

Case 380: CISG 7, 78, 79

Italy: Tribunale di Pavia (Judge Frangipani)

Date: 29-12-1999

Parties: Unknown

Published in Italian: Corriere Giuridico, 2000, 932-933.

Commented on by Ferrari, Corriere Giuridico 2000, 933-939; Ferrari, Revue de droit des affaires internationales 2001, 224-230; Graffi, European Legal Forum 2001, 240-244.

An agreement for supply of fashion fabric was entered into between a company having its place of business in Italy and a company having its place of business in Greece, prior to ratification of the CISG by Greece. The Italian supplier sued the Greek company for the payment of the price, as well as of interests and damages.

In awarding payment to the plaintiff, the Court retained the applicability of the CISG pursuant to article 1(1)(b), since the Italian rules of conflict of laws led to the application of Italian law and Italy was a Contracting State at the time when the agreement was entered into. It also held that uniform substantive law prevails over the conflict of laws rules due to its speciality.

The Court held that the rate of interest is not settled by the Convention itself, since article 78 merely states that failure to pay the price or any other sum due entitles the other party "to interest on it". Therefore, the issue has to be settled in conformity with the national law applicable by virtue of the rules of private international law.

The Court also highlighted that, under article 78, title to interests does not prejudice the right to claim damages and that it is the party claiming damages who has to prove them, according to the principle underlying article 79.

Finally, the Court recognized that foreign decisions, though not binding, should be taken into account by the judge in construing and applying the Convention; this according to article 7 (1), which expressly provides that "regard has to be taken" to the international character of the convention and the need to promote uniformity in its application.