractual relation with the national economic enterprises. This encompasses the various export and import licenses, customs, establishment of contingents and regime of payment, different types of embargoes etc. Also, the countries by signing and accepting international contracts from various areas determine de facto the direction and terrain of the international contracting between entities in trade. This kind of intervention by the state in the international economic contracting some French international law theoreticians even call “triangle concept of contract” where both parties are contracting parties of an international contract, and the third one is the state.

The modern conclusion of international trade contracts introduced modern methods of their conclusion:

- The development of the new means of communication enables conditions for conclusion of larger spatial distance.
- Conclusion of contracts between parties that does not know each other.
- Conclusion of contracts for various types of goods on completely different manner (for example, for goods of serial production through standard contracts, and investment contracts with slow and phase contracting).
- Seeking a most preferred partner due to development of the marker and large number of products and manufacturers etc.

All previously listed features must be taken into consideration when concluding international trade contracts. The presence of foreign element in the trade contracts has its own feature which the economic entities must pay special attention to. The national rights of the parties of the international trade contracts are always different so there must be common rules, i.e. an international law in this area must be created. Our further interest is exactly that, to study the conclusion of international trade contracts and their regulation in the national legislations through common rules as well as international private rules.

Comprising parts of the contracts

The national rights of all states regarding the conclusion of contracts envisage that there is no need of agreement between the contracting parties on all points (elements) of the contract. Certain unexpected or not harmonized conditions of the contractual relations are implied and regulated with additional rules of the national legislations. This encompasses the positive and custom rules. For example, today in the modern business communication through the means of communication (telex, telefax, internet etc.), it is impossible and unnecessary the international contract between the contracting parties to be concluded with all elements. However, all national legislations envisage that every contract concluded on any manner must contain agreement of the will of the contracting parties regarding certain *important elements of the contract* (essentialia negotti). That means that the parties must agree on the type of contract they conclude, the elements that characterize that type of contract which it cannot exist without and which are reason for conclusion.

But the national rights differ in the establishment of the important elements of the contracts, which also means that the contracts in the international trade differ. Certain elements are important for certain national rights, and other elements for other international rights.

In the *countries from the European continental law*, the subject-matter and the price are important elements of the sales contract, and the parties should agree on the manner of their determination. All other modalities shall be established according the additional regulations for sales contracts. Also according the continental law (the national rights under that name) not even the mentioned important elements of the sales contract must be precisely determined but they can be established on the basis of the content of the contract. The quality of goods categorized by type may also not be an obligatory element of the contract. The additional law shall be applied in this case, i.e. the rule according to which the seller shall deliver certain goods to the buyer with quality for the purpose it is intended. If the seller is not familiar with the end goal, the goods must be of a average quality at least. Also according the continental law, the price as an important element of the contract may not be always provided with the contract. It is enough for the clauses of the sales contract to allow establishment of a price on the basis of elements that do not depend on the will of the contracting parties. In that case, the parties agree "marker" or "current prices" which are the prices at the time of conclusion of the contract; "price of competition" which is the price of a loyal competitor for the same goods; "invoice price" which is the price listed in the invoice by the seller; "price from former contract" – this encompasses the price from previously concluded contract; "price according calculation" – this shows the price established by seller according the calculation of the its elements etc. Besides the mentioned "exceptions" when the subject-matter and price in the contract of international trade are not obligatory to be established but determined with provisions from another positive law, they still remain important elements of the sales contracts according the continental law. There are exceptions in certain national legislations in the continental law regarding whether the important elements of the sales contract are envisaged or not. According to Article 1474 of the Italian Civil Code, if subject-matter of the contract are goods which the seller sales regularly, if the parties did not agree the price nor the manner of its establishment nor it is established by the public authorities, it is assumed that the price of the regular sale is accepted. The Swiss Law on Obligations (Article 212 paragraph 1) envisages that when a buyer makes an order but the price is not determined, it is determined according the average market price valid in the time and place of implementation of the contract.

