

The Importance of the Sales Contract in Electronic Form: Case study Kosovo

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Abstract

Internet and e-commerce, in recent years, have undergone significant progress in our daily lives. As a result of these technological developments, the need arose for creating and using the sales contract in electronic form, in the function of the national and international market, to perform various electronic transactions. This relatively new method of buying and selling has taken a rapid and important development in the development of legal relations. As such, the sales contract in electronic form offers various advantages and some advantages to consumers related to its signing through electronic means.

Keywords: *Online Sales, Electronic Business, Electronic Agreement, Signature*

INTRODUCTION

Today, information-software technology has evolved at a very high speed every day and more as a subjective and objective factor of the demands of individuals and society in general in the economic, educational, legal, etc. fields. As a result of the use of the computer for the sale and purchase of various products and services in a massive way by consumers/traders at the global level, it is worth emphasizing that software installed as computer programs can be considered one of the most important inventions for society and developed countries in particular. The special position that technology occupies today (iPad, smartphones, Computers), together with the great economic developments have influenced and will continue to have an extraordinarily positive influence, especially in the development of the electronic sales contract.

As an objective factor in the juridical-civil field of the use of the electronic contract, one should be categorized as the product and the role of electronic sales and purchases, where the parties as subjects should strictly refrain from the mutual agreement and signature. Based on many analyses of data on the use of electronic networks and software programs show that computer products, books, magazines, music and, to an increasing extent, services such as travel are among the most popular items to be purchased online but contracting remains a challenge for online purchases of electronics, furniture, real estate, etc

METHODS

The realization of this scientific work is supported by the qualitative method, analyzing certain theoretical and practical issues. Through this work, we will try to answer some questions: How? Why? and what? causes problems to the legal system in the civil-contractual field, and the implementation and functioning of electronic contracts. Focusing on the qualitative method of this study, we emphasize that it contains within it, the analytical, historical, empirical, descriptive, interpretive, and comparative methods.

The purpose of the above-mentioned methods is to reflect the evolution of the sales contract in electronic form as well as the software and technology equipment that influence its development by continuing with research to collect materials in both written and electronic formats as well as the collection of good practices. in the

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paper we will also analyze the sales contract in online-electronic form, being able to come to the identification of legal problems in the country and region.

The paper mainly tries to answer the questions:

What conditions and causes lead to the emergence of victimization and the development of criminal behavior in a society at a given time?

How to notify individuals and society about electronic counters

How many are victimized and how well do individuals and society protect their contractual rights

How much knowledge do individuals and society have about contractual and civil laws in protecting their rights?

To answer these questions, we have some data through qualitative research with 850 respondents surveyed in urban areas.

Survey and interview method in hybrid form, online, paper and pencil- Hybrid form, electronic questionnaire

RESULTS and CONCLUSIONS

In the framework of the operation of electronic commerce for the realization of the sales contract in electronic form, it turns out that our country Kosovo has filled many of the legal deficiencies that existed by the Directives of the European Union. And in this case, one of which is the law on electronic communications, which represents a special importance in terms of the contract of sale in electronic form, since it aims to protect consumers from damages or consequences that may cause an unregulated market.

Commercial contracts in Kosovo can be signed electronically and they are legally valid. Exceptionally, contracts cannot be signed electronically, which must have a special form according to the law, and this includes contracts that have the object of transactions related to immovable properties, which must be signed by a notary and authenticated. Contracts with consumers can be signed remotely and electronically but are subject to the fulfillment of certain legal requirements according to the Consumer Protection Law. Commercial contracts signed physically or electronically are not reliable documents in the sense of the Law on Enforcement Procedure, therefore, they are not suitable for enforcement. However, bills for services rendered or goods sold under commercial contracts are reliable documents and as such can be enforced if they contain the elements required by law and if they are regularly delivered to the debtor party. In conclusion, contracting parties to commercial contracts should not hesitate to sign the contracts electronically since legally, the will of the parties is recognized even if it is expressed electronically.

Based on the conclusions reached in this paper, the following recommendations would be an indication for further studies and research in the contractual field of electronic sales. Legally valid sales contracts in electronic form are a prerequisite for the further development of the law for electronic communication and for consumers who sign these contracts and as such legal certainty must be great with reference to the practical side and the resolution of possible conflicts. The legislator in the Republic of Kosovo should determine which court is competent for solving problems related to sales contracts in electronic form, since according to the law on electronic communication, such a fact is not defined.

