

*Article 26***[Judgement for specific performance]**

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court could do so under its own law in respect of similar contracts of sale not governed by this Convention.

PRIOR UNIFORM LAW

Convention relating to a Uniform Law on the International Sale of Goods, The Hague, 1 July 1964, article VII.

ULIS, article 16.

Commentary

1. This article considers the extent to which a national court is required to enter a judgement for specific performance of an obligation arising under this Convention.

2. If the seller does not perform one of his obligations under the contract of sale or this Convention, article 42 provides that "the buyer may require performance by the seller". Similarly, article 58 authorizes the seller to "require the buyer to pay the price, take delivery or perform his other obligations".

3. The question arises whether the injured party can obtain the aid of a court to enforce the obligation of the party in default to perform the contract. In some legal systems the courts are authorized to order specific performance of an obligation. In other legal systems courts are not authorized to order certain forms of specific performance and those States could not be expected to alter fundamental principles of their judicial procedure in order to bring this Convention into force. Therefore, article 26 provides that a court is not bound to enter a judgement providing for specific performance unless the court could do so under its own law in respect of similar contracts of sale not governed by this Convention, e.g., domestic contracts of sale. Therefore, if a court has the authority under any circumstances to order a particular form of specific performance, e.g. to deliver the goods or to pay the price, article 26 does not limit the application of articles 42 or 58. Article 26 limits their application only if a court could not under any circumstances order such a form of specific performance.¹

4. It should be noted that articles 42 and 58, where not limited by this article, have the effect of changing the remedy of obtaining an order by a court that a party perform the contract from a limited remedy, which in many circumstances is available only at the discretion of the court, to a remedy available at the discretion of the other party.

¹ See also paragraph 9 of the commentary to article 42.