Insight into the legal concept of contract according to civil law and common law

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Abstract

In contemporary contractual law, the contract is one of the most crucial institutes, because it serves as the main tool for the circulation of goods, services and capital in a society based on the market economy. For such reason, the term "contract" is a widespread term that is used not only by lawyers, but also by ordinary citizens, and being such, it is thought that everyone knows the exact meaning of this term.
Yet, the truth is a total different story. The right and accurate meaning of the legal concept of the contract is an important and discussed issue in the legal literature, both in the countries that have represented the civil legal system and in the countries that implement the Cammon Law system.
This scientific article aims to make a complete analysis of the understanding of the legal concept of the contract according to the two legal systems that are implemented by the countries of western democracies. The article is composed of two main issues. In the first issue, the debates encountered in the doctrine of contract law regarding the concept of the contract, in both civil law and common law systems are discussed. In this matter, we will focus mainly on the reflection of the different definitions that certain authors make of the concept of contract and the meaning that the law and civil legislation in Albania give to this concept.
In the second issue, the understanding of the concept of the contract in the comparative perspective will be addressed. We will focus mainly on the treatment of this concept according to the civil legislation in Albania, Kosovo, Italy, England, etc., highlighting the commonalities and differences that exist between these legislations. Also, part of this analysis in this article is the way in which the concept of the contract is regulated in Albania, looking at it from a historical perspective.
At the end of the article, its conclusions will be drawn, as well as the bibliography on which it is based.

Keywords: contract law, civil circulation, civil law system, common law system, contract concept.

1. Difficulties concerning the accurate understanding of the contract concept

The accurate and true understanding of the concept of contract constitutes one of the most debated issues in the doctrine of contract law. This comes as a result of several reasons: *firstly*, this concept constitutes one of the most extensive and complicated institutes of law; *secondly*, different legal systems hold different positions on its meaning and content, and third, this concept has evolved over time, being constantly changed and supplemented.
In addition to the above, providing an accurate understanding of the concept of the contract is also made difficult by the other fact that *the contract performs two main functions*, which it can perform at the same time or separately from each other. It constitutes one of the ways of acquiring ownership and real rights over them,

highlighting its function as a tool for the circulation of goods and services, as well as *constituting one of the sources of obligations*, highlighting the function of its as a means of gaining the rights of others.[1]

Based on the above reasons, the doctrine of contract law, but also the civil legislation and jurisprudence is not easy to give a complete definition of the contract as a legal concept. In general, we can say that from the two main legal systems of the law of the Western democratic states, the law in the civil law or Romano-Germanic system gives, in an express way, the meaning of the contract and treats this concept as one of the most important institutes of civil law. Thus, if we refer to the Civil Code of Italy, we find that this Code expressly defines the contract as an agreement between the parties that aims to create, change or terminate property legal relations.[2]

In contrast to civil law, the law in the common law legal system does not give a definition expressly on the concept of contract. Since the meaning of this concept is not given by law and in the absence of a Civil Code, which is typical for this system, the meaning of the concept of the contract is left to the doctrine of civil law.

In the cammon law system, almost all the authors who deal with this important institute of civil law, begin their texts by providing a definition on the concept of contract, regardless of the fact that the law itself does not provide such a definition. These definitions are indicative or illustrative in nature and are not intended to provide a final and complete definition for this concept.

Such a thing is clear if we refer to two of the most well-known scholars of English law, a country where the cammon law system is applied more clearly and completely, who, when giving the definition of the concept of contract, specify that this is one possible definition and should not be considered a complete definition. Thus the authors J. Beatson, A. Burrow and J. Cartwright., in their book "*Anson's Law of Contract"*, give this definition for the contract and contractual law:

"Contract law can be informally described as a branch of law that determines the circumstances under which a promise will be legally binding on the person who makes it"[3].

