*Elnur Karimov**

CONFORMITY AND PASSING OF RISK UNDER THE CISG: "PLANTS CASE" BY BAMBERG DISTRICT COURT OF GERMANY

Abstract

This article studies "Plants case" heard in October 2006 by Bamberg District Court in Germany and discusses the applicability of the United Nations Convention on Contracts for the International Sales of Goods dated 1980 to this case, the conformity of the goods with the contract under Articles 35-44 and passing of risk to the buyer under Articles 66-70 as well. Specifically, the question that who carries the risk during loading of goods before handing over to the first carrier is answered in accordance with Article 67(1) of the Convention. The article further explores the carrier's duty to examine goods when it stops before arriving at the destination for unloading other goods and its relation with a buyer's duty to examine goods. It promotes the points the Court did not take into account with a reference to the Convention and case law. In the Plants case, defining the liability of the parties upon the carriage of goods, including their involvement in the occurrence of the damage to goods has been a disputable issue because the seller had observed the buyer's instructions to deliver all goods despite the lack of space on the truck. However, this fact and the seller's notice and warning did not influence the Court's decision. Hence, the article concludes that unlike the decision of the court, it will not fit in all cases to determine the reasonable time for notification of non-conformity of goods with a sales contract as one month. Furthermore, when the courts apply the Convention, they should be inclined to take into account all details of cases, especially parties' correspondence that can be read as an acknowledgment of liability.

Annotasiya

Bu məqalədə Almaniya Bamberg Rayon Məhkəməsinin 2006-cı ilin oktyabr ayında baxdığı "Bitki işi" araşdırılır, və həmin işə Əmtəələrin Beynəlxalq Alqı-satqı Müqavilələri Haqqında 1980-ci il tarixli BMT Konvensiyasının tətbiqinin mümkünlüyü, Konvensiyanın 35-44-cü maddələrinə uyğun olaraq malların müqaviləyə uyğunluğu, 66-70-ci maddələr çərçivəsində riskin alıcıya keçməsi müzakirə olunur. Xüsusilə, Konvensiyanın 67-ci maddəsinin 1-ci bəndinə uyğun olaraq, malların birinci daşıyıcıya təhvil verilməsindən əvvəl yüklənmə zamanı riski kimin daşıdığı sualı cavablandırılır. Məqalədə, həmçinin, daşıyıcının təyinat məntəqəsinə çatmamış başqa malları boşaltmaq üçün dayandığı hallarda daşıyıcının malları yoxlamaq öhdəliyi daşıyıb-daşımadığı və bu öhdəliyin alıcının yoxlama öhdəliyi ilə əlaqəsi araşdırılır. Məqalədə Konvensiya və mövcud məhkəmə işlərinə istinad edilərək məhkəmənin toxunmadığı bəzi məqamlar önə çəkilir. "Bitki işi" malların daşınmasında tərəflərin məsuliyyətinin, o cümlədən, onların mallara dəyən ziyanda bu və ya digər formada iştirakının xarakterizə edilməsi nöqteyi-nəzərindən mübahisəlidir, çünki satıcı alıcının yük maşınında yer azlığına baxmayaraq bütün malların göndərilməsi haqqında təlimatını yerinə yetirmişdir. Ona görə də, Məhkəmənin gəldiyi nəticədən fərqli olaraq, malların alqı-satqı müqaviləsinə uyğunsuzluğunun bildirilməsi üçün ağlabatan müddətin bütün işlərdə bir ay kimi müəyyən olunması işin mahiyyətinə uyğun gəlməyə

* LL.M International Economic & Business Law, Kyushu University, Japan.

bilər. Bundan əlavə, məhkəmələr Konvensiyanı tətbiq edərkən işin bütün detallarını, xüsusilə, alıcı və satıcı arasında məsuliyyətin qəbul edilməsi kimi təfsir oluna biləcək yazışmaları nəzərə almalıdırlar.

