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Contract for international sale of goods – Cisg its importance and applicability

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Abstract. Contractual contests in international sale transactions mainly derive from languages, cultures, traditions, views and different legal terms of contractors in different countries worldwide. In international legal-business relations, problematic issues are inevitably outnumbered and different, thus, more difficult to be solved. International legal-business transactions, on the other hand, are of particular importance, especially in the continuum and intences of political-economic globalization and integrations of the countries with more developed economy in different international structures such as European Union, etc. Legal regulation of sales transactions in international relations is, above all, practised with CISG, United Nations Organization Convention on International Sale of Goods which is extraordinarily important for the well-being and progress of international sales.

Keywords. Cisg,Convention, sale, transactions, international, economic

Introduction

CISG “The OUN Convention on the International Sale of Goods”, is a UNO Convention on International Sale of Goods.

Developments of the United Nations Convention on International Sale of Goods started at the beginning of the 20s¹ in order to come up with a uniform legal system for the contracts on international sales. Such developments started due to a belief that a Convention that unanimously regulates sale of goods would also help to provide safety in trade and would consequently reduce expenses of legal actions between the contracting parties. The Convention was signed in Vienna, in 1980 and entered into force in 1988 after it had gained support from ratifying countries.²

Since 2010, CISG has been adopted by seventy countries, including the United States, Canada, Mexico, some countries of South America, China, Japan, and majority of the European countries. This means that CISG is the uniform law for international sale of goods of the countries that constitute more than two thirds of all the global trade.³ Until the 25th of September 2020 the Convention was ratified by 94 countries. The Republic of Albania joined this Covention in May 2009⁴, the joining was valid for the entire Convention and the Republic

¹Tom McNamara, U.N. Sale of Goods Convention: Finally Coming of Age, “Colorado Lawyer” 11-22 (February 2003), f 2

²<http://legal.un.org/avl/ha/ccisg/ccisg.html>

³Roger Le, Roy Miller, Frank B. Cross, BUSINESS LAW, TWELFTH EDITION, 2013, USA, P.340

⁴ http://www.punetejashtme.gov.al/files/userfiles/Aktet_e_OKB.pdf

of Albania has neither declared reserved nor stated anything else thereof.⁵ CISG is directly implemented for an international sale contract but the contracting parties are free not to abide by it and assign another system of norms.

CISG has been prepared by a group of renowned lawyers from different countries as ordered and monitoring of the United Nations Organisation for the International Business Law. CISG has been adopted by many countries, therefore, a solid and a broad basis has been created for building basic contours of the International Business Law as well as its broader application.

CISG is a useful and appropriate model for the countries that aspire to approve a legislation concerning international sale transactions in line with the laws on the trade economy. CISG consists in an international business law which results from various legal traditions and trade customs, good and affirmed "Trade Usages" in the practices of international business transactions.⁶

CISG boosts the freedom of contracting by giving entities necessary independence to actually modify or substitute any provision under condition or any other ways suitable to them.

CISG has been conciped and compiled directly in a direct and pragmatic style which excludes any over and useless formalisation in the professional technical jargons. CISG is one of the international legal documents of a particular importance in regulating the international-business transactions which, after ratification and depositing of its ratification, entered into force on January 1988⁷.

CISG has been projected by the Commission on the International Trade Law "UNCITRAL". CISG is considered to be an international convention, which is spread in the most comprehensive and broad way.⁸

The aim and function of Cisc-ut

The aim and function of CISG derive from its Preamble. In the Preamble of CISG, it is explicitly stated:"(Member) States of CISG⁹,

1. Bearing in mind the broad objectives in the resolution adopted by the seventh special session of the General Assembly of the United Nations Organisation on the establishment of a New World Economic Order.
2. Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States as well as,
3. Bearing of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic, and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade.¹⁰

From the content of the Preamble of CISG it is clear that its aim and function is:

1. Contribution towards creating and implementing of the new international economic order promoted in the seventh special session of the General Assembly of the UNO;
2. Creation of uniform legal regulations (norms) in line with the contracts on international sale of goods.;

⁵ Law no. 10092 dated 09.03.2009 "For accession of the Republic of Albania in the United Nations Convention for the Contract on International Sale of Goods" and entered into force on 1 June 2010.