The fact that this definition does not claim to provide a definitive understanding of the concept of contract is evident from the way it is worded, stating that "contractual law may be informally described", and this definition does not explain why some promises may to be legally binding, while others are not. Another example that shows that English law does not provide an official and complete definition of the concept of contract can be found in the work entitled: *"Treitel on the Law of Contract"*, where this definition is given for this concept:

"A contract is an agreement that gives rise to obligations that are binding or recognized by law. The fact that distinguishes contractual obligations from other obligations is that they are based on the agreement of the contracting parties".

The lack of a universally accepted definition of the concept of contract in English law is a product of how contract law in this country has evolved. English contract law is unusual in the sense that it has not developed on the basis of certain theories or concepts of contract, but has developed through a form of action known as the

[1] See also: Galgano, F; "Private law", translated by Alban Brati, Tirana 2006, page 263.

[2] Article 1321 of the Civil Code of the Republic of Italy provides:

"*A contract is an agreement between two or more parties to establish, change or terminate a legal property relationship between them".*

[3] See also: Beatson, A. Burrow and J. Cartwright., "Anson's Law of Contract", Oxford University Press, 30th edition, page 122.

"*act of presumption*". According to him, what matters is the procedure or the form of action and not the content of what is promised. With the abolition of the forms of contracts with the procedural law of 1852, the importance of the procedure in front of the content of the contract or what was promised in the contract, came to be reduced. At about the same time, the practice of writing international treaties in the field of contracts began to grow, and the authors of these texts wanted to rationalize the large number of precedents within the principles of civil law. Acting in this way, they were full of faith for the work of the civil law authorities. The result of this process was the writing of a significant number of books, written in particular by Sir William Pollock and Sir William Anson, who sought to define the general principles of contracts. Although these authors were successful in defining a number of principles which were universally accepted as applying to almost all contracts, it was still not possible to define a precise definition of the concept of contract.

But, on the other hand, while there is no universally accepted definition of this concept in English law, the basic principles that apply in contract law have already been established. Thus, in order to conclude a contract, the parties must reach an agreement, which must realize a legal interest for them, and there must be an intention to create a contractual relationship. Courts generally decide whether an agreement has been concluded, if there is an offer made by one party to the other, who has accepted this offer.

The doctrine of legitimate interest constitutes a distinct concept in English contract law, which is ambiguous and requires further explanation. The essence of the legal interest is that one party can give something, perform or not perform a certain action, against the obligation of the other party to provide a benefit in favor of the first party. It does not matter how great will be the benefit or value that the other party will return to the first party, this is a matter that the parties decide by agreement in the contract, the important thing is that a certain value must be given in favor of the party that gave something or performed or did not perform something that it would have performed if there was no contract with the other party.[4]

The Civil Code of Albania, being a part of the civil legal system, expressly gives the meaning of the contract, defining it as an agreement of the parties through which a legal relationship is intended to be created, changed or terminated. What stands out in the definition that the Civil Code in force makes of the concept of contract is the fact that it connects this concept with another concept or institution of civil law, which is that of *legal action,* which is treated as the as a separate institute from this Code, in many of its provisions, from Article 79 to Article 111 thereof. According to our Civil Code, *the contract is one of the types of legal actions entered into by one or both parties, through which they aim to create, change or terminate a legal relationship*[5]. Here it is necessary to distinguish between the terms "party" and "person" who can participate in the creation or conclusion of the contract. The term "party" is a broader term than the topic "person", since one party to the contract may consist of one or several natural or legal persons. Therefore, whenever we talk about the party in the contract, we should not confuse it with the persons in the contract, because every contract as a rule has only two parties[6], while the persons in a contract can be several natural

[4] See more: McKendrick, E, "Contract Law, Text, Cases and Materials", Oxford University Press, Oxford 2020, page 5.

