



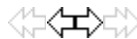
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ECLI:EU:C:2017:541

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

13 July 2017 (\*)

(Reference for a preliminary ruling — Sale of consumer goods and associated guarantees — Directive 1999/44/EC — Article 5(1) — Period of liability of the seller — Limitation period — Second subparagraph of Article 7(1) — Second-hand goods — Contractual reduction of the seller's liability)

In Case C-133/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour d'appel de Mons (Court of Appeal, Mons, Belgium), made by decision of 22 February 2016, received at the Court on 4 March 2016, in the proceedings

**Christian Ferenschild**

v

**JPC Motor SA,**

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger (Rapporteur),  
A. Borg Barthet, E. Levits and F. Biltgen, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Ferenschild, by P.-E. Partsch, avocat,
- the Belgian Government, by J. Van Holm, J.-C. Halleux and M. Jacobs, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, initially by G. Goddin and D. Roussanov, acting as Agents, and subsequently by G. Goddin and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 April 2017,

gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 5(1) and the second subparagraph of Article 7(1) 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 Mr Christian Ferenschild and JPC Motor SA concerning, inter alia, a claim for compensation for the damage suffered as a result of the lack of conformity that allegedly vitiated the vehicle that he acquired from that company.

### **Legal context**

#### *EU law*

3 According to recital 7 of Directive 1999/44:

‘Whereas the goods must, above all, conform with the contractual specifications; whereas the principle of conformity with the contract may be considered as common to the different national legal traditions; whereas in certain national legal traditions it may not be possible to rely solely on this principle to ensure a minimum level of protection for the consumer; whereas under such legal traditions, in particular, additional national provisions may be useful to ensure that the consumer is protected in cases where the parties have agreed no specific contractual terms or where the parties have concluded contractual terms or agreements which directly or indirectly waive or restrict the rights of the consumer and which, to the extent that these rights result from this Directive, are not binding on the consumer’.

4 Recital 16 of the directive states:

‘Whereas the specific nature of second-hand goods makes it generally impossible to replace them; whereas therefore the consumer’s right of replacement is generally not available for these goods; whereas for such goods, Member States may enable the parties to agree a shortened period of liability’.

5 Under recital 17 of the directive:

‘Whereas it is appropriate to limit in time the period during which the seller is liable for any lack of conformity which exists at the time of delivery of the goods; whereas Member States may also provide for a limitation on the period during which consumers can exercise their rights, provided such a period does not expire within two years from the time of delivery; whereas where, under national legislation, the time when a limitation period starts is not the time of delivery of the goods, the total duration of the limitation period provided for by national law may not be shorter than two years from the time of delivery’.

6 Recital 24 of Directive 1999/44 states:

‘Whereas Member States should be allowed to adopt or maintain in force more stringent provisions in the field covered by this Directive to ensure an even higher level of consumer protection’.

7 Under the heading ‘Scope and definitions’, Article 1(1) 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.’

8 Under the heading ‘Rights of the consumer’, Article 3(1) and (2) states:

‘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.’

9 Under the heading ‘Time limits’, Article 5(1) states:

‘The seller shall be held liable under Article 3 where the lack of conformity becomes apparent within two years as from delivery of the goods. If, under national legislation, the rights laid down in Article 3(2) are subject to a limitation period, that period shall not expire within a period of two years from the time of delivery.’

10 Under the heading ‘Binding nature’, Article 7(1) provides:

‘Any contractual terms or agreements concluded with the seller before the lack of conformity is brought to the seller’s attention which directly or indirectly waive or restrict the rights resulting from this Directive shall, as provided for by national law, not be binding on the consumer.

Member States may provide that, in the case of second-hand goods, the seller and consumer may agree contractual terms or agreements which have a shorter time period for the liability of the seller than that set down in Article 5(1). Such period may not be less than one year.’

11 As provided in Article 8 of the directive, which is headed ‘National law and minimum protection’:

‘1. The rights resulting from this Directive shall be exercised without prejudice to other rights which the consumer may invoke under the national rules governing contractual or non-contractual liability.

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

### *Belgian law*

12 Under Belgian law, Directive 1999/44 was transposed into the code civil (Civil Code) by the loi du 1<sup>er</sup> septembre 2004 relative à la protection des consommateurs en cas de vente de biens de consommation (Law of 1 September 2004 on consumer protection in matters involving the sale of consumer goods) (*Moniteur belge* of 21 September 2004, p. 68384), which entered into force on 1 January 2005.

13 Article 1649 *quater* of the Civil Code provides:

‘1. The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered where the lack of conformity becomes apparent within two years of their delivery.

...

