

SECTION III. REMEDIES FOR BREACH OF CONTRACT  
BY THE BUYER

*Article 57*

[Seller's remedies in general; claim for damages;  
no period of grace]

- (1) If the buyer fails to perform any of his obligations under the contract and this Convention, the seller may:
- (a) exercise the rights provided in articles 58 to 61;
  - (b) claim damages as provided in articles 70 to 73;
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(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

PRIOR UNIFORM LAW

ULIS, articles 61 to 64, 66 to 68 and 70.

Commentary

1. Article 57 serves both as an index to the remedies available to the seller if the buyer fails to perform any of his obligations under the contract and this Convention and as the source for the seller's right to claim damages. Article 57 is comparable to article 41 on the remedies available to the buyer.

2. Article 57 (1) (a) provides that in case of the buyer's breach, the seller may "exercise the rights provided in articles 58 to 61." Although the provisions on the remedies available to the seller in articles 58 to 61 are drafted in terms comparable to those available to the buyer in articles 42 to 48, they are less complicated. This is so because the buyer has only two principal obligations, to pay the price and to take delivery of the goods, whereas the seller's obligations are more complex. Therefore, the seller has no remedies comparable to the following which are available to the buyer: reduction of the price because of non-conformity of the goods (article 46), right to partially exercise his remedies in the case of partial delivery of the goods (article 47),<sup>1</sup> right to refuse to take delivery in case of delivery before the date fixed or of an excess quantity of goods (article 48).

3. Article 57 (1) (b) provides that the seller may "claim damages as provided in articles 70 to 73: if the buyer fails to perform any of his obligations under the contract of sale and this Convention." In order to claim damages it is not necessary to prove fault or a lack of good faith or the breach of an express promise, as is true in some legal systems. Damages are available for the loss resulting from any objective failure by the buyer to fulfil his obligations. Articles 70 to 73, to which article 57 (1) (b) refers, do not provide the substantive conditions for the exercise of a claim for damages but the rules for the calculation of the amount of damages.

4. A number of important advantages flow from the adoption of a single consolidated set of remedial provisions for breach of contract by the buyer. First, all the buyer's obligations are brought together in one place without confusions generated by the complexities of repetitive remedial provisions. This makes it easier to understand the rules on what the buyer must do, which are the provisions of prime interest to merchants. Second, problems of classification are reduced with a single set of remedies. Third, the need for complex cross-referencing is lessened.

5. Paragraph (2) provides that a party who has resorted to any remedy available to him under the contract or this Convention is not thereby deprived of the right to claim any damages which he may have incurred.

6. Paragraph (3) provides that if a seller resorts to a remedy for breach of contract, no court or arbitral tribunal may delay the exercise of that remedy by granting a period of grace either before, at the same time as, or after the seller has resorted to the remedy. The reasons for this provision are discussed in paragraphs 3 to 5 of article 43. Such a provision seems desirable in international trade.

<sup>1</sup> However, article 64 (1) allows the seller to declare the contract avoided as to one instalment where the buyer's failure to perform in respect of that instalment amounts to a fundamental breach of that instalment.