

In the past few months, the UNCITRAL Secretariat has issued **four new CLOUT issues** ([229](#), [230](#), [231](#) and 232 (pending publication)) featuring **33 new cases** from Armenia, China, Egypt, Finland, France, Germany, India, Israel, Pakistan, Russian Federation, Saudi Arabia, Slovenia, Sweden, Türkiye, Zambia and Zimbabwe.

The new cases **relate to the following UNCITRAL texts**: United Nations Convention on Contracts for the International Sale of Goods (CISG), United Nations Convention on the Limitation Period in the International Sale of Goods (Limitation Convention), United Nations Convention on the Carriage of Goods by Sea – The “Hamburg Rules” (HR), UNCITRAL Model Law on International Commercial Arbitration (MAL) and United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards – The “New York Convention” (NYC).

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UNCITRAL Newsletter

THE TRIANNUAL January – April 2024

Cases in focus

In this CLOUT Newsletter, the focus is on (i) a notification of the refusal to accept the delivery of goods due to a lack of conformity, and their subsequent possession by the buyer on behalf of the seller, in a contract for the international sale of goods; and, (ii) an application to stay a judgement through which the court had dismissed the setting-aside of an arbitral award.

Case 2114: CISG 1; 6; 25; 26; 38; 39; 45; 49; 86; 86(1); 86(2); Limitation Convention 8

VSL *sklep I Cpg 1502/2015* | 28 April 2016 [and]

VSL *Sodba I Cpg 322/2017* | 10 May 2017

Slovenia: Višje sodišče v Ljubljani (High Court of Ljubljana)

Abstract prepared by Ana Vlahek and Tjaša Kalin

A dispute arose between a seller with place of business in Macedonia (plaintiff) and a buyer with place of business in Slovenia (defendant) over two consignments of onions. The seller filed a claim for the payment of the two consignments and the buyer filed a counterclaim based on the lack of conformity of the onions and demanded compensation of damages. The buyer claimed that the delivered onions were wet and rotten, and that it had notified the lack of conformity to the seller. It added that the seller had asked the buyer to dry the onions, but that the drying was ineffective and the onions had to be discarded. However, the court of first instance found in favour of the seller. The buyer filed an appeal with the Ljubljana High Court.

In its order (VSL *sklep I Cpg 1502/2015*), the High Court indicated that the CISG applied to the matter as both parties have their place of business in CISG contracting States and had not opted out according to article 6 of the CISG. In the case at hand, the seller and the buyer entered into a contract for the sale of onions which had been delivered to the buyer. The buyer refused to accept the delivery of the onions, stating that they were non-conforming with the terms agreed in the contract. Pursuant to the seller’s request, the buyer took possession of the goods on behalf of the seller and took steps that were reasonable in the circumstances to preserve the onions (article 86 of the CISG). The buyer explained that it did not sign the consignment note evidencing receipt of the goods because it only took possession of the onions, but did not take them over. Moreover, the buyer reiterated that it notified the seller of the non-conforming quality of the onions imme-

diately by the telephone and within a reasonable period by email.

The High Court recalled that, in accordance with article 53 of the CISG, the buyer is obliged to pay the price for the goods and take delivery of them, and explained that the buyer cannot refuse to take the delivery of goods if these are not in conformity, except in case of fundamental breach and if the seller has been notified within a reasonable period. In that regard, the High Court stated that the notice of termination did not need to be explicit, but the will of the buyer to terminate the contract should be evident.

The High Court noted that under article 27 of the CISG, a delay or error in the transmission of the communication or its failure to arrive did not deprive that party of the right to rely on the communication, including when email is used. However, in confirming that the notification of non-conformity of the goods may be oral, the High Court added that the burden of proving the content of the oral communication and the fact that the addressee had accepted and understood it lied with the party who alleged it and chose the method of communication, i.e., the caller in case of telephone communication.

In light of the above, the High Court of Ljubljana referred the case back to the court of first instance. The court of first instance denied the claim in its entirety while partially awarding the damages requested by the buyer. The seller filed again an appeal.

In its second judgement (VSL Sodba I Cpg 322/2017), the High Court of Ljubljana confirmed that the CISG was the law applicable to the contract and that the notification of the lack of conformity was timely. It also indicated that the buyer declared the contract avoided by declining to take the onions when they were delivered and that it tried to dry them only because the seller requested it in accordance with article 86, paragraph 2 of the CISG. Moreover, in reply to the

argument of the seller that the counterclaim for compensation of damages was time-barred under article 480 of the Slovenian Code of Obligations, the High Court confirmed the conclusion of the court of first instance that the Convention on the Limitation Period in the International Sale of Goods was applicable, and that, given the limitation period of four years (article 8 of the Limitations Convention), the counterclaim was not time-barred.

