



General Assembly

Distr.: General
15 January 2007

Original: English

United Nations Commission on International Trade Law

CASE LAW ON UNCITRAL TEXTS (CLOUT)

Contents

	<i>Page</i>
Cases relating to the United Nations Sales Conventions (CISG)	3
Case 644: CISG 57 (1) – Italy: Corte Suprema di Cassazione, Sezioni Unite, 7759/98 AMC di Ariotti e Giacomini s.n.c. vs. A. Zimm & Söhne GmbH (7 August 1998)	3
Case 645: CISG 1 (1)(a); 7 (1); 7 (2); 63 (1); 64 (1)(b); 74; 75; 78 – Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)	4
Case 646: CISG 31 (a) – Italy: Corte Suprema di Cassazione, Sezioni Unite, 58/00 Krauss Maffei Verfahrenstechnik GmbH, Krauss Maffei AG v. Bristol Meyer Squibb S.p.a. (10 March 2000)	5
Case 647: CISG 6; 31; 57; [90] – Italy: Corte Suprema di Cassazione, Sezioni Unite, 448/00 PSS Snd. BHD vs. Oscan s.p.a. (19 June 2000)	6
Case 648: CISG 1 (1)(a); 3 (1); 7 (2); 31 (a) – Italy: Corte di Cassazione, Sezioni Unite, 14837/02 Janssen Cosmeceutical Care GmbH v. Munda Alberto (18 October 2002)	7
Case 649: CISG 57 (1)(a) – Italy: Corte Suprema di Cassazione, Sezioni Unite, 7503/04 Tekna S.r.l. vs. Eberhardt Freres S. (20 April 2004)	8
Case 650: CISG 31 – Italy: Corte Suprema di Cassazione, Sezioni Unite, 18902/04 Kling & Freitag GmbH s.r.l. vs. Società Reference Laboratory s.r.l. (20 September 2004)	9
Case 651: CISG 6; 7; 25 – Italy: Tribunale di Padova Ostroznik Savo (Vzerja Kuncev) e Eurotrafic s.r.l. vs. La Faraona soc. coop. a.r.l. (11 January 2005)	9
Case 652: CISG 3 (2); 7; 30; 31; 53 – Italy: Tribunale Padova Pessa Studio vs. W.H.S. Saddlers International (10 January 2006)	10
Index to this Issue	12



INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on Court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1/REV.1). CLOUT documents are available on the UNCITRAL website (<http://www.uncitral.org>).

Issues 37 and 38 of CLOUT introduced several new features. First, the table of contents on the first page lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted by the Court or arbitral tribunal. Second, the Internet address (URL) of the full text of the decisions in their original language are included, along with Internet addresses of translations in official United Nations language(s), where available in the heading to each case (please note that references to websites other than official United Nations websites do not constitute an endorsement by the United Nations or by UNCITRAL of that website; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Third, abstracts on cases interpreting the UNCITRAL Model Arbitration Law now include keyword references which are consistent with those contained in the Thesaurus on the UNCITRAL Model Law on International Commercial Arbitration, prepared by the UNCITRAL Secretariat in consultation with National Correspondents, and in the forthcoming UNCITRAL Digest on the UNCITRAL Model Law on International Commercial Arbitration. Finally, comprehensive indices are included at the end, to facilitate research by CLOUT citation, jurisdiction, article number, and (in the case of the Model Arbitration Law) keyword.

Abstracts have been prepared by National Correspondents designated by their Governments, or by individual contributors. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

Copyright © United Nations, 2007
Printed in Austria

All rights reserved. Applications for the right to reproduce this work or parts thereof are welcomed and should be sent to the Secretary, United Nations Publications Board, United Nations Headquarters, New York, N.Y. 10017, United States of America. Governments and governmental institutions may reproduce this work or parts thereof without permission, but are requested to inform the United Nations of such reproduction.