CONTENTS

Introduction 2
I. Facts of the "Plants case" 3
A. Conclusion of the contract 3
B. Performance of delivery 4
C. Non-conformity of the goods 4
D. Notice to the seller about non-conformity 5
II. Reasoning of the court 5
A. Applicability of the Convention 5
B. The validity of the buyer's notice on non-conformity 6
C. Passing of risk 8
D. Buyer's duty to examine goods 10
E. The decision of the court 11
Conclusion 12

Introduction

Since April 11, 1980, the United Nations Convention on Contracts for the International Sales of Goods (hereinafter referred to as "the Convention") has become one of the most applied mechanisms in international commercial law for the settlement of disputes arising out of international sales contracts.[1] The Convention has contributed to the promotion of a uniform practice in international commercial law.[2] However, the success of the Convention to react to the current challenges is open to debates, particularly, in the law of damages that has gone beyond the non-pecuniary loss to allow the compensation of future loss under Article 7.4.3 of the UNIDROIT Principles of International Commercial Contracts or Article 9 of the Principles of European Contract Law.[3] Contracting parties enjoy autonomy to recognize its applicability to international sales contracts and settle disputes accordingly to prevent possible conflicts and forum-shopping

[1] Roy Goode et al., Transnational Commercial Law, 204 (2nd ed. 2015).
[2] Harry M. Flechtner, The United Nations Convention on Contracts for the International Sales of Goods, 1 (2009). Available at: https://bit.ly/2ULVcB8 (last visited Nov. 22, 2020).
[3] Ingeborg Schwenzer and Pascal Hachem, The Scope of the CISG Provisions on Damages, *in* D. Saidov and Ralph Cunnington (eds.) Contract Damages: Domestic and International Perspectives, Oxford: Hart Publishing, 2008, 93.

between applicable domestic laws.[4] The Preamble of the Convention has reiterated this objective as the removal of legal barriers in international commerce.[5]

"Plants case" is one of the cases to which Bamberg District Court of Germany (hereinafter referred to as "the Court") applied the Convention on October 23, 2006.[6] The Court discussed Articles 35-44 of the Convention on the conformity of goods and Articles 66-70 on the passing of risk, specifically, interpreted the party who bears the risk that occurred during loading of goods to be handed over to the first carrier under Article 67(1).[7] This article also looks through the conditions where the carrier or buyer is obliged to examine goods with reasonable care to make sure that they are in a good condition in transit. Despite this case presented three interpretations that would be useful in dispute settlement in international commercial law, the Court ignored any of the communication between the parties on the alterations upon the contractual terms that might have exempted the seller from liability for the damage to some plants.[8]

This article introduces the case, the parties' duties under the contract and the Court's reasoning and decision briefly, studies the jurisdiction of the Court on the case and the applicability of the Convention and further attempts to answer the questions raised about the conformity of goods and passing of risk under the Convention.

I. Facts of the "Plants case"

A. Conclusion of the contract

In this case, a seller whose place of business is Italy and the buyer from Germany concluded an international sales contract for plants. The buyer who owns a tree nursery in Germany ordered plants from the seller in Italy by fax dated March 12, 2001:[9]

> *"Straight stems, drawn through the terminals:*
> *1. 50 Aesculus carnea "Briottii"*
> *2. 25 Ailanthus altissima*
> *3. 100 Catalpa bigno. Nana*
> *4. 50 Ginko Biloba*
> *5. 200 Juglans regia*

[4] Caroline D. Klepper, *The Convention for the International Sales of Goods: A Practical Guide for the State of Maryland and Its Trade Community*, 15 Maryland Journal of International Law 235, 237 (1991).
[5] The United Nations Convention on Contracts for the International Sales of Goods (2010). Available at: https://bit.ly/338I11H (last visited Nov. 22, 2020).
[6] District Court (Landgericht) Bamberg, 2 O 51/02 (2006). Available at: https://bit.ly/3fmMbrB (last visited Nov. 22, 2020).
[7] *Ibid.*
[8] *Ibid.*
[9] *Ibid.*

6. 25 Liquidambar styracifula
7. 100 Robinia umbriculifera
8. 100 Sophora japonica
Delivery free of charge"[10]

The plaintiff's claim is about the non-conformity of the goods with the contract, and the nature of the non-conformity of each plant is different.[11] For this article, the plants will be referred to as the 1st, 2nd, 3rd, 4th group etc.

