

Avis juridique important

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Judgment of the Court of 14 July 1994. - Paola Faccini Dori v Recreb Srl. - Reference for a preliminary ruling: Giudice conciliatore di Firenze - Italy. - Consumer protection in the case of contracts negotiated away from business premises - Availability in disputes between private individuals. - Case C-91/92.

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Summary

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Keywords

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1. *Approximation of laws ° Consumer protection in the case of contracts negotiated away from business premises ° Directive 85/577 ° Article 1(1) and (2) and Article 5 ° Determination of the persons for whose benefit they were adopted and of the minimum period within which the right of cancellation must be exercised ° Unconditional and sufficiently precise*

(Directive 85/577, Art. 1(1) and (2) and Art. 5)

2. *Measures adopted by the Community institutions ° Directives ° Direct effect ° Limits ° Possibility of relying on a directive against an individual ° Excluded*

(EEC Treaty, Art. 189)

3. *Approximation of laws ° Consumer protection in the case of contracts negotiated away from business premises ° Directive 85/577 ° Possibility of relying on the right of cancellation against a private individual in the absence of measures transposing the directive ° Excluded*

(EEC Treaty, Art. 189, third para.; Directive 85/577, Art. 1(1) and (2) and Art. 5)

4. *Measures adopted by the Community institutions ° Directives ° Implementation by the Member States ° Need to ensure that directives are effective ° Obligations of the national courts*

(EEC Treaty, Art. 189, third para.)

5. *Community law ° Rights conferred on individuals ° Breach by a Member State of the obligation to transpose a directive ° Obligation to make good the damage caused to individuals ° Conditions ° Procedures for providing compensation ° Application of national law*

(EEC Treaty, Art. 189, third para.)

Summary

1. *The provisions of Article 1(1) and (2) and Article 5 of Directive 85/577, concerning protection of the consumer in respect of contracts negotiated away from business premises, are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given. Although Articles 4 and 5 of the*

directive allow the Member States some latitude regarding consumer protection when information on the right of cancellation is not provided by the trader and in determining the time-limit and conditions for cancellation, that latitude does not make it impossible to determine minimum rights which must on any view be provided to consumers.

2. The possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to each Member State to which it is addressed and has been established in order to prevent a State from taking advantage of its own failure to comply with Community law. It would be unacceptable if a State, when required by Community legislature to adopt certain rules intended to govern the State's relations ° or those of State entities ° with individuals and to confer certain rights on individuals, were able to rely on its own failure to discharge its obligations so as to deprive individuals of the benefit of those rights.

The effect of extending that principle to the sphere of relations between individuals would be to recognize a power in the Community to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations.

It follows that, in the absence of measures of transposition within the prescribed time-limit, an individual may not rely on a directive in order to claim a right against another individual and enforce such a right in a national court.

3. In the absence of measures transposing within the prescribed time-limit Directive 85/577, concerning protection of the consumer in respect of contracts negotiated away from business premises, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract away from business premises or enforce such a right in a national court.

4. The Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, is binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts. It follows that, when applying national law, whether adopted before or after the directive, the national court that has to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 189 of the Treaty.

5. If a Member State fails to comply with the obligation to transpose a directive which it has under the third paragraph of Article 189 of the Treaty and if the result prescribed by the directive cannot be achieved by way of interpretation of national law by the courts, Community law requires that Member State to make good the damage caused to individuals through failure to transpose the directive, provided that three conditions are fulfilled, namely that the result prescribed by the directive must entail the grant of rights to individuals, the content of those rights must be identifiable on the basis of the provisions of the directive and there must be a causal link between the breach of the State's obligation and the damage suffered. In those circumstances, it is for the national court to uphold the right of aggrieved persons to obtain reparation in accordance with national law on liability.

