Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

1 March 2012 *

(Consumer protection — Contracts negotiated away from business premises — Directive 85/577/EEC — Scope — Not included — Unit-linked insurance contracts)

In Case C-166/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de Oviedo (Spain), made by decision of 24 March 2011, received at the Court on 5 April 2011, in the proceedings

Ángel Lorenzo González Alonso

v

Nationale Nederlanden Vida Cia De Seguros y Reaseguros SAE,

THE COURT (Fifth Chamber),

composed of M. Safjan, President of the Chamber, E. Levits and M. Berger (Rapporteur), Judges,

Advocate General: V. Trstenjak,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ireland, by D. O'Hagan, acting as Agent,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by J. Baquero Cruz, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Spanish.

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3(2)(d) of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31).

2 The reference has been made in the course of proceedings between Mr Ángel Lorenzo González Alonso and Nationale Nederlanden Vida Cia de Seguros y Reaseguros SAE ('Nationale Nederlanden') regarding an action seeking the cancellation of a 'unit-linked' insurance contract and the refund of premiums paid by Mr González Alonso on the basis of that contract.

Legal context

European Union law

Directive 85/577

3 Article 3(2)(d) of Directive 85/577 provides:

'This Directive shall not apply to:

…

(d) insurance contracts.'

4 Article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ 2002 L 345, p. 1; 'the Life Assurance Directive'), entitled 'Scope', provides:

'This Directive concerns the taking-up and pursuit of the self-employed activity of direct insurance carried on by undertakings which are established in a Member State or wish to become established there in the form of the activities defined below:

(1) the following kinds of assurance where they are on a contractual basis:

(a) life assurance, that is to say, the class of assurance which comprises, in particular, assurance on survival to a stipulated age only, assurance on death only …;

(b) annuities;

…

…'

5 Under Article 35 of that directive, entitled 'Cancellation period':

'1. Each Member State shall prescribe that a policy holder who concludes an individual life-assurance contract shall have a period of between 14 and 30 days from the time when he/she was informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy holder shall have the effect of releasing him/her from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract as defined in Article 32, notably as regards the arrangements for informing the policy holder that the contract has been concluded.

…'

6 Article 36 of that directive, entitled 'Information for policy holders', provides:

'1. Before the assurance contract is concluded, at least the information listed in Annex III(A) shall be communicated to the policy holder.

…

4. The detailed rules for implementing this Article and Annex III shall be laid down by the Member State of the commitment.'

7 Annex I, point III of the Life Assurance Directive lists, as a class of direct insurance covered by the directive, '[t]he assurance referred to in Article 2(1)(a) and (b), which are linked to investment funds'.

8 According to point A(a)13 of Annex III to that directive, '[a]rrangements for application of the cooling-off period' are to be communicated to the policy holder before the contract is concluded.

9 Under Article 1 of First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (OJ 1979 L 63, p. 1):

'This directive concerns the taking up and pursuit of the self-employed activity of direct insurance … in the form of the activities defined below:

1. the following kinds of insurance where they are on a contractual basis:

(a) life assurance … .'

10 Point III of the annex to that directive names, as a class of life assurance, '[t]he assurance referred to in Article 1(1)(a) … which are linked to investment funds'.

National law

11 Directive 85/577 was transposed into the Spanish legal order by Law 26/1991 concerning contracts concluded away from business premises (Ley 26/1991, sobre contratos celebrados fuera de los establecimientos mercantiles) of 21 November 1991 (BOE No 283 of 26 November 1991; 'Law 26/1991'). Law 26/1991, which was in force until 1 December 2007, is applicable to the facts in the main proceedings.

12 Under Article 2(1)(3) thereof, Law 26/1991 does not apply to 'insurance contracts'.

13 Under Article 3(1) and (2) of Law 26/1991:

'1. The contract or contractual offer … shall be set down in writing, in duplicate, with a cancellation notice, and shall be dated and signed by the consumer in his own hand.

2. The contract document shall include … a clear and precise reference to the right of the consumer to withdraw the consent given and to the conditions for and consequences of the exercise of that right.'

14 By virtue of the first paragraph of Article 4 of Law 26/1991, '[a] contract concluded or an offer made in breach of the conditions laid down in Article 3 may be cancelled at the request of the consumer'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

15 It is apparent from the decision for reference that, in July 2007, an employee of Nationale Nederlanden visited Mr González Alonso at his place of work to offer him a financial product. The employee stated that the product comprised a high-return account which allowed the depositor to retrieve the capital invested at any time.

16 The national court stated that Mr González Alonso accepted the offer and signed a number of documents comprising a policy known as 'Segur Fondo Dinámico', an insurance questionnaire relating to the signatory's particulars and his state of health, and an authorisation addressed to his bank for payment of the insurance premiums by direct debit. After those documents had been signed, Nationale Nederlanden began to take payment for successive premiums, amounting in total to EUR 3 083.30, from the applicant's bank account between 3 September 2007 and 30 May 2008.

17 In July 2008, Mr González Alonso informed Nationale Nederlanden that he wished to recover the total amount of the sums he had paid. The company refused to repay that amount. In the light of that refusal, Mr González Alonso applied to the courts of Oviedo on the basis of Article 4 of the Law 26/1991 seeking cancellation of the contract and claiming repayment of the premiums paid.

18 According to the Audiencia Provincial de Oviedo, before which the appeal was brought, the document signed by Mr González Alonso, the 'Segur Fondo Dinámico', includes a life assurance policy, the beneficiaries of which are designated by the policyholder as the insured person himself and his children, with insured capital of a minimum of EUR 3 000 in the event of death. Other types of benefit which distort the inherent characteristics of the life assurance and convert it into a mixed contract have been added to the insurance. The benefits associated with that insurance contract are combined with those corresponding to a genuine financial investment product.

