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Review Paper

TYPES OF DAMAGES UNDER THE CISG

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Abstract. *The breach of a contract of sale may cause damage. Naturally, the aggrieved party may claim damages as a result of the breach of the contract of sale. Therefore, the Vienna Convention on International Sale of Goods (CISG, 1980) regulates damages in Articles 74 -78 of the CISG. Article 74 provides foreseeability and full compensation principles as general principles for determining damages resulting from all types of breaches. Articles 75 and 76 regulate damages resulting from the fundamental breach caused by the avoidance of a contract of sale. Article 77 puts the injured party under the obligation to mitigate damage. Article 78 regulates the issue of determining interest rates. Although these provisions seem comprehensive at first glance, they do not cover some important issues. Case law, legal doctrine, and gap-filling rules are very important for the interpretation of these provisions. The purpose of this paper is to draw a line in the interpretation of these provisions on damages for breach of contract. The doctrinal research methodology shall be employed in this paper.*

Key words: *CISG, damages, loss of profit, market price rule, incidental damage*

1. INTRODUCTION

The legal consequences of a breach of contract are the focal point of contract law (Magnus, 2014: 257). If the defaulting party breaches the contract of sale, damage may occur as a result of the breach of the contract of sale, and the defaulting party has to recover the damages of the damaged party. In national legal systems, damages constitute one of the most essential remedies after a breach of contract of sale has occurred, as compensation may be claimed by the damaged party through any other available remedies, such as specific performance, suspension of performance, and avoidance of the contract (Eiselen, 2005: 32). Without remedies, there is no effective contract law (Magnus, 2014: 257). The

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UN Convention on International Sale of Goods (hereinafter: the CISG)[1], adopted in Vienna in 1980, regulates damages for breach of contract in Articles 74 - 78 of the CISG. These provisions, regulate the basic principles in determining damages for breach of contract in international sales law.

2. The Sphere of Application of the CISG Damages Provisions

The first issue an arbitral tribunal or a court has to settle in cases involving breach of contract in international law of sales is whether the CISG is the applicable law or not. In case the CISG is the applicable law, Article 74 of the CISG regulates the damages as a result of the breach of the contract of sale. Articles 75 and 76 CISG regulate the consequences of damages as a result of avoidance of the contract of sale. According to Article 74 CISG, the basic rule on damages is that it only emerges in case of a claim under the Article 45(1)(b) or 61(1)(b) CISG).[2] These two articles state that, if one party fails to perform its contractual obligations in the contract of sale, the other party may claim damages based on Articles 74-77 CISG. Article 74 CISG is always applicable whether the contract of sale has been avoided or not (Galvan, 1998: 22-23). Therefore, these three provisions are essential to determine the scope of damages in the CISG.

If the parties decide, the principle of freedom of contract may shape the content arising out of damage as a result of breaching the contract of sale. Pursuant to Article 6 CISG, it is clearly stated that the parties may vary or exclude the effects of the CISG provisions as a result of the principle of party autonomy. In the ICC Court of Arbitration Case No. 7585 of 1992, a Finish buyer and an Italian seller agreed on the payment of a "compensation fee" equivalent to 30% of the contract price where there is a contractual breach, even in case of a *force majeure*. The arbitral tribunal accepted this clause although an impediment beyond the parties' control occurs (Galvan, 1998: 24). Therefore, the buyer and the seller may vary the conditions governing damages.

2.1. Requirement for the Award of Damages under Article 74 of the CISG

Article 74 of the CISG is the most important provision which applies to all types of damages in the CISG. Pursuant to Article 74 CISG, "*Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract*."

Thus, under Article 74 CISG, a claim for damages must meet two criteria. First, a contractual breach must cause actual damage. There must be casual relation between breach of contract of sale and damage. The damage can be covered through full compensation (damages for breach of contract). Naturally, it excludes punitive damages from common law systems. The

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[1] UN Convention on Contracts for the International Sale of Goods (CSIG), Vienna 1980, UN Commission on International Trade (UNCITRAL), United Nations, New York, 2010;

[2] Article 45(1)(b) CISG: "If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may: (a) …….....; (b) claim damages as provided in articles 74 to 77
Article 61(1)(b) CISG: "If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may: (a) .....……. ; (b) claim damages as provided in articles 74 to 77."

