

**Case 1020: CISG 1 (1)(b); 7 (1); 62; 78**

Serbia: Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce

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The parties, a Serbian seller and an Albanian buyer, signed a “Sales and distribution agreement”, set to expire on 31 December 2007. However, the arbitration clause was not time barred and provided that it [the clause] “shall survive termination or expiration of (the Contract)”. The arbitration clause further provided that the parties may resort to arbitration if the dispute could not be amicably settled within 30 days. Since the buyer failed to perform its payment obligation within 45 days of the delivery of the goods, the seller initiated arbitration proceedings.

The seller stated in its submissions that it had “repeatedly demanded the buyer to fulfil its payment obligation” and that such attempts were met with “vague promises” or even “absence of any reaction”. The sole Arbitrator found that the requirement of pursuit of amicable settlement had been observed by the seller.

The contract contained a choice of law clause, providing that the Contract “*shall be governed and construed in accordance with applicable regulations and laws of the Republic of Serbia*”. Since Serbia has ratified the CISG, the arbitrator found that the CISG should be applied. This finding was in accordance with foreign judicial and arbitral practice, which should be taken into consideration for the purpose of achieving uniform application of the CISG, pursuant to Article 7 (1) CISG. Although Albania was not a party to the CISG [at the time of the contract], the Convention was applicable by virtue of Article 1 (1)(b) as the party autonomy pointed to a law of the Contracting State — Serbia. The arbitrator also noted that although the CISG does not cover distribution agreements, the Convention is applicable to individual transactions concluded under the overall agreement, as in the case at hand. As a matter of fact, the seller based its claim on single transactions and not the contract as a whole.

The Arbitrator noted that the contract was concluded for a definite period, and expired on 31 December 2007. Not being able to terminate the contract, as the seller requested, the Arbitrator observed and declared that it had expired on 31 December 2007. However, the individual sales transaction, concluded according to the contract had remained in force and had not been avoided. Hence, the seller’s request for payment of the contract price was justified by the terms under which the sales transaction was concluded and Article 62 CISG. Furthermore, pursuant to Article 78 CISG, the seller was entitled to interest on the purchase price the buyer failed to pay. The seller had requested to apply a “domicile” interest rate for the sum requested in euro. Since the CISG does not determine the interest rate to be applied, the arbitrator stated that the rate had to be determined in accordance with the principles of the Convention (Article 7 CISG), in particular that of full compensation. The arbitrator further noted that compensation “should not put the creditor in a better position than he would be had the contract been performed”. Therefore, the arbitrator decided that Serbian law was not applicable as it would result in overcompensation of the seller. On the contrary, it was more appropriate to apply an interest rate “regularly used for savings, such as short-term deposits in the first class banks at the place of payment (Serbia) for the currency of payment”.