

Case 240: CISG 1(1)(a); 9(2)

Austria: Supreme Court; 2 Ob 191/98x

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The plaintiff was involved in the wood trade and had his place of business in Austria. The Austrian defendant had his place of business in Italy and was also involved in the wood trade.

The plaintiff's son signed a contract with the defendant for the purpose of taking part in the defendant's enterprise. The plaintiff delivered wood for several years to the defendant. The defendant paid the plaintiff a certain amount for the wood delivered, albeit without referring to a specific delivery or invoice. The plaintiff claimed payment of the outstanding invoices as well as interest.

The Supreme Court remanded the case to the court of first instance, holding that the place of business of the parties in different Contracting States and not the citizenship of the parties was relevant for a determination as to whether the CISG applied to the case. Accordingly, the Supreme Court decided that the CISG was applicable to the case under its article 1(1)(a). Moreover, owing to differences in the time limits for notice of lack of conformity between Austrian usages in the trade in wood and the CISG, the Supreme Court held that the court of first instance should examine whether the conditions set forth in article 9(2) CISG as regards usages had been met, in particular whether they were widely known and regularly observed in the trade.

*Addenda/Corrigendum*

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(Arabic, Chinese, English, French, Russian, Spanish)

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