



A Comparative Study of the Right of Termination Due to Material Non-Conformity of the Goods in the 1980 Vienna Convention, the Directive 2019 of the European Union and Iranian Law

**Umm Al Baneen Ramadanzadeh Badeli¹ | Mohammad Hossein Taghipour Naghibi^{2*} |
Ali Soleimani Andurvur³**

1. Assistant Professor, Department of Private Law, University of Mazandaran, Babolsar, Iran
2. Assistant Professor, Department of Private Law, University of Mazandaran, Babolsar, Iran
3. Ph.D Candidate in Private Law, University of Mazandaran, Babolsar, Iran

* Corresponding Author Email: mh.taghipour@umz.ac.ir

Abstract

At the international and regional levels, numerous conventions and regulations have been adopted to ensure maximum consumer protection and to remove the main barriers to cross-border trade. Part of these regulations focuses on providing remedies for the buyer, including the right of termination in cases of material non-conformity of goods. In fact, according to contractual obligations, the seller is committed to delivering goods to the customer that conform to the contract (for example, in terms of quantity, quality, suitability for purpose, and other characteristics). However, if the seller fails to fulfill their obligation, it will cause harm to the other party of the contract. Therefore, in some legal systems around the world, various remedies (including the right to repair and replace, reduction of the price, etc.) have been provided to the customer to compensate for the damage caused by the breach of contract. The right to terminate the contract, arising from the seller's failure to fulfill their obligations, is one of the severe remedies that the injured party due to material non-conformity of the goods may use as a solution for compensating damages. This remedy is recognized not only in Iranian law but also in the 1980 Vienna Convention on the International Sale of Goods and the European Union Directive 771/2019. However, in Iranian law, the lack of specific regulations regarding the conformity of goods and the provision of subtle distinctions regarding the delivery of non-conforming goods has made the issue difficult to address.

Therefore, given the importance of harmonizing laws to facilitate and promote cross-border trade, this research aims to clarify the similarities and differences regarding material conformity of goods and the right of termination arising from it in the Convention, the Directive, and Iranian law. To address the mentioned questions, this study will first examine the concept, criteria, and examples of conformity, followed by an analysis of the remedies for breach of conformity obligations and the discretion in applying them. Finally, the conditions for exercising the right of termination due to

material non-conformity of goods with the contract in the 1980 Vienna Convention, the European Union Directive 771/2019, and Iranian law will be explored.

The aforementioned investigations showed that the concept of 'material conformity' of goods with the contract is accepted in a limited manner in Iranian law. In the case of material non-conformity of goods with the contract, to maintain the stability of transactions and encourage sustainable consumption, the 1980 Vienna Convention essentially provides various remedies for the buyer and discretion in applying each one, while also granting the seller rights such as the right to remedy non-conformity, which imposes the performance of the contract on the buyer despite their right of termination. In contrast, in the European Union Directive, this objective is generally achieved by obligating the consumer to adhere to the remedies for damages, without providing any rights to the seller. This means that until it is feasible to require the repair or replacement of the goods, the right of termination does not arise for the consumer from the outset. Furthermore, in Iranian law, the remedy for breach of conformity obligations is generally limited to the right of termination, and there is no possibility of requiring the seller to remedy the goods for the buyer. Granting the right of repair to the seller is also generally not feasible due to the obligation it places on the consumer and the absence of specific provisions in this regard. However, what is common among all three is the exceptional nature of the right of termination.

Regarding the conditions for exercising the right of termination due to material non-conformity of goods, the Directive is more similar to the Convention compared to Iranian law, as follows: First, under the Directive and the Convention, the right of termination is granted to the buyer only when the non-conformity is significant and fundamental. However, in Iranian law, any non-conformity creates a right of termination for the buyer, and if the non-conformity is fundamental, such that the goods lack an essential characteristic or the defect is such that it alters the nature of the goods, the transaction is considered void, contrary to the provisions of the other two regulations. Secondly, in the Convention, notifying the buyer about the non-conformity of the goods with the contract is one of the conditions for exercising the right of termination. This is not explicitly required in the Directive. Moreover, in Iranian law, if there is no contrary condition, the consumer will have the right to terminate the contract without any obligation to inform the seller. Thirdly, according to the Convention, for the buyer to exercise the right of termination, it must be done within a reasonable period specified in the Convention. Otherwise, even if the buyer has a valid excuse, they will be deprived of the right of termination. Under the Directive, the seller is generally only responsible for the non-conformity of goods to the consumer for up to two years from the time of delivery. In Iranian law, in the case of non-conformity (lack of the agreed-upon characteristic or defect), the buyer is required to immediately exercise their right of termination. Fourthly, while under the Convention and the Directive, the termination of the contract does not necessarily require a court judgment, the termination must be communicated to the buyer; whereas in Iranian law, neither is required. However, what is common among all three regulations as conditions for contract termination is the possibility of returning the goods to the buyer in their original condition (with some exceptions).



