



LUXEMBOURG

## Press and Information

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Judgment of the Court of Justice in Case C-404/06

*Quelle AG v. Bundesverband der Verbraucherzentralen und Verbraucherverbände***CONSUMERS ARE NOT REQUIRED TO PAY COMPENSATION TO SELLERS FOR THE USE OF DEFECTIVE CONSUMER GOODS UNTIL THEIR REPLACEMENT**

*Unlike the consumer, who has already paid the selling price, the seller of goods which are not in conformity has not performed his contractual obligation correctly and must therefore bear the consequences*

In August 2002, Quelle, a mail order company, delivered a ‘stove-set’ to a German consumer. In early 2004, she noticed that the appliance was defective. The enamel layer had come away from the interior of the oven which was part of the ‘stove-set’. Since repair was not possible, the consumer returned the appliance to Quelle, who replaced it with a new appliance. However, Quelle required her to pay EUR 69.97 by way of compensation for the benefit which she had obtained from use of the appliance initially delivered.

The Bundesverband, an authorised consumers’ association acting as the consumer’s authorised representative, demanded reimbursement to her of that amount. In addition, it applied for an order directing Quelle to desist, in cases where goods not in conformity with the contract of sale are replaced, from invoicing consumers for the use of those goods.

The Bundesgerichtshof (BGH), which is to rule at final instance on the dispute, noted that under the German law of obligations the seller is entitled, in cases where goods not in conformity are replaced, to payment by way of compensation for the benefits derived by the purchaser from the use of those goods until their replacement with new goods.

Being unsure whether the German legislation is in compliance with the Community Directive on consumer goods<sup>1</sup>, the BGH made a reference to the Court of Justice of the European Communities for a preliminary ruling on the question whether the provisions of the Directive preclude an obligation on the consumer to compensate the seller of goods which are not in conformity.

**In its judgment delivered today, the Court answers in the affirmative.**

<sup>1</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, p. 12).

As a preliminary point, the Court recalls that, under the Directive, the seller is to be liable to the consumer for any lack of conformity in the goods at the time when they are delivered. Where goods are not in conformity, the consumer is entitled to require the seller to repair the goods or to replace them – in either case free of charge – unless that is impossible or disproportionate.

The Court points out that **the ‘free of charge’ requirement attaching to the seller’s obligation to bring the goods into conformity is intended to protect consumers from the risk of financial burdens which might dissuade them from asserting their rights** in the absence of such protection. The ‘free of charge’ requirement is also consistent with the purpose of the Directive which is to ensure a high level of consumer protection.

The Court goes on to refute the argument that the Directive lays down a general principle enabling the Member States to take account, in any situation they wish, of the use which the consumer has had of goods not in conformity. In fact, it is only in relation to termination of contract that the Directive lays down the principle that the contracting parties must each give up the benefits they have received.

As regards the seller, the Court finds that if a seller delivers goods which are not in conformity, it fails correctly to perform the obligation which it accepted in the contract of sale – unlike the consumer, who has already paid the selling price – and must therefore bear the consequences of that faulty performance. However, the seller’s financial interests are protected, on the one hand, by the two-year time-limit and, on the other, by the fact that it may refuse to replace the goods where that remedy would be disproportionate in that it would impose unreasonable costs on the seller.

The Court therefore concludes that **the Directive precludes national legislation under which a seller who has sold consumer goods which are not in conformity may require the consumer to pay compensation for the use of those defective goods until their replacement with new goods.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS DE EN FR HU NL PL SK*

*The full text of the judgment may be found on the Court’s internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-404/06>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS “Europe by Satellite”, a service provided by the European Commission, Directorate-General Press and Communications,*

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