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35 YEARS OF CISG

PRESENT EXPERIENCES AND FUTURE CHALLENGES

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Contents

Foreword 7

Articles:

Jelena S. Perović
Interplay between the CISG and other legal sources of contract law (or contract principles) - on the example of clauses excluding or limiting the liability 11

Kasper Steensgaard
Boundaries for *Expansive Interpretations* of the CISG 37

National reports:
Albania 57
Austria 75
Croatia 91
Czech Republic 111
Germany 137
Greece 169
Hungary 203
Italy 229
Lithuania 253
Macedonia 279
The Netherlands 311
Poland 327
Romania 365
Russian Federation 387
Slovenia 409
Switzerland 423

Annex:
Questionnaire 445

Zervogianni, E., "Greece", in Franco Ferrari (Ed.), The CISG and its Impact on National Legal Systems, Sellier European Law Publishers, 2008, p. 172 et seq.

35 Years of CISG – Present Experiences and Future Challenges

National Report: Hungary

Reporter: Judit Glavanits*

1. CISG and the Contracting Parties – exclusion and inclusion

1.1. Empirical survey on the usage of CISG

During the summer of 2015, a unique survey was made among the practitioners in the Hungarian legal practice. When searching for antecedent research I had to realize that since Hungary is part of the United Nations Convention on Contracts for the International Sale of Goods (hereafter: the CISG), which was declared in Hungary with the Act No. 20 of 1987, there have been no published studies which analysed the contractual routine from the legal expertise point of view. There were studies examining the case law of national courts[1], and the case law of the CISG internationally[2], but no surveys (or at least no published data) on the contracting design of participating lawyers. Realizing this, we arrived at the basic concept of the research: we must study not only the contracting clauses but its appearance in the

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1 E.g. Vörös, Imre (2003a): Az áruk (ingó dolgok) nemzetközi adásvételéről szóló Bécsi Egyezmény és jogalkalmazási gyakorlata: az egyezmény hatálya, általános rendelkezlsei és a szerződés megkötése. Külgazdaság Jogi Melléklet. 2003/7-8, pp. 93-108, Vörös, Imre (2003b): A nemzetközi adásvételi szerződés tartalma: a felek jogai és kötelezettségei, valamint a szerződésszegés szabályozása a Bécsi Egyezményben és gyakorlatában. Külgazdaság Jogi Melléklete. 2003/9, pp. 109-124, Szabó, Sarolta (2011): A nemzetközi gazdasági kapcsolatok a XXI. században – a Bécsi Vételi Egyezmény a magyar bírói gyakorlatban. In: Raffai Katalin (szerk) Tanulmányok Bánrévy Gábor tiszteletére, Pázmány Press, 2011.

2 In the Hungarian literature we must mention the two monographs dealing with the Vienna Convention as a whole: Sándor, István – Vékás, Lajos (2006): Nemzetközi adásvétel. HVGORAC, Budapest. and Szabó, Sarolta: (2014) A Bécsi Vételi Egyezmény, mint nemzetközi lingua franca – az egységes értelmezés és alkalmazás újabb irányai és eredményei. Budapest, Pázmány Press. Both are basic literature in studying Vienna Convention with reference to the international case law.

court. One of the research questions this way was if there is any relevant difference between what we can see in the Hungarian courts' case law and the law firms' drafting and contracting habits.

With a questionnaire (see Annex 1.) sent directly to the most significant international law firms, to the Hungarian National Chamber of Attorneys and to the Győr-Moson-Sopron County Chamber of Attorneys, the process of drafting and entering of international sales contracts has been examined. As in Hungary the participation in the Chamber is mandatory for all the lawyers practicing, the survey reached the complete field of experts. We contacted the attorneys in Győr-Moson-Sopron County, as the Széchenyi István University has excellent relations with the local Chamber, so the colleagues could be addressed more easily. Altogether 20 questionnaires were sent directly to major law firms, and through the Chambers approximately 150 attorneys have been asked to answer. As a result, 35 documents arrived until 31st August, 2015 from the whole country, among these 12 were the results of the directly requested offices and 23 offices reached through the Chamber's request. The letters were entitled "Invitation for participating in an international research project", and I asked for the help of attorneys "only if they were engaged in international commercial contracts".

At the same time, a parallel research was started in the judicial field. The questionnaire (see Annex 2.), made especially for the court system, had to be endorsed first by the President of the National Office of the Judiciary. On 3rd July 2015 the President sent the statement allowing the research to take place, and this way 150 sheets of printed questionnaires were sent directly to the above mentioned Courts, and simultaneously the National Office of the Judiciary sent the questionnaire via email to the heads of the Courts. From July to September of 2015, 41 questionnaires arrived with appraisable content.

The arbitration in commercial disputes is traditionally dealt with by the Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry, resident in Budapest. I also sent the questionnaire to the judges working here, and got only 1 answer back, but this one clearly showed the difference between the state courts' routine and the arbitration experiences.

In what follows, I will analyse the results of the different parts of the research separately, and at the end I will compare them and try to explain the huge differences that came out.

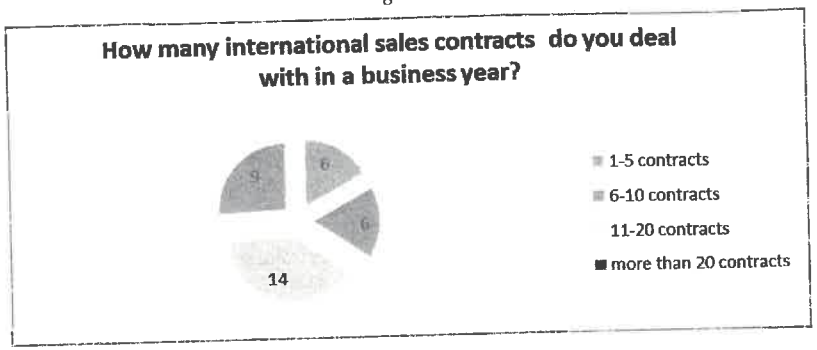
1.2. Results of the questionnaire distributed among law firms

In the first part of the research, I searched for the 10 biggest Hungarian law firms dealing with international private law cases - according to the national literature and statistics. I wrote to these firms and called them personally in early June 2015, telling them that as a researcher of Széchenyi István University Faculty of Law and Political

Sciences I would like to ask the lawyer colleagues to participate in a research on the field of international sales contracts. At the same time I contacted the Hungarian Chamber of Attorneys and the Chamber of Győr-Moson-Sopron County Attorneys with the same request.

From the 35 answers there were only 4 independent lawyers, and 31 law firms (Question 1.). I asked for the annual number of the contracts they deal with in an average business year (Question 2.), and the results can be seen in Figure 1.

Figure 1.



After this I created a specified group consisting of the answers coming from offices dealing with more than 10 contracts a year, presuming their answers were more significant than the others with less influence on the "legal market". However, important inferences can be drawn in cases where there is much difference between the two groups – as we will see later.

The next group of questions highlights the jurisdiction issues of international sales contracts. All 35 participants agreed to adopt a clause of jurisdiction in the sales contract (Question 3), and among the chosen forum the results can be seen in Figure 2. The questionnaire named alternative dispute resolution (hereafter ADR) following: "I specify alternative dispute resolution (arbitration, mediation, other ADR)". At this point we can see a very important difference between the smaller and the bigger law firms' contractual design: the law firms dealing with more than 10 contracts in a business year chose ADR in 65, 21% of cases, in comparison with the average 57,14%, while the choice of the Hungarian forum is less (56,52%) than the average (65,7%).

