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Pregledni rad

THE ESSENCE OF FUNDAMENTAL BREACH OF CONTRACT – EXPLORING SALES LEGISLATION IN THE SOUTHEAST EUROPEAN CONTEXT

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Abstract:

This paper examines the concept of the fundamental breach of contract and its application within the contract laws of Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, and Serbia, with a particular focus on sales contracts. It highlights the role of the *United Nations Convention on Contracts for the International Sale of Goods* (CISG) as a foundational framework for understanding fundamental breaches and their implications for international trade. While regional legislation does not explicitly reference the term "fundamental breach," this study demonstrates how the concept is implicitly recognized and addressed within national laws governing obligations. A comparative analysis of these legal systems reveals both similarities and divergences in the treatment of breaches, shedding light on shared practices and region-specific variations. Notably, although regional laws stress the importance of timely notification and define conditions for contract termination, they lack precise criteria for identifying fundamental breaches. This paper advocates for amendments to national civil codes to incorporate clearer definitions, aligning domestic legislation with international standards. Such reforms could enhance legal harmonization, strengthen adherence to modern international trade practices, and facilitate the integration of Southeast European countries into the global market.
Keywords: CISG, fundamental breach, contract law, sales contracts, international trade, comparative analysis, legal frameworks, legal coherence.

KONCEPT SUŠTINSKE POVREDE UGOVORA – PRISTUP UGOVORNOM PRAVU U KONTEKSTU ZEMALJA JUGOISTOČNE EVROPE

Apstrakt:

Ovaj rad se bavi konceptom suštinske povrede ugovora i njegovim implikacijama u ugovornom pravu u Bosni i Hercegovini, Hrvatskoj, Crnoj Gori, Severnoj Makedoniji i Srbiji, posebno u kontekstu kupoprodajnih ugovora. Rad istražuje kako Bečka konvencija o ugovorima o međunarodnoj prodaji robe (CISG) služi kao temeljni okvir za razumevanje osnovnih povreda i njihovih posledica u međunarodnoj trgovini. Uprkos nepostojanju eksplicitne terminologije u regionalnom zakonodavstvu, rad objašnjava kako se suštinske povrede implicitno prepoznaju i regulišu u okviru nacionalnih zakona o obligacionim odnosima. Kroz uporednu analizu pravnih okvira, povlače se paralele u rešavanju kršenja, bacajući svetlo na zajedništva i razlike u regionalnim pristupima. Naročito, dok regionalni zakon naglašava pravovremeno obaveštavanje i ocrtava scenarije za raskid, nedostaje mu precizna klasifikacija osnovnih povreda. U radu se predlažu amandmani u nastojanju da se izradi nacionalni građanski zakonik kako bi se dale jasnije definicije i uskladile sa međunarodnim standardima. Prihvatanjem koncepta fundamentalnog kršenja, zemlje jugoistočne Evrope mogu da podstiču pravnu koherentnost sa savremenim međunarodnim trgovinskim zakonima i olakšaju lakšu integraciju u globalno tržište.

Ključne reči: Bečka konvencija, fundamentalna povreda, ugovorno pravo, kupoprodajni ugovori, međunarodna trgovina, uporedna analiza, pravni okviri, pravna koherentnost.

INTRODUCTION

In commercial transactions (Berman & Kaufman, 1978) and throughout the legal landscape (Farnsworth, 1967), contracts stand as the bedrock of business interactions, offering a structured framework for parties to uphold their commitments. Yet, amidst the intricate fabric of contract law, the notion of fundamental breach arises as a pivotal and frequently debated concept (Meyer, 1964), capable of significantly reshaping the dynamics of contractual relationships. (Ferrari, 2005)

Consider a scenario in which a Serbian technology firm eagerly anticipates the delivery of innovative software from an international corporation. Promised groundbreaking advancements, the Serbian company restructures its operations in anticipation. However, unforeseen challenges arise—prolonged delays, significant technical malfunctions, and compromised software quality. These disruptions not only threaten delivery schedules but also undermine the company's overall functionality, leaving it in a precarious position. With ambiguous provisions on contract termination and limited remedies to sustain operations, the company faces considerable uncertainty until the promised software is provided. This scenario illustrates the complexities inherent in the concept of a fundamental breach of contract, highlighting its critical implications within sales agreements (Kok &

Turner, 2024) and the broader context of contract law in Southeast Europe (Vassileva, 2016).

