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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). The purpose is to facilitate the uniform interpretation of these legal texts by reference to international norms, which are consistent with the international character of the texts, as opposed to strictly domestic legal concepts and tradition. More complete information about the features of the system and 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/clout/showSearchDocument.do>).

Each CLOUT issue includes a table of contents on the first page that lists the full citations to each case contained in this set of abstracts, along with the individual articles of each text which are interpreted or referred to by the court or arbitral tribunal. The Internet address (URL) of the full text of the decisions in their original language is 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 of that website by the United Nations or by UNCITRAL; furthermore, websites change frequently; all Internet addresses contained in this document are functional as of the date of submission of this document). Abstracts on cases interpreting the UNCITRAL Model Arbitration Law 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. Abstracts on cases interpreting the UNCITRAL Model Law on Cross-Border Insolvency also include keyword references. The abstracts are searchable on the database available through the UNCITRAL website by reference to all key identifying features, i.e. country, legislative text, CLOUT case number, CLOUT issue number, decision date or a combination of any of these.

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**Cases relating to the United Nations Convention on Contracts for
the International Sale of Goods (CISG)**

Case 795: CISG 75

Spain: Audiencia Provincial de Murcia (sección 1a)

Reporting Judge: Don Francisco José Carrillo Vinader

13 May 2002

Antecedents: Judgement of the Juzgado Civil de Primera Instancia no. 2 de

Caravaca, 29 January 2002

Published in Spanish: <http://www.uc3m.es/uc3m/dpto/PR/dppr03/cisg/espan51.htm>

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

A Spanish seller claimed breach of contract by the German buyer, which had not collected the merchandise, with the result that the seller had had to sell it at a lower price. The seller had declared the contract avoided and proceeded with a substitute sale. The buyer argued that neither the price nor the time period for the substitute transaction were reasonable. The court hearing the appeal, however, considered that both price and time period must be considered reasonable and in conformity with CISG article 75. With regard to the time period, the court considered this reasonable whether counted from the date of conclusion of the contract or from the date of avoidance. As to the price, the court found that it was not unreasonable; although the product was canned, it also had an expiry date and the action of the buyer leading to a reduction in the useful life of the goods made a reduction of the price by one fifth reasonable.

Case 796: CISG 23, 30, 45, 49 (1)(a), 73 (2), 74, 75, 76, 77, 81 (2), 84 (1)

Spain: Juzgado de Primera Instancia, no. 3 de Badalona

22 May 2006

Published in Spanish: <http://turan.uc3m.es/uc3m/dpto/PR/dppr03/cisg/sespan50.htm>

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The case concerns a contract between a Spanish company (seller/defendant) and a German company (buyer/plaintiff) for the sale of Bermuda shorts intended for Egypt and Iran; the transport was the responsibility of the seller, which had an obligation to deliver the goods to Dubai. The parties had already had commercial relations earlier. The contract stipulated an advance payment, and the German buyer satisfied this requirement. The seller, however, did not deliver the goods and proceeded to avoid the contract arguing that the buyer had breached its obligation to sell the goods in countries of the Middle East, as garments from previous sales contracts had been detected in Japan.

The court found, in the first place, that the contract had been concluded between the parties through the exchange of electronic mails showing the offer and the acceptance of the order (CISG article 23).

Secondly, the court found that the sales contract contained a fundamental condition that the goods should be resold in countries of the Middle East, but that there was no provision giving the buyer an obligation to verify that its customers in the Middle East sold the products only in such countries. There was therefore no

obligation on the part of the buyer to supervise the chain of sales following its own sale to its customer in the Middle East.

As was adequately demonstrated in the proceedings, the buyer performed its obligation to sell the goods to countries in the Middle East. There being no basis for the seller to declare the contract avoided, it was concluded that the seller had breached the sales contract by not delivering the goods stipulated in the contract (CISG article 40), all the more so as the contract was not a distribution contract but a sales contract relating not to delivery of goods by instalments but to a single delivery, even though other contracts existed. Consequently, avoidance of the contract could not be based on an expected future breach of contract by the buyer – something that had not yet occurred. Such avoidance was permitted in the Convention (CISG article 73 (2)) only in cases of delivery of goods by instalments, and not with individual, isolated deliveries as in the present case.

Thirdly, as a result of the foregoing, the court found that the buyer was entitled under CISG article 45 to claim damages in accordance with CISG articles 74 to 77 and to declare the contract avoided under CISG article 49 (1)(a).

With regard to the refunding of the price, the buyer claimed a small part of the price that was not returned by the seller with the argument that this related to the cost generated by the bank transfer. The court found that that amount must also be refunded since the circumstance in question was not demonstrated and, moreover, the restitution of the price referred to the whole quantity paid, as could be deduced from CISG article 81 (2).

The court also awarded the buyer interest on the basis of CISG article 84 (1).

