

Case 52: CISG 9(1): 53

Hungary: Municipal Court Budapest AZ 12.G.41.471/1991/21 24

March 1992

Adamfi Video Production GmbH v. Alkot6k Studi6sa Kisz6vetkezet

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Commented on by Vida in Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1993 ,263

The plaintiff, a German company, demanded payment of the price and interest for goods sold and delivered to the defendant, a Hungarian company. At first, the defendant disputed the existence of a contract and the delivery of goods. However, the court found that delivery had taken place on the basis of documents obtained from the Hungarian Customs Authority and the forwarding agent had delivered the goods upon receipt signed by an employee of the defendant.

The court relied upon a sales contract that had previously been concluded between the parties, in order to determine the price of the goods and the other elements of the contract and ordered the defendant to pay (art. 9(1) and 53 CISG).

As to the obligation for payment of interest, which is not regulated by CISG, the court, on the basis of the Hungarian Act on Private International Law (paragraph 25 of Legal Decree No. 13 of 1973), applied German law as the law of the seat of the seller. In this context, on the basis of article 352 paragraph (1) of the German Code of Commerce (HGB), the Court awarded to the plaintiff interest at the rate of 5% on the amount due as of the day the obligation to pay the purchase price (determined in German currency) became due.

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裁判所は、物品の代金およびその他の契約上の重要事項を決定するために、以前に当事者間で締結された売買契約に依拠して、被告に支払いを命じた(CISG9条1項、53条)。

利息の支払義務に関して、CISGでは規制されていないので、裁判所は、ハンガリーの国際私法典(1973年法令13号25項)に基づいて、売主の所在地法(従属法)であるドイツ法を適用した。これに関連して、裁判所は、ドイツ商法典(HGB)352条1項に基づき、購入代金(ドイツ通貨建て)の支払義務が生じた日から、支払額に対する5%の利息を、原告に認容した。