[5] Article 659 of the Civil Code of the Republic of Albania provides:
"*A contract is a legal act by which one or several parties create, change or extinguish a legal relationship".*

[6] Exceptions are multi-party contracts which are recognized by our Civil Code in the definition it

or legal persons that make up either one party or the other party to the contract. For example, in the property sale contract we always have two parties that are the selling party and the buying party, while the persons in this contract can be two or more natural or legal persons that make up the selling party or the buying party.
The term used by the Civil Code according to which the contract is a legal action that can be concluded between one or more parties, is a fair and accurate term and in this case the law itself has helped to distinguish between the terms party and person.
For this reason, for the legal meaning of the concept of the contract, the importance stands with the parties who enter into it and not the persons who participate in its conclusion.
The accurate understanding of the concept of contract under our Civil Code in force, at first glance seems to be simple matter. But different is the truth. To understand this concept accurately, we will have to carefully study and interpret the definition that Article 659 of the Civil Code gives to it, according to which the contract is a legal action, where one or several parties create, change or terminate a legal relationship. Based on this definition, it follows that a contract can be created or concluded: i. by a party or ii. by two parties or iii. from many parties.
The acceptance of the fact that the contract according to the Civil Code, in force, can be concluded by one party, seems at first sight a legal nonsense, this comes based on what is accepted by the vast majority of lawyers in Albania, the contract is defined in any case as a two-sided legal action, in which at least two parties participate, and the contract is called concluded when the opposing wills of the parties match, in relation to the essential elements of the contract. For this reason, we would have to accept that the definition made by Article 659 of this Code that the contract is a legal act on the basis of which a party can create, change or terminate a legal relationship or constitutes a linguistic slip, where the numerator "one" should be replaced with the number "two" or it constitutes a wrong legal concept that conflicts with the autonomy of the will of the parties in concluding the contract and with the principles that Albanian civil law applies to the concept of the contract.
However, our opinion is that the definition that the Civil Code in force makes of the concept of contract is a fair and accurate definition, clarifying that according to this Code there is an equalization in the legal sense between the contract and the legal action and that this Code gives a wide meaning of this concept, implying with the term contract, not only bilateral or multilateral legal actions, but also unilateral actions. In cases where, according to our Civil Code, we are talking about a contract concluded by one party, we will have to take into account the fact that, in this case, we are talking about a unilateral legal action that is created or concluded by one party and through which it is created , a legal relationship is changed or terminated.
In these conditions, in order to accept the fact that the contract can be concluded by a single party, we will have to take into consideration the fact that our Civil Code qualifies the contract as a legal action, making in fact equalization in the legal sense, between the contract and legal action. Since the concept of the contract according to this Code is the same as that of the legal action, then the issue of whether the contract can be concluded by only one party is a settled issue, because it is accepted by all jurists that the legal action can be created or concluded by a single party, the so-called unilateral legal action, through which certain legal relations are created, changed or terminated.

makes of the concept of contract and that even here each party may consist of one or several natural or legal persons.

An issue that requires a solution is whether the choice made by Article 659 of the Civil Code in force in Albania, where the concept of contract and that of legal action is equated, accepting the fact that the contract can be concluded or created by one party, is it a right or wrong choice? If we refer to this issue in the historical aspect in Albania, we find that the Albanian civil legislation did not accept the fact that the contract can be concluded by a single party. Thus, the Civil Code of 1982, in its definition of the concept of contract, does not help us much to understand the position it holds on the matter under discussion, since it considers the contract as a legal action that aims to fulfill the duties of the state plan and of the material and cultural needs of citizens, as well as determines that state enterprises or agricultural cooperatives or individuals can enter into different contracts, each to meet their needs.[7]

However, based on the meaning that this Code gives to the concept of contract, we can conclude that it did not accept the fact that the contract could be concluded by a single party and recognized only its most widespread form, which is the contract concluded between two parties for realization of their legitimate interests.

Law no. 2359, dated 15.11.1956 "On legal actions and obligations" did not provide the definition of the concept of contract, dealing only with the concept of legal action, treating the latter as an action that aims to create, change or terminate rights and legal-civil obligations. In the definition that this law makes of the concept of legal action, it results that it does not expressly provide whether it can be bound by one, two or many parties, but from the content of the provisions of this law, it can be concluded that it accepted the fact that the legal action could be connected even by a single party.

