

*Milica Popović**
Faculty of Law, University of Novi Sad
ORCID: 0009-0004-9607-4123

THE METHOD OF CALCULATING PRICE REDUCTIONS IN CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS**

ABSTRACT: The buyer's right to a price reduction represents an institution of Roman law that has, over time, become widely accepted in legal systems with a continental legal tradition. In the context of international sales of goods, Article 50 of the United Nations Convention on Contracts for the International Sale of Goods, which regulates this right, is of particular importance. This paper analyzes the method of calculating price reductions as one of the contentious issues regarding exercising the right to a price reduction, in terms of Article 50 of the Convention. For a comprehensive understanding of the problem, the paper presents the history of the emergence, the sources of the right to a price reduction in contracts for the international sale of goods, as well as the conditions for its application. The central part of the paper is the issue of the method of calculating price reduction, with special reference to the time and place of determining the value of conforming and non-conforming goods for the purpose of their comparison and the application of the calculation formula. These issues were controversial even at the

* e-mail: popovicmilica321@gmail.com, PhD student.

** The paper was received on September 13, 2023, the modified version of the paper was submitted on October 30, 2023, and it was accepted for publication on March 12, 2024.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

time of the adoption of the Convention itself, and today they are still the subject of discussions in legal theory, while case law is not sufficiently harmonized. The aim of the paper is to draw a conclusion about the method of calculating price reduction, through the analysis of the Convention's provisions, and solutions given in theory, as well as in case law.

Keywords: price reduction, contract for the international sale of goods, Article 50, United Nations Convention on Contracts for the International Sale of Goods, method of calculation, time of calculation, place of calculation

THE RIGHT TO A PRICE REDUCTION IN CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

The United Nations Convention on Contracts for the International Sale of Goods¹ (hereinafter: the Convention) regulates a special legal remedy available to the buyer in case the delivered goods do not conform with the contract – the right to a price reduction. Specifically, Article 50 of the Convention stipulates that:

“...if the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.”²

The buyer's right to a price reduction originates from a special action in Roman law – *actio quanti minoris*, which allowed the buyer to demand

¹ The United Nations Commission on International Trade Law (UNCITRAL), *United Nations Convention on Contracts for the International Sale of Goods* (hereinafter: the Convention), Vienna, 1980.

² See Article 50 of the Convention. Although the right to a price reduction was also regulated in Article 46 of the Convention Relating to a Uniform Law on the International Sale of Goods (ULIS), which preceded the adoption of the Convention, Article 50 differs from the provision provided for by ULIS in several ways. Firstly, the Convention explicitly emphasizes that the buyer may reduce the price even after the price has been paid. Also, an exception from the use of the right to a price reduction is provided in the case that the seller remedies any failure to perform his obligations in accordance with Article 37 of the Convention (remedy of defects before delivery), which was a proposal by the German delegation as a logical consequence of referring to Article 48 of the Convention (remedy of defects after delivery). For more details, see Schwenger, I., Fountoulakis, C. (2007). *International Sales Law*. Oxford: Routledge–Cavendish, 394.

a reduction in the purchase price if the seller delivered goods with defects.³ From Roman law, the right to a price reduction was transferred into many codifications of the continental legal system.⁴ On the other hand, the Anglo-Saxon legal system does not recognize this institution, and its purpose is achieved through compensation for damages.⁵

However, the right to a price reduction cannot be equated with the right to compensation for damages. The fundamental difference between the right to compensation for damages and the right to a price reduction lies in their different purposes. While the purpose of the right to a price reduction is to preserve the contractual balance achieved while simultaneously aligning contractual obligations with changed circumstances, the purpose of compensation for damages is to put the buyer in the material position they would have been in had the contract been fulfilled.⁶

Article 50 of the Convention has also influenced the development of the right to a price reduction in certain *soft law* sources of law, such as the Principles of European Contract Law (PECL)⁷ and the Draft Common Frame of Reference (DCFR)⁸, as well as legislation of the European Union.⁹ However, it is important to note that the influence of Article 50 is exclusively present

³ Sondahl, E. (2003). Understanding the Remedy of Price Reduction: A Means to Fostering a More Uniform Application of the United Nations Convention on Contracts for the International Sale of Goods. *Vindobona Journal of International Commercial Law and Arbitration*, 7 (2), 258.

⁴ Will, M. (1987). *Bianca-Bonell Commentary on the International Sales Law*. Milan: Giuffrè, 368, see: eg. Article 1644 of the French Commercial Code or Article 441 of the German Commercial Code.