Figure 2.

Which jurisdiction do you chose?	Answers	%	Choice of jurisdiction by law firms more than 10 contracts/year	Answers	%
Hungarian	23	65,70%	Hungarian	13	56,52%
Contracting partner's country's	8	22,85%	Contracting partner's country's	4	17,39%
Other country's	2	5,70%	Other country's	2	4,34%
ADR	20	57,14%	ADR	15	65,21%

For direct exclusion of a certain country's forum only two participants (both with more than 20 contacts per year) stated that they chose to exclude specific jurisdiction (Question 4). Both of the participants also excluded the use of the CISG in the contractual terms with the argument that the international application of the CISG is incoherent; one of the participants wrote that in his/her practice "almost every contract contains the exclusion of the CISG because in the international practice it is not accepted for many reasons".

As for the application of the CISG, it may be more important how the contracting parties agree on the applicable law for the contract. Figure 3. shows the result for Question 5, which focuses on the choice of applicable law.

Figure 3.

Choice of applicable law for the contract	Answers	%	Choice of applicable law for the contract by law firms more than 10 contracts/year	Answers	%
Hungarian	35	100%	*Hungarian*	23	100
Contracting partner's country's	9	25,71%	*Contracting partner's country's*	7	30.43%
Other country's law or refer to international convention	10	28,57%	*Other country's law or refer to international convention*	6	26,08%
Law of the arbitration	11	31,42%	*Law of the arbitration*	9	39,13%
Other	0		*Other*	0	

As a common ground we can see that the Hungarian law is the predominantly applied law in the contracts. Here we also face a difference between the major law firms and the smaller ones: from all the answers, the choice of the law of the arbitration court can be found in almost 40% by major law firms, while only plus 2 of the

smaller ones chose that answer, which can be seen from the answers in comparison. The previously studied question and this one together reflect the same way in the position and part of dispute resolution of arbitrators: the bigger the law firm is, the more likely they will be to use the jurisdiction and applicable law of the arbitration court. This fact has several consequences for the parallel results of the research on the national court system, as we will see in what follows.

The next question is indispensable for studying the CISG as an integral or "accidental" part of the contracts. We presumed that in the legal practice there are two typical forms of clauses or articles dealing with the applicable law for the contract. The possible forms are to agree on the following: "This Agreement shall be governed by, and construed in accordance with the laws of Hungary" or "...in accordance with the Hungarian Civil Code". In the questionnaire we offered a third version to be referred to, which was left upon the personal use of the participant. Only 4 participants chose the third version, two of them stated they usually agreed on the law of the domicile of the Court of Arbitration, the other two specified that "For this Contract and disputes which may arise from this Contract the Hungarian law shall be applied, without the application of the international colliding regulations". As for the consequences of these articles, if the parties chose the Hungarian law as applicable law, they referred to the law of a country which adopted the CISG, and in this way the CISG must be applied for their dealings. But if they refer to the Hungarian Civil Code, the permanent jurisdiction of Hungarian courts interprets this article as direct exclusion of the CISG. Referring to the Civil Code or some certain Act or Regulation of a country is interpreted in the Hungarian jurisdiction as exclusion of the CISG[3]. The result is that from 35 answers in 27 cases the parties typically refer to the Hungarian law, in 4 cases they refer to the Hungarian Civil Code, and in 4 cases they refer to another version of applicable law as detailed before. Concluding, the CISG is applied by parties as referring to a law of a country which adopted the CISG. See details in Figure 4.

Figure 4.

If the Hungarian law is applicable, the term refers to...	Answers	Answers of law firms more than 10 contracts/year
"the Hungarian law"	27	19
"the Hungarian Civil Code"	4	0
other	4	4

No answers reported direct reference to the CISG to be part of the contract[4], but in the following question (No. 7.) six participants named the CISG as excluded from

[3] Sándor, Tamás – Vékás, Lajos: Nemzetközi adásvétel. HVGORAC, Budapest, 2005. pp. 64-65. They are referring to a judgement of the Arbitration Court which interpreted the choice of BGB within a contract of a Hungarian and a German party as exclusion of CISG.

[4] However, in the literature we find reference to direct inclusion in the contract: see: Sándor – Vékás 2005, p. 61.

the contracts. On Figure 5 we quote the exclusions written in the questionnaires together with the reasoning the participants gave.

Figure 5.

Excluding certain legal order and the reasons of such exclusion

"Do you tend to exclude the use of certain country's law or any other legal orders or conventions for the disputes?"	**Reason or comment on this decision (For Questions 7 and Comments)**
"I exclude the CISG at the request of the client"	*Comment*: "Fundamentally I have positive experiences. The CISG is easy to use for a continental lawyer, the Hungarian and foreign language (basically German) commentary literature is useful help. But at the same time during the civil procedure neither the judges nor the clients realize the need for applying the regulations of the CISG, they have to be noticed on this fact during the process."
"I exclude the CISG."	*Reasoning*: "In case of international sales contract in many concrete cases it is favourable for the seller to use only the Hungarian law. Without direct excluding of the CISG it must be applied, and as the CISG does not govern all relevant fields, in disputes this doubles the applicable laws, which may lead to confusion in the judgement". *Comment*: "The main problem of the CISG is the lack of uniform application, which is the result of the phenomenon that the national courts interpret the CISG based on national laws."
"I exclude the CISG almost all the time"	*Reasoning*: "The Convention is not accepted in the international practice for many reasons, almost every time its applicability is excluded."
"I exclude the CISG"	*Reasoning*: "The application of the CISG is internationally rare"
"If the client is the seller, I exclude CISG"	*Reasoning*: "The Hungarian civil law is more in favour of the seller in particular situations."
"The clients expressing the will for excluding the CISG"	*Comment*: "Despite of the fact that the CISG regulations are clear, the Courts have inconsistent practice of interpretation, or simply do not use the CISG tough it is mandatory in the process."

Summarizing the reasons for exclusion, we have to say that the commonly known arguments can be found in the Hungarian legal practice as well: lack of uniform interpretation and inconsistent judicial practice. Here I have to refer to the work of Koehler and Guo summarizing the reasons of exclusion[5]. They stated the main

[5] See: Koehler, Martin F. – Guo, Yujun: The Acceptance of the Unified Sales Law (CISG) in Different Legal Systems. Pace International Law Review, 2008/1, pp. 45-60.

problem was lack of knowledge of the CISG. Our results show that both the lack of uniform interpretation and the inconsistent judicial practice are more dominant reasons for excluding the CISG; however, the attorneys also stated that the Courts do not realize the mandatory use of the CISG. This argument will be proved in the next chapter, when we analyse the results of the questionnaire conducted among the Hungarian judicial board.

About the knowledge of the CISG we asked the attorneys of the circumstances in which they use the regulations of the CISG (see Figure 6.). One of the surprising results was - according to the above mentioned research by Koehler and Guo – that among the lawyers working solely with international sales contracts 28,57 % never used the CISG! The scale was better among major law firms (13%), but this figure is also far too high.

Figure 6.