A comparative examination of the above points has clarified the differences and similarities between the Iranian legal system, the 1980 Vienna Convention on the International Sale of Goods, and the European Union Directive 771/2019 regarding the exercise of the right of termination in cases of material non-conformity of goods. However, given the expansion of the global economy, it is suggested that lawmakers, to strike a balance between the rights of consumers and sellers, encourage sustainable consumption and greater durability of goods for the realization of a more sustainable economy, establish specific regulations regarding the theory of 'conformity' of goods in line with the harmonization of its rules with international regulations. This would facilitate the development of cross-border transactions.

Keywords: Non-Conformity, Delivery, Material, Goods, Right of Termination.



References

Books

1. Agapiou, N. (2015). *Buyer's remedies under the CISG and English sales law: a comparative analysis*. Doctoral dissertation, University of Leicester.
2. Alhajaj, A. M. A. H. (2015). *The concept of fundamental breach and avoidance under CISG*. Doctoral dissertation, Brunel University London.
3. Emami, S. H. (2004). *Civil law*. Tehran: Ganj Danesh Publications. [in Persian]
4. Haeri, S. A. (2020). *Commentary on the Civil Code*. Tehran: Ganj Danesh Publications. [in Persian]
5. Hayati, A. A. (2013). *General rules of contracts*. Tehran: Mizan Publications. [in Persian]
6. Honnold, J. (1999). *Uniform law for international sales under the 1980 United Nations convention*. The Hague: Wolters Kluwer Law & Business.
7. Howells, G. G. 2016. *Reflections on Remedies for Lack of conformity in Light of the Proposals of the EU Commission on Supply of Digital Content and Online and Other Distance Sales of Goods*: In European Contract Law and the Digital Single Market: The Implications of the Digital Revolution (Edited by: De Franceschi, A.). Cambridge: Cambridge University Press, Intersentia.
8. Jafari Langaroudi, M. J. (2011). *Terminology of law*. Tehran: Ganj Danesh Publications. [in Persian]
9. Katouzian, N. (2016). *General rules of contracts*. Tehran: Sahami Enteshar. [in Persian]
10. Katouzian, N. (2020). *Civil law; Reciprocal contracts – Proprietary contracts*. Tehran: Ganj Danesh Publications. [in Persian]
11. Maley, K. (2009). *The limits to the conformity of goods in the United Nations convention on Contracts for the International Sale of Goods(CISG)*: in Int'l Trade & Bus. L. Rev: Volume XII(Edited By: Moens, G. , Jones, R.), London: Routledge-Cavendish.
12. Permats, C. (2012). *Seller's right to cure under the United Nations Convention for the International Sale of Goods(CISG)*. Master thesis, Faculty of Law, Lund University, Supervisor Professor Proshanto Mukherjee, Field of study International Contract Law Semester.
13. Safaii, S. H. (2017). *General rules of contracts*. Tehran: Mizan Publications. [in Persian]
14. Safaii, S. H., Adel, M., & Kazemi, M. (2016). *International sales law*. Tehran: University of Tehran Press. [in Persian]
15. Schlechtriem, p. (1998). *Commentary on the un convention on the international sale of Goods*. Oxford university press.

