Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

3 October 2013 *

(Directive 1999/44/EC — Rights of the consumer in the event of lack of conformity in a product — Minor nature of that lack of conformity — Rescission of the contract not possible — Powers of the national courts)

In Case C-32/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia nº 2 of Badajoz (Spain), made by decision of 13 January 2012, received at the Court on 23 January 2012, in the proceedings

Soledad Duarte Hueros

v

Autociba SA,

Automóviles Citroën España SA,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and J.-J. Kasel, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 January 2013,

after considering the observations submitted on behalf of:

— Ms Duarte Hueros, by J. Menaya Nieto-Aliseda, abogado,

— Autociba SA, by M. Ramiro Gutiérrez and L.T. Corchero Romero, abogados,

— the Spanish Government, by S. Centeno Huerta, acting as Agent,

— the German Government, by F. Wannek, acting as Agent,

— the French Government, by G. de Bergues and S. Menez, acting as Agents,

* Language of the case: Spanish.

— the Hungarian Government, by Z. Fehér, K. Szíjjártó and Z. Biró-Tóth, acting as Agents,

— the Polish Government, by M. Szpunar and B. Majczyna, acting as Agents,

— the European Commission, by J. Baquero Cruz and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 February 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 1999 L 171, p. 12).

2 The request has been made in proceedings between Ms Duarte Hueros, on the one hand, and Autociba SA ('Autociba') and Automóviles Citroën España SA, on the other hand, concerning her request for the rescission of a contract for the sale of a vehicle due to the vehicle's lack of conformity with that contract.

Legal context

European Union law

3 Recital 1 in the preamble to Directive 1999/44 states:

'… [Article 153(1) and (3) EC] provides that the Community should contribute to the achievement of a high level of consumer protection by the measures it adopts pursuant to Article [95 EC]'.

4 Article 1(1) of Directive 1999/44 provides:

'The purpose of this Directive is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market.'

5 Article 2(1) of Directive 1999/44 provides:

'The seller must deliver goods to the consumer which are in conformity with the contract of sale.'

6 Article 3 of Directive 1999/44, entitled 'Rights of the consumer', reads as follows:

'1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered.

2. In the case of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with paragraph 3, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods, in accordance with paragraphs 5 and 6.

3. In the first place, the consumer may require the seller to repair the goods or he may require the seller to replace them, in either case free of charge, unless this is impossible or disproportionate.

…

5. The consumer may require an appropriate reduction of the price or have the contract rescinded:

— if the consumer is entitled to neither repair nor replacement, or

— if the seller has not completed the remedy within a reasonable time, or

— if the seller has not completed the remedy without significant inconvenience to the consumer.

6. The consumer is not entitled to have the contract rescinded if the lack of conformity is minor.'

7 Article 8(2) of Directive 1999/44 provides:

'Member States may adopt or maintain in force more stringent provisions, compatible with the [EC] Treaty in the field covered by this Directive, to ensure a higher level of consumer protection.'

8 The first subparagraph of Article 11(1) of Directive 1999/44 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive …'

Spanish law

9 The national legislation transposing Directive 1999/44 into Spanish law which was in force at the time of the facts in the main proceedings was the Law on guarantees covering sales of consumer goods (Ley 23/2003 de Garantías en la Venta de Bienes de Consumo) of 10 July 2003 (BOE nº 165 of 11 July 2003, p. 27160; 'Law 23/2003').

10 According to the first paragraph of Article 4 of Law 23/2003:

'The seller shall be liable to the consumer for any lack of conformity which exists at the time when the goods were delivered. Under the conditions set down by the present Law, the consumer has the right to have the goods repaired, to have them replaced, to have a reduction made in the price or to have the contract rescinded.'

11 Article 5.1 of Law 23/2003 provides:

'If the goods are not in conformity with the contract, the consumer may choose to require that the goods be repaired or replaced, unless one of those possibilities proves to be impossible or disproportionate. From the moment at which the consumer notifies the seller of his choice, both parties are bound by that choice. That decision by the consumer is subject to the provisions in the following article in the event that repair or replacement does not allow the goods to be brought into conformity with the contract.'

12 Article 7 of Law 23/2003 is worded as follows:

'The consumer shall choose whether there is to be a reduction made in the price or whether the contract is to be rescinded in the event that he cannot require repair or replacement or where repair or replacement has not been carried out within a reasonable amount of time or without causing major inconvenience to the consumer. Rescission shall not be available where the lack of conformity is minor.'

13 Article 216 of the Code of Civil Procedure (Ley de Enjuiciamiento Civil) provides:

'Civil courts before which cases are brought shall dispose of them on the basis of the facts, evidence and claims put forward by the parties, save where otherwise provided by law in specific cases.'

