



Press and Information

Court of Justice of the European Union
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Judgment in Case C-75/16
Livio Menini and Maria Antonia Rampanelli
v Banco Popolare Società Cooperativa

EU law does not preclude national legislation which provides that, in disputes involving consumers, mandatory mediation should take place before any court proceedings

However, since access to the judicial system must be ensured, a consumer may withdraw from mediation at any time without having to give reasons

Mr Livio Menini and Ms Maria Antonia Rampanelli, who are Italian nationals, brought proceedings before the Tribunale Ordinario di Verona (Verona District Court, Italy) against the bank Banco Popolare, which sought repayment of a loan of €991 848.21.

The Verona District Court pointed out that, under Italian law, the action brought by Mr Menini and Ms Rampanelli is not admissible without a prior out-of-court mediation procedure, even though they are acting as 'consumers'. Furthermore, Italian law provides that, in the context of such mandatory mediation, consumers must be assisted by a lawyer and may not withdraw from the mediation without a valid reason.

Having doubts as to the compatibility of those national rules with EU law, the Verona District Court asked the Court of Justice to interpret the directive on consumer disputes.¹

In today's judgment, the Court points out that the directive, whose objective is to enable consumers to submit, on a voluntary basis, complaints against traders by using alternative dispute resolution (ADR) procedures, could be applicable in the present case, since the mediation procedure may be regarded as one of the possible forms of ADR, a matter which it is for the national court to determine. In particular, the Court notes that the directive is applicable where the ADR procedure (in the present case, the mediation procedure) meets the following three cumulative conditions: (1) it must have been initiated by a consumer against a trader concerning contractual obligations arising from a sales or service contract; (2) it must be independent, impartial, transparent, effective, fast and fair and (3) it must be entrusted to an entity established on a durable basis which is entered on a special list notified to the European Commission.

In the event that the Italian court finds that the directive on consumer disputes is applicable,² the Court notes that the voluntary nature of the ADR procedures provided for in that directive lies not in the freedom of the parties to choose whether or not to use that process but in the fact that the parties are themselves in charge of the process and may organise it as they wish and terminate it at any time. Accordingly, what is important is not whether the mediation system is mandatory or optional, but the fact that, as expressly laid down in the directive, **the parties' right of access to the judicial system is maintained.**

¹ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ 2013 L 165, p. 63).

² On the other hand, the Court points out that Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3) applies only to cross-border disputes, while the case in question is not of a cross-border nature, since both Banco Popolare and Mr Menini and Ms Rampanelli have their headquarters or residence in Italy.

In that regard, the Court finds³ that the requirement for a mediation procedure before bringing court proceedings may be compatible with the **principle of effective judicial protection** under certain conditions to be verified by the national court. That is, in particular, the case provided that that procedure (1) does not result in **a decision which is binding** on the parties⁴, (2) **does not cause a substantial delay for the purposes of bringing legal proceedings**, (3) **suspends the period for the time-barring of claims** and (4) **does not give rise to high costs**, and only if (5) **electronic means are not the only means by which the settlement procedure may be accessed** and (6) **urgent interim measures are possible**. Accordingly, the Court finds that the fact that legislation, such as the Italian legislation, has not only put in place an out-of-court mediation procedure, but has also made it **mandatory to have recourse to that procedure before bringing an action before a judicial body is not incompatible with the directive**.

On the other hand, the Court notes that national legislation **may not require a consumer taking part in an ADR procedure to be assisted by a lawyer**.

Finally, the Court points out that protection of the right of access to the judicial system means that **any withdrawal from an ADR procedure by a consumer, with or without a valid reason**, must never have unfavourable consequences for that consumer at subsequent stages of the dispute. However, national legislation may provide for penalties in the event of the **failure of parties to participate in a mediation procedure without a valid reason**, provided that the consumer may withdraw following the initial meeting with a mediator.

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 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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³ The Court here follows the same reasoning as it adopted in its case-law on settlement procedures (judgment of 18 March 2010, *Alassini and Others*, [C-317/08](#) to [C-320/08](#)).

⁴ The directive establishes the possibility for national legislation to provide that the outcome of ADR procedures is binding on traders, on condition that the consumer has previously agreed to the proposed solution.