

Original Article: Price Determination of a Sale Contract in the 1980 Uncitral Convention

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Citation A. Mahdavi Rad, A. Khosravi*, **Price Determination of a Sale Contract in the 1980 Uncitral Convention.** *Int. J. Adv. Stu. Hum. Soc. Sci.* 2022, 11(4): 230-236.

 <https://doi.org/10.22034/IJASHSS.2022.345364.1097>



Article info

Received: 2022-05-02

Accepted: 2022-06-11

Available Online: 2022-07-06

Checked for Plagiarism: Yes

Peer Reviewers Approved by:

Ermia Aghaaie

Editor who Approved Publication:

Dr. Sara Darabi

Keywords:

Sale; Price; International Convention on the Goods' Sale; Price determination

ABSTRACT

In recent international trade, in particular, and in some domestic transactions, it can generally cause several legal issues with which the existing regulations do not deal with. For this, this article aims to offer solutions in a different interpretation of these rules, including proving that the price non-determination in a lump sum can not always be regarded as a reason for a transaction to be arrogant and void because the custom of such transactions is not mentioned as arrogant and practically. It is common in the community, and after studying the application of other countries' rights and the Convention provisions. Therefore this examination concluded by making two introductions: if a transaction is not from the arrogance viewpoint, it is not void, and the transaction is common recently. Sometimes its price determination has been postponed to the future, indicating such an issue. The need for this research stems from the fact that following the globalization phenomenon, the movement for unifying contract law has impacted the countries' national laws. Thus, it is essential to remove the necessities and obstacles to the unification of contract law with comparative studies. In this regard, the proposed study examines price determination and its effect on sales in Iranian law and the 1980 Vienna Convention on International Sale.

Introduction

The contract is regarded as one of the most significant commercial acts, so it can be mentioned that it is the resource sale of most commercial transactions such as sea, land, air, and insurance. The frequency of sale contracts compared with other transactions has led the legal systems of different countries to lay down special rules and regulations regarding the sale contract. Most of these legal systems do not make a significant variation between the price and the seller in the sale contract and equally concern the cases as primary conditions in both

cases. The significance of removing ambiguity from the transaction in regulating the social relations and legal life of individuals is not hidden from anyone since its ignorance not only affects the legal status of the contract but also alters the legal parties' relations, accordingly more legal systems, at the outset, insisted explicitly and unequivocally on the need to remove ambiguity about the transaction. In any case, in which the contract issue was ambiguous, they ruled that the contract was invalid.

With the expansion of economic affairs in the domestic and international arenas, the

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necessity to achieve rules and principles which provide trade's stability, facilitation, and acceleration was felt more than ever, and the view was adopted that rights, despite being based on the principle of stability, are evolving. Likewise, it is flexible in terms of time and place.

1. Validity and Invalidity of the Contract of Sale in the 1980 Convention

In the scattered articles of the convention, the influence and validity of some elements of the contract and the conditions of its conclusion are mentioned; For example, according to Article 15 of the Convention: "The requirement shall take effect upon receipt by the addressee of the requirement." Or, according to paragraph 1 of Article 18 of the said Convention: "The acceptance of a request shall take effect from the moment that the requester receives the declaration of consent." Also, per Article 23 of this Convention: "The contract shall be concluded from the moment the acceptance of the requirement enters into force following the provisions of this Convention." [7] Also, according to Article 35 of the Convention, the seller must deliver goods with the quantity, quality (description), and description specified in the contract. The convention is not null and void, and the validity of the contract is essentially excluded from the convention, as Article 4 of the Convention provides: It will not be specifically related to the following: A) The validity of the contract or any of its terms or the validity of any relevant custom. Of course, the distinction between concluding a contract and its validity is surprising and can undoubtedly be questionable. [8] Therefore, at first, it was decided to add a chapter on the contract's validity to the convention by raising issues such as error, fraud, and coercion, as a draft prepared by Unidroit¹. Problems arising from the above issues, which relate to the general principles of contract law, have raised concerns that the content of the convention will change

significantly with the addition of a new chapter, making it more difficult for some countries to accept. That was when the plan was forgotten. Thus, all issues related to the contract's validity, some related to public order, were excluded from the provisions of the convention. [9].

