

Case 131: CISG 1; 14; 35 (2)(c); 39

Germany: Landgericht München I; 8 HKO 24667/93

8 February 1995

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The German defendant ordered a computer programme from the French plaintiff. The programme was delivered and installed. The parties also intended to conclude a second contract concerning the use of the programme, but the negotiations on that contract failed. The defendant then refused to pay the purchase price of the programme, which was delivered and installed.

The court held that the CISG was applicable as the parties had their place of business in different CISG Contracting States and as the CISG applies to standard software. The court further found also that the parties had agreed on all particulars of the sale of the programme and therefore had concluded a sales contract.

It was held that the defendant could not rely on a possible lack of conformity of the software programme, since it had not effectively given notice of the defect but had only asked for assistance in addressing the problems identified. As a result, the court ordered the defendant to pay the purchase price and interest at the rate of 5%.