

**Case C-91/92**

**Paola Faccini Dori**

**v**

**Recreb Srl**

(Reference for a preliminary ruling  
from the Giudice Conciliatore di Firenze)

(Consumer protection in the case of contracts negotiated  
away from business premises — Availability in disputes  
between private individuals)

Opinion of Advocate General Lenz delivered on 9 February 1994 ..... I - 3328  
Judgment of the Court, 14 July 1994 ..... I - 3347

**Summary of the Judgment**

- 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.)*

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.

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.

2. The possibility of relying on directives against State entities is based on the fact

The effect of extending that principle to the sphere of relations between individu-

als 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.

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.

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
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.