

Current Affairs

Judgment II. ÚS 2778/19 - Consumer Protection in Distance Contracts

05 November 2019

On 5 November 2019 the Second Chamber of the Constitutional Court (judge rapporteur Kateřina Šimáčková) granted the constitutional complaint and quashed judgments of lower courts.

Headnotes:

If a court fails to take into account consumer protection under Art. 38 of the Charter of Fundamental Rights of the European Union and the legal regulations adopted to ensure any such protection, it proceeds in violation of Art. 1 (2) in conjunction with Art. 10a and 4 of the Constitution of the Czech Republic, and thus violates the right of the parties to the proceedings to judicial protection pursuant to Art. 36 (1) of the Charter of Fundamental Rights and Freedoms.

Summary:

I. The Petitioner withdrew from the contract for the purchase of a table, which she concluded as a consumer with the secondary party via e-mail communication. On the day the table was delivered to her, the Petitioner did not find any defect in the goods after inspection, yet the following day she turned to the secondary party claiming that the table had been delivered with a damaged leg. Once the secondary party rejected the complaint regarding the table, the Petitioner withdrew from the purchase contract. However, the secondary party retained CZK 2,780 (10% of the table price) of the refunded purchase price as compensation for damages, as the delivered table was allegedly not defective and the Petitioner was responsible for reducing its value as a result of a defect which could have been caused, for instance, by improper handling. The District Court dismissed the Petitioner's action, since the Petitioner had not carried out a proper inspection of the table on the day of delivery in which she would have discovered a manifest defect. It was therefore not possible to grant her rights from defective performance.

In the submitted constitutional complaint, the Petitioner argued, above all, that although this was a so-called trivial dispute, the instant matter amounted to a constitutional law dimension, as the contested decision was in extreme contradiction with the principles of justice. According to the Petitioner, the court's conclusion that there had been a delayed inspection and delayed exercise of rights from defective performance was overly formalistic.

II. The Constitutional Court reiterated that the Petitioner had entered into a purchase contract with the secondary party through e-mail communication. In the contested decision, the District Court then inferred that the contract had not been concluded through

the secondary party's Internet store and had not therefore been subject to the commercial terms of that store. In spite of this, it no longer considered whether, in view of the manner in which the contract was concluded (by distance), the Petitioner as a consumer had not been subject to specific provisions designed to protect her. According to the Constitutional Court, the instant case was covered by the provisions of Directive No. 2011/83 on distance contracts, transposed in Section 1820 et seq. of the Civil Code. Although the Petitioner herself did not invoke this specific protection, the task of the District Court was to address it in the light of the principle of *iura novit curia*.

The sale of goods and the provision of services on the basis of distance contracts are specific in that the consumer does not have the opportunity to view the goods or become familiar with the characteristics of the service prior to the conclusion of the contract. The legal regulation therefore grants the consumer the right to withdraw from the contract within 14 days. However, the effectiveness of this right depends on whether consumers are properly informed about it by merchants (entrepreneurs). Thus, although it is generally applicable that, even when withdrawing from the contract, the consumer is liable for the decrease in the value of the goods if they handled the goods in a manner other than necessary to acquaint themselves with the nature and characteristics of the goods, this rule shall not apply unless the merchant instructs the consumer about their right to withdraw from the contract.

Regarding the present case, it was not apparent from the facts established by the District Court that the secondary party had informed the Petitioner in the manner specified above and provided her with information on the right to withdraw from the contract. Although the sales terms and conditions posted on the secondary party's website contained the provisions on the right to withdraw from the contract, the purchase contract was not concluded through that store and the sales terms and conditions thus did not apply to it.

In the light of the foregoing, the Constitutional Court concluded that, since the Petitioner had not been advised of the right to withdraw from the contract, she was not liable, under Art. 14 (2) of Directive No. 2011/83 and Section 1833 of the Civil Code, for the decrease in the value of the goods, even if damage to the table leg was caused by her improper or inappropriate manipulation of the table, as claimed by the secondary party. However, the District Court failed to pay due attention to these facts and failed to take into account the requirements arising from consumer protection within the meaning of European Union law (in particular Art. 38 of the Charter of Fundamental Rights of the European Union) or the legal regulation adopted to ensure such protection in the case of distance contracts.

It was therefore necessary to conclude that the Circuit Court proceeded in violation of Art. 1 (2) in conjunction with Art. 10a and Art. 4 of the Constitution, thereby violating the Petitioner's right to judicial protection under Art. 36 (1) of the Charter. In addition, it violated the same right as a result of violating the constitutional principle of consumer protection as a weaker party. Therefore, the Constitutional Court allowed the constitutional complaint and annulled the contested decision of the District Court.