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Contents

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 have emanated 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).

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I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 150: CISG 1(1)(a): 35

France: Court of Cassation (1st Civil Division)

23 January 1996

Société Sacovini v. S.A.R.L. Les Fils de Henri Ramel

Published in French: Recueil Dalloz Sirey 1996, Jurisprudence, 334; [1996] UNILEX

Reported on in English: [1996] UNILEX

Commented on in French: Witz, Claude, Recueil Dalloz Sirey 1996, Jurisprudence, 334

The seller, Sacovini, a company with its place of business in Italy, concluded several contracts in 1988 for the sale of wine with French buyers. Having learned that adulterated Italian wine had been imported into France that same year, the buyers reported the matter to the Fraud Control Service. The latter concluded that the wine had indeed been adulterated.

The French dealers then brought an action before the Sète Commercial Court and then before the Montpellier Court of Appeal, claiming avoidance of the sales contract relating to the disputed wine and demanding compensation for the material and moral damages that they had suffered.

The Court of Appeal, in accordance with French domestic law, declared avoided the sales contract pertaining to the consignments of wine, finding against the seller, on the ground that the latter had not honoured its contractual obligation to supply a wine conforming to the contract and of fair merchantable quality.

The Italian company, Sacovini, appealed against the decision without invoking application of the CISG. It objected to the fact that the Court of Appeal found against the seller by avoiding the contract, since, in its view, the supply of chaptalized wine could not constitute a breach of the seller's obligation. The seller further asserted that there was no causal relationship between the chaptalization of the wine and the alleged damage, since it had been established in the case of particular consignments that the wine had been rendered unfit for consumption as a result of the conditions in which it had been transported.

The Court of Cassation dismissed the appeal. It found that the disputed contract had been an international sale of goods falling within the scope of application of CISG, which had entered into force on 1 January 1988 between France and Italy, and that the Court if Appeal had respected the provisions of that treaty, in particular its article 35, when finding that Sacovini, by supplying chaptalized wine, had not performed its obligation to supply goods in conformity with the contract. Finally, regarding the absence of a causal relationship between the chaptalization of the wine and the alleged damage, the Court of Cassation agreed with the ruling of the trial court according to which it was solely the treatment of the wine that had rendered it unfit for consumption.

Case 151: CISG 1(1)(a); 6; 55

France: Court of Appeal of Grenoble (Commercial Division)

26 April 1995

Entreprise Alain Veyron v. Société E. Ambrosio

Original in French

Published in French: [1996] UNILEX

Reported on in English: [1996] UNILEX

A commercial collaboration contract was concluded in 1989 between a company with its place of business in Italy and an individual resident in France. The latter thus became the sole representative and importer of confectionery exported by the Italian business. One year later, the Italian company broke off the collaboration agreement, which triggered the dispute.

The Court of Appeal found that the commercial collaboration contract pertained partly to sales and partly to representation, and that the part falling under sales law was governed by CISG since it had been concluded between a seller and a buyer based in Italy and France respectively, both States being parties to CISG (art.1(1)(a)).

The Court of Appeal considered the question of the possible liability of the Italian company for breach of contract regarding the part of the commercial collaboration contract pertaining to sales. The court based this finding on a provision of the collaboration contract whereby the contract was revokable without being open to objection on the part of the agent. The court also found that the Italian company was not obliged to make any payment for breach of contract. The court stressed that such a stipulation was not prohibited by CISG and that the parties were at liberty to agree that the seller could refuse to maintain the contractual relationship since it would not thereby be calling into question the performance of a previously concluded sales contract. The court noted that, in the case in point, it was not alleged that the decision to terminate the contractual relationship had resulted in a refusal to execute a previously placed order or in the incomplete execution of such an order. The court concluded therefore that the Italian company could not be held liable for breach of the part of the commercial collaboration contract pertaining to sales.