Parties

In Case C-91/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Giudice Conciliatore di Firenze (Judge-Conciliator, Florence), Italy, for a preliminary ruling in the proceedings pending before that court between

Paola Faccini Dori

and

Recreb Srl

on the interpretation of Council Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31),

THE COURT,

composed of: O. Due, President, G.F. Mancini, J.C. Moitinho de Almeida, M. Diez de Velasco and D.A.O. Edward (Presidents of Chambers), C.N. Kakouris, R. Joliet (Rapporteur), F. A. Schockweiler, G.C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P.J.G. Kapteyn and J.L. Murray, Judges,

Advocate General: C.O. Lenz,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

° Paola Faccini Dori, by Vinicio Premuroso, of the Milan Bar, and Annalisa Premuroso and Paolo Soldani Benzi, of the Florence Bar,

° Recreb Srl, by Michele Trovato, of the Rome Bar, and Anna Rita Alessandro, Procuratore, Florence,

° the German Government, by Ernst Roeder, Ministerialrat in the Federal Ministry of Economic Affairs, and Claus-Dieter Quassowski, Regierungsdirektor in the same Ministry, acting as Agents,

° the Greek Government, by Vasileios Kontolaimos, Assistant Legal Adviser, and Panagiotis Athanasoulis, judicial representative, acting as Agents,

° the Italian Government, by Luigi Ferrari Bravo, Head of the Contentious Diplomatic Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Marcello Conti, Avvocato dello Stato,

° the Commission of the European Communities, by Lucio Gussetti, of its Legal Service, acting as Agent,

having regard to the answers given to the written question put by the Court:

° for the German Government, by Ernst Roeder and Claus-Dieter Quassowski,

° for the French Government, by Jean-Pierre Puissochet, Director, Direction des Affaires Juridiques, Ministry of Foreign Affairs, and Catherine de Salins, Adviser in the same Ministry, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Danish Government, represented by Joergen Molde, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the German Government, represented by Ernst Roeder and Claus-Dieter Quassowski, acting as Agents, the Greek Government, represented by Vasileios Kontolaimos and Panagiotis Athanasoulis, acting as Agents, the French Government, represented by Catherine de Salins, acting as Agent, the Italian Government, represented by Luigi Ferrari Bravo, acting as Agent, assisted by Ivo Braguglia, Avvocato dello Stato, the Netherlands Government, represented by Ton Heukels, Assistant Legal Adviser in the Ministry of Foreign Affairs, the United Kingdom, represented by J.E. Collins, acting as Agent, assisted by Derrick Wyatt, Barrister, and the Commission, represented by Lucio Gussetti, acting as Agent, at the hearing on 16 March 1993,

after hearing the Opinion of the Advocate General at the sitting on 9 February 1994,

gives the following

Judgment

Grounds

1 By order of 24 January 1992, received at the Court on 18 March 1992, the *Giudice Conciliatore di Firenze* (Judge-Conciliator, Florence), Italy, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Council Directive 85/577/EEC, concerning protection of the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31, hereinafter "the directive"), and on the possibility of relying on that directive in proceedings between a trader and a consumer.

2 The question was raised in proceedings between Paola Faccini Dori, of Monza, Italy, and Recreb Srl ("Recreb").

3 It appears from the order for reference that on 19 January 1989, without having been previously approached by her, Interdiffusion Srl concluded a contract with Miss Faccini Dori at Milan Central Railway Station for an English language correspondence course. Thus the contract was concluded away from Interdiffusion's business premises.

4 Some days later, by registered letter of 23 January 1989, Miss Faccini Dori informed that company that she was cancelling her order. The company replied on 3 June 1989 that it had assigned its claim to Recreb. On 24 June 1989, Miss Faccini Dori wrote to Recreb confirming that she had cancelled her subscription to the course, indicating *inter alia* that she relied on the right of cancellation provided for by the directive.

5 As is apparent from its preamble, the directive is intended to improve consumer protection and eliminate discrepancies between national laws providing such protection, which may affect the functioning of the common market. According to the fourth recital in the preamble, where contracts are concluded away from the business premises of the trader, it is as a rule the trader who initiates the negotiations, for which the consumer is wholly unprepared and is therefore often taken by surprise. In most cases, the consumer is not in a position to compare the quality and price of the offer with other offers. According to the same recital, that surprise element generally exists not only in contracts made on the doorstep but also in other forms of contract for which the trader takes the initiative away from his business premises. The purpose of the directive is thus, as indicated by the fifth recital in its preamble, to grant the consumer a right of cancellation for a period of at least seven days in order to enable him to assess the obligations arising under the contract.

6 On 30 June 1989, Recreb asked the *Giudice Conciliatore di Firenze* to order Miss Faccini Dori to pay it the agreed sum with interest and costs.