According the *Anglo-Saxon law*, the agreement on price in the international trade contract between the parties is not necessary. According this law there is an additional law which

provides that a price of goods shall mean a reasonable price. *According to the legislation of the Scandinavian countries*, the price is not an important element of the contracts. If it is not established with the contract, the buyer is obliged to pay a price that the seller will request (unless it is unreasonable).In terms of this question, Article 57 of the Uniform Law on International Sales of Goods provides that the buyer is obliged to pay the price which the seller regularly collects at the time of conclusion of the contract if the price is not envisaged with the contract.

Vienna Convention on Contracts for the International Sales of Goods contains two (opposite) solutions: a) According to Article 14 of the Convention states that a proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price; b) Article 15 of the same Convention states that the contract is valid (validity is estimated according the national law), and the price of the contract is not determined expressly or implicitly nor the contract contains provisions on the basis of which it can be determined, it shall be considered that the parties implicitly accepted the price which at the moment of conclusion of the contract was regularly paid for the appropriate trade goods sold under similar circumstances, unless otherwise provided.

Unimportant elements lie in the very nature of the contract. When we talk about the nominate contract, the unimportant elements are envisaged by law and other legal regulations (deadline, place of delivery, payment, quality), and in the case of innominate contracts, the additional rights are provided by the judge according the rule of analogy with the rules valid for similar nominate contracts. If the unimportant elements are determined by a regulation, the contracting parties may establish them otherwise according their will: directly by regulating them or indirectly by calling on the trade customs, ways, general conditions or trade clauses.

Phases of conclusion of contracts

The conclusion of almost every international trade contract is followed by several phases. Generally, the phases of contract conclusion are divided to: negotiations, offer and acceptance of the offer, and conclusion of the contract.

Of course, not all contracts go through these phases and some contracts are concluded immediately without formal implementation of all said phases. Every phase of conclusion of the international trade contracts shall be elaborated in details further in the text.[4]

Period (phase) of negotiations

The period of negotiations happens when the entities question each other and found out the condition about the solvency of the other entity, its place in the international trade etc. What would be the elements of the eventual contract, the economic and legal consequences from concluding that contract, the volume etc. During the period of negotiation, the parties communicate, talk, give proposals and counter-proposals, accepts, refuse, modify etc. Also, every party looks after their own interest.

[4]Nikolovski A. – Krstanoski M. “Law of the contracts in the international trade (with practical examples) first editions 1999” Studentski zbor – Skopje 1999. Printed by Grafotehna – Kichevo, p.113.

It is very difficult to make a difference between the phase of negotiations and the phase of giving offer in the practice because the activities in both phases interweave. However, the negotiations are just a reflection of the will to consider and negotiate a legal affair, while the offer is given with the will to conclude the contract. The legal action of everything accomplished by the parties during the negotiations is conditioned by the conclusion of the contract. Another important element from the negotiation phase is that if there is any future need the contract to be interpreted and if the intention of the parties is evaluated, it is mostly evaluated through the negotiation phase. Therefore, it will be evaluated what each party wanted to achieve with the contract.

Offer to conclude the contract

The offer to conclude the international trade contract is a statement of will where a person declares that is prepared to conclude a contract. The national rights differ several types of offers among which the most basic are: the negotiation offer and the offer to conclude the contract. The negotiation offer is not binding while the offer to conclude the contract is binding for the parties. There are authors who divide this categorization to call for negotiation and the ultimatum offer (Kahn, Lavente international comerciale pp.53-56).

The legal practice and some modern sources of laws have strong and non-binding offer. According to them, strong offer is an offer made in a signed document which clearly shows that the offeror wants to make a strong commitment. Strong offer as a term operates in the Uniform Law on International Sales of Goods, General Terms and Conditions of the European Economic Commission for Foreign Procurements and General Terms and Conditions of EEC for international trade of tropical fruits. The non-binding offer means a call for the other party to make a offer which should be accepted or denied.

