

# MEANS FOR SECURING THE CONTRACT OF SALE THAT DERIVE FROM THE PROCESS OF EU INTEGRATION: IN KOSOVA AND ALBANIA

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## Abstract

Contract parties enter into a contract because from the contracted job they expect determined results. However it happens that debtor doesn't fulfill his obligation, or he fulfills the obligation with the delay whereas the item respectively service is not of the contracted quality. In these and in the similar cases, if the debtor doesn't fulfill willingly his obligation, to the creditor it remains to negotiate compensate the eventual damage or it remains that he will realize his rights through court. Court procedure usually lasts a lot and causes additional damages whereas even if the judgment is taken a question appears if the request could be realized with the execution procedure. Therefore parties very frequently contract special institutes by which the execution of obligations is ensured by debtor. Means of securing contract are always applied if parties have foreseen this explicitly by contract, whereas this is rarely regulated by the law. Contract could be "perfect", "strong", as soon as parties agree with the essential parts of contracts. However, contract parties sometimes apart of the main contract they sign a second hand contract-accessory or they add to the contract special disposals-clause, so the contract to be strong and that through these parties are pushed to precisely fulfill their obligations.

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**Keywords:** Contract, law, parties, means, indemnity, sale

## Introduction

All juridical civil relationships are signed with a determined aim and in order to achieve this goal their both parties should be satisfied: seller and buyer. When parties enter into a contract they are obliged to fulfill their obligations by complete commitment. By obligation fulfillment the contract is extinguished and this is one of the main ways of the suppression of contract. The issue becomes complicated when both or one from the parties doesn't fulfill obligation. From the fear of non fulfillment it happens that one

party does not fulfill his obligation. However in order of not having doubts he enforces assignment of the other means in addition to the main contract. At the end of the day he is willing to ensure himself that the obligation is going to be fulfilled. The biggest fear of non fulfillment stands with the seller because he is the creditor that shall get the price of the item but he is responsible to also deliver the good/item to the buyer.

Civil law specially and the private law in general no matter of efforts has not managed to achieve a unified European Civil Code. Therefore up until now there is no unification of laws or codes even though efforts for unification are made in the field of familiarly contract law and the obligation law in general.

Local civil law counts a set of disposals on contracts especially for the sale contract as the most frequent contract in the countries of Europe. Circulation of goods or signing of contracts and their non fulfillment is one of the biggest challenges for the states of Europe. Until now there were no efforts or there is no achievement on unifying of these disposals for accessory contracts that are signed in order to secure the sale contracts.

Every legislation of EU countries regulates this with special laws and codes and in this way Kosova and Albania have done the same since they are pretending to be part of the big European family.

Due to the fact of inability of unification of these disposals within a special legislation and due to the inability of treating each from each European country the focus of the paper is Albania and Kosova as countries pretending harmonization of laws with those for the EU developed countries.

Since Croatia has become the EU member and since Croatia is geographically an EU country close to ours there are some comparisons between our legislation (Albania, Kosova) and Croatia with the topic being treated with this paper.

## **Means of securing the sale contract based on the obligations that derive from the process of integration in EU: in Kosova and in Albania**

### **General notion of means for securing the sale contract**

Contract parties enter into a contract since they expect determined results from the contracted job. However it happens that the obligation is not fulfilled or the obligation is fulfilled by delay whereas item respectively service is not of the contracted quality. In these cases and similar to those, if debtor doesn't fulfill vulnerably the obligation, it remains to the creditor to agree with the debtor compensation of damage or to realize his rights through the court.<sup>37</sup> Court procedure usually takes a lot of time and causes

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<sup>37</sup> Vilim Gorenc, "Bazat e së Drejtës Tregtare Statusore dhe Kontraktore", Prishtinë, 2010, fq. 159.

additional expenses whereas even if the judgment is taken a question appears if the obligation is going to be fulfilled via execution procedure. Therefore parties very frequently contract special institutes by which the fulfillment of obligations is secured from the debtor. Means of securing contracts are usually applied if parties have foreseen it with the contract, whereas this is rarely foreseen with the law.

