



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 63/15**

Luxembourg, 4 June 2015

Judgment in Case C-497/13

Froukje Faber v Autobedrijf Hazet Ochten BV

## **The Court clarifies the rules on consumer protection with regard to the sale of consumer goods and associated guarantees**

*Any lack of conformity which becomes apparent within six months of the delivery of goods is to be presumed to have existed at the time of delivery*

The EU directive on certain aspects of contracts concluded with consumers seeks to ensure that those consumers are protected.<sup>1</sup>

On 27 May 2008, Ms Froukje Faber purchased a secondhand vehicle at a garage. On 26 September 2008, the vehicle caught fire during a journey and was completely destroyed. It was towed to the seller's garage by a breakdown lorry and then, at the request of that garage, to a scrapyard to be kept there. Ms Faber maintains, in contrast to the garage, that, on that occasion, the parties spoke about the accident and about the possible liability of the garage. By letter of 11 May 2009, Ms Faber gave the seller's garage notice that she was holding it liable. A technical investigation into the cause of the vehicle fire could not take place as the vehicle had been scrapped in the meantime.

As the seller disputed that it was liable, Ms Faber brought legal proceedings. The Gerechtshof (Regional Court of Appeal) Arnhem-Leeuwarden, Netherlands, before which the dispute was brought on appeal, decided to refer questions to the Court of Justice for a preliminary ruling.

As regards whether the national court is required to examine of its own motion whether, in the present case, Ms Faber is to be regarded as a consumer within the meaning of Directive 1999/44, even though she has not relied on that status, the Court replies, in its judgment delivered today, in the affirmative. Whether the consumer is assisted by a lawyer or not cannot alter that conclusion.

In the same vein, the Court confirms that the national court may of its own motion raise Article 5(3) of the directive in the context of an appeal. That provision provides that, unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods is, in principle, to be presumed to have existed at the time of delivery. In view of the nature and importance of the public interest underlying the protection which that provision confers on consumers, it must be regarded as a provision of equal standing to a rule of public policy within the domestic legal system.

The referring court also asks whether the principle of effectiveness precludes a national rule which requires the consumer to prove that he informed the seller of the lack of conformity in good time. According to Netherlands law, it is in principle for the consumer, if there is a challenge by the seller, to furnish evidence that he informed the seller of the lack of conformity of the goods delivered within a period of two months after the discovery of the lack of conformity.

The Court points out in that regard that Directive 1999/44<sup>2</sup> permits Member States to provide that the consumer must, in order to benefit from his rights, inform the seller of the lack of conformity within a period of two months from the date on which he detected such lack of conformity.

<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 1999 L 171, p. 12).

<sup>2</sup> Art. 5(2).

According to the *travaux préparatoires* in respect of that directive, that option reflects the aim of reinforcing legal certainty, by encouraging ‘diligence’ on the part of the purchaser, ‘taking the seller’s interests into account’, ‘but does not establish a strict obligation to carry out a detailed inspection of the good’.

The Court explains that the obligation imposed on the consumer is limited to that of informing the seller that a lack of conformity exists. The consumer is not required, at that stage, to furnish evidence that a lack of conformity actually adversely affects the goods that he has purchased or to state the precise cause of that lack of conformity. By contrast, in order for the notification to be of use to the seller, it must include a certain number of particulars, the degree of precision of which will necessarily vary depending on the specific circumstances of each case.

Lastly, the referring court asks how the apportionment of the burden of proof functions and, in particular, which matters it is for the consumer to establish.

The Court states that if the lack of conformity has become apparent within six months of delivery of the goods, the directive relaxes the burden of proof which is borne by the consumer by providing that the lack of conformity is presumed to have existed at the time of delivery. In order to benefit from that relaxation the consumer must nevertheless furnish evidence of certain facts.

Firstly, the consumer must allege and furnish evidence that the goods sold are not in conformity with the contract in so far as, for example, they do not have the qualities agreed on or even are not fit for the purpose which that type of goods is normally expected to have. The consumer is required to prove only that the lack of conformity exists. He is not required to prove the cause of that lack of conformity or to establish that its origin is attributable to the seller.

Secondly, the consumer must prove that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of delivery of the goods.

Once he has established those facts, the consumer is relieved of the obligation of establishing that the lack of conformity existed at the time of delivery of the goods. The occurrence of that lack of conformity within the short period of six months makes it possible to assume that, although it became apparent only after the delivery of the goods, it already existed ‘in embryonic form’ in those goods at the time of delivery.

It is therefore for the professional seller to provide, as the case may be, evidence that the lack of conformity did not exist at the time of delivery of the goods, by establishing that the cause or origin of that lack of conformity is to be found in an act or omission which took place after that delivery.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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