B. Performance of delivery

As the subject matter of the dispute arose from the international sales contract between the seller and buyer from different countries, the seller had a duty to deliver the goods. To perform the duty of delivery, the Italian seller prepared the plants and loaded them onto the carrier's truck that the buyer had engaged at that time. The seller submitted that when they dispatched, the goods were conforming with the contract. However, the buyer had allocated 6 meters of space instead of 8 that had been agreed in the contract because the truck had been loaded by another 10 pallets in advance.

Despite the seller proposed to limit the number of the plants to the capacity of loading space, the buyer insisted on the loading of all orders onto the same truck. Therefore, the seller submitted to the Court that they performed the duty of delivery, and the non-conformity of the goods arose from an act or omission of the carrier or buyer. Besides, according to the facts, the other 10 pallets were unloaded during the transit in Burgebrach. Based on this fact, the seller submitted that as the plants were temporarily discharged to unload the other 10 pallets in transit, they were likely to be damaged in Burgebrach or at the buyer's place of business.[12]

C. Non-conformity of the goods

The Court discussed whether the non-conformity of the goods occurred before the passing of risk. The buyer explained the nature of the non-conformity of the 1st, 2nd, 3rd, and 7th group of the plants in detail, and added that the 4th group of the plants was so damaged because of improper loading onto the truck that their broken terminals prevented further growth. Regarding the 5th and 8th group of the plants, the buyer submitted that the seller had delivered a wrong pair of the plants that were only so young with no measurable stem circumference. However, the buyer's submission about these plants was not confirmed by the expert opinion. Finally, the buyer could notice the low-quality roots of the 6th group of the plants on March 29, 2001, only after the notice given to the seller about the non-conformity of the other goods because it had been covered with ground sacks before.[13]

---

[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*
[13] *Ibid.*

The buyer argued that the reason for the damage to the plants was defective packing of the plants in jute bags, and improper loading onto the truck. The buyer tried to convince the Court that it was sufficient to notice about the non-conformity of the plants and the buyer was never under the duty to notice the amount of the damaged and undamaged plants.[14]

D. Notice to the seller about non-conformity

Following its contractual duties, the seller prepared the goods and handed them over to the carrier engaged by the buyer. The carrier delivered the goods on March 23, 2001, and the seller paid €1.000 for carriage. During the delivery, the main sprouts of the 8th group of the plants were missing. After the delivery, the buyer gave notice to the seller about the non-conformity of the goods by adding a reservation on the bill of delivery dated March 22, 2001, and sent a separate letter on March 26, 2001. The letter displayed each defect of the plants individually discovered on March 23, 2001, during the unloading. The defects notified to the seller can be summarized as bark tearing at the stems in the 1st group, broken main sprouts and chipped bark at the stems in the 2nd group, broken or no crowns in the 3rd and 7th groups, partly broken terminals due to the loading onto the bottom of the truck in the 4th group, maximum 6 cm circumference and no side branches in the 5th group, and no main sprouts in the 8th group of the plants.[15]

II. Reasoning of the court

A. Applicability of the Convention

The Court has jurisdiction over the case as the parties agreed to the jurisdiction of German courts in the disputes arising from the sales contract.[16] As both parties' place of business is in the Contracting States of the Convention, the Court concluded that even if the parties have chosen the law in the sales contract, the Convention is still applicable to the dispute.[17] The Convention entered into force in Italy on January 1, 1988,[18] and in Germany on January 1, 1991.[19]

Thus, the fact that the parties to the contract chose German law as the applicable law cannot be ground for the non-application of the Convention. Both the buyer and seller knew or should have known that the states where

[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*
[17] The Convention is relatively straightforward in this regard by recognizing "the application of the Convention when the parties to the contract have places of business in two different Contracting States". Goode et al., *supra* note 1, 218.
[18] CISG: Participating Countries – Italy (2015), https://bit.ly/2JoaB8S (last visited Dec. 3, 2020).
[19] CISG: Participating Countries – Germany (2015), https://bit.ly/2KTApKa (last visited Dec. 3, 2020).

their places of business were, were party to the Convention.[20] Therefore, article 1(1) of the Convention does not contain any exception for its applicability when the parties' places of business are in two different Contracting States.

B. The validity of the buyer's notice on non-conformity

The Court concluded that the buyer preserved his right to bring a claim on non-performance by fulfilling his duty to notify the seller on the defective plants according to Article 39(1) of the Convention. This article speculates that "the buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it". Furthermore, the Court dismissed the seller's arguments and held that when more than one goods of the same kind are sold, a notice about the non-conformity of all goods of the same kind is sufficient under Article 39(1) and there is no need to notify about each one of the goods individually.[21]

Under Article 39(1), a buyer is not only obliged to give notice about the existence of non-conformity but also provide detailed information about the nature of non-conformity. This article protects both buyer's and seller's interests by setting forth a notice requirement because the buyer lets the seller know about the non-conformity and preserves his right to the remedies,[22] and the seller is given a chance to cure the damage and prevent further loss.[23]

On the other hand, giving notice about the nature of non-conformity is important to decide under Article 25 of the Convention if "a breach of contract committed by one of the parties is fundamental when it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract". A fundamental breach is a breach of the contractual duties that depreciates the aggrieved party's contractual expectations.[24] In each case where there is a claim about the fundamentality of the breach, it is crucial to find out what the aggrieved party expected from the contract and to what extent the breach deprived him of those expectations. Thus, by clarifying the nature of non-conformity, the buyer will facilitate the judge's decision on the fundamental breach that will be influenced by the buyer's expectations and reality.

---

[20] This awareness is not solely enough to apply Article 1(1) of the Convention. Under Article 1(2), "the difference in places of business shall be known to the parties from the contract or disclosed information by the parties, otherwise, the Convention cannot be applied". Jacob Ziegel, *The Scope of the Convention: Reaching Out to the Article One and Beyond*, 25 Journal of Law and Commerce 59, 62-63 (2005-2006).

[21] Plants case, *supra* note 6.

[22] Ulrich Schroeter, *A Time-limit Running Wild? Article 39(2) CISG and Domestic Limitation Period*, 2 Nordic Journal of Commercial Law 153, 174 (2017).

[23] Benjamin K. Leisinger, *Some Thoughts about Art. 39(2) CISG*, 6 Internationales Handelsrecht 76, 81 (2006).

[24] UNCITRAL Digest of Case Law on the United Nations Convention on the International Sales of Goods, 80 (2016).

Unlike other contractual breaches regulated in the Convention, a fundamental breach allows a buyer to avoid a contract under Article 49(1)(a) of the Convention. According to Article 49(1)(a) of the Convention, "the buyer may declare the contract avoided if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract". However, depending on the circumstances, it may suffice for the buyer to establish non-conformity alone by describing its symptoms where the buyer cannot access detailed information about the nature of non-conformity.[25]

In this case, the buyer further claimed the non-conformity caused by the defects other than those has been notified to the seller, despite the fact that these claims were based on the defects the buyer discovered at a later date. But the Court dismissed the buyer's claims on new defects on the ground that he failed to give notice to the seller about the new ones within a reasonable time.[26] The Court interpreted the requirement of a reasonable time as one month. Then it dismissed the buyer's justification that the defects, especially the low-quality roots of the 6th group of the plants were found after planting.

The Court's interpretation of the reasonable time for the notification of the defects in the 1st, 4th, 6th, and 7th groups of the plants as one month did not conform with the buyer's efforts to give notice in time. The buyer gave notice about the visible defects in the 1st, 4th, 7th, and other groups of the plants by adding a notice on the invoice and sending a letter to the seller as soon as he received the goods on March 23, 2001, without any delay.[27] This betokens the buyer's care not to be deprived of his right to rely on non-conformity in litigation. As the non-conformity regarding the quality of the roots of the 6th group of the plants could have only been discovered after planting, it would not be fair to expect the buyer to give notice about such defects along with the other plants.