Contract is signed as perfect, “strong” as soon as parties agree on essential parts of the contract. However, parties sometimes apart from the main contract sign secondary contracts, accessories or they add to the contract special disposals-clause, so the contract is going to be more stronger and that through which parties are pushed to realize precisely their obligations.<sup>38</sup>

Means of securing the execution of contract are either real or personal.

*Personal means of contract securing are: repentance, penal/criminal condition and sureties. Meanwhile real means of execution of contracts are: mortgage, pledge, earnest and bail.*

Personal means of securing the execution of contract

Bail (Fideiussia)

Bail traditionally has been regulated by our legislations. It has been regulated by positive and historic norms. It dates since ancient times from the customary law. Bail earlier has been regulated by the customary legislation e.g. Leke Dukagjini canon. Bail is called a person obliged for an obligation that if not fulfilled personally then it will be fulfilled by bail.<sup>39</sup> Bail since 1929 is regulated by the legislation. Bail is a person that personally guaranties the execution of obligation to creditor in the name of third person.<sup>40</sup>

Positive law regulates bail as a means for securing contracts. Rarely it appears to be as a special clause in the contract. However bail is mostly seen as a secondary contract and accessory that survives and creates effects in addition to the principal contract. In time and totally to the creditor

Bail is personal means for securing the execution of contract. Bail is accessory contract by which bail is obliged to fulfill obligations in time matured obligations if they are not fulfilled by debtor. Albanian Civil Code recognizes legal bail and contractual bail. According to the Albanian Civil Code (ACC) bail is a legal act by which a person is obliged to ensure creditor that he will fulfill obligation of a third person (principal debtor)

<sup>38</sup> Andrija Gams, “Hyrje në të Drejtën Civile”, Prishtinë 1986, fq. 251.

<sup>39</sup> Kanuni i Lekë Dukagjinit, nye i njiqindetet Dorzanija, Kuvendi, Shkodër, 2001.

<sup>40</sup> Kodi Civil i Shqipërisë, i vitit 1929 ( Kodi i Ahmet Zogut 1929), neni 1830 paragrafi 1.

totally or partially.<sup>41</sup> Bail is accessory contract because it is signed together with the principal contract, with the special clause or as a special contract.<sup>42</sup> Law on obligation relations regulates bail as a contract with its disposals which means that it regulates bail as a contract in its special part. By the bail contract, bail is obliged to fulfill obligation to the creditor deriving to be paid if the debt is not paid by the principal debtor.<sup>43</sup> Meanwhile ACC is based and it determines bail as an obligation of subjects and securing for creditor on the obligation fulfillment of the principal obligation. Bail is a legal act by which a person (bail) is obliged to secure creditor on the execution of the obligation of the third person (principal debtor), bail is valuable also when creditor is not informed about that.<sup>44</sup>

This means of security has its characteristics and they are: written form, content of bail responsibility and the accessorially where according to this characteristic: if principal debtor obligation was not born or extinguish, it may be secured by bail, also, statute of limitation of principal obligation there we have the statute limitation of the bail obligation.<sup>45</sup>

Goal of bail – as each institute of law bail has the goals that justify its use. The goal of bail is good security for creditor. When there is a bail creditor has two debtors to whom he can address request of paying.

Effects of bail – bail has its effects by which through which there are created relationships: relationships between creditor and bail and the relationship between bail and principal debtor.

Types of bail – bail has several types which are: subsidiary bail, paying bail, joint bail, bail of bail, bail of compensation of damage.

**Extinguish of bail – obligation of bail being as accessory obligation lies as long as the principal obligation is in force where we say that bail is over.<sup>46</sup> According to the Law on obligation relations bail is over: by extinguish of principal contract, when creditor gives away the debt of bail, by changing debtor and by confounding.**

Statute limitation

When we talked about judicial facts of events categories there it was mentioned that the termination of a time limit belongs to this category. Exactly such a termination has its basis in the institute of statute

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<sup>41</sup> Mariana Tutulani-Semini, *E Drejta E dEtyrimeve dhe e Kontratave, Pjesa e përgjithshme, Skanderbegbooks, Tiranë 2006, fq.222*

<sup>42</sup> Nerxhivane Dauti, *Kontratrat, Universiteti I Prishtinës, Prishtinë 2012, fq.74,*

<sup>43</sup> LMD, neni 1009, paragrafi 1.