But this fact does not help to resolve our issue under discussion, since this law does not treat the concept of the contract in a separate and special way, it does not give any concrete solution as to whether or not the contract could be concluded by a single party. However, making a systematic interpretation of the provisions of law no. 2359, dated 15.11.1956 "*On legal actions and obligations"*[8], we can say that this law did not accept the fact that the contract could be concluded by a single party. Such a thing also results from the content of the second paragraph of Article 1 of this law, which precisely defines that when the legal action is concluded by two parties, it is called a contract, which indirectly means that this law did not accept the concept that the contract can be concluded even by a single party.

On the other hand, the Civil Code of Zogu, from 1928, defined the contract as an agreement of two or more parties to create, change or terminate a legal relationship. From the definition that this Code makes of the concept of contract, it follows that it makes a clear distinction between the concepts of legal action (which it did not specifically regulate) and contract, not accepting the fact that the contract could be

[7] Article 142 of the Civil Code of 1982 provided:
"The contract is a legal act, through which the duties of the state plan are met, as well as the material and cultural needs of the citizens.
When, for the implementation of the state plan, enterprises, institutions and agricultural cooperatives must supply or sell products and goods to each other and perform work or services, they conclude a contract between them.
Citizens conclude contracts for the fulfillment of their material and cultural needs, as well as for the subordination, enjoyment and disposition of their personal assets".

[8] Article 1 of Law no. 2359, dated 15.11.1956 *"On legal actions and obligations"*, stipulated:
"The legal action is the action that aims to establish, change or extinguish legal-civil rights and obligations (legal relationship).

concluded by a single party.[9]

2. Understanding the concept of the contract in comparative terms

If we see the issue from a comparative point of view with the civil legislations of other states of the region, we shall find that, in general, these legislations take the position that the contract can be concluded between two or more parties and do not accept the fact that it can also be concluded by one party alone. Thus, the Italian Civil Code, which in its provisions does not treat the institution of legal action separately and separately, in contrast to the German, Austrian, Russian legislation, etc., defines the contract as an agreement between two or more parties for creating, changing or terminating property rights and legal obligations. Based on this definition, it is concluded that the Italian civil law, in contrast to our Civil Code, does not accept the fact that the contract can be concluded by a single party and adheres to the classical theory of contractual law according to which where there is a contract, there are at least two parties and two wills that, within the framework of contractual freedom, agree to create, change or terminate legal rights and obligations of a property nature. [10]

The Civil Code of the Republic of Kosovo defines a contract as an agreement between two or more parties that aims to create, change or terminate a legal relationship between the parties. From the understanding that this Code gives to the concept of the contract, it can be concluded that, under the model of the Italian and French Civil Codes, it does not specifically treat the institution of legal action, treating in its provisions, in detail, the concept of contract and its effects for the parties. Based on this Code , it follows that it also does not accept that the contract can be concluded by a single party.[11]

If we refer to some civil legislations of other countries, we find that most of them define the contract as an agreement of two or more parties to create or change legal-civil rights and obligations, not accepting the fact that it can also be concluded from a single party. Thus, the French Civil Code defines the contract as a voluntary agreement of the parties to create or transfer property rights from one person to another, a definition which is similar to what the Italian Civil Code makes of the contract. The Greek Civil Code defines a contract as a lawful manifestation of the will of two or more parties concerning a future lawful interest. The civil law of the United States of America, based on the Uniform Commercial Codes adopted by each state, defines a contract as an agreement of the parties to give things or perform acts, where one party has made a proposal or an offer that has been accepted by the other party and when both parties intend to create a contractual relationship. [12]

Based on what was discussed above, it can be concluded that most of the legislations

[9] Article 1076 of the Civil Code of 1928 provided:
"*A contract is an agreement between two or more people to establish, change or terminate a relationship (a legal relationship).*

[10] Article 1321 of the Civil Code of the Republic of Italy provides:
"A contract is an agreement between two or more parties to establish, change or terminate a legal property relationship between them".

