

The Application of the CISG by the Egyptian Courts: Egypt's Court of Cassation Case No. 2490 of Judicial Year 81, Rendered on 23 June 2020

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Abstract

This Case Note discusses the approaches adopted by the Egyptian courts on the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) which could be threatened by the inappropriate application of the domestic laws.

This Case Note clarifies whether the Egyptian courts' approach is deemed a support, or a threat to the CISG.

Keywords

CISG; UNCITRAL; commercial law; sale of goods; private international law

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Introduction

The United Nations Commission on International Trade Law (UNCITRAL)¹ plays a significant role in harmonizing the laws of international trade through formulating legislative and non-legislative instruments in many areas of commercial law, including, inter alia, the sale of goods.² In this context, the United Nations Convention on Contracts for the International Sale of Goods (CISG) has been recognized as one of the most successful attempts of the UNCITRAL to unify the rules that govern the international sale of goods.³ To reach this latter end, the uniform application and interpretation of the provisions of the CISG by national courts is essential. This Case Note sheds light on Egypt's Court of Cassation's approaches concerning the application and the interpretation of the CISG to the international sale of goods. The role of Egypt's Court of Cassation is to unify the interpretation of the laws and the application of such interpretation by all the other lower courts in Egypt. Therefore, the judicial principles that are rendered analysed in this Case Note represent the approach that should be followed by all the Egyptian courts with respect to the interpretation and application of the CISG.

Initially, to understand the key facts of the case presented below, it is essential to have a broad understanding of Egypt's Civil Courts system structure. Briefly, Egypt's Civil Courts have a three-tiered structure, as follows:

- i. Courts of First Instance, which represent the first level of litigation;
- ii. Courts of Appeal, which represent the second level of litigation that review the rulings of the Courts of First Instance, covering questions of fact as well as questions of law;⁴ and
- iii. Court of Cassation, which is the highest court in Egypt that reviews the rulings of the Courts of Appeal to provide uniform interpretation and application of the law. However, appealing to the Court of Cassation is limited to the issues of law, but not facts.

1. Facts

1.1 Pre-dispute facts

On 19 April 1994, an Egyptian company (the "Egyptian Company") entered into a sale of goods contract with the Australian Wheat Board ("AWB") for supplying Australian wheat to the Egyptian Company on several shipments.⁵

On 18 April 2000, the Egyptian authorities rejected one of the shipments for non-compliance with the Egyptian standard specifications.⁶

On 10 December 2001, the Egyptian Company, on the one hand, served a notice to AWB, by virtue of which it rejected the shipment for the lack of conformity. On the other hand, to release the shipment, the Egyptian Company took all the needed corrective actions to make the shipment compatible with the Egyptian standard specifications, which cost the Egyptian Company an amount of EGP 264,600 (the "Remedy Cost")⁷.

¹ UNCITRAL is established by the United Nations General Assembly by resolution No. 2205 (XXI) of 17 December 1966.

² United Nation Commission on International Trade Law, A Guide to UNCITRAL, Basic facts about the United Nation Commission on International Trade Law, Vienna (2013), <https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/12-57491-guide-to-uncitral-e.pdf>.

³ Harry M. Flechtner, Introductory Note, United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11 April 1980, February (2009), <https://legal.un.org/avl/ha/ccisg/ccisg.html>.

⁴ Dr. Mohamed S. E. Abdel Wahab, Article, An Overview of the Egyptian Legal System and Legal Research (2019), https://www.nyulawglobal.org/globalex/Egypt1.html#_ednrefl.

⁵ Judgement issued from the Egyptian Court of Cassation on Case No. 2490 of Judicial Year 81 on June 23, 2020, p. 5.

⁶ *Ibid*, p. 5 and 6.

⁷ *Ibid*, p. 2.

1.2 Dispute facts

1.2.1 *The Dispute before the Court of First Instance*

In 2003, the Egyptian Company filed a case against AWB before an Egyptian Court of First Instance to claim the Remedy Cost in addition to its legal interests.⁸

AWB argued that: (i) the Egyptian Company did not serve any notice with respect to the lack of conformity as per Articles 38 and 39 of the CISG; and (ii) that AWB was not notified of the notice dated 10 December 2001.⁹

The Court of First Instance declined the case.

1.2.2 *The dispute before the Court of Appeal*

The Egyptian Company appealed the ruling of the Court of First Instance.

AWB presented the same arguments that were submitted before the Court of First Instance with respect to the non-compliance with the notice of any lack of conformity in accordance with the provisions of the CISG.

The Court of Appeal did not respond nor review AWB argument of the non-compliance with the notice of the lack of conformity as per the CISG, breaching AWB right of defence and issued its ruling in favour of the Egyptian Company based on the fact that the Remedy Cost was essential to make the wheat valid for human use.

1.2.3 *The Dispute before the Court of Cassation*

AWB challenged the ruling of the Court of Appeal before the Court of Cassation. The Court of Cassation revoked the challenged ruling for the deficiency in reasoning, breaching defence right, and the misapplication of the laws, as detailed and analysed below.

2. Legal analysis of the Cassation Judgement

The Court of Cassation conducts its legal analysis by reviewing the laws governing the dispute, then apply the correct interpretation of the said governing laws on the facts of the case to reach its decision. I will present the legal analysis of the Court of Cassation in this section, as follows:

- i. the laws governing the dispute and the legal reasoning of judgement;
- ii. the application of the governing laws to the dispute; and
- iii. the Court's decision.

2.1 The laws governing the Dispute and the legal reasoning of the Judgement

2.1.1 *The law governing the Dispute*

Given that Egypt is a contracting state to the CISG and that the CISG was approved by the Egyptian Presidential Decree No. 471/1982 and entered into in force in Egypt as of 1 August 1988, the Court of Cassation concluded that the dispute shall be governed by the provisions of the CISG.¹⁰

⁸ *Ibid*, p. 2.