<sup>44</sup> Kodi Civil i Republikës së Shqipërisë, neni 585, paragrafi1 dhe 2.

<sup>45</sup> Vilim Gorenc, “Bazat e së Drejtës Tregtare Statusore dhe Kontraktore”, Prishtinë, 2010, fq. 160.

<sup>46</sup> KCSH, neni 597.

limitations.<sup>47</sup> Parties in the judicial relationships regularly fulfill their obligations. However it is not excluded the case when the fulfillment of obligation is not done regularly from one party for different reasons as: avoidance of fulfillment, paying inability when the obligation is monetary, weak quality of goods, whether conditions, diseases, etc.<sup>48</sup> By statute limitation of principal debtor obligation there we have also the statute limitations of bail obligations.<sup>49</sup> This rule has a general character and it is foreseen by article 1019 paragraphs 1,2,3,4 of the Law on obligation relations. A special rule on the bail contract is article 1031 paragraph 2 of the Law on obligation relations where it is stated that “when the deadline of statute limitation of obligation of the principal debtor is longer than 2 years the obligation of bail is limited on two years after the reachibility of the principal debtor obligation.”<sup>50</sup>

**Repentance (declaration of withdrawal from the contract)**

Repentance is a personal securing means on the execution of contracts as well as accessory contract because it is signed close to it and it follows the faith of the principal contract. By the agreement of both contracting parties there could one or both sides be withdraw the contract by declaring repentance.<sup>51</sup> Repentance is contracted by a special clause or as a special contract in addition to the principal contract. Repentance is a promise of determined sum of money or the other material value that is going to be paid by one or both sides when giving up from the agreed contract.<sup>52</sup> Effects of repentance are expressed by the fact that the party that has promised repentance has the right or option to fulfill the contract or to pay repentance. Declaration of giving up from the contract should be done in a reasonable time limit. If the deadline is not determined by the contractors then the declaration can be done until the deadline for obligation fulfillment is over.<sup>53</sup> Repentance can not be reduced because it is a lump sum if it is monetary.

### **Penalties (contracted penalty)**

Contracted penalty<sup>54</sup> is a monetary sum determined by the contract or any other benefit which debtor will pay or will secure creditor, if the obligation is not fulfilled as per principal contract; if debtor is in delay with

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<sup>47</sup> Ardian Nuni, *E Drejta Civile, pjesa e përgjithshme, Tiranë 2012, fq.349*

<sup>48</sup> Rrustem Gjata, *E Drejta Civile, pjesa e përgjithshme, Ribotim me ndryshimet përkatëse, viti 2010, fq. 200.*

<sup>49</sup> LMD, neni 1031, paragrafi 1.

<sup>50</sup> Nerxhivane Dauti, “*E Drejta Kontraktuese*”, *Praktikum, Prishtinë, 2008.*

<sup>51</sup> LMD, neni 70, paragrafi 1.

<sup>52</sup> *Komentari ZOO, Knjiga I, Beograd, 1995, fq. 178.*

<sup>53</sup> LMD, neni 70, paragrafi 4,

<sup>54</sup> *Tek LMD emërtohet dënimi kontraktues*

paying or if he doesn't fulfill irregularly.<sup>55</sup> Creditor and debtor may agree by contract debtor to pay creditor determined sum of money or other material benefit, if debtor doesn't fulfill his obligation, or if he is late with the fulfillment (contracted penalty). If something else doesn't result from the contract, it is considered that the penalty is contracted in the case when debtor is late with fulfilling the obligation. "Contracted penalty cannot be contracted for the monetary obligations".<sup>56</sup>

Designation "contracted penalty" is not a penalty but it means contract obligation which parties have determined by their will. Therefore, debtor doesn't pay penalty but he pays principal penalty respectively obligation fulfils by being late. If from the contract there is no other result, it is considered that the contracted penalty is a disposal on fulfilling obligation by delay.<sup>57</sup>

Contracted penalty has the following characteristics:

**Form** – Contracted penalty should be determined in relevant form as the principal contract is signed.<sup>58</sup>

**Acceleration** – agreement on contracted penalty has the same faith as the principal obligation has which has to do with the securing of the contract. This penalty is not going to be paid in case of non fulfillment, in case of delay or in case when obligation is not fulfilled regularly for what debtor is not found guilty e.g. vis maior.