Meeting the CISG

Meeting the CISG during...	**Answers**	**%**	**Answers of law firms more than 10 contracts/ year**	**%**
the negotiations of the contracting parties	20	57,14%	19	82,60%
the official communications by legal experts during the dispute	13	37,14%	11	47,82%
the judicial case	9	25,71%	7	30,43%
alternative dispute resolution process	9	25,71%	5	21,74%
Have not crossed the CISG ever	10	28,57%	3	13,04%

The other surprising result was that the legal experts meet the CISG more often during the negotiation process of the contracting parties than in the legal communication or during the judicial phase. In the other questionnaire the judges answered this question correspondingly, as we will see later.

At the end of the questionnaire I gave space for comments in the form of an open question. As a positive surprise, in 17 times the participants made some comments. I already quoted 6 of them on the question of exclusion, and now I quote the other 11 as I find these comments a very important part of the research, as they reflect the problems not necessarily mentioned in the questionnaire.

Figure 7.

Comments by attorneys on the CISG

"The CISG governs the parties' relationship in a plain and logical way, the text gives attention to the difference between national laws. However, I have experienced many attempts to exclude it in the contract"	"As the regulation is not all-inclusive, I used to suggest the application of the Hungarian Civil Code, or if it does not suit the partner, I suggest the use of the Court of Arbitration"
"The Court interpreted the CISG adequately"	"The Courts apply the CISG properly and prudently"
"In general the parties try to steer clear of the CISG, in my opinion the CISG is not commonly used in the commercial practice"	"The parties do not really know anything about the CISG"
"I have experienced that in disputes parties may refer to the CISG as a helping tool of interpretation of the sales contract when parties are faced with not unambiguous terms or in cases where the choice of applicable law is charged"	"The main problem with the CISG is the lack of uniform interpretation, while most of the national Courts interpret and apply the terms based on its national laws."
"In many cases colleagues from Czech Republic interpreted the CISG in a very different way. I have not observed this with other nations"	"I experienced the use of the CISG only when the parties disagreed on contractual terms"
"The international practice and literature are wide enough for a proper use"	

1.3. Results of the questionnaire among courts

In Hungary, justice is administered by the following courts: The Curia, the Regional Courts of Appeal, the Regional Courts, the District Courts and the Administrative and Labour Courts. There are 111 District Courts in Hungary, located in major cities. The District Courts proceed only in first instance of all actions which are not delegated under the competence of Regional Courts by law. Councils may be established at district courts to handle certain types of cases. As for the current research, the Councils of civil cases are relevant. There are 20 Regional Courts in Hungary in the 19 counties of Hungary and in Budapest (Budapest-Capital Regional Court). The Regional Court shall proceed as the first instance court – in cases defined by law– and review appeals lodged against the decisions of district courts and administrative and labour courts in the second instance. Councils are also formed at Regional Courts, the relevant councils being the civil and/or economical councils. There are 5 Regional Courts of Appeal in Hungary. The Regional Court of Appeal shall review appeals - in second or third instance - submitted against the decisions of district courts or regional courts, and shall proceed in other cases referred to its jurisdiction. The Curia (previously called the Supreme Court) is the highest judicial authority in Hungary. Under the authority of its President it has three departments:

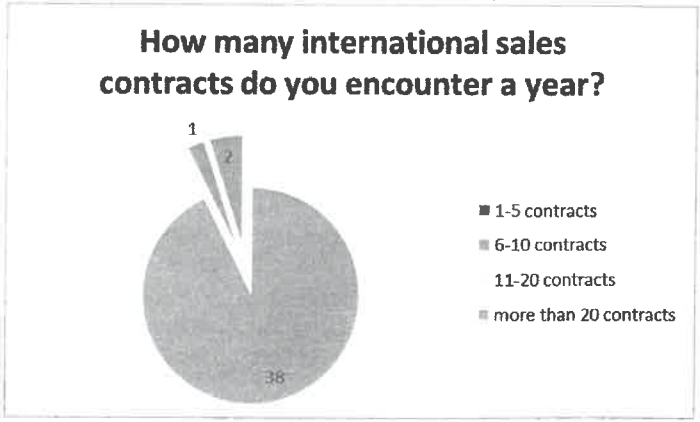
criminal, civil and administrative-labour law departments. Each department has various chambers: chambers hearing appellate cases, chambers passing uniformity decisions, chambers issuing decisions on principles, as well as working groups examining judicial practice.

We have to underline the significance of Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry, (in the legal literature it is referred to as Court of Arbitration). In 2009 the Tribunal celebrated the 60th anniversary of its foundation and continuous activity. This alternative dispute resolution Court deals with cases of investments, sales of property, leasing, national and international commercial contracts, and has jurisdiction for international sale contracts. The Arbitration Tribunal deals with 300-400 cases a year. According to the 46th § (3) paragraph of Act LXXI of 1994, from 1st January 1997 in international cases - unless otherwise provided by law - the Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry shall function as a standing arbitration tribunal.

In the following I conclude the empirical survey's results. As mentioned above, from the 20 Regional courts and the 111 District courts 41 questionnaires have arrived. The participants were judges (32), court clerks (7)[6] and arbitrators (1). As a result, we can observe first (see Figure 8.) that the judges who encounter international sales contracts at all deal with only 1-5 cases in a year. Only one judge and arbitrator participant reported more than 20 cases annually, and 1 judge reported 6-10 cases.

Figure 8.

International sales contract in the practice of courts s



For the following we anticipated that the answers given by the courts would be extremely different from those coming from attorneys. As stated before, all the

[6] Court clerk is the level before somebody is assigned as a judge.

participants from law firms declared that they used clauses on jurisdiction and on applicable law every time when they signed an international sales contract. The judges and clerks observed that in many of the cases they work with the contracts do not contain regulations on the jurisdiction, nor on the applicable law.

According to the observations of the courts, if there is an article on jurisdiction in the international sales contract, the parties chose the law of Hungary (61,5%), the law of the partner state (23%), other state's law (1%), or they choose arbitration or other alternative dispute resolution (26,9%). Comparing these answers with those given by attorneys, we see many differences. In the following figure I compare the answers given on jurisdiction and on applicable law of the major law firms and the courts (see Figure 9.)

Figure 9.
Jurisdiction and applicable law in international sales contracts as seen for major law firms and the courts of Hungary

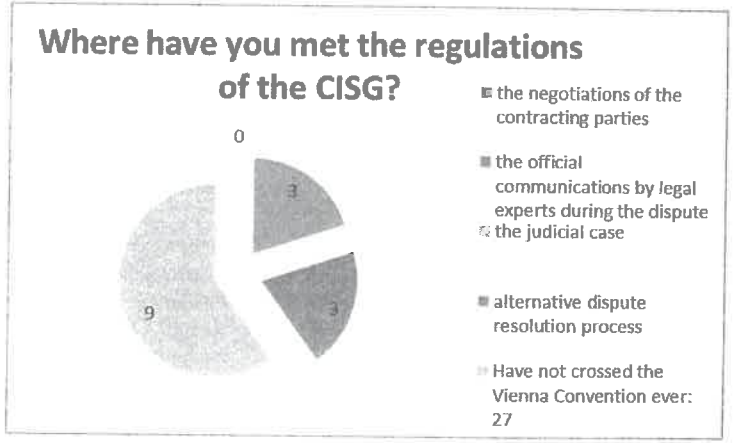
Choice of jurisdiction by law firms more than 10 contracts/ year	**Answers**	**%**	**Answers by courts % (total partici-pants: 23)**	**Choice of applicable law for the contract by law firms more than 10 contracts/ year**	**Answers**	**%**	**Answers by courts % (total partici-pants: 25)**
Hungarian	13	56,52%	61,50%	*Hungarian*	23	100	52%
Contracting partner's country's	4	17,39%	23,00%	*Contracting partner's country's*	7	30.43%	52%
Other country's	2	4,34%	4,30%	*Other country's law or refer to international convention*	6	26,08%	20%
ADR	15	65,21%	26,90%	*Law of the arbitration*	9	39,13%	8,00%
				Other	0		2

