Centre Européen des Consommateurs Luxembourg

ECC-Net

JUDGMENTS OF THE COURT OF JUSTICE OF THE EUROPEAN UNION ON CONSUMER PROTECTION – 2021[1]

12 judgments[2] (updated till 30 June 2021)

1. Judgment of 27 January 2021, Dexia Nederland BV v XXX and Z, joined Cases C-229/19 and C-289/19

The disputes in the main proceedings arise from the refusal of XXX and Z to settle the balances set out in the final statements drawn up by Dexia following termination of the share leasing agreements, which were concluded between them and Dexia's predecessor in title, on account of delays in payment of the monthly instalments payable to Dexia. In this case the Court of Justice was requested to clarify the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; concerning the refusal to pay final statements drawn up by Dexia, following the termination of the share leasing agreement concluded between the consumers and a company of which Dexia was the successor. The Court stated that the provisions of Directive 93/13/EEC must be interpreted as meaning that a term in a risk-weighted contract concluded between a seller or supplier and a consumer, such as share leasing agreements, must be regarded as unfair, since, having regard to the circumstances surrounding the conclusion of the contract in question and by reference to the date of its conclusion, that term may create a significant imbalance between the rights and obligations of the parties during the performance of the contract, even though that imbalance could occur only if certain circumstances were to arise and, in other circumstances, that term could even benefit the consumer. In those circumstances, it is for the referring court to ascertain, in the light of the circumstances attending the conclusion of the contract, whether a term fixing in advance the advantage which the seller or supplier is to enjoy in the event of premature termination of the contract was, from the time that contract was concluded, liable to create such an imbalance. In addition, must be interpreted as meaning that a seller or supplier which has imposed on a consumer a term declared unfair and, consequently, void by the national court cannot claim the statutory compensation provided for by a supplementary provision of national law which would have been applicable in the absence of that term where the contract is capable of continuing in existence without that term.

Link to the judgment

2. Judgment of 3 February 2021, Stichting Waternet v MG, Case C-922/19

The case is regarding Stichting Waternet a water supply company which is exclusively responsible for the supply of drinking water in the municipality of Amsterdam (Netherlands), where the dwelling occupied by MG since September 2012 is located. MG did not inform

[1] Information obtained from the website of the Court of Justice. www.curia.europa.eu

[2] The number 8 of the list is related to 2 joint cases.

Stichting Waternet of his move as new occupant into that dwelling. The previous occupant also failed to indicate that he was moving out and continued to pay water supply invoices for that dwelling. Stichting Waternet brought an action before the Cantonal Court, Netherlands, seeking an order that MG pay the sum of EUR 283.79, together with interest at the statutory rate and costs and, in the alternative, an authorisation to disconnect the water supply of that dwelling. In this case, the Court held that the concept of 'inertia selling', within the meaning of point 29 of Annex I to Directive 2005/29, must be interpreted as meaning that, it does not cover a commercial practice of a drinking water supply company consisting in maintaining the connection to the public water supply network when a consumer moves into a previously occupied dwelling, since that consumer does not have the choice of the supplier of that service, that supplier charges cost-covering, transparent and non-discriminatory rates that are proportionate to the water consumption, and the consumer knows that that dwelling is connected to the public water supply network and that water is supplied against payment.

Link to the judgment

3. **Judgment of 4 February2021, Azienda Agricola Ambrosi Nicola Giuseppe, Azienda Agricola Castagna Giovanni, Azienda Agricola Castellani Enio Nereo e Giuliano Ss, Azienda Agricola De Fanti Maria Teresa, Azienda Agricola Giacomazzi Vilmare, Azienda Agricola Iseo di Lunardi Giampaolo e Silvano Ss, Azienda Agricola Mastrolat di Mastrotto Franco e Luca Ss, Azienda Agricola Righetti Michele e Damiano, Azienda Agricola Scandola Stefano e Gianni, Azienda Agricola Tadiello Roberto, Azienda Agricola Turazza Mario, Azienda Agricola Zuin Tiziano, 2 B Società Agricola Srl, Azienda Agricola Fracasso Claudio, Azienda Agricola Pozzan Mirko v Agenzia per le Erogazioni in Agricoltura (AGEA) and Ministero delle Politiche agricole e forestali, Case C-640/19**