**Penalty amount** – Parties freely determine amount of penalty by percentage. By debtor request court may reduce the amount of contracted penalty if it concludes that it is too high taking into the consideration the value of principal obligation. Nonmonetary acts the contracted penalty cannot be determined for monetary obligations.<sup>59</sup> Thus principal obligation doesn't mean money because for non fulfillment or fulfillment on delay on money it is foreseen the payment of interest.

### **Penal condition (Stipulatio Poenae)**

Penal condition is personal mean on securing execution of contract. The most usable means for securing contract foreseen by our legislation is penal condition. It exists when debtor and creditor agree that debtor will pay determined amount of money or deliverance of any material value, if he doesn't execute totally his obligation or if he fulfils his obligation not

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<sup>55</sup> Vilim Gorenc, "Bazat e së Drejtës Tregtare Statusore dhe Kontraktore", Prishtinë, 2010, fq.160.

<sup>56</sup> LMD, neni 253, paragrafi 1,2 dhe paragrafi 3.

<sup>57</sup> Zakon o Obaveznim Odnosima, Narodne Novine, Zagreb, 2005, neni 350, paragrafi 2.

<sup>58</sup> Vilim Gorenc, "Bazat e së Drejtës Tregtare Statusore dhe Kontraktore", Prishtinë, 2010, fq.161.

<sup>59</sup> LMD i Republikës së Kroacisë, neni 350, paragrafi 3.

regularly. Penal condition serves as an important means of securing discipline in the contractual relationships. Thus, this keeps an important position in contracts of goods and on delivering services. Penal condition is determined in a determined sum of money in determined percentage or for every day delay.<sup>60</sup> Penal condition lies always in the function of principal obligation, because it exists as long as the principal obligation exists.<sup>61</sup> Penal condition is foreseen by special clause in the principal obligation or it is agreed by the special accessory contract. Penal condition by the nature is an accessory contract that has the same faith with the principal contract. The form of this accessory contract depends on the form of principal contract.

### **Material means of securing the execution of contract**

Real means that secure execution of contract are those by which creditor will gain the real right on items of debtor or any other third sector. Real means that secure execution of contract are: pledge, mortgage, earnest, bail, advance.

### **Pledge**

Pledge right is the property right over the strange item based on what creditor can realize (pay) his requests from the item value that is under the pledge (if debtor doesn't fulfill the mature obligation).<sup>62</sup> Or, pledge is a property right based on which the pledge holder or creditor may require fulfillment of requests from items if they are not fulfilled on the determined deadline.<sup>63</sup> Pledge right is a property right over the strange object and from the object under the pledge if the debtor doesn't fulfill the taken obligation at the determined time.<sup>64</sup> Pledge right is accessory right, because the principal right is the right on the request. By the pledge the request of creditor is secured.<sup>65</sup> Real securing of request strengthen the creditor in realizing the right of his request, because sine the roman law it is said: *Plus cautions in re est quam in persona*", (it is much security offered from the item and not from man).<sup>66</sup> Pledge is put under mobile property, over a right from bearer, or by order, or over the usufructs of this wealth or right. Pledge is created by putting wealth/property or the title under possession of creditor or to a third

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<sup>60</sup> LMD neni 271, paragarfi 1.

<sup>61</sup> Mariana Tutulani-Semini, *E Drejta e Detyrimeve dhe e Kontratave, pjesa e përgjithshme, Saknderbegbooks, Tiranë, 2006, fq.206.*

<sup>62</sup> Abdullah Aliu, " *E Drejta Sendore (Pronësia)*", Prishtinë, 2006, fq. 177.

<sup>63</sup> Andrija Gams, " *Hyrje në të Drejtën Civile*", Prishtinë, 1986, fq. 158.

<sup>64</sup> Martin Vedriš & Petar Klarić, " *Gradansko Pravo*", Zagreb, 1998, fq. 326.

<sup>65</sup> Abdullah Aliu, *vepër e cituar*, fq. 178.