In the Republic of Kosovo, the legislator must determine which court is competent for solving problems related to sales contracts in electronic form, since according to the law on electronic communication, such a fact is not defined. As far as the contractual party of electronic sales is concerned, we recommend to consumers, if the services are not provided and executed according to the provisions made in the contract, to seek compensation for damages, addressing you to the Basic Court according to the principle of territoriality and functionality, with a lawsuit with the object of pecuniary and non-pecuniary damage compensation.

The Importance of The Sales Contract in Electronic Form

Security in electronic transactions on the Internet is considered one of the most important issues in the digital world. Since 1996, both international and multinational organizations at the governmental and business level

have been trying to promote the use of electronic signatures in electronic commerce and define a common legal framework for electronic authentication on the Internet. The origin refers to the exact moment when UNCITRAL was established by the United Nations in 1996.

The Model Law on Electronic Commerce purports to enable and facilitate commerce conducted using electronic means, providing national legislators with a set of internationally accepted rules aimed at removing legal barriers and increasing legal predictability for electronic commerce.

Contracts concluded through electronic devices and software programs are called electronic-online contracts. The proposal and acceptance of the offer can be made through electronic means, which is their electronic form. In any case, for the electronic contract to be valid, it must fulfill all the requirements provided by the civil-contractual laws both at the national and international levels, for the general part of the contracts, the requirements provided for the concrete form of the contract, provided by the laws in force and the special requirements, provided in the laws for the protection of consumers in general.

Electronic signature by the Government, businesses but also citizens. Also, this law aims to reduce the potential problems of misuse during electronic transactions as well as address the security of IT systems. The law applies to any type of information provided in the form of a data message, except in the following cases:

Contracts that create or transfer rights to real estate, except rental rights;

Contracts that by law require the involvement of courts, public authorities, or professionals exercising public authority;

Contracts for the guarantee given and for collateral insurance given by persons acting for purposes outside their commercial, business, or profession;

Contracts regulated by the Family Law or the Law on Inheritance.

The Civil Legal Aspect of The Electronic Contract

It is important to emphasize the fact that the types of electronic commerce derive from the parties entering into a legal relationship that aims to transfer the ownership of a certain product or the provision of a certain service. Seen from this point of view, it turns out that, the types of electronic commerce are.

According to the law in Kosovo, if the person has been requested or allowed to provide the information in writing, that request will be considered fulfilled by the person if the person provides the information via data message, with the condition that:

At the time the information is provided, it is reasonable to expect that the information will be ready for access so that it is usable for subsequent reference;

If the information has been requested to be provided to the person or another person on his behalf, and the first-mentioned person requests that the information be provided according to the special requirements of information technology through the special type of data message, this request of the person be completed;

If the information has been requested to be given to the person, then the person to whom the information has been requested or allowed to be given, allows the information to be given through the data message; and 4. If the information has been requested to be given to the person or another person on his behalf, and the first-mentioned person requests that a special action be taken by verifying the information that is received, this person's request shall be fulfilled.

For providing information about the electronic contract according to the legislation in force including, but not limited to; making the application; making or filing a complaint; giving, sending or serving the notice; return filing; making the request; making the statement; presenting or issuing the certificate; submission of objection; and speech making.

If a person's signature is required in any legal agreement contract in Kosovo, such requirement is considered fulfilled if such signature is an electronic signature and such signature will not deny legal effectiveness based on the fact that it is in electronic form.

If the electronic signature is in the form of an advanced electronic signature that is based on a qualified certificate and is created with secure signature creation equipment, it will be considered the signer's signature for all intents and purposes of the law.

We will start from the premise that commercial contracts must legally be in written form (physical "hardcopy" or electronic contract). So, it is important to draw up a contract, a written document. The law provides that "When the conclusion of the contract requires the compilation of the document, the contract is concluded when the document is signed by all the persons bound by it"

Contracts are signed to prove or show the will of the contracting parties, that they agree with what is written in the contract. The will of the contracting parties to conclude the contract is expressed in the form of a signature and this signature can be presented on paper or other forms of identification. "The will to conclude the contract can be expressed with words, with ordinary signs or with any other behavior from which it can be safely concluded about its existence", (Article 18 of the LMD). So, the commercial contract can also be signed through electronic mail, in which the contractor will write e.g. that he agrees with the terms and obligations of the contract.

Contracts that cannot be signed electronically Exceptionally, some contracts cannot be signed electronically as a special form of signature is required for their validity. The written form is also replaced by declarations by electronic means if the law does not expressly stipulate otherwise, as paragraph 5 of article 57 of the LMD provides.