⁵ Müller-Chen, M. (2010). *Article 50 y Commentary on the UN Convention on the International Sale of Goods (CISG), third edition, edited by I. Schwenzer*. Oxford: Oxford University Press, 770. For this reason, during the discussions on the draft of the Convention, there were proposals by representatives of the Anglo-Saxon legal system to reformulate Article 50 of the Convention to allow the buyer to deduct from the price the amount of damages suffered due to breach of contract. See: Gärtner, A. (2000). *Britain and the CISG: The Case for Ratification – A Comparative Analysis with Special Reference to German Law*. Available at <https://iicl.law.pace.edu/cisg/scholarly-writings/britain-and-cisg-case-ratification-comparative-analysis-special-reference#iia>; Bergsten, E. E., Miller, A. J. (1979). The Remedy of Reduction of Price. *American Journal of Comparative Law*, 27 (1), 255.

⁶ Đorđević, M. (2012). *Obim naknade štete zbog povrede ugovora o međunarodnoj prodaji robe*, Belgrade: Faculty of Law in Belgrade, 58–59.

⁷ *Principles of European Contract Law*. Available at https://www.trans-lex.org/400200/_/pecl/ See: Article 9:401.

⁸ Study Group on a European Civil Code and the Research Group on EC Private Law (2009). *Principles, Definitions and Model Rules of European Private Law Draft Common Frame of Reference*. München, Article III 3:601.

⁹ European Parliament, *Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees*. Brussels, 1999. See Article 3(5).

in legal sources in Europe, while one of the most significant soft law legal instruments applied in both continental and Anglo-Saxon legal systems, the UNIDROIT Principles of International Commercial Contracts (UPICC), does not contain provisions on price reduction.¹⁰

CONDITIONS FOR PRICE REDUCTION

The first condition for exercising the right to a price reduction is the delivery of non-conforming goods. In this context, Article 35, Paragraph 1 of the Convention sets the standards for conforming goods and stipulates that the seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract,¹¹ while Article 35, Paragraph 2 of the Convention further regulates when goods are considered non-conforming to the contract, in the absence of a different agreement between the contracting parties.¹² The burden of proof regarding the nature and extent of non-conformity rests on the buyer, and in cases where it cannot be determined whether the goods are non-conforming, such uncertainty goes to the detriment of the buyer as they must prove that the non-conformity of the goods existed at the moment of risk transfer.¹³

Given that price reduction can only be used in the case of non-conformity of goods, it is necessary for the buyer to notify the seller of the defect in accordance with Article 39 of the Convention. The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.¹⁴ The content of the notification is not regulated by the Convention, but in essence, it needs to include enough information for the identification of the specific defect.¹⁵

According to Article 50 of the Convention, the buyer has the right to reduce the price of the goods regardless of whether the price has already

¹⁰ Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 110.

¹¹ Article 35 of the Convention.

¹² See Article 35, paragraph 2 of the Convention.

¹³ Chengwei, L. (2003). *Remedies for Non-performance – Perspectives from CISG, UNIDROIT Principles and PECL*. Available at https://iicl.law.pace.edu/sites/default/files/cisg_files/chengwei2.html#154

¹⁴ Article 39 of the Convention.

¹⁵ Jovičić, K. (2012). Zahtev za sniženje cene kod ugovora o međunarodnoj prodaji robe. *Pravni život – Journal of Legal Theory and Practice*, 11 (3), 359.

been paid or not. If the price has been paid, the buyer exercises their right by requesting the seller to return a part of the sales price, or, in case the price has not been paid, the buyer is authorized to deduct from the agreed price the difference in the value of the goods, calculated in accordance with the rules of the Convention.¹⁶

Finally, even when all conditions for using the right to a price reduction are met, the seller has the possibility to prevent the buyer from reducing the price by remedying the lack of conformity in terms of Article 37 or 48 of the Convention. According to Article 37 of the Convention, the seller is authorized, in case the goods were delivered before the date for delivery, to deliver any missing part or quantity or replace non-conforming goods with conforming ones or remedy the lack of conformity of the delivered goods, all by the date set for delivery, provided that this right does not cause the buyer unreasonable inconvenience or expense.¹⁷ Similarly, Article 48 of the Convention regulates the seller's right, after the date for delivery, at their own expense, to remedy

“...any failure to perform his obligations if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer.”¹⁸

Therefore, if the seller remedies the defect, either before or after the date for delivery, equality among the parties to the contract is re-established, and it is natural that the buyer has no right to a price reduction, the purpose of which is precisely to achieve that equality. Case law confirms that the buyer is obligated to allow the seller to remedy the defect, and if they refuse to accept delivery in accordance with Articles 37 or 48 of the Convention, the buyer has no right to a price reduction.¹⁹ Moreover, even if the buyer requested a price reduction, if the seller subsequently remedies the defect, the buyer loses the right to a price reduction, or this right is subject to “a condition subsequent which is reflected in the seller's offer to remedy the defect.”²⁰

¹⁶ Piche, C. (2003). The Convention on Contracts for the International Sale of Goods and the Uniform Commercial Code Remedies in Light of Remedial Principles Recognized under U.S. Law: Are the Remedies of Granting Additional Time to the Defaulting Parties and of Reduction of Price Fair and Efficient Ones. *North Carolina Journal of International Law*, 28 (3), 553.