<sup>66</sup> N. Gavella dhe të tjerë, *Stvarno Pravo*, Zagreb, 1998, fq. 713.

one determined by the agreement between parties.<sup>67</sup> Disposal of pledge are not applied on the credits signed with financial transactions on what there are put securing burdens based on determined criteria by special law. In the Croatian legislation the pledge right is defined “pledge right is property right limited with the determined item – pledge that authorizes its holder, pledge creditor that the determined request if not fulfilled respecting determined time limit, to fulfill from the pledge value no matter whose the item is, whereas the day to day owner is obliged to endure.<sup>68</sup> Pledge holder basically, as the right holder over the strange item has no right to use the item under the pledge if not agreed. Pledge right as the property right has always the accessory character and cannot stand independent as it is the case with the property right.<sup>69</sup> Pledge right is the property right and for this there exist disposal in the codes and laws that regulate the property right<sup>70</sup>, starting from the codes from XIX century and later on.<sup>71</sup>

### **Extinguish of the pledge right**

Pledge right as every property right extinguishes. It is properly said that: they are concluded, stand and extinguish.<sup>72</sup> Pledge extinguishes when the determined conditions are fulfilled. In literature as reasons of pledge more frequently are used<sup>73</sup> as: when the right to request the secured request from the pledge right, by termination of deadline (if it was determined), by consolidation, by confusion, by public sale, by agreement of parties, by losing the possession, etc.

### **Mortgage**

In the property right apart of pledge right over the mobility's and over the rights, there exists also the right over the right over the immobility's as it is known as mortgage. In every case when the object of pledge right is immobility then this is called or known as mortgage. In judicial theory mortgage is the property right over the immobile item.<sup>74</sup> Mortgage is more secure means that guaranties execution of an obligation in favor of creditor.<sup>75</sup> Albanian Civil Code determines mortgage as a property right put over the wealth of debtor or of a thirds person, in favor of creditor in order to secure

<sup>67</sup> *Kodi Civil i Republikës së Shqipërisë, neni 546, paragrafi 1.*

<sup>68</sup> *Zakon o Vlasništvu i Drugim Pravima, Zagreb, 1996, neni 297, paragrafi 1.*

<sup>69</sup> *Abdullah Aliu, “ E Drejta Sendore (Pronësia)”, Prishtinë, 2006, fq. 179.*

<sup>70</sup> *Kodi Civil i Francës, neni 2071; Kodi Civil Austriak, paragrafi 447; Kodi Civil i Republikës së Shqipërisë, neni 546.*

<sup>71</sup> *Françesko Galgano, “ E Drejta Private”, Tiranë, 2006, fq. 390.*

<sup>72</sup> *Ejup Statovci, “ E Drejta e Pengut”, Prishtinë, 1998, fq. 311.*

<sup>73</sup> *Andrija Gams, vepër e cituar, fq. 274.*

<sup>74</sup> *Abdullah Aliu, “ E Drejta Sendore (Pronësia)”, Prishtinë, 2006, fq. 219.*

<sup>75</sup> *Marjana Tutulani-Semini, vepra e cituar, fq 214.*



the execution of an obligation. Object of securing by this means could be made as it is done with the mobile items similarly the social property or any other property.<sup>76</sup>

“*Mortgage*” means the property right put over an immobile property which secures execution of request from the sale of the property or its right.<sup>77</sup> Pledge as the property right is a property right based on what the holder of it – pledge receiver or creditor can require payment of requests from its items, if they are not paid within the determined time limits.<sup>78</sup>

Mortgage is not unknown for the customary law because Albanian customary law recognizes the pledge right. Leke Dukagjini Code foresees: in order to cure the issue of borrowing and to avoid any doubt about it, the pledge could be taken.<sup>79</sup> Albanian Civil Code of 1929 defines the mortgage as: mortgage is a property right over an item of debtor or over the third person in favor of creditor in order to secure execution of an obligation.<sup>80</sup>

The mortgage is defined also with the other codes and civil laws similarly. Albanian Civil Code in article 560 defines mortgage in the following way:”mortgage is a property right put over the debtor wealth or to the third one, in favor of creditor, for securing execution of an obligation”. Pledge right is property right limited on the determined item, if it is not fulfilled when mature, to realize from its value no matter whom the item belongs to.<sup>81</sup>

Immobile item could be put on the mortgage no matter if we are talking about land or building.