16. Schulze, R. (2016). *Supply of digital content—a new challenge for european contract law*: in European Contract Law and the Digital Single Market. The Implications of the Digital Revolution: (Edited by: De Franceschi, A.). Cambridge University Press: Intersentia.
17. Shahidi, M. (2012). *Obligations (Civil Law 3)*. Tehran: Majd Publications. [in Persian]
18. Shahidi, M. (2018). *Conditions of contract*. Tehran: Majd Publications. [in Persian]
19. Shahrarian, E., & Rahimi, F. (2021). *International sale of goods law: Commentary on the United Nations Convention on Contracts for the International Sale of Goods in the light of doctrine and judicial decisions, a comparative study with international documents and Iranian law*. Tehran: City Knowledge Legal Studies and Research Institute. [in Persian]
20. Straetmans, G., & Meys, S. (2017). *Digital Content and Distance Sales New Developments at EU Level: The new proposals for directives concerning digital content and online/distance sales: what impact on consumer protection?*. In Digital content & distance sales/Claeys, I. [edit.]; e.a., Cambridge: Intersentia.
21. Synodinou, T. E., Jogleux, P., Markou, C., & Prastitou, T. (2019). *EU Internet Law in the Digital Era: Regulation and Enforcement*. Switzerland: Springer Nature.

Articles

22. Amini, M., Mafi, H., & Azami Chahar Bargh, H. (2011). A study of the right of termination due to the anticipated breach of contract in the United Nations Convention on Contracts for the International Sale of Goods and Iranian law. *Legal Studies Journal (Social Sciences and Humanities of Shiraz)*, 3(1), 35-52. [in Persian]
23. Andersen, C. B. (2012). Article 39 of the CISG and Its Noble Month for Notice-Giving; a(Gracefully) Ageing Doctrine. *JL & Com.*, 30(2), 185.
24. Asadi, M. M. (2022). Termination of contract as a remedy under the United Nations Convention on Contracts for the International Sale of Goods (Comparative study). *Legal Civilization Quarterly*, 5(13), 31-52. [in Persian]
25. Asghari Aghamshehdi, F., & Mohammadzadeh, A. (2008). A comparative study of the buyer's right to request the repair of goods under the 1980 United Nations Convention on Contracts for the International Sale of Goods and Iranian law. *Business Research Journal*, 13(49), 121-143. [in Persian]
26. Atamer, Y., Bergsten, E., Bonell, M. J., Flechtner, H., Gama, L., Garro, A., ... & Bridge, M. (2019). CISG Advisory Council Opinion No. 19: Standards and Conformity of the Goods under Article 35 CISG. *Nordic Journal of Commercial Law*, 2, 34-63. Doi: 10.5278/ojs.njcl.v0i2.3396.



27. Bygum, M. (2010). Extension and limitation of the buyers right to avoid the contract under the cisg with focus on the situation whether the seller is in current breach of the contract after the time for performance has passed. available online at: <https://law.au.dk/fileadmin/Jura/dokumenter/forskning/-rettid/2010/afh21-2010.pdf>.
28. Carvalho, J. M. (2019). sale of goods and supply of digital content and digital services—overview of directives 2019/770 and 2019/771. *Journal of European Consumer and Market Law*, 8(5), 194-201.
29. Claeys, I., Vancoillie, J. (2017). Remedies, modification of digital content and right to terminate long-term digital content contracts. *In Digital content & distance sales: new developments at EU level*, 15(4), 167-232.
30. De Franceschi, A. (2021). Consumer's Remedies for Defective Goods with Digital Elements. *J. Intell. Prop. Info. Tech. & Elec. Com. L.*, 12, 143.
31. De Luca, V. (2015). The conformity of the goods to the Contract in International Sales. *Pace Int'l L. Rev.*, 27(1).
32. Flechtner, H. M. (2007). Conformity of Goods, Third Party Claims, and Buyer's Notice of Breach under the United Nations Sales Convention("CISG"), with Comments on the " Mussels Case," the " Stolen Automobile Case," and the " Ugandan Used Shoes Case. *University of Pittsburgh School of Law*. available at: <https://law.bepress.com/pittlwps/art64>.
33. Graffi, L. (2003). Case Law on the concept of fundamental breach in the Vienna Sales Convention. *Int'l Bus, LJ*, 338.
34. Khayrijabr, A., Ghabouli Darafshan, S. M., & Ansari, A. (2018). How to exercise termination in case of breach of contractual obligations in the 1980 United Nations Convention on Contracts for the International Sale of Goods, Iranian law, and Iraqi law. *International Studies Quarterly*, 15(3), 89-114. [in Persian]
35. Magnus, U. (2005). The Remedy of Avoidance of Contract Under CISG- General Remarks and Special Cases. *JL & Com.*, 25, 423.
36. Malkawi, B. H. (2020). CISG: The Relation among Cure, Fundamental Breach, and Avoidance. *JL Pol'y & Globalization*, 93, 24.
37. Mirzanajad Joibari, A. (2005). The impossibility of rejecting the goods and exercising the buyer's right of termination (Analytical study of the 1980 United Nations Convention on Contracts for the International Sale of Goods and Iranian law). *Legal Affairs Journal*, 33, 271-302. [in Persian]
38. Müller-Chen, M., & Pair, L. M. (2011). Avoidance for non-conformity of goods under Art. 49(1)(a) CISG. *Wolters Kluwer Law & Business*. available at: https://cisg-online.org/files/commentFiles/M%C3%BCller-Chen_Pair_FS_Bergsten_2011_655.pdf
39. Qasemi, R., & Mahdavi, M. H. (2018). The right of termination arising from the

