JUDGMENT OF THE COURT (Fourth Chamber)

15 April 2010 *

In Case C-511/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesgerichtshof (Germany), made by decision of 1 October 2008, received at the Court on 25 November 2008, in the proceedings

Handelsgesellschaft Heinrich Heine GmbH

v

Verbraucherzentrale Nordrhein-Westfalen eV,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), C.W.A. Timmermans, P. Kūris and L. Bay Larsen, Judges,

* Language of the case: German.

Advocate General: P. Mengozzi,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 29 October 2009,

after considering the observations submitted on behalf of:

— the Verbraucherzentrale Nordrhein-Westfalen eV, by K. Haase, Rechtsanwalt,

— the German Government, by M. Lumma and S. Unzeitig, acting as Agents,

— the Spanish Government, by J. Rodríguez Cárcamo, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Portuguese Government, by L. Inez Fernandes and H. Almeida, acting as Agents,

— the Commission of the European Communities, by W. Wils and H. Krämer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6(1), first subparagraph, second sentence, and Article 6(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19).

2 The reference was made in the context of a dispute between Handelsgesellschaft Heinrich Heine GmbH ('Handelsgesellschaft Heinrich Heine') and the Verbraucherzentrale Nordrhein-Westfalen eV ('Verbraucherzentrale Nordrhein-Westfalen') in relation to charging consumers the cost of delivering the goods in the event of withdrawal from a distance contract.

Legal context

European Union law

3 Recital 4 in the preamble to Directive 97/7 provides:

'… [T]he introduction of new technologies is increasing the number of ways for consumers to obtain information about offers anywhere in the Community and to place orders; … some Member States have already taken different or diverging measures to protect consumers in respect of distance selling, which has had a detrimental effect on competition between businesses in the internal market; … it is therefore necessary to introduce at Community level a minimum set of common rules in this area.'

4 Recital 14 in the preamble to Directive 97/7 is worded as follows:

'… [T]he consumer is not able actually to see the product or ascertain the nature of the service provided before concluding the contract; … provision should be made, unless otherwise specified in this Directive, for a right of withdrawal from the contract; …, if this right is to be more than formal, the costs, if any, borne by the consumer when exercising the right of withdrawal must be limited to the direct costs for returning the goods; … this right of withdrawal shall be without prejudice to the consumer's rights under national laws, with particular regard to the receipt of damaged products and services or of products and services not corresponding to the

description given in the offer of such products or services; … it is for the Member States to determine the other conditions and arrangements following exercise of the right of withdrawal'.

5 Article 4 of that directive, headed 'Prior information', states in paragraph 1:

'In good time prior to the conclusion of any distance contract, the consumer shall be provided with the following information:

…

(c) the price of the goods or services including all taxes;

(d) delivery costs, where appropriate;

…'

6 Article 6 of that directive, headed 'Right of withdrawal', provides in paragraphs 1 and 2:

'1. For any distance contract the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods.

...

2. Where the right of withdrawal has been exercised by the consumer pursuant to this Article, the supplier shall be obliged to reimburse the sums paid by the consumer free of charge. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods. Such reimbursement must be carried out as soon as possible and in any case within 30 days.'

7 Under the heading 'Minimal clause', Article 14 of that directive states:

'Member States may introduce or maintain, in the area covered by this Directive, more stringent provisions compatible with the [EC] Treaty, to ensure a higher level of consumer protection. Such provisions shall, where appropriate, include a ban, in the general interest, on the marketing of certain goods or services, particularly medicinal products, within their territory by means of distance contracts, with due regard for the Treaty.'

National legislation

8 Paragraph 2 of the Law on injunctions for infringements of consumer and other rights (Gesetz über Unterlassungsklagen bei Verbraucherrechts- und anderen Verstößen) provides:

'1. Any person who infringes the provisions in place to protect consumers (consumer protection laws), other than in the application or recommendation of general conditions of sale, may have an injunction imposed on him in the interests of consumer protection. If the infringements committed in a commercial undertaking were caused by an employee or a person representing the undertaking, the injunction shall also apply to the owner of the undertaking.

2. For the purposes of this provision, "consumer protection laws" shall mean, in particular:

(1) the provisions of the Civil Code [Bürgerliches Gesetzbuch; "the BGB"] which apply to … distance contracts between traders and consumers …

…'

9 Paragraph 312d(1) of the BGB, headed 'Right of withdrawal and return in respect of distance contracts', states:

'In respect of a distance contract a consumer has a right of withdrawal under Paragraph 355. In the case of contracts for the supply of goods, the consumer may be granted a right of return under Paragraph 356 instead of the right of withdrawal.'