The case-law of the Convention is in line with this position too. Regarding the defects that are not *prima facie* visible, in 1994 the Appellate Court Frankfurt discussed the buyer's duty to examine the goods after delivery under the Convention and held that the heavy wrinkles in the leather shoes could only have been noticed by use.[28] In this case, the seller delivered the shoes that had been manufactured from another type of leather that the parties had not agreed upon.[29] In 1996 France Supreme Court dismissed the appeal on the ground that the seller added sugar in the wine to be delivered to the buyer, and the buyer could avoid the contract for that goods based on

---

[25] CISG-AC Opinion no 2: Examination of the Goods and Notice of Non-Conformity Articles 38 and 39 (2004). Available at: https://bit.ly/3q34SFQ (last visited Nov. 27, 2020).
[26] *Supra* note 6.
[27] *Ibid.*
[28] Oberlandesgericht Frankfurt, 5 U 15/93, (1994). Available at: https://bit.ly/33nbYLN (last visited Nov. 28, 2020).
[29] *Ibid.*

non-conformity.[30] Although the buyer did not immediately examine the wine sweetened and partly spoiled, the court found that the defects could not have been discovered otherwise.[31] However, it is worth noting that the France Supreme Court decided in favor of the buyer's avoidance of the contract on the *Code Civile*, not the Convention.[32] In another example, delivery of a T-shirt that contracts by %10-15 (one or two body sizes) after the first washing can be considered as a fundamental breach if the other conditions in the Convention co-exist.[33] Domestic courts should not apply strict rules to the time of the examination and notification of conformity of goods but conduct a case-to-case analysis of the defects that are not *prima facie* visible to the buyer and can only be discovered through use.

Additionally, to require the buyer to plant the 6th group of the plants immediately after the delivery to check the quality of their roots would result in the forced rescheduling of the planting date and unreasonable costs and efforts to the buyer. One of the objectives of the Convention is to protect parties to a contract from unreasonable costs.[34] For this reason, this interpretation would cause unreasonable efforts for the buyer who planned to plant the 6th group of the plants on March 29, 2001.

C. Passing of risk

1. Postponing the passing of risk to the end of the loading

In the Plants case, it was important to determine when the risk had passed to the buyer to establish the parties' liability for the non-performance. According to Article 66 of the Convention, "loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his duty to pay the price, unless the loss or damage is due to an act or omission of the seller". The buyer submitted that some groups of the plants were damaged during the loading onto the truck, while the other groups were damaged as a result of inferior quality of nursing, therefore, the defective performance by the seller.[35] Avoiding to ask the buyer to prove a negative, the Court held that the seller had to prove the conformity of the goods with the sales contract. As the buyer gave notice about the non-conformity, the seller was required to prove the conformity.[36]

The moment of passing of risk is set forth by the Convention in more than one clause. According to Article 67(1), "if the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular

[30] Sacovini/M Marrazza v. Les fils de Henri Ramel, France Supreme Court, 173 P/B 93-16.542, (1996). Available at: https://bit.ly/3mf3Xjr (last visited Nov. 28, 2020).
[31] *Ibid.*
[32] Peter Schlechtriem, Petra Butler, UN Law on International Sales, 101 (2009).
[33] Yeşim M. Atamer, Milletlerarası Satım Hukuku, 250 (2nd ed. 2012).
[34] Schroeter, *supra* note 22, 174; Leisinger, *supra* note 23, 81.
[35] *Supra* note 6.
[36] Peter Schlechtriem and Ingeborg Schwenzer (eds.), Kommentar zum Einheitlichen UN-Kaufrecht, §11 (4th vol. 2005).

place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale". According to the same paragraph, "if the seller is bound to hand over the goods to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place".