The Court of Appeal also ruled on the operation of article 55 CISG, which the commercial agent had used to his advantage. The latter had asserted that his successor had benefited from lower prices than those charged to him and requested the court to reduce accordingly the debt claimed by the Italian exporter. The court found that “the reference made by article 55 CISG to a market price, in as much as this article is applicable to the case, is overridden by a contrary agreement between the parties, such as the provisions of CISG in their entirety, with the exception of article 12 (art. 6)”. The court also noted that the objections raised by the agent when the rates charged were increased in 1990 did not call into question the sales contract itself but merely expressed general grievances regarding the parties' business relationship and the difficulties encountered in the face of the competition. The court finally noted that, since the commercial agent had taken delivery of the goods without specifically questioning their purchase price, the exporter was justified, under article 8(2) and (3) CISG, in interpreting the agent's behaviour as indicating acceptance of the rate charged.

Case 152: CISG 1(1) (b); 49; 78

France: Court of Appeal of Grenoble (Commercial Division)

26 April 1995

Marques Roque, Joaquim v. S.A.R.L. Holding Manin Rivière

Original in French

Published in French: [1996] UNILEX

Reported on in English: [1996] UNILEX

A company with its place of business in France sold to an individual resident in Portugal a used warehouse for the price of 500,000 French francs, including the cost of dismantling and delivery, the price of the warehouse being 381,200 francs and the dismantling and delivery costs amounting to 118,800 francs. Following the buyer's refusal to pay the last part of the price on the grounds that the dismantled metal elements were defective, the Court of Appeal of Grenoble found that the disputed contract covered the sale of a used warehouse together with its dismantling and that it was apparent from the invoices submitted that the supply of services did not constitute the preponderant part [of the contractual obligations]. The court concluded that the contract therefore fell within the scope of application of CISG (art. 3(2)).

The Court of Appeal further stressed that the contract had been concluded between a seller with its place of business in France and a buyer resident in Portugal, that France was a State Party to CISG whereas Portugal had neither signed nor ratified it, and that it was therefore necessary to ascertain whether CISG was applicable through the provisions of private international law (art. 1(1)(b)).

Having invoked the Hague Convention of 15 June 1955 on the Law applicable to International Sales of Goods, the court arrived at French law, this being the law of the country where the seller had its habitual residence at the time when it received the order (art. 3, first paragraph, Hague Convention). The court accordingly applied CISG because “since 1 January 1988, the French domestic law applicable to international sales was the Vienna Convention of 11 April 1980”. The court found, in the light of article 35 CISG, that a certain quantity of the goods were not fit for the particular purpose of reassembly in the identical form expressly made known to the seller. Since that defect related to only part of the warehouse and concerned metal elements which could be repaired, it did not constitute a fundamental breach such as to deprive the buyer of what he was entitled to expect under the contract. The court therefore found that this breach did not justify avoidance of the contract pursuant to article 49.

The Court of Appeal further noted that, in the event, such avoidance had not taken place, since the parties had determined that the seller would repair the damaged metal elements. In response to the buyer's objection that the [seller's] obligation was to restore the warehouse to a new state, the court found that it was not established that the seller had accepted such a task which would have served to multiply the value of some of the elements sold by a factor of 40. Having furnished the buyer with replacement elements which were only very slightly bent out of shape, the seller had, in conformity with article 46(3) CISG, repaired the defect in conformity with the goods sold.

The court awarded damages to the buyer after noting that the latter retained the right to claim damages notwithstanding the repair carried out at its own expense by the seller (art. 48(1)).

Finally, regarding interest on arrears and the capitalization of interest claimed by the seller, the Court of Appeal noted that article 78 CISG stated that any delay in payment gave rise to entitlement to interest on the arrears

without notice being served and that such interest should start to accrue on the date on which the replacement goods were handed over to the buyer. The court decided that the interest would be capitalized at the end of one complete year to be counted from the date of submission of grounds of appeal in which the seller first made the request for interest.