10 Under Paragraph 346 of the BGB, headed 'Effects of termination of the contract':

'1. If one party to a contract has reserved the right to terminate the contract or if he has a statutory right of termination, then, if termination occurs, any goods or services received shall be returned, and the benefits derived from such goods or services surrendered.

2. The obligor shall pay compensation for value, in lieu of restitution or surrender, where:

(1) restitution or surrender is excluded by virtue of the nature of what has been obtained;

(2) he has used up, transferred, encumbered, processed or transformed the object received;

(3) the object received has deteriorated, perished or been lost, any deterioration resulting from the proper use of the object for its intended purposes being disregarded.

If the contract specifies consideration, such consideration shall be taken as a basis for calculation of the compensation for value; if compensation is to be provided for the benefit deriving from use of a loan, evidence may be adduced to show that the value of such benefit was lower.

3. No obligation to pay compensation for value shall arise:

(1) if the defect which gives the right to termination became apparent only during the processing or transformation of the object;

(2) in so far as the obligee is responsible for the deterioration or loss, or in so far as the damage would also have occurred in his hands;

(3) if, in the case of a statutory right of termination, the deterioration or destruction has occurred in the hands of the person entitled, even though he has taken the care that he customarily exercises in relation to his own affairs.

Any remaining enrichment must be surrendered.'

11 Paragraph 347 of the BGB, headed 'Benefits and expenses after termination', states in subparagraph 2:

'If the obligor returns the object or gives compensation for the value or if his duty to compensate for value is excluded under Paragraph 346(3), point 1 or 2, he shall be reimbursed for his necessary outlays. Other expenses shall be reimbursed to the extent that the obligee is enriched by them.'

12 Paragraph 355 of the BGB, headed 'Right of withdrawal in respect of consumer contracts', provides in subparagraph 1:

'Where a consumer is granted a statutory right of withdrawal under this provision, he shall no longer be bound by his declaration of intention to conclude the contract if he has withdrawn from it in good time. The withdrawal does not have to be reasoned and must be declared to the trader in writing or by returning the item within two weeks; the time-limit shall be deemed to be observed in the case of dispatch in good time.'

13 Paragraph 356 of the BGB, headed 'Right of return in consumer contracts', states in subparagraph 1:

'The right of withdrawal under Paragraph 355 may, to the extent expressly permissible by statute, where the contract is entered into on the basis of a sales prospectus, be replaced in the contract by an unlimited right of return. The precondition is that:

(1) a clearly drafted instruction on the right of return is included in the sales prospectus,

(2) the consumer was able to obtain detailed knowledge of the sales prospectus in the absence of the trader, and

(3) the consumer is granted the right of return in writing.'

14 Paragraph 357 of the BGB, headed 'Legal consequences of withdrawal and return', is worded as follows:

'1. Unless otherwise provided, the provisions on statutory termination shall apply *mutatis mutandis* to the right of withdrawal and return. Paragraph 286(3) shall apply *mutatis mutandis* to the obligation to reimburse payments under that provision; the period laid down therein shall commence with the declaration of withdrawal or return by the consumer. In this connection the period shall commence, with regard to an obligation to reimburse on the part of the consumer, when that declaration is made and, with regard to an obligation to reimburse on the part of the seller, when that declaration is received.

…

3. In derogation from point 3 of the first sentence of Paragraph 346(2), the consumer shall pay compensation in respect of deterioration in the goods as a result of

their proper use if he has been informed in writing of this legal consequence and of a means of avoiding it at the latest when the contract is concluded. This shall not apply if the deterioration is due solely to testing of the item. Point 3 of the first sentence of Paragraph 346(3) shall not apply if the consumer has been given due notice of his right of withdrawal or if he has become aware of it in some other way.

4. The above provisions shall be exhaustive as regards the rights of the parties.'

15 Paragraph 448 of the BGB, headed 'Costs of delivery and comparable costs', provides in subparagraph 1:

'The seller shall bear the costs of delivery of the item, the buyer the costs of acceptance and of shipping the item to a place other than the place of performance.'

The main proceedings and the question referred

16 Handelsgesellschaft Heinrich Heine is a mail-order company. Its general conditions of sale provide that the consumer is to pay a flat-rate charge of EUR 4,95 for delivery, which the supplier will not refund in the event of withdrawal from the contract.