As a result, the offer to conclude the contract is a final proposal of an entity in the legal trade intended for other entity/is in order conclusion of a contract. The contract offer is different from the contract itself until its acceptance.

In terms of the offer for international contract, the unified international law in the area of international trade contracts provides the following solutions:

Uniform Law on International Sales of Goods and the Convention on Contracts for the International Sales of Goods envisage that the offer (proposal, statement) that one entity in the legal trade shall give to another entity or larger number of entities in order conclusion of sales contract shall be an offer if it is clearly enough definite that by its acceptance a contract can be concluded and if it expresses the will of the offeror to make a commitment.

According the said international legal acts the offer must have the following features:
a) To be intended to definite entities
b) to be definite enough to be accepted and
c) to express the will of commitment.

If the offer is intended for certain entity/ies, it means that the person whom the offer is directed to is known to the offeror. In both theory and practice there is a difference regarding whether the offer might be intended for indefinite entity/ies. The French practice states that the notices directed towards indefinite entities are considered an offer. The German law refers to the trade practice which is effective regarding when the call to indefinite number of persons is an offer.

Our law (Article 26 of the Law on Obligations) states that the listing of price on a certain product is an offer. The Swiss and French law have the same view. The English law envisages that if a product is displayed with a price (offer), this does not present an offer in a positive legal sense. The English seller, according to that, has a right to select their costumers (this rule applies for stores and not in the international trade).

The offer which provides the content of the contract (what, how, where, how much, when etc.) which should be concluded after, by applying other additional norms, is considered a sufficiently definite enough in all national laws.

The will for commitment is a statement of will by the offeror to conclude an international trade contract. If they do not want that and after the final offer want to remain free, the offer is not valid according the unified rules of international sales.[5]

Compulsory and revocable offers

The offeror is not obliged regarding his/her offer until it reaches the offeree and the offeree turns it down. An offer is compulsory when it reaches the offeree. He may revoke the offer before it reaches the offeree or at the time of its arrival. In terms of the compulsory offer, different national laws have different acts.

The US and English law prescribe that the offer can always be revoked. The offer is not binding not even when there is a deadline for its acceptance nor shall when the offeror declares that within a certain period of time the offer not be revoked. According to this law, the offeror is only obliged to revoke the offer before the conclusion of the contract. The contract is deemed concluded at the time of sending the acceptance.

Opposite to that, the Common Trade Code of USA provides that the strong offer cannot be revoked for three months at the longest. According the French law, the offer without a deadline can be revoked at any time. Therefore, the offeror should compensate the damage done with the revoking. If the offer has a deadline of acceptance, it cannot be revoked during that deadline.

In terms of the Middle European continental laws, such as the Scandinavian law, the offer is of compulsory nature.

The Uniformed Law on International Sales of Goods generally accepts the standpoint of revoking the offer but with certain exclusions. The offer cannot be revoked if the revoking is not reasonable and in accordance with the market loyalty. Also, if the offer has an acceptance deadline or it is specified that it is a strong and irrevocable offer, it cannot be revoked. According to our Law on Obligations (Article 28), the offer may be revoked before the arrival of the offer at the offeree or at the same time with the arrival of the offer.[6]

Deadline of the offer

In terms of time until when the offer is binding to the offeror, the solutions in different legislations depend on whether the offeror specified a deadline for acceptance of the offer or not.

[5]Ibid, pp.115-117
[6]Ibid, pp.117-118

In terms of the contracts between the present parties, the offeree must immediately accept or refuse the offer, and between absent parties the offer is binding to the offeror for the time necessary for the offer to reach the offeree, its consideration, decision and the delivery of the contract.

Most Middle European legal system has the same criteria in terms of duration of the compulsory offer. That is the time of sending the offer, reasonable deadline for consideration and deadline for returning the contract (Swiss Code, Scandinavian law, Soviet, Czech, Hungarian, Macedonian law etc.)