Regarding damages, the court awarded to the buyer, under the heading of consequential damages, the costs of lawyers' fees in relation to extrajudicial claims addressed to the plaintiff outside Spain. Under the heading of loss of earnings, the court ordered the seller to pay the buyer the difference between the price of the sales contract breached and the price that the buyer would have received from its customer.

Case 797: CISG 25

Spain: Tribunal Supremo núm. 731/2006 (Sala de lo Civil, sección 1)

Reporting Judge: Don Juan Antonio Xiol Rios

20 July 2006

Antecedents: Juzgado de Primera Instancia no. 18, Valencia, 2 September 1998

Published in Spanish: <http://www.uc3m.es/uc3m/dpto/PR/dppr03/cisg/espan55.htm>

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

In this case, in a trust contract under which one of the parties remained a hidden partner holding half of the shares of a limited company corresponding to the other party with an obligation to share the resulting profits and losses, the court found that the Vienna Convention, and specifically CISG article 25 concerning fundamental breach of contract, could be interpreted in the light of article 1124 of the Spanish Civil Code. Referring to the explanation given in an earlier decision by the same court [*see* CLOUT case 735], the appellate court also cited in support article 8:103 (c) of the Principles of European Contract Law.

Case 798: CISG 38 (1), 39

Spain: Audiencia Provincial de Girona

Reporting Judge: Don Joaquim Miquel Fernández Font

6 November 2006

Antecedents: Judgement of the Juzgado de Primera Instancia núm. 6 de Girona, 18 May 2006

Published in Spanish: <http://www.uc3m.es/cisg/sespan64.htm> and Aranzadi/Westlaw 2007/182704

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The Italian seller argued that the period of time during which the Spanish buyer could plead unsuitability of the material supplied (quartz) in order to avoid paying the price had elapsed. In this connection, the court of second instance examined CISG articles 38 (1) and 39. Taking into account the fact that the merchandise had been delivered on 29 April 2002 and on 8 July 2003, and considering the documentation provided by the buyer in response to the arguments of the seller, the court found it demonstrated that the dissatisfaction of the buyer with the merchandise had been communicated to the seller before the period of two years provided for in CISG article 39. As additional evidence of the buyer's notification of dissatisfaction with the goods to the seller, in March 2004 the buyer had proposed a negotiated solution to the dispute. This, in the opinion of the court, confirmed the buyer's argument that, in view of its dissatisfaction with the material supplied, it had initiated a series of conversations and negotiations with the seller with a view to resolving the dispute. The foregoing took place before the two-year period had expired.

Case 799: CISG 39

Spain: Audiencia Provincial de Pontevedra (sección 1a)

Reporting Judge: Don Francisco Javier Menéndez Estebanez

8 February 2007

Antecedents: Judgement of the Juzgado de Primera Instancia núm. 1 de Porriño, 7 June 2006

Published in Spanish: <http://www.uc3m.es/cisg/sespan59.htm> and Aranzadi/Westlaw 2007/88277

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The Spanish buyer was sued by the Italian seller for non-payment of the price of the sales contract concluded between them. The buyer claimed that the machine supplied was unusable (machinery damaged and unmaintained). The expert appraisals were carried out two and three years respectively after delivery, when the merchandise was no longer in the hands of the buyer, which had sold it to a third party. The court of second instance found that in such circumstances it was difficult to determine accurately what had been the state of the machinery at the time of conclusion and consummation of the sales contract, while indeed there was evidence to indicate that the machinery had been in good condition at the time of delivery: the buyer had not questioned the satisfactory state of the machinery until a year after delivery and the new buyer had paid the price and not complained about the condition of the machinery.

With regard to the complaint from the Spanish buyer, the court considered that what could be regarded as a reasonable period of time under CISG article 39 (1) had expired, and that the buyer had therefore lost the right to plead a lack of conformity. Regarding the interpretation to be given to the two paragraphs of CISG article 39, the court found that “the logical and consistent interpretation is that the maximum period of two years applies when the reasonable period of time referred to in the first paragraph is not shorter”.

Case 800: CISG 1, 27, 36 (2), 39 (2), 50

Spain: Tribunal Supremo (sección 1a)

Reporting Judge: Don Francisco Marín Castán

16 May 2007

Antecedents: Juzgado de Primera Instancia, no. 2 de Pamplona, 16 March 1999;

judgement of AP Navarra, 27 March 2003

Published in Spanish: <http://www.uc3m.es/cisg/sespan61.htm> and

Aranzadi/Westlaw (RA 2007/4004)

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The Spanish buyer submitted an application for judicial review by the Supreme Court of the judgement of the Navarra Provincial High Court of 27 March 2003, which had already been a decision on appeal. The Supreme Court rejected the application.

In the first place, it was claimed that CISG article 1 had been violated in that the provisions of the Spanish Civil Code and Commercial Code had been applied and not those of the Vienna Convention. The Supreme Court rejected this argument, taking the view that the judgement appealed against used as a legal basis various provisions of the Vienna Convention: CISG articles 50, 31 (c), 30, 53 et seq, 58, 36 (2) and 45 in conjunction with 46 (3). The Supreme Court found that the mention in the judgement of the Provincial High Court, alongside provisions of the Convention, of various provisions of the Commercial Code and the Civil Code “was no more than a reinforcement of its arguments on the basis that domestic law would lead to the same result as international law”.

Secondly, it was argued that CISG articles 36 (2) and 50 had been violated since the judgement appealed against had recognized that 184 apparatuses were defective but had nevertheless rejected its claim based on the five-year guarantee clause, in spite of the provisions of the Convention. The Supreme Court considered, however, that the judgement appealed against had regarded the alleged defects in the apparatuses as unproven in view of the absence of a complaint by the buyer within a reasonable period of time, and on the basis of an assessment of the evidence casting doubt on the reliability of the expert’s opinion.

In the third place, it was argued that there had been a violation of CISG article 27 read in conjunction with article 39 (2) in that the judgement of the Provincial High Court had not taken into account certain documents; the Supreme Court rejected this argument also on the grounds that it constituted an indirect attempt to obtain a re-evaluation of the evidence, something that was not permissible in the case of a judicial review by the Supreme Court.

Case 801: CISG 35

Spain: Audencia Provincial de Barcelona (sección 16)

Reporting Judge: Don Agustín Ferrer Barriandos

3 July 2007

Antecedents: Judgement of the Juzgado de Primera Instancia núm. 2 de Barcelona, 3 July 2007

Published in Spanish: <http://www.uc3m.es/cisg/sespan63.htm> and Aranzadi/Westlaw 2007/285218

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The Spanish buyer had purchased certain parts and machinery items, supplying the plans to the seller so that the latter could determine the technical requirements and the equipment needed for the installation. The conformity of the materials was not in dispute, but rather the technical specifications supplied by the seller. The appellate court considered this service provided to be complimentary to the sales contract and had recourse to the Vienna Convention in recognizing a particular purpose that had been communicated to the seller (CISG article 35). While the court recognized that the Vienna Convention was not directly applicable to the case, which concerned a domestic sales contract, it believed that the principles of the Convention reflected universally recognized principles of justice. Specifically, it referred to the wording of CISG article 35, according to which the seller is not liable if the circumstances show that the buyer did not rely, “or that it was unreasonable for him to rely, on the seller’s skill and judgement”. Applying this provision to the specific case, the court considered that the buyer was imputing to the seller an error that bore no direct relation to what it had requested of the seller. Moreover, as could be deduced from the proceedings, the seller had transmitted the technical specifications to the manufacturer, and it was the manufacturer that had prepared the assembly diagram.

Case 802: CISG 35, 36, 38, 39

Spain: Tribunal Supremo (sección 1a)

Reporting Judge: Don Ignacio Sierra Gil de la Cuesta

17 January 2008

Antecedents: Juzgado de Primera Instancia, no. 1 de Arrecife, 31 May 1999; judgement of AP Las Palmas, 24 October 2000

Published in Spanish: <http://www.uc3m.es/cisg/sespan67.htm> and Aranzadi/Westlaw (RA 2008/38038)

Abstract prepared by María del Pilar Perales Viscasillas, National Correspondent

The German buyer submitted an application for judicial review by the Supreme Court of the judgement of the Provincial High Court. The Supreme Court rejected the application.

The German buyer claimed that CISG articles 35, 36, 38 and 39 had been violated. The Supreme Court reviewed the most important provisions of the Convention to be found in parts I and III thereof, and dwelt especially on article 25, recognizing that that article implied a system of contractual liability based on a criterion of objective imputation, attenuated, however, by exceptions – corresponding to the hypotheses of fortuitous events and force majeure under domestic law – and by a parameter of reasonableness. The Supreme Court then focused on the German party’s arguments

based on a lack of conformity of the vehicles, which exhibited a certain amount of damage in the form of scratches, chafes and the deterioration of various components. The Supreme Court concentrated its analysis on determining the object of the sales contract in the light of its clauses. It was indicated in the contract that the vehicles had previously been hired out, hence the stipulated price, and that the seller undertook to ship the vehicles in good condition taking into account normal use and free of accidents. The Supreme Court, evaluating the evidence considered by the Provincial High Court, agreed with its conclusion that the defects detected in the vehicles resulted from normal wear in view of the use to which they had been put earlier, which had been known to the buyer and had been taken into account by the contracting parties, and that the imperfections of the vehicles resulting from their earlier use had been expected, whereas no signs of accidents had been detected. The Supreme Court therefore concluded that there had been no lack of conformity with the contract provisions or violation of CISG article 35 and no breach of contract by the two Spanish seller companies. In addition, the Supreme Court found that the German buyer had not complained of the defects in time as required by CISG article 39 (1).