For the milk and milk product marketing period 2008/2009, the AGEA sent communications to each of the Italian producers concerned regarding the procedures for compensation and calculation of domestic production for the purpose of establishing additional levies which they would have to pay. Those producers brought an action for annulment of the payment orders issued against them and all the letters from the AGEA and the Ministry linked to those payment orders; they claimed that those acts are unlawful, in particular because they do not comply with EU law. In support of their claims, they rely, inter alia, on the unreliable nature of the data used to establish the level of domestic production in the milk and milk products sector. They take the view that the quantities of milk used for the production of cheeses with a protected designation of origin (PDO) intended for export to countries outside the European Union should be excluded from the guaranteed total quantity allocated to the Member States. The Court ruled that Articles 55, 65 and 78 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, as amended by Council Regulation (EC) No 248/2008 of 17 March 2008, must be interpreted as not excluding the quantities of milk used for the production of cheeses with a protected designation of origin intended for export to countries outside the European Union from the calculation of national quotas for the production of milk and other milk products and of surplus levies.

Link to the judgment

4. Judgment of 18 March 2021, X v Kuoni Travel Ltd,, C-578/19

X and her husband entered into the contract at issue with Kuoni under which the latter agreed to provide them with a package holiday in Sri Lanka. On 17 July 2010, whilst making her way to the reception of the hotel where X was staying, came upon N, an electrician and hotel employee, who lured X into an engineering room where he raped and assaulted her. In the dispute, X claimed damages against Kuoni in respect of the rape and assault suffered, on the ground that these were the result of the improper performance of the contract at issue. By its judgment, the Court ruled that the third indent of Article 5(2) of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours, in so far as it provides for a ground for exemption from liability of an organiser of package travel for the proper performance of the obligations arising from a contract relating to such travel, concluded between that organiser and a consumer and governed by that directive, must be interpreted as meaning that, in the event of non-performance or improper performance of those obligations, which is the result of the actions of an employee of a supplier of services performing that contract: A) that employee cannot be regarded as a supplier of services for the purposes of the application of that provision, and B) the organiser cannot be exempted from its liability arising from such non-performance or improper performance, pursuant to that provision.

Link to the judgment

5. Judgment of 22 April 2021, LH v Profi Credit Slovakia s. r. o., C-485/19

On 30 May 2011, the applicant in the main proceedings and Profi Credit Slovakia entered into a consumer credit agreement for the sum of EUR 1 500, with an interest rate of 70% and an APR of 66.31%, amounting to a total of EUR 3 698.40, to be repaid in 48 monthly instalments of EUR 77.05, without any specification as to the breakdown of the repayments between capital, interest and other costs borne by the borrower. It is apparent from the order for reference that, under the terms of that agreement, Profi Credit Slovakia was entitled, from the first day of the contractual relationship, to charge fees amounting to EUR 367.49 in return for the possibility given to the consumer of obtaining a deferment of the repayment of the credit in the future. As a result of the application of those charges, the applicant in the main proceedings received not the agreed amount of EUR 1 500, but a residual amount of EUR 1 132.51, a reduction of 24%, even though it was not certain that that consumer would make use of the option to defer reimbursement. On the other hand, was mentioned that the APR indicated in the contract (66.31%) is lower than the interest rate (70%), which could be related to the fact that the APR was not calculated on the basis of the amount actually paid by Profi Credit Slovakia. The referral decision in this case stated that, under Slovak law, the incorrect indication of the APR is sanctioned by the loss of the creditor's right to the payment of interest and charges relating to the credit. On 2 February 2017, after having repaid the credit in full, the applicant in the main proceedings was informed by a lawyer that the term in the contract relating to the deferment fee was unfair and that the information given to him concerning the APR was incorrect. On 2 May 2017, the applicant brought an action for restitution of the fees which, in his view, were wrongly charged. In its defence, Profi Credit Slovakia pleaded that his right to bring proceedings was time-barred. By decision of 15 November 2018, the Okresný súd Prešov (District Court, Prešov, Slovakia) dismissed that application. On appeal by the applicant, the Regional Court, Prešov, Slovakia, takes the view that the agreement at issue may, in a number of respects, be regarded as contrary to the rules of Union law on consumer protection. Regarding this case the Court ruled that the principle of effectiveness must be interpreted as precluding national legislation which provides that an action brought by a consumer for repayment of sums wrongly paid in connection with the performance of a credit agreement may not be brought on the basis of unfair terms, within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts,

or terms contrary to the requirements of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, is subject to a limitation period of three years which begins to run from the day on which the unjust enrichment occurred. In addition, Article 10(2) and Article 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, *Home Credit Slovakia* (C-42/15, EU:C:2016:842), are applicable to a credit agreement which was entered into before that judgment was handed down and before the national legislation was amended in order to comply with the interpretation adopted in that judgment.

