

Case 83: CISG 35; 45(1)(c); 49(2); 50; 78
Germany: Oberlandesgericht München; 7 U 4419/93
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The plaintiff, a Swedish seller of coke which was delivered to a company in the former Yugoslavia under instructions of the defendant, a German buyer, sued demanding payment of the purchase price. The defendant objected mainly relying on a complaint made by the Yugoslav company that the coke was of inferior quality.

The court held that the supply of goods of inferior quality did not constitute a fundamental breach of contract that could justify the avoidance of the contract and the refusal to pay. It was found that, in any event, the defendant would have lost the right to declare the contract avoided since the defendant claimed avoidance of the contract four months after delivery, which could not be considered as a reasonable time under article 49(2) CISG.

In addition, it was held that the defendant should have expressed its intention to reduce the price in order to be entitled to a reduction of the purchase price for lack of conformity of the goods (articles 35 and 50 CISG). Moreover, it was held that the defendant was not entitled to damages under article 45(1)(c), since it failed to establish that it suffered any damages and to offset those damages against the purchase price.

The court ordered the defendant to pay the purchase price plus interest (CISG 78). As the CISG does not set an interest rate, the court applied the statutory interest rate of 8% according to the applicable Swedish law.