



## General Assembly

Distr.: General  
8 June 2004

Original: English

---

**United Nations Commission  
on International Trade Law**

### **UNCITRAL Digest of case law on the United Nations Convention on the International Sale of Goods\***

#### *Article 62*

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

#### **The right to require specific performance**

1. This provision entitles the seller to require the buyer to perform its obligations, a remedy generally recognised in civil law systems, whereas common law systems only allow for specific performance in limited circumstances.<sup>1</sup>
2. This provision is designed to assist sellers who have a particular interest in the performance by the buyer, in particular the obligation to take delivery of the goods. However, illustrations of recourse to this remedy in case law, involving the hypothesis that a buyer refuses to take delivery, are rare<sup>2</sup>. Illustrations of the

---

<sup>1</sup> On this problem, see the compromise established by article 28.

<sup>2</sup> For a general statement, see CLOUT case No. 133 [Oberlandesgericht München, Germany, 8 February 1995] (see full text of the decision).

---

\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

application of article 62 to the payment of the purchase price, on the other hand, are numerous.<sup>3</sup>

### **Limitations of the right to require specific performance**

3. The right to require performance does, however, have two kinds of limitations. One emerges clearly from the wording of the provision: the seller is deprived of this right if it has resorted to a remedy which is inconsistent with the seller insisting upon the specific performance, as in the case where it had declared the contract avoided (article 64) or fixed an additional period of time for performance (article 63). The second limitation is related to the application of article 28. Thus, the competent judge is not bound to order specific performance on behalf of the seller as required under article 62 if the judge would not do so under its domestic law in respect of similar contracts.

---

<sup>3</sup> See Landgericht Mönchengladbach, Germany, 15 July 2003, *Internationales Handelsrecht* 2003, 229; Hof van Beroep Gent, Belgium, 2 December 2002, available on the Internet at <<http://www.law.kuleuven.ac.be/int/tradelaw/WK/2002-12-02.htm>>; Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, Argentina, 21 July 2002, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/020721a1.html>>; Landgericht München, Germany, 27 February 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/654.htm>>; CLOUT case No. 344 [Landgericht Erfurt, Germany, 29 July 1998]; CLOUT case No. 273 [Oberlandesgericht München, Germany, 9 July 1997]; CLOUT case No. 376 [Landgericht Bielefeld, Germany, 2 August 1996]; CLOUT case No. 135 [Oberlandesgericht Frankfurt a.M., Germany, 31 March 1995]; CLOUT case No. 134 [Oberlandesgericht München, Germany, 8 March 1995]; CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993].