By way of derogation from the first subparagraph, the seller and the consumer may, for second-hand goods, agree on a period shorter than two years; such period may not be less than one year.

...

3. Actions by the consumer shall be brought within a period of one year from the day on which the consumer detected the lack of conformity; such limitation period may not expire before the end of the two-year period provided for in [paragraph 1].

...’

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

14 On 21 September 2010, Mr Ferenschild, a Dutch national residing in Belgium, purchased a second-hand car from JPC Motor for EUR 14 000.

15 On 22 September 2010, registration of that vehicle was refused by the Direction pour l’immatriculation des véhicules (Vehicle Registration Department, Belgium) (DIV), given that it was listed in the Schengen Information System as a stolen vehicle. Accordingly, a lack of conformity of the vehicle was detected.

16 On 7 October 2010, the lack of conformity was notified to JPC Motor by Mr Ferenschild’s legal expenses insurer. The insurer put the seller’s liability in issue on the ground that the vehicle at issue had a hidden functional defect, and he gave him formal notice to take the vehicle back and reimburse the sale price, without prejudice to any costs incurred or losses sustained between the date of sale and the future date on which the sale would be declared void.

17 Pursuant to the measures taken by JPC Motor, it became apparent that, in fact, it was not the vehicle itself but the vehicle’s documents that had been stolen in order to serve as a ‘cover’ for a similar vehicle of fraudulent origin in Italy. Accordingly, the vehicle bought by Mr Ferenschild was duly registered by DIV on 7 January 2011.

18 On 21 October 2011, Mr Ferenschild’s adviser put JPC Motor on formal notice to pay compensation to his client for the damage sustained as a result of the lack of conformity affecting the vehicle at issue.

19 Since JPC Motor disputed the claim for compensation, contending that it was out of time, Mr Ferenschild initiated legal proceedings against that company on 12 March 2012 before the tribunal de commerce de Mons (Commercial Court, Mons, Belgium) in order to obtain compensation for the damage sustained as a result of the lack of conformity of the vehicle at issue. He sought reimbursement of the costs of renting a replacement vehicle and all administrative costs incurred, as well as a reduction of the sale price in respect of the capital loss of the vehicle purchased, plus compensatory interest and interest to be determined by the court from 7 October 2010.

20 By judgment of 9 January 2014, the tribunal de commerce de Mons (Commercial Court, Mons) dismissed Mr Ferenschild's application.

21 On 3 April 2014, Mr Ferenschild brought an appeal against that judgment before the cour d'appel de Mons (Court of Appeal, Mons, Belgium).

22 On 8 June 2015, the cour d'appel de Mons (Court of Appeal, Mons) found that the vehicle sold lacked conformity within the meaning of Article 1649 *bis* et seq. of the Civil Code, but that the lack of conformity appeared to have been resolved following registration of the vehicle. However, the court ordered, of its own motion, that the hearing be reopened in order to allow the parties to make submissions, inter alia, on whether the action was time barred.

23 With regard to the time-barring of the action at issue in the main proceedings, the referring court states, first, that it is necessary to distinguish between 'the guarantee period' and 'the limitation period'.

24 In that respect, the referring court indicates, on the one hand, that the duration of the guarantee period set out in paragraph 1 of Article 1649 *quater* of the Civil Code is two years as from delivery of the goods. In accordance with the third subparagraph of that provision, that period may be reduced to one year minimum for second-hand goods by mutual agreement between the parties to the contract of sale. In the present case, the parties at issue in the main proceedings allegedly made use of the possibility of reducing the guarantee period to one year.

25 On the other hand, the duration of the limitation period laid down in paragraph 3 of Article 1649 *quater* of the Civil Code is one year from the day on which the lack of conformity is detected by the consumer, bearing in mind that that period cannot expire before the end of the two-year period provided for in paragraph 1 of that article.

26 The referring court finds, secondly, that in the present case the legal proceedings were instituted on 12 March 2012, that is to say, one year after, inter alia, the vehicle at issue was delivered, namely on 21 September 2010, and the lack of conformity of the vehicle was detected, namely on 22 September 2010.

27 In that context, the question is how to interpret paragraph 3 of Article 1649 *quater* of the Civil Code on the limitation period in a situation such as that at issue in the main

proceedings, in which the guarantee period was shortened to one year by mutual agreement. More specifically, the referring court wonders whether, in such a situation, the one-year limitation period laid down in that provision should be extended until the two-year guarantee period provided for in paragraph 1 of that article expires.