⁶ SMAKA, Prof. Dr. Riza, GOJANI, Mr. Sc. Skender, *Business Law*, Kolegji Biznesi, Prishtinë 2012, f.356

⁷United Nations Convention on Contracts for the International Sale of Goods, UNITED NATIONS, New York, 2010, f 34, web: <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf> (retrieved on 15.04.2015)

⁸Ulrich Magnus, Michael Martinek, *Wiener UN Kaufrecht (CISG)*, Neubearbeitung, Berlin, 2013, p. 41

⁹SMAKA, Prof. Dr. Riza, GOJANI, Mr. Sc. Skender, *Business Law*, Kolegji Biznesi, Prishtinë 2012, f.357

¹⁰ SMAKA, Prof. Dr. Riza, GOJANI, Mr. Sc. Skender, *Business Law*, Kolegji Biznesi, Prishtinë 2012, f.358

3. Avoiding legal barriers in international sale of goods;
4. Avoiding traditional, cultural, terminological and custom differences in international sale transactions;
5. Creation of convenient conditions for signing of contracts and implementing contracts on sales of the goods based on the rules approved as norms harmonised as common;
6. Creation of uniform contracting regulations for international transactions of goods based on better precedents, general legal principles and international trade usances;
7. Creation of a friendly climate between contractors – countries that establish legal – business reports under the contracting circumstances based on basic principles and values in business transactions and benefit from them in conformity with the social moral and law and
8. Specification of requirements and conditions for international sale contracts especially mutual obligations and authorisations of the contractors, sellers and buyers as well as goods as contracting objects.¹¹.

Application of CISG in international sale of goods mitigates:

1. Contracts;
2. Comments and interpretations of the deliberative parts of the contracts;
3. Settling of the contracting contests as well as their implementation;

The role of CISG for the good of the effective and efficient contracting is expressed by:

1. Avoiding language and terminological unclarities of different contractors;
2. Avoiding customs, cultural and language differences of different countries as well as by;
3. Creating and implementing new, common contractual uniform regulations which are appropriate for multiple, different and important international sales transactions.

With CISG, the basis for adhesive application of the drejtës formulare in international sale transactions is created considerably (Opt In, Opt Out).

The Sphere of Cisg Application

CISG applies to¹²:

1. Contracts for international sale of goods between the parties (contractors) whose places of business are in different countries;
2. When countries (parties, contractors) are member states of CISG;
3. When the rules of private international law lead to application of the law of a Contracting states as well as;
4. When contractors by the clause Opt In Cisg expressly are determined for its application¹³.

Contracting freedom in international sale of goods referring to contracting “Opt In CISG” or out of application “Opt Out CISG” is also stipulated by the article 6 of CISG.

Pursuant to the article 1 paragraph 2 of CISG, the fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either

¹¹Ibiz, f 358

¹²This Convention applies for contracts on sale of goods between the parties whose places of business are in different states. a) when the countries are contracting states ; or b) when the rules of the private international law require implementation of law of a contracting state UNITED NATIONS CONVENTION ON INTERNATIONAL SALE OF GOODS, announced by the decree no.6102, dated 19.3.2009, Article, 1 web: http://www.qbz.gov.al/botime/fletore_zyrtare/2009/PDF-2009/37-2009.pdf .

¹³ <https://iicl.law.pace.edu/cisg/page/united-nations-convention-contracts-international-sale-goods-1980-cisg>

from the contract or from any dealings between, or from information disclosed by the parties at any time before or at the conclusion of the contract.

Pursuant to the article 1 paragraph 4, neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of CISG.

Contractual autonomy of the contracting parties

The draftsmen of the Convention aimed at creating a flexible regulation instrument which would enable, on the one hand, inclusion of as many countries as possible thanks to spare mechanisms as well as it would enable its suitability to particular situations of the contractors and development of international trade thanks to recognition of the autonomy of the parties' free will, on the other.

As mentioned earlier herein, pursuant to the article 95¹⁴ of the Convention, the countries in question may declare reserved as far as implementation of the Convention is concerned so as to prioritise in some cases implementation of the internal right. Furthermore, the Editors of the Convention have considered that recognition of the contracting right of the parties is a basic principle provided for in the article 6 of the Convention. Thus, the article 6 of the Convention foresees that the parties may choose the cases and the way the Convention would treat their contract of sale. In cases of disagreements, prior to taking actions on implementation or exclusion of the Convention, the court should find out what the will of the parties is. This way, we may say that parties, out of their free will, may decide that their contract not be fixed by the Convention of Vienna, by excluding its entire implementation or some of its provisions. The exclusion of the implementation of the Convention by the parties for fixing their contract is a manifestation of an international private autonomy according to which the parties are free from any bounds.¹⁵, at the same time the autonomy for signing a contract requires a big freedom, but not a full autonomy. Such a limitation of the contracting freedom of the parties is foreseen, for instance, in the Civil Code of the Republic of Albania pursuant to the article 660 wherein: "Parties in contract freely determine the content, within the limits determined by law".

(a) Cisg Inheritance in Kosovo

Former Yugoslavia, as a contracting member of CISG, signed and ratified this Convention on CISG inheritance in Kosovo according to the Convention of Vienna on April 11 1980 and March 27 1985 respectively. On the 12th of March 2001 former Federal Republic of Yugoslavia declared that it takes on liabilities of this convention and pleads to fulfil and implement with loyalty its provisions starting from April 27, 1992, which is when the Federal Republic of Yugoslavia took on the responsibility of its international relations.

However, Kosovo (initially through the Regulation 2000/68 of UNMIK on Contracts on Sale of Goods and nowon by the Law on Obligational Relationships no 04/L-077) in line with the article 6 has unilaterally adopted CISG. This convention covers cases of inheritance of the countries. This convention applies only to the effects of the inheritance of the countries that take place in accordance to the international law, in particular, for the principles of the international law which have been embodied in the United Nations Chart.

¹⁴Each and every country may, during the time of depositing of its instruments of ratification, acceptance or accession may declare that it is not bound by the subparagraph (1) (b) of the article 1 of this Convention http://www.qbz.gov.al/botime/fletore_zyrtare/2009/PDF-2009/37-2009.pdf .

¹⁵ FERRARI, Franco, CISG rules on exclusion and derogation: article 6, in *The draft UNCITRAL Digest and Beyond*, fq. 117.

Article 9: A unilateral declaration by a succeeding country with regards to the treaties of a previous country 1.2., article 34 inheritance of countries in cases of division of a part of a country and article 100, points 1 and 2 for unilateral attachment (accession).

For the first time in the history of the international legal unification of the law on international contracts it is possible to find acceptable solution for the most important aspects of the conclusion and finalisation of executing international sale of goods by combining the access to continental and Anglo-American law. But, it does not unify all the issues related to the contracts on sale.

Cases when Cisg cannot be applied

CISG-u, pursuant to its article 2, does not apply to sales:¹⁶

- a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- b) by auction;
- c) on execution or otherwise by authority of law;
- d) of stocks, shares, investment securities, negotiable instruments or money;
- e) of ships, vessels, hovercraft or aircraft;
- f) of electricity¹⁷.

Pursuant to its article 5 CISG does not apply for liability of the seller for death or personal injury caused by the goods to any person.

Such a formulation of the article 5 of CISG is conditioned by regulating and realisation of the penal liability as well as liability of compensation of the damage by special *Lex Specialis Derogat Lex Generalissi* and the fact that the consequences of death respectively of the damage exceed legal framework of CISG-ut.

According to CISG, the contracts for provision of fabrics or products are considered contracts for sale unless the contractors stipulate that the goods will serve for necessary provision of products or particular fabrication.

CISG, in particular, regulates signing of the contract on international sale of goods, obligations and authorisations of the contractors, the subject matter of the contract for international sale of goods, settlement of contractual contests between the contractors, requests and conditions of delivery of goods and performance of the contract for international sale of goods, etc.

Cases when Cisg applies

The following are cases when CISG may be applied¹⁸:

1. This Convention applies to contracts for sale of goods between the parties whose places of business are in different countries:

- a) when the countries are contracting states; or
- b) when rules of the private international laws require implementatoin of law of a contracting state¹⁹.

¹⁶UNITED NATIONS CONVENTION ON INTERNATIONAL SALE OF GOODS, Shpallur me dekretin nr.6102, dated 19.3.2009, Article 2 web: http://www.qbz.gov.al/botime/fletore_zyrtare/2009/PDF-2009/37-2009.pdf (retrieved on 02.05.2015)

¹⁷ <https://iicl.law.pace.edu/cisg/page/united-nations-convention-contracts-international-sale-goods-1980-cisg>

¹⁸UNITED NATIONS CONVENTION ON INTERNATIONAL SALE OF GOODS announced by the decree no.6102, dated 19.3.2009, Article, 1 web: http://www.qbz.gov.al/botime/fletore_zyrtare/2009/PDF-2009/37-2009.pdf (parë më 02.05.2015)

¹⁹ <https://iicl.law.pace.edu/cisg/page/united-nations-convention-contracts-international-sale-goods-1980-cisg>

2. The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by the parties at any time before or at the conclusion of the contract.
3. neither the nationality of the parties nor the civil or commercial character of the parties.

Conclusion

The Convention on contracts on international sale of goods CISG remains one of the best and flexible options related to drafting of the regulations of contracts on international sales.

The sphere of implementation, aim of unification, elimination of difficulties and its flexibility for the contracting parties with international elements make it the best one so far.

This form of regulating the contracts of international sales according to CISG is very good.

In our country (Kosovo) a very little is known about the international conventions, generally speaking in transactions of (international) sale such legal instruments apply very little, if not at all. Thus, contests of international transactions, especially on sales are obviously very frequent and different.

Settlements of contests on sales are usually very complicated and last longer when they are not contracted in line with (OPT IN) respective international conventions initially with CISG.

In cases of international contests on sales in line with respective conventions contrary to the practical trade, the settlement is performed quickly with the agreement of the contractors!

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