The statement for acceptance of the offer received after the deadline of the offer is not binding to the offeror. In that case, this statement shall be considered as a new offer.

Acceptance of the offer

The acceptance of the offer shall be a statement of the will of the offeree which completely accepts the offer of the offeror for conclusion of international contract. By accepting the offer the agreed will by both parties for conclusion of the contract is expressed and it will be considered that the contract is concluded.

The offer shall be accepted with a statement of acceptance comprised in any form but in complete accordance with the offer. The statement of acceptance may be given by the offeree or his proxy (representative).

The offer must be accepted in timely manner during its validity period. It may happen the statement of acceptance to contain certain modification. In that case it will be considered that a new offer is made where the offeror and the offeree switch their roles (also according to our Law on Obligations, Article 33). But if the modifications in the statement of acceptance are of unimportant nature, the statement of acceptance is effective – valid. The international sources of the law regulate the acceptance of the offer on the following manner: the Uniform Law on International Sales of Movables and UN Convention on Contracts for International Sales provide that the acceptance of the offer should match the offer. If the reply to the offer contains additional or different elements which generally do not change the provisions from the offer, then it shall be considered as accepted if the offeror does not point out to those difference in a short period.

According to the Common Trade Code of USA, the final and expired statement of acceptance or written confirmation sent within a reasonable deadline shall be considered as acceptance regardless that might contain additional or different provisions than those in the offer (different and more liberal than others).

In the international trade practice, the acceptance of the offer is usually called an order. The question of what is there is a delay of acceptance of the offer is asked in both theory and practice.

According the Swiss Law on Obligations and the German Civil Code, a contract is concluded if the offeror does not inform the offeree that the acceptance is delayed and that the contract is not concluded immediately after the receiver of the statement of acceptance. But in that case the offeror should immediately, or the first work day at the latest, to inform the offeree. According the Italian Civil Code, the delayed acceptance can be considered as valid by the

offeror if he immediately informs the other party. According to the Uniformed Law and the Italian Code, the delayed acceptance shall not be considered a new offer.

The manner of acceptance may be expressed or implicit. According the regulations for trade of good, there is an implicit acceptance of the offer, for example when one of the parties accepted the goods without returning it; the forwarding officer accepted the goods with a specified address of destination: the warehouse worker loaded the goods in the warehouse etc. It shall be considered that the offered is implicitly accepted and contract is concluded in all cases.

The international legislation deems that the offer can be implicitly accepted. The Uniform Law on International Sales of Good envisages that the acceptance may be perform by sending of things or price as well as any other activity that on the basis on the offer, practice between the parties or customs may be considered as complete statement of acceptance of the offer (for example: the offeree to the sales price this implicitly accepting the offer meaning that the contract is de facto concluded. Our Law on Obligation regulates the implicit acceptance of the offer on this manner also. The offer is accepted when offeror will send the subject-matter or pay the price as well as any other activity which on the basis of the offer, practice determined between the interested parties or customs may be considered a statement of acceptance (Article 31 paragraph 2).

According the Uniform Law on International Sales of Goods every clause in the offer that establishes that the silence shall be considered acceptance of the goods is void.

As the offer may be revoked until a certain phase so the accepted offer may be revoked. The revoking should reach the offeror before the statement of acceptance of the offer or at the same time. The revoking of the accepted offer after that deadline is not legally binding. This standpoint is accepted in all national laws and international sources of international trade of contracts.[7]

Time and place of the contract

Time of the contract

Conclusion of contract between present persons – the moment (time) of the contract is especially important legal and internationally legal category due to several reasons. The first and basic reason is that that from that point on the begins the implementation of the international contract, the rights and obligations of the contracting parties become effective; Second, the option to revoke the accepted offer depends on how the moment (time) of conclusion of the contract is established. Third, that moment is valid in terms of acknowledging the acquired rights, for evaluation of the moment for application of new regulations, rights of the parties in case of bankruptcy, occurrence of tax, customs and other liabilities etc. Fourth, the resolution of (eventual) large number of problems depends from the time of conclusion of the contract: 1) what party should bare the risk if the statement of acceptance is delayed; 2) what are the facts that should be proven that a contract is concluded; 3) the place of the contract; 4) moment of transfer of ownership and risk etc.