28 In that regard, JPC Motor claims that, inter alia, in view of the underlying principle of paragraph 3 of Article 1649 *quater* of the Civil Code, which is to prevent any action by the consumer from becoming time barred before the guarantee period expires, an extension of the limitation period until expiry of the two-year period is unwarranted where the guarantee period has been legitimately shortened to one year. In such a situation, that provision should be interpreted as meaning that the limitation period for the initiation of legal proceedings by the consumer can expire before the end of the two-year period from the time of delivery of second-hand goods.

29 For his part, Mr Ferenschild submits that, in particular, Directive 1999/44 and, more specifically, Article 5(1) and the second subparagraph of Article 7(1) thereof, do not allow Member States to prescribe, for actions by the consumer relating to second-hand goods, a limitation period shorter than two years from the time of delivery of the goods.

30 According to the referring court, if paragraph 3 of Article 1649 *quater* of the Civil Code is to be interpreted as meaning that the limitation period for action by the consumer expires before the two-year period as from delivery of the second-hand goods expires, the question arises as to whether the provisions of Belgian law are compatible with Directive 1999/44, and in particular with Article 5(1) and the second subparagraph of Article 7(1) thereof.

31 In those circumstances, the cour d'appel de Mons (Court of Appeal, Mons) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Article 5(1) of Directive 1999/44 ..., in conjunction with the second subparagraph of Article 7(1) thereof, be interpreted as precluding a provision of national law which is interpreted as allowing, for second-hand goods, the limitation period for action by the consumer to expire before the end of the two-year period as from delivery of goods which are not in conformity with the contract, where the seller and the consumer have agreed on a guarantee period of less than two years?’

### **Consideration of the question referred**

32 By its question, the referring court asks, in essence, whether Article 5(1) and the second subparagraph of Article 7(1) of Directive 1999/44 must be interpreted as precluding a rule of a Member State which allows the limitation period for action by the consumer to be shorter than two years from the time of delivery of the goods where the Member State has made use of the option given by the latter of those two provisions, and the seller and consumer have agreed on a period of liability of the seller of less than two years, namely a one-year period, for the second-hand goods concerned.

33 In order to provide a useful answer to the referring court, it should be recalled, in the first place, that, under the heading ‘Time limits’, Article 5(1) of Directive 1999/44 provides for a distinction to be drawn between two types of time limits, each of which has a specific purpose.

34 On the one hand, there is the time limit referred to in the first sentence of Article 5(1) of the directive, namely the period of liability of the seller, which refers to the period during which the seller is liable under Article 3 of the directive where a lack of conformity of the goods at issue becomes apparent and, accordingly, this gives rise to the rights set out in that article in favour of the consumer. The duration of the period of liability of the seller is, as a rule, two years from the time of delivery of the goods.

35 On the other hand, the time limit referred to in the second sentence of Article 5(1) of the directive is a limitation period corresponding to the period of time during which the consumer can actually exercise the rights that arose in the period of liability of the seller, with regard to the latter.

36 In the second place, as noted by the Advocate General in point 52 of his Opinion, whereas Article 5(1) of Directive 1999/44 requires that a period of liability of the seller is laid down, which, as a rule, is at least two years from the time of delivery of the goods, the decision whether to impose a limitation period for action by the consumer is a matter for national legislation.

37 Nonetheless, it is apparent from the wording of the second sentence of Article 5(1) of the directive, read in conjunction with recital 17 thereof, that if a limitation period is imposed under national law, that period cannot expire within two years from the time of delivery of the goods concerned, even if, under that national law, the limitation period does not commence at the time of delivery of the goods.

38 It follows from the foregoing considerations that, in order to ensure a uniform minimum level of consumer protection in the context of the internal market, in accordance, inter alia, with Article 1(1) of Directive 1999/44, that directive established, under Article 5(1) thereof, two distinctive time limits, namely a period of liability of the seller and a limitation period. The mandatory minimum duration of each of those periods is, as a rule, two years from the time of delivery of the goods concerned.

39 The wording of the first subparagraph of Article 7(1) of the directive, read in the light of recital 7 thereof, confirms the binding nature of that general minimum duration in so far as, under that provision, the parties cannot, as a rule, derogate from it by means of an agreement and Member States must ensure that it is complied with (see, to that effect, judgment of 4 June 2015, *Faber*, C-497/13, EU:C:2015:357, paragraph 55).

40 In the third place, as noted by the Advocate General in point 53 of his Opinion, the absence of a link between the duration of the period of liability of the seller and that of any limitation period can be inferred from the very wording of Article 5(1) of Directive 1999/44. In fact, the second sentence of Article 5(1) of the directive makes no reference



to the first sentence of that provision. Therefore, contrary to the assertions of the Belgian Government, in particular, in its written observations, that provision does not make the duration of any limitation period contingent on that of the period of liability of the seller.