¹⁷ Article 37 of the Convention.

¹⁸ Article 48 of the Convention.

¹⁹ See *Acrylic blankets case*, Oberlandesgericht Koblenz, 2 U 31/96, Judgment on January 31, 1997; *Canned food case*, Turun hovioikeus, S 97/324, Judgment on November 12, 1997.

²⁰ Will, M. (1987). *Bianca-Bonell Commentary on the International Sales Law*. Milan: Giuffrè, 773

METHOD OF CALCULATING PRICE REDUCTION

In applying Article 50 of the Convention, a proportional method of calculation is adopted, which implies that the relationship between the reduced and the agreed price is equal to the relationship between the value of the delivered goods at the time of delivery and the hypothetical value of the conforming goods.²¹ Therefore, this is an abstract relationship that does not represent a simple difference between the values of conforming and non-conforming goods (so-called linear method).²² Rather, the formula for calculating the reduced price is derived precisely on the basis of the equality of the relationship between the price and value of the goods (reduced price/agreed price = value of delivered goods/value of conforming goods). From this, it follows that the reduced price is calculated as follows²³:

$$\frac{\text{value of delivered goods}}{\text{hypothetical value of conforming goods}} \times \text{agreed price.}$$

It should be noted that when applying the proportional method, the value of conforming goods is not equated with the agreed price of goods, considering that the value of goods at the time of delivery often differs from the value at the time of the contract's conclusion.²⁴ The biggest difference between the proportional and linear methods manifests especially in situations where the value of goods at the time of delivery is different from that at the moment of concluding the contract because if such changes in value do not occur, it does

²¹ Schlechtriem, P. (1998). *Commentary on the UN Convention of the International Sale of Goods (CISG)*. Munchen: C. H. Beck, 441.

²² Stanivuković, M., Draškić, M. (2005). *Ugovorno pravo međunarodne trgovine*. Belgrade: Official Gazette of the SCG, 468. For information about different methods of calculating damages and price reductions, see: Đorđević, M. (2012). *Obim naknade štete zbog povrede ugovora o međunarodnoj prodaji robe*. Belgrade: Faculty of Law in Belgrade, 60–63 and Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 112–113.

²³ This formula is also applied by courts when implementing Article 50 of the Convention. For example, see the *Furniture case II*, Pretura di Locarno Campagna, 6252, Judgment on April 27, 1992. The court emphasized that, in accordance with established case law, price reduction is performed according to the relative method of calculation: the reduced price is in the same ratio to the agreed price as the objective value of the non-conforming goods is to the value of conforming goods.

²⁴ Han, K. (2016). A Study on Price Reduction under CISG and Issues. *The International Commerce and Law Review*. 59 (1), 50.

not matter which method is applied, the result is the same.²⁵ The method of calculating price reduction is simpler for quantitative deficiencies compared to qualitative ones, while the greatest challenge certainly represents *aliud*, considering the difficulties of comparing different kinds of goods (delivered goods that are not contracted and contracted goods).²⁶ Certainly, the application of Article 50 of the Convention is not mandatory, and a different method of calculating the reduced price can be stipulated by the contract, but if Article 50 is applied, the application of the proportional method is obligatory.²⁷

Time for Determining the Value of Goods

According to Article 50 of the Convention, the buyer may reduce the price “... in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time.”²⁸

Therefore, the Convention itself designates the time of delivery of goods as the relevant time for determining the value of goods for comparison. Autonomous sources of law, such as the PECL and DCFR, do not deviate in this respect from the Convention, although they use different terminology due to the fact that the right to a price reduction is regulated in a general manner, for all contracts to which the provision can be applied, not just sales contracts.²⁹

If the time of delivery is not regulated by the contract of sale itself, Article 31 of the Convention applies.³⁰ In this sense, the time of delivery alter-

²⁵ For example, if a buyer purchased first-class wheat with a market value of 1,000 dinars at the time of contract conclusion, but was delivered third-class wheat valued at 600 dinars, using the linear method of calculation, we would arrive at a price reduction amount of 400 dinars ($1,000 - 600 = 400$). If we used the proportional method, the reduced price would be 600 dinars ($600/1,000 \times 1,000 = 600$), which means the amount by which the price needs to be reduced is again 400 dinars. However, if from the time of contract conclusion to delivery, the market value of first-class wheat fell to 800 dinars, and the third-class wheat is worth 600 dinars, using the linear method, the price should be reduced by an amount of 200 dinars ($800 - 600 = 200$), but by applying the relative method, we get an amount of 250 dinars ($1,000 - (600/800 \times 1,000) = 250$).

²⁶ Zdravković, U. (2022). Pravo kupca na smanjenje cene usled prodavčeve povrede ugovora o međunarodnoj prodaji robe. *Law and Economy*, 60 (2), 328.

