



General Assembly

Distr.: General
12 January 2010

Original: English

United Nations Commission on International Trade Law

CASE LAW ON UNCITRAL TEXTS (CLOUT)

Contents

	Page
I. Cases relating to the CISG	3
Case 912: CISG 1 (1) - Croatia: High Commercial Court Pž-1134/05-3; Jelen d.d. v. Malinplast GmbH (30 October 2007)	3
Case 913: CISG 1; 31 (a) - Croatia: High Commercial Court Pž-6176/04-3; PML s.r.l. v. RKM d.o.o. (27 September 2007)	3
Case 914: CISG 1; 38 (1); 39 (1) - Croatia: High Commercial Court Pž-7365/04-3; Morel Trade v. Kuna Corporation d.o.o. (11 July 2007)	4
Case 915: CISG 1 (1)(a); 30; 53 - Croatia: High Commercial Court 4301/04-3; Rondine S.p.A. v. Larva d.o.o. (20 February 2007)	4
Case 916: CISG 7 (2); 30; 53 - Croatia: High Commercial Court Pž-2047/03-8; Bridgestone/Firestone GmbH v. Weimar d.o.o. (19 December 2006)	5
Case 917: CISG 1; 7 (2) - Croatia: High Commercial Court Pž-7602/03-3; Helios v. Mundus VTS (24 October 2006)	5
Case 918: CISG 1 (1)(a); 7 (2); 30; 78 - Croatia: High Commercial Court, Pž-5580/03-3; Roraco Vertriebsges GmbH v. Hospitalija d.o.o. (26 September 2006)	6
Case 919: CISG 1 (1)(a); 7(2); 23; 24; 53; 78 - Croatia: High Commercial Court Pž-2728/04-3; Industria Conciaria S.p.A. v. Šimecki d.o.o. (26 July 2005)	6
Case 920: CISG 1 (1)(a) - Croatia: Supreme Court, II Rev-61/99-2; F.C.M. v. L. iz S. (12 March 2003)	7



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.

The abstracts are prepared by National Correspondents designated by their Governments, or by individual contributors; exceptionally they might be prepared by the UNCITRAL Secretariat itself. 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 2010
Printed in Austria

All rights reserved. Applications for the right to reproduce this work or parts thereof are welcome 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.

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

Case 912: CISG 1 (1)

High Commercial Court

Pž-1134/05-3

Jelen d.d. v. Malinplast GmbH (30 October 2007)

30 October 2007

Original in Croatian

Published at www.vsrh.hr

Abstract prepared by Davor Babić

A Croatian seller commenced an action against an Austrian buyer for the payment of price. The Commercial Court of Zagreb, as the court of first instance, refused the claim on the grounds that it was time barred. The court invoked the three years limitation period provided for commercial contracts by the Croatian Obligations Act. The High Commercial Court, however, held that the first instance court erred in the application of the substantive law. The contract of sale was governed by the CISG pursuant to article 1 (1) CISG and the UN Limitation Convention. Under the Limitation Convention, the limitation period is four years. Since four years had not elapsed from the date when the plaintiff commenced litigation, the Court held that the claim was not barred by the statute of limitations.

Case 913: CISG: 1; 31 (a)

High Commercial Court

Pž-6176/04-3

PML s.r.l. v. RKM d.o.o.

27 September 2007

Original in Croatian

Published at www.vsrh.hr

Abstract prepared by Davor Babić

The Italian seller commenced an action against the Croatian buyer in the Commercial Court of Zagreb for the payment of price for the goods delivered. The Commercial Court ruled in favour of the buyer. The High Commercial Court affirmed the judgement of the Zagreb court noting that the court should have applied the CISG and not the Croatian Obligations Act, but that the result under the CISG would have been the same. The Court noted that, pursuant to article 31 (a) CISG, the seller had performed its obligation, and it was entitled to receive payment. The court reversed the decision of the court of first instance with regard to the applicable interest rate holding that the interest rate was to be based on Italian liras for the part of the contractual relationship performed before the introduction of the Euro. The court implicitly held that the interest rate should be determined by Croatian law, but did not substantiate that part of the decision.