14 Article 218.1 of the Code of Civil Procedure provides:

'Legal decisions must be clear and precise and must be commensurate with the requests and other claims of the parties, made in a timely manner in the course of the proceedings. Those decisions must contain the requisite declarations, find in favour of or against the defendant and settle all points in dispute which form the subject-matter of the litigation.

The court, without departing from the cause of action by accepting elements of fact or points of law other than those which the parties intended to raise, must give its decision in accordance with the rules applicable to the case, even though they may not have been correctly cited or pleaded by the parties to the procedure.'

15 Article 400 of the Code of Civil Procedure states:

'1. Where the claims advanced in the application can be based on different facts, different grounds or different legal arguments, they must be advanced in the application when they are known or can be advanced at the time at which the application is lodged. It is not permissible to defer claims to later proceedings.

…

2. In accordance with the provisions of the preceding paragraph, for the purposes of *lis alibi pendens* and *res judicata*, the facts and the legal grounds advanced in a dispute shall be considered as being the same as those put forward in earlier proceedings if they could have been advanced in those earlier proceedings.'

16 Article 412.1 of the Code of Civil Procedure provides:

'Once the subject-matter of the proceedings has been established in the application, in the defence, and, as the case may be, in the counterclaim, the parties may not vary it at a later date.'

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

17 In July 2004, Ms Duarte Hueros purchased a car with a sliding roof from Autociba. The following August, after she had made a payment in the amount of EUR 14 320 for the vehicle, Autociba delivered the vehicle.

18 Ms Duarte Hueros returned the vehicle to Autociba because, when it rained, water leaked in through the roof into the car interior. After a number of unsuccessful attempts to repair it, Ms Duarte Hueros requested that the vehicle be replaced.

19 Following Autociba's refusal to replace it, Ms Duarte Hueros brought an action before the Juzgado de Primera Instancia nº 2 of Badajoz (Court of First Instance, Section No 2, Badajoz) seeking rescission of the contract of sale and an order that Autociba and Citroën España SA, the latter as the manufacturer of the vehicle, be held jointly and severally liable to repay the purchase price of the vehicle.

20 The Juzgado de Primera Instancia nº 2 of Badajoz found, however, that, because the lack of conformity giving rise to the dispute before it was minor, rescission of the contract of sale could not be granted under Article 3(6) of Directive 1999/44.

21 Against that background, even though Ms Duarte Hueros was entitled to a reduction in the sale price on the basis of Article 3(5) of Directive 1999/44, the referring court nevertheless finds that that remedy could not be provided because of the internal rules of procedure, in particular Article 218.1 of the Code of Civil Procedure, reflecting the principle that judicial decisions must be commensurate with the requests made by the parties, as no request had been made to that effect, either as a principal claim or by way of alternative claim, by the consumer.

22 Moreover, as Ms Duarte Hueros had the possibility of claiming such a reduction in the price, even if by way of alternative claim, in the main proceedings, no such application would be admissible in later proceedings by reason of the fact that, under Spanish law, the principle of *res judicata* extends to all claims which might already have been made in earlier proceedings.

23 In those circumstances, since it has doubts as to whether Spanish law is compatible with the principles flowing from Directive 1999/44, the Juzgado de Primera Instancia nº 2 of Badajoz decided to stay the proceedings and to refer to the Court the following question for a preliminary ruling:

'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 question referred for a preliminary ruling

24 By its question, the referring court seeks to establish, in essence, whether Directive 1999/44 precludes 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.

25 In that regard, it should be pointed out that the purpose of Directive 1999/44, as stated in recital 1 in the preamble thereto, is to ensure a high level of consumer protection (Case C-404/06 *Quelle* [2008] ECR I-2685, paragraph 36).

26 In particular, Article 2(1) of Directive 1999/44 obliges the seller to deliver goods to the consumer which are in conformity with the contract of sale.

27 Accordingly, under Article 3(1) of that directive, the seller is to be liable to the consumer for any lack of conformity which exists at the time at which the goods were delivered (see *Quelle*, paragraph 26, and Joined Cases C-65/09 and C-87/09 *Gebr. Weber and Putz* [2011] ECR I-5257, paragraph 43).

28 Article 3(2) of Directive 1999/44 lists the rights on which the consumer may rely against the seller in cases where there is a lack of conformity in the goods delivered. In the first place, under Article 3(3) of Directive 1999/44, the consumer has the right to require that the goods be brought into conformity. If that is not possible, he may subsequently, in accordance with Article 3(5) thereof, seek a reduction in the price or rescission of the contract (see *Quelle*, paragraph 27, and *Gebr. Weber and Putz*, paragraph 44). However, as is apparent from Article 3(6) of the directive, where the lack of conformity in the goods delivered is minor, the consumer is not entitled to have the contract rescinded and, in such a case, may request only an appropriate reduction in the price of the goods at issue.