²⁷ Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 114.

²⁸ Article 50 of the Convention.

²⁹ See: Article 9:401, paragraph 1 of PECL and Article III.–3:601, paragraph 1 of DCFR.

³⁰ See: Article 31 of the Convention.

natively represents the moment when the goods were handed over to the first carrier, i.e., made available to the buyer. The formulation “goods actually delivered” implies that the time when the delivery is actually executed is considered, not the contracted time of delivery.³¹

This solution deviates from the provisions of some legal systems,³² as well as from the provisions of ULIS which determine the time of contract conclusion as the relevant time.³³ When drafting the Convention, the proposal regarding the relevant time for determining the value of goods originated from the Norwegian representative, and this proposal was discussed both during the debate on the proposal itself and at the time of the final approval of Article 50’s formulation.³⁴

The change in relation to ULIS came about for two main reasons. Firstly, it was highlighted that at the time of contract conclusion, the goods might not yet exist, and thus their value cannot be determined. On the other hand, the choice between damages and price reduction is made easier for the buyer since the relevant time for calculation in both legal remedies is the time of delivery.³⁵ The Norwegian delegation considered that by changing the time for determining the value of goods, price reduction becomes an adequate substitute for damages.³⁶ From the perspective of legal certainty, preference is given to the time of delivery, which is easier to determine than the time of contract conclusion.³⁷

The difference between determining the value of goods at the time of delivery versus at the time of contract conclusion only becomes apparent in situations where there is a disproportionate change in market price from the contract conclusion to delivery. For example, if contractual parties agreed on the sale of first-class wheat at a market price of 1,000 dinars at the time of

³¹ Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 116.

³² For example. see: article 441, paragraph 3 of the German Civil Code (Bürgerliches Gesetzbuch); Article 498 of the Law on Obligations, *Official Gazette of the SFRY*, no. 29/78, 39/85, 45/89. – decision of the Constitutional Court and 57/89, *Official Gazette of the FRY*, no. 31/93, *Official Gazette of SCG*, no. 1/2003. – Constitutional Charter and *Official Gazette of the RS*, no. 18/2020. Also, see Article 711, paragraph 2 of the Draft Civil Code of the Republic of Serbia.

³³ See Article 46 of ULIS.

³⁴ Summary Records of Meetings of the First Committee. Available at https://iicl.law.pace.edu/sites/default/files/cisg_files/Meeting23.html

³⁵ Will, M. (1987). *Bianca-Bonell Commentary on the International Sales Law*. Milan: Giuffrè, 369.

³⁶ Summary Records of Meetings of the First Committee. *Op. cit.*

³⁷ Jovičić, K. (2012). Zahtev za sniženje cene kod ugovora o međunarodnoj prodaji robe. *Pravni život – Journal of Legal Theory and Practice*, 11 (3), 361.

contract conclusion, with the agreed price also being 1,000 dinars, and the seller delivers third-class wheat at a market price of 500 dinars at the time of contract conclusion. If the market price remains the same until the time of delivery, the reduced price will be 500 dinars ($500/1000 \times 1,000$) regardless of whether the relevant time considered is the contract conclusion or delivery. If, by the time of delivery, the market price increases by 50%, so that the value of first-class wheat at the time of delivery is 1,500 dinars, and third-class wheat is 750 dinars, the reduced price again amounts to 500 dinars, regardless of the relevant time for determining the value of goods. In this situation, the buyer retains goods of lower quality but higher market value at the time of delivery, which justifies a lesser price reduction. In essence, the profitability of the purchase is lower when, in the period from the contract conclusion to delivery, the price of the delivered but non-conforming goods increases by a larger percentage relative to the conforming goods.³⁸ Conversely, if the value of first-class wheat decreases by 20% and third-class wheat by 60%, the reduced price would be 250 dinars, and the seller would actually bear the risk of having delivered goods of lower quality and market value than conforming goods. By considering the time of delivery instead of the time of contract conclusion, a fair distribution of risk between contractual parties is achieved.³⁹

However, interpreting the time of delivery in accordance with Article 31 of the Convention can lead to complications in cases where delivery involves the transportation of goods, considering that the buyer will take over the goods and have the opportunity to inspect them and notify the seller of any deficiencies only after delivery.⁴⁰ The question arises whether the value of goods is estimated at the time of delivery in terms of Article 31, Paragraph 1 of the Convention, or at the moment when the buyer actually takes possession of the goods. Although there are authors who believe that the value of goods should be determined only after the goods reach their final destination,⁴¹ this interpretation does not seem adequate for several reasons. First and foremost, the Convention clearly specifies “the time of delivery,” and as delivery is regulated by the Convention, including the question of when delivery is considered to have taken place, it is evident that the Convention’s text does not leave room

³⁸ Enderlein F., Maskow, D. (1992). *International Sales Law*, New York: Oceana Publications, 198.

³⁹ See more in Will, M. (1987). *Bianca-Bonell Commentary on the International Sales Law*. Milan: Giuffrè, 370–371.

⁴⁰ Huber, P., Mullis, A. (2007). *The CISG: A new textbook for students and practitioners*. Munich: Sellier European Law Publishers, 253.

⁴¹ See e.g. Müller-Chen, M. (2010). *Article 50 – Commentary on the UN Convention on the International Sale of Goods (CISG)*, third edition, edited by I. Schwenzer. Oxford: Oxford University Press, 775–776.

for a broader interpretation of the provisions on the time of delivery. Also, delivery represents a unilateral action of the seller and is considered completed when the seller has done all that is necessary for the delivery of goods, thus the time of delivery represents the moment of handing over the goods to the first carrier.⁴² Finally, it is necessary to refer to the Convention's provisions on the transfer of risk which are contrary to a potential broader interpretation of "the time of delivery." Since, in cases where transport of goods is necessary, the risk transfers from the seller to the buyer when the goods are given to the first carrier,⁴³ i.e., the time of delivery corresponds to the time of risk transfer, it is not justified to determine the value of goods after this moment considering that the goods may lose value during transport, but the seller cannot bear the consequences of such a loss of value since the risk has passed to the buyer.⁴⁴

While courts often apply Article 50 of the Convention by interpreting «the time of delivery» in accordance with Article 31,⁴⁵ there are also recorded cases where the provisions of the Convention were deviated from by not considering the contracted moment of delivery, but rather the moment when the goods arrived at the final destination. For example, in one case, the court noted that, in a situation where the seller had an obligation to provide packaging, the fact that the goods were damaged during transport due to inadequate packaging, and that at the final destination the goods had no value, justified interpreting "the time of delivery" as the time when the goods arrived at the contractually specified final destination, i.e., when the goods became available to the buyer.⁴⁶

⁴² Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 117.

⁴³ See Article 67, paragraph 1. Convention.

⁴⁴ Fišer Šobot, S. (2017). *Op. cit.*

⁴⁵ See: e.g. *CVIS Trading v. BV Vadotex*, Hof Van Beroep Antwerp, 1995/AR/1558, Judgment on November 4, 1998; *Furniture case II*, Pretura di Locarno Campagna, 6252, Judgment on April 27, 1992.

⁴⁶ See: e.g. *Wine bottles case*, Oberlandesgericht Koblenz, 2 U 923/06, Judgment on December 14, 2006. In this specific case, the plaintiff, an Italian manufacturer of wine bottles, sued a buyer from Germany for the payment of the sale price for the delivered bottles after the buyer refused to pay the price. The buyer claimed that the bottles, due to inadequate packaging, were not fit for use. The delivery was agreed upon as "Ex Works," thus delivery was considered completed by making the goods available to the buyer at the seller's factory. The seller argued that, for the application of Article 50 of the Convention, it was necessary to compare the value of the bottles at the time and place of delivery, i.e., before transportation by the carrier with bottles that were adequately packaged at that time, and that both values were equal, as a result of which the buyer has no right to a price reduction, only to compensation for damages. However, the court considered that if the defects in the packaging were of such a degree that they did not allow for safe transport of the goods to the final destination, then the buyer is entitled to a complete reduction of the price.

Finally, there is a viewpoint that in certain situations there are exceptions when even the time when the goods reach their final destination is not significant, but rather the moment when the buyer takes over or should have taken over the goods. This stance is justified by the demand to establish a uniform rule for different modes of delivery and thus different moments when delivery is considered to have been executed, and it is considered that such a demand can be met by including, in addition to the actions of the seller, the actions of the buyer, i.e., the acceptance of goods by the buyer.⁴⁷ However, this approach again leads to a broader interpretation of the Convention's provisions which clearly determine "the time of delivery" as the relevant time for determining the value of goods for calculating price reduction.

Place for Determining the Value of Goods

Unlike the time relevant for determining the value of goods, which, despite causing certain discussions in theory and case law, is still based on the Convention, the place for determining the value, or the market to be considered, is not regulated by the Convention at all.⁴⁸ For this reason, exhaustive discussions were held regarding this issue during the drafting of the Convention, and the questions considered then remain relevant today.

Representatives of some countries⁴⁹ suggested that Article 50 of the Convention should specify the place for determining the value of non-conforming goods by considering the place of business or habitual residence of the buyer. Considering that prices vary in different places, it was deemed necessary to specify the place for determining the value of goods, and it was argued that the solution that protects the interests of the buyer, as the injured party, was the most justified.⁵⁰ However, the prevailing opinion was to stick with the solution

⁴⁷ Müller-Chen, M. (2010). *Article 50 – Commentary on the UN Convention on the International Sale of Goods (CISG), third edition, edited by I. Schwenzer*. Oxford: Oxford University Press, 776.