2. Price Determination in the 1980 Vienna Convention and Other International Regulations

Nowadays, the dimensions of international trade relations have expanded even more. The nationals may be nationals of different countries, or the goods may be delivered in a nation other than the customer's country of residence. The 1980 Vienna Convention provides for particular provisions in this regard. The study of the manner and stages of ratification of Articles 44 and 55 of the Convention confirms that there has been disagreement on the issue of specifying and determining the price in the contract of sale [1]. Article 14, Paragraph 1, of the Convention, provides: The contract has been concluded correctly, yet the price has not been explicitly or implicitly specified, or a contract has not been provided to determine it. Without any contrary reason, it is assumed that the parties "have agreed on the goods sold, which are common in the relevant trade in similar circumstances" [10].

Explicit and Determined Price

The most common method of price determination is the explicit agreement of the parties on the price amount and mentioning it in the sale contract. This technique has the effect of transferring the risk of price fluctuations to the other side in the sense that if, for instance, the price of a product is set at 100,000 Rials during the sale contract, the subsequent increase or decrease in price has no effect and the buyer is obliged to pay the price. The exact amount is agreed, and the seller cannot receive an additional amount for claiming that the goods' price has increased [2]. The 1980 Vienna Convention, following the customary practice of transactions, sets out in Article 14, Paragraph 1, the initial method of determining the price and its explicit

¹ The International Institute for the Unification of Private Law, better known as "Unidroit", was established by the Italian government under the auspices of the United Nations.

recognition. Nowadays, according to the common custom of international trade, sellers or exporters of goods frequently inform consumers and customers about the details and specifications of their products by sending special announcements or proforma invoices. The notice contains information such as the type of the sold goods, quality, quantity, weight, technical specifications, the value and price of the goods and, relying on the price, a certain amount of goods and even, in some cases, the type of currency to be paid [3].

Implicit Price Determination

In some cases, the parties may refuse to explicitly mention the price of the transaction. However, some prior negotiations or procedures reveals that the parties have paid attention to the price and its amount at the time of concluding the contract. One common case indicating the implicit price determination is the flow of negotiations and correspondence between the parties. For instance, sellers publish a wide range of catalogs containing various types of goods at specific prices. Someone sends a telex to the seller to send the goods with the specifications listed in the catalog, while the telex does not mention the price [4].

Given that the seller's catalog was not sent to particular persons, it is not regarded as a requirement under Article 14, paragraph 1 of the convention, but a transaction invitation. At the very least, it forms a positive buyer's demand that implicitly refers to the price listed in the catalog. Another common case that indicates the implicit price determination by the parties to the contract is the commercial custom or the procedures which the parties have established between themselves. Article 9 in the Convention stipulates role confirmation and custom effect: "The parties are obliged to observe any agreed custom or of the procedures which they have established among themselves" [11]. Therefore, if two people normally have transactions with each other, in their next transactions, they can refrain from mentioning the price amount and refer it to their prior transactions. The price will not be

unknown in this case because the parties have implicitly set the price. The terms of the contract are concluded, but they are likely used in determining the parties' intention, according to paragraph 3 of Article 8 of the Convention [5]. In addition, even in some cases, the transaction procedure may overshadow the entire contract, for the case if the parties in their previous transactions have regularly complied with some of the general conditions set out in a separate document. The price amount may be required to comply with such conditions in their subsequent contracts, even if they have not made any explicit reference to the price [6].

No Price Determination

In their contract, the parties usually specify the transaction price explicitly or implicitly or provide at least a criterion or standard for price determination. The existence of financial requirements and the necessity and significance of speed in trade exchanges, on the one hand, and the knowledge and awareness of the parties to the existence of regulations that apply if the price is not determined, on the other hand, have made the price determination at the time of the contract is not prominent. In particular, the buyer has more access to the desired product, and agreement on the price or technique to determine it at the time of the contract loses its necessity and significance. For instance, in times of crisis, an offshore steamer may malfunction due to the breakdown of some of its components. The shipowner may order another spare part by telegraph or telephone without mentioning the price or even the rules to its determination [9]. According to Article 14 of the Convention, the possibility of concluding a contract of sale has not been adopted in the existing assumption, and a proposal in which no price is set and no criteria for its determination is not regarded as necessary. Of course, no contract is concluded. At the same time, according to Article 55 of the Convention, it is considered that the possibility of concluding a contract of sale has been accepted in the underlying assumption because the international legislator considers the normal and reasonable price for the present

assumption as a criterion of the buyer's obligation, that the sale contract has been concluded. Indeed, the convention recognizes the possibility of concluding a contract of sale without specifying the price and does not essentially consider the non-mention of the price to indicate the lack of intention to conclude a contract of sale. Of course, it should be noted that the condition for applying and executing the normal price, in this case, is to verify the sale contract. Issues related to the validity of the contract of sale are excluded from the scope of this law following the provisions of Article 4 of the Convention. The contract is the criterion for determining the contract's validity [2].

3. Knowledge of Goods in Convention

1. The necessity of selling knowledge in the international sale of goods according to the 1980 Convention

(1) As mentioned in the previous sections, both parties to the transaction should be fully aware of what is being traded. In this regard, in general, there is no difference between a domestic sale and an international sale, although there may be variation between the two parties in its limits, the main difference is that in the domestic sale (according to Islamic law and Iranian civil law) ignorance of the transaction which causes arrogance requires the transaction annulment, however in International Sale Convention, an article which explicitly mentions the requirement for transaction awareness as a primary condition does not exist for the validity of the contract. Otherwise, Article 14 of the Convention mentions: A proposal is sufficiently particular if it specifies the goods and explicitly or implicitly characterizes the good's quantity, the price, or the criteria for both determinations [1].

(2) Furthermore, following Article 35 of this Convention, the seller should deliver goods with the quantity and quality (goods) and the description specified in the contract. Based on the articles mentioned above and further applying Paragraph 2 of Article 65 of the Convention on the necessity for informing the seller to the customer about the details of the

goods, it is inferred that the customer and buyer should provide each other with essential information about the traded goods, if it is a general sale, it should characterize its features and types. Otherwise, the goods' conformity or non-conformity with the agreed sale will not make sense [13].

2. Ways to determine sales in international sales under the 1980 Convention

The 1980 Convention on International Sale, as described in Domestic Sale, offers several techniques for identifying a transaction, some of which are not covered in Domestic Sale. To complete the discussion in this case and the comparative study, each of the methods and means of sale determination is briefly clarified as purchase and sale of goods on a sample basis: The International Convention on the Sale of Goods, as argued in the Domestic Law of Iran (Article 354 BC), accepts the sale based on a case and, following paragraph 2 of Article 35, the goods comply with the contract. It is not regarded unless it has the product features that the seller has provided to the customer as an instance. Therefore, based on the above article, if the two parties to the contract suffice to provide a sample to determine the goods and other properties of the goods and the seller delivers the goods to the customer based on it, the transaction is valid. Therefore the customer can not rely on Article 25. The convention announces the transaction termination based on a fundamental contract's breach [14]. It can be concluded that the mentioned convention concerns the sale based on the case to be valid. If it does not comply with the descriptions implicitly or explicitly agreed upon, the transaction will not be void. Yet, the customer has the right to decline the price (according to Article 50 of the Convention) or claims for damages (Article 45 of the Convention). If this non-compliance of the goods with the case is regarded a fundamental contract violation, it will have the right to annul and terminate the contract (Article 51 of the Convention) [8].

4. Price Determination of goods in International Sales under the 1980 Convention

The necessity of determining the price in the Convention: In the domestic law of Iran, which is based on Islamic law, one of the primary conditions for the validity of a contract of sale is that the price is determined (by using Articles 190, 216, and 338 of Civil Law) and this is briefly other legal systems, including French law, which makes pricing one of the essential components of a contract of sale (Article 1583 of French Civil Law) (42) are further adopted. In the 1980 Convention on International Sale, the necessity of price determination is inferred from Articles 14, 19, 50, 55, 56, etc. for instance, according to Article 14 of the Convention, “a proposal is sufficient if it determines the goods and explicitly or implicitly recognizes the quantity of the goods and the price or does not set criteria for the two.” Therefore, the offer in an international sale contract should, in addition to specifying the goods, explicitly or implicitly determine the quantity and price or provide information that can be used to determine the goods’ quantity and price. As a result, concerning the mentioned materials, especially the recent article, the necessity of price determination is emphasized by the 1980 Convention [9].

