

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
AZ EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTIEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 69/09

3 September 2009

Judgment of the Court of Justice in Case C-489/07

Pia Messner v. Firma Stefan Krüger

A CONSUMER WHO EXERCISES HIS RIGHT OF WITHDRAWAL FROM A DISTANCE CONTRACT MUST NOT BE OBLIGED, IN GENERAL, TO COMPENSATE THE SELLER FOR THE USE OF THE GOODS ACQUIRED

In certain circumstances, a consumer can however be required to pay compensation for the use of the goods acquired where he has made use of those goods in a way incompatible with the principles of civil law, such as those of good faith or unjust enrichment

The Community directive on the protection of consumers in respect of distance contracts¹ provides that a consumer may withdraw from a distance contract, within a period of at least seven working days, without penalty and without giving any reason. The only charge that may be made to the consumer is the direct cost of returning the goods.

Since the German Civil Code (BGB) however provides that a seller may claim compensation for the value of the use of the consumer goods delivered, the Amtsgericht (Local Court) Lahr referred the question to the Court of Justice whether such an obligation is compatible with the Community directive.

That question is raised during proceedings concerning the withdrawal from a contract for the purchase of a second-hand laptop computer on the internet by a German consumer, Pia Messner.

As the seller of the computer refused to repair free of charge a defect which appeared in August 2006, that is to say, eight months after the purchase, Ms Messner informed the seller that she was revoking the contract of sale and offered to return the laptop computer in return for refund of the purchase price. That revocation was carried out within the period provided for in the BGB in so far as Ms Messner had not received effective notice, provided for in the provisions of that Code, such as to commence the period for withdrawal.

Ms Messner sought reimbursement of EUR 278 before the Amtsgericht Lahr. In opposition to that claim, the seller submitted that Ms Messner was, in any event, obliged to pay it compensation for value inasmuch as she had been using the laptop computer for approximately

¹ Directive 97/7/EC of 20 May 1997 (OJ 1997 L 144, p. 19) defines a distance contract as any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

eight months. For a comparable laptop computer, it argued, the average market rental price for three months would be EUR 118.80, with the result that the compensation for the period during which Ms Messner had been using the computer at issue came to EUR 316.80.

In its judgment delivered today, the Court notes that a general requirement to pay compensation for the value of the use of consumer goods acquired under a distance contract is incompatible with the objectives of the directive. The consumer could be dissuaded from exercising his right of withdrawal if that right involved adverse financial consequences.

If the consumer were required to pay such compensation merely because he had the possibility of using the goods acquired under a distance contract whilst they were in his possession, he would be able to exercise his right of withdrawal only against payment of that compensation. Such an outcome would, in particular, deprive the consumer of the possibility of making completely free and independent use of the period for reflection granted to him by that directive.

Likewise, the functionality and efficacy of the right of withdrawal would be impaired if the consumer were obliged to pay compensation simply as a result of having examined and tested the goods acquired under a distance contract. To the extent to which the right of withdrawal is intended precisely to give the consumer that possibility, the fact of having made use thereof cannot have the consequence that the consumer is able to exercise that right only if he pays compensation.

The Court considers however that the directive is not intended to grant a consumer rights going beyond what is necessary to allow him effectively to exercise his right of withdrawal. Consequently, it does not preclude, in principle, a legal provision of a Member State which requires a consumer to pay fair compensation in the case where he has made use of the goods acquired under a distance contract in a manner incompatible with the principles of civil law, such as those of good faith or unjust enrichment.

The power of the Member States to determine the other conditions and arrangements following exercise of the right of withdrawal must, however, be exercised in accordance with the purpose of the directive and, in particular, may not adversely affect the functionality and efficacy of the right of withdrawal. Such would, for example, be the case if the amount of compensation were to appear disproportionate in relation to the purchase price of the goods at issue or also if the provision of national law were to place on the consumer the onus of proving that he did not use those goods during the period for withdrawal in a manner which went beyond what was necessary to permit him to make effective use of his right of withdrawal.

The Amtsgericht Lahr must now resolve the dispute in the light of the principles observed by the Court, taking due account of all the elements of the case and, in particular, of the nature of the goods at issue and the length of the period at the end of which, as a result of the seller's failure to meet his obligation to provide information, the consumer exercised his right of withdrawal.

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

Languages available: DE EN FR NL

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-489/07>

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

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731