

European Union, CJEU, Duarte Hueros, Judgement of 3 October 2013

Deciding bodies and decisions

Court of First instance of Badajoz
Court of Justice of European Union

Area of law

Consumer protection

Subject matter

ex officio power of judge
effective remedy - proportionality
effective remedy - modification of remedy

Summary Facts Of The Case

After having bought a car with a sliding roof from Autociba, Ms Soledad Duarte Hueros had to return the car several times to be repaired as water leaked into the car when it rained. The attempts to repair the car were however unsuccessful. As the request by Ms Duarte for replacement of the car was refused by Autociba, the former claimed rescission of the contract and asked Autociba and the manufacturer of the car to repay the purchase price.

The Court of First Instance of Badajoz held that rescission of the contract could not be granted under Article 3(5) of the national law implementing the Consumer Sales directive since the lack of conformity was considered as “minor”, thus only a reduction of price could be sought. As Ms Duarte has not claimed price reduction, the judge indicated that he could not apply it.

The court, however, deemed that national procedural rules could conflict with EU law, as on the one hand, art. 218 LEC provided that “judicial decisions must be commensurate with the requests made by the parties”; however on the other hand, as the buyer did not claim a price reduction by way of an alternative claim, any subsequent application would be inadmissible because of the *res judicata* principle.

Thus, the Court of First Instance of Badajoz on 13 January 2012 decided to stay the proceedings and to refer the following question:

“If a consumer, after failing to have the product brought into conformity – because, despite repeated requests, repair has not been carried out – seeks in legal proceedings only rescission of the contract, and such rescission is not available because the lack of conformity is minor, may the court of its own motion grant the consumer an appropriate price reduction?”

The CJEU decided the case on 3 October 2013. The CJEU, after having pointed out that the Consumer Sales Directive does not provide for specific remedies, analysed the national procedural rules under the principles of equivalence and effectiveness. Apart from the brief

mention of equivalence, the CJEU focused its reasoning on effectiveness. The CJEU observed that Spanish procedural rules do not allow courts to grant a price reduction of their own motion in the framework of system where the consumer may not modify its original submission nor bring a fresh action. This then hampers the effective protection of the consumer. However, the CJEU did not deduce from this that the national court is obliged to grant a price reduction of its own motion. It is sufficient that national procedural law can be interpreted to enable the consumer to exercise his rights under the Consumer Sales Directive.

Thus, the CJEU affirmed that:

“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 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which does not allow the national court hearing the dispute to grant of its own motion an appropriate reduction in the price of goods which are the subject of a contract of sale in the case where a consumer who is entitled to such a reduction brings proceedings which are limited to seeking only rescission of that contract and such rescission cannot be granted because the lack of conformity in those goods is minor, even though that consumer is not entitled to refine his initial application or to bring a fresh action to that end.”

The national court was instructed to decide the case accordingly. The case was however eventually concluded through a plea agreement.

Notes on the remedies dimension

The CJEU addressed the procedural aspects of the Consumer Sales directive, under the specific issue of an ex officio duty of national courts to apply European law. The CJEU affirmed that the Consumer sales directive precludes national rules, which do not allow a national court hearing the dispute to grant of its own motion an appropriate price reduction, under the given circumstances. Although the CJEU did not clearly distinguish between the reasoning behind the Unfair Terms Directive and the Consumer sales directive, they both aim for strong and effective consumer protection. Consequently, in line with the unfair terms case law, a national court should be required to grant of its own motion the alternative remedy of price reduction, when a consumer has incorrectly invoked rescission (because the non-conformity is only minor) and is only entitled to price reduction and the national system makes it impossible or excessively difficult to invoke this alternative remedy (e.g. a national system does not allow refining the initial application and does not allow making a fresh action to that end), provided that all the necessary legal and factual elements are available.

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Impact on Jurisprudence

See that the CJEU decision had an impact of foreign jurisprudence:

Netherlands

Supreme Court, 12 February 2016, n. 15/1503359, ECLI:NL:PHR:2015:2658. The Supreme Court decided on a case regarding a consumer contract which includes both a subscription to the mobile service as well as the sale of a phone. The Supreme Court affirmed that national courts have the duty to examine (ex officio) the content of the contract and apply the national legislation implementing Directive 87/102 on consumer credit. In particular, the Supreme Court affirmed that the national court, has to ensure adequate effective consumer protection, this allowed the Supreme Court to introduce a new remedy, not specified in the Dutch Civil Code. The wide and detailed reference to CJEU case law supported the reasoning of the Supreme Court, which ends in a higher level of consumer protection.