On Figure 9. I highlighted the major differences: while the practice of major law firms shows that they tended to reserve the jurisdiction and applicable law of the Court of Arbitration or other alternative dispute resolution body, this is almost invisible for the national courts. The other difference is the dominance of Hungarian law in terms of applicable law by the law firms, while only half of the judges have seen this in their judicial practice. When choosing the Hungarian law, the judges observed that the contracts refer to "Hungarian law" in 70%, and to "Hungarian Civil Code" in 30%, which is about the same result as we have seen by the results of the questionnaire answered by the attorneys.

As for the question on excluding any country's legal order, all of the participants said no, even those dealing with more than 20 cases in a year.

The most interesting result was on the question of meeting the CISG in the court's practice. From the 41 participants (we need to remember: judges dealing with 1-5 international sales contract per year!) 27 have never met the CISG, which is 65,85% of all answerers. This result, which is somewhat shocking, has a correlation with the international legal literature mentioned before, namely the lack of knowledge on the CISG, and also correlates with the comments and reasoning by the attorneys, suggesting that the Hungarian judicial board does not apply the CISG though it is mandatory in many cases. Figure 10. shows the answers on the form in which the judges met the CISG (if they meet it at all).

Figure 10.
The judges' connection to the regulations of CISG



As we compare it with the answers of attorneys we see that the negotiations of the parties were dominant in the attorneys' answers, while the judges meet (or use) the CISG basically during the judicial cases.

I also left space for comments for the judges, and 6 comments arrived, which I quote in what follows.

Figure 11.
Comments by judges on the CISG

"The jurisdiction is uniform in the field of sales contracts"
"There are no problems with the usage of the CISG, however the parties do not know it is applicable"
"The CISG is prevailingly easy to interpret, but some regulations do not keep up with the technological changes, so some parts are not updated enough. The international case law may only be recognized from teaching materials"
"The related questions are not governed by the CISG, the terminology is different from the Hungarian Civil Code"
"The CISG is relatively easy to interpret, and the national case law is uniform"
"The CISG is adequately precise and properly used by the Courts"

1.4. Concluding remarks on the empirical survey

As a university lecturer whose responsibility is to teach the CISG and its relevant case law to law students, it seemed obvious to me that – as a result of mandatory material for every lawyer who graduated in Hungary – the level of knowledge of the CISG was high. The empirical survey's aim was to reach as many legal experts as possible from Hungary who work with/on international sales contacts. As the research papers (the questionnaires) were addressed DIRECTLY to those having experience in international commerce, here I must express my gratitude to those who sent back the questionnaire, especially to those who commented their experiences on the CISG, since all answers were very useful, and some comments were very thought-provoking.

Starting with the "good news": we have to see that according to the attorneys the CISG is known as a good tool to govern the parties' rights and duties in international relations. Many of the colleagues reported having good experiences with the regulation itself and also some of them reported being satisfied with the judicial practice in interpreting and applying the CISG. Some of the judges also declared that the CISG has proper and unanimous interpretation in Hungary; they even come across with the regulations of the CISG during the negotiation process of the contracting parties.

The number of judgements available can be seen as enough for a country with less than 10 million inhabitants and as a result of the examination of more than 70 judgements from the last 25 years I more or less justify the declaration of judges and clerks on the proper interpellation of the Convention.

Despite the upper mentioned facts I have to add some aspects of possible development. Until there is no (official or private) collection on the CISG available also in Hungarian, it is hard to expect from legal experts or judges to be up-to-date with the current international jurisdiction on the CISG. In this field we have to admit that Hungary is not a leading foreign-language-speaking country, so having the international decisions translated to Hungarian would be a great step towards a proved and internationally fitting interpretation of the CISG. This leads to the next problem of having very few specialists publishing on this subject. Perhaps in the next few years

some changes will come, as for example the Széchenyi István University Faculty of Law and Political Sciences created a research group on "Comparative Analysis of Sales Law". We can also observe that with the formation and rise (and regrettable fall) of the Common European Sales Law (CESL), much more attention has turned to the CISG as well, which resulted in an increasing number of publications. We can also observe a change in the contingent of researchers: Gábor Bánrévy died some years ago, Lajos Vékás and Imre Vörös have both passed their 65th year, so a younger generation – started with Sarolta Szabó and followed by the research team at the Széchenyi István University – has started to work on the dissemination of knowledge on the CISG.

A concrete measure may help the research on the practical issues of the CISG. The empirical survey showed that the major legal firms used to stipulate the jurisdiction of a Court of Arbitration of Arbitration Tribunal in the sales contracts. If the dispute is judged by this court or tribunal, it is hard to find it in Hungary. As the most favourable ADR body is the Arbitrational Court attached to the Hungarian Chamber of Commerce and Industry, an official (and of course anonym) collection of the judgements would be desirable.

2. CISG and the courts

As the CISG came into force on 1 January, 1988 in Hungary (from this time we consider Hungary as a Contracting State), the Hungarian Courts have had the time to get accustomed to the regulations. However, in the CISG Database maintained by the Pace University Pace Law School we found 22 references on case law, and among these we found 8 by the Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry.

We have to admit that internationally it is not easy to study the Hungarian jurisdiction and practice, as the judgements are not published in English. The publicly open research engine for anonym judgements is available at the homepage of the Hungarian Courts (http://birosag.hu/ugyfelkapcsolati-portal/anonim-hatarozatok-tara) but only in Hungarian. According to this public search engine, 52 judgements refer to Act 20. of 1987 enacted the CISG in Hungary, but these results only refer to judgements after 2006. Some legal service providers offer a larger scale of access to judgements and awards of the Court of Arbitration as well, but their services are not free of charge, this way the database is only available – and researchable – for subscribers. A periodical (Journal of Court Decisions) is also available for subscribers, which summarizes the most significant decisions from the Regional Courts and the Regional Courts of Appeal in short form.

It is even more difficult to find the Arbitration Tribunal's decisions. Some of them are published in the official papers of the Courts, but not publicly available.

Finally, the court decisions are only partially available for the public, and they are not translated to any other languages. There is no publicly available collection of court decisions on the CISG, even in Hungarian.

As for this current research, I used the publicly listed judgements and one of the private service providers' database, which is available at Széchenyi István University Faculty of Law and Political Science – as a subscriber.

During the autumn of 2015 I tried to collect and analyse all the available court decisions that refer to the CISG. As a result, I examined 38 court cases (which means approximately 70 judgements by text as in most of the cases the final judgement is made by the second instance court, but sometimes only at the Supreme Court) and 10 awards by the Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry. In the years from 2000 there has been no significant change in the number of cases, but we have to add that an average court case (taking into account the second and possibly third instance as well) takes about 3-5 years.