Case 153: CISG 1(1)(a); 29(1); 31(a) and (c); 57(1); 78

France: Court of Appeal of Grenoble (Commercial Division)

29 March 1995

Société Camara Agraria Provincial de Guipuzcoa v. André Margaron

Original in French

Published in French: [1995] UNILEX, E.95-2

Reported on in English: [1995] UNILEX, D.95-2

A French seller and a Spanish buyer concluded a number of contracts for the sale of maize. All the deliveries were made, but the buyer did not pay the full price. The seller brought an action against the buyer before a French court, demanding payment of the full price and interest accruing.

In the first instance, the Regional Court of Grenoble, without invoking CISG, ordered the buyer to pay the full price, but found that the seller was not entitled to claim interest.

The buyer lodged an appeal, objecting that the French court did not have jurisdiction and demanding a price reduction on the basis of an agreement emerging from a meeting of the parties after conclusion of the contract.

The Court of Appeal found that CISG was applicable since the contract in question was a contract for the international sale of goods concluded between two parties established in different States Parties to CISG.

In order to determine where the price was payable, the Court of Appeal cited article 57(1) and article 31(a) and (c) in their entirety, and accordingly found that the obligation to pay the price should be performed within the jurisdiction of the Regional Court of Grenoble, whether or not the payment had been made subject to delivery of the goods.

Regarding the price reduction requested by the buyer, the court found that, on the basis of article 29 CISG, a contract could be modified purely by agreement of the parties. However, it also found that the modification of the purchase price could not, as in the case in point, result from the general mood of a meeting.

The seller's entitlement to payment of the price and interest on arrears was recognized. The Court of Appeal made reference for this purpose to article 78 CISG and noted that, unlike under French law, the serving of notice was not necessary. Finally, the court ordered the capitalization of the interest requested by the buyer.

Case 154: CISG 1(1)(a); 7(1); 8(1); 25; 64(1); 73(2)

France: Court of Appeal of Grenoble (Commercial Division)

S.A.R.L. Bri Production "Bonaventure" v. Société Pan Africa Export

22 February 1995

Original in French

Published in French: [1995] UNILEX, E.95-L; Journal du droit international 1995, 632

Reported on in English: [1995] UNILEX, D.95-1

Commented on by P. Kahn, Journal du droit international 1995, 639

A French seller, a jeans manufacturer, concluded a contract for the sale of a given quantity of goods with a buyer based in the United States of America. It was specified that the jeans purchased were to be sent to South America and Africa.

Both during the negotiations preceding the contract and during the follow-up to its performance, the seller had repeatedly and insistently demanded proof of the destination of the goods sold. It became apparent during a second delivery that they had been shipped to Spain.

The seller's refusal to maintain the trade relationship and to proceed with further deliveries triggered the proceedings.

The Court of Appeal invoked article 1(1)(a) CISG in order to determine the law applicable to the case, since the buyer and seller were nationals of two different States Parties to CISG.

The court then invoked article 8(1) CISG in order to conclude that the United States company had not respected the wish of the French company, namely to know the destination of the goods. That attitude constituted a fundamental breach of contract within the meaning of article 25 CISG.

Under article 64(1) the seller could declare the contract avoided. The Court of Appeal adopted this solution, invoking in addition article 73(2) with regard to the contracts for further deliveries.

Finally, it ordered the United States company to pay damages amounting to 10,000 French francs for abuse of process, finding that the conduct of the buyer, "contrary to the principle of good faith in international trade laid down in article 7 CISG, aggravated by the adoption of a judicial stand as plaintiff in the proceedings, constituted abuse of process".