[11] Article 9 of the Civil Code of the Republic of Kosovo provides:
"A contract is an agreement between two or more parties, which is intended to create, regulate or extinguish a binding legal relationship between the parties, or to have any other legal effect".

[12] See also to: Tutulani-Semini; M; *"The Law of Obligations and Contracts, the General Part and the Special Part",* published by the publishing house "Skanderbeg Books", Tirana 2016, page 40.

of other countries define the contract as an agreement of two or more parties to create or change legal-civil rights and obligations and do not accept the fact that the contract can also be concluded by a single pair. Under these conditions, it may seem that the definition of the concept of the contract in our current Civil Code, acknowledging that it can be created or concluded by only one party, is wrong and unfounded. Our opinion is that the definition that our current Civil Code makes of the concept of contract is fair and accurate, for several reasons: *firstly*: our Civil Code for the regulation of the concept of contract has not followed the model of the Italian or French Civil Codes, but the German, Austrian, Belgian, Croatian, etc., *treating this concept as part of the legal action. Secondly:* In the definition that the Civil Code makes of the concept of contract, *it equates it with the concept of legal action* and as long as all the civil legislations of different states accept that legal action can be created by the will of one party, and the contract may be created by the will of a single party, as part of the legal action it represents.

The debate discussed above on the concept of contract, where it is accepted that it can be concluded or created by a single party, has not only theoretical or academic value but also practical value. Thus, the acceptance by our Civil Code, in effect, that the contract can be created by one party, giving the concept of the contract a broad meaning, carries practical values, because it creates the possibility for the legal system in Albania that through special laws of contracts are created that can only be created by the will of one party. This is how we refer to the special law no. 9091, of the year 2008 " *Traders and Trading Companies* ", as amended, in its article 3 it is determined *that limited liability companies and joint stock companies can be created only by a natural or legal person.*[13]

The creation of the above commercial companies with a sole partner or shareholder cannot be done otherwise except by means of a contract that is reflected in the act of incorporation and in the statute of these companies, on the basis of which the sole natural or legal person agrees that making contributions to the company, in accordance with the company's status, to develop a commercial economic activity, in order to receive profits or losses from this activity. Based on the above, we can say that the definition that the Civil Code gives to the concept of contract, accepting that it can be created by a single party, is not only fair and well-founded, but also creates the possibility that laws others provide that certain contracts can be concluded by a single party. If the Civil Code had not accepted that contracts can be concluded by a single party, then even special laws would have been impossible to provide for such a thing, because they take the concept of the contract precisely from the Civil Code and they cannot give it a different meaning than the one given by the Civil Code.

The cases when the contract is created or concluded by agreement of the two parties are the most frequent cases in practice and do not need any special treatment. As such cases are most of the contracts that are foreseen in the special part of the contract law, such as the sale-purchase contract, the lease contract, the business contract, the loan contract, the insurance contract, etc.

In addition to two parties, the contract can also be concluded by several parties, where such contracts are known in contract law as multilateral contracts. All those

[13] Article 3 of the law no. 9091, of 2008 *"Traders and Trading Companies ",* as amended, provides:
"1. Trading Companies are established by two or more natural and/or legal persons, who agree to achieve common economic objectives, making contributions to the company, according to the provisions in its statute. *Limited liability companies and joint-stock companies can be established by only one natural or legal person (companies with a sole partner or shareholder).*

agreements in which three or more parties participate and whose purpose is to create, change or terminate a legal relationship will be considered as such contracts. As a typical example of a multilateral contract provided for in the Civil Code is the simple partnership contract, which is regulated by article 1074 et seq. of the Civil Code. According to this provision, the simple partnership is a contract in which two or more parties agree with each other to exercise a joint economic activity in order to share the profits and losses arising from it[14].

