



Spanish procedural legislation does not guarantee the effectiveness of the directive on the sale of consumer goods and associated guarantees

It is for the Spanish courts to do all within their power to ensure that consumers benefit from the high level of protection intended by the directive

The directive on the sale of consumer goods and associated guarantees¹ provides that the seller is liable to the consumer for any lack of conformity which exists at the time at which goods were delivered. Initially, the consumer has the right to require that the goods be brought into conformity. If that is not possible, he may then seek a reduction in the price or rescission of the contract. However, where the lack of conformity in the goods delivered is minor, the consumer is not entitled to have the contract rescinded and may request only an appropriate reduction in the sale price.

In July 2004, Ms Duarte Hueros purchased a convertible from the company Autociba for €14 320. Noticing that water leaked in through the roof when it rained, she returned the vehicle to Autociba. After several unsuccessful attempts to repair the defect, Ms Duarte Hueros requested that her vehicle be replaced. Following Autociba's refusal to do so, she brought an action before the Juzgado de Primera Instancia nº 2 de Badajoz (Court of First Instance, Section No 2, Badajoz) seeking rescission of the contract of sale and an order that Autociba and Citroën España SA be held jointly and severally liable to repay the purchase price, the latter as the manufacturer of the vehicle.

That Spanish court found that, as the defect in the vehicle was minor, rescission of the contract of sale could not be granted. Although Ms Duarte Hueros was entitled to a reduction in the sale price, such a remedy could not, by reason of the Spanish procedural rules, be provided because she had not requested such a reduction in her application. A court cannot of its own motion adjudicate on requests which have not been pleaded before it (the principle that judicial decisions must be commensurate with the forms of order sought by the parties). Moreover, no application seeking such a price reduction would be admissible in later proceedings, due to the fact that, under Spanish law, the principle of *res judicata* extends to all claims which could already have been made in earlier proceedings.

In those circumstances, the Spanish court asks the Court of Justice whether that Spanish procedural legislation is compatible with the directive on the sale of consumer goods and associated guarantees.

In its judgment delivered today, the Court notes, at the outset, that the purpose of the directive is to ensure a high level of consumer protection. However, the directive merely requires Member States to adopt such measures as are necessary to enable consumers to exercise their rights effectively, without indicating the processes under which those rights are to be asserted in judicial proceedings, this being a matter for the internal legal order of each Member State. However, those procedural rules must not, in particular, be such as to make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law ('principle of effectiveness').

¹ 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).

In this regard, the Court of Justice finds that, under the Spanish procedural system, a consumer who brings proceedings seeking solely rescission of the contract for the sale of goods is definitively deprived of the possibility of benefitting from the right to seek an appropriate reduction in the price of those goods in the event that the court dealing with the dispute should find that, in fact, the lack of conformity in those goods is minor. Only in the event that the consumer had made an application containing an alternative claim seeking such a price reduction would that outcome not occur. However, such an eventuality must be regarded as being highly improbable. There is a significant risk that the consumer will not put forward an alternative claim requesting a reduction in the price – which would seek, moreover, relief that is inferior to the claim for rescission of the contract – either by reason of the particularly rigid requirement that the two claims must be presented at the same time or because the consumer is unaware of, or does not appreciate, the extent of his rights.

The Court of Justice finds that such procedural rules are liable to undermine the effectiveness of the consumer protection intended by the European Union legislature in so far as they do not allow the national court to recognise of its motion the consumer's right to obtain an appropriate reduction in the price of the goods, even though that consumer is not entitled to refine his initial application or to bring a fresh action to that end. The Spanish system essentially obliges the consumer to anticipate the legal characterisation regarding the lack of conformity in the goods, which must be definitively made by the court dealing with the case. However, this makes the protection provided by the directive completely uncertain in nature and, consequently, inadequate. This is all the more true where the analysis proves to be particularly complex, with the result that the characterisation depends conclusively on the inquiries carried out by the court dealing with the case.

Consequently, the Court of Justice declares that the Spanish procedural legislation does not appear to comply with the principle of effectiveness, in so far as, in proceedings brought by consumers in cases where the goods delivered are not in conformity with the contract of sale, it makes the enforcement of the protection which the directive seeks to confer on them excessively difficult, if not impossible.

The Court of Justice makes it clear that it is for the Spanish court to do whatever lies within its power, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive is fully effective and to achieving an outcome which is consistent with its objective of guaranteeing a high level of consumer protection.

NOTE: A request 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 European Union 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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