Object of mortgage are always immobile as well as fruits unless they are separated from the immolities and the other items connected to the immobility’s.

### **From the way of establishing mortgage could be: contracted mortgage, legal mortgage and court mortgage.<sup>82</sup>**

Mortgage as the property right over the strange item which authorizes holder that from the immobility’s under mortgage to fulfill its request by selling the item vie court ways and it could extinguish. Extinguish could be

<sup>76</sup> Faik Brestovci, “ *E Drejta e Procedurës Civile II*”, Prishtinë, 2006. fq. 219.

<sup>77</sup> Ligji për Hipotekat, nr 2002/4, neni 2, paragrafi 7.

<sup>78</sup> Andrija Gams, “ *Hyrje në të Drejtën Civile*”, Prishtinë, 1986, fq. 156.

<sup>79</sup> Kanuni i Lekë Dukagjinit, paragrafi 501,

<sup>80</sup> Kodi Civil i Republikës së Shqipërisë i vitit 1929, neni 1896, paragrafi 1.

<sup>81</sup> Ligji për Pronësinë dhe të Drejtat tjera Pronësore, i Kroacisë i vitit 1996 ( *Zakon o vlasništvu i drugim stvarnim pravima*), neni 297 , paragrafi 1.

<sup>82</sup> Shih më gjërësisht për të gjitha këto hipoteka tek , Abdullah Aliu, “ *E Drejta Sendore (Pronësia)*”, Prishtinë, 2006, fq. 226.

not only after the fulfillment of the request but also before the extinguish of the request of mortgage creditor.

Mortgage according to Albanian Civil Code of 1994 is extinguished: by obligation extinguish, by losing the item put under mortgage, by paying the contracted price, by forcefully execution, based on order of creditors as per order registered, by termination of the deadline by which the mortgage is limited.<sup>83</sup>

### **Earnest**

arnest is an am punt of money or replaced item that at the moment when the contract is signed one party give so the other contract party as a proof that the contract was signed so it is secured by earnest. Earnest is the amount of money given from one contract party to the other one based on the contract so the execution of the contract is secured.<sup>84</sup>

Earnest is a sign that the contract is signed. As a rule the earnest is given in the case of contract signature. Contract is considered signed only if earnest is given and if this is not differently foreseen by the contract.<sup>85</sup>

### **Bail**

Bail is real means of securing the execution of contract that is given in money in the case of contract signature. Usually bail is stored so the packaging of bought item is turned back. By this buyer guarantees to turn back the packages to seller and this doesn't happen then seller keeps the bail. By bail the assignment of contract is secured by auction. In this case firstly the bail is stored and after this some gains the possibility to take part in the process of auction. This is used by judicial persons in order to prevent participation of persons that have no right of participation or that do not have serious goal regarding the contract.

### **Advance**

Advance is property value that is given from one contract party to the other. Advance should be delivered and not only promised. Thus, this is real and secondary/additional contract.<sup>86</sup>

Advance first of all is a sign that the contract is signed. But the main goal of advance is to strengthen the contract. If the contract is not realized, advance should be turned back or it shall be calculated within the value of

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<sup>83</sup> *Kodi Civil i Republikës së Shqipërisë, neni 583.*

<sup>84</sup> *Mariana Tutulani-Semini, vepra e cituar, fq 221.*

<sup>85</sup> *LMD i Republikës së Kroacisë, neni 303, paragrafi 1.*

<sup>86</sup> *Andrija Gams, “ Hyrje në të Drejtën Civile”, Prishtinë, 1986, fq. 251.*

the obligation. For example advance in case of purchase is calculated in the price of purchase.<sup>87</sup>

### **The right of retention**

The right of retentions is the creditor right of retention to keep the mobile items of debtor that has taken in the legal way, to keep under the retention with the aim of paying or securing the return of debt, without taking into the consideration the types of judicial relationships that produce the request.<sup>88</sup> If the debtor is insolvent then creditor has the right of keeping under the retention the item until the debt is returned. The right of retention is a suitable means of securing contract because creditor has the right to keep the item until the debt is returned. E.g.in the hotel the guest item may be kept if left as under retention, when/if guest did not pay the bill for the offered services. The right of retention differs from the pledge right because the judicial relationship in case of pledge item is delivered in advance base on the special pledge contract to the pledge holder with the aim of securing contract, but this right belongs from the law. Creditor is obliged to turn back the item to the debtor if he gives clear guarantee of paying the debt.