We have to add here that there is a significant difference between the content of the official court's decisions and the Arbitration Tribunal's decisions: the Arbitration Tribunal used to cite and sometimes quote from the legal literature and case law when facing a more complex question. We never see this phenomenon in the court's practice – adding also that in Hungary there is no case law like in the Anglo-Saxon legal orders: the courts are not forced to take into consideration any other court decision. This way, as we will see later, opposite statements may occur in relatively similar situations or on disputed terms of contracts.

Having collected the database detailed before, I made short statistics on the articles often cited by the Courts.

Figure 13.

Articles cited by the Courts

Referred by the Court	Articles
1-10 times	7, 8, 9, 10, 11, 14, 15, 18, 19, 23, 25, 29, 31, 33, 36, 45, 47, 50, 54, 56, 60, 61, 71,76, 77, 81, 82,84,
11-20 times	30, 35, 39, 53, 59, 62, 75, 79, 96
21 or more times	**1, 38, 74, 78**

In the case of the most referred articles of the CISG, we have to agree that there is common and proper, uniform interpretation. We also find one common phenomenon in interpretation: the consequent and recurring use of the Hungarian Civil Code, and in general the Hungarian civil law, while applying the CISG. From the examined 38 cases, in 13 (34%) the Hungarian forum cited the CISG, but in the argumentation or in evaluating the court used the terms or the terminology of the Hungarian Civil Code, sometimes parallel with the articles of the CISG[7].

[7] Most interesting: BH250/2004 (Szegedi Ítélőtábla Gf.I.30.350/2003) where the judgement is namely based upon the CISG, but when going into details, the rightfulness of determing the contract is based upon Hungarian regulation and jurisprudence. In the case by Szegedi Ítélőtábla Gf.30379/2008/4. the first instance was based on the CISG, but the second instance court turned back to the Hungarian Civil Code when dealing with the question..

In the Hungarian legal system, a decision rendered by a lower court can be reversed or overruled by a higher court declaring the lower court's decision (as well as the result or the argumentation) wrong. In some cases we can still observe that the lower courts did not apply the CISG at all, and only the second (rarely the third) instance gave attention to the Convention. We can see the same in some cases on the jurisdiction and applicable law governed by EU law. In many cases when the parties have domicile in EU member states when searching for the legal basis of jurisdiction the Court applies Act 13. of 1979 (Hungarian Code on International Private Law) to decide the jurisdiction and the applicable law as well, while it is the Brussels I. Regulation that should have been applied. Luckily in case of international sales contract, the Regulation and the Hungarian Act both use the same regulations.

3. CISG and the legislation, education and legal scholarship

3.1. International influence in the Hungarian Civil Code

It is common knowledge that the Hungarian civil law has its roots in the Roman law, and during its formation it was basically influenced by the German and Austrian legal traditions, namely by the BGB and the ABGB. It is also agreed that Italian and French legal influence can also be detected in our private law.[8] When examining the international influence on the Hungarian civil law, we also have to consider that the EU in its mandatory regulations on the field of international private law has also formed the codification process[9] started in the late 1990s, and ended in a new Hungarian Civil Code.

When examining the similarities and differences in regulation of the sales contract in the CISG and the Hungarian Civil Code, we have to note the difference in the case law before and after the new Hungarian Civil Code, Act V. of 2013, came into force on 15th March, 2014. (hereinafter: HCC). We have to see that every court decision we have had so far is based on the previous Civil Code, Act IV. of 1959. The Commentary on the Hungarian Civil Code has referred to the CISG as follows: "Despite of the straightening of sales contract as a fundamental contract type the regulation cannot be unified on it as Hungary is contracting party of the CISG. In cases where the CISG is applicable, the Hungarian Civil Code must be set aside. Although the Civil Code aspired to implement the effective regulations of the CISG, it could not be the goal to introduce regulations perfectly fitting to international sales law to be applied for national sales contracts. The duplicity stays: Hungarian Civil Code for national sales contracts, and the Convention as autonomous law for international sales contracts."[10]

[8] Ádám Boóc: Észrevételek az új Polgári Törvénykönyv tervezetéhez nemzetközi magánjogi szempontból. In: Polgári Jogi Kodifikáció, 2008/3., p. 3-8, at p. 3.

[9] Gábor Palásti: Közrendi, imperatív, kógens és diszpozitív szabályok. In. Magyar Jog, 2006/2, pp. 65-77.

[10] Osztovits, András (szerk): A Polgári Törvénykönyv magyarázata. Vol. II., p. 1702.

As in the Hungarian legal history foreseeability clause was never used, it is an essential question how judicature will interpret the rule in practice. In our opinion, for an adequate application of the new clause it is necessary to take a closer look at the CISG and at the Principles of European Contract Law (PECL) and the interpretation in the American and English case law[11]. The foreseeability requirement of the CISG is often cited as a leading model of the new Hungarian Civil Code while re-regulating the liability for contractual damages[12]. The official comment on the HCC (by the Secretary of Justice) directly refers to the CISG when introducing the new rules for contractual liability. The 6: 142. § of HCC says: "The person who causes damage to the other party by breaching the contract shall be liable for such damage. The said party shall be relieved of liability if able to prove that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage." As latest legal literature and the official reasoning of HCC sees it, the foreseeability is based on personal abilities, as the damage is foreseeable if the contractor could possibly count with the consequences of the breach of contracts, but at the same time it is based on objective/expected foreseeability based on a typical person. Here we can refer to the jurisdiction of the CISG on the formula of Article 25: "a reasonable person of the same kind in the same circumstances would not have foreseen such a result". However, we should add that the Hungarian jurisdiction should not stick to the case law of the CISG[13]. It would be problematic for most of the Courts from many aspects. One aspect is limited access to international jurisdiction in Hungarian language – we have to admit that in comparison with other countries there are very few publications analysing the case law[14]. The other aspect is that adopting the interpretation of international sales contracts to national cases is not without problems either, however, this is still more than nothing[15]. Despite the fact that the international case law is hard to find in Hungarian, the latest monograph on the law of indemnification by Ádám Fuglinszky has a complete chapter on the relevant

11 Csécsy Andrea: Előreláthatósági klauzula a szerződések jogában In: *Debreceni Jogi Műhely*, 2009/1. http://www.debrecenijogimuhely.hu/archivum/1_2009/elorelathatosagi_klauzula_a_szerzodesek_jogaban/ (10.25.2015).

12 Eg. Fuglinszky, Ádám: Kártérítési jog. HVGORAC, 2015, p. 173.

13 Fuglinszky 2015, pp. 172-173.

14 We can take the monograph by Tamás Sándor and Lajos Vékás as common ground of interpretation (issued in 2005 the latest) and the monography of Sarolta Szabó (published in 2014).

15 This was a problematic issue discussed at a conference held by the Széchenyi István University on 19th February 2015, on the occasion of the 35th anniversary of the CISG. Legal experts and university scholars also agreed that the international practice cannot be adopted as a whole, as for ex. in Hungary the proper interpretation of Article 25 is one of the most difficult questions, as the legal formulas are not used, not even familiar to the Hungarian civil law.

jurisdiction of Article 74 CISG.[16] This also straightens the above mentioned facts that in the Hungarian judicial practice Article 74 CISG is often cited and used.