Place of the contract

The international trade contracts as well as the international sales deem the place of conclusion of the contract as very important from the aspect of the international private legal regulations.

[7]Ibid, st.119-121

According the place of the contract, many national laws determine which law shall be applied for the validity of the contract, the form and jurisdiction for resolution of any eventual issues arising from the contract.

In terms of the written contract the place (and time) of the contract are established by the contracting parties, however if the parties did not do that, it shall be considered that the contract is concluded at the place where the last fact necessary for the conclusion of the contract occurred. According to that, the establishment of the place of the contract is closely related to the establishment of the time of the contract.

For example, if we take the previously mentioned theories as a starting point, according to the theory of statement and the theory of sending, the place of the contract is the place where the offer is accepted, i.e. the place when the acceptance was sent from. According to the theory of acceptance, that is the place where the replay from the offeror for acceptance of the offer is received. According the theory for acknowledgment, that is the place where the offeror found out about the acceptance of his offer by the offeree.

Due to the subject of our study, it is especially important that the regulations and trade customs of all national law determine the place of the contract if the contracting parties do not do that according the autonomy of their will. In case of international trade contracts concluded between present parties, the place of the contract shall be the place where the parties were present at the moment when they agreed the important elements of the contract.

Conclusion of *contracts* through the means of communication (telephone, telegram, teleprinter)

Separate contracts (especially sales contracts) may be concluded through the modern technological means of fast communication such as the telephone, telegram, teleprinter etc.

Conclusion of contract through telephone - shall be considered as conclusion of contract between present persons in terms of the moment of conclusion of the contract. This practice is accepted by the legislations of more countries such as England, Switzerland, Germany, Macedonia and other as well as in the legal theory in the countries that did not envisage that as a regulation.

The conclusion of contract through telephone in our law is regulated with general conditions. According to them, the offeror should confirm with a letter of receipt at the same day or the next business day his offer and the offeree his statement of acceptance made by telephone. If they do not do that, the contract is valid but the party did not gave written confirmation and is liable before the other party for any eventual damage that might have occurred due to this oversight.

According to the English law, the contract concluded through telephone shall be deemed concluded between the present parties. However according to the Swiss and Italian legislation the statement given through the telephone may be denied as a decision made in delusion.

The conclusion of the contract through telegram is deemed a contract between absent parties. In the countries that accept the theory of receiving, the contract is concluded at the moment of receiving of the telegram. In order the risk of transfer of the telegram to be avoided as well as any eventual mistakes, more national laws envisage the content of the telegram to be confirmed

by letter of receipt. According to our law, the offer and the statement of acceptance by telegram are considered a contract concluded between the absent parties. The French and German laws exclude the liability of the state for any damage due to improper transfer of the telegram (its irregularities).

The teleprinter as a mean of communication and manner through which a contract can be concluded is not envisaged in any national legislation having in mind its newer application. However, our laws envisage its use in the contracts. Therefore (law No. 31 paragraph 2), the offer and statement of acceptance given through teleprinter are considered concluded between the absent persons. Also, the sender cannot challenge the validity of the offer or the statement of acceptance given in his name through his teleprinter (law No. 31 paragraph 3). As opposite, according the German law the offer through teleprinter is considered an offer between absent persons. In terms of the moment of conclusion of the contract, the English law accepts the theory of receiving, and more legal systems the theory of sending.[8]

Conclusion of contracts through proxy

The parties can conclude the contracts in the international trade through proxy where one party may be the contracting party and the other part a proxy of the other contracting party or both contracting parties can be represented by proxies. A proxy is the person who the party entrusted such duties which, according to the normal flow of works, result with authorization for certain contracts in the international trade. Issues may occur when international contracts are concluded through proxies. The signing the international contract through proxies is under the Convention on Agency in International Sale of Goods adopted in 1983 as special international source of law. This Convention regulates the norms and resolution of two basic issues related to conclusion of contracts in the international trade through proxy as follows: 1. the issues with the validity of the proxy 2. the issue with violation of the power-of-attorney. According to this Convention, the power-of-attorney of the proxy may be express and implicit.