⁴⁸ DCFR and PECL also do not regulate the place relevant for determining the value of goods. See: Article 9:401, paragraph 1 of PECL and Article III. – 3:601, paragraph 1 of DCFR.

⁴⁹ Representatives from Argentina, Spain, and Portugal submitted a joint proposal to amend Article 50 by adding the words "at the place of business or habitual residence of the buyer" at the end of the first sentence of the provision. See: United Nations Conference on Contracts for the International Sale of Goods, *Official Records – Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees*. Available at: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>

⁵⁰ Summary Records of Meetings of the First Committee. Available at https://iicl.law.pace.edu/sites/default/files/cisg_files/Meeting23.html, paras. 45–46.

from ULIS, namely, to omit specifying the relevant place by the Convention. It was highlighted that it is a complicated issue, and it is not a valid assertion that the buyer always prefers prices in their place of business, given the possibility that the buyer intends to resell the goods.⁵¹ Thus, the buyer bears the risk of which place will be considered when reducing the price, given there is a legal gap, and the question of the relevant place is resolved by courts.

The majority view is that, in accordance with the purpose of the provision on price reduction, the relevant place must be the place where the seller executes delivery.⁵² It is based on the fact that the place and time of calculation are closely linked.⁵³ However, this rule is modified so that in situations where goods are transported or when goods are sold during transport, the method of determining delivery according to Article 31, Paragraph 1, Subparagraph (a) of the Convention, which consists of handing over the goods to the first carrier, is deviated from, and the place of the goods' final destination is considered instead.⁵⁴ This stems from the fact that the buyer only has the opportunity to inspect the goods and identify defects once the goods arrive at their final destination.⁵⁵ Therefore, the rule regarding the relevant place of delivery, with a correction for transported goods, implies that Article 31 of the Convention is interpreted depending on whether the goods are transported or made available to the buyer at a certain place. If delivery consists of handing over the goods to the first carrier for delivery to the buyer,⁵⁶ the final destination of the goods is the relevant place for determining their value. But when delivery consists of making the goods available to the buyer at a specific place,⁵⁷ the value of goods for the purpose of price reduction is determined according to the prices in the place where the goods are made available.

⁵¹ For instance, *Date-Bah*, the representative from Ghana, emphasized that he does not believe that the envisaged time of delivery implies that determining the value of goods should be done at the place of delivery. Hence, his delegation preferred the existing text, which does not specify the place for determining the value of goods. Representatives from Canada and India agreed with the omission of mentioning any place in Article 50.

⁵² See: Enderlein F., Maskow, D. (1992). *International Sales Law*, New York: Oceana Publications, 197; Huber, P., Mullis, A. (2007). *The CISG: A new textbook for students and practitioners*. Munich: Sellier European Law Publishers, 253.

⁵³ Jovičić, K. (2012). Zahtev za sniženje cene kod ugovora o međunarodnoj prodaji robe. *Pravni život – Journal of Legal Theory and Practice*, 11 (3), 365.

⁵⁴ Müller-Chen, M. (2010). *Article 50 – Commentary on the UN Convention on the International Sale of Goods (CISG)*, third edition, edited by I. Schwenzer. Oxford: Oxford University Press, 555.

⁵⁵ Jovičić, K. (2012). Zahtev za sniženje cene kod ugovora o međunarodnoj prodaji robe. *Pravni život – Journal of Legal Theory and Practice*, 11 (3), 366

⁵⁶ Article 31, paragraph 1, subparagraph a) of the Conventions.

⁵⁷ Article 31, paragraph 1, subparagraphs b) and c) of the Convention.

However, the fact is that there is no concrete basis in the Convention for differentiating the place of determining the value of goods based on different methods of delivery. Especially considering that the time of delivery is crucial when calculating price reduction, the question of the justification for deviating in terms of the place of determining value arises. Finally, it's necessary to consider the rules about the transfer of risk to the buyer. Price reduction allows the buyer to receive a certain type of compensation for non-conformity that exists at the moment of risk transfer, so deviating from the place of delivery as a key factor for determining the value of goods would place an excessive burden on the seller.⁵⁸

On the other hand, there is a proposal that the place for determining the value of goods be determined in three steps. First, the relevant place is the first destination provided for in the contract. If there is no current price for the goods in that place, the place of delivery of non-conforming goods is given priority. Finally, in case there is no current price at the place of delivery, the buyer has the choice between the place of business of the buyer or the seller. The advantage of the goods' final destination as a priority solution lies in its close connection with the interests of the buyer, covering both generic and individually determined goods, as well as deliveries to the buyer's place of business or another location.⁵⁹

Courts also make different decisions regarding the relevant place when calculating price reduction. For example, in the *Marble slabs* case, the court concluded by analogy with Article 76 of the Convention⁶⁰ that the place of delivery of goods is the relevant place for determining their value.⁶¹ On the other hand, in one arbitration case, it was concluded that in accordance with Article 50 of the Convention, it is necessary to reduce the price according

⁵⁸ Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 120.

⁵⁹ *Ibid.*

⁶⁰ Article 76 of the Convention – "(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods."

⁶¹ *Marble slabs case*, Oberlandesgericht Graz, 6 R 194/95, Judgment on November 9, 1995.

to the prices at the place of the goods' final destination or the buyer's place of business.⁶²

In any case, the fact is that the Convention leaves open the question of the place where the value of goods will be determined. Furthermore, the *travaux préparatoires* of the Convention, which indicate the majority decision of delegations not to resolve this issue in the same way as the time of delivery, cannot be ignored, thus it cannot be easily concluded that the time and place of determining the value of goods coincide. The right to a price reduction belongs to the buyer and is established to protect their interests, which must be the starting point when answering the question of the relevant place. In this sense, in most cases, the prices at the place of the goods' final destination will be preferable to the buyer. However, such a conclusion cannot be taken as the basis for establishing a uniform rule because it conflicts with the Convention's rules on the transfer of risk, and it cannot be definitively stated which place is universally acceptable and of the most interest to every buyer. For these reasons, it can be concluded that the correct stance was taken during the drafting of the Convention that it is up to the courts to assess the circumstances of each individual case, based on which they will create an appropriate rule.

CONCLUSION

Certain aspects of the right to a price reduction, as one of the legal remedies available to the buyer provided by the Convention in case of delivery of non-conforming goods, are subjects of various discussions, both in theory and in case law. One of the issues that definitely deserves special attention is the method of calculating price reduction when the buyer exercises this right. Detailed discussions on some of the questions regarding calculation methods were held during the drafting of the Convention itself, but with different outcomes. Namely, the relevant time for determining the value of goods during the calculation was already regulated in ULIS, but with the adoption of the Convention, it was changed to consider the time of delivery of goods, not the time of concluding the sales contract. The reasons for this shift in the regulation of the right to a price reduction were justified, given the possibility that the goods might not yet exist at the time of contract conclusion, thereby facilitating the

⁶² *Containers case I*, Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, VB/94131, Judgment on December 5, 1995. The court highlighted in the judgment that, in accordance with Article 50 of the Convention, price reduction is relevant according to the prices at the destination of the goods known to the seller or at the buyer's place of business.

use of this legal remedy. Also, in situations leading to differences between the value of goods at the time of contract conclusion and delivery, especially the change in the market price of the goods in the period from contract conclusion to delivery, the risk between buyer and seller regarding the amount of price reduction is fairly divided. On the other hand, although some authors, supported by corresponding court rulings, consider deviations from the time of delivery in favor of the time of arrival of the goods at the final destination in case the goods are transported to be justified, such views are not supported by the text of Article 50 of the Convention, which explicitly provides for the time of delivery as relevant during calculation.

Unlike time, the place for determining the value of goods was not regulated either in ULIS or mentioned in the Convention, nor in *soft law* sources that provide for the right to a price reduction. Although there were heated debates regarding this issue at the conference during the adoption of the Convention, proposals from various delegations were rejected, leading to the conclusion that a consensus on disagreement was reached, choosing the easier path – a legal gap and passing the “ball” to the courts. Legal theorists also could not bypass the question of the relevant place when analyzing Article 50 of the Convention, leading to different conclusions, from the buyer’s place of business, through the place of delivery, the place of the final destination, to finding new solutions like establishing the place for determining the value of goods in three steps. However, it seems that the decision to leave the question of the relevant place open is justified, and it is up to the courts to, taking into account the circumstances of the specific case, including primarily the content of the sales contract and the method of delivery, determine the value of goods in the place that favors the interests of the buyer, but respecting the provisions of the Convention, especially the provisions on the relevant time for determining the value of goods, as well as the provisions on the transfer of risk.

BIBLIOGRAPHY

Books and articles

- Bergsten, E. E., Miller, A. J. (1979). The Remedy of Reduction of Price. *American Journal of Comparative Law*, 27 (1), 255–277.
- Der Reichstag, *Bürgerliches Gesetzbuch*, Berlin, 1900, translation available at https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p1906
- Der Reichstag, *Handelsgesetzbuch*. Berlin, 1900, translation available at https://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.pdf
- Đorđević, M. (2012). *Obim naknade štete zbog povrede ugovora o međunarodnoj prodaji robe*, Belgrade: Faculty of Law in Belgrade.

