

European Union, CJEU, Alassini et al., Judgement of 18 March 2010

Deciding bodies and decisions

CJEU, judgment of 18 March 2010, Joined Cases C-317/08 to C-320/08, *Alassini et al.*, EU:C:2010:146

Area of law

Effective judicial protection

Subject matter

Disputes between end users and operators concerning electronic communications.

The CJEU decided on a reference for preliminary ruling issued by the *Giudice di Pace* of Ischia (Magistrates Court of Ischia, Italy). The national judge requested the guidance of CJEU on the alleged breaches of service contracts by two providers of telephone services.

The European Court of Justice clarified whether Directive 2002/22/EC on Universal Service and users' rights relating to electronic communications networks and services (Universal Service Directive), interpreted in the light of the principle of effective judicial protection, precludes national legislation which makes the admissibility of court proceedings concerning electronic communication services between services providers and endusers conditional upon a mandatory attempt to settle the dispute out of court.

Summary Facts Of The Case

Several claimants initiated proceedings before the *Giudice di Pace* (Magistrates Court) of Ischia (Italy) against two providers of telephone services (Telecom Italia Spa and Wind SpA), contending alleged breaches of service contracts. The defendants argued that the actions were inadmissible, because the applicants had not preliminarily undertake the mandatory attempt to settle the disputes before the Co.re.com (Regional Communication Commission), as required by Italian national law.

The seized court observed, at first, that the Co.re.com had not yet been established in the concerned Region, and that it has not still been verified whether other competent bodies - listed by the national legislation as alternative avenues for undertaking mandatory settlement attempts – operated free of charge and in an accessible way. Moreover, the *Giudice di pace* doubted whether, even in case the Co.re.com had been set up in the Region, the national provisions

requiring the mandatory settlement attempt could fully grant the exercise of end- users' rights, taking into account, in particular, that the relevant procedure must be carried out only by electronic means.

In particular, the national judge doubted the compatibility of the said legislation with Article 34 of the Universal Service Directive, according to which "*Member States must ensure that transparent, simple and inexpensive out-of-court procedures are available, enabling disputes involving consumers and relating to issues covered by that directive to be settled fairly and promptly. Those procedures are always to be without prejudice to national court procedures*".

At the outset, the CJEU examined the issue of the admissibility of the referred question. The Italian government had indeed argued that the question referred to the Luxembourg Court was inadmissible for being merely hypothetical, given that the referring court had not specified which rights under EU law were disputed in the main proceedings. The Court, however, while acknowledging the lack of clear indications about the rights and obligations at dispute in the main proceedings in the orders for reference, rejected the inadmissibility argument on the ground that the case at stake concerned the interpretation and application of the Universal Service Directive.

Concerning the question, the CJEU stressed that neither Article 34 of the Universal Service Directive nor other EU law provisions set a limitation to the Member States' discretion to make out-of-court dispute settlement procedures mandatory. The Directive, in particular, does not provide detailed provisions in relation to the precise content of out-of-court attempts to settle disputes and only requires that the right to bring an action before a court for the purpose of dispute settlement is maintained. The Court even found that the mandatory procedure provided for in Italian national law strengthened the effectiveness of the Directive to the extent that the latter required Member States to implement out-of-court procedures for dealing with unresolved disputes concerning the Directive's content.

At the same time, however, the Court also stressed that, insofar as the mandatory out-of-court procedure was a condition for the admissibility of the action in court, it should ascertain whether the national procedure at issue could be deemed consistent with the right to effective judicial protection.

As a first step, the Court thus examined whether the principle of equivalence (pursuant to which procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions) and the principle of effectiveness (pursuant to which procedural rules must not make it impossible or excessively difficult to exercise the rights conferred by EU law) had been observed.

The Court found that the Italian procedural rules at issue fully respected the principle of equivalence, as they applied without distinction to alleged breaches of EU law or national law on electronic communications.

As regards the principle of effectiveness, the CJEU similarly observed that a mandatory settlement procedure such as that at issue did not make the exercise of the rights derived from the Universal Service Directive impossible or excessively complicated. To support this conclusion, the Court took into account four specific elements: (i) the non-binding outcome of the settlement procedure; (ii) the fact that the procedure did not determine a substantial delay for the purpose of bringing proceedings in court; (iii) the suspension of the period for the time?barring of the claim during the entire procedure; (iv) the fact that the procedure before the Co.re.com did not imply costs.

The Court, however, also found that the exercise of the rights enshrined in the Universal Service Directive could result excessively complicated in practice if such procedure was accessible only by electronic means or if interim measures could not be granted in exceptional circumstances, and, accordingly, invited the referring court to ascertain whether this was the case.

The Court then stressed that, in any event, the fact of making access to court conditional to a mandatory settlement procedure could prejudice the implementation of the principle of judicial effective protection, as enshrined in Article 47 CFR (and Articles 6 and 13 ECHR). In this respect, however, the CJEU observed that this right is not absolute and may instead be legitimately restricted when this is necessary to pursue objectives of general interest, provided that the interference is not disproportionate or intolerable. According to the Court, the adoption of Italian rules providing for a mandatory dispute settlement procedure had been driven by a legitimate objective (i.e., lightening the burden on the court system). Furthermore, it found that the interference with the exercise of the right to judicial protection was not disproportionate in relation to the objective pursued.

Relation to the scope of the Charter

Article 47 EU Charter - Right to an effective remedy and to a fair trial

The case fell within the scope of the Charter pursuant to Article 51(1) therein as it concerned the interpretation of Directive 2002/22/EC on Universal Service and users' rights relating to electronic communications networks and services (Universal Service Directive)

Relation between the Charter and ECHR

The right to an effective remedy enshrined in Article 47(1) of the CFR corresponds to Article 13 ECHR. However, Article 47 CFR protection is more extensive because it guarantees that that right is exercised before a court (whereas Article 13 ECHR grants the right to an effective remedy before a "national authority", which can encompass also nonjudicial authorities).

Insofar as Article 47(1) CFR and Article 13 ECHR overlaps, Article 52(3) CFR requires that the former is interpreted as providing at least the same protection as granted by the latter, taking into account also the case law of the ECtHR. This obligation of parallel interpretation also extends to the issue of limitations: accordingly, any conditions concerning access to a court that is contrary to Article 13 ECHR, as interpreted by the ECtHR, must be regarded as being incompatible also with

Article 47(1) CFR. On the contrary, the CJEU may embrace a more restrictive approach towards such conditions, thus granting broader protection to the person concerned.

Article 52(3) CFR indeed allows Union law to provide more extensive protection than that ensuing from the ECHR.

Sources - EU and national law

National Law

- Article 84 of the Legislative Decree N. 259 of 1 August 2003, relating to the Electronic Communications Code (*Codice delle Comunicazioni Elettroniche*)
- Article 3 and 13 of the Decision 173/07/CONS (GURI No 120 of 25 May 2007, p. 19) adopted by the Communications Regulatory Authority ('the dispute settlement rules')

EU Law

- Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108/51)
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Sources - CJEU Case Law

C-268/06, *Impact*, EU:C:2008:223

C-12/08, *Mono Car Styling*, EU:C:2009:466

C-63/08, *Pontin*, EU:C:2009:666

C-28/05, *Doktor and Others*, EU:C:2006:408