The following chapters examine various dimensions of the concept's evolution and its regulation within the legal frameworks of Bosnia and Herzegovina, Croatia, North Macedonia, Montenegro, and Serbia. A comparative analysis incorporates international sources, most notably the 1980 *United Nations Convention on Contracts for the International Sale of Goods* (CISG). Given the authors' background, the analysis often begins with Macedonian and Serbian legislation, offering a foundation for exploring the developmental trajectory of contract law in the context of contemporary and comparative legal frameworks in Southeast Europe. Particular attention is given to post-Yugoslav legal systems, which exhibit notable similarities and a shared legal heritage.

This analysis seeks to provide a comprehensive yet concise overview of the current legal landscape and the desired future scenario, with the objective of identifying optimal solutions for integration into the draft civil codes of the region. Recent developments, including proposed amendments to relevant Laws on Obligations aimed at their transformation into Civil Codes (Bubalo, 2023), highlight an ongoing trend across the region, where countries have either recently revised or are in the process of updating their legal frameworks. Accordingly, the focus is on a detailed examination of the requirements for parties engaged in legal transactions (Zhu, 2022), particularly within established business relationships designed to serve mutual interests in commercial operations (De Barros, 2017). The analysis prioritizes understanding these requirements over a critical evaluation of existing legislation.

FUNDAMENTAL BREACH OF CONTRACT

The notion of a "fundamental breach of contract" refers to a significant violation of contractual duties that compromises the essence of the contractual relationship (Spaic, 2014). When viewed from an international perspective (Fisher, 1997), the Vienna Convention stands out as one of the most successful instruments for unifying international contracts for the sale of goods, representing a cornerstone of international trade. Its success is evident in the fact that as of 2023 (CISG Contracting States, 2024), 97 countries have signed and ratified it, rendering the convention nearly universally accepted (Koch, 1998), although many authors would disagree (Grebler, 2007). Central to this convention is the concept of a "fundamental breach of contract" (Kocev, 2018), specifically detailed in Article 25 of the Vienna Convention:

> "A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result." (United Nations Convention on the International Sale of Goods, 1980).

Previous efforts by the international community, particularly Article 10 of the Hague Uniform Law on the International Sale of Personal Property of 1964 (ULIS-Convention Relating to a Uniform Law on the International Sale of Goods, 1964), have indeed addressed the concept, but the Vienna Convention marks the first comprehensive effort to provide a definition that encompasses both subjective and objective perceptions (Lorenz, 1998). Consequently, this convention represents a significant evolution in the seriousness with which it addresses the concept of material breach (Stone, 2024), granting the injured party the option to promptly terminate the contract without necessitating the pursuit of alternative legal remedies, provided there is a substantial violation of any contractual obligation by the other party (Chen, 2021).

In transitioning from a global context to a regional framework, the Laws on Obligations in Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, and Serbia notably omit explicit reference to the term "fundamental breach." Despite this omission, these laws still, to some extent, recognize and regulate the failure to fulfill essential contractual obligations in certain respects. While some scholars caution against interpreting "fundamental breach" solely through the lens of domestic law or established legal principles (Lazic, Kröll, Mistelis, Perales Viscasillas, & Rogers, 2011; Graffi, 2003), a comparative analysis of regional legislation is nonetheless a crucial foundational step. Therefore, this paper advocates for a dual approach, which first examines regional legislative nuances before broadening the analysis to consider "fundamental breach" within a more expansive legal framework (Illia, 2024).

