

**Case 774: CISG 7 (1), 35 (2)(a), 36 (1), 50, 67 (1)**

Germany: Bundesgerichtshof

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<http://www.cisg-online.ch/cisg/urteile/999.htm> (original);

<http://cisgw3.law.pace.edu/cases/050302g1.html> (English translation);

[www.unilex.info](http://www.unilex.info)

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The case deals with the conformity of goods and the reduction of price.

A German buyer entered into contract with a Belgian seller for the purchase of pork. It was agreed that the meat should be delivered directly to the buyer's customer, who would forward the goods to the ultimate buyer in Bosnia-Herzegovina. The goods were delivered in three instalments, for which of them the seller drew up invoices payable on 25 June 1999 at the latest. The last instalment arrived in Bosnia Herzegovina on 4 June 1999.

The suspicion of Belgian pork being contaminated with dioxin started to arise in Belgium and Germany as of June 1999. On 11 June an ordinance was enacted in Germany which declared Belgian pork as not marketable unless a health clearance certificate proving the meat to be free of dioxin was presented. On 28 July 1999 a similar ordinance was enacted in Belgium including provisions regarding meat that had already been exported abroad. The defendant rendered only a partial payment towards the total amount. The remaining purchase price was assigned to the plaintiff [i.e. the seller's assignee] by the Belgian meat wholesaler.

The plaintiff filed an action demanding payment of the remaining purchase price. The buyer stated that the delivered pork had been withheld and finally disposed of by customs after Bosnia-Herzegovina had prohibited the resale and the buyer had not been able to present a health clearance certificate, which it had repeatedly requested from the Belgian meat wholesaler.

After the Regional Court had dismissed the plaintiff's claim for payment of the remaining purchase price, the Higher Regional Court rejected the plaintiff's appeal as well. Eventually, the plaintiff appealed to the Federal Court of Justice.

The Federal Court of Justice reversed the judgment of the Higher Regional Court and amended the Regional Court's verdict. It held that the Higher Regional Court had reached its decision incorrectly by referring to precedents of the national jurisdiction only. The Federal Court expressed that, under article 7 (1), it is necessary to interpret the provisions of the CISG autonomously i.e. with reference to its international character and without recourse to principles developed for national laws.

As to the substance, the Federal Court held that the defendant was entitled to reduce the price because of non-conformity of the delivered goods pursuant to articles 35, 36, 50 CISG as far as the delivered pork had been affected by the precautionary measures of the ordinance enacted in Belgium. In the Federal Court's opinion this applied to the two initial deliveries, whereas the last delivery did not originate from animals slaughtered within the time period the Belgium ordinance referred to.

The Federal Court stated that in international wholesale and intermediate trade the resaleability (tradability) of the goods is one aspect of being fit for the purpose of ordinary use in terms of article 35 (2)(a) CISG and that in the case of foodstuff intended for human consumption, the resaleability includes that the goods are at least not harmful to health. Insofar as this is governed by provisions of public law, the law of the seller's state is applicable on principle.

Furthermore, the Federal Court held that in the sector of international wholesale and intermediate trade, the mere suspicion that the goods may be harmful to health represents a lack of conformity of the goods and therefore a breach of contract at any rate, if the suspicion has resulted in measures of public-law precluding the tradability of the goods.

Pursuant to article 36 (1) CISG, the Federal Court stated that the lack of conformity is already given at the time when the risk passes to the buyer, even if the non-conformity became apparent only after the risk has passed, i.e. in cases of hidden defects. The characteristics of the goods causing the loss of resaleability were inherent to the pork when the risk passed, as it was certain beyond doubt at that time that the pork originated from animals suspected to be contaminated with dioxin.

Arguing that there had not been any other way of utilizing the meat, the Federal Court granted the defendant the right to reduce the purchase price to zero for the first two deliveries.