

1. Gaillard Ambulance, state of registration of Emptoria, purchased from Reinisch Werkstatt, state of registration of the Republic of Venditoria, a used R-17 helicopter for emergency transportation of patients on April 15, 2019. At the same time, according to the terms of the Contract, the Seller undertakes at his own expense to conduct a technical inspection, replace all the necessary parts and carry out a test flight. According to the terms of the Contract, the helicopter had to be delivered to the port of Rosanvallon. The Parties agreed to apply the UN Convention on Contracts for the International Sale of Goods (1980) to the Contract and to resolve all disputes, disagreements or claims arising from the Contract or in connection with it in ad hoc arbitration under the UNCITRAL 2010 Rules.
2. Reinisch Werkstatt completed the reorganization process by dividing into two companies: Schreuer's Helicopters and Dolzer Flugservice GmbH on April 24, 2019. Dolzer Flugservice GmbH became the legal successor of all rights and obligations under the Contract. According to the terms of the Contract, Dolzer GmbH was supposed to conduct a technical inspection of the helicopter and replace defective parts and mechanisms.
3. In the course of inspection carried out on August 15, 2019, it was found out that the rotor attachment fitting is defective. Dolzer Flugservice GmbH sent a letter to Gaillard Ambulance on the readiness to replace the part, subject to immediate payment of the cost of the part. On August 18, 2019, representatives of Gaillard Ambulance agreed to the proposed conditions and transferred the money to the specified details. Dolzer Flugservice GmbH rectified the problem by replacing the broken unit with a similar one produced in the state of Periculia.
4. On August 20, 2019, Gaillard Ambulance Company received a notification that Dolzer Flugservice GmbH together with Schreuer's Helicopters had created a new legal entity - Schack S.A.R.L., the state of registration of Tenebra, to which the rights and obligations under the Contract with Gaillard Ambulance had been transferred.
5. On November 05, 2019, Schack S.A.R.L. entered into an agreement with Schreuer's Helicopters for a test flight and additional tuning of on-board computers. The helicopter was moved to the testing facility of the testing company. Additionally, an agreement was concluded with Dolzer GmbH for a repeated technical inspection and assessment of the condition of all helicopter systems. Notifications on awarded contracts were sent to Gaillard Ambulance Company.
6. On January 02, 2020 the companies fulfilled their obligations under the contracts with Schack S.A.R.L. At the same time, the helicopter was moved to a hangar owned by Dolzer GmbH. On January 04, 2020 Schack S.A.R.L. sent a notification to Gaillard Ambulance about the completion of all necessary work and readiness to send the helicopter on January 18, 2020. The notification contained the bank details for which the final payment had to be made under the Contract between Schack and Gaillard Ambulance Company. At the same time, the Gaillard Ambulance Company employee drew attention to the fact that the specified details coincided with the details for which payment was made on August 18, 2019.

7. On January 17, 2020 in the evening at 17:30 local time, publications on the entry into force of the law were posted on the official websites of the state bodies of Emtoria, according to which aircraft parts and mechanisms produced in the state of Periculia were prohibited from import (time difference with the state of Venditoria is 2 hours).
8. The next day at 23:00 local time, the helicopter was dispatched to the Buyer from the warehouse of Dolzer GmbH. Not long before this, Schack S.A.R.L. had sent Gaillard Ambulance an email with copies of all technical documentation of the helicopter, as well as a list of all performed manipulations and replacements of parts and mechanisms, indicating the serial number, country of origin, date of manufacture and service life of each part.
9. On January 29, 2020, when passing through customs control in the port of Rosanvallon, the prohibited part was seized.
10. On February 02, 2020, realizing that the helicopter would not fly without the necessary part, representatives of Gaillard Ambulance turned to representatives of Schack S.A.R.L. with a request to urgently deliver another helicopter, as the number of patients requiring urgent hospitalization had sharply increased that time.
11. In response, Schack S.A.R.L. proposed to replace the rotor attachment fitting with another one produced in the state of Venditoria. However, due to the fact that the R-17 model of helicopters was not used in the civil aviation of the Venditoria state, it could take about six months to manufacture a new or rework an existing model of the rotor attachment fitting and adjust it for operation on a helicopter.
12. Gaillard Ambulance refused, because it had no time to wait that long. In addition, the Buyer expressed doubts about the safety of the proposed replacement, which was not an original part, which could lead to the need for additional technical tests or, in the worst case scenario according to Gaillard Ambulance, to a possible helicopter crash. In addition, Schack S.A.R.L. violated the Contract by supplying a helicopter with a prohibited part.
13. On February 07, 2020 Schack S.A.R.L. sent an email with a repeated refusal to replace the helicopter and stopped communicating. When trying to visit the Seller's office, the Buyer's employees discovered that a grocery store was located at the specified address.
14. On March 19, 2020 Gaillard Ambulance Company sent notice of arbitration.
15. On March 28, 2020, the Arbitral Tribunal was formed consisting of: Herr Prof. Dr. Hellkopf, Frau Dr. Rennbahnstein and Herr Dr. Grünewiese.