Apart from the simple company which is an example of a multilateral contract and which is regulated by the Civil Code, all commercial companies, regardless of their form and which are regulated by the special law no. 9091, of 2008 "*Traders and Trading Companies* ", are nothing but multilateral contracts. Such a thing is clear if we refer to the definition that article 3 of this law gives to commercial companies, quoted above, according to which commercial companies are established by two or more parties with the purpose of exercising a joint economic activity.

Another issue that is worth discussing in relation to the definition that our current Civil Code makes of the contract is the fact *whether the contract is created by one, two or many parties to create, change or terminate a legal relationship, generally* as this Code expressly defines, *or to create, change or terminate a legal relationship with a property character*, as provided by the legislation of some other states. Regarding this issue, if we look at it from a historical perspective, it is found that the Albanian civil legislation has taken different positions. Civil Code of 1982 and law no. 2359, dated 15.11.1956 "*On legal actions and obligations*", provided that the contract can be concluded between the parties to create or change a legal relationship of a property nature. On the other hand, the Civil Code of Zogu on this issue held the same position as the Civil Code in force, determining that the contract can be created to create or change legal relations, including here, in addition to property relations, legal relations with personal character.

Looking at the issue from a comparative point of view, we find that the civil legislations of different states take different positions. Thus, if we refer to the Italian Civil Code, this Code expressly determines that the contract is concluded between the parties for the creation or change, between them, of a property legal relationship. According to Italian civil law, the legal relationship that creates, changes or terminates between the parties to the contract must be a property relationship.

This means that the object of the contract is primarily the objects and other legal goods of a property nature. But the fact that the contract creates or changes a property legal relationship does not mean that it cannot have as its object legal relationships of a personal nature. On the contrary, according to Italian civil law, the contract can create or change a legal relationship of a personal nature, provided that this relationship can be evaluated economically.

The fact that the contract creates or changes between the parties a legal relationship with a property character, constitutes one of the characteristic elements or conditions, either for the material goods or for the object of the obligation. This condition or element derives from the fact that the contract, as mentioned above, is both one of the ways of acquiring ownership and a source of obligations, and it can be either a way of acquiring ownership or a source of obligations.

The property element of the contract according to Italian civil law serves to distinguish

[14] Article 1074, first paragraph of the Civil Code provides:
"*The partnership is a contract by which two or more people agree to carry out an economic activity, with the aim of sharing the profits derived from it".*

between the contract in general and the institution of marriage, which is a family legal relationship that is created by agreement between the parties, as well as the contract. But in the case of marriage, we are not faced with a property legal relationship that transfers rights and obligations, and for this reason, special norms are applied to marriage that are provided by the Family Code, which do not apply in the case of a contract[15].

The Civil Code of Kosovo, based on the definition of the concept of contract, seems to take a similar position to our Civil Code, in force. Thus, the Kosovar civil law, defining the contract as an agreement that has the purpose of creating or changing a legal relationship of obligation between the parties or any other legal effect, accepts that by means of the contract, not only property legal relationships can be created or changed, but and legal relations, with a personal character.

The French Civil Code recognizes that contracts can be concluded to create or transfer property rights from one person to another, taking the same position as the Italian Civil Code on this matter. The Greek Civil Code, defining a contract as a legal manifestation of the will of two or more parties concerned with a future legal interest, taking a similar position to our Civil Code, recognizing that contracts can create or change not only a property legal relationship, but also a personal legal relationship.

The civil legislation of the United States of America, based on the definition they make of the contract as the agreement of the parties to give things or to perform actions, seems to take the same position as the Italian and French Civil Codes, recognizing that the contract can create or change only a property legal relationship. The same can be said about English civil law, which recognizes that a contract is an agreement to give things or perform actions, based on an offer made by one party and accepted by the other party.[16]

The position held by our Code in force in relation to the object of the contract, according to which a legal relationship in general and not only a legal relationship with a property character can be created, changed or terminateed by means of it, we think that it is a fair position and grounded. In the first place, by giving a broad meaning to the object of the contract, *this Code reinforces and guarantees the principle of the autonomy of contractual freedom, as one of the basic principles of contract law.* In addition to this provision in an extended manner of what the parties intend to create, change or terminate by means of the contract, *is a provision that allows the parties to enter into types of contracts that are not expressly provided for in the civil law or and mixed contracts*, which are contracts that contain the elements of several contracts at the same time.