Case 2122: MAL 5; 34

Konkola Copper Mines PLC v. Copperfields Mining Services Ltd | 4 October 2010

Zambia: High Court of Zambia
Abstract prepared by Bwalya Lumbwe

[Keywords: *courts; judicial assistance; judicial intervention; jurisdiction; procedure; award; arbitral; award – setting aside; enforcement*]

The case stems from the High Court's dismissal of the plaintiff's application to set aside an arbitral award. The plaintiff was dissatisfied with the High Court's judgement and through the same Court applied for a stay of execution of the judgement. In opposition of the stay application, the defendant raised an application challenging the Court's jurisdiction to hear the stay application. The defendant contended that an application for stay of execution of a judgment relates to a judgment made or passed by a court. In this case, arguably, the Court

had no judgment to stay, as the application to set aside the arbitral award did not succeed, there exists only an award of the arbitral tribunal and not a judgment of the Court. Furthermore, the defendant contended that the Court must guard itself against interference in the arbitral process as its role was supervisory. It was argued further that section 20(3) has the effect that once a setting aside application has been dismissed, the award

LATEST CLOUT NEWS & EVENTS

We are pleased to welcome in the CLOUT Network a new National Institutional Partner, the Judicial & Legal Studies Institute (JLSI) from the Kingdom of Bahrain!

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UNCITRAL is celebrating the 10th anniversary of the UNCITRAL Transparency Standards and the 50th anniversary of the Limitation Convention (1974) this year! The UNCITRAL secretariat is collecting cases on the Limitation Convention in the context of preparations for a future publication on that text. Feel free to send us further information on cases not included in the CLOUT database applying and interpreting the Limitation Convention!

LATEST PRESS RELEASES

08/04/2024 UNCITRAL Working Group III Concludes its Work on the Draft Statute of an Advisory Centre on International Investment Dispute Resolution

18/03/2024 Belgium and the European Union sign the “Beijing Convention on the Judicial Sale of Ships”

29/02/2024 Sri Lanka ratifies the United Nations Convention on International Settlement Agreements Resulting from Mediation

is restored, and the court has nothing further to do with it.

In response, the plaintiff argued that under ordinary circumstances a court has no jurisdiction to stay an award, however, once a party has applied to set aside an award, there can be no execution of that award. Furthermore, once an application to set aside an award is dismissed, section 20(3) of the Arbitration Act No. 19 of 2000 of Zambia ("Arbitration Act") (no MAL equivalent) states that the award shall be deemed to be, and shall be enforceable in the same manner, as an order of the court. In this respect, it was contended, a party in whose favour the award was rendered has an entitlement to enforce the award except, as in this case, where there is a pending appeal against the judgement of the court on the dismissal of the application to set aside the award. This means that the award is still contested and still before the courts for final determination. Though the plaintiff was aware that an appeal does not operate as a stay of execution, it was argued that what was being requested of the Court was to stay the enforcement of the judgement of the Court dismissing the setting aside of the award.

In giving judgement, the Court felt it necessary to highlight the role of courts in respect of arbitral proceeding and the award that flows from those proceedings. The Court pointed out that article 5 of MAL, which is the First Schedule of the Arbitration Act, states that in matters governed by this law, no court shall intervene except where so provided by this law. The Court further stated that the MAL has been adopted with modification as part of the arbitration act as clearly stated in the preamble of the Arbitration Act. The law therefore sets out incidences under which a court can intervene in the arbitral proceedings. These provisions are under sections 11, 12, 13, 17, 18, 19 (corresponding to articles 9, 11, 13, 34, 35, 36 MAL) in addition to articles 16 (3) and 27 of MAL which have not been modified. The Court emphasized that these are the only provisions under which a court can intervene and are designed to be complementary to the arbitral process and not interfere with the process. In its reasoning the Court stated that the judgement sought to be stayed was that resulting from the Court's dismissal of the application to set aside the award. The judgement did not award any sum of money to the defendant, nor did it direct any action to be undertaken by the plaintiff. The Court therefore reasoned that there was nothing capable of being stayed arising out of its judgement. As such, as provided for under section 20(3) of the Arbitration Act, the award was enforceable in terms of section 20(3).

Furthermore, as the award was rendered by an arbitral tribunal and not a court, the Court had no jurisdiction to stay a decision which it did not render. In addition, the Court stated that it had no jurisdiction to order a stay of execution of an award as there was no such provision under the law as summarized above. The defendant's application therefore succeeded.

The CLOUT Team welcomes any CLOUT Network contributor who would like to make **short contributions** to the Newsletter with articles and information on the application of UNCITRAL texts in their own countries. Send your contributions at: uncitral@un.org

Universities, training centres, arbitration centres, law professors, judges and other interested law practitioners **can contribute to** the CLOUT collection even if they are not National Correspondents. They are strongly encouraged to contact UNCITRAL at uncitral@un.org for information.

UPCOMING EVENTS - RCAP

[5-May-2024] "[Arbitration & Beyond: Recent Developments at UNCITRAL](#)"

[6-May-2024] "[UNCITRAL - AAIL event on the UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution](#)"

[8-May-2024] "[Law, Peace and Harmonious Development Roundtable II](#)"

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