Case 155: CISG 19(2); 86(1)

France: Court of Cassation (1st Civil Division)

Decision dismissing the appeal on points of law brought against the decision of the Court of Appeal of Paris of 22 April 1992

4 January 1995

Société Fauba v. Société Fujitsu

Original in French

Published in French: Recueil Dalloz Sirey 1995, Jurisprudence, 289; [1996] UNILEX; Witz, Claude, Les premières applications jurisprudentielles du droit uniforme de la vente internationale - Convention des Nations Unies du 11 avril 1980, Librarie Générale de Droit et de Jurisprudence (L.G.D.J.), Collection Droit des Affaires, Paris (1995) 140

Commented on in French by Witz, see Recueil Dalloz Sirey 1995, Jurisprudence, 290; Witz, see L.G.D.J. above (1995) 61; 69

Reported on in English: [1996] UNILEX

The Court of Cassation dismissed the appeal on points of law brought by the French buyer against the decision of the Court of Appeal of Paris regarding the formation of the sales contract. The buyer asserted that the contract had not been formed and that, by deciding the contrary, the Court of Appeal had violated article 19 CISG. The Court of Appeal was also held by the buyer to have violated article 86 CISG by finding that the buyer should have immediately returned the surplus goods delivered.

The Court of Cassation agreed with the ruling of the trial and court on the question of the existence of an agreement between the parties regarding the object at issue and the price, including the part of the agreement relating to an adjustment of the initial price in accordance with the market and the alterations made in the content of the order. Having done so, the Court of Cassation made no reference to any provision of CISG.

Secondly, the Court of Cassation referred to article 86(1) CISG, under which the buyer who had received the goods and intended to reject them was entitled to retain them until it had been reimbursed by the seller its reasonable expenses for preserving them. In dismissing the appeal on this point, the Court of Cassation found that the buyer "had never claimed to have incurred such expenses for those goods which did not correspond to its orders".

Case 156: CISG 57(1)(a))

France: Court of Appeal of Paris (1st Division, Urgent Proceedings Section)

10 November 1993

Société Lorraine des produits métallurgiques v. Banque Paribas Belgique S.A. and Société BVBA Finecco

Original in French

Published in French: Juris-Classeur Périodique, ed. G, 1994, II, No. 22314; [1995] UNILEX, E.93-23; Journal du droit international 1994, 678

Reported on in English: [1995] UNILEX, D.93-23

Commented on by Audit, Juris-Classeur Périodique, ed. G, 1994, II, No.22314; Jacquet, Journal du droit international, 1994, 683; Dubarry-Loquin, Revue trimestrielle de droit commercial 1994, 698

In July 1991 a French seller and a Belgian buyer concluded a contract for the sale of metal sheets. The payment of the purchase price was guaranteed by a Belgian bank.

Since the buyer had not effected payment by the agreed date, the seller brought an action for payment against the buyer and his guarantor before a French court (Bobigny Commercial Court).

The Commercial Court found that it did not have jurisdiction and referred the case and all the parties to Gand Court (Belgium).

The seller raised an objection to this decision on the ground that the French court did indeed have jurisdiction.

The Court of Appeal applied CISG in determining where the purchase price was payable. It found that, pursuant to article 57 CISG, the purchase price was payable at the place of business of the seller, no specific stipulation having been agreed by the parties.

The Court of Appeal consequently asserted its jurisdiction.

Case 157: CISG 3(1)

France: Court of Appeal of Chambéry (Civil Division)

25 May 1993

Société AMD Eléctronique v. Société Rosenberger Siam S.p.A.

Original in French

Published in French: Revue de Jurisprudence Commerciale 1995, 242; [1995] UNILEX, E.93-16

Reported on in French: Bull. inf. C. cass, 01-10-1993, 35

In English: [1995] UNILEX, D.93-16

Commented on in French by Witz, Claude, Revue de Jurisprudence Commerciale 1995, 244; Les premières applications jurisprudentielles du droit uniforme de la vente internationale - Convention des Nations Unies du 11 avril 1980, Librairie Générale de Droit et de Jurisprudence (L.G.D.J.), Collection Droit des Affaires, Paris, (1995), 34

The buyer, a company established under Italian law, placed an order for connectors with a French company, the seller, in February 1990. Under the agreement, the connectors were to be manufactured on the basis of designs provided by the company Rosenberger and checked in accordance with the quality-control standards adopted and communicated by the latter company.