second necessary criterion is foreseeability of the breaching party which means that a reasonable person in the same situation ought to have foreseen a possible consequence at the time of the concluding the contract (Eicher, 2018:32). Thanks to foreseeability, in the course of the formation of a contract of sale, a party is held liable for foreseeable damage and cannot be held liable for unforeseeable events (Baş, 2021: 961). This criterion is applied in the light of the facts which that party knew or should have known (Lookofsky, 2007:75). However, there is an opposite view in the legal doctrine which entail the opinion that the seller must have knowledge that tradable goods are sold to a third merchant (Schwartz, 2006:3). The risk of those losses falls in the knowledge of the breaching party as an experienced merchant (Eicher, 2018:31). As a result, foreseeability and full compensation rules are limitations for the calculation of damages in Article 74 CISG (Singh, Zeller, 2007:217). However, the legal doctrine and the case law determine the precise line of this principle in the CISG (Munoz, Ament-Guemez, 2017:201).

2.1.1. Types of Damages

2.1.1.1. Incidental Damage (Consequential Damages)

Incidental or consequential damage means that a party bears the additional costs as a result of the damage sustained by the aggrieved party. It includes any kind of non-performance of obligation which may cause additional damage arising from a particular situation and the arrangements that a party had already performed. In this regard, as noted by the Court of Appeal in Celle, Germany (2 September 1998), consequential damage implies damage that is triggered by the fact that the promisee's liability bears the cost against a third party as a result of the contract of sale (Zaheeruddin, 2016:53). The compensability of consequential damage is not explicitly mentioned in Article 74 CISG. However, the aggrieved party may recover consequential damages, such as costs borne in storing, repairing, and preserving the defective goods, the inspection of non-conforming goods, and shipping and customs costs incurred when returning goods (Zaheeruddin, 2016:53).

2.1.1.2. Loss of Profit

Loss of profit is a type of damage that is expressly stated in Article 74 CISG. The reason behind this specific provision in Article 74 CISG is that some legal systems do not state the loss of profit concept (Nielsen, 2022:19). This profit exists if the goods are not resold by the buyer as a result of the seller's breach of the sales contract and the loss of resale is normally foreseeable (Huber, Mullis, 2007:276). Moreover, the full compensation is a limitation on the loss of profit. In this situation, the buyer has the burden of proof over the seller for the loss of profit. It must be proved with reasonable certainty (Huber, Mullis, 2007: 276). It is very easy to prove it for the buyer if both parties add a contractual clause that the seller admits that the buyer purchases the goods to sell to the third person. Otherwise, in order to prove loss of profit against the aggrieved party, the buyer may submit a revolving letter of credit to its long-standing buyer to sell the subject matter of goods.

Article 74 of the CISG does not include a provision regarding the calculation of loss of profit. In order to examine the loss of profit, the arbitral tribunal must take into account the principle of full compensation, foreseeability, and the prevention of any increase in profit in connection with the breach of contract of sale (Nielsen, 2022:19). However, there are various calculations methods for loss of profits envisaged in Article 74 CISG. In the case *Chrome-Plating Machines Production-Line Equipment (12 July 1996)*, a Swiss seller and

a Chinese buyer concluded a contract of sale to provide for the sale of a set of chrome-plating production line equipment at an agreed price CIF Shanghai. The buyer failed to pay the contract price. It triggered the seller to resell at a lower price than the seller's original price. The arbitral tribunal accepted the calculation method that the difference in machine prices between the resale price and the contractual price if the contract had been fully performed (Singh, Zeller, 2007:219-220).

In the case *Tin Plate* (17 October 1996), a Korean seller and Chinese buyer concluded a contract for the sale of Korean Tin Plates. The seller failed to deliver the goods. The buyer filed an arbitral case against the seller and sought compensation of 432.000 yuan for the loss of expected profit. The calculation method was the determination of the domestic sales contractual amount less the cost under the present contractual and other expenditures. However, import duties and gains taxes were not deducted. Upon this situation, the seller claimed that they should have been added to the calculation. The arbitral tribunal accepted the majority of the seller's calculations. The loss of expected profits was awarded as the difference between the contractual price and the price under the contract of sale. However, the arbitral tribunal emphasized the amount of the loss of expected profit should be considered the contractual price for the domestic contract of sale: the sum of the price in the contract, customs price, and gains taxes (Singh, Zeller, 2007:220). As a result, there is no single calculation method to examine the loss of profit envisaged in Article 74 CISG. Gap-filling rules may also be applied for the calculation of the loss of profit under Article 74 CISG.[3] By analogy, even calculation methods envisaged in Articles 75 and 76 can be applied for the loss of profit specified in Article 74.