17 Verbraucherzentrale Nordrhein-Westfalen, which is a consumer association constituted under German law, brought an action against Handelsgesellschaft Heinrich Heine for an injunction to restrain it from charging consumers the cost of delivering the goods in the event of withdrawal.

18 The first instance court granted the injunction sought by Verbraucherzentrale Nordrhein-Westfalen.

19 The appeal brought against that judgment by Handelsgesellschaft Heinrich Heine was dismissed by the Oberlandesgericht (Higher Regional Court) Karlsruhe.

20 Handelsgesellschaft Heinrich Heine then brought an appeal on a point of law ('Revision') before the Bundesgerichtshof (German Federal Court of Justice), which states explicitly that German law does not grant the buyer any right to reimbursement of the costs of delivering the goods ordered.

21 However, in the view of that court, if Directive 97/7 were to be analysed as precluding the charging of the costs of delivering the goods to the consumer where he withdraws from the contract, the relevant provisions of the BGB would have to be interpreted in conformity with that directive as meaning that the supplier would then be required to reimburse such costs to the consumer.

22 The Bundesgerichtshof considers, however, that it is not in a position to determine, with the required level of certainty, the interpretation to be given to that directive and, in particular, Article 6(1) and (2) thereof.

23 In that regard, the Bundesgerichtshof raises several arguments which could support the view that the directive does not preclude legislation such as that at issue in the main proceedings.

24 Thus, first of all, the words 'infolge der Ausübung seines Widerrufsrechts' ('because of the exercise of his right of withdrawal') in the German version of Article 6(1), first subparagraph, second sentence, and Article 6(2), second sentence, of Directive 97/7 could suggest that those provisions relate only to the costs incurred as a result of exercising the right of withdrawal, excluding costs of delivering the goods which have already been incurred at the date of withdrawal. Other language versions of the directive, in particular the French and English versions, could support that interpretation.

25 Second, Article 6(2), first sentence, of the directive does not prevent, in the event of withdrawal, the supplier from obtaining compensation for the value of the goods or services used by the consumer which, because of their nature, cannot be returned. Therefore, it would be consistent with Article 6 to acknowledge that delivery of the goods is a service in respect of which the consumer should refund to the supplier a replacement value equal to the delivery costs and that, consequently, the supplier's obligation of reimbursement should be reduced accordingly.

26 Third, it is not certain that the aim of consumer protection expressed in particular in recital 14 in the preamble to Directive 97/7 requires reimbursement of the costs of delivering the goods. When making an ordinary purchase, the consumer has to bear the cost of travelling to the shop, not to mention the time spent travelling there.

27 In those circumstances, the Bundesgerichtshof decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Are the provisions of Article 6(1), [first subparagraph], second sentence, and Article 6(2) of Directive [97/7] to be interpreted as precluding national legislation which allows the costs of delivering the goods to be charged to the consumer even where he has withdrawn from the contract?'

The question referred for a preliminary ruling

Observations submitted to the Court

28 The Verbraucherzentrale Nordrhein-Westfalen, the Spanish, Austrian and Portuguese Governments and the Commission of the European Communities consider that Article 6 of Directive 97/7 precludes national legislation which allows the supplier to charge the consumer the costs of delivering the goods in the event that the consumer exercises his right of withdrawal.

29 First of all, they claim that the words 'sums paid by the consumer', in Article 6(2), first sentence, of Directive 97/7, should be interpreted broadly so as to encompass all money paid by the consumer to the supplier in performance of the contract, including the cost of delivering the goods.

30 Next, in their view, Article 6(1) and (2) of the directive provide that only the direct cost of returning the goods may be charged to a consumer who exercises his right of withdrawal. Consequently, other costs, in particular those relating to delivery of the goods, cannot be charged to the consumer.

31 Finally, they claim that the consumer should be reimbursed the costs which he bore in respect of an ancillary service from the supplier, such as the delivery of the goods, which, once the consumer has withdrawn from the contract, does not serve to protect the consumer from risks related to the impossibility in practice of seeing the goods prior to the conclusion of the distance contract.

32 The German Government submits, by contrast, that Article 6(1), first subparagraph, second sentence, and Article 6(2) of Directive 97/7 must be interpreted as not precluding such national legislation, pursuant to which the cost of delivering the goods may be charged to the consumer in the event that he has exercised his right of withdrawal.

33 The German Government submits, in essence, that Directive 97/7 does not regulate the charging of delivery costs in the event of withdrawal by the consumer. Consequently, the charging of such costs falls within the 'other conditions and arrangements following exercise of the right of withdrawal' which the Member States are to determine, in accordance with recital 14 in the preamble to that directive.

34 The German Government also considers that the reimbursement of the 'sums paid' by the consumer within the meaning of Article 6(2), first sentence, of the directive concerns only the principal supplies under the contract and, in particular, the price paid by the consumer.

35 It argues that Directive 97/7 distinguishes costs charged 'because of the exercise' of the right of withdrawal, which are subsequent to the implementation of that right, from the other costs incurred on the conclusion or performance of the contract. In that regard, it claims that Article 6(2), second sentence, of the directive concerns only costs incurred following the exercise of the right of withdrawal, whereas the rules applicable to the other contractual costs are not harmonised by the directive. Delivery costs arise prior to and independently of the exercise of the right of withdrawal. Therefore, the charging of such costs is governed by the domestic law of each Member State.

36 As regards the objectives pursued by Article 6 of Directive 97/7, the German Government submits that that article admittedly seeks to compensate for the disadvantage which results from the impossibility for consumers to examine the goods prior to concluding the contract. However, those objectives do not indicate that a complete overhaul of the contractual relationship is justified.

37 In addition, it submits that the fact that the consumer bears the delivery costs cannot prevent him from exercising his right of withdrawal. First, he is informed of the amount of such costs prior to concluding the contract. Second, the decision to terminate the contract is independent of the existence of those costs since they have already been incurred.

The Court's response

Preliminary observations

38 It should be noted at the outset that it is apparent from recital 4 in the preamble to Directive 97/7 that that directive seeks to introduce at European Union level a minimum set of common rules in the area of distance contracts.

39 In particular, Article 6(1), first subparagraph, first sentence, of that directive affords consumers a right of withdrawal which they may exercise, within a specific time-limit, without penalty and without giving any reason.

40 As regards the legal consequences of the withdrawal, Article 6(2), first and second sentences, of Directive 97/7 provide that 'the supplier shall be obliged to reimburse the sums paid by the consumer free of charge. The only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods'.

41 However, it is apparent from recital 14 in the preamble to the directive that the harmonisation of the legal consequences of the withdrawal is not complete and that it is thus for the Member States to 'determine the other conditions and arrangements following exercise of the right of withdrawal'.

Interpretation of the phrase 'sums paid by the consumer'

42 In the main proceedings, the question which arises is whether the scope of Article 6(1) and (2) of Directive 97/7 covers the charging of the costs of delivering the goods where the consumer exercises his right of withdrawal or whether, on the contrary, it is for the Member States to determine how such costs are to be charged.

43 In that regard, it should be noted that the wording of Article 6(2), first sentence, of that directive imposes on the supplier, in the event of the consumer's withdrawal, a

general obligation to reimburse which covers all of the sums paid by the consumer under the contract, regardless of the reason for their payment.

44 Contrary to what the German Government submits, it is not apparent from the wording of Article 6 of Directive 97/7 or from the general scheme thereof that the terms 'sums paid' must be interpreted as referring solely to the price paid by the consumer, excluding the costs borne by him.

45 Directive 97/7, under Article 4 thereof, makes a distinction between the price of the goods and the delivery costs only in relation to the information to be made available to the consumer by the supplier prior to conclusion of the contract. By contrast, as regards the legal consequences of the withdrawal, that directive does not make such a distinction and thus covers all of the sums paid by the consumer to the supplier.

46 That interpretation is also confirmed by the very wording of the phrase 'the only charge that may be made to the consumer', used in Article 6(2), second sentence, to designate 'the direct cost of returning the goods'. As pointed out by the Advocate General in point 32 of his Opinion, the words 'the only charge' make a strict interpretation of that provision necessary and render that exception exhaustive.

47 Consequently, it is apparent from the above that the term 'sums paid' in Article 6(2), first sentence, of Directive 97/7 encompasses all of the sums paid by the consumer to cover the costs incurred under the contract, subject to the interpretation to be given to Article 6(2), second sentence, of that directive.

Interpretation of the phrase 'because of the exercise of his right of withdrawal'

48 As pointed out in paragraph 35 above, the German Government also claims that the words 'because of the exercise of his right of withdrawal', in Article 6(1), first subparagraph, second sentence, and Article 6(2), second sentence, of Directive 97/7, relate not to all of the costs to be charged to the consumer, but only to those connected with the exercise of the right of withdrawal. Therefore, it claims that those provisions regulate only the situation as regards costs caused by the withdrawal.