- anticipated breach of contract in the Principles of International Commercial Contracts, the United Nations Convention on Contracts for the International Sale of Goods, and Iranian law. *Journal of Private and Criminal Law Research*, 14(38), 99-116. [in Persian]
40. Saidov, D. (2006). Anticipatory non-performance and underlying values of the unidroit principles. *Unif. L. Rev. ns*, 11, 795.
 41. Schroeter, U. A. (2017). Time-Limit Running Wild: Article 39(2) CISG and Domestic Limitation Periods. *NJCL*, 2, 152.
 42. Schwenger, I. (2005). Avoidance of the Contract in Case of Non-Conforming Goods(Article 49 (1)) A CISG. *JL & Com.*, 25, 437.
 43. Shafiei, H., & Forouhi, M. (2020). A study of the conditions for termination under the United Nations Convention on Contracts for the International Sale of Goods, Iranian law, and European legal principles. *Law and Advocacy Journal*, 23, 73-92. [in Persian]
 44. Shahrarian, E., & Rahimi, F. (2014). Material conformity of goods with the contract under the 1980 United Nations Convention on Contracts for the International Sale of Goods and Iranian law. *International Legal Journal*, 31(51), 41-66. [in Persian]
 45. Shahrarian, E., & Rahimi, F. (2014). Inspection of goods and notification of non-conformity under the United Nations Convention on Contracts for the International Sale of Goods and Iranian law. *Comparative Legal Research*, 18(1), 75-98. [in Persian]
 46. Shahrarian, E., & Sahebjam, S. (2021). Hierarchy and modification of remedies for breach of contract: An approach to international documents and Iranian law. *Contemporary Legal Studies Journal*, 12(24), 33-79. [in Persian]
 47. Tari, H., Qasemzadeh, M. J., & Mohammadi, S. (2020). Analysis of the legal relationship between the seller's right to remedy non-conformity and the buyer's right to termination (A comparative study of the United Nations Convention on Contracts for the International Sale of Goods, UNIDROIT Principles, and Iranian law). *Comparative Legal Research*, 24(2), 1-25. [in Persian]
 48. Twigg-Flesner, C. (2020). Conformity of Goods and Digital Content/Digital Services. *El Derecho privado en el nuevo paradigma digital, Barcelona-Madrid, Marcial Pons*, 1-25. Available at ssrn: <https://ssrn.com/abstract=3526228>.
 49. Van Gool, E., & Michel, A. (2019). The New Consumer Sales Directive 2019/771 and Sustainable Consumption: A Critical Analysis. *Journal of European Consumer and Market Law (EuCML)*, 136-147. Available at ssrn: <https://ssrn.com/abstract=3732976>.
 50. Yovel, J. (2005). The Seller's Right to Cure a Failure to Perform: An Analytic Comparison of the Respective Provisions of the CISG and the PECL. *NJCL*, 1.



Legal Case

51. Clout Case No. 2 Ob 48/02a, Austria, 27 February 2003.
52. Clout Case No. 235 [Bundesgerichtshof, Germany, 25 June 1997], published in RECHT DER INTERNATIONALEN WIRTSCHAFT (RIW) 1037(1997) (German).
53. Clout Case No 83 [Oberlandesgericht München, Germany, 2 Mar. 1994]; CLOUT Case No. 124 [Bundesgerichtshof, Germany, 15 Feb. 1995].
54. Clout Case No. 282 [Oberlandesgericht Koblenz, Germany, 31 Jan. 1997].
55. Clout Case No. 165 [Oberlandesgericht Oldenburg, Germany, 1 Feb. 1995].