19 The national court points out that the monthly premiums paid by the policyholder appear to be used for a financial investment in which the customer may choose the apportionment of his funds according to the portfolio offered to him. Thus, under the option chosen by Mr González Alonso, 30% of the premiums paid were invested in an internal fund managed by Nationale Nederlanden, 60% in variable-rate investments and 10% in fixed-rate investments.

20 The national court states that Mr González Alonso therefore took a unit-linked product, which is characterised by the fact that the insurer bears only the actuarial risk while the financial risk of the investment is transferred to the policyholder. It is the policyholder who assumes the risk in exchange for certain tax advantages.

21 In those circumstances, despite the exclusion of insurance contracts from the scope of Directive 85/577, provided for in Article 3(2)(d) thereof, and the corresponding exclusion in Article 2(1)(3) of Law 26/1991, the national court raises the question whether it is possible that the contract at issue in the main proceedings may be covered by that directive. In the view of that court, such an interpretation could be justified, having regard to the case-law of the Court of Justice, which has ruled on many occasions that the exclusions laid down in Article 3 of Directive 85/577 must be interpreted restrictively.

22 The national court points out that, in the event that a 'unit-linked' financial product falls within the scope of Directive 85/577, the formal requirements laid down in Articles 3 and 4 of Law 26/1991 will be applicable to it and accordingly the contract signed by the appellant in the main proceedings may be declared void.

23 In those circumstances, the Audiencia Provincial de Oviedo decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 3(2)(d) of [Directive 85/577] be interpreted restrictively so as not to cover a contract, concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company itself?'

Consideration of the question referred

24 By its question, the national court asks, in essence, whether a contract concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company offering the contract falls outside the scope of Directive 85/577, in accordance with Article 3(2)(d) thereof.

25 In that regard, it must be borne in mind, firstly, that Directive 85/577 does not contain any explicit definition of the concept of 'insurance contract'. Furthermore, nor does that directive refer expressly to the law of the Member States on that point. Thus, as dictated by the requirements of both uniform application of European Union law and the principle of equality, the scope of the term 'insurance contract' must be sought having regard to the context of the directive and must be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, Case 64/81 *Corman* [1982] ECR 13, paragraph 8, and Case C-98/07 *Nordania Finans and BG Factoring* [2008] ECR I-1281, paragraph 17).

26 Secondly, as is apparent from settled case-law, derogations from the rules of European Union law for the protection of consumers must be interpreted strictly (see Case C-481/99 *Heininger* [2001] ECR I-9945, paragraph 31, and Case C-215/08 *E. Friz* [2010] ECR I-2947, paragraph 32).

27 However, as the Court has already made clear, the protection of consumers pursued by Directive 85/577 is not absolute and is subject to certain limits (see Case C-412/06 *Hamilton* [2008] ECR I-2383, paragraphs 39 and 40, and *E. Friz*, paragraph 44). The exclusions in Article 3(2) of Directive 85/577 form part of those limits. Too narrow an interpretation of those exclusions would have the consequence of depriving them of their effectiveness and, accordingly, cannot be accepted.

28 As regards the type of contract at issue in the main proceedings, it provides, inter alia, life assurance in the strict meaning of the term. The classification of such a contract as an 'insurance contract' within the meaning of Directive 85/577 does not, therefore, appear to be manifestly incorrect. Although the contract at issue in the main proceedings offers life assurance in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products, the financial risk of which is borne by the policyholder, such contractual stipulations are not unusual.

29 On the contrary, contracts which are 'unit-linked' or 'linked to investment funds', such as that concluded by Mr González Alonso, are common in insurance law. Thus, the European Union legislature took the view that that type of contract falls within a class of life assurance, as is clear from Annex I, point III to the Life Assurance Directive, read in conjunction with Article 2(1)(a) of that directive.

30 Moreover, before the entry into force of Directive 85/577, insurance linked to investment funds was already regarded, in accordance with Article 1(1)(a) of First Directive 79/267 and point III of the annex thereto, as a class of life assurance. The European Union legislature, by adopting Directive 85/577, did not, however, restrict the notion of 'insurance contract' to mean that it did not cover insurance linked to investment funds.

31 In those circumstances, and in the absence of provisions to the contrary, the view must be taken that the European Union legislature, when it adopted Directive 85/577 and excluded insurance contracts as a whole from the scope thereof, regarded insurance contracts linked to investment funds as insurance contracts.

32 Consequently, it must be held that those contracts do not fall within the scope of that directive.

33 That interpretation of Article 3(2)(d) of Directive 85/577 does not, moreover, exclude from the outset the possibility of consumers cancelling insurance contracts in certain circumstances. The Life Assurance Directive provides, in Article 35(1), read in conjunction with Article 36 thereof and point A(a)13 of Annex III thereto, for the right of the policyholder to cancel the insurance contract. However, it is for the national court alone to ascertain whether the conditions laid down for the exercise of that right are satisfied in the dispute before it.

34 Having regard to the foregoing considerations, the answer to the question referred is that a contract concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company offering the contract falls outside the scope of Directive 85/577, in accordance with Article 3(2)(d) thereof.

Costs

35 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 (Fifth Chamber) hereby rules:

A contract concluded away from business premises, under which life assurance is offered in return for payment of a monthly premium to be invested, in varying proportions, in fixed-rate investments, variable-rate investments and financial investment products of the company offering the contract falls outside the scope of Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, in accordance with Article 3(2)(d) thereof.

[Signatures]