**CASES RELATING TO THE UNITED NATIONS SALES CONVENTIONS
(CISG)**

Case 644: CISG 57(1)

Italy, Corte Suprema di Cassazione, Sezioni Unite, No. 7759/98

AMC di Ariotti e Giacomini s.n.c vs. A. Zimm & Söhne GmbH

7 August 1998

Original in Italian

Available in Iurisdata (database)

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Paola Portacci

The dispute arose out of a contract for the sale of women stockings. The Italian seller brought an action before an Italian court against the Austrian buyer to recover the unpaid balance of the contract price. The buyer challenged the jurisdiction alleging that the parties had established a practice under which the price was to be paid in Austria. The case was deferred to the Italian Supreme Court on the issue of jurisdiction.

The Italian Supreme Court (in plenary sitting) declared the jurisdiction of the Italian court according to Article 4 (2), of the Italian Code of Civil Procedure, in force at the time when the action was commenced, whereby a foreign defendant can be sued before an Italian court if the claim concerns, inter alia, obligations to be performed in Italy.

The Supreme Court applied Article 57 (1) CISG in order to determine the place of performance of the buyer's obligation to pay the price. The court stated that art. 57 (1) CISG sets out the general rule whereby the buyer has to pay the seller at the place of business of the latter. The buyer, however, may be obliged to pay the price "at any other particular place", but such an obligation must obviously descend from a certain source; if, finally, payment is to be made against the handing over of the goods or the documents, the place of payment is that where the handing over takes place.

In the Supreme Court's view, the wording of the provision whereby the place of performance of the obligation to pay the price is the seller's place of business "if the buyer is not bound to pay the price at any other particular place" clearly indicates that the buyer must be "bound" to pay at a different place, which is to say, obliged, by virtue of a title that may be legal or contractual but cannot consist of a mere practice. The practice may simply be the consequence of a mere tolerance by the seller and, as such, unable to establish a place of performance different from the legal one.

In the case concerned, in the absence of undisputed facts which could justify a derogation from the legal rule on the place of performance, the Supreme Court stated that such place was to be determined on the ground of the general rule set out in Article 57 (1) CISG, that is at the seller's place of business which, i.e. Italy.

Case 645: CISG 1 (1)(a); 7 (1); 7 (2); 63 (1); 64 (1)(b); 74; 75; 78

Italy, Corte di Appello di Milano Bielloni Castello v. EGO

11 December 1998

Original in Italian

Published in English:

<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/981211i3.html>

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Vincenzo Vinciguerra

An Italian seller entered into a contract for the sale of printing equipment with a French buyer. After a down payment, the buyer later on failed to offset the balance and take delivery of the goods despite several notices from the seller. Following the buyer's refusal, the seller brought an action against the buyer seeking damages. The buyer alleged that it had been unable to take delivery of the goods as originally agreed due to circumstances beyond its control, i.e. delays in the construction of the premises in which the goods were to be installed. The buyer further argued that it had asked for an extension of the delivery period and, it deemed, that this request had been accepted by the seller. Therefore the buyer asked the court to declare the seller in breach of contract and claimed the restitution of the down payment.

The Italian court of first instance, applying Italian domestic law, rendered a decision in favour of the buyer. As a matter of fact, the court failed to acknowledge any agreed modification of the terms of delivery. The seller appealed against the decision.

The Court of Appeal held that the substantive provisions of the Italian Civil Code did not apply and that the contract was instead governed by the CISG (art. 1 (1)(a)). The court stated that the buyer had breached the contract since it had failed to perform its obligations even after the seller's notices.

The court found that the extension granted by the seller was reasonable under the circumstances (art. 63 (1) CISG), furthermore, it recognised that an "interlocutory behaviour of the seller [had] de facto expanded the tolerance period already granted". Thus the court refused to accept the argument of the buyer that the unexpected delay of the construction of its premises could excuse its fundamental breach.

As to the principle of good faith invoked by the buyer, the court stated that, in light of art. 7 (1) CISG, the circumstances affecting the buyer could not be taken into account. In addition, in the case concerned art. 7 (2) CISG would apply, therefore the buyer's allegations should be settled according to Italian law. These allegations, however, were inconsistent also pursuant to Italy's domestic law.

