

**Case 1765: CISG 1(1)(a); 38(1); 39; 40; 50; 74**

Finland: Turun hovioikeus (Turku Court of Appeal)

S 13/1060

*Oy Pokostore Systems Ltd. v. TP-Konepajat Polska Sp.z o.o*

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The seller of steel girders was a Polish company, which had its place of business in Poland. The buyer was a Finnish building company with its place of business in Finland. As both Finland and Poland are contracting states to the United Nations Convention on Contracts for the International Sale of Goods, the convention was applicable to the contract according to Article 1(1) (a) CISG.

The Turku Court of Appeal stressed that the Convention was to be applied regardless of the outcome of the rules on the choice of law of private international law. The lower court had found based on the private international law rules that the Finnish Sales of Goods Act was applicable. The Turku Court of Appeal decided the case applying the rules of CISG.

The Turku Court of Appeal found, according to the contract between the parties, that all the steel girders were to be delivered painted. The seller delivered a considerable part of the girders unpainted. The Court established that the buyer, according to Article 38(1) CISG had a duty to examine the girders within as short a period as is practicable in the circumstances, as well as according to Article 39 CISG a duty to give notice in connection with a lack of conformity of the goods. These duties, however, are leveraged according to Article 40 CISG if the lack of conformity relates to facts of which the seller knew or could not have been unaware and which he did not disclose to the buyer. The Court found that the fact that the seller delivered unpainted girders was a circumstance that it could not have been unaware of. Therefore, the buyer had a right to remedies.

According to the court, the buyer is thus entitled to price reduction based on Article 50 CISG and damages based on Article 74. Since the buyer in the case had not submitted any evidence of the actual loss, the claim for compensation had to be rejected.