41 In the light of the foregoing, it must be observed that (i) the limitation period of at least two years from the time of delivery of the goods is an important element of consumer protection guaranteed by Directive 1999/44 and (ii) the duration of that period is not contingent on that of the period of liability of the seller.

42 In the fourth place, it should be borne in mind that the second subparagraph of Article 7(1) of the directive, pursuant to which Member States may provide that, in the case of second-hand goods, the seller and consumer may agree a shorter time period for the liability of the seller than that set out in Article 5(1) of the directive, provided that that period is not less than one year, does not warrant a different interpretation.

43 In that respect, it must be noted, first, that the second subparagraph of Article 7(1) of Directive 1999/44 concerns only the period of liability of the seller, as referred to in the first sentence of Article 5(1) thereof, and not the limitation period. In fact, different language versions of the directive and, inter alia, the Spanish, English, French and Italian versions, refer to ‘the liability of the seller’ in the second subparagraph of Article 7(1) of Directive 1999/44.

44 Moreover, in the German language version, the wording of the second subparagraph of Article 7(1) of Directive 1999/44 is even more explicit in that regard. Indeed, while the first sentence of that provision lays down the possibility, in relation to second-hand goods, to reduce the period during which the seller is liable pursuant to Article 5(1) of the directive (*‘der Verkäufer weniger lange haftet als in Artikel 5 Absatz 1 vorgesehen’*), the second sentence of the provision specifies that that possibility relates to the period of liability of the seller (*‘diese kürzere Haftungsdauer’*).

45 In addition, that interpretation is confirmed by recital 16 of the directive, inasmuch as it states that, for second-hand goods, Member States may enable the parties to agree a shortened ‘period of liability’.

46 Secondly, as has already been pointed out in paragraph 39 of the present judgment, it should be recalled that the two-year period of liability of the seller from the time of delivery of the goods, as mentioned in the first sentence of Article 5(1) of Directive 1999/44, is a mandatory time limit from which the parties to the contract, as a rule, cannot derogate. Therefore, as noted by the Advocate General in points 74 and 75 of his Opinion, the second subparagraph of Article 7(1) of the directive, which allows Member States to provide that, in the case of second-hand goods, the parties may stipulate a shorter time period for the liability of the seller, of not less than one year, is an exception, which must be interpreted strictly (see, by analogy, judgment of 1 March 2012, *González Alonso*, C-166/11, EU:C:2012:119, paragraph 26 and the case-law cited).

47 Accordingly, the possibility for Member States to provide that, in the case of second-hand goods, the parties may reduce the duration of the period of liability of the seller to one year from the time of delivery of the goods does not enable Member States to provide also that the parties may reduce the duration of the limitation period caught by the second sentence of Article 5(1) of the directive.

48 In the last place, it must be recalled that Member States must comply with the minimum level of protection provided for by Directive 1999/44. Thus, pursuant to Article 8(2) of the directive, read in conjunction with recital 24 thereof, while they may adopt or maintain in force more stringent provisions in the field covered by this directive in order to ensure an even higher level of consumer protection, they may not undermine the guarantees laid down by the EU legislature (see, to that effect, judgment of 17 April 2008, *Quelle*, C-404/06, EU:C:2008:231, paragraph 36).

49 A national rule such as that at issue in the main proceedings, which would allow the limitation period afforded to consumers to be shortened as a consequence of the reduction of the period of liability of the seller to one year, would result in a lesser level of consumer protection and would undermine the guarantees afforded to consumers under Directive 1999/44. Indeed, as noted by the Advocate General in point 93 of his Opinion, the consumer would be entirely deprived of legal remedies before the end of a period of two years from the time of delivery of the goods, a period of time which he is guaranteed, however, under the second sentence of Article 5(1) of the directive.

50 In the light of all the foregoing, the answer to the question is that Article 5(1) and the second subparagraph of Article 7(1) of Directive 1999/44 must be interpreted as precluding a rule of a Member State which allows the limitation period for action by the consumer to be shorter than two years from the time of delivery of the goods where the Member State has made use of the option given by the latter of those two provisions, and the seller and consumer have agreed on a period of liability of the seller of less than two years, namely a one-year period, for the second-hand goods concerned.

### **Costs**

51 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:

**Article 5(1) and the second subparagraph of Article 7(1) 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 must be interpreted as precluding a rule of a Member State which allows the limitation period for action by the consumer to be shorter than two years from the time of delivery of the goods where the Member State has made use of the option given by the latter of those two**

**provisions, and the seller and consumer have agreed on a period of liability of the seller of less than two years, namely a one-year period, for the second-hand goods concerned.**

[Signatures]

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\* Language of the case: French.

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