Finally, the court found that the considerable delay of the buyer had caused the seller a substantial loss and, applying art. 75 CISG, held that this latter was entitled to damages in the measure of the difference between the contract price and the price of the substitute transaction. The court, in fact, rejected the seller's claim to recover damages according to the criterion of art. 74 CISG, since this claim appeared unjustified and not supported by convincing evidence. The court, however, stated that the seller was entitled to interest at the Italian legal rate.

Case 646: CISG 31 (a)

Italy, Corte Suprema di Cassazione, Sezioni Unite, No. 58/00

Krauss Maffei Verfahrenstechnik GmbH, Krauss Maffei AG v. Bristol Meyer Squibb S.p.a.

10 March 2000

Original in Italian

Full text and excerpts available in Iurisdata (database)

Italian excerpts published in *Giustizia civile*, Massimario, 2000, p. 501; *Giustizia civile* 2000, I, p. 3203 (commented by Simone); *Diritto e Giustizia*, 2000, 11, p. 32; *Foro Italiano* 2000, I, p. 2226; *Rivista di diritto internazionale privato e processuale*, 2000, p. 773.

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Rocco Palma

An Italian buyer and a German seller concluded a contract for the sale of two industrial machineries to be used in the filtering and drying of intermediate chemicals for antibiotics and to be installed by the latter in Italy. Upon installation, the machineries turned out to be defective. The buyer forthwith notified the seller of non-conformity of the goods with the contractual specifications and commenced an action before an Italian court claiming breach of contract, and consequent recovery of the purchase price and damages. The seller objected to the jurisdiction of Italian courts and referred the case to the Supreme Court on the grounds that (1) the parties, by exchange of letters, had given their implied consent to submit any dispute to an arbitral tribunal; (2) according to art. 31 (a) CISG, the place of performance of the obligation, in the meaning of art. 5 (1) of the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, was to be intended as the place of delivery of the goods to the carrier (i.e. Germany).

In deciding the case, the Supreme Court first rejected the argument of the claimant concerning the existence of a valid arbitration clause. The Court, recalling abundant Italian case-law on the relevant articles of the 1958 New York Convention on the Recognition and Enforcement of Arbitral Awards and the 1961 Geneva Convention on International Commercial Arbitration, pointed out that the will to refer any dispute to foreign arbitrators must unequivocally result from the contract and cannot be inferred from documents drafted and signed by one of the parties.

The Court further held that, in order to determine the place of performance of the obligation, the CISG was not applicable. In the Court's view, the place of delivery of the goods to the carrier was to be considered irrelevant, since, in the case at hands, the contractual clauses providing the obligations of the seller to install the machineries at the factory of the buyer in Italy and to guarantee their well functioning were to be deemed preponderant. Therefore the Supreme Court, pursuant to Italian law, concluded that the Italian judge had jurisdiction.

Case 647: CISG 6; 31; 57; [90]

Italy: Corte di Cassazione, Sez. Unite; n. 448/00

Premier Steel Service Sdn. Bhd v. Oscan S.

19 June 2000

Original in Italian

Published in Italian: *Foro Italiano*, 2001, I c. 527; *Giurisprudenza italiana* 2001, 236

English translation available at: <http://cisgw3.law.pace.edu/cases/000619i3.html>

Abstract prepared by Lucia Ostoni

Oscan S.p.A., an Italian company (the seller), entered into a contract with Premier Steel Service Sdn. Bhd, a Malaysian company (the buyer) for the purchase, assembly, and delivery of various parts of a plant for manufacturing iron for industrial purposes. According to the contract, the price was set F.O.B. North Italian port, but the assembly and installation of the plant had to take place in Malaysia under the supervision of the seller's employees.

The Italian seller brought suit against the Malaysian buyer before the Court of First Instance of Turin claiming first the payment for supplying the agreed plant, and then the declaration of conformity of the delivered plant as ordered by the buyer. The buyer filed a preliminary motion challenging the jurisdiction of the Italian court arguing that, under the contract, the seller's duties included the assembly, the installation and the delivery of the plant. Such obligations had to take place in Malaysia. According to the buyer, since the place of performance was Malaysia, Italian courts did not have jurisdiction over the dispute. The seller counterclaimed that the agreed price had to be paid in Italy (where the seller had its premises): therefore, the place of performance was Italy.

Pursuant to Italian rules of civil procedure, the decision concerning the preliminary motion challenging jurisdiction was rendered by the Italian Supreme Court. The court found the buyer's preliminary motion admissible and finally declared the lack of jurisdiction of the Court of First Instance. The court rendered a step-by-step rationale finding that:

- a) according to the Italian international private law, art. 5 (1) of the 1968 Brussels Convention on the Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters was applicable. Under this provision, the court of the place where the obligation has been or must be performed has jurisdiction;
- b) the place of performance must therefore be determined pursuant to the substantive law applicable to the dispute according to the domestic private international law;
- c) with regard to international sales of moveable goods, the Italian private law is based on The Hague Convention of 15 June 1955 on the Law Applicable to International Sales of Goods. According to art. 3 of the Hague Convention, unless parties agree otherwise in the contract, the law of the place where the seller has its current dwelling place is the governing law. In this case, the seller had its dwelling place in Italy and, therefore, Italian substantive law was applicable to the case;

Since Italy is party to the CISG, the Convention is the substantive law governing the case. Pursuant to art. 6 CISG, the parties may depart from the Convention's provisions. Therefore, so far as the determination of the place of performance is

concerned, it is important to refer, first, to the contractual provisions in order to define the parties' intent.

In the light of the contractual provisions (i.e., the assembling and installing duties, the warranty clause including the seller's duty to participate to the assembling and starting of the plant, etc.), the court found that, even if, with regard to the payment of the price, the place of performance was Italy pursuant to art. 57 CISG, the main obligation within the scope of the contract at issue consisted of assembly, installation and delivery of the industrial plant. Since all these operations had to be performed in Malaysia, Malaysia was the place of performance and Italian courts did not have jurisdiction over the dispute.

Case 648: CISG 1 (1)(a); 3 (1); 7 (2); 31 (a)

Italy: Corte di Cassazione, Sezioni Unite, no. 14837/02

Janssen Cosmeceutical Care GmbH v. Munda Alberto

18 October 2002

Original in Italian

Full text and excerpt available in Iurisdata (database)

Italian excerpt published in *Giustizia civile*, Massimario, 2002, p. 1826.

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Rocco Palma

An Italian distributor and a German manufacturer entered into an agreement whereby the distributor was to purchase and distribute in Italy a certain quantity of cosmetics. Shortly after the German company had started delivery of the goods, the Italian distributor contested to the counterpart that the goods were delivered late, in quantities different from those ordered and without the packaging and advertising materials agreed in the contract. The distributor brought suit before an Italian Court claiming breach of contract and damages, on the ground that, according to art. 5 (1) of the 1968 Brussels Convention on Jurisdiction and Enforcement of Foreign Judgments in Civil and Commercial Matters, a person domiciled in a contracting State may be sued in the court of another contracting State where the obligation has been or is to be performed. The German manufacturer objected to the jurisdiction of the Italian judge and referred the case to the Italian Supreme Court to obtain a preliminary decision on the matter.

The Supreme Court found that jurisdiction was vested in German courts since article 5 (1) of the Brussels Convention was not applicable to the dispute. In reaching this conclusion, the Court stated that the contract was governed by CISG as the two parties had their place of business in two Contracting States (art. 1 (1)(a) CISG) and the substantive requirements for the application of the Convention were met, i.e. the contract for the supply of goods to be manufactured or produced was to be considered a sale contract (art. 3 (1) CISG). Then, in order to determine the place of performance and whether the Italian judge had jurisdiction, the Court resorted to art. 31 (a) CISG, according to which, when a sale involves carriage of goods, unless otherwise provided by the parties, the place of performance is to be considered the place where the goods are handed over to the first carrier. In the case at hands, a contractual clause provided for the delivery of the goods "FOB". Consequently, under both the CISG and the terms of contract, Germany was to be considered the place of performance.