BREACH OF CONTRACT IN REGIONAL LEGISLATION

The subject matter within Macedonian legislation is regulated in the “Law on Obligations”, particularly in “Chapter 3”, which addresses contract termination due to non-performance. The same principle is followed by the Croatian and Serbian legislation with an identical structure and content of the articles. Relevant provisions encompass Articles 113 to 121, alongside Articles 251 and 252. Generally, in bilateral contracts, when one party defaults on its obligation, the other party, unless otherwise stipulated, may:

1) Request the fulfillment of obligations or
2) Terminate the contract with a straightforward declaration under the conditions outlined in the following articles. If termination does not occur in accordance with the law, the right to seek compensation for damages is preserved in all cases

The same clauses can be located in “Article 119 of the Law on Obligations of the Republic of Montenegro” (Montenegro's Law on Obligations, 2023), as well as in “Article 124 of the Law on Obligations of the Republic of Bosnia & Herzegovina” (Bosnia & Herzegovina's Law on Obligations, 2023), the “Law on Obligations of the Republic of Croatia” (Croatia's Law on Obligations, 2023), and the “Law on Obligations of the Republic of Serbia” (Serbia's Law on Obligations, 2020).

The following article of Macedonian law specifies that if fulfilling an obligation within a specified period is a critical aspect of the contract, and one party fails to

meet this obligation within the prescribed timeframe, the contract is automatically terminated in accordance with the law (Law on Obligations, Article 114, para. 1). Nevertheless, the creditor retains the right to maintain the contract's validity by promptly notifying the debtor, after the expiration of the term, of the demand for fulfillment (Law on Obligations, Article 114, para. 2). In cases where one party requests fulfillment but does not receive it within a reasonable period, that party reserves the right to declare the contract terminated (Law on Obligations, Article 114, para. 3). These provisions apply when the contracting parties have explicitly provided for termination in the event of non-fulfillment within the stipulated period, as well as when timely fulfillment is inherent to the contract's nature (Law on Obligations, Article 114, para. 4)

Similar to Article 113, the provisions in Bosnian, Croatian, Montenegrin and Serbian legislation regarding this article are entirely identical. This uniformity in structure and content across the five states extends to several scenarios: when the fulfillment of a term is not a critical aspect of the contract, in cases of termination without setting an additional term, in instances of premature contract termination, and regarding termination accompanied by subsequent obligations. The same consistency applies to provisions concerning notification duties, situations where termination of the contract is not feasible, and the effects of termination. To streamline the analysis and provide a clearer overview, this section focuses on the content of only the first two relevant articles before addressing the provisions on compensation. This approach is due to regional legislation explicitly recognizing a fundamental breach only when fulfilling an obligation within a specified period is a crucial aspect of the contract. In all other provisions, as will be discussed, the language used may not fully align with the conditions outlined in Article 25 of the Vienna Convention.

In summary, the laws of all five countries are consistent in recognizing "fundamental breach" only in cases where time is of the essence, specifically when the breach pertains to failure to meet time requirements. In other contexts, however, the concept of fundamental breach is not addressed. Moving forward, we will examine how this limited recognition influences the approach to damages.

PROVISIONS FOR DAMAGES

Regarding the general rules for compensation of damages, Macedonian legislation stipulates the consequences of both fulfillment and non-fulfillment of obligations (Article 251), as well as instances where the debtor is absolved of responsibility (Article 252). Article 251 of the Law on Obligations grants the creditor in a binding relationship the authority to demand fulfillment from the debtor, who is obligated to conscientiously fulfill the obligation in its entirety (Article 251 paragraph 1). In cases where the debtor fails to fulfill or delays the obligation, the creditor reserves the right to seek compensation for any resulting damages. Furthermore, if the creditor grants the debtor an additional deadline for fulfillment and there is a delay, the debtor remains liable for damages caused by the delay. The debtor also bears responsibility for the partial or complete impossibility of fulfillment, even if the impossibility arose after a delay for which the debtor is accountable and even if the debtor did not conceal the impossibility. The debtor is absolved of liability for

damages if they can demonstrate that the failure would accidentally occur even if they would have fulfilled the obligation on time.

Conversely, "Article 252 outlines the concept of *force majeure"*, stating that the debtor is exempt from liability for damages if they can prove that their inability to fulfill the obligation or their delay in fulfilling it, is due to an extraordinary event occurring after the contract's conclusion, which they could neither prevent, avoid, nor mitigate. Similar to violations of contracts in Macedonian and comparable legislation, "Articles 251 and 252 of the Law on Obligations of the Republic of Macedonia" have corresponding counterparts in "Articles 262 and 263 of the Law on Obligations of Bosnia and Herzegovina, Croatia, and Serbia", as well as in "Articles 269 and 270 of the Law on Obligations of Montenegro".

From these two articles, it is clear that the concept of "fundamental breach", except when timely fulfillment is inherent to the contract, is not explicitly articulated in its original form within regional legislation. However, it is evident that the overarching principles governing breaches and compensation regulations, as manifested in national legal frameworks, elucidate the concept of "fundamental breach" as delineated in the Vienna Convention through eight distinct articles, aiming to comprehensively cover various scenarios. This alignment is not surprising, considering the Socialist Federal Republic of Yugoslavia's support for the Convention from its inception, as it was a signatory country on April 11, 1980, and later ratified it on March 27, 1985. (UNTC)

Subsequently, Bosnia and Herzegovina acceded to the convention on January 12, 1994, Croatia on June 8, 1998, Serbia on March 12, 2001, Montenegro on October 23, 2006, and North Macedonia on November 22, 2006. Despite this, the specific articles never define the concept of „fundamental breach" explicitly, nor do they specify what would constitute a „fundamental breach", except for Article 114 of the Macedonian law, Article 120 of the Montenegrin law, and Article 125 of the Bosnian, Croatian and Serbian laws, which, as previously noted, restrictively interprets the term only in relation to timely fulfillment potentially being an essential aspect of the contract (Eisenberg, 2000).

Given the significance of contract termination as a critical legal recourse for parties (Chen-Wishart, 2012), especially in cases of fundamental breach, it is essential to conduct a comprehensive analysis of this concept and its treatment within regional contract law, particularly in the context of sales contracts, before drawing any conclusions (Galev & Anastasovska Dabović, 2021).

SALES CONTRACTS IN REGIONAL LEGISLATIONS

In a sales contract, the seller is obligated to transfer the sold item to the buyer, thereby conferring ownership rights to the buyer and requiring the buyer to remit payment to the seller (Article 442, paragraph 1). Similarly, in the sale of a right, the seller agrees to transfer the right to the buyer, enabling the exercise of that right, which may necessitate the delivery of an object. This definition aligns with Article 454 of the Bosnian, Croatian, and Serbian Laws on Obligations, and Article 463 of the Montenegrin Law on Obligations.

The relevant articles of the sales contract, central to the focus of this paper, begin with the section addressing material deficiencies, as outlined in "Article 466 of the

Law on Obligations of North Macedonia" and from "Article 478 onwards" in the other four legislations. This regulation initially enumerates the material defects for which the seller bears responsibility, followed by delineating scenarios absolving the seller of such responsibility. Subsequently, it covers aspects such as the overview of the object, visible and hidden defects, deadlines for repair or replacement, and provisions regarding the notification of deficiencies.

In the section addressing the buyer's rights, regional legislation provides detailed provisions concerning fulfillment, price reduction, contract termination, compensation for damages, non-fulfillment within a reasonable period, conditions for contract termination by the buyer, and non-fulfillment within an additional deadline. It also covers scenarios such as partial deficiencies, delivery of a larger quantity by the seller, determination of a single price for multiple items, loss of termination rights due to deficiencies, preservation of other rights, termination actions, price reduction, gradual discovery of deficiencies, and loss of rights. Articles 476 to 488 of the Macedonian Law on Obligatory Relations mirror identical regulations found in Articles 488 to 500 of the Bosnian, Croatian, and Serbian Laws on Obligations, as well as Articles 496 to 508 of the Montenegrin Law on Obligations. The following chapter will primarily focus on the concept of "fundamental breach," with a comprehensive examination of the relevant articles from Macedonian, Croatian, and Serbian legislation (Andrews, 2015).

FUNDAMENTAL BREACH IN INTERNATIONAL LAW

Considering the Vienna Convention's absence of further explanation or elaboration on the concept of "fundamental breach", ensuring uniform interpretation and application within a specific context, such as the national legal frameworks in the region, requires dissecting the concept into several elements (Honnold, 1995). Drawing from the influence of prominent authors in this field, including Kroll, Mistelis, Viscasillas, Schlechtriem & Schwenzer, the breakdown comprises: breach of contractual obligation; substantial deprivation of expectations; and foreseeability or predictability of the deprivation (Kroll, Mistelis, & Viscasillas, 2015). A breach is deemed fundamental if all three elements are met. It's noteworthy that, unlike an 'ordinary' breach, a "fundamental breach" entitles the aggrieved party to terminate the contract unilaterally (Kroll et al.). Typically, legal remedies for ordinary breaches entail "compensation for damages, price reduction", etc., but do not encompass unilateral termination of the contract. Moreover, it's important to acknowledge the differences between continental legal systems (Kocev, 2018), where contract termination is exceptional, and Anglo-Saxon legal systems, where any deficiency provides grounds for terminating the contractual relationship.