Case 914: CISG 1; 38 (1); 39 (1)

High Commercial Court

PŽ-7365/04-3

Morel Trade v. Kuna Corporation d.o.o.

11 July 2007

Original in Croatian

Published at www.vsrh.hr

Abstract prepared by Davor Babić

An Italian seller commenced an action in the Commercial Court of Zagreb against a Croatian buyer for the payment of price for the goods delivered. The Zagreb court ruled in favour of the seller. The High Commercial Court affirmed the decision of the Zagreb court although it noted that the court should have applied the CISG and not the Croatian Obligations Act. The court cited article 38 (1) CISG which provides for the duty of the buyer to examine the goods as soon as practicable and article 39 (1) CISG which provides that the buyer loses the right to rely on a lack of conformity if he does not notify it to the seller within a reasonable time. The court found that, even if the goods were not conforming to the contract as the buyer claimed during the proceedings, the buyer failed to timely notify the seller of the lack of conformity in accordance with the those provisions of the CISG and therefore the buyer was liable for the payment of price.

Case 915: CISG 1 (1)(a); [7 (2)]; 30; 53

High Commercial Court

PŽ-4301/04-3

Rondine S.p.A. v. Larva d.o.o.

20 February 2007

Original in Croatian

Published at www.vsrh.hr

Abstract prepared by Davor Babić

An Italian seller commenced an action against a Croatian buyer in the Commercial Court of Rijeka seeking payment of the price for goods which were delivered without objections. The court ruled in the seller's favour. Deciding on appeal, the High Commercial Court affirmed the lower instance decision. The Court held that the first instance court erred in the application of substantive law because it had applied the Croatian Obligations Act instead of the CISG. The court found the CISG was applicable under article 1 (1)(a) CISG because the parties had their places of business in different Contracting States. Because there was no express or implied exclusion of the CISG, the court held that the convention governed the contract. The court applied article 53 CISG which defines the obligation of the buyer to pay the price. Even though the Rijeka court applied the Croatian municipal law, the Court affirmed the first instance decision because the outcome under the CISG would have been the same as in the first instance. The Court reasoned that the claimant had proved that it had performed its obligation to deliver the goods according to article 30 CISG and that on the other hand, the respondent had not performed its obligation to pay the price under article 53 CISG.

Case 916: CISG 7 (2); 30; 53

High Commercial Court

Pž-2047/03-8

Bridgestone/Firestone GmbH v. Weimar d.o.o.

19 December 2006

Original in Croatian

Published at www.vsrh.hr

Abstract prepared by Davor Babić

Over the period of several years, an Austrian company sold automobile tyres to a Croatian company. The Croatian company had instructed the seller to invoice an offshore company organized under the laws of Delaware and owned by a manager of the Croatian company. When the Croatian company refused to pay for the last delivery, the seller filed a suit for the payment of price in the Commercial Court of Zagreb. The Croatian company claimed that the seller had never entered into a contractual relationship with the Croatian company, but with the offshore company to which invoices were issued. The first instance court found that there was indeed a contract of sale under the CISG with the Croatian company and that the company was liable for the payment of price. The High Commercial Court referring to article 7 (2) CISG in the context of defining a contract of sale, held that although the CISG does not provide a definition of the contract of sale, this can be inferred in articles 30 and 53 CISG. Under article 30 CISG, the seller has an obligation to deliver the goods: in this particular case, the Austrian company had performed its obligation. However, the Croatian company had not performed its obligation ex article 53 CISG to pay for the delivery of the goods. Therefore, the Croatian company was liable for the payment of the price.

Case 917: CISG 1; 7 (2)

High Commercial Court

Pž-7602/03-3

Helios v. Mundus VTS

24 October 2006

Original in Croatian

Published at www.vsrh.hr

Abstract prepared by Davor Babić

A Slovenian seller and a Croatian buyer made a contract for the sale of dye. After the buyer failed to pay the price for the delivered goods, the seller commenced litigation before the Commercial Court of Varaždin. On appeal, the High Commercial Court held that the court in Varaždin erred in the application of substantive law, because it applied the Croatian municipal law. The court should have applied the CISG because the parties had their places of business in different CISG contracting states. The court rejected the decision and directed the first instance court to apply the CISG. As for the determination of the interest rate the court ruled that on the basis of article 7 (2) CISG Slovenian law, as the law of the seller, was applicable.

Case 918: CISG 1 (1)(a); 7 (2); 30; 78

High Commercial Court

Pž-5580/03-3

Roraco Vertriebsges GmbH v. Hospitalija d.o.o.

26 September 2006

Published at www.vsrh.hr

Abstract prepared by Davor Babić

The Austrian seller commenced an action in the Commercial Court of Zagreb against the Croatian buyer for the payment of price. The court ruled in favour of the seller and ordered the buyer to pay the price with interest accrued under the Croatian law. The High Commercial Court reversed the decision. It first noted that the commercial court should have applied the CISG pursuant to article 1 (1)(a) CISG and not the Croatian municipal law. Furthermore it noted that under article 30 CISG, the seller has the duty to deliver the goods to the buyer. The court found that it was not proved in the first instance that the seller had performed its obligation to deliver the goods in accordance with this provision. The court also held that on the basis of article 78 and 7 (2) CISG, as well as article 20 Croatian Private International Law Act, the applicable interest rate was that provided by Austrian law, as the law of the seller, and not Croatian law.

Case 919: CISG 1 (1)(a); 7 (2); 23; 24; 53; 78

High Commercial Court

Pž-2728/04-3

Industria Conciaria S.p.A. v. Šimecki d.o.o.

26 July 2005

Published at www.vsrh.hr

Abstract prepared by Davor Babić

The Italian seller delivered goods to the Croatian buyer as part of an ongoing business relationship. The buyer failed to pay the price for the last delivery claiming that it had never entered into a contractual relationship with the seller but with another Croatian company which acted as an intermediary. The seller sued the buyer in the Commercial Court of Zagreb for the payment of the price. The court found for the seller and ordered the buyer to pay the price plus interest accrued under Croatian law.

On appeal, the High Commercial Court affirmed in part and rejected in part the decision. The Court noted that the first instance court should have applied the CISG and not the Croatian Obligations Act. The CISG was applicable pursuant to article 1 (1)(a) CISG because the parties' places of business were in different contracting states. The Court held that, because there was an ongoing business relationship between the seller and the buyer, the contract of sale was formed under articles 23 and 24 CISG when the buyer's order reached the seller. The court affirmed the lower court's decision that the buyer must pay the price, even though the proper legal basis for such ruling was article 53 CISG and not the corresponding provision of the Croatian Obligations Act.

The High Commercial Court also upheld the commercial court's decision that the seller's claim was not barred by the statute of limitation. The Court noted however that the commercial court should have applied the four year limitation period

provided by the UN Convention on the Limitation Period in the International Sale of Goods of 1974 and not the five year period provided by the Italian Civil Code.

The Court rejected the lower court's decision on interest because this latter should have applied the interest rates defined by the Italian not the Croatian law. The Court noted that article 78 CISG regulates the payment of interest, but provides no criteria for determining the interest rate. Relying on article 7 (2) CISG, the High Commercial Court applied Croatian private international law (Article 20 (1) Croatian Private International Law Act) and found that the interest rate was governed by the Italian law as the law of the seller.

Case 920: CISG 1 (1)(a)

Supreme Court, II Rev-61/99-2

F.C.M. v. L. iz S.

12 March 2003

Published at www.vtsrh.hr/

Abstract prepared by Davor Babić

A Croatian buyer took a delivery of shoes from an Italian seller and failed to pay the price. The seller commenced litigation before the Croatian courts seeking the payment of price. The first and second instance courts ignored the international element and decided the matter under the Croatian municipal law of contract. The Supreme Court ruled that by failing to apply the relevant rules of conflict, the courts erred in the application of substantive law. The Court held that, unless it can be proved that the parties have chosen another law, the contract was governed by the CISG because the parties had their places of business in different Contracting States within the meaning of article 1 (1)(a) CISG.