In this case, the moment the seller handed over the goods to the carrier engaged by the buyer or the loading of the goods onto the truck is when the risk passed to the buyer. The Court interpreted "to hand over" as the transfer of title of the goods to the first carrier, and held that the risk passed as soon as the loading of the goods for the carriage was over[37]. This interpretation indeed corresponds to the characteristics of the Plants case. However, it can be disputed whether risk does not pass to a buyer until the end of loading in all international sales contracts. Because when a seller is required to deliver goods, it is not always the seller who loads the goods onto the truck. It can be concluded that if parties agreed on the loading of goods for delivery at a particular place by a carrier engaged by a buyer, the risk passes to the buyer as soon as the goods are handed over for delivery, regardless of the status of loading.

2. Can the passing of risk be differentiated for particular goods?

The seller could not defend his position for the 4th group of the plants against the buyer who submitted that this group had been loaded and placed improperly. However, the seller could rely on his timely warning to the buyer that instead of 8 meters of space agreed by the parties, the truck could only offer 6 meters. The seller acted in good faith within the meaning of Article 7(1) of the Convention by asking for the opinion of the buyer on the loading of the goods onto available 6 meters of space on the truck and offering to load less amount of the plants that would fit in the space. Agreeing with the available space on the truck, the buyer accepted the new terms of the contract and implicitly acknowledged that 6 meters might deprive him of the plants in the given conditions because the seller could have asked for 8 meters reasonably for safe carriage and delivery of the plants. Following the buyer's insistence, the parties agreed to amend the terms slightly with an awareness of its consequences.

According to Article 19(3) of the Convention, "additional or different terms relating, among other things, to the price, payment, quality, and quantity of the goods, place and time of delivery, the extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially". In this case, the fact that the buyer provided 6 meters of space instead of 8 cannot be considered as a new offer but it altered the terms of the contract materially. The exchange of information between parties about the importance of a particular duty makes the duty so important that its breach

[37] *Supra* note 6.

will be fundamental.[38] The seller reminded the buyer about the importance of 8 meters of space on the truck in terms of safe carriage and delivery of the goods. Thus, the buyer could not rely on the damages caused by the lack of space on the truck, especially, the 4th group of the plants because he altered the terms on the delivery part materially and acknowledged its consequences by insisting on the carriage.

A better approach would be to examine the passing of risk for each group of the plants individually. Because, for example, while in the 4th group of the plants it is important to examine the passing of risk at the time of handing over to the first carriage, the seller can be liable for its other act or omissions concerning the other groups of the plants. Hence, the Court postponed the passing of risk to the end of loading of all plants. However, the parties' agreement to alter the contractual term on the availability of the truck for carriage that happened technically before the risk passed should not have been discarded.

D. Buyer's duty to examine goods

The buyer's duty to examine is regulated under Article 38 of the Convention. According to Article 38(1), "the buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances". While as a matter of the rule, the buyer must examine within a short period which is practicable in the circumstances, Article 38(2) postpones the buyer's duty to examine the goods to the arrival at the destination. It is clear from the facts that the buyer has fulfilled his duty to examine as soon as he received the goods at the destination. However, it can be disputed whether the buyer had a duty to examine the goods in Burgebrach where the carrier stopped to unload the 10 pallets that were not part of the contract. Can the buyer raise the argument that he was never under the duty to examine the goods in Burgebrach before the arrival at the destination in response to the seller's submission that the goods were damaged during the unloading in transit? If the buyer was under such a duty, he would be deemed to acknowledge the damage to the plants because he did not give notice to the seller, hence, lost his right to rely on the non-conformity under Article 39(1) of the Convention. Nonetheless, the buyer is entitled to rely on the non-conformity of the 6th group of the plants because of the inferior quality of their roots.

