

**United Nations Commission on
International Trade Law**CASE LAW ON UNCITRAL TEXTS
(CLOUT)**United Nations Convention on Contracts for the International Sale of Goods
(CISG) and Convention on the Limitation Period in the International Sale of
Goods (amended 1980) (Limitation Convention)****Case 2194: CISG 1; 11; 12; 53; 60(b); 61(1); 74; 77; 78; 79(1); 79(3); 79(4); 96;
101; Limitation Convention 8; 12(1); 12(2)**

Hungary: Budapest Environs Regional Court

Case No. G.40.313/2010/71

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A Romanian buyer and a Hungarian seller concluded a contract for the sale of goods in 2005. Goods were to be delivered in instalments, and the buyer was responsible for arranging the deliveries. On 12 May 2006, the buyer informed the seller by phone that it could not receive the goods, and on 13 May 2006 public authorities in Romania prohibited the transport and sale of such goods due to the spread of bird flu. The seller sent a payment notice to which the buyer responded by stating its inability to take delivery of the goods due to the aforementioned event as an impediment beyond its control. The buyer indicated that both that event and the prohibition imposed by the public authorities were considered impediments beyond its control according to article 79 CISG. By letter of 6 December 2006, the seller contested the existence of the impediment and declared the contract avoided. On 23 June 2010, the seller initiated legal proceedings against the buyer for breach of contract. Before the Budapest Environs Regional Court (“court of first instance”), the buyer raised among others the exception of the limitation period under the Limitation Convention.

The seller argued that the buyer had breached its obligation to accept delivery of the goods under article 53 CISG, contested the existence of an impediment pursuant to article 79(1), (3) and (4) CISG and, with respect to the buyer’s argument that it had avoided the contract by phone on 12 May 2006, referred to the fact that any expression of intention was only valid in writing. Concerning the issue of the limitation period, it also stated that according to article 12(2) of the Limitation Convention, if one party was entitled to declare the contract terminated by reason of breach, and exercised this right, the limitation period in respect of all relevant instalments should commence on the date on which the relevant declaration was made to the other party.



The court of first instance found the CISG applicable to the dispute pursuant to private international law rules (article 1(1)(b) CISG).¹ The court noted that the seller was entitled to avoid the contract in December 2006 as the buyer had breached the contract by not taking over the goods in accordance with article 60(b) CISG. Noting articles 11, 12, 96 and 101 CISG and in particular that Hungary had made a declaration under article 96 that all legal declarations related to a contract should be made in writing, it further held that the buyer's defence regarding previous contracts concluded orally with the seller could not be accepted and that the avoidance of the contract had occurred not in May 2006 but on 12 December 2006, the date on which the buyer received the seller's written declaration of avoidance of the contract. According to the court, the fact that the buyer had declared the contract avoided orally in May 2006 and that the seller took note of it could not be taken into consideration.

With respect to the expiration of the four-year limitation period under the Limitation Convention, the court, without explicitly discussing the application of the Convention, took into account articles 8 and 12(1) and (2) of the Convention and found that the limitation period regarding all instalments began to run on 12 December 2006. The court found that the majority of the seller's claims were not time-barred as the seller for those claims had initiated proceedings on 23 June 2010. It found that the remaining claims were time-barred as they were first raised by the seller in its amended application of 17 February 2011, and this date exceeded the limitation period specified in the Limitation Convention.

As per the buyer's inability to perform under article 79 CISG, the court found that the impediment beyond its control did not exist during the entire contractual period and that the impediment could only have been considered for the period that the prohibition of the public authorities actually existed, pursuant to article 79(3) CISG.

Noting article 77 CISG, the court further stated that by selling the goods to third parties the seller had acted taking all reasonable measures necessary to mitigate the damages resulting from the breach of contract.

The court held that the seller was entitled to damages and interest on the basis of articles 61(1), 74 and 78 CISG. The Court of appeal² upheld the judgment of the court of first instance. Concerning the exception of the limitation period raised by the buyer, the Court of appeal further noted that, pursuant to article 12(2) of the Limitation Convention, the delivery schedule broken down into weeks, i.e., its fulfilment in instalments, was also not disputed by the buyer.

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¹ The court also found that the CISG was applicable through its article 1(1)(a) since the defendant (buyer) had not disputed the fact that both parties had their places of business in Contracting States (Hungary and Romania).

² Budapest-Capital Regional Court of Appeal, Hungary, 19 February 2015, (2015) case No. Gf.40318/2014/4, published: BHGY (Collection of Court Judgements) of Hungary FIT-GJ-2015-38.

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