2.1.1.3. Legal Costs

After the arbitral tribunal proceeding and the civil proceeding are instituted, parties have to bear legal costs including attorney fees and court fees. There are two opposite approaches regarding the allocation of attorney fees: the loser-pays rule and the American rule. According to American rule, each party involved in a civil case bears its own costs regarding the litigation process; according to the loser-pays rule, the losing party pays all legal costs to the winning party partially or completely (Pınarbaşı, 2018:182). At first glance, it seems that the principle of full compensation supports the compensation of legal costs but legal costs are not compensable under the CISG. One of the main reasons behind this situation revolves around whether the recovery of legal costs is a procedural law issue or a substantive law issue governed by the CISG (Schwenzer, Hachem, 2008:103). Legal costs arise after a dispute occurs. Article 74 CISG covers costs in the prelitigation term (Schwenzer, Hachem, 2008:104). Moreover, Article 74 CISG does not clearly include a provision for the recovery of legal costs by an aggrieved party. In the case *Zapata*, Justice Posner stated that "*the Convention is about contracts, not about procedure. The principles for determining when a losing party must reimburse the winner for the latter's expense of litigation are usually not a part of a substantive body of law, such as contract law, but a*

[3] Article 7 CISG: *"(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade. (2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."*

part of procedural law." (Pınarbaşı, 2018:183-184). This is one of the reasons that legal costs are not compensable under the CISG.

If legal costs are claimed as damage, it must be based on Article 74 CISG. The foreseeability criterion is a limitation on legal cost. At first glance, the attorney's fee is foreseeable when the contract of sale is concluded but this is part of the undertaken risk. It is not certain which party will win the case if the loser-pays rule is applied. Court costs and arbitral tribunal fees depend on cases variously. Therefore, there are uncertainty and unforeseeability for the calculation of legal costs under Article 74 (Schlectriem, 2002:208).

2.1.1.4. Pre-contractual Liability

Pre-contractual liability occurs for matters which have occurred in negotiations before the parties have concluded a contract of sale. A party may suffer some loss when the other party break negotiations suddenly after having confidential information regarding the aggrieved party's trade practice. Different national legal systems have a different scope of dealing with pre-contractual liability (Nielsen, 2022:41). Therefore, "*culpa in contrahendo*" falls outside the scope of the CISG. Although the Convention is not the applicable law, the injured party has legal remedies in national legal systems (Galvan,1998:23).

2.1.1.5 Non-pecuniary Loss (Non-pecuniary Damages)

Material (pecuniary) damage is damage that lessens the current and potential assets of the company. Traditionally, non-material (non-pecuniary) damage includes loss of amenities, suffering mental distress, pain, and psychological injury. Non-pecuniary damage is damage that affects the trader's enjoyment of commercial life and reputation, and it is not excluded under the Convention (Nielsen, 2022:40). It is not impossible to imagine that the aggrieved party may lose his potential customers as a result of breaching the contract of sale (Nielsen, 2022:36). In one doctrinal view, non-pecuniary loss takes only the form of damage of goodwill, often called the reputation of goods, or damage to the reputation of a firm in business law (Busctöns, 2015:39). However, loss of goodwill is very difficult to measure because it is very difficult to prove "a sum equal to the loss" under Article 74 CISG with reasonable certainty (Nielsen, 2022:36).

In an arbitration case, the US buyer brought action to the Russian seller in connection with the contract of sale concluded between the buyer and the seller in January 1998. The buyer claimed that the breach of contract in the first instalment caused a delay in selling and a reduction of prices of the goods in the second instalment. It caused the loss of reputation of goods and goodwill on the market. The arbitral tribunal declined this claim for the following reasons: 1) the causal link does not exist between damage and breach; 2) the buyer could not prove the amount of the commensurate claim with breach; 3) the foreseeability was not proved (Zaheeruddin, 2016:54).

Unlike the second rejection of the aforesaid arbitral tribunal decision, the Helsinki Court of Appeal[4] granted damages for different damage, including loss of goodwill, on the basis of the following estimate: *"[i]n estimating the loss resulting from loss of goodwill, the Court of First Instance has taken into consideration the fact that the [buyer] has not done business in this trade sector before the coming about of the business relationship now in question. ... The Court of First Instance has estimated the damage caused to [the buyer]*

[4]Helsinki Court of Appeals, Helsingin Hoviokeus, S 00/82, 26 October 2000.

on the basis of a rule laid down [in] the Civil Procedure Act (section 17)." (Buschtöns, 2015:40-41). This judgment shows that the award of damages for loss of goodwill is indeed a pecuniary value without demonstration of actual losses. In these decisions, it is agreed that non-pecuniary losses are recoverable but it is very hard to prove the actual amount due to their non-material nature and the lack of proof (Galubovic, 2013:15).

2.2. Requirements for awarding damages under Articles 75-76 of the CISG

2.2.1. Determining Damages through Substitute Transactions

Pursuant to Article 75 of the CISG, the party claiming damages may recover the difference between the price in the contract of sale and the price in a substitute transaction carried out by the injured party. Supposing that the second transaction is the substitute transaction for the first transaction, there would be insignificant or no loss if the cover price gained in the second transaction exceeded the price stipulated in the breached contract (Al-Hajaj, 2015:222). Therefore, it may be deduced that the buyer can receive the difference between the price in the original contract and the price that it accepted from the sale to some other buyer of the goods determined in the avoided contract under the assumption that the price of the original contract would be higher than the latter price. The reason behind this rule is that the aggrieved party who has declared the contract of sale avoided will look for a substitute transaction since avoidance of the contract of sale releases the buyer and the seller from their contractual obligations. It is normally expected that the buyer buys substitute goods or the seller resells the goods to a different buyer. Moreover, encouraging the aggrieved party to reach the conclusive purpose of the contract of sale in substitute performance is likely to cause the minimization of the damages breached by the contract of sale (Al-Hajaj, 2015:222).

Pursuant to Article 75 CISG, there are two necessary conditions to calculate the damage formula. The substitute transaction must be carried out in "*a reasonable manner*", and it must be completed within "*a reasonable time after avoidance*" (Al-Hajaj, 2015:222). It should be emphasized that there is a limitation that a substitute transaction is compensable to the extent that it has been made in "*a reasonable manner and within a reasonable time after avoidance*." How should the term "reasonable manner" be understood? Schlechtriem interprets it as follows: "*If the promise acted as a careful and prudent businessman and observed the relevant practice of the trade concerned*" (Galvan, 1998:37). Therefore, it is allowed for the substitute goods to deviate from the original goods as long as the deviation is reasonable. As for the time limit, it is only certain that it starts running from the moment of avoidance of the contract of sale. Due to the nature of international trade, it is decided on the case by case basis. In a German case, a German shoe buyer did not sell until two months after the contract of sale was avoided. This duration was considered a reasonable time by the German court (Galvan, 1998:37). A buyer who is aggrieved by a seller's breach may not simply cover the transaction and an aggrieved seller may not resell goods at any price or at any time. If these conditions are not met, the aggrieved party may cover the loss as if the substitute transaction has not been made (Al-Hajaj, 2015:223).

It is very difficult to prove damage, especially when it involves specific goods, when there is no pre-order for the resale of goods, or when a new business enterprise has no record of sale with comparable prices, because the proposed calculation method here only requires knowledge of the price at which the goods were sold by the seller to the second buyer (Munoz, Ament-Gimenez, 2017:216).

2.2.2. Determining Damages on the basis of the Market Price

Pursuant to Article 76 of the CISG, the party claiming damages may recover the difference between the price stipulated in the contract and a current (market) price for the goods at the time of avoidance of the contract of sale. This rule assumes that the goods have not been taken over (by the party claiming damages) under the breached contract. However, if the goods have been taken over by the party who claims damages before the contract of sale was avoided, the current (market) price at the time of such taking over should be taken into account instead of the current (market) price at the time when the contract of sale was avoided (Al-Hajaj, 2015: 226). Article 76 CISG is applied in the calculation of damage if there is no purchase for the buyer or no resale for the seller under Article 75 CISG (Zaheeruddin, 2016:51).