Various problems arose between the parties. On 18 June 1991, the seller brought proceedings against the other party to the contract before the Regional Court of Bonneville for payment of the price due for goods delivered but not paid for. The buyer raised an objection on the ground of the lack of jurisdiction of the French court as against an Italian court. On 6 January 1993, the Regional Court upheld the objection on the grounds that the defendant was resident in Italy and that the delivery had also been made in Italy.

The buyer lodged an appeal.

In order to determine the place where the obligation to pay the price should be performed, pursuant to article 5(1) of the Brussels Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments, the Court of Appeal considered whether CISG was applicable. It found that the disputed contract was not a sale within the meaning of CISG, which was not applicable when, as in the case in question, the party placing an order supplied “a substantial part of the materials necessary for such manufacture or production” (cf. art. 3(1) CISG).

Case 158: CISG 1(1)(b); 23

France: Paris Court of Appeal (15th Division)

22 April 1992

Société Fauba v. Société Fujitsu

Original in French

Published in French: [1996] UNILEX; Witz, Claude, Les premières applications jurisprudentielles du droit uniforme de la vente internationale - Convention des Nations Unies du 11 avril 1980, Librairie Générale de Droit et de Jurisprudence (L.G.D.J.), Collection Droit des Affaires, Paris (1995), 135

Commented on in French by Witz, V., L.G.D.J. above, 29; 59; 69; Witz, Recueil Dalloz Sirey 1995, 19è Cahier, Chronique, 143

Reported on in English: [1996] UNILEX

The plaintiff, a French buyer, had ordered on 22 March 1990 several batches of electronic components from the defendant, a German seller, through the defendant's liaison office in France. The buyer had accepted the price previously stated by the supplier but had requested its reduction in accordance with the drop in prices on the market.

In its acceptance of the order, the seller had replied that the prices could be adjusted upwards or downwards, as agreed, in accordance with the market, but that various specific items could not be delivered. A telephone conversation took place between the parties on 26 March, and the German seller sent his partner a telex on the same day recording the latter's agreement to amend one item of the order. By telex of 13 April, the French buyer changed his order once again, a change which the German seller stated that it could not accept for short-term deliveries.

Before the Paris Court of Appeal, the plaintiff maintained that the contract had not been formed because of alteration of the initial order which had led to disagreement between the parties, and invoked for that purpose article 19 CISG. The plaintiff further ruled that, under article 4 of that instrument, there were grounds for taking account of French common law with regard to the purchase price.

The Court of Appeal held that the seller's liaison office based in France did not have due legal personality and that the contract was therefore an international sales contract concluded between a French company and a German company. It found that CISG (art. 1(1)(b)) was applicable in the case in point.

Regarding the formation of the contract, the Court of Appeal held that the contract had been validly formed by virtue of the consent of the parties to the object at issue and the price and that it had become effective on receipt by the buyer of the seller's acceptance of the order in accordance with article 23 CISG. In addition, since the buyer had argued that the seller had delivered surplus goods, the Court of Appeal held that if the quantity of goods delivered did not correspond to the quantity specified in the order, it was the responsibility of the buyer to return the surplus goods immediately. Finally, regarding the price, the court held that the parties' agreement regarding the adjustment of the price in accordance with the market had not rendered the price indeterminable; it did not, however, state the legal principles whereby it considered the price to be determinable.

II. CASES RELATING TO THE UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA (HAMBURG RULES) (HR)

Case 159: HR 2(1)(b); 4(2)(b); 5(1)

France: Commercial Court of Marseille

23 January 1996

Compagnie sénégalaise d'assurances et de réassurances CSAR and 27 other companies v. Roscoe Shipping Co., the Captain of the Ship “World Appolo”, and the Steaming Mutual Underwriting Association

Original in French

Published in French: Revue de droit commercial, maritime, aérien et des transports 1996, 51

The carrier had taken charge without any reservation of a cargo of bags of rice for shipment from a Thai port to the port of Dakar in Senegal. The ship's insurer had furnished the consignee with a letter of guarantee as security for any penalties imposed on the ship owner in his capacity as carrier. According to this letter, the ship's insurer undertook to settle, up to a given amount, any final penalty imposed by a decision of the Commercial Court of Marseille or the competent Court of Appeal.

On arrival, a jointly agreed survey conducted in the presence of representatives of both parties throughout the unloading established the presence of successive damage and shortages amounting to a certain sum.

After indemnifying the consignee, its insurers brought an action before the Commercial Court of Marseille on the basis of a right of legal subrogation which they possessed *vis-à-vis* the maritime carrier and its insurers.

The commercial court applied HR, invoking article 2(1)(b), which stipulates that "the provisions of this Convention are applicable to all contracts of carriage by sea between two different States, if (...) the port of discharge as provided for in the contract of carriage by sea is located in a Contracting State ...".

In order to determine the liability of the carrier for damage occurring during unloading, the court invoked article 4(1) HR, according to which "the responsibility of the carrier for the goods...covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge", article 4(2)(b)(i) specifying that the carrier is deemed to be in charge of the goods until the time he has delivered them by handing them to the consignee.

The court found that HR did not formally define the time of delivery and held that, in the absence of a mandatory limitation, the carrier was incontestably entitled to take advantage of a delivery when the hatches were opened and the goods handed over.

The court noted that the bill of lading bore the note "Dakar free out" and that this note served not only to assign the unloading costs to the consignee, but also indicated that all damage occurring at a time subsequent to the unloading could not be charged to the maritime carrier, whose liability, under article 5(1) HR, was incurred by operation of law in respect of loss or damage to the goods occurring prior to delivery, provided that the latter adduced proof that "he ... took all measures that could reasonably be required to avoid the occurrence and its consequences".

On that basis, the court upheld the claim for compensation submitted by the consignee's insurers.

Case 160: HR 16

Tunisia: **Tunis Court of First Instance (9th Division)**

2 November 1994

"Carte" Société tuniso-européenne d'assurances et de réassurances v. Sudcargos

Original in French

Published: Revue de droit commercial, maritime, aérien et des transports 1996, 40

(Abstract prepared by David Morán Bovio)

The defendant company had transported goods on behalf of the consignee to the port of Radès in Tunisia. During loading of the goods, the defendant had stipulated a reservation in the bill of lading discharging the carrier of all liability in respect of the number and nature of the packages because the containers had been sealed with lead seals and it was therefore impossible to check the accuracy of the particulars of the goods given in the bill of lading.

After unloading, the consignee realized that a number of packages were missing. It reported that fact to its insurer and was duly indemnified. The insurer then brought an action before the Tunis Court of First Instance with a view to establishing the liability of the maritime carrier and making it pay the value of the missing goods.

The Court applied article 16 HR, ratified by the Republic of Tunisia, under which a carrier may stipulate substantiated reservations if he has reasonable grounds to suspect the accuracy of the particulars given by the shipper in the bill of lading. Consequently, the onus was on the consignee to prove the accuracy of the particulars in order to be able to establish liability on the part of the carrier. However, the consignee had not adduced proof of the number or nature of the packages handed over to the carrier on departure.

The Court therefore found that the damage was non-determinable and that it was not possible to establish liability on the part of the carrier.

III. ADDITIONAL INFORMATION

Case 134

Published in German: OLG München, 8.3.1995 (7 U 5460/94), Recht der Internationalen Wirtschaft (RIW) 1996, 854