Concluding, the codification of the Hungarian Civil Code gave much space to international influence, and it clearly referred to the CISG as an important part of the Hungarian civil law.

As for the regulation of international treaties in the national legal system, the starting point is the Fundamental Law of Hungary, Act I of 2012. In practice this Act works as the Constitution of Hungary. Article Q (2)-(3) of the Act regulates the relation between international and domestic law. It maintains the principle of harmony – just like the previous Constitution - and in respect of the 'generally recognized rules of international law' it retains the monist concept. This results in the customary international law, *ius cogens* and general principles of law recognized by civilized nations, being the 'generally recognized rules of international law' under the terminology of the Fundamental Law, having at least constitutional rank in the Hungarian hierarchy of legal norms, because they can be regarded as part of the constitution; or, moreover, ius cogens norms have priority over the constitution. With regard to other sources of international law (i.e. sources other than 'generally recognized rules,' such as treaties, mandatory decisions of international organs and certain judgements of international courts), the Fundamental Law supports the dualist model with transformation, as it does not express the priority of international law over domestic law: the 'harmony' shall be ensured with international norms to which Hungary is obligated and so the instruments of international soft law (e.g. recommendations, declarations, final acts) are excluded from the scope of the harmony rule.[17]

3.2. CISG and legal education

A perfect tool is to have legal specialist who are experts in international sales law to teach students at Law Schools how to become experts. Traditionally, legal education and legal profession are highly evaluated in Hungary. Today, eight faculties of law exist in a country with less than 10 million inhabitants. Half of these faculties were established following the political changes of 1989. The regional division of Hungarian law schools is relatively balanced, as one can find at least one law school in every region of the country. As for the substance of the studies, we cannot find a standard course of study at law faculties since the general structure of legal education was regulated in relatively broad terms by the legislator. Law students have ten semesters for their studies and they must collect 300 credits during these five

16 Ádám Fuglinszky: Kártérítési jog. HVGORAC, 2015, pp. 181-184.

17 Chronowski, Nóra – Csatlós, Erzsébet: Judicial Dialogue or National Monologue? The International Law and Hungarian Courts. In: ELTE Law Journal, 2013/1, pp.7-28., pp. 8-9.

years. It is required that they prepare and defend a Master's thesis at the end of the studies and the passing of four so-called "state exams" is also mandatory. In relation to the remaining nine semesters the relevant decree of the Ministry of Education only outlines the main lines for the curricula of law schools by dividing them into three major parts. A legal curriculum must contain basic studies (80–110 credits), professional studies (115–130 credits) and elective studies (30–50 credits). Besides these guiding principles and credit numbers, law schools are almost absolutely free to compose their curriculum, the only thing that they must respect is the earlier mentioned general structure.[18]

International commercial regulations – and among these the international sales contracts – are part of the mandatory studies at all law faculties. Typically it is part of the subject titled "Law of International Economic Relations" or "International Private Law". There are three basic teaching materials used by the faculties:

(1) Ferenc Mádl – Lajos Vékás: International Private Law and Law of International Economic Relations. ELTE Eötvös Kiadó, Budapest, 2015. (the latest print, but it has several previous editions)

(2) Imre Vörös: The Law of International Economic Relations. Krim Bt, Budapest, 2009. (also with several previous editions)

(3) Gábor Bánrévy: The Law of International Economic Relations. Szent István Társulat, Budapest, 2011. (also with several previous editions)

Besides these basic books, almost everybody uses the "traditional monograph" by Tamás Sándor and Lajos Vékás (title: International Sales, published in 2005), which is based on the book by Tamás Sándor published in 1990 for the purpose of the CISG. This book, and the revised edition, is made as a commentary on the CISG, and its structure is also like a commentary: it analyses every Article individually and (the later edition) cites the case law of the Articles as well. It is similar to the UNCITRAL's Digest[19] in form and in style as well.

4 Personal scope of CISG application

In the legal literature it may seem to be a problematic issue to define "the place of business". The leading teaching materials refer to the definition that the place of business "requires a certain duration and stability as well as a certain amount of autonomy"[20]. In the Hungarian corporate law there are many expressions for the

[18] See in details: Balázs Fekete: Practice Elements in the Hungarian Legal Education System. In: Acta Juridica Hungarica, Vol. 51, No. 1 (2010), pp. 67–78.

[19] UNCITRAL: Digest of Case Law on the United Nations Convention on Contracts for the International Sale of Goods—UNITED NATIONS, Vienna, 2012.

[20] See: Mádl – Vékás 2015, p. 289. , Sándor – Vékás 2005, pp. 36-41. Sándor 1990, p. 23. This is also –word by word - cited in UNICTRAL's Digest 2012, p. 4.

place of business, but with different scope of meaning. The term "székhely" is the place referred as the capital of the company in the State Registry. But there are also terms for other places of business, where the company functions like "telephely": a place of business other than the official capital or "fióktelep": a place of business in another town like where the capital is. The Hungarian corporate law also has a term for place of business from where the company organizes its activity, which is called "központi ügyintzés helye", which can be translated as "central place of management". We also have to mention that other different terms are used when the place of business is in another country. The official translation of the CISG, namely Act No. 13 of 1979 translates the "place of business" as "telephely", which is – according to the Hungarian law – any place other than the official capital, where the company functions. Despite the above mentioned problems in translation, we have to say that understanding the place of business is not a problematic issue in the judicial process: all the examined cases interpreted the place of business widely and in accordance with the Digest's interpretation.

According to the examined judgements, the courts arrive at the application of the CISG both applying Article 1(1)(a) and (1)(b) points. The Hungarian legal literature shares common thoughts on the following[21]:

One can come to the application of the CISG in an (1) autonomous way, which means ascertaining the fact that the contracting parties are settled in states that are contracting states, so the CISG is applicable without using the collision rules, or (2) through the conflict of laws rules, which means the case when the conflict of laws rule directs the court to apply the law of a country which is a contracting state of the CISG. As Hungary is also part of Rome I. Regulation, if the seller has its business in a contracting state, the courts apply the CISG, and the Code on Private International Law has the same solution for applicable law.

In the Hungarian case law both methods can be observed, the only problem being that for the same legal facts (e.g. both contracting parties' place of business is in contracting states) courts apply the above mentioned ways "accidentally". In one case between an Italian seller and a Hungarian buyer (Legf. Bír. Pfv.IX.21.281/2005) we can see the following argumentation: "The court of first instance based the judgement on the Article 25 of Act 13 of 1979, saying that the law of the seller's country should be applicable, BUT as both countries signed the CISG this must be used for the dispute".

We can also observe that the parties' legal representatives refer to the certain point of the CISG (Articles 1(1)(a) or (b)), and the court implements the argumentation of the parties to the judgement (e.g. Budapest Környéki Törvényszék G.40.313./2010/71). In this case the court found that both parties (Romanian buyer

[21] Sándor 1990, p. 24., Sándor – Vékás 2005, p. 31., Mádl-Vékás 2015, p. 289., Bánrévy 2005, p. 106., Vörös 2003/7-8., pp. 99-100.

and Hungarian seller) are settled in contracting states, but based the judgement on Article 1(1)(b) CISG. Statistically this solution is common: in 1/3 of the examined judgements that referred to any part of Article 1 CISG were based on point a).

