

## **TIME OF GOODS DELIVERY, FULLFILMENT OF AN OBLIGATION BY SELLER**

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### **Abstract**

Contract parties have agreed the time of goods delivery based on the agreement that was reached between them. According to the legislation the time of goods delivery is determined in two ways: determination of the day (time), determination of date when the obligation is fulfilled. According to the first the day is determined by the agreement of the parties and this day is connected to a determined day or to a determined event.

Goods delivery is also done based on a precisely determined term based on the contract agreement and it has to be strict and respected by both parties.

Apart to this, there are cases when contract parties do not determine the time for goods delivery, and they determine the time after the contract was signed and regarding this there are three ways of delivery. Delivery is done 8 days after the contract is signed, but the Law on Obligations and other legislations determine an additional agreement to be signed between parties after the contract was signed. Delivery of goods on the determined day and time, means also the fulfilment of the contract therefore the fulfilment brings to a better development of trade and it doesn't create delays from both parties. When there are no delays on goods delivery on the determined time then there are also no casualties. All this has an impact on improving the circulation of goods and in way perfection by which it is contributed to the business perspectives and to the circulation of goods.

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**Keywords:** Contract, time, delivery, fulfillment, contract parties

### **Introduction**

Fullfilment of the obligation based on the contract is one of the main obligations that have to be fulfilled by a seller on the interest of buyer. All times when the contract is signed, and in most cases even before the contract is signed the contract parties have two key problems. The first, it could be said I would say the determination of time for delivery, whereas the other problem or said in other way the obligation of the seller is the determination of time for delivery of the contract subject.

It is very easy for the contracting parties if the time of fulfilling the obligation is put in the contract articles. The problem appears when the time is not determined by the parties in the contract; when contracting parties didn't contract the time of delivery, then the issue is: when the obligation is fulfilled? It can be fulfilled any time but it could not be fulfilled at all. If the seller doesn't deliver determined item it is then considered that he is late and by this he has damaged the buyer. These damages then the buyer requires to be compensated by seller. In order not to be in the delay then he should by all means determine the time of goods delivery and this is based on the theory of nature that is most spread and used by lawyers in different systems for these cases. Related to the time of goods delivery when the time is not determined by the contract there exist various theories. Our domestic legislation is poor in this issue and it doesn't go deep with this. Whereas common law have regulated this issue quite well. In some case laws determine the term of delivery of goods for 8 days always

after the contract is signed but this is used only in the urgent cases, because in the cases when the delivery is impossible (cases when the goods are to be produced)---it is quite difficult to determine such a short term.

Law on Obligation Relations (LMD) determines also the cases when the parties cannot in any way determine the time of delivery by contract or by non contracting agreement addressing the parties to the court so the court determine the time of goods delivery. Nonetheless goods have to be delivered in the determined time and if this is not done then there will be delays in the fulfillment of the obligation and this not only damages the contracting parties, but by this we would have delays in the circulation of goods in the market or circulation in general.

### **Regulating the term (time) of goods delivery by contract**

Parties in most cases agree by their contract about the term (time) of goods delivery. Time of fulfillment can be detrimental in two ways: 1.) be detrimental the day (time) or 2.) by determining the term within which the obligation should be fulfilled.

### **Goods delivery in the determined time (day)**

If parties by contract have determined the term of goods delivery, seller is obliged to deliver goods in that determined time. This is the rule that derives from the principle *pacta sunt servanda* and from the LMD as well as from the 1994 Albanian Civil Code.

Time of delivery could be determined by contract or it could be derived from the agreement of contracting parties. The moment of goods delivery is determined by contract if parties agreed on goods delivery in the determined time (example: May 02,0000).

Day of delivery is determined by the contract if the time is connected to an event that is expected to happen (example 20 days after the contract is signed) or if the usual terms are used. According to LMD saying the beginning of the month determines the first day of the month, the half of the month is considered the 15th of the month whereas the end of the month it is considered the last day of the month.<sup>215</sup>

According to the legislation if the goal of parties or the nature of contract relationships do not determine something else then the rights and obligations will be taken from the existing law. This means this has to do with an additional norm that will find its execution only when in the contract relationship there is an emptiness. When using these notions we have to be careful because the general usances give a different meaning. The beginning of the month is considered the period from 01 to 10th of the month; middle of the month starts with the 11th of the month and ends on 20th of the respected month and finally the end of the month starts on 21st until the last day of the month.<sup>216</sup> This means that according to the General Usances the delivery of goods is done in the determined date and not in the determined day.