7 By order of 20 November 1989, the judge ordered Miss Faccini Dori to pay the sums in question. She lodged an objection to that order with the same judge. She again stated that she had withdrawn from the contract under the conditions laid down by the directive.

8 However, it is common ground that at the material time Italy had not taken any steps to transpose the directive into national law, although the period set for transposition had expired on 23 December 1987. It was not until the adoption of Decreto Legislativo No 50 of 15 January 1992 (GURI, ordinary supplement to No 27 of 3 February 1992, p. 24), which entered into force on 3 March 1992, that Italy transposed the directive.

9 The national court was uncertain whether, even though the directive had not been transposed at the material time, it could nevertheless apply its provisions.

10 It therefore referred the following question to the Court for a preliminary ruling:

"Is Community Directive 85/577/EEC of 20 December 1985 to be regarded as sufficiently precise and detailed and, if so, was it capable, in the period between the expiry of the 24-month time-limit given to the Member States to comply with the directive and the date on which the Italian State did comply with

it, of taking effect as between individuals and the Italian State and as between individuals themselves?"

11 The directive requires the Member States to adopt certain rules intended to govern legal relations between traders and consumers. In view of the nature of the dispute, which is between a consumer and a trader, the question submitted by the national court raises two issues, which should be considered separately. The first is whether the provisions of the directive concerning the right of cancellation are unconditional and sufficiently precise. The second is whether a directive which requires the Member States to adopt certain rules specifically intended to govern relations between private individuals may be relied on in proceedings between such persons in the absence of measures to transpose the directive into national law.

Whether the provisions of the directive concerning the right of cancellation are unconditional and sufficiently precise

12 Article 1(1) of the directive provides that the directive is to apply to contracts concluded between a trader supplying goods and services and a consumer, either during an excursion organized by the trader away from his business premises or during a visit by him to the consumer's home or place of work, where the visit does not take place at the express request of the consumer.

13 Article 2 states that "consumer" means a natural person who, in transactions covered by the directive, is acting for purposes which can be regarded as outside his trade or profession and that "trader" means a natural or legal person who, for the transaction in question, acts in his commercial or professional capacity.

14 Those provisions are sufficiently precise to enable the national court to determine upon whom, and for whose benefit, the obligations are imposed. No specific implementing measure is needed in that regard. The national court may confine itself to verifying whether the contract was concluded in the circumstances described by the directive and whether it was concluded between a trader and a consumer as defined by the directive.

15 In order to protect consumers who have concluded contracts in such circumstances, Article 4 of the directive provides that traders are to be required to give consumers written notice of their right of cancellation, together with the name and address of a person against whom that right may be exercised. It adds that, in the case of Article 1(1), that information must be given to the consumer at the time of conclusion of the contract. Finally, it provides that Member States are to ensure that their national legislation lays down appropriate consumer protection measures for cases where the information in question is not supplied.

16 Furthermore, pursuant to Article 5(1) of the directive, the consumer is to have the right to renounce the effects of his undertaking by sending notice within a period of not less than seven days from the time at which the trader informed him of his rights in accordance with the terms and conditions laid down by national law. Article 5(2) provides that the giving of such notice is to have the effect of releasing the consumer from any obligations under the contract.

17 Admittedly, Articles 4 and 5 allow the Member States some latitude regarding consumer protection when information is not provided by the trader and in determining the time-limit and conditions for cancellation. That does not, however, affect the precise and unconditional nature of the provisions of the directive at issue in this case. The latitude allowed does not make it impossible to determine minimum rights. Article 5 provides that the cancellation must be notified within a period of not less than seven days after the time at which the consumer received the prescribed information from the trader. It is therefore possible to determine the minimum protection which must on any view be provided.

18 As regards the first issue therefore, the answer to be given to the national court must be that Article 1(1), Article 2 and Article 5 of the directive are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given.