The Court further noted that the uniform law provided by the CISG prevails over the 1980 Rome Convention on the Law Applicable to Contractual Obligations by virtue of art. 7 (2) of the former and art. 21 of the latter and renders of no avail the domestic rules of private international law.

Case 649: CISG 57 (1)(a)

Italy, Corte Suprema di Cassazione, Sezioni Unite, No. 7503/04

Tekna S.r.l. vs. Eberhardt Freres S.

20 April 2004

Original in Italian

Published in *Rivista di diritto internazionale privato e processuale*, n.1/2005, p. 111 ff. Available in Unisex database

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Vincenzo Vinciguerra

An Italian seller (plaintiff) concluded a contract with a French buyer (defendant), for the sale of goods (refrigerators' components) manufactured by the seller. When the plaintiff brought action before an Italian court asking for payment of the price for the delivered goods, the defendant alleged lack of jurisdiction and argued that the contract included a forum selection clause leading to the jurisdiction of a French court. After the lower court had upheld the defendant's claims, the plaintiff asked the Italian Supreme Court to state the Italian jurisdiction on the case. The Supreme Court rejected the defendant's claims and held that the Italian court had jurisdiction.

In assessing the question of jurisdiction, the court evaluated the applicability of the forum selection clause embodied in the contract. Italian Law provides that in case of commercial and civil disputes the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Law applies. Article 17 (1) of such Convention establishes that a forum selection clause must be in written form *ad probationem*. Since the contract where the clause was embodied was neither signed by the plaintiff nor implicitly agreed upon by it (at least as far as this particular clause was concerned), the court held that the contract was not binding upon the parties.

The court then referred to art. 5 (1) of the Brussels Convention, which sets forth the jurisdiction of the country where the obligation must be performed. In order to assess the place of performance of the obligation (i.e. the place of payment), the court held that the CISG was applicable, thus superseding both domestic law and the 1980 Rome Convention on the Law Applicable to the Contractual Obligation (ratified by Italy). Pursuant to art. 57 (1)(a) CISG, and lacking any agreement to the contrary, the buyer shall pay the price at the seller's place of business: since this was in Italy, according to the above mentioned art. 5 (1) of the Brussels Convention, the Supreme Court established that the Italian court had jurisdiction.

Case 650: CISG 31

Italy, Corte Suprema di Cassazione, Sezioni Unite, No. 18902/04

Kling & Freitag GmbH s.r.l. vs Società Reference Laboratory s.r.l.

20 September 2004

Available on: <http://www.cisg.law.pace.edu/cisg/wais/db/cases2/040920i3.html>

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Davide Marcianó

Following a distributorship agreement between an Italian distributor and a German manufacturer, the distributor would purchase and distribute in Italy the products of the manufacturer over a period of three years. The manufacturer initiated performance of its obligations, however it refused to recognise the distributor the contractual right to act as a sole distributor. In a short time, the manufacturer refused any further performance. The distributor brought action for breach of contract before an Italian court of First Instance. The manufacturer objected to the jurisdiction of the Italian Court and brought the case before Italy's Supreme Court.

The Supreme Court concluded for the lack of jurisdiction of the Italian judge and in favour of the jurisdiction of the German court. The distributorship agreement was considered a framework agreement, whose essence was the obligation of the parties to order and deliver a certain quantity of specific goods over a certain period of time, executed through separate "deeds of sale".

Therefore, the claim of the distributor against the manufacturer was a claim for breach of individual sale contracts. The Supreme Court thus made straightforward reference to the CISG in order to determine the place of performance of the obligation. Since, according to art. 5 (1) of the 1968 Brussels Jurisdiction and Enforcement Convention, applicable to the case, the place of performance is the place where the manufacturer has to deliver the goods, the Court applied art. 31 CISG. Germany was thus considered the place of delivery and the lack of jurisdiction of the Italian Court over the case was declared.