Contracts that are not Signed Electronically

Contracts that must be signed specially are contracts that must be notarized to complete their formal validity. Mandatory notarial processing applies to contracts with which ownership or other real rights over real estate are transferred or acquired; establishing a mortgage on real estate; marriage contracts and agreements related to property relations between spouses or persons living in an extramarital union; and contracts aimed at the establishment of joint bodies and business companies as well as the establishment and amendment of the statutes of such bodies and companies (Article 30 of the Law on Notary). In other cases, the contracting parties also "can agree that the special form is a condition for the validity of their contract" (Article 54 of the LMD). In these cases, "if the contracting parties have provided for the specified form only to provide evidence for the conclusion of their contract, or to achieve something else, the contract is concluded when consent has been reached for its content, while for the contractor has at the same time the obligation to give the contract the prescribed form".

Signature and Digital Seals

In the development of electronic technology and communications, Kosovo had serious problems with the lack of legislation for digital signatures and seals, and now it has this law.

In an electronic process, EU countries, but also developed countries, ensure that documents are not printed, but that they are stored in digital format, which ensures that they are original and not disputed, while the placement of seals and signatures digitally is subject to licensing and security mechanisms.

The construction of such a system has eliminated printed documents and the need for signatures and traditional seals which are used on a massive scale in Kosovo. For years, Kosovo has intended to build legislation that will regulate this field, enabling physical documents to be avoided and the need to produce them. The data show that companies in the country have to produce hundreds of documents to justify workers' vacations, or to conclude contracts, all of which must be saved in physical copies on paper. The implementation of the stamp and digital signature creates the possibility that these documents are all stored in electronic form.

Even communication and relationships between businesses are currently carried out in traditional formats, creating huge barriers due to the cost of postage and the time required for sending letters. Companies that sign contracts with the EU must send them by mail, as currently the digital signatures of the country are not recognized by the systems of the EU countries. The approach is the same in public institutions, where most of

the communications, especially those in the justice system, are carried out in printed formats, stamped and signed in the traditional form.

The law regulates issues such as Electronic seals and electronic signatures, foreseeing control mechanisms and licensing mechanisms of companies that will provide license services for these services.

The system will be organized within specialized companies that will be registered to perform this activity, while their services will be performed against a fee.

Through this law in Kosovo, identification methods and electronic identification schemes are regulated, conditions of use of electronic signature, electronic seal, electronic time stamp and devices for their creation, registered electronic services for judicial procedures, conditions of issuance and use of qualified certificates for service certification and website authentication; trusted services in electronic transactions and electronic documents.

It is also foreseen the regulation of trusted services in electronic transactions and electronic documents. The law in question is intended to apply to electronic identification schemes and to trusted service providers in electronic transactions.

While it will not be applied to the verification of the validity of contracts or other legal, procedural obligations that are regulated by other laws in force.

The electronic identification and authentication process is intended to be initiated only at the request of the legal entity or natural person who is the subject of identification.

In cases where a public or private institution, for a service it offers on the Internet, requires electronic identification to access this service, I can use the means of electronic identification issued in an EU Member State for cross-border authentication.

The responsibility for electronic identification is also foreseen, thus, the electronic identification service provider who issues the electronic identification tool is responsible for the damage caused. The responsibility for trusted electronic services is regulated in the same way.

In the framework of cross-border cooperation in the field of trusted services, the Ministry notifies the competent authorities of the countries that are affected by the risk of security or the loss of integrity in the provision of the trusted service or personal data.

The public institution can become a provider of trusted services if it meets all the requirements for the provision of services provided by this law and by its work regulations.

A chapter of this law has also regulated the electronic signature.

Electronic signature means the set of data in electronic form, which are attached or logically connected to other data in electronic form and which are used by the signatory to sign. An electronic signature is valid and admissible and is not denied validity or evidentiary weight merely because it is in electronic form or does not meet the requirements for a qualified electronic signature. A qualified electronic signature has the same legal effect as a handwritten signature.

Electronic Seal

An electronic seal means data in electronic form, which is attached or logically connected to other data in electronic form to ensure the origin and integrity of these data.

Validation of an electronic signature or electronic seal means the process of verifying and confirming the validity of the data used to validate the validity of an electronic signature or electronic seal.

Electronic Document

Electronic document means information stored in electronic form which is composed of letters, numbers, symbols, graphics, visual and audio-visual recordings.

An electronic document is not denied legal effect and admissibility as evidence in legal proceedings solely because it is in electronic form.

