

**Case 470: CISG 26; 49; 78**

Russian Federation: Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry

Arbitral award in case No. 196/1997

22 October 1998

Original in Russian

Published in Russian: *Arbitrazhnaya praktika za 1998 god*, ed. M. G. Rozenberg (Moscow, Statut), 1999, p. 193

<http://cisgw3.law.pace.edu/cases/981022r1.html> (English translation)

Abstract prepared by Alexander Komarov, National Correspondent

A Cypriot firm, the seller, sued a Russian company, the buyer, for the outstanding balance due on goods delivered under a contract concluded in April 1996. The contract provided for delivery by instalments in May-June 1996. The buyer did not pay for the goods, which were delivered in July. The buyer stated that it was justified in declaring the contract avoided at the end of the agreed period, having offered to pay the seller for the goods at current prices. The buyer considered the delivery of the goods in July 1996 to fall outside the scope of the contract. The seller claimed payment for the goods delivered in July 1996 at the contract price plus interest.

The seller and the buyer agreed on the application of the law of the Russian Federation, which is a party to the CISG. Article 6 CISG allows the parties to a contract of sale to exclude the application of the Convention, but such agreement between the parties must be expressed clearly and specifically. In the present case, in the tribunal's view, the parties, in agreeing to be bound by Russian law and thus submitting themselves exclusively to the operations of a national legislation, did not intend to exclude the application of the CISG. On the contrary, in making their cases to the tribunal, both parties cited the provisions of the CISG. Consequently, the tribunal concluded that article 1(b) CISG was applicable inasmuch as, in accordance with private international law, (which allows the parties to an agreement to choose the applicable law, in the present case the law of the Russian Federation, as a Contracting State), it was applicable on the strength of the corresponding agreement between the parties.

As for national civil law, and particularly the Russian Federation Civil Code, it was applicable only to the extent to which the case currently before the tribunal was not regulated under the CISG (see art. 7(2)).

The tribunal determined that the buyer's communication addressed to the seller on 1 July 1996 could not be characterized as declaring the agreement avoided, since it did not contain a direct and unambiguous expression of the buyer's will. It was clear from the parties' business correspondence that the buyer considered shipments made after the expiry of the agreed time limit to be deliveries under the contract. The buyer's contention that the price of the goods delivered by the plaintiff should be reviewed was not accepted. Since the buyer did not declare the agreement avoided within a reasonable time after the delivery had been made, as provided for under article 49 CISG, the tribunal found that the goods delivered in July 1996 should be paid for in full at the price stipulated by the contract. Furthermore, the tribunal awarded interest on the damages to be paid by the buyer pursuant to article 78 CISG, the amount of such interest to be determined in accordance with Russian law. On the basis of the above, the tribunal ruled in favour of the seller.