

JUDGMENT OF THE EUROPEAN COURT OF JUSTICE FROM 16.06.2011

ON JOINED CASES C-65/09 AND C-87/09

(CONSUMER PROTECTION – REPLACEMENT OF GOODS)

Judgment of the First Chamber of the European Court of Justice (“the **ECJ**”) from 16.06.2011 in joined cases C-65/09 and C-87/09 was published in the Official Journal of the European Union C 226 from 31.07.2011, p. 2.

The judgment is given in relation to references for preliminary ruling by two German courts for interpretation of Articles 3(2) and (3) of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees. These provisions are implemented in articles 112 and 113 of the Bulgarian Consumer Protection Act.

Key issues to be addressed:

- Sale to a consumer of goods lacking conformity through no fault of the seller;
- Goods correctly installed by the consumer;
- National legislation under which, in the absence of other forms of remedy, the seller is not obliged to replace goods lacking conformity if the cost would be unreasonable;
- Compatibility of such legislation with the Community provisions cited above;
- If incompatible, interpretation of the concept of ‘*replacement free of charge*’ in Article 3(3) of the above Directive;
- Liability of the seller for the cost of replacing goods lacking conformity correctly installed by the consumer.

Short summary of the operative part of the judgment is presented below.

Judgment of the ECJ

The legal problem that the ECJ is called upon to deal with addresses the issue of the scope of seller’s liability for delivery of defective goods or, seen from the angle of consumer’s protection, the question as to which remedies should be available to the consumer in the event of goods delivered to him which are not in conformity with the contract of sale.

Seller’s obligations in case of delivering defective goods

The ECJ ruled that where consumer goods which are not in conformity with the contract and were installed in good faith by the consumer in a manner consistent with their nature and purpose, are restored to conformity by way of replacement, the seller is obliged:

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- (i). either to remove the goods from where they were installed and to install the replacement goods there,
- (ii). or to bear the cost of that removal and installation of the replacement goods.

That obligation on the seller exists regardless of whether he was obliged under the contract of sale to install the consumer goods originally purchased or not.

It should be highlighted that goods must have been installed by the consumer in a manner consistent with their nature and purpose and in good faith as well, meaning before the defect became apparent.

Liability for reimbursing costs incurred for replacement of defective goods

Article 3(3) of Directive 1999/44 must be interpreted as precluding national legislation from granting the seller the right to refuse to replace goods not in conformity on the ground that because of the obligation to remove the goods from where they were installed and to install the replacement goods there, replacement imposes costs on him which are disproportionate with regard to:

- (i). the value that the goods would have if there were no lack of conformity and
- (ii). the significance of the lack of conformity.

It is important to note that this only concerns cases where replacement of defective goods is the only remedy possible.

Scope of seller's liability

If that is the case, however, seller's liability is not unlimited and regarded as covering all costs incurred. That provision yet allows the consumer's right to reimbursement of the cost of removing the defective goods and installing the replacement ones to be limited to a seller's payment of proportionate amount.

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