Case 651: CISG 6; 7; 25

Italy, Tribunale di Padova

Ostrozniak Savo (Vzerja Kuncev) e Eurotrafic s.r.l. vs. La Faraona soc. coop. a r. l.

11 January 2005

Published in Germany: The European Legal Forum (Forum Iuris Communis Europae), 3 – 2005, II;

also available at <<http://cisgw3.law.pace.edu/cisg/wais/db/cases2/050111i3.html>>.

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Davide Marcianó

The case concerns a contract for the supply of goods (rabbits) between a Slovenian company (supplier) and an Italian company (buyer). While the contract was being performed, the buyer, unsatisfied with the quality of the goods, suggested that the supplier would adopt a new genetic type of rabbits (called "Grimaud"), after selling the remaining rabbits and providing for a "sanitary clearing" of the farm. The supplier proceeded with the sale below cost of the remaining rabbits, but was then unable to obtain from the breeder of the genetic type "Grimaud" the new rabbits for its farm and was therefore unable to fulfil the supply contract to the buyer. As a result, the buyer terminated the agreement alleging the supplier's non performance.

The supplier commenced an action before an Italian Court of First Instance alleging that the inability to perform was due to the conduct of the buyer, who had requested the change of the genetic type of rabbits but had failed to cooperate to obtain the delivery of the new type of rabbits. The supplier claimed damages for the sale below cost of the first set of rabbits and for the termination of the agreement. The buyer objected that the quality of the first type of rabbits was defective, that the decision to adopt the Grimaud type had been freely taken by the supplier, and finally that the breeder of the Grimaud rabbits had refused to give its rabbits to the supplier because this latter had failed to reach a satisfactory level of “sanitary clearing”.

The Italian Court concluded that the supplier had committed a fundamental breach of contract according to art. 25 CISG since it had failed to supply the goods as a result of its failure to provide the “sanitary clearing”. Before deciding the merit of the case, the court examined some preliminary issues regarding the applicable law. In their supply contract, the parties had agreed that the contract «shall be governed by the laws and regulation of the International Chamber of Commerce of Paris, France», thus making it appear as if they wanted to exclude the application of Italian or Slovenian law, as well as the CISG. The Court argued that in the matter under dispute the substantive uniform law (i.e. the CISG) should prevail over a conflict of law approach, that would be the traditional way of assessing an international contract: resort to the substantive uniform law conventions shall prevail over resort to private international law rules and the judge should favour insofar as possible the application of the substantive rules contained in the uniform law convention. The Court also addressed the issue of implicit exclusion of the CISG on the basis of the agreement (in light of the opt-out clause of art. 6 CISG). Arguing that what stated in the contract should not be considered either an explicit or an implicit exclusion of the CISG, the Court stated that the reference to law or regulation of the ICC could not be intended as “choice of law” according to private international law rules.

Case 652: CISG: 3 (2); 7; 30; 31; 53

Italy, Tribunale Padova

Pessa Studio vs. W.H.S. Saddlers International

10 January 2006

Original in Italian

Available in Unilex database

Also available in:

<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/060110i3.html#cd>

Published in *Rivista di Diritto Internazionale Privato e Processuale* 1/2006

Abstract prepared by Maria Chiara Malaguti, National Correspondent, and Paola Portacci

The dispute arose out of a sale contract on approval of two merry-go-rounds manufactured and to be installed by an Italian manufacturer in the United Kingdom. As neither the price was paid nor the goods returned to the seller within the time fixed in the contract, the seller brought an action against the buyer before an Italian Court of First Instance. This latter declared not to have any jurisdiction according to art. 5.1 (b) of EC Council Regulation No. 44/2001 on jurisdiction and recognition and the enforcement of judgments in civil and commercial matters [Regulation 44/2001 applies to actions, concerning “civil or commercial matter”, brought after 1 March 2002].

According to the said art. 5 (1), the place of performance of sales contracts is the place “where the goods were delivered or should have been delivered under the contract”, providing this is in a Member State. However, since the Regulation does not provide a definition of “sales contract”, the Court resorted to an autonomous definition and the Court made reference to the CISG, since the Convention defines the substantial meaning of “contract of sale”. The Court considered the recourse to the Convention justified also in light of the international consensus on the CISG and of its particular character. As a matter of fact, the CISG, though a stand-alone instrument, is also a model for other legal texts (e.g. European Union Directive n. 99/44 on the sale and consumer goods and associated guarantees).

According to art. 3, 30 and 53 CISG, a sale contract is a contract whereby the seller is obliged to deliver the goods, transfer the property in the goods and possibly deliver the documents relating to the goods while the buyer is obliged to pay the price and to take delivery of the goods. Contracts where part of the obligations of the party who supplies the goods consists in the supply of labour or other services are also considered sales contracts unless the supply of labour or other services represent a preponderant part of the obligations (art. 3 (2)CISG).

In the present case, the seller was also obliged to install the merry-go-rounds in the United Kingdom. However, the Court did not consider the obligation to supply labour preponderant over the obligation to manufacture/deliver the goods. In particular, the value of the merry-go-rounds was superior to the labour supply and in the agreement the installation was not described as an essential condition of the delivery.

Finally, with regard to the issue of jurisdiction, the Court referred to art. 31 CISG. However, the judges noted that, since the seller was bound to install the merry-go-round in the United Kingdom, none of the options set forth in the said art. 31 could apply. With reference to art. 5 Regulation 44/2001, the Court thus concluded that the United Kingdom was the place of performance of the obligation and declared the jurisdiction of the English courts.

Index to this issue**I. Cases by jurisdiction***Italy*

Case 644: CISG 57 (1) – *Italy: Corte Suprema di Cassazione, Sezioni Unite, 7759/98 AMC di Ariotti e Giacomini s.n.c vs. A. Zimm & Söhne GmbH (7 August 1998)*

Case 645: CISG 1 (1)(a); 7 (1); 7 (2); 63 (1); 64 (1)(b); 74; 75; 78 – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

Case 646: CISG 31 (a) – *Italy: Corte Suprema di Cassazione, Sezioni Unite, 58/00 Krauss Maffei Verfahrenstechnik GmbH, Krauss Maffei AG v. Bristol Meyer Squibb S.p.a. (10 March 2000)*

Case 647: CISG 6; 31; 57; [90] – *Italy: Corte Suprema di Cassazione, Sezioni Unite, 448/00 PSS Snd. BHD vs. Oscam s.p.a. (19 June 2000)*

Case 648: CISG 1 (1); 3 (1); 7 (2); 31 (a) – *Italy: Corte di Cassazione, Sezioni Unite, 14837/02 Janssen Cosmeceutical Care GmbH v. Munda Alberto (18 October 2002)*

Case 649: CISG 57 (1)(a) – *Italy: Corte Suprema di Cassazione, Sezioni Unite, 7503/04 Tekna S.r.l. vs. Eberhardt Freres S. (20 April 2004)*

Case 650: CISG 31 – *Italy: Corte Suprema di Cassazione, Sezioni Unite, 18902/04 Kling & Freitag GmbH s.r.l. vs. Società Reference Laboratory s.r.l. (20 September 2004)*

Case 651: CISG 6, 7, 25 – *Italy: Tribunale di Padova Ostroznik Savo (Vzerja Kuncev) e Eurotrafic s.r.l. vs. La Faraona soc. coop. a r. l. (11 January 2005)*

Case 652: CISG 3 (2), 7, 30, 31, 53 – *Italy: Tribunale Padova Pessa Studio vs. W.H.S. Saddlers International (10 January 2006)*

II. Cases by text and article**United Nations Sales Convention (CISG)****CISG 1 (1)(a)**

Case 645: – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

Case 648: – *Italy: Corte di Cassazione, Sezioni Unite, No 14837/02, Janssen Cosmeceutical Care GmbH v. Munda Alberto (18 October 2002)*

