

Case 1307: CISG 1(1)(a); 6; 7(2); 50; 78; Limitation Convention (amended text) 3(1)(a); 3(1)(b)
Poland: Supreme Court
I CSK 105/08
L.M. v. Grażyna S.
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The Italian seller, the applicant, delivered fabric to be used in the production of clothing to the Polish buyer. The buyer, alleging that the goods were not of the quality required by the contract paid only one fourth of the price. The seller sued in Poland for the remaining part. Both the District Court at first instance and the Court of Appeals found that the allegations of the lack of conformity were not proved and thus entered in a judgment for the plaintiff.

The Polish buyer brought an appeal to the Supreme Court asserting numerous breaches of the substantive and procedural law. All but one were rejected by the Supreme Court, which extensively discussed the legal issues arising in the case at hand.

At the outset, the court explained that since both parties had their place of business in CISG Contracting States (Italy and Poland), the Convention applies by virtue of Article 1(1)(a). The judges acknowledged the possibility of excluding the application of CISG, pursuant to Article 6. Such exclusion can be express or tacit, and may also occur after the conclusion of the contract. Since both parties were — at certain stages of the proceedings — putting forward arguments under Polish law, a question arose whether such concerted behaviour should be treated as a choice of Polish domestic law and an exclusion of the CISG. The court first underlined that circumstances such as: filing a suit before a Polish court, invoking Polish law in the pleadings, and not contesting the other party's reliance on a given law, are not a sufficient proof of a tacit choice of Polish law. Circumstances of such kind do not indicate an intention to submit the contract to a particular governing law. They rather constitute an expression of the parties' legal representatives, who, however, had no authority to choose the applicable law on behalf of the parties. The court then argued that even if one assumed the choice of Polish law, this would not automatically result in an exclusion of the CISG under Article 6. Referring to case law from other countries, the Supreme Court further explained that unlike the choice of law of a non-contracting state which could indicate an intention to exclude the CISG, the choice of the law of a contracting state cannot amount to such an exclusion. Consequently, the Court found that the dispute was governed by the CISG and as to the matters not regulated therein — by the Italian law, being the law of the seller. The latter conclusion was drawn from article 27§ 1 point 1 of the old Polish Private International Law Act of 1965 (then still in force),¹ which with respect to contracts of sale called for application of the law of the seller's place of business.

The Court also discussed the issue of the law applicable to interest. It observed that although an obligation to pay interest on the payment in arrears results from Article 78 CISG, the Convention does not set the rate of interest. It follows from Article 7(2) CISG that the rate of interest, being an "internal gap" should be established in conformity with the law applicable by virtue of the rules of private international law of the forum, since there are no general principles in that regard. In the case at hand this meant that the rate of interest is to be determined under Italian law.

Another contentious issue was the length of the limitation period. The Court first clarified that the UN Convention on the Limitation Period in the International Sale of Goods of 1974 cannot apply, neither under Article 3(1)(a), nor under Article 3(1)(b), since Italy is not a party to it (although Poland is). Applying Polish conflict-of-law rules (and in particular article 13 of the old 1965 Act), the Supreme Court found that the limitation period of the claims sought in the dispute is governed by Italian law. The Court held that under article 2946 of the Italian civil code, the limitation period applicable to claims for the price under contract of sale is 10 years.

The defendant eventually prevailed for procedural reasons. When the Polish buyer raised the defence of the low quality of the fabric before the lower courts and requested that the price is decreased under Article 50 CISG, the court appointed an independent expert to assess the quality of the goods. The expert, however, failed to provide any meaningful opinion. Still the lower courts felt satisfied. The Supreme Court believed that in such a case, the courts should have called ex officio for a second expert to give an additional opinion. Consequently, the court remanded the case to the lower courts so that they could correct that error.

¹ The Act has been replaced by the new Act of 2011.