

CISG-online 4113	
Jurisdiction	China
Tribunal	Higher People's Court Henan Province
Date of the decision	15 October 2018
Case no./docket no.	(2017) Yu Min Zhong No. 1119
Case name	<i>Xinyang Hengda Pork Processing Co., Ltd. v. Ideal Rulo ve Firça Sanayi A.S.</i>

Abstract

by Shu Zhang & Peng Guo***

The court in this case dealt with the appeal raised by the seller against the decision of the Intermediate People's Court Luohe, Henan Province, 26 September 2016, CISG-online 4199. While dealing with the claim and the time limit issue, the Higher People's Court Henan considered the applicability of CISG under its Arts. 1 and 6.

The dispute arose from a sale of goods contract between a Turkish company (buyer, plaintiff in the case of first instance and respondent in this proceeding) and a Chinese company (seller, defendant in the case of first instance and appellant in this proceeding). The buyer brought the claim of restitution against the seller on the basis of duplicated payments for the same amount under the sales contract, which was upheld Intermediate People's Court Luohe in the case of first instance (Intermediate People's Court Luohe, 26 September 2016, CISG-online 4199). Regarding the applicable law, the Intermediate People's Court Luohe held that the applicable law to this case should be decided in accordance with the Law of the People's Republic of China on the Choice of Law for Foreign-related Civil Relationships. The court eventually decided to apply the (non-harmonised) Chinese law by applying the closest connection test in absence of the choice of law by the parties, based on the facts that one of the parties was Chinese, and its residence and the place of its performance of the contractual obligations were both within the territory of China.

The applicable law was not challenged by the appeal. The Higher People's Court Henan, however, in the appeal, commented on the applicability of CISG. The court held that, although both China and Turkey were Contracting States of CISG, which satisfied Art. 1(1)(a) of the CISG, the parties could choose to exclude the application of CISG under Art. 6. Although the application of the 'closest connection test' by the Intermediate People's Court Luohe was

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incorrect, the application of the Chinese Law on the merit of this case was correct because both parties had expressly chosen Chinese Law in arguing their cases, which gave rise to the exclusion of the application of CISG under Art. 6. The court eventually maintained the ruling of the Intermediate People's Court Luohe. The court did not comment on the appellant's argument that the restitution claim was not within the contractual relationship.