CISG 3 (1)

Case 648: – *Italy: Corte di Cassazione, Sezioni Unite, No 14837/02, Janssen Cosmeceutical Care GmbH v. Munda Alberto (18 October 2002)*

CISG 3 (2)

Case 652: – *Italy: Tribunale Padova, Pessa Studio vs. W.H.S. Saddlers International (10 January 2006)*

CISG 6

Case 647: – Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 448/00, *PSS Snd. BHD vs. Oscam s.p.a.* (19 June 2000)

Case 651: – Italy: Tribunale di Padova, *Ostroznik Savo (Vzerja Kuncev) e Eurotrafic s.r.l. vs. La Faraona soc. coop. a r. l.* (11 January 2005)

CISG 7

Case 651: – Italy: Tribunale di Padova, *Ostroznik Savo (Vzerja Kuncev) e Eurotrafic s.r.l. vs. La Faraona soc. coop. a r. l.* (11 January 2005)

Case 652: – Italy: Tribunale Padova, *Pessa Studio vs. W.H.S. Saddlers International* (10 January 2006)

CISG 7 (1)

Case 645: – Italy: Corte di Appello di Milano *Bielloni Castello v. EGO* (11 December 1998)

CISG 7 (2)

Case 645: – Italy: Corte di Appello di Milano *Bielloni Castello v. EGO* (11 December 1998)

Case 648: – Italy: Corte di Cassazione, Sezioni Unite, No 14837/02, *Janssen Cosmeceutical Care GmbH v. Munda Alberto* (18 October 2002)

CISG 25

Case 651: – Italy: Tribunale di Padova, *Ostroznik Savo (Vzerja Kuncev) e Eurotrafic s.r.l. vs. La Faraona soc. coop. a r. l.* (11 January 2005)

CISG 30

Case 652: – Italy: Tribunale Padova, *Pessa Studio vs. W.H.S. Saddlers International* (10 January 2006)

CISG 31

Case 647: – Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 448/00 *PSS Snd. BHD vs. Oscam s.p.a.* (19 June 2000)

Case 650: – Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 18902/04 *Kling & Freitag GmbH s.r.l. vs Società Reference Laboratory s.r.l.* (20 September 2004)

Case 652: – Italy: Tribunale Padova, *Pessa Studio vs. W.H.S. Saddlers International* (10 January 2006)

CISG 31 (a)

Case 646: – Italy: Corte Suprema di Cassazione, Sezioni Unite, Judgment No. 58/00 *Krauss Maffei Verfahrenstechnik GmbH, Krauss Maffei AG v. Bristol Meyer Squibb S.p.a.* (10 March 2000)

Case 648: – Italy: Corte di Cassazione, Sezioni Unite, No 14837/02, *Janssen Cosmeceutical Care GmbH v. Munda Alberto* (18 October 2002)

CISG 53

Case 652: – *Italy: Tribunale Padova, Pessa Studio vs. W.H.S. Saddlers International (10 January 2006)*

CISG 57

Case 647: – *Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 448/00 PSS Snd. BHD vs. Oscam s.p.a. (19 June 2000)*

CISG 57 (1)

Case 644: – *Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 7759/98 AMC di Ariotti e Giacomini s.n.c vs. A. Zimm & Söhne GmbH (7 August 1998)*

CISG 57 (1)(a)

Case 649: – *Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 7503/04 Tekna S.r.l. vs. Eberhardt Freres S. (20 April 2004)*

CISG 63 (1)

Case 645: – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

CISG 64 (1)(b)

Case 645: – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

CISG 74

Case 645: – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

CISG 75

Case 645: – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

CISG 78

Case 645: – *Italy: Corte di Appello di Milano Bielloni Castello v. EGO (11 December 1998)*

CISG 90

Case 647: – *Italy: Corte Suprema di Cassazione, Sezioni Unite, No. 448/00 PSS Snd. BHD vs. Oscam s.p.a. (19 June 2000)*