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**United Nations Commission  
on International Trade Law**

**UNCITRAL Digest of case law on the United Nations  
Convention on the International Sale of Goods\***

*Article 61*

- (1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:
  - (a) Exercise the rights provided in articles 62 to 65;
  - (b) Claim damages as provided in articles 74 to 77.
- (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.

**Remedies available to the seller (article 61 (1))**

1. Article 61 (1) describes in general terms the remedies available to the seller when the buyer does not perform one of its obligations. In stating that the seller may “exercise the rights provided in articles 62 to 65”, the Convention merely refers to

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\* The present digest was prepared using the full text of the decisions cited in the Case Law on UNCITRAL Texts (CLOUT) abstracts and other citations listed in the footnotes. The abstracts are intended to serve only as summaries of the underlying decisions and may not reflect all the points made in the digest. Readers are advised to consult the full texts of the listed court and arbitral decisions rather than relying solely on the CLOUT abstracts.

these provisions without giving them any normative force.<sup>1</sup> On the other hand, in providing that the seller may “claim damages as provided in articles 74 to 77”, article 61 (1) (b) does provide a legal basis for the seller’s right to claim compensation; articles 74 to 77 merely specify what damage is to be compensated. In the event that a buyer is found to be obliged to pay compensation, there is thus reason to have recourse to article 61 (1) (b), as a number of court and arbitral decisions have done<sup>2</sup>, and not just to article 74 of the Convention.

2. Failure on the part of the buyer to perform any one of its obligations is the only prerequisite for recourse to the remedies referred to in article 61 (1). As one court decision put it, recourse to the remedies available to the seller is not subject to the seller proving that the buyer is at fault.<sup>3</sup>

3. Article 61 (1) mentions only the principal remedies available to the seller. Other remedies apart from those mentioned in this provision may be available to a seller who is damaged by the buyer’s breach of contract. These remedies are set out in articles 71, 72, 73, 78 and 88 of the Convention.

4. The main difficulty to which article 61 (1) gives rise in case law relates to those cases in which the contract of sale imposes on the buyer particular obligations not provided for by the Convention. As the heading of this section indicates, failure by the buyer to perform any of its obligations under the contract, even when the contractual obligation infringed is a consequence of the party autonomy, opens recourse to the remedies provided under the Convention, without any need to apply the national law governing the contract for questions not covered by the Convention. Some decisions apply the Convention in cases of this kind.<sup>4</sup> There has been one decision, however, where the courts had recourse to national law.<sup>5</sup>

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<sup>1</sup> Nevertheless, it is quoted in some decisions: Landgericht Mönchengladbach, Germany, 15 July 2003, *Internationales Handelsrecht* 2003, 229; Kantonsgericht Zug, Switzerland, 12 December 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/720.htm>>; Handelsgericht St. Gallen, Switzerland, 3 December 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/727.htm>>; Cámara Nacional de Apelaciones en lo Comercial de Buenos Aires, Argentina, 21 July 2002, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/020721a1.html>>.

<sup>2</sup> See Landgericht Berlin, Germany, 21 March 2003, available on the Internet at <<http://www.cisg.law.pace.edu/cisg/wais/db/cases2/030321g1.html>>; Cour de Justice, Genève, Switzerland, 13 September 2002, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/722.htm>>; Cour d’appel de Colmar, France, 12 June 2001, available on the Internet at <<http://witz.jura.uni-sb.de/CISG/decisions/120601v.htm>>; CLOUT case No. 169 [Oberlandesgericht Düsseldorf, Germany, 11 July 1996]; CLOUT case No. 166 [Arbitration—Schiedsgericht der Handelskammer Hamburg 21 March, 21 June 1996]; CLOUT case No. 47 [Landgericht Aachen, Germany, 14 May 1993]; CLOUT case No. 227 [Oberlandesgericht Hamm, Germany, 22 September 1992].

<sup>3</sup> CLOUT case No. 281 [Oberlandesgericht Koblenz, Germany, 17 September 1993] (see full text of the decision).

<sup>4</sup> See, with regard to a re-export prohibition: CLOUT case No. 154 [Cour d’appel, Grenoble, France, 22 February 1995] (see full text of the decision); with regard to the violation of an exclusivity agreement, see CLOUT case No. 217 [Handelsgericht des Kantons Aargau, Switzerland, 26 September 1997]; with regard to an obligation to redress a fault of conformity within an agreed period of time, see CLOUT case No. 311 [Oberlandesgericht Köln, Germany, 8 January 1997]; with regard to the opening of a letter of credit, see CLOUT case No. 104 [Arbitration—International Chamber of Commerce No. 7197 1993]; CLOUT case No. 261 [Berzirksgericht der Sanne, Switzerland, 20 February 1997]; Supreme Court of Queensland,

## Recourse to damages in combination with other remedies (article 61 (2))

5. Under article 61 (2), the seller is not deprived of any right the seller may have to claim damages by exercising its right to other remedies. This provision is contrary to the legal tradition of certain countries. This was true, for example, in Germany before the reform of the law of obligations which entered into force on 1 January 2002 and that authorized combined remedies<sup>6</sup>.

## Refusal of a period of grace (article 61 (3))

6. Under this provision, a judge or arbitrator is not empowered to grant the buyer a period of grace for payment of the price or to authorize partial payments. Such measures were judged contrary to the best interests of international trade.<sup>7</sup> Only the seller can grant such an extension of time for performance<sup>8</sup>. Another issue yet to be resolved is whether article 61 (3) does constitute an obstacle in situations involving an insolvent party where the applicable insolvency law grants a defaulting buyer a period of grace for making payment<sup>9</sup>.

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Australia, [2000] QSC 421 (17 November 2000).

<sup>5</sup> Bundesgerichtshof, Germany, 5 February 1997, *Neue Juristische Wochenschrift*, 1997, 1578.

<sup>6</sup> The German courts have been able to depart from their national law and grant damages parallel to other remedies such as avoidance of contract; see the following decisions concerning article 45 (2) which, with regard to the remedies available to the buyer, incorporates the same principle as article 61 (2): CLOUT case No. 348 [Oberlandesgericht Hamburg, Germany, 26 November 1999]; CLOUT case No. 345 [Landgericht Heilbronn, Germany, 15 September 1997]; Landgericht Landshut, Germany, 5 April 1995, available on the Internet at <<http://www.cisg-online.ch/cisg/urteile/193.htm>>; Landgericht München, Germany, 20 March 1995, *Recht der internationalen Wirtschaft*, 1996, 688; CLOUT case No. 50 [Landgericht Baden-Baden, Germany, 14 August 1991]; implicitly, see CLOUT case No. 235 [Bundesgerichtshof, Germany, 25 June 1997].

<sup>7</sup> United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, p. 48.

<sup>8</sup> For the fixing of an additional period of time, see article 63.

<sup>9</sup> One court was confronted with this difficulty and avoided it by finding that the Convention was not applicable because the non-performance in question was connected with a distribution agreement, a kind of contract not governed by the Convention; see CLOUT case No. 187 [Federal District Court, Southern District of New York, United States, 23 July 1997].