

Case 48: CISG 1(1)(b); 5(1) and (2); 38(1); 39; 45; 50; 51

Germany: Oberlandesgericht Düsseldorf; 17 U 82/93

8 January 1993

Excerpts published in German: Praxis des Internationalen Privat- und Verfahrensrechts(IPRax) 1993, 412

Summary published in Italian: Diritto del commercio internazionale July-September 1993,651

Commented on by Magnus in Praxis des Internationalen Privat- und Verfahrensrechts(IPRax) 1993, 390 and in Zeitschrift für Europäisches Privatrecht(ZEuP) 1993, 79

The German buyer of fresh cucumbers appealed against the decision of the court of first instance, which ordered the German buyer to pay to the Turkish seller the balance of the price due under the contract. The court of first instance had dismissed the application of the buyer for a reduction of the price of the goods for non-conformity with contract specifications on the ground that the buyer had inspected the goods at the place of delivery in Turkey and had found them to be in good order.

生鮮キュウリを購入したドイツの買主は、契約によって支払わなければならない代金の残額をトルコの売主に支払うよう命じた第一審裁判所の判決を不服として控訴した。第一審裁判所は、買主がトルコの引渡場所において物品の検査を行い、契約どおりであると確認したことをもって、契約仕様との不適合があることを理由とした買主による物品の代金減額の申立てを棄却した。

The appellate court found that the parties, during the oral hearings before the court of first instance, had agreed to submit their dispute to German law and held that CISG was applicable as part of German law. The judgement of the court of first instance was upheld on the ground that the buyer lost the right to rely on non-conformity of goods and to reduce the price proportionally, since it gave notice of the non-conformity only when the goods arrived in Germany, i.e. seven days after the buyer had the opportunity to examine them at the place of delivery in Turkey (art. 38, 39(1) and 50 CISG).

控訴審は、第一審での口頭弁論手続き中、当事者が紛争をドイツ法に従って解決することを合意したと認定し、CISGがドイツ法の一部として適用されると判示した。物品がドイツに到着した後、すなわち買主にトルコの引渡場所での検査の機会があったときから7日後にようやく、不適合の通知をしたため、買主は物品の不適合に基づく権利およびそれに応じて代金を減額する権利を失ったということを理由に（CISG第38条、第39条1項および第50条）、控訴審判決は第一審判決を維持した。