Thus if within the contract was determined that the delivery will be at the beginning of the months, in the middle or at the end of the month, then the beginning notes the first day of the month, middle notes the 15th of the month and the end notes the last day of the month.<sup>217</sup>

Rules covered by the Usances are more flexible and they are more convenient for the needs of goods circulation on trade therefore in practice they will be more used. On the trade

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<sup>215</sup>Law on Obligations (LMD), art. 77 paragraph 4. (Kosovo Parliament, 10. 05.2012), Gazette. It is important to take into the consideration the LMD and General Usances in different ways determine the time of regular terms.

<sup>216</sup> See more, Usance nr . 82, “General Usances on goods trade” (Chamber of Commerce of Former Yugoslavia, nr.15/54), Beograd, 1954.

<sup>217</sup>Law on obligations , art. 65 paragraph 4, (Kosovo Parliament, 10. 05.2012), Gazette.

contracts the notion the begining of the month for the traders means the determined term but not precisely the term detrmined to be the firts day of the month.

Situation when the term is not determined by contract is not similar with the delivery of goods in the determined term. Even if the term is not determined with the contract according to the calendarik day but it is determined by passing the time connecting this with an event, seller has ni possibility to select the time when to deliver goods but is responsible to deliver it exactly that day.

### **Delivery on the determined term**

Traders in practice often agree that the delivery means that the obligation should be fulfilled in the determined day. More often the term is determined to seller within which he has to do the goods delivery.

Such term is known is named framework term and it can be determined by the agreement of contract parties or it is in fact determined itslef by th eagreement.

LMD determines only one rule that regulates delivery by contract that is determined in the time period. When the goods delivery is contracted to be within e detrmined period and when it is not determined that which party has the rigt to determine the day of delivery within that period, this right belongs to seller, with the exception when the circumstances of the case appears that the determination of the date is given to the buyer. Against this the General Uzanses are more detailed and they every day will be used in the certain cases and their implementation will come.<sup>218</sup>

Framework term within which the obligation should be fulfilled is determined when parties in a calendarik way determine period of time (example: from January until May).

Against this the term of fulfillment is determined when it is connected to an event of the determined case. Base on this it is posible that parties expressively determine the event (example: term of ten days before the contract is concluded), or by using determined notions lead towards creating aof the determined case (by coming of the rains, by flourishing of a determined flower, etc). If the term of delivery is determined by expressions urgent, quickly and by these expressions it means that the delivery should be done within 8 days from the contract closure<sup>219</sup>. Expression on the contract as by opening the cruise, by passing the frost, by coming the water and similar expressions that the goods delivery should be done within 15 days accordinf to official services that in the entire sea road that will be done in an open cruise or that it has ended without obstacles for cruise, without taking into the consideration it the road was navigational also before it was announce public<sup>220</sup>.

If we talk about goods delivery within a determined term, the start and the end can be determined or are determined by the contract. If by the contract the last term for fulfilling of the obligation is not determined we cannot talk of existence of the framewrok term (example goods delivery not before December).

When it is foreseen that the fulfillment of the obligation should be done in the framework term it is important to know that the contracting party is authorised to respect the term of delivery. Parties by agreement may overcome the day of delivery not stressing out that this is done based on the will of one party. This could be done with the clause “ by the selection of buyer”<sup>221</sup>. However when it is determined that the goods should be delivered within a determined period of time and it is nit determined which party has the right to determine the term of delivery the according to all theories and according to the legislation

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<sup>218</sup> Id, art. 452.

<sup>219</sup> General Uzanses on trade with goods, Uzanse nr. 81.

<sup>220</sup> Id, Uzanse, nr. 85.

<sup>221</sup> Kapor & Carić, “Contracts on goods circulations”, edition IX, Novi Sad, 1996, pg.100.

belongs to seller.<sup>222</sup> LMD and Uzanses determine that the determination of goods delivery belongs to seller because this is more useful from the fact that possibility is given to him to select the moment of delivery. This solution derives from the natural right on obligation of goods delivery respectively seller is party that should undertake various acts until the obligation fulfillment. There exist cases when the seller is authorised to determine term of goods delivery. This can be achieved when seller has the obligation to do the transportation of goods. Oppositely from LMD Uzanses do not foresee possibility for seller to determine the day of goods delivery. In my opinion this possibility that is given to seller by the law is much better because it doesn't favor seller but it gives to him more possibilities to take into the consideration all circumstances and to find the best possibility in relation to the concrete case. This solution is also in accordance with the international rules of sales.

