

Case 246: CISG 33; 47; 49; 73

Spain: Audiencia Provincial de Barcelona, Division 16

3 November 1997

T, SA v. E

Original in Spanish

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Española: <http://www.uc3m.es/cisg/espan3.htm>

A Spanish buyer ordered from a German seller a set of parts for use in the buyer's production process, it being agreed that the goods would be delivered by instalments. The seller consistently failed to meet the delivery deadlines so that three of the instalments were delivered after the agreed dates, with delays of between four and eight weeks and inevitable disruption of the buyer's production process. In view of the situation, the buyer declared the contract avoided in respect of the outstanding future instalments within a period of 48 hours after delivery of the third overdue instalment.

The Court held that the buyer's tolerance of the late delivery of the three initial instalments was equivalent to the granting of an "additional period of time" to the seller, in accordance with article 47 CISG. However, the delay incurred and its effects on the buyer's production process were deemed by the Court to amount to a "fundamental breach", in conformity with articles 33 and 49. The Court ruled that, in accordance with articles 49(2) and 73, such fundamental breach entitled the buyer to avoid the contract and prevent the handing over of future outstanding instalments. The 48-hour period within which the buyer cancelled following delivery of the last late instalment received was deemed to be a "reasonable time" within which to declare the contract avoided.

*Addendum*

Document A/CN.9/SER.C/ABSTRACTS/24 (Arabic, Chinese, English, French, Russian, Spanish)

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Commented on in French: Rosch, [1999] Recueil Dalloz, No. 41, 363