On the question of the parties' choice of law clause we can observe that in the Hungarian judicial practice if the parties choose a state law, the courts interpret this not as an exclusion of the CISG, but if they refer to a concrete code (e.g. Hungarian Civil Code) they interpret this as a direct exclusion of the CISG.

5. Substantive scope of CISG application – extending the CISG beyond the sales of goods contracts

The CISG is used in cases not only named "purchasing" or "sales" contracts, but in many contractual types with sales elements. The current and the previous Hungarian Civil Codes both regulated different types of sales contracts, including the following: purchase by sample, trial purchase, barter (exchange contract), conditional sale on approval[22], forward transactions for the sale of things defined by type and quantity[23] (formerly called delivery contract). In the case law there are two types of contracts usually dealt as governed by the CISG: consignment contract (or consignment purchase) and distribution contract.

In this section I would like to highlight some contract types from the Hungarian civil law that occur in the Hungarian case law, which are not defined exactly or solely "sales contracts", but the CISG is applied in these cases.

The previous Civil Code named different types of sales contracts, like the sales on probation ("If a thing has been bought for the purpose of inspection or testing, the effect of the contract shall be conditional upon the buyer's statement"- Article 371.§), sales based on sample („If purchase is made on the basis of a sample the seller shall deliver things that correspond to the sample" - Article 372.§), instalment sales („Parties shall be entitled to agree for the buyer to pay the purchase price in several instalments at specific dates and the thing shall be delivered before the purchase price is fully paid" – Article 376. §), and barter („If the contracting parties undertake reciprocal transfer of the ownership of things, the provisions pertaining to sale shall

[22] Hungarian Civil Code 6:228 §: „If the buyer is not able to inspect the subject matter of the contract before concluding the contract, and the buyer has the right by agreement of the parties to declare his intention whether or not to conclude the contract after visual inspection of the thing, the seller shall provide for the inspection of the thing. In that case, the effect of the contract shall be conditional upon the buyer's statement.".

[23] Hungarian Civil Code 6:231 §: „If the seller undertakes an obligation for the supply in the future of things defined by type and quantity, and the parties stipulate the range of discrepancy as to quantity by which the seller may deviate from the quantity fixed in the contract to either direction, the buyer shall pay the purchase price for the quantity actually supplied."

be duly applied. In such cases each party shall be deemed as the seller in respect of his own service and the buyer in respect of the other party's service." – Article 378. §) In accordance with the legal literature these above mentioned types of sales were identified as sales contracts in the sense of applying the CISG[24].

The previous Code also named the so-called supply contract, defined in Article 379. § as follows: "Under a supply contract the seller shall be obliged to deliver the thing defined therein to a customer at a later agreed date or period, and the customer shall be obliged to accept delivery of the thing and pay its price." As we can see from the definition, the supply contract can be seen as a sales contract with the difference in time of fulfilling the obligations, and it could be easily identified as a contract that refers to Article 3 CISG. The Commentary on the new Hungarian Civil Code stated that the Code does not want to maintain contract types that can be hardly distinguished from each other, therefore the new Code does not contain this type.

Next, we should deal with the consignment contracts. Although we find case law on the subject[25], we have to note that the legal literature does not mention the consignment contract as a special object to the CISG[26]. According to the previous Hungarian Civil Code, Article 507. § declared that "Under a consignment agency contract the consignment agent is obliged to conclude a sales contract in his own name, in favour of the principal in return for a commission" (Act IV of 1959) and the recent Hungarian Civil Code (Act V of 2013) determines the consignment contract in Article 6:281. § (1) as follows: "Under a consignment contract the consignment agent undertakes to conclude a sales contract for a movable property in his own name, on the principal's behalf, and the principal undertakes to pay the commission agreed upon." According to the current regulation (noting that this was also included in the previous Code) the sales contract concluded under a consignment contract shall entitle and bind the consignment agent in terms of the party contracting with the consignment agent. The consignment agent shall be responsible to the principal for the performance of all of the obligations that are undertaken by his contracting partner in the contract, if he has specifically agreed to do so.

6. Interpretation of the CISG – international and national influences

Based on the above mentioned empirical survey and on the Hungarian case law on the CISG we can state that – although the judicial system states the opposite - the CISG is not interpreted autonomously and largely not interpreted internationally. An

[24] Sándor 1990, p. 20, Sándor-Vékás 2005, p. 25, and the other authors refer to these publications.

[25] See BH 266/1994.

[26] In the seminal monograph by Tamás Sándor from 1990 we cannot find any reference to consignment contracts and in its revised and enlarged edition with Lajos Vékás from 2005 there is still not a word on this contractual type.

important part of the truth is that the sentences of the Arbitration Tribunal attached to the Hungarian Chamber of Commerce and Industry refer both to national and international case law and national and international legal literature[27], while none of the state courts do so. There is no case law in Hungary, so the courts may not take into consideration another sentence, but sometimes they do refer to important cases, and never to legal literature. In the questionnaire only one comment by a judge has arrived on the notice of the most commonly known commentary by Tamás Sándor.

The causes of this phenomenon are numerous. One basic cause is the lack of foreign language knowledge, the other is maybe the lack of enough time for preparing a sentence. Statistically a judge receives 18-25 new (!) cases in a month. If we add the fact of the questionnaire that from these cases they encounter 1-5 international sales law cases, it could be easily understood that they may not be motivated to prove or update their knowledge on international case law or international legal literature with so few cases affected.

Hungarian judges are not likely to base their judgement on principles, they prefer the statement to be based on a concrete paragraph of the substantial law[28]. Among the examined 70 cases none was based on legal principles.

7. Reservations/Declarations (Articles 92-96 CISG)

Hungary ratified the CISG with reservation. In 101. § of Act 20 of 1987 Hungary declared that "any regulations of Article 11, 29, or II. Part of the Convention that allows the parties to sign the contract, modify the contract or terminate the contract with consensus, or allow to accept or express the acceptation of the offer other way than in written form, are not applicable if any of the Parties has domicile in Hungary".

According to the Hungarian legal literature it is a common opinion that "the reservation was unnecessary, moreover, inappropriate, as modern international commerce needs the flexibility of forms when contracting"[29]. Sarolta Szabó declared the reservation as "emptied"[30], and the leading Hungarian private law professors and commentators of the CISG, like Gábor Bánrévy[31], Tamás Sándor and Lajos

[27] One of the best example: VB/9638 BH1997/10.

[28] Mátyás Bencze made an empirical study on the criminal cases and concluded this in as well. See: Bencze, Mátyás: A jogi alapelvek szerepe a magyar bírói gyakorlatban — a bizonyítást vezérlő elvek példája. Jog-Állam-Politika, 2011, pp. 211-224.

[29] Sándor – Vékás 2005, p. 530.

[30] Szabó, Sarolta: A Bécsi Vételi Egyezmény, mint nemzetközi lingua franca – Az egységes értelmezés és alkalmazás újabb irányai és eredményei. PhD Doctoral Study, Budapest, 2009, p. 97.

[31] See:. Bánrévy, Gábor: Három etűd a nemzetközi jog területéről. In: Békés Imre ünnepi kötet. A jogtudomány és a büntetőjog dogmatikája, filozófiája. Tanulmánykönyv Békés

Vékás[32], or Imre Vörös[33] also declared several times that there is no argument for maintaining the reservation.