Also, the provision made by our Civil Code according to which the contract can be concluded between the parties to create or change a legal relationship, without specifying whether it is of a property or personal nature, *is a provision that gives the parties the opportunity to enter into any type of agreement that is legal, regardless of the rights and obligations that are purported to be transferred by it*. So, for example, if we refer to Article 705 of the Civil Code, this provision defines the sales contract as an agreement between the parties whose object is the transfer of ownership of an item or a right against the payment of the price stipulated in the contract.

If our Civil Code were to determine that only property legal relationships can be created or changed through the contract, then there would be a legal conflict between

[15] See more: Galgano, F; *"Private Law",* translated by Alban Brati, Tirana 2006, page 264-265.

[16] See more: www.ad4id.org, page 2, Allan and Overy, Advocates for International Development; *"At a glance guide of Basic Principles to English Contract Law".*

its article 595, which defines the concept of contract in general, and its article 705, which defines the meaning of the contract of sale, since according to the latter the object of the contract can be not only the objects but also the rights in general, not of a property nature, such as the right of the firm, the right of the author, the right of invention, the right of inheritance , etc. But, since the Civil Code has given a broad meaning to the concept of the contract, accepting that through it the parties can create or change a legal relationship, in general, in this case we do not have a clash or collision between these two legal provisions .

The contract as an agreement of the parties to create, change or terminate a legal relationship *can be concluded to create a legal relationship.* For example, in the case of concluding a business contract between the customer and the entrepreneur, from which mutual rights and obligations arise, between the customer on the one hand and the entrepreneur on the other hand, or in the case when the parties conclude a property insurance contract, where again between the parties, the insured and the insurance company have mutual rights and obligations, etc.

The contract can also be concluded to change an existing legal relationship. For example, between persons A and B, a loan contract was concluded, where person B borrowed from person A an amount of 5,000,000 ALL, without interest, with a repayment period of 5 years. During the continuation of this contract, person A transfers or assigns his right to request the return of the loan from person B to person N, who has the right to request the return of the loan from person B, at the end of the term of the contract . In this example, which in contract law is known as "assignment of credit", we have a change in the legal relationship of the obligation, where the obligation to return the loan from person B initially existed towards person A, but during the continuation of this relationship this obligation already exists towards person N.

In addition to creating or changing a legal relationship, *the contract can also be concluded to terminate an existing legal relationship*. This is applicable with the cases when, for example, the creditor forgives the debt that the debtor has towards him and for this a contract is concluded between the parties or when the parties decide to change the legal relationship they have concluded between them, for example from a lease contract, the parties decide to end the lease contract and conclude the contract of sale of the item between them, etc.

Under English law, while there is no universally accepted agreement on the definition of contract, the general principles of contract law are provided for with a high degree of certainty. To enter into a contract, the parties must reach an agreement, the agreement must be based on a legitimate interest, and there must be the intention of the parties to create a binding legal relationship. Courts generally conclude that a contract has been concluded between the parties, if there is an offer made by one party addressed to the other party, which has been accepted by the latter; acceptance will be deemed to exist if he responds positively to all the essential conditions of the offer.

The essence of legal interest is that something must be given in return for a promise that has been made, in order for that promise to be considered binding. It does not matter how much its value is that will be given in return; it is a matter for the parties to decide.

What matters is that something legal that has value will be given by the party who made the promise.

