

Case 1594: Limitation Convention (1980, amended text) 3(2); 8

Poland: Supreme Court

IV CSK 611/13

B. a.s. (Slovakian seller) v. "S.- I." sp. z o.o (Polish buyer)

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Original in Polish

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Abstract prepared by Michal Habas.

The seller, a Slovakian corporation, agreed to sell 29,000 turkey poult (young turkeys being raised for food) to the buyer, a Polish company. The parties agreed that the contract would be governed by Polish law. The seller sued to recover the purchase price as the buyer failed to pay the balance due after receiving the goods. The buyer alleged that the claim was time-barred.

In the first instance, the district court established that by choosing Polish law the parties had excluded the application of the Limitation Convention. It decided that pursuant to Article 554 of the Polish Civil Code the period of limitation for the sale

of goods within the scope of operations of the seller's enterprise is 2 years and therefore the seller's claim was time-barred. The seller appealed.

The appellate court stated that pursuant to Article 3(2) Limitation Convention, the Convention shall not apply only when the parties have expressly excluded its application. The Court found that in the contract at hand the parties had not done so.

The Appellate Court referred to Article 91(1) of the Polish Constitution which states that a ratified international agreement constitutes part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. It concluded that the international agreements entered into by Poland are part of the Polish legal system, and therefore the choice of Polish law entails the application of these agreements. Ruling that the limitation period in the contract was governed by the Limitation Convention, the Appellate Court established that the period had started to run on 1 April 2009. It concluded therefore that the claim was not time-barred as Article 8 Limitation Convention sets out a 4 year limitation period, which had not passed by the time the suit was filed. Thus, the Appellate Court found for the seller.

The buyer lodged an appeal with the Supreme Court. The Supreme Court upheld the reasoning of the Appellate Court. It elaborated by adding that the Limitation Convention had been effective *proprio vigore* from the day it had been promulgated as its application was not contingent upon the enactment of a statute.