29 Against that background, as the Advocate General observed, in essence, in point 41 of her Opinion, it is important to make clear that Article 3 of the directive does not contain any provisions pursuant to which the national court is obliged, in circumstances such as those at issue in the main proceedings, to grant of its own motion an appropriate reduction in the price of the goods at issue.

30 Article 3 of Directive 1999/44, read in conjunction with Article 11(1) thereof, merely requires Member States to adopt such measures as are necessary to enable consumers to exercise their rights effectively, making use of the different remedies provided for in the event that there is a lack of conformity in the goods. As the Advocate General also observed in point 25 of her Opinion, that directive does not provide any indications as to the processes under which those rights may be asserted in court.

31 Thus, in the absence of European Union legislation, the procedural rules governing actions for safeguarding the rights that individuals derive from Directive 1999/44 fall within the internal legal order of the Member States by virtue of the principle of procedural autonomy of those Member States. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence) or such as to make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law (principle of effectiveness) (see, to that effect, Case C-472/11 *Banif Plus Bank* [2013] ECR, paragraph 26 and the case-law cited).

32 As regards the principle of equivalence, it must be noted that the documents before the Court do not point to anything that is capable of raising doubts that the Spanish procedural legislation does not comply with that principle.

33 Indeed, it is apparent from those documents that that legislation applies regardless of whether the law on which the consumer has based his application is European law or national law.

34 As regards the principle of effectiveness, it is the Court's settled case-law that every case in which the question arises as to whether a national procedural provision makes the application of European Union law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies (Case C-618/10 *Banco Español de Crédito* [2012] ECR, paragraph 49, and Case C-415/11 *Aziz* [2013] ECR, paragraph 53).

35 In the present case, it is apparent from the order for reference that, on the one hand, under Articles 216 and 218 of the Code of Civil Procedure, the national court is bound by the form of order sought by the applicant in her application initiating proceedings, and, on the other hand, the applicant cannot vary the subject-matter of that application in the course of the proceedings, by virtue of Article 412.1 of that code.

36 In addition, under Article 400 of that code, the applicant is not entitled to bring a fresh action in order to advance certain claims that she could have advanced, at the very least by way of alternative claim, in previous proceedings. Such an action would, in fact, be inadmissible on the basis of the principle of *res judicata*.

37 It thus follows from those indications that, under the Spanish procedural system, a consumer who brings proceedings seeking only rescission of the contract for the sale of goods is definitively deprived of the possibility of benefitting from the right to seek an appropriate reduction in the price of those goods pursuant to Article 3(5) of Directive 1999/44 in the event that the court dealing with the dispute were to find that, in fact, the lack of conformity of those goods is minor, except where that application contains an alternative claim seeking that such a price reduction be granted.

38 In that regard, it must none the less be stated that, taking into account the progress and the special features of the Spanish procedural system, such an eventuality must be regarded as very improbable because there is a significant risk that the consumer in question will not put forward an alternative claim which would seek, moreover, relief inferior to that sought in the principal claim, either on account of the particularly rigid requirement that the alternative claim be presented at the same time as the principal claim or because the consumer is unaware of, or does not appreciate, the extent of his rights (see, by analogy, *Aziz*, paragraph 58).

39 In those circumstances, it must be held that such procedural rules are liable to undermine the effectiveness of the consumer protection intended by the European Union legislature in so far as they do not allow the national court to recognise of its motion the right of the consumer to obtain an appropriate reduction in the price of the goods, even though that consumer is not entitled to refine his initial application or to bring a fresh action to that end.

40 The Spanish system essentially obliges the consumer to anticipate the outcome of the competent court's analysis of the legal characterisation regarding the lack of conformity in the goods, which is final, making the protection provided for the consumer under Article 3(5) of Directive 1999/44 completely uncertain in nature, and thereby rendering that protection inadequate. This is all the more true where, as in the case in the main proceedings, such an analysis proves to be particularly complex, with the result that that characterisation depends mainly on the manner in which the court dealing with the case carries out its inquiries.

41 In those circumstances, as the Advocate General observed in point 31 of her Opinion, it must be held that the Spanish legislation at issue in the main proceedings does not appear to comply with the principle of effectiveness, in so far as, in proceedings brought by consumers in cases where the goods delivered are not in conformity with the contract of sale, it makes the enforcement of the protection which Directive 1999/44 seeks to provide to those consumers excessively difficult, if not impossible.

42 That said, it is for the referring court to identify which national rules are applicable to the dispute before it and to do whatever lies within its jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that Article 3(5) of Directive 1999/44 is fully effective and to achieving an outcome which is consistent with the objective pursued by that directive (see, to that effect, Case C-282/10 *Dominguez* [2012] ECR, paragraph 27 and the case-law cited).

43 In the light of all of the foregoing considerations, the answer to the question referred is that Directive 1999/44 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.

Costs

44 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 (First Chamber) hereby rules:

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.

[Signatures]