Therefore, theoretically if I agree to sell my flat for £100, this is a binding promise because it is based on a legitimate interest. On the other hand, a promise that I transfer

my ownership of the apartment to them in exchange for nothing is not binding, except when it is stipulated in an agreement. In essence, contract law does not recognize promises without consideration as binding, even though they, in certain cases, may provide protection for a party who has acted by making expenses on the basis of a promise without consideration, according to the doctrine of non-retraction from a public promise. While the doctrine of legitimate interest has exerted great influence in the academic field, it presents little practical value, as it can be avoided either by the provision of concrete legitimate interest by the parties, or by including the promise in the agreement .

The requirement that there must be an intention to create a binding legal relationship between the parties similarly poses few problems in practice. This is due to the fact that there is a strong presumption in the field of legal-civil relations that the parties aim to create binding legal relations. The purpose of this doctrine is to essentially keep contract law out of the realm of social relations and family law.

The law also defines the general terms of the contract and the procedure according to which the contract will be considered concluded. Thus, a contract can be declared invalid (relative invalidity) if it was concluded as a result of a fundamental mistake or as a result of a misunderstanding or as a result of threat or fraud or when its object or the way of its execution is illegal or contrary to public order or when after the conclusion of the contract a fact or circumstance occurs that makes the execution of the contract impossible or makes it illegal, etc.[17]

Presuming that a valid contract has been entered into, failure to perform obligations under the contract without lawful cause constitutes a breach of contract. Breach of contract entitles the other party to claim damages, the purpose of which is to put the injured party in the position it would have been in if the contract had been performed according to its terms. If the breach of the contract constitutes a violation of one of its main terms, the injured party may terminate the further execution of the contract, without suffering any legal consequences for such an action. But the law does not usually require the breaching party to fulfill its obligations under the contract; the principle of in-kind fulfillment of the obligation constitutes an exception to the rule and not a primary principle for the party that violated the contract. The law generally accepts that the party who has breached the contract must pay a sum of money as compensation, instead of performing the obligation in kind.

Conclusions

From the above treatment of the contract concept, several conclusions can be drawn. One of the conclusions of this article is that the accurate and fair meaning of this concept is not an easy issue, but rather it is one of the most difficult and debated issues of contract law. Thus, for this concept, the civil law and common law systems hold different positions, as well as by well-known authors of the law, different definitions are provided in relation thereto.

Another conclusion that may be drawn is that in the states that implement the civil law system, the concept of contract is provided, expressly by law, while the legislation of the states that implement the cammon law system, do not provide a definition of this concept.

This happens as a matter of tradition, since the cammon law system is based mainly

[17] Also refer to: McKendrick, E, "Contract Law, Text, Cases and Materials", Oxford University Press, Oxford 2020, pp. 6-7.

on judicial precedent, rather than on written law. But this also happens based on the fact that this system has not preferred to make a rigid definition of this concept, since it is a vast broad concept and has been assessed as impossible to define, completely in legal terms.

Another conclusion that can be drawn from this article is that the civil legislation in Albania has defined the concept of contract in the widest possible way, equating it with the concept of legal action, which in our opinion is a right solution. If we compare the definition that our civil law has made of this concept, with some of the civil legislation of other countries, such as Italy, France, Kosovo, North Macedonia, etc., it is found that there is some inconsistency between them. This is due to the fact that these foreign legislations recognize that the contract can only be concluded between two parties, whilst our civil law recognizes that the contract can also be concluded by a single party. On the other hand, if we compare the concept of the contract defined by our civil legislation with that of countries such as Germany, Austria, Croatia, Hungary, England, etc., it is found that there is complete agreement between these legislations, since they equate this concept with that of legal action, which makes possible a more comprehensive definition of this concept.

As the last conclusion of this paper, we can affirm that the cammon law system, in contrast to the civil law system, pays greater attention to the element of legal interest as one of the basic conditions for concluding a contract. In the English judicial practice, as the typical country that represents the civil system, there are a large number of court decisions that have concluded in the non-existence of the contracts due to the lack of legal interest of the parties. We are of the opinion that the treatment of the legal interest that the English contract law makes, should also be included in the civil legislation in Albania, since in this way its meaning would become more complete and clear.

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