49 It should be noted, at the outset, that in certain language versions the wording of Article 6(1), first subparagraph, second sentence, and Article 6(2), second sentence, of the directive can be interpreted either as relating only to costs incurred following the exercise of the right of withdrawal and caused by it, or as relating to all of the costs incurred by the conclusion, performance or termination of the contract which may be charged to the consumer if he exercises his right of withdrawal.

50 As the Advocate General noted in point 41 of his Opinion, even if the German, English and French versions of Directive 97/7 use respectively the terms 'infolge', 'because of' and 'en raison de', other language versions of that directive, in particular the Spanish and Italian, do not use such terms, but merely refer to consumers who exercise their right of withdrawal.

51 According to settled case-law, the need for a uniform interpretation of European Union directives makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted and applied in the light of the versions existing in the other official languages (see, to that effect, Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 36; Case

C-321/96 *Mecklenburg* [1998] ECR I-3809, paragraph 29; Case C-375/07 *Heuschen & Schrouff Oriental Foods Trading* [2008] ECR I-8691, paragraph 46; and Case C-199/08 *Eschig* [2009] ECR I-8295, paragraph 54). In addition, where there is divergence between the various language versions of a European Union text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see Case C-437/97 *EKW and Wein & Co.* [2000] ECR I-1157, paragraph 42; Case C-457/05 *Schutzverband der Spirituosen-Industrie* [2007] ECR I-8075, paragraph 18; and Case C-239/07 *Sabatauskas and Others* [2008] ECR I-7523, paragraph 39).

52 The interpretation of Article 6(1), first subparagraph, second sentence, and Article 6(2), second sentence, of Directive 97/7, to the effect that those provisions relate to all of the costs incurred by the conclusion, performance and termination of the contract which may be charged to the consumer if he exercises his right of withdrawal, is in line with the general scheme and purpose of that directive.

53 First, that interpretation is supported by the fact that, even in the language versions of Directive 97/7 which use, in Article 6, the term 'because of' or a similar expression, recital 14 in the preamble to the directive refers to the costs borne by the consumer 'when exercising the right of withdrawal'. It follows that, contrary to what the German Government claims, Article 6(1), first subparagraph, second sentence, and Article 6(2), second sentence, of the directive relate to all of the costs incurred under the contract and not only costs incurred following the exercise of the right of withdrawal and caused by it.

54 As regards, second, the purpose of Article 6 of Directive 97/7, it should be made clear that recital 14 in the preamble to that directive states that the prohibition of imposing on consumers, where they withdraw from the contract, the costs incurred under that

contract serves to ensure that the right of withdrawal guaranteed by that directive is 'more than formal' (see, in that regard, Case C-489/07 *Messner* [2009] ECR I-7315, paragraph 19). Since Article 6 thus clearly has as its purpose not to discourage consumers from exercising their right of withdrawal, it would be contrary to that objective to interpret Article 6 as authorising the Member States to allow delivery costs to be charged to consumers in the event of such withdrawal.

55 It should be noted, in that regard, that Article 6(1), first subparagraph, second sentence, and Article 6(2), second sentence, of the directive authorise suppliers to charge consumers, in the event of their withdrawal, only the direct cost of returning the goods.

56 If consumers also had to pay the delivery costs, such a charge, which would necessarily dissuade consumers from exercising their right of withdrawal, would run counter to the very objective of Article 6 of the directive, as noted in paragraph 54 above.

57 In addition, charging them in that way would compromise a balanced sharing of the risks between parties to distance contracts, by making consumers liable to bear all of the costs related to transporting the goods.

58 Furthermore, the fact that the consumer has been informed of the amount of the delivery costs prior to concluding the contract cannot neutralise the dissuasive effect which the charging of those costs to the consumer would have on his exercise of his right of withdrawal.

59 In the light of all of the above considerations, the answer to the question referred is that Article 6(1), first subparagraph, second sentence, and Article 6(2) of Directive 97/7 must be interpreted as precluding national legislation which allows the supplier under a distance contract to charge the costs of delivering the goods to the consumer where the latter exercises his right of withdrawal.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 6(1), first subparagraph, second sentence, and Article 6(2) of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts must be interpreted as precluding national legislation which allows the supplier under a distance contract to charge the costs of delivering the goods to the consumer where the latter exercises his right of withdrawal.

[Signatures]