### **Other forms of strengthening contract**

There are also many institutes of securing in forms of special contracts respectively disposals of contracts, e.g. cash advancement to secure a concrete contract relationship.

What institutes of securing contracts are going to be used by parties, this depends on the concrete circumstances. Institutes may be combined, e.g. (contracted penalty and bail) if this is not against the law disposals, respectively against the nature of issues (cash advancement and earnest to cancel the contract).<sup>89</sup>

### **Conclusion**

Sale contract is one of the most frequent contracts in our country and in the entire Europe. It is a legal act agreed between parties because of the circulation of goods within the country and also outside the country. By this contract the transfer of property is done over the mobile and immobile items.

During XX century and especially at the beginning of XXI century many efforts were done in order to unify the civil law entirely and especially the contract law.

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<sup>87</sup> Andrija Gams, “Hyrje në të Drejtën Civile”, Prishtinë, 1986, fq. 251.

<sup>88</sup> Vilim Gorenc, “Bazat e së Drejtës Tregtare Statusore dhe Kontraktore”, Prishtinë, 2010, fq.162.

<sup>89</sup> Vilim Gorenc, *vepër e cituar*, fq.164.

Unification was not pretended to be done only in the Balkans in the Europe continent but also more broadly and this just because of the importance the circulation of goods from one to the other country, has.

Unification of sale contract, however is done and related to this there are adopted a series of international disposals. But in EU there is still no unification in sense of civil code.

Means of securing contracts are accessory contracts and they have the faith of principal contracts in every step they appear also as special clause within the principal contract.

Albania and Kosovo that pretend EU should have their legislation harmonized with the EU law and in this regard efforts are being made on harmonization of the legislation with the EU law.

Means for securing sale contracts in our country are treated and applied with the customary law and they were taxatively enumerated in the Leke Dukagjini Code.

Means of securing contracts are mentioned also in big Civil Codes as: French Civil Code, German Civil Code, Italian, Austrian and also the Albanian Civil Codes from the early XX century.

These means are treated in the Albanian Civil Code of 1929 and they are regulated perfectly. This has served drafting legislation later on in Albania and in Kosovo.

Albanian Civil Code recognizes the following means of extinguish in the obligations: penal condition, pledge, mortgage, bail, advance, preferences or privileges and objections of debtor legal acts.

Law on obligation relations of 2012 classifies means as follows: sureties, repentance, penal condition, earnest, caution and advance.

Classification of these means itself shows that time statute limitation is not the mean of securing contract in the Albanian law whereas in Kosovo it is. Cash advancement in Kosovo law exists whereas in Albania it doesn't exist.

Objection of legal acts is a securing means in the Albanian law, whereas not in the Kosovo law.

I think that all means of securing sale contracts should unify and that they should be the same in our two countries because among the other of better circulation of goods.

There exist various theories regarding the means of securing contracts. These means from some authors are considered as clause within contracts, whereas some other authors consider them as dependent on principal contracts.

The other theory supports holds that these means should be complete contracts with all elements of contracts. They even should fulfill the general and special elements of contracts.

In my opinion the second theory is more acceptable. But I think that these contracts are successor or accessory because they will not be signed if there is no principal sale contract.

As contracts they extinguish by extinguishing of the principal contract because these means cannot stand alone. If contract is extinguished properly and based on the contract conditions existence of these accessory contracts would be not needed and of impalpability.

A theory doesn't separate them in special parts and it enumerates them one by one.

Theory divides them into two groups: means of real and personal securing of contract.

Both legislations Albanian and Kosovo do not make division of securing means of contracts in general and especially not the sale contract.

Name itself shows that they present security of contract parties and that if the main obligation is not fulfilled (the principal contract) then it will be fulfilled the accessory contract (security means) which was signed between parties.

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