The duty to examine goods cannot be isolated from the transfer of title of the goods to the buyer. It is clear from the contract that the carrier was independent of the seller but engaged by the buyer. It can be argued that even though the goods were not delivered to the buyer in Burgebrach, the risk had already passed to the buyer and he had to examine the goods there. This argument can be logically concluded with that the buyer did not examine the

[38] Atamer, *supra* note 33, 244.

goods via the carrier in Burgebrach despite he could have done so, that's why the question of whether the goods were damaged during the unloading in Burgebrach remained unanswered. However, as Burgebrach was not the destination in the meaning of Article 38(2) of the Convention, the buyer cannot be under a duty to examine the goods in Burgebrach. Even though the buyer knew or could have known about the unloading of the other 10 pallets in Burgebrach, he did not know how the plants were placed on the truck and whether the plants needed to be discharged for unloading the 10 pallets. The only person who witnessed the unloading in Burgebrach was the carrier from whom reasonable care for the plants could be expected. Nevertheless, the expectation cannot exceed the care nor can be interpreted as a duty, any breach of which could result in liability of the parties.

E. The decision of the court

In some matters, the Court asked for an expert's opinion. According to the results of the expert examination, the quality of the delivered goods was under average. This inferior quality was related to the nursery of the plants by the seller. The expert also pointed out that the visible damages to the plants were not inherent, in contrast, a result of improper loading onto the truck. The expert referred to the bale cargo to underline that the damaged ones were placed under the other plants.[39] Although the vehicle was not inappropriate for delivery, the loading of the goods caused the damage in this case. Hearing the expert and witnesses, the Court held that there was a defective performance by the seller as after the risk passed the buyer did not unload the goods before the arrival at the destination and approved the buyer's claim to reduce the price. The buyer had to pay the price for non-defective plants, however, he lost his right to rely on the defective *Liquidambar styracifula* from the 6th group because of the delay in the notification. The Court found the seller liable for the judicial expenses and carriage fees as well.[40]

Here, the Court should have not ignored the fact that the seller had warned the buyer about the lack of space on the truck, and the buyer should have understood the consequences of the carriage in those circumstances. Therefore, the buyer cannot be justified to request the price reduction for the goods damaged as a result of improper loading. On the other hand, the buyer gave notice about non-conformity in the 6th group of the plants due to the nature of the goods. The Court did not discuss the effects of the seller's notification to the buyer about the lack of space on the truck before the risk passed to the buyer on the damage to the goods caused by improper loading, and the buyer's duty to examine the goods in Burgebrach.

[39] *Supra* note 6.
[40] *Ibid*.

Conclusion

The Plants case is one of those cases to envisage how the Convention is applied in different national jurisdictions despite the aim of the Convention to establish a uniform practice. This case has left the following three interpretations to international commercial law, in particular, for the application of the Convention:

1) In case of the sale of more than one goods of the same kind, a notice about non-conformity of all goods is sufficient, and there is no need to give notice about each one of the goods separately;

2) The notice about the non-conformity of goods must help the seller to understand the nature of non-conformity so that the seller can take the next steps to cure the defects. Any suspicion or uncertainty about the nature and kind of the non-conformity on the notice must be discussed and resolved by the parties;

3) The goods are handed over as soon as the loading is over.

Although all of these interpretations can be applied in analogous cases to which the Convention is applicable, the third interpretation must be handled carefully because the identity of the loader of the goods can be essential in some cases. The courts may consider the passing of risk to the buyer as soon as the goods are collected for delivery by the carrier arranged by the buyer at a particular place without waiting for the loading to be over. In such cases, the courts can also take into account the loading of the goods by the seller or the carrier arranged by the seller. To determine the passing of risk on a case-to-case basis would therefore be more appropriate to the complex character of the international commercial law where more parties can be involved in the carriage.

As it was in the Plants case, it is more efficient to examine the defect of each group of the plants individually and reduce the price accordingly. However, the interpretation of the reasonable time for the notice as one month with a reference to German law did not fit in the 6th group of the plants. Because the buyer could not be aware of these defects before planting, not to mention the effects of the forced rescheduling of the planting date on his business.

Finally, regarding the 4th group of the plants where the Court found the lack of space on the truck as the cause of the damage, the seller's warning to the buyer and offer to deliver fewer plants must not have been discarded. The reason why the plants were loaded improperly was the buyer's insistence to deliver them within 6 meters of space instead of 8. Thus, the Court should have considered the seller's efforts to deliver the goods safely on the one hand, and the buyer's acts and insistence on the other hand, and let him bear the risk caused by new contractual terms he altered.