Penal Provisions

The law provides that the inspection official for the violations found with this law imposes a fine for the misdemeanor.

How Many of The Residents of Urban Areas In Kosovo Know Electronic-Online Contracts

The method used is that of surveying and interviewing a total of 850 respondents, of which 450 are male and 400 are female, employed 65%, and unemployed 35%, we have divided them from employed persons working in state institutions 30%, working in the private sector 42%, self-employment 28%. The purpose of the research is how many residents of urban areas in the Republic of Kosovo know electronic contracts, how much they have the opportunity to sign electronic contracts, how much they have been victims of any online fraud. This research used the study method of self-accusation and victimization according to Van der Werff.

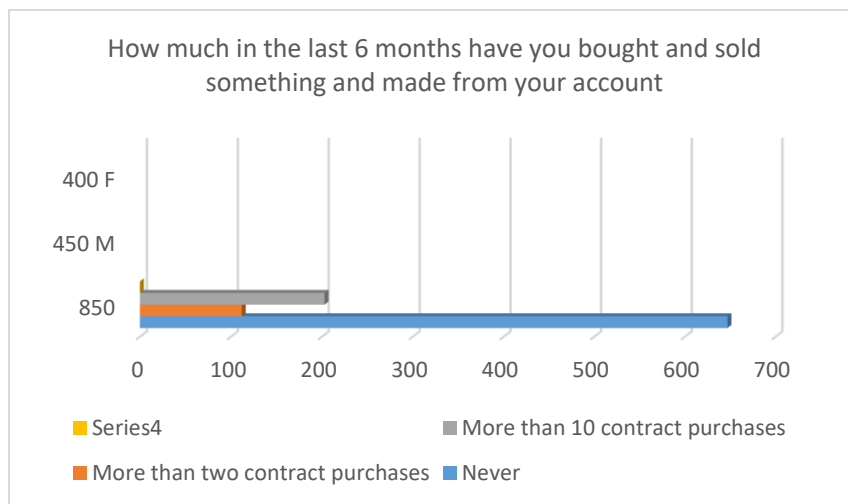


Fig.1. How much in the last 6 months have you bought and sold something and made from your account.

In figure 1, we see that from the respondents we have an interesting answer because most of them have access to online shopping and knowledge of the site and reach the product to possess it according to the agreements of the parties through electronic addresses, emails, social networks, messengers and phone calls.

Tab.1 How much in the last 6 months have you bought and sold something and made from your account

Respondent	850	450 M	400 F
Never	130		
More than two contract purchases	458		
More than 10 contract purchases	262		

In the next question, how many of these have had problems or disagreements during the purchase of goods through online contracts, we have a result as a merchant of the next question that people do not know how to protect themselves from fraudsters or the non-fulfillment of the contract as they do not know which courts they are addressed, they do not know that there are some laws that protect them as consumers, etc.

Out of a total of 850 respondents, 647 people or 67% have indicated that they have never been cheated, 112 or 12% of people who have bought more than 2 times have been victimized and those who have bought more than once 203 people 21%.

Tab.2. How many times in the last 6 months have you had problems and disagreements when purchasing goods with online contracts		
Respondent	850	450 M
Never	647	
More than two contract purchases	112	
More than 10 contract purchases	203	

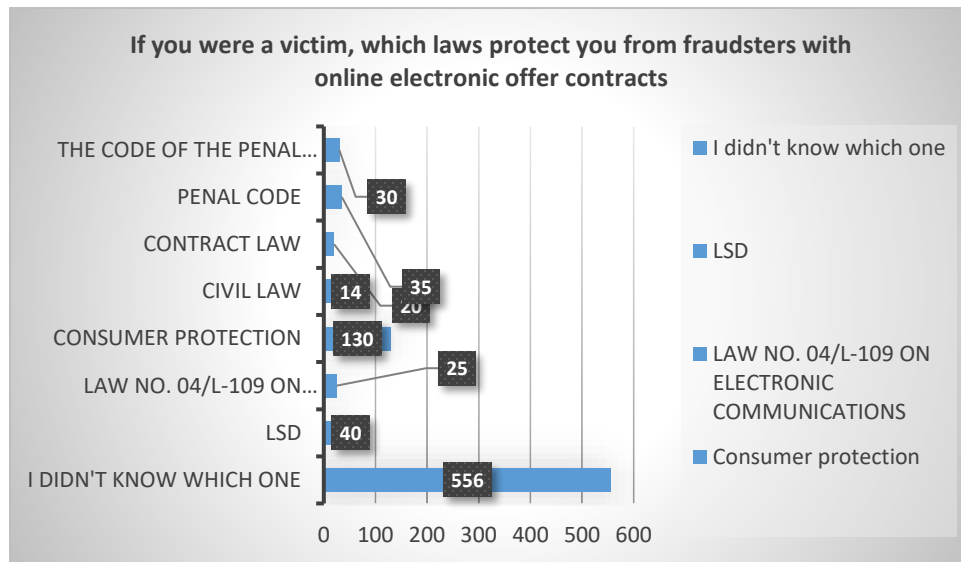


Fig.2. If you were a victim, which laws protect you from fraudsters with online electronic offer contracts