- Enderlein F., Maskow, D. (1992). *International Sales Law*, New York: Oceana Publications.
- Fišer Šobot, S. (2017). Calculation of Price Reduction in International Sale of Goods Contracts. *LeXonomica*, 9 (2), 109–124.
- Han, K. (2016). A Study on Price Reduction under CISG and Issues. *The International Commerce and Law Review*. 59 (1), 45–62.
- Huber, P., Mullis, A. (2007). *The CISG: A new textbook for students and practitioners*. Munich: Sellier European Law Publishers.
- Jovičić, K. (2012). Zahtev za sniženje cene kod ugovora o međunarodnoj prodaji robe. *Pravni život – Journal of Legal Theory and Practice*, 11 (3), 353–368.
- Müller-Chen, M. (2010). *Article 50 – Commentary on the UN Convention on the International Sale of Goods (CISG), third edition, edited by I. Schwenzer*. Oxford: Oxford University Press.
- Piche, C. (2003). The Convention on Contracts for the International Sale of Goods and the Uniform Commercial Code Remedies in Light of Remedial Principles Recognized under U.S. Law: Are the Remedies of Granting Additional Time to the Defaulting Parties and of Reduction of Price Fair and Efficient Ones. *North Carolina Journal of International Law*, 28 (3), 519–566.
- Schlechtriem, P. (1998). *Commentary on the UN Convention of the International Sale of Goods (CISG)*. Munchen: C. H. Beck.
- Schwenzer, I., Fountoulakis, C. (2007). *International Sales Law*. Oxford: Routledge–Cavendish.
- Sondahl, E. (2003). Understanding the Remedy of Price Reduction: A Means to Fostering a More Uniform Application of the United Nations Convention on Contracts for the International Sale of Goods. *Vindobona Journal of International Commercial Law and Arbitration*, 7 (2), 255–276.
- Stanivuković, M., Draškić, M. (2005). *Ugovorno pravo međunarodne trgovine*. Belgrade: Official Gazette of the SCG, 468.
- Will, M. (1987). *Bianca-Bonell Commentary on the International Sales Law*. Milan: Giuffrè.
- Zdravković, U. (2022). Pravo kupca na smanjenje cene usled prodavčeve povrede ugovora o međunarodnoj prodaji robe. *Law and Economy*, 60 (2), 317–334.

Regulations and soft law sources

- The United Nations Commission on International Trade Law (UNCITRAL). *United Nations Convention on Contracts for the International Sale of Goods*. Vienna, 1980.
- The International Institute for the Unification of Private Law (UNIDROIT). *Uniform Law on the International Sale of Goods*. Hague, 1964.
- Code de commerce*, Paris, 1807, translation available at <https://wipolexres.Wipo.int/edocs/lexdocs/laws/en/fr/fr199en.html>
- Commission on European Contract Law. *Principles of European Contract Law*. Hague, 1999.

Study Group on a European Civil Code and the Research Group on EC Private Law (2009). *Principles, Definitions and Model Rules of European Private Law Draft Common Frame of Reference*. München.

European Parliament, *Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees*. Brussels, 1999.

Draft of the Civil Code of the Republic of Serbia. Available at: <https://www.mpravde.gov.rs/files/NACRT.pdf>.

Law on Obligations, *Official Gazette of the SFRY*, no. 29/78, 39/85, 45/89. – decision of the Constitutional Court and 57/89, *Official Gazette of the FRY*, no. 31/93, *Official Gazette of SCG*, no. 1/2003. – Constitutional Charter and *Official Gazette of the RS*, no. 18/2020.

Case law

See *Acrylic blankets case*, Oberlandesgericht Koblenz, 2 U 31/96, Judgment on January 31, 1997.

Canned food case, Turun hovioikeus, S 97/324, Judgment on November 12, 1997.

Furniture case II, Pretura di Locarno Campagna, 6252, Judgment on April 27, 1992.

CVIS Trading v. BV Vadotex, Hof Van Beroep Antwerp, 1995/AR/1558, Judgment on November 4, 1998.

Wine bottles case, Oberlandesgericht Koblenz, 2 U 923/06, Judgment on December 14, 2006.

Marble slabs case, Oberlandesgericht Graz, 6 R 194/95, Judgment on November 9, 1995.

Containers case I, Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, VB/94131, Judgment on December 5, 1995.

Internet sources

Chengwei, L. (2003). *Remedies for Non-performance – Perspectives from CISG, UNIDROIT Principles and PECL*. Available at https://iicl.law.pace.edu/sites/default/files/cisg_files/chengwei2.html#154

Gärtner, A. (2000). *Britain and the CISG: The Case for Ratification – A Comparative Analysis with Special Reference to German Law*. Available at <https://iicl.law.pace.edu/cisg/scholarly-writings/britain-and-cisg-case-ratification-comparative-analysis-special-reference#iia>

United Nations Conference on Contracts for the International Sale of Goods, *Official Records – Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committees*. Available at: <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/a-conf-97-19-ocred-eng.pdf>

Summary Records of Meetings of the First Committee. Available at: https://iicl.law.pace.edu/sites/default/files/cisg_files/Meeting23.html