Party that was authorised to determine the day within the contracted term about when the goods is to be delivered, can determine each day that belongs to the working day within this term.<sup>223</sup>

If the authorised party has not determined the day of delivery, then as the day of delivery will be considered to be the last day of goods delivery the day that is determined by contract between contracting parties from the moment of contract signature.

According to a theory that is indeed supported by LMD, if the authorised party has not determined the term of delivery and if this is not determined by contract, the authorised contracting party to determine the term of delivery can require court to decide the term of goods delivery.<sup>224</sup> In my opinion article 315 of LMD cannot be implemented for some reasons. First, the mentioned article regulates the issue when the term of goods delivery is not at all determined whereas the authorised party do not determine but he delays or stagnation on determining of this term. The other party is not obliged to suffer stagnation or delay and he/she is obliged to remind the authorised party (for determining term) to determine the term of goods delivery.

If the framework term of goods delivery is contracted this means that the time of goods delivery is determined, apart of this it is not possible to apply the legal rule that regulates the situation when the place of fulfillment is not determined. Second, a distinction between delivery and the arrival of term for fulfillment of obligation.<sup>225</sup>

Obligation is counted to be obligation within the determined term that is contracted and the goods delivery should be respectively the seller can fulfill. However this comes in the last day, buyer since the last day by the good faith may require fulfillment whereas seller is obliged to do the delivery. Non delivery of goods leads toward delay of obligation fulfillment.

If we talk for his quantity of goods that cannot be delivered within a day, the authorised party should calculate that the goods delivery to be within a determined period of time when the entire goods are delivered within the contracted term.<sup>226</sup> According to this

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<sup>222</sup> General Uzanse on trade with goods, Uzanse nr.88, paragraph 1.

<sup>223</sup> Id, Uzanse . nr. 87 paragrafi 2 & Perović & Stojanović, "Commentar on Law on Obligation Relations", book II, Kragujevac, Gornji Milanovac, 1980, pg. 53.

<sup>224</sup> Perović & Stojanović, "Commentar on Law of Obligations", book II, Kragujevac, Gornji Milanovac, 1980, pg. 53; Blagojević & Krulj, "Commentar on Law on Obligation Relations," book I, Beograd, 1980, pg. 962.

<sup>225</sup> Time of obligation fulfillment differs two moments: time of fulfillment by good faith when party requires fulfillment by the other party – arrival and the time within which obliged party can fulfill obligation – fulfillment of the obligation. Apart of this arrival of fulfillment should exist even at the same time when the obligation arrives to be fulfilled. This means that the arrival of fulfillment and the fulfillment of the obligation should be present at the same time. See more Schulze, "Bürgerliches Gesetzbuch – Handkommentar," 2. Auflage, Baden-Baden, 2002, pg. 255.

<sup>226</sup> Id, Uzanse nr. 88, paragraf 3.

when the big quantity of goods , it is not enough that obligation starts to be fulfilled but it should be fulfilled within the determined term by contract.

Party that has the right to determine the contracted term when the obligation will be fulfilled, should inform the other party about the day of fulfillment well on time. Information should be clear about the job we talk about as well as the day on which the obligation is to be fulfilled. This information about fulfillment is named *preavizo*. Uzances in case of obligation fulfillment accept the theory of acceptance, information is considered fulfilled when the party that has ordered accepts.<sup>227</sup> LMD does not foresee the obligation on information to the party but this is of course understandable.

### **Goods delivery on term according to the agreement**

Contract of sale is considered plenipotentiary even when parties didn't agree about the time of goods delivery. When parties did not contract the time of goods delivery, there are three ways of determining the time on which the goods will arrive. In many countries of the world, if nothing else is contracted delivery should be done immediately.<sup>228</sup> According to the other decision the fixed term is described within which the goods should be delivered. General Uzances contain rules for cases when the term is not determined with the contract and thus it is considered that the delivery has to be done within 8 days from the contract conclusion.<sup>229</sup> Many theories, especially those from anglosaxon system foresee that when there is an absence of agreement between parties the delivery should be done within a term determined according to the agreement after the contract is concluded. This solution is foreseen also by LMD, that foresees that the seller is obliged to deliver goods according to the agreement between parties for goods delivery without taking into the consideration circumstances and without taking into the consideration the nature of the item (type).<sup>230</sup> Term of goods delivery within 8 days is not possible to be respected always because there are cases when the goods to be delivered have to be produced and in this case term of 8 days is not valuable.