⁹ *Ibid*, p. 3.

¹⁰ *Ibid*.

2.1.2 *The legal reasoning of the Judgement*

The Court of Cassation provided the following interpretation of the CISG provisions that should be applicable to the dispute:

The buyer's right to examine the goods: The buyer shall have the right to examine the goods when they arrive at their destination in case the sale contract of goods included a carriage of goods in accordance with Article 38 of the CISG¹¹.

Notice of lack of conformity: According to Articles 6 and 39 of the CISG, the buyer shall notify the seller of any lack of conformity that has been discovered or ought to be discovered in the goods within the following time limits (the "Notice Obligation"):

- a. a reasonable time as of the date on which the lack of conformity has been discovered or ought to have been discovered.

The reasonable time during which the notice shall be served should be determined on a case-by-case basis taking into consideration the following:

- i. the contractual circumstances;
 - ii. the nature of the goods;
 - iii. the nature of the lack of conformity (apparent or latent);
 - iv. the professional and experience of the buyer; and
 - v. the business practices.
- b. a maximum period of two years as of the date on which the buyer has actually received the goods unless the parties agreed on longer/shorter period (the "Maximum Period").

It is worth noting that the Maximum Period shall not be applied unless the reasonable time limit criteria would be longer than the said Maximum Period.¹²

Failure to comply with the Notice Obligation: Failing to notify the seller with the lack of conformity deprives the buyer of its right to rely on the lack of conformity for any future claims against the seller unless the lack of conformity is related to matters that the seller is aware of or ought to be aware of as per Article 40 of the CISG.¹³

2.2 **The application of the governing laws to the dispute**

The Court of Cassation applied the above rules on the facts of the Case and concluded the following:

- CISG shall be applied to the dispute. Therefore, the Egyptian Company shall have the right to examine the goods and shall notify AWB of any lack of conformity within a reasonable time as of discovering the lack of conformity.
- The date on which the lack of conformity was discovered is deemed the date on which the shipment was rejected by the Egyptian authorities (i.e., 18 April 2000). That said, the Egyptian Company should have served the lack of conformity notice by no later than 17 April 2002.¹⁴

¹¹ *Ibid.*

¹² *Ibid.*, p. 4 and 5.

¹³ *Ibid.*, p. 3 and 4.

¹⁴ *Ibid.*, p. 6.

- AWB argued before the Court of First Instance and the Court of Appeal that the Egyptian Company did not serve any lack of conformity notices and that AWB was not served the notice dated 10 December 2001.¹⁵
- The Court of Appeal did not respond to AWB argument of not receiving any notice with respect to the lack of conformity leading to breaching of defence and did not investigate whether or not the Egyptian Company has fulfilled the Notice Obligations as per Articles 38 and 39 of the CISG leading to a deficiency in reasoning and a misapplication of laws.¹⁶

2.3 Decision of the Court of Cassation

The Court decided to (i) revoke the ruling of the Court of Appeal for the deficiency in reasoning, breaching defence right and the misapplication of the laws for not reviewing the fulfilment of the Notice Obligations as per the provisions of the CISG; and (ii) to refer the case to the Court of Appeal to be re-reviewed with a new panel.

3. Critical analysis

3.1 Application of the CISG by the Egyptian Courts

The binding power of the international treaties, under Public International Law, causes the automatic application thereof when the requirements of its application are met.¹⁷ In this context, the CISG has satisfied the entry into force requirements under the Egyptian laws since 1988. That being said that Egyptian courts are obliged to, automatically, apply the CISG on any dispute that arise from contracts of sale of goods between parties whose place of business are in different contracting States to the CISG.¹⁸

In addition, the Court of Cassation adopts an approach to apply the CISG, whenever applicable, even if the parties to that dispute do not invoke the application thereof. This approach was confirmed in another case between an Italian seller and Egyptian buyer entered into a contract for the sale of marble where the Court of First Instance and the Court of Appeal were erred in applying the domestic laws to the dispute without paying any attention to the CISG.¹⁹

In view of the above, the efforts of the Court of Cassation to redirect the attention of the lower courts towards the correct application of the CISG, whenever applicable, instead of domestic laws is notable and well recognised.

3.2 Uniform interpretation of the CISG by the Egyptian Courts

The interpretation of the Court of Cassation with respect to the provisions of the CISG, as detailed in point 2.1 [the legal reasoning of the Judgement], was made in light of the explanatory notes of the CISG and the 1978 Secretariat Commentary thereon.²⁰

In view of the above, Egyptian courts are adopting an efficient approach towards the uniform application of the CISG considering its international character and the need to promote uniformity in its application.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Ani Nadareishvili, LLM short thesis, Application of the CISG by Courts and Arbitral Tribunals: Comparative Analysis, the Central European University (2015), http://www.etd.ceu.hu/2015/nadareishvili_ani.pdf.

¹⁸ Article 1 of the CISG. Note that if any court did not apply the CISG automatically (whenever applicable), the Court of Cassation would revoke this judgement. However, in this Case Note, the Court of Appeal's fault was disregarding the argument of AWB of not receiving lack of conformity notice and not investigating whether the notice obligations was fulfilled or not.

¹⁹ Egyptian Court of Cassation No. 979 of Judicial Year 73 on 11 April 2006.

²⁰ Commentary on the Draft Convention on Contracts for the International Sale of Goods prepared by the Secretariat/ UN DOC. A/CONF. 97/5, <http://www.cisg-online.ch/index.cfm?pageID=644>.