1) Breach of contractual obligation

Breach of obligation constitutes a fundamental prerequisite for the occurrence of a fundamental breach, as the concept represents a specialized or qualified form of breach applicable to any contractual obligation. The distinction lies in the severity of available remedies (Vukadinovic, 2012), notably including contract termination, which serves as the ultimate legal recourse when other methods of rectifying the fractured contractual relationship prove ineffective (Pauly, 2000).

The breach in question may either be explicitly provided for in the Convention (Basedow, 2005), such as the delivery of goods of a specified quality, manner, and location, payment of the price, and acceptance of goods, or it may be agreed upon between the parties (Ferrari, 2006). There is no exhaustive list of what may be covered by the agreement, but examples include obligations to: inform and advise, maintain trade secrets, respect each other's trademarks when producing goods, and obligations inferred from the parties' established practices, even if not expressly stated in the contract if it follows from their established practice (Vienna Convention, Article 9.1; Kotsev, 2018). Consequently, any violation can be construed as fundamental if it meets the conditions outlined in Article 25 of the Convention (Zdravkovic, 2021), with particular importance placed on the following two elements which are to be analyzed (Jovičić, 2018).

2) Substantial deprivation of expectations

The second element indicates that to establish the existence of a fundamental breach (Zhao, 2024), the objective condition must first be met: the violation must essentially deprive the other party of what it justifiably expected from the contract (Council, 2024). In this context, the breach must demonstrate significant seriousness, considering not just the amount of damage caused but also the importance of the contract and the specific obligation to the other party (Fischer, 2014). The assessment of expectations by the other party hinges on the particular contract circumstances, customary practices, and the provisions of the Vienna Convention (Zdravkovic, 2021).

In this regard, it is important to note that while the English version of Article 25 of the Convention uses the term "detriment," which is translated as "damage" in the regional languages, the distinction between these terms in English is not captured in the translations. In the regional versions, both "detriment" and "damage" are equated and translated as "damage." Consequently, the concept of detriment in Article 25 within the regional context should be interpreted broadly and not equated with the concept of damage in Article 74 of the Convention. The disparity between these two concepts also arises from the fact that parties retain the right to seek compensation for damages under Article 74 even if the breach is not substantial (Ishida, 2020). While the convention does not offer explicit definitions for these terms, the concept of “damage” in Article 25 is broader, encompassing not only current or future monetary losses but also all other adverse consequences that may arise for the injured party, including loss of customers, reputation, and/or resale opportunities (Lazic, Kröll, Mistelis, Perales Viscasillas, & Rogers, 2011; Graffi, 2003).

Consequently, determining whether the “damage” is substantial must be based on the specific circumstances of each case. This includes factors such as the monetary value of the contract, the material damage caused by the breach, and the extent to which the breach disrupts the injured party's other activities. This suggests that the standard for a "fundamental breach" is quite high. For a substantial deprivation to occur, the violation must undermine the contract's purpose to such an extent that the injured party loses any interest in its continuation. The injured party should perceive the fulfillment of the breached obligation as so critical and essential that, had they

known of the potential for such a breach, they would not have entered into the contract at all.

It is apparent that contractual expectations involve the “subjective perceptions” of the injured party. Nevertheless, it is crucial to acknowledge that these expectations stem from the provisions of the contract, which should be “objectively interpreted”, as contract interpretation primarily falls within this domain. The „burden of proof“ for establishing substantial deprivation rests on the party claiming to be substantially deprived. Once the existence of substantial “deprivation is established”, the burden of proof shifts to the party that committed the violation, which must demonstrate that the substantial deprivation, if it exists, was not foreseeable. (Kotsev, 2018).