Conclusion of adhesion contracts

With the everyday growth of the international trade exchange, new forms and types of conclusion of contracts in the international trade appear. As an exception from the basic rule that the contract is a reflection of the agreement between two contracting parties are the adhesion contracts as called by the French science. The adhesion contract occurred as consequence if the economic monopoly and power of certain entities in the trade on one hand and frequent repetition of certain types of contracts on other. Basic features of the adhesion contract are: 1) economic superiority where one side creates de fact possibility to dictate its conditions to the other; 2) unilateral nature of the clauses prepared by the more powerful mostly in his interest and 3) their inalterability, i.e. a whole that might be accepted or refused. Adhesion contract actually are type of standard contract without the pre-negotiation and agreement of elements of the contract. The contracting entity is in position only accept or refuse the contract. He has a freedom to conclude but not a freedom to formulate. This kind of contracts is formed general conditions which the entities might accept or refuse.

[8]Ibid, pg.125-126

Form of contracts

In terms of the form of conclusion of the contract in the international trade, most laws have a standpoint that agreement between the parties is generally sufficient regardless the manner of making that agreement – *freedom of the form.* That arises from the principle of freedom of the autonomy of the wills of the parties.

Also, all national laws envisage certain limitation of freedom of the form due to the fact that it is prescribed in the national laws for certain types of contracts. When we talk about the written form of the contracts in the international trade, we encompass the telegrams, fax messages, tele printer and other modern means of communication. That way, the written form of the contracts in the international trade often appears, and almost always in the practice. This is also a consequence of the fact that these contracts often incorporate the clause for jurisdiction and according to all legislation must be in written form.

The written form of the contracts in international trade, by rule, serves for provision of evidence for existence and content of the contract, and it is not a condition for validity of the contract. The contract is comprised and signed due to any eventual dispute because if there is no dispute, the written form of the contract is completely irrelevant except those contracts when it is envisaged as an obligation. In that sense, the science makes difference between two types of contracts:
1) contracts where the written form is a condition for their validity (ad solemnitatem form) and
2) contracts where the written form only has an evidence function (ad probationem).

In terms of the form of the contracts, our Law on Obligation envisages that the contract may be concluded in any form unless otherwise determined by law. The contract that is not concluded in written form has no legal action as well as the contract which is not concluded in the agreed form (Articles 59 and 61).[9]

Conclusion

From this article we can conclude that the national rights of all states regarding the conclusion of contracts envisage that there is no need of contract between the contracting parties on all points (elements) of the contract. Certain unexpected or not harmonized conditions of the contractual relations are implied and regulated with additional rules of the national legislations. This encompasses the positive and custom rules.

However, all national legislations envisage that every contract concluded on any manner must contain agreement of the will of the contracting parties regarding certain important elements of the contract (essentialia negotti). That means that the parties must agree on the type of agreement they conclude, the elements that characterize that type of contract which it cannot exist without and which are reason for conclusion. But the national rights differ in the establishment of the important elements of the contracts, which also means that the contracts in the international trade differ. Certain elements are important for certain national rights, and other elements for other international rights.

In the countries from the European continental law, the subject-matter and the price are important elements of the sales contract, and the parties should agree on the manner of their

[9]Ibid, pp.130-133

determination. All other modalities shall be established according the additional regulations for sales contracts. Also according the continental law (the national rights under that name) not even the mentioned important elements of the sales contract must be precisely determined but they can be established on the basis of the content of the contract.

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