Whether the provisions of the directive concerning the right of cancellation may be invoked in proceedings between a consumer and a trader

19 *The second issue raised by the national court relates more particularly to the question whether, in the absence of measures transposing the directive within the prescribed time-limit, consumers may derive from the directive itself a right of cancellation against traders with whom they have concluded contracts and enforce that right before a national court.*

20 *As the Court has consistently held since its judgment in Case 152/84 Marshall v Southampton and South-West Hampshire Health Authority [1986] ECR 723, paragraph 48, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual.*

21 *The national court observes that if the effects of unconditional and sufficiently precise but untransposed directives were to be limited to relations between State entities and individuals, this would mean that a legislative measure would operate as such only as between certain legal subjects, whereas, under Italian law as under the laws of all modern States founded on the rule of law, the State is subject to the law like any other person. If the directive could be relied on only as against the State, that would be tantamount to a penalty for failure to adopt legislative measures of transposition as if the relationship were a purely private one.*

22 *It need merely be noted here that, as is clear from the judgment in Marshall, cited above (paragraphs 48 and 49), the case-law on the possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to "each Member State to which it is addressed". That case-law seeks to prevent "the State from taking advantage of its own failure to comply with Community law".*

23 *It would be unacceptable if a State, when required by the Community legislature to adopt certain rules intended to govern the State's relations ° or those of State entities ° with individuals and to confer certain rights on individuals, were able to rely on its own failure to discharge its obligations so as to deprive individuals of the benefits of those rights. Thus the Court has recognized that certain provisions of directives on conclusion of public works contracts and of directives on harmonization of turnover taxes may be relied on against the State (or State entities) (see the judgment in Case 103/88 Fratelli Costanzo v Comune di Milano [1989] ECR 1839 and the judgment in Case 8/81 Becker v Finanzamt Muenster-Innenstadt [1982] ECR 53).*

24 *The effect of extending that case-law to the sphere of relations between individuals would be to recognize a power in the Community to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations.*

25 *It follows that, in the absence of measures transposing the directive within the prescribed time-limit, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court.*

26 *It must also be borne in mind that, as the Court has consistently held since its judgment in Case 14/83 Von Colson and Kamann v Land Nordrhein-Westfalen [1984] ECR 1891, paragraph 26, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts. The judgments of the Court in Case C-106/89 Marleasing v La Comercial Internacional de Alimentación [1990] ECR I-4135, paragraph 8, and Case C-334/92 Wagner Miret v Fondo de Garantía Salarial [1993] ECR I-6911, paragraph 20, make it clear that, when applying national law, whether adopted before or after the directive, the national court that has to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 189 of the Treaty.*

27 *If the result prescribed by the directive cannot be achieved by way of interpretation, it should also be borne in mind that, in terms of the judgment in Joined Cases C-6/90 and C-9/90 Francovich and Others v Italy [1991] ECR I-5357, paragraph 39, Community law requires the Member States to make good damage caused to individuals through failure to transpose a directive, provided that three conditions are fulfilled. First, the purpose of the directive must be to grant rights to individuals. Second,*

it must be possible to identify the content of those rights on the basis of the provisions of the directive. Finally, there must be a causal link between the breach of the State's obligation and the damage suffered.

28 The directive on contracts negotiated away from business premises is undeniably intended to confer rights on individuals and it is equally certain that the minimum content of those rights can be identified by reference to the provisions of the directive alone (see paragraph 17 above).

29 Where damage has been suffered and that damage is due to a breach by the State of its obligation, it is for the national court to uphold the right of aggrieved consumers to obtain reparation in accordance with national law on liability.

30 So, as regards the second issue raised by the national court, the answer must be that in the absence of measures transposing the directive within the prescribed time-limit consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court. However, when applying provisions of national law, whether adopted before or after the directive, the national court must interpret them as far as possible in the light of the wording and purpose of the directive.

Decision on costs

Costs

31 The costs incurred by the Danish, German, Greek, French, Italian, Netherlands and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

Operative part

On those grounds,

THE COURT,

in answer to the question referred to it by the Giudice Conciliatore di Firenze, by order of 24 January 1992, hereby rules:

Article 1(1), Article 2 and Article 5 of Council Directive 85/577/EEC of 20 December 1985, concerning protection of the consumer in respect of contracts negotiated away from business premises, are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given.

In the absence of measures transposing Directive 85/577 within the prescribed time-limit, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court. However, when applying provisions of national law, whether adopted before or after the directive, the national court must interpret them as far as possible in the light of the wording and purpose of the directive.