Article 76 of the CISG is applied at the time of avoidance of contract of sale when the aggrieved party does not conclude a substitute transaction with a third party. The market price is the general price in the market for the same kind of goods at the place of delivery of goods. In international sale of goods, the market place is designated place where the first carrier hands over the goods to the buyer. There is a suitable place for a seller to measure the market price when the shipment is obstructed as a result of the buyer's breach. If there is no (market) price at the place of delivery of goods, the aggrieved party may claim the current price of comparable or similar goods at different market places, if such a price may be a reasonable substitute (Al-Hajaj, 2015:226). The term "reasonable substitute" has not been. It depends on the situation and must be examined on the case-by-case basis in view of the interest of both parties (Al-Hajaj, 2015:227). In the case *Silicate-Iron Case CIETAC-Shenzhen Arbitration, China* (18 April 1991)[5], the arbitral tribunal did not accept the quotations (on terms of sale and payment) published in an international *commerce* magazine because the reported quotations were written for markets which differ from the market place of the delivery of goods. Therefore, the arbitral tribunal accepted the price agreed by the aggrieved seller in a substitute transaction which was not ultimately made (Al-Hajaj, 2015:227).

2.3. The Duty to Mitigate the Loss under Article 77 of the CISG

Pursuant to Article 77 of the CISG, the aggrieved party has an obligation to take relevant measures to mitigate the loss, but this provision is subject to the limitation envisaged in Article 74 CISG (Schneider, 1997:236). Article 77 CISG states: *"A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated*."

Considering that the first sentence of Article 77 CISG imposes an obligation on the aggrieved party to mitigate the damage (loss) resulting from the breach of contract, courts or arbitral tribunals may require such mitigation by allowing a set-off in favour of the breaching party as a result of the failure of the non-breaching party to mitigate. According to the second sentence, there is no intention to place liability on the aggrieved party for the failure of avoidance of damages (Schneider, 1997:236). However, it means precluding an aggrieved party from covering damages that could have been avoided by taking reasonable measures (Schneider, 1997:236). In this situation, the aggrieved party's performance

[5] Silicate-Iron Case CIETAC-Shenzhen Arbitration, China (18 April 1991).

interest can be protected with a lower amount of damages, and the breaching party can enjoy the remaining money in business life (Saidov, 2008:126-127). In accordance with these interpretations, there is a third interpretation of Article 77 CISG, which is that "*mitigation of loss can become a sword as well as a damages shield – by drawing on the "general principles" provision of the CISG Article 7(2) to create a duty of "loyalty to the other party to the contract*." (Schneider, 1997: 236-237). Therefore, failure to mitigate damage (loss) may constitute a breach of the contract of sale and cause recoverable damages (Schneider, 1997:237).

2.4. Interest Rate under Article 78 of the CISG

The interest rate has the economic function to preserve the value of money for the injured party (Kizer, 1998:1288). It is an important issue to calculate total damage in detail. Thus, Article 78 of the CISG refers to the interest rate regarding damages, stating as follows:

"*If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under Article 74*."

It is evident that a party may request interest on a sum owed by the other party and that this does not have an effect on claiming damages under Article 74 CISG (Galvan, 1998:39). Yet, this provision is silent on the calculation of the interest rate, based on the amount of damage and other factors. (Schneider, 1997:230-231). Therefore, case law determines interest rates in CISG disputes on the basis of relevant factors, the gap-filling rule, equity, and trade usage. Two different approaches may be observed in the case law of arbitral tribunals.

Firstly, the interest rate is determined in conformity with the CISG general principles (Schneider, 1997:234). In the ICC case No. 8611/1997, interest on interest is not accepted in a CISG dispute (Galvan, 1998:39) because this type of interest is not compatible with the full compensation principle envisaged in Article 74. This basic principle is applied in an arbitral decision[6] as follows: "*One of the general principles underlying the CISG is that of 'full compensation' of the loss. It follows that, in the event of failure by the debtor to pay a monetary debt, the creditor, who as a business person must be expected to resort to bank credit as a result of the delay in payment, should therefore be entitled to interest at the rate commonly practiced in its country*…" (Schneider, 1997:234).

Secondly, by virtue of the principles governing the conflict of law in the forum (*lex fori*), the interest rate is determined as a result of applicable law rules. Then, the law of the forum determines the interest rate without reference to its conflict of law principles (Schneider, 1997:234-235). When determining the interest rate, some connecting factors play decisive roles, such as the law of the place of payment, the law of the debtor or creditor, and the law of the place of actual loss (Schneider, 1997:235). In an ICC case involving a dispute between an Italian debtor and a Yugoslav creditor over the sale of cow hides, the arbitrator ruled that the creditor was entitled to get interest from the debtor under Article 78 CISG but noted that there was no single internationally determined interest rate in international business life. However, the arbitrator emphasized that the creditor's place of business was the connecting factor in determining the interest rate for damage incurred due to delayed payment in Private International Law. Thus, the Yugoslav interest rate was awarded in the dispute (Kizer, 1998:1298).