According to figure 2, we see that most of the respondents have no knowledge about the laws that protect them from possible fraud and abuse in electronic-online contracts.

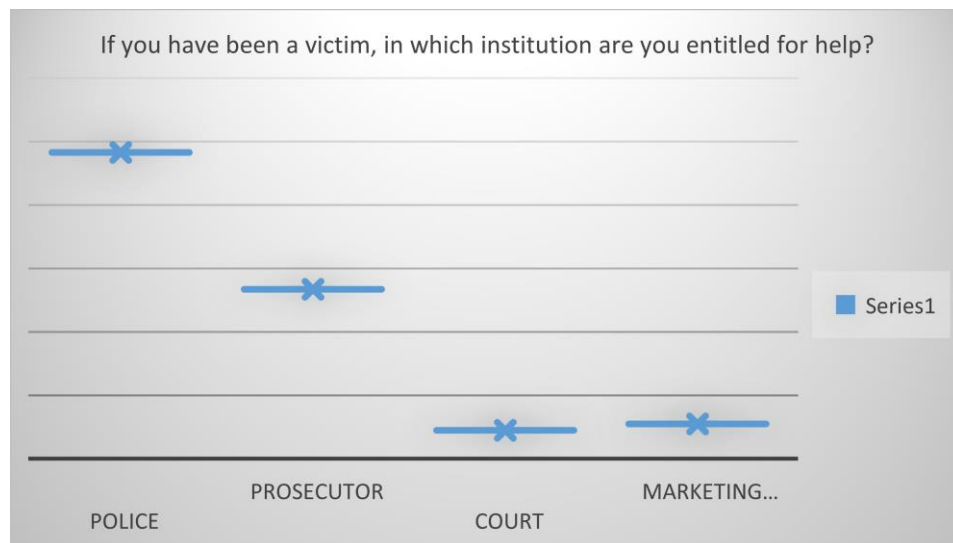


Fig.3 If you have been a victim, in which institution are you entitled for help?

If you have been a victim, in which institution are you entitled for help?	
Police	483
Prosecutor	267
Court	45

In the table and figure 3, we see that the majority of those who have been victims of online fraud turn to the police as a factor of lack of adequate knowledge of the laws in force for consumer protection, LSD, for electronic communication, so about 57% of the respondents answered they go to the police, then about 31% to the prosecutor's office and only 5% to the courts, where in this case we will submit it to the recommendation as a concern because the citizens do not know which courts to go to and 7% go to marketing with complaints from whom they got the information.

Legal-Civil Issues Of Electronic Contracts

The form of contracts known as online or digital refers to the agreements of the parties concluded between them through an electronic form, not applying the classical form of signature present on paper, but this challenges the agreement between the contracting parties as a formal legal proof if there is no great success, the previous agreement does not apply. Seeing the dynamics of developments in the world, this form of contract is more present and more accessible in businesses, but it also has some shortcomings and advantages such as:

Disadvantages of the Electronic Contract

The lack is security and its use in dispute disputes as real evidence due to electronic security or interference in it.

Proving the Contract As Authentic

In this part, we are dealing with the control and auditing of the accuracy and authenticity of the contract, to overcome this challenge, it must be an adequate contracting program that has the reliability and authentic authenticity.

Legal Approval or Acceptance

First, there must be a legal framework and approval for the acceptance of the electronic contract, and then its implementation must begin in the countries, regions and with the entities mentioned in the laws in force.

The Success Of The Electronic Contract

This form of agreement between the parties, i.e. contracting between them in electronic form, serves the parties by enabling the dynamics of the development of businesses or obligations between them, lower cost and faster time frame.

in electronic contracts, we must take into account the form of auditing, the form of tax payment, the form of its presentation and documentation before the law-enforceable and executive bodies for recognition, implementation, implementation, verification and achievement of success according to legislative, economic principles, flexible, reliable.

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