Regulation of goods delivery based on agreement of contracting parties is one of the most interesting phenomenon because it strengthens the agreement between parties, enables facilitations for contracting parties and serves the free circulation of goods.

Term by the agreement is valued in the report with the nature of item (goods) and other circumstances. Thus for example delivery of generic item in the small quantity can be done within 3 days. Taking into the consideration the termination of term or change of the term based on the agreement we should take into the consideration all circumstances as well as the interests of the contracting parties.

General Uzances for trade of goods foresee specific rules for case when parties did not cover by contract the term of delivery but they have foreseen that the buyer is obliged to oblige for packaging. Then seller is obliged to deliver goods immediately by passing the time for packing the goods.<sup>231</sup> Seller is obliged to determine precise term of goods delivery and is obliged to for this inform the other contracting party.

### **Conclusion**

The main goal of both parties is delivery of goods from seller to buyer and by this the transfer of the ownership from seller to buyer. This because this is the mission of the contract. The fulfillment of the obligation by both parties is achieved when both parties fulfill

<sup>227</sup> See more, General Uzance, Uzance nr 89, article 3.

<sup>228</sup> German Civic Code, art. 271, paragraph 1.

<sup>229</sup> General Uzances on trade with goods, Uzance . nr. 80 paragraph 2, and art 81.

<sup>230</sup> Vizner & Bukljas, "Commentary on Law of Obligations", volume 3, Zagreb, 1979, pg. 1560.

<sup>231</sup> General Uzances on trade with goods, Uzance nr 94.

their obligations in determined time, in the determined place and based on the foreseen conditions by the contract. According to our legislation the rights and obligations of both parties are taxatively enumerated. Contract in addition to general conditions and specific conditions should fulfill also some other conditions among the other determination of the place and the time of goods delivery.

In some cases the place is determined without the determination of time and without the determination of the way of fulfillment of the obligation. Nondetermination of the time of goods delivery presents the formal lack in the contract.

Nondetermination of time presents an overlasting of the obligation fulfillment and at the same time additional engagement for contracting parties. As the additional engagement will be a new agreement in order to determine the time of obligation fulfillment that means obligation fulfillment and this even creates a contract annex or a new contract by which the time is determined.

Time of fulfillment can be determined by contract but this can be determined by the legislation and with the general usances. The time of goods delivery is calculated by date, it is also calculated by passing of the determined period time ( after two months) but it is also connected to a determined event (snowing for example).

According to the usances date is determined precisely and it is calculated as from the start of the month: from 1 to 10, middle of the month from 10 to 20th and the end of the month that covers date from 20 to the end of the month. Civil legislation determines dates differently, the beginning of the month that is the 1st, the middle of the month the 15th and the end of the month that is 30 or 31st. Delivery of goods can happen also based on the events and this means that the delivery will be done after these events happen. When goods are to be delivered urgently then they should be delivered 8 days before the contract is signed. Delivery depends also from the nature of goods, because it cannot be delivered quickly if it has to be packed and transported. Law foresees cases when the time of goods delivery is not determined by contract and this can be determined by seller. Whereas general usances on goods trading do not foresee this. If we talk about big quantities that cannot be delivered within one day, the authorized party should calculate that the delivery of goods has to be in that determined period of time when the entire goods will be delivered (fulfillment of the obligation) within the term determined by the contract.

According to this when a big quantity is to be delivered it is not enough if the obligation starts to be fulfilled, but it will be fulfilled within the determined term by the contract.

According to a theory that is supported by LMD, if the authorized party did not determine term of goods delivery and if this is not determined by the contract, the authorized contracting party for determining the term of goods delivery can require court to decide about this.

Based on this we can conclude that the time of obligation fulfillment can be determined in various ways whereas determination by the contract presents avoiding of other agreements and it presents security for both parties based on the principle *pacta sunt servanda* – contract has by all means to be executed/fulfilled.

Determination of time by the law and when there is the lack of the law, by usances presents an extension of obligation fulfillment, even a norm of the law on obligation relationships that determines the time of goods delivery through a competent court.

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