**Plaintiff's position:**

1. **Effect of the arbitration clause.** The plaintiff considers Schack S.A.R.L. as a "fake company" for the companies Schreuer's Helicopters and Dolzer GmbH, which agreed to operate within the same project. In fact, the performance of the Contract was carried out by these two companies, so they should be involved in arbitration as well as Schack S.A.R.L.
2. **Challenge of an arbitrator.** Soon after the commencement of the arbitration, the private correspondence of the arbitrator Prof. Dr. Hellkopf, in which he wrote that he

was going to use the help of a junior lawyer-assistant (Herr Schmetterling), whose task would be "to summarize everything that was said to resolve the case." In addition, during one of the scientific conferences, the arbitrator, in a conversation with a colleague, repeatedly spoke about his high workload due to the need to write expert opinions "... and in addition to everything else, I was appointed an arbitrator!" The Plaintiff believes that the role of the secretary in this process goes beyond helping to organize the work of the arbitral tribunal. Given that the transfer of competence to decide on the merits of the dispute to a third party is considered as an unacceptable and undermining the legitimacy of the arbitral award, the formed arbitral tribunal cannot consider this dispute.

3. **The goods delivered by the defendant do not comply with the quality.** The plaintiff believes that the Seller should have known about the new restrictions. Delivering a helicopter with a prohibited part violates the terms of the Contract on the quality of goods.
4. **The defendant must replace the goods.** The defendant committed a significant violation of the terms of the Contract, which cannot be eliminated by applying Art. 48 of the UN Convention of 1980.

#### **Defendant's position:**

1. **Effect of the arbitration clause.** The arbitration clause is applied only to Schack S.A.R.L. and Gaillard Ambulance. Dolzer GmbH cannot be involved in the proceedings; since all rights under the Contract have been transferred to Schack S.A.R.L. Schreuer's Helicopters also did not sign the Contract containing an arbitration clause and is not even a successor to Reinisch Werkstatt under this Contract.
2. **Challenge of an arbitrator.** It is common practice to contact an assistant and does not affect the jurisdiction of the arbitral tribunal to resolve a dispute. The statements of the arbitrator are the expression of the opinion of a private person and do not in any way relate to the consideration of the case.
3. **The goods delivered by the defendant do not comply with the quality<sup>1</sup>.** The plaintiff was obliged to warn the defendants about the entry into force of the new law. The goods comply with the requirements stipulated by the Contract, as well as the requirements of Art. 25 of the Convention.
4. **The defendant must replace the goods.** Even if the defendant committed a breach of Contract, such breach does not amount to a fundamental breach within the meaning of the Convention. The material breach clause does not apply as it only applies to termination of the Contract, but not to other remedies.

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<sup>1</sup> Participants shall take into account, that all States mentioned in the Case-study are Contracting Parties of the CISG.

**Applicable terms of contract Article 3.**

**Subject of the Contract**

The Seller undertakes to transfer the ownership of, and the Buyer to accept and pay for the helicopter model R-17, built in 2011, serial number 19 C 2900 0009 8783E, registered office in Kelsen, Republic of Venditoria. The technical condition of the helicopter must meet all the necessary international requirements for aircraft of this type.

**Article 14. Grounds for termination of the Contract**

1. The Buyer has the right to terminate the Contract if the Seller makes a significant violation of the terms of the Contract.
2. The following violations are recognized as material:
  - 1) Delayed delivery for more than 150 days
  - 2) The technical characteristics of the helicopter will not correspond to those indicated in the accompanying documentation
  - 3) Failure to pass the re-test flight by the helicopter after delivery to the Buyer.
  - 4) Other violations entailing such harm that the Buyer is largely deprived of what he had the right to expect on the basis of the Contract.