[6] For the full text of this decision see Unilex database 1995/II, d. 1994-13(English translation of German text)

3. CONCLUSION

The UN Convention on International Sale of Goods (CISG) regulates damages for breach of contract in Articles 74-78 of the CISG. Article 74 of the CISG is the basic rule including principles for the calculation of damages. Although it does not offer a calculation method, it has established two criteria: the principle of full compensation and foreseeability. These criteria are applied to all types of damages, and gap-filling rules cannot be incompatible with these criteria. While full compensation excludes overcompensation (Akşin, 2016:23), the purpose of the foreseeability requirement is to ensure that parties are precluded from claiming gross liability, except for possible economic risks in the course of formation of a contract of sale (Karabaş, 2018:71). Therefore, the aforesaid types damages types are assessed under these two criteria. Unlike Article 74 of the CISG, Articles 75 and 76 offer a calculation method when the contract of sale is avoided as a result of a fundamental breach of contract of sale. Under Article 75 CISG, the party claiming damages may recover the difference between the price stipulated in the contract of sale and the price in a substitute transaction carried out by the damaged party. Under Article 76 CISG, the party claiming damages may recover the difference between price in the contract and a current (market) price (Al-Hajaj, 2015:222-226). The application of Articles 75 and 76 CISG is more limited than the application of Article 74 CISG. Article 77 CISG obliges the aggrieved party to mitigate the loss in case the damage occurs as a result of the breach of the contract of sale. Thanks to this provision, the damaged party is precluded from becoming indifferent in the aftermath of a contractual breach while the breaching party expects the payment of all accruing damages or losses (Rostila, 2017:46). Article 78 CISG regulates the interest rate for the calculation of all damages, but this provision it is not very detailed. In practice, the interest rate is determined according to the national applicable law by referring to the conflict of law rules of the forum state (Atamer, 2013:15-16).[7]

Therefore, although the CISG provisions are quite comprehensive, there are a few legal issues that have not been covered. These issues constitute gaps in the CISG which should be interpreted pursuant to Article 7 CISG (Eiselan, 2005:32). Case law and legal doctrine play an important role in the interpretation of Article 7 CISG. It is possible to draw a precise line on the issue of damages in each case through case law, gap-filling rules and legal doctrine.

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[7] See: CISG Advisory Council Opinion No. 14 Interest under Article 78 CISG (Rapporteur: Yeşim Atamer İstanbul Bilgi University, Turkey), 2013, pages 15-16.

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CISG Advisory Council Opinion No. 14 Interest under Article 78 CISG (Rapporteur: Yeşim Atamer, İstanbul Bilgi University, Turkey), adopted by the CISG Advisory Council following its 18th meeting in Beijing (China) on 21 and 22 October 2013

VRSTE NAKNADE ŠTETE PREMA BEČKOJ KONVENCIJI O MEĐUNARODNOJ PRODAJI ROBE

Kršenje ugovora o prodaji može prouzrokovati štetu. Naravno, oštećeni može tražiti naknadu štete zbog kršenja ugovora o prodaji. Bečka konvencija o međunarodnoj prodaji robe (Convention on International Sale of Goods/CISG, 1980) reguliše naknadu štete odredbama koje su sadržane u članovima 74-78 ove Konvencije. Član 74 predviđa punu naknadu štete i predvidivost kao opšte principe za utvrđivanje obima štete kod svih vrsta povreda ugovora o prodaji. Članovi 75. i 76. Konvencije regulišu naknadu štetu za bitnu povredu ugovora do koje je došlo raskidom ugovora o prodaji. Član 77. Konvencije obavezuje oštećenog da ublaži štetu. Član 78. Konvencije uređuje pitanje utvrđivanja kamatnih stopa za obračun naknade štete. Iako ove odredbe na prvi pogled izgledaju sveobuhvatne, one ne pokrivaju neka važna pitanja. Za tumačenje ovih odredbi veoma su važne sudska praksa, pravna doktrina i pravila za popunjavanje pravnih praznina. Svrha ovog rada je da se podvuče crta u tumačenju odredbi o naknadi štete zbog kršenja ugovora o prodaji. U pripremi rada korišćena je metodologija teorijskog istraživanja.

Ključne reči: *Bečka konvencija o međunarodnoj prodaji robe, naknada štete, gubitak dobiti, pravilo tržišne cene, slučajna šteta.*