5. Methods of Price Determination of Goods in the 1980 Convention

Unlike domestic trade, the method of offer and acceptance in international trade agreements has particular features. Nowadays, according to the common custom of international trade, frequently the sellers or exporters of goods, by sending special announcements or proforma invoice, the details and specifications of their manufactured goods, inform the consumers, customers, or commercial institutions which have already intervened. The institution and the invitation, which is indeed a plan for concluding a contract, are called offers. “The plan should be sufficiently clear and reflect the intention of the offerer, which, if accepted, would impose on him/ or her.” [4]

The bidding forms for and concluding a contract contain information such as “regarding

the type of goods being sold, quality, quantity, weight, technical specifications, and trademarks” based on which the customer can evaluate the product correctly. Likewise, in these forms, the value and price of goods and products and the price of a certain amount of goods (as the case may be), and even in some cases, the type of currency to be paid [2]. Suppose a contract has been entered into correctly, yet the price has not been explicitly or implicitly set, or no criteria have been set for determining the price, in the absence of a contrary reason. In that case, it is assumed that the parties implicitly set the price at the time of the contract. The sale of such goods in similar circumstances is considered in the type of concerned trade.

Furthermore, it is not specified, and there is a possibility of differences in the value of the goods. Of course, as argued in the proposed article, in the absence of a contrary reason, it is presumed that the parties have implicitly concerned the goods’ price based on the time of the conclusion of the contract; that is, to validate the transaction, a hypothetical will has been regarded for the parties to the transaction. This price can be considered as a reasonable price at the time of concluding the contract. Thus, according to Article 55 of the Convention on the International Sale of Goods (1980), it is assumed that, at least in some cases, a contract of sale can be concluded without a price being set by the parties. This has been accepted in some legal systems, particularly in the Commonwealth, but has not been accepted by other legal systems, especially the socialist countries and the French Civil Code, which emphasizes: “The parties should determine the price.” (According to Article 1591 of French Civil Law) [9].

Conclusion

Given the mentioned issues, it follows that in Iranian civil law, the loss of the seller or the impossibility of returning the seller, in general, does not prevent the sale termination. In contrast, in the convention, according to Article 82, Delivery prevents the termination of the sale. If the impossibility of returning the goods

is not due to the act or omission of the buyer, or if all or part of the goods have been destroyed or corrupted as a result of inspection and testing subject to Article 38, or all or part of the goods before the buyer does not comply. The buyer will still have the right to terminate the sale. Therefore, according to the initial exception, the buyer can terminate the contract if it is impossible. The return of the goods should not be 'due to his act or omission'. Therefore, if the goods that do not comply with the contract are destroyed due to the buyer's negligence, Masharalieh cannot terminate the contract. However, this rule does not apply if the goods are confiscated, for instance, by state authorities or public licenses in Article 81. The customer no longer has the right to terminate the sale, but in Iranian law, as it was argued, even the seller's loss does not avoid the termination.

1. If the customer has not changed the seller's price by his own possession, the seller will be returned to him/her with the same condition.

2. If the seizure has caused a price decrease, the same seller will be returned to the seller. The difference between the seller's prices is given to the seller after and before the seizure at the time of termination.

3. If the seizure has caused a price increase and what has been increased is a mere attribute, such as grinding wheat or making ornaments from gold bars according to the use of Article 288 of the Civil Code on a lease, the customer during termination at the amount of the price due to his increased action will be entitled and receive from the seller because the price is due to the act of the customer, which is done with legal permission. It is also the case that the "excess" is inseparable from what has been added, such as the fact that it is the seller of the house. The customer has pasted paper and photos on the wall so that it falls out of ownership whenever it is separated.

4. If the customer's action, which has increased the price, is the addition of detachable items, such as a car dealership in which the customer has installed a series of decorative items or accessories, then in the

event of "huge" termination, it belongs to the customer, and he can separate them.

5. If the seller is mixed with other and heterosexual money in such a way that the seller is consumed, such as throwing a perfume bottle in the pool, it is as if the seller is lost, and the customer should pay the same or the price.

In this regard, the convention also introduces exceptions. Finally, it deals with the return of benefits which the buyer is required to return the goods and their benefits, and the seller is required to return the price and interest from the date of payment. The legislature has not assigned specific articles to the termination effects in Iranian law. More generally, in the various articles that deal with the termination of the contract, the effects of the contract can be regarded as the dissolution of the contract and the return of the recipients. The difference between Iranian law and the convention and the law of France and Egypt is that in Iranian law, unlike the mentioned systems, the termination effects appear from the time of termination and not from the time of contract, so until the day of termination. Therefore, the return of benefits is from the day of termination. The other significant difference is that in Iranian law, loss, loss, or transfer of goods does not prevent termination, except in the case of defective options. However, in Article 82 of the Convention, if the buyer cannot to return the goods in the same condition in which he received them, he will lose the right to terminate the contract, except in exceptional cases.

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