The reservation of Hungary is even more unnecessary if we take into consideration that at the time of ratification the mandatory written form was exceptional in international commercial contracts. Hungary repealed the mandatory written form of international commercial contacts in 2004, regulated by the Order No. 7/1974 of Ministry of Foreign Affairs, so after 2004 there were no state legislation that could justify the reservation.

Analysing the Hungarian case law we observe that the courts have tried to ease the strictness of this reservation. For example, the Supreme Court's decision from 1994 has seen a lack of written form not as a reason of invalidity but as a difficulty to prove[34]. The courts interpreted the reservation in the examined cases unanimously: if the contract was not made in written form, but the applicable law of the country for the contact did not prescribe the written form for international sales contracts, it did not declare the contract void. Here I quote one decision which clearly demonstrates the above mentioned solutions of the Hungarian courts: "...The reservation excluding the freedom of contractual forms is only relevant in signing, modifying or terminating the contract, and on declarations on the offer and its acceptance and declarations made in accordance with Section II. This way only in the detailed cases, namely in evaluating the validity of these declarations are the norms found by the collision law (which is the law of the country in which the seller has domicile) applicable. So if according to the law of the country in which the seller has domicile the international sales contract is valid, the CISG is applicable to any other disputed questions between the parties."[35] There is also an official judgement announced by the Supreme Court of Hungary, No. 1322/2005. Economical Precedential Decision that makes it clear that "if the disputes of the parties arouse from an international sales contact the CISG must be applied, but because of the reservation declared by Hungary the freedom of contractual form is not enforceable, the contract is only invalid if –according to the collision law – in the law of the country in which the seller has domicile the written form is mandatory for this contract".[36]

A recent change in the Hungarian law has moved forward: the Parliament of Hungary enforced the Act LXXI of 2015 (in June of 2015), which declared that the

Imre születésének 70. évfordulójára. (szerk.: Busch Béla – Belovics Ervin – Tóth Dóra), Budapest, 2000, p. 54.

[32] Sándor – Vékás 2005, pp. 530-531.

[33] Vörös, Imre: A nemzetközi gazdasági kapcsolatok joga, Krim Bt, 2004, Vol. II., p. 97.

[34] Gf. VI. 32.706/1992 cited also by Sándor-Vékás 2005, p. 531.

[35] Reasoning of BH 88/2006. announced by the Supreme Court of Hungary in 2006, official number of the case: Legf.Bír. Pfv.IX.21.481/2005.

[36] See also: BH 594/1996.

Ministry of Foreign Affairs should make the necessary measures to withdraw the reservation made by Hungary.

8. Challenges in the application of specific CISG provisions

Damages and interest are the most cited articles of the CISG in the examined cases, as shown in Figure 13. The recodification of Hungarian Civil Code has introduced changes in the regulation of damages: it introduced the non-cumul principle: Article 6:145 § says "The obligee shall enforce his claim for compensation against the obligor in accordance with the provisions on liability for damages for loss caused by non-performance of an obligation even if the obligor's non-contractual liability also exists." Foreseeability – as discussed before – is also a new rule. According to the Hungarian Civil Code, we can classify two groups: damages occurred in the supply (adhesive damages, *damnum emergens*) and other damages in goods and interests of the harmed (result-damages, personal and material damages and *lucrum cessans*). According to Fuglinszky, the adhesive damages are the following: "lack of value" in case of absence of performance; amortization of the false performance; expenses spent on correction of the false performance. Result-damages can be the harm to assets; harm to person; the costs of measures to mitigate the losses; damages occurred by a third person in causation with the breaching of contact.[37]

In connection with the Article 77 CISG, measures on mitigation of losses are detailed in an often cited decision of the Hungarian Court (BH 1987.450.), and this interpretation of the Hungarian law is also cited in international cases, e.g. in case Budapest Környéki Törvényszék G.40.313/2010/71, where the court cites Article 77 CISG as applicable, but when understanding and interpreting the rule, it refers to Hungarian case law. This is also an example of "mixing the applicable laws".

As the damages and interests are often cited, the method of calculating the interest rate is also common in the Hungarian case law. We can summarize the case law by citing the judgement Pécsi Ítélőtábla Gf.30.010/2011/7.: As the CISG does not regulate the rate of default interest[38] "it is regulated by the provisions on interest rates of the country pointed out by the collision rules" (also applied by Fővárosi Törvényszék G.41.291/2005/49. and in many other cases). But we can find examples for awarding the default interest based on merely the Hungarian Civil Code without any reference to the Article 74 CISG (Szegedi Törvényszék G.40.176/2009/9.) At this point we have to add that the Hungarian civil procedure requires the parties to directly ask for the interest, so if the claim does not contain direct reference for interest, the court will not award it for the party, as can be seen in judgement of the Győri Ítéltőtábla Gf.20.356/2008/14.

[37] Fuglinszky 2015, pp. 166-167.

[38] Here I would like to refer to Bruno Zeller: Penalty Clauses: Are they governed by the CISG? Pace University School of Law International Law Review Online Companion. Vol. XXIII. No. 1. (2011), pp. 1-14.

As for the default interest it is also common in the case law to refer to a decision BDT 2008.1814., which declares that if interest is paid in foreign exchange, the interest rate must be based upon the foreign country's national bank's official interest rate. If the interest is to be paid in EUR, the official interest rate of the European Central Bank is to apply (see: Budapest Környéki Törvényszék F.40.313/2010/71.)

Hungary has ratified the New York Convention on the Limitation Period in the International Sale of Goods, and it is also referred to in some judgements.

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35 Years of CISG – Present Experiences and Future Challenges

National Report: Italy

Reporter: Barbara Pasa*

1. CISG and the Contracting Parties – exclusion and inclusion

The empirical survey on the process of drafting and concluding international contracts of Italian exporters/importers has been conducted in cooperation with the Torino Chamber of Commerce (Camera di commercio di Torino, Settore "Sviluppo competitività e internazionalizzazione")[1]. The Italian business realty is made by small and medium-sized enterprises (SMEs), which constitute the structure of the average Italian enterprise. The legal data as to the impact of the CISG in B2B standard terms have been collected through a questionnaire, composed by the first 5 questions of this Report (see above, beginning § 1). The Commercial Chamber sent the questionnaire via email to more than 3,000 managers (in most of the cases, these enterprises do not have any in-house lawyers or consultants) in charge of the external relations. This number corresponds to all Piedmont importers/exporters participating to the database called 'Promopoint'. A risible number of them answered, around 2%! (but we still hope they will do it in the coming months). Many of them simply answer they do not use standard contracts, but simply exchange 'documents of transport'. The same questionnaire was sent to Commercial Chambers of Padua and Florence, in order to test different economic contexts in Italy. An important law firm in Rome help us to the diffusion of questionnaires to Finmeccanica and other major corporations. Nobody answer to the questionnaire.

According to the answers we have been able to collect, the CISG is playing an increasingly relevant role in the Italian legal system. Although CISG's existence is well known, it has not gained spread popularity and only a few businesses use it[2]. The task of drafting international sales contracts including standard forms should

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2 Ferrari, La vendita internazionale. Applicabilità e applicazioni della Convenzione delle Nazioni Unite sui contratti di vendita internazionale di beni mobili, 2006.