3) Predictability of the deprivation

Article 25 of the Convention introduces an additional condition for substantial “deprivation of expectations,” stipulating that the party committing the fundamental breach must have foreseen that such a breach would result in substantial deprivation of the other party's expectations. This requirement is subjective, as it necessitates an assessment of whether the specific party who committed the violation knew that their actions would lead to substantial deprivation. However, Article 25 of the Convention objectifies this situation by introducing the criterion of the “reasonable person” (Article 25 of the Vienna Convention, 1980). Even if it cannot be proven that a specific party foresaw substantial deprivation, a “fundamental breach” still occurs if such deprivation could have been anticipated by a reasonable person with similar characteristics in the same circumstances (Zdravkovic, 2021).

If the party responsible for the violation did not anticipate that “their actions would significantly deprive the other party of their expectations”, and such anticipation could not reasonably be expected from “a person with similar characteristics in the same circumstances”, the injured party is not entitled to terminate the contract. The element of "unforeseeability" serves as a remedy that allows the breaching party to avoid contract termination. The lack of foreseeability on the part of the breaching party for the substantial deprivation justifies their actions and, if proven, prevents the injured party from terminating the contract. In assessing subjective foreseeability, factors such as the breaching party's experience, personal status, organizational abilities, sector-specific practices, and trade experiences will be taken into account (Cui & Guo, 2024).

In the context of the objective test, a "reasonable trader with the same characteristics" refers to a trader engaging in the same trade activity and operating within the same trade sector. "Same circumstances" pertain to the market characteristics in which the merchant operates, irrespective of whether it's a regional or global market. Concerning the fulfillment of conditions, it's generally accepted that only the objective test needs to be satisfied, as it offers clearer and more easily determinable parameters for assessing foreseeability.

REGIONAL LAWS AND THE CONCEPT OF FUNDAMENTAL BREACH IN RELATION TO SALES CONTRACTS

Delivering the goods to the buyer stands out as the seller's most prominent obligation in both international and national commercial sales. In practice, the majority of disputes revolve around the breach of this obligation (CLOUT cases 90,

136, 130, 468, 578, 810, 983). Such breaches manifest in three forms: non-delivery of goods, late delivery of goods, and delivery of non-conforming goods. In the first two cases, the quality of the goods is not scrutinized; rather, only the timing of delivery is considered. Nevertheless, in the third scenario, Article 35 of the Vienna Convention outlines criteria for non-conformity. These include goods that are unsuitable for their usual purpose, unsuitable for a specific purpose communicated to the seller, lack qualities promised by the seller via sample or model, or are not packaged or protected in customary fashion (Article 35 paragraph 2 of the Vienna Convention). For the purposes of this paper, the examination will focus solely on theoretical implications regarding regional legislation and its conformity with "the concept of fundamental violation".

As previously noted, the legislations of Bosnia, Croatia, Montenegro, North Macedonia, and Serbia acknowledge "the concept of fundamental breach" only when timely fulfillment is intrinsic to the contract, permitting unilateral termination of the contract by law along with the entitlement to compensation for damages. Aside from cases where the contract is terminated by law, the regional laws on obligations afford parties the liberty to terminate the contract if it becomes evident from "the other party's" behavior that they will not fulfill their obligations or when it is apparent that one party will not fulfill their agreement. Regional legislation explicitly stipulates that the contract cannot be terminated due to the non-fulfillment of an insignificant part of the obligation, meaning that a fundamental breach cannot stem from the non-fulfillment of such minor obligations. Regardless, the party terminating the contract due to the debtor's non-fulfillment must promptly notify the other party. The consequences for the right to compensation for damages directly stem from the fulfillment or non-fulfillment of obligations in this regard (Beheshti, 2024).

In relation to the contract of sale, regional legislation specifically excludes the possibility of a fundamental breach concerning defects for which the seller is not liable. The language of the article indicates that the seller is not responsible for defects that the buyer was aware of at the time of the contract's formation or those that the buyer could have reasonably noticed. It is presumed that the buyer could not have been unaware of defects that "a diligent person with average knowledge and experience in the same field could easily identify during a standard inspection of the goods." As a result, a fundamental breach of the sales contract may occur due to defects that the buyer could have readily detected, particularly if the buyer indicated the absence of defects or specified particular qualities or features of the item, as well as in cases of hidden defects. If, after receiving the goods, the buyer discovers a hidden defect—one that was not visible during the customary inspection at the time of delivery—the buyer is required to inform the seller of the defect within eight days of its discovery. In the case of a commercial contract, swift action is necessary, or the buyer risks losing the right to make a claim. This is especially relevant since the seller is not responsible for defects that appear more than six months after delivery unless the contract specifies a longer period (Beheshti, 2024).

Hence, according to regional laws, albeit not explicitly, there is recognition of the notion of a "fundamental breach" in the context of a sales contract (Kocev, 2020).

However, it intricately defines “the conditions under which such a breach may occur”, outlining “the kinds of violations that justify the termination of the sales contract and subsequent claims for compensation”. Prior to initiating the contract termination process, it is imperative for one of the parties to notify the other party „in a timely and orderly manner“. After the notification phase concludes, the buyer may only cancel the contract if they have given the seller a fair opportunity beforehand „to fulfill their obligations“ within an extended reasonable timeframe. Additionally, the buyer retains the right to terminate the contract without granting an additional term if the seller, subsequent to being notified of the deficiencies, explicitly communicates their refusal to fulfill the contract, or if it becomes evident from the circumstances of the specific case that the seller will be unable to fulfill the contract even within the additional timeframe.

Furthermore, regional legislation explicitly outlines instances where “the right to terminate the contract” due to deficiencies is forfeited, thereby clarifying situations where a “fundamental breach” cannot occur (Nwafor, 2013). Specifically, the buyer loses this right when it becomes impossible to return the object or restore it to its original condition. However, the buyer retains „the ability to terminate the contract“ if the object has wholly or partially failed or sustained damage due to a defect justifying contract termination, or due to an event beyond their control or the control of anyone for whom they are responsible. Likewise, if the product has experienced complete or partial failure or damage resulting from “the buyer's duty to inspect it”, or if “the buyer has utilized or altered a portion of the product during normal usage before detecting the flaw”, termination of the contract remains feasible, especially if the damage or alteration is insignificant.

The termination of a sales contract due to a “fundamental breach” yields similar consequences as the termination of bilateral contracts for non-performance. However, there is considerably less discretion left to the parties due to the detailed provisions outlined. An illustration of this is the stipulation that the buyer is obligated to compensate the seller for the benefits derived from the object, even if it is impossible to return all or part of it, and the contract is terminated. Furthermore, the regional laws on obligations delve into comprehensive regulations concerning the most common fundamental breaches of the „seller's obligations“, such as the delivery of goods and the transfer of documents, as well as the „buyer's obligations“, including payment of the price and acceptance of delivery (Relevant legislation on sales contracts from the five countries).

Finally, regional legislation sets a time limit, specifying that the rights of a buyer who has promptly informed the seller of a defect expire one year from the date the notice was sent to the seller unless the buyer was prevented from doing so due to fraud committed by the seller. However, if the buyer promptly reported the defect to the seller, they may, after this period has elapsed and if the price has not yet been paid, assert their request for price reduction or compensation for „damages“ as a counterclaim against “the seller's demand for payment of the price”.

CONCLUSION

The “fundamental breach of contract” concept is a crucial element within the “Vienna Convention” and is, to a certain degree, incorporated within the “Laws on Obligations of Bosnia & Herzegovina, Croatia, Montenegro, North Macedonia, and Serbia”. Undoubtedly, this legal concept holds a central position in the legal remedy systems of both the Convention and these laws. Although the regional legislation generally corresponds with the understanding of “Article 25 of the Vienna Convention” within the “Laws on Obligations” concerning sales contracts, it does not provide a precise categorization of fundamental breaches. For instance, typical violations like the seller's inability to deliver goods or transfer documents, and the buyer's failure to pay the price or accept delivery, are handled through dispersed provisions. Given that any violation meeting the conditions of “Article 25 of the Convention” could be deemed fundamental, the regional legislation could greatly benefit from enhanced clarity and direct regulation, thus fostering legal certainty.

The comparative analysis reveals a striking limitation in regional legislation: while aligned with certain Vienna Convention principles, the relevant legal frameworks stop short of formally defining "fundamental breach" beyond cases involving timely performance. This omission reflects an inherent gap that risks undermining the clarity and consistency of enforcement for breaches, particularly in the absence of explicit provisions to address varying breach scenarios. Ultimately, the regional legislation's restrictive focus on timely performance highlights a need for more comprehensive guidelines on fundamental breaches to strengthen contract enforcement mechanisms.

By failing to fully align with international law, the five countries do not define or consistently apply the term "fundamental breach" as outlined in the Vienna Convention, especially in relation to the essential elements of breach, substantial deprivation, and foreseeability. The lack of clarity around substantial deprivation of contractual expectations opens the door for varying interpretations and undermines predictability for parties seeking a remedy. Furthermore, these national laws generally limit the circumstances under which unilateral termination is allowed to cases involving time-sensitive performance, excluding other breaches that may significantly impact the value of the contract. The high standard required to categorize a breach as "fundamental," coupled with the narrow scope of regional laws, highlights the need for clearer definitions and more structured guidelines to address this complex concept more effectively in regional jurisdictions.

In this context, the proposed civil codes currently being developed in the region offer a timely opportunity to bring clarity to the definition of "fundamental breach of contract." Establishing this definition would empower either party to promptly terminate the contract when non-fulfillment represents a significant and essential violation. A "fundamental breach" should be understood as one that substantially deprives the other party of their entitlements under the contract, unless such deprivation was unforeseeable and could not have been reasonably anticipated. When determining the essential nature of a breach, factors such as the contractual importance of the unfulfilled obligation, intent or extreme negligence,

disproportional loss, and reliance on future performance should be taken into account. At a minimum, these elements should be incorporated into any amendments to the laws on obligations, aligning with the ongoing efforts to codify civil law in the region.

Such a provision would ensure the complete alignment of regional laws with "Article 25 of the Vienna Convention". Furthermore, the notion of "fundamental breach" is increasingly acknowledged in other contemporary international legal instruments aimed at harmonizing international commercial law, such as the "UNIDROIT Principles of International Commercial Contracts" (Article 7.3.1) and the "Principles of European Contract Law" (PECL) - Lando principles (Article 8:103). Embracing the concept of "fundamental breach" allows sales regulations to also incorporate the supplementary utilization of these principles to address accountability for material and legal deficiencies in fulfillment. The influence of the „fundamental breach" concept has extended to various modern legal frameworks, including "Scandinavian sales laws, the Estonian Law on Obligations, and the Dutch Civil Code", reflecting a broader European trend that the region seeks to align with.

In the pursuit of harmonizing international trade regulations and minimizing disparities among domestic legal frameworks, the concept of "fundamental breach" serves as a crucial tool. It encapsulates the core objectives of the Vienna Convention and highlights the importance of aligning national systems with international trade standards to enhance clarity in domestic contract law. As such, the region is in a favorable position to align its contract laws with the concept of "fundamental breach." Bridging this gap is vital for these nations to fully integrate with international standards, thereby positioning themselves as trustworthy and reliable partners in the global legal landscape.

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REZIME

Rad se bavi konceptom fundamentalnog kršenja ugovora o prodaji, analizirajući njegovo tumačenje i primenu u nacionalnom zakonodavstvu, uz komparativnu analizu sa regionalnim pandanima, uključujući bosanske, hrvatske, crnogorske, makedonske i srpske zakone. Fokusirajući se na Bečku konvenciju, studija secira zamršene elemente koji čine fundamentalno kršenje, kao što su kršenje ugovornih obaveza, značajno lišavanje očekivanja i predvidljivost. Detaljnim ispitivanjem razjašnjava pravni okvir koji reguliše raskid ugovora zbog bitnih povreda, naglašavajući važnost blagovremenog obaveštenja i nijansirane uslove za raskid. Štaviše, zalaže se za jasniju regulativu u okviru regionalnih zakona kako bi se uskladila sa međunarodnim standardima, predlažući amandmane kako bi se osigurala koherentnost i usklađenost sa Bečkom konvencijom. Istraživanje naglašava ključnu ulogu koncepta fundamentalnog kršenja u harmonizaciji pravnih okvira i podsticanju uniformnosti u međunarodnom trgovinskom pravu.