Link to the judgment

6. Judgment of 29 April 2021, Natumi GmbH v Land Nordrhein-Westfalen, Case C-815/19

The German company Natumi produces soya and rice drinks. It adds the red coral alga Lithothamnium calcareum to those drinks, in the form of a powder obtained from the cleaned, ground and dried sediment of that alga after it has died. The Land of North Rhine-Westphalia (Germany) brought proceedings for the imposition of a financial penalty on Natumi owing to the fact that the use of calcium carbonate, as a mineral, for the calcium enrichment of organic products is prohibited, even where enrichment is effected by adding algae. In addition, according to the Land, it is forbidden to include references to calcium on such products. According to Natumi, that alga is a natural alternative to calcium and its use for enriching organic food should be permitted. By its judgment, the Court holds that EU law precludes the use of a powder obtained from the cleaned, dried and ground sediment of the alga Lithothamnium calcareum, as a non-organic ingredient of agricultural origin, in the processing of organic foodstuffs such as rice-and soya-based organic drinks for the purpose of their enrichment with calcium. The use of a non-organic ingredient of agricultural origin in organic food is permitted only under certain conditions, in particular that it is impossible, without having recourse to that ingredient, to produce or preserve that food or to fulfil given dietary requirements provided for on the basis of EU legislation. It does not, however, appear that those are criteria are fulfilled in the case of the powder in question. In addition, EU law lays down strict rules on the addition of minerals, such as calcium, in the production of organic food. As a rule, it excludes the use of calcium carbonate to enrich products with calcium, with the result that the addition of calcium in the processing of organic foodstuffs such as the rice- and soya-based drinks at issue, for the sole purpose of their enrichment with calcium, is prohibited. Consequently, authorising the use of the powder in question as a non-organic ingredient of agricultural origin in the processing of organic foodstuffs, in order to enrich them with calcium, would amount to permitting producers of those foodstuffs to circumvent that prohibition.[3]

Link to the judgment

7. Judgment of 29 April 2021, I.W., and R.W. v Bank BPH S.A., Third party: Rzecznik Praw Obywatelskich, Case C-19/20

In 2008, I.W. and R.W concluded, as consumers, a mortgage loan agreement with Bank BPH's predecessor in law, the term of that loan being 360 months (30 years). The contract was denominated in Polish zlotys (PNL), but indexed to a foreign currency, namely the Swiss franc (CHF). It is apparent from the explanations provided by the referring court that those borrowers were informed that the Swiss franc exchange rate could increase, which would affect the amount of the monthly repayment instalments of that loan. Further to a request by

[3] Press Release N° 69/21 https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-04/cp210069en.pdf

the bank in that respect, those borrowers submitted a declaration that they wished to choose indexation of their loan to the Swiss franc rate, even though they had been duly informed of the risks in respect of a loan granted in a foreign currency. Under the terms of that contract, repayment of the loan was made in Polish zlotys, the balance of the loan and the monthly repayments being calculated on the basis of the CHF currency exchange rate, plus the selling margin for the currency by the bank. The method for determining the bank's margin was not specified in that contract. That loan agreement was the subject of an amendment signed by the parties on 7 March 2011 ('the amendment'), which contained, first, provisions laying down the detailed rules for determining the margin of BPH Bank. Second, that amendment provided that the borrowers were henceforth entitled to repay their loan in the indexation currency chosen, namely the Swiss franc, which they could also obtain on the open market. Faced with the increase in the exchange rate of the Swiss franc, I.W. and R.W. claimed that the indexing of the loan to the Swiss franc was unfair before the referring court, maintaining that the contract should be annulled and that all the amounts paid in respect of interest and costs relating to that contract should be reimbursed. The Court stated that: (1) Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it is for the national court to find that a term in a contract concluded between a seller or supplier and a consumer is unfair, even if it has been contractually amended by those parties. Such a finding leads to the restoration of the situation that the consumer would have been in in the absence of the term found to be unfair, except where the consumer, by means of amendment of the unfair term, has waived such restoration by free and informed consent, which it is for the national court to ascertain. However, it does not follow from that provision that a finding that the original term is unfair would, in principle, lead to annulment of the contract, since the amendment of that term made it possible to restore the balance between the obligations and rights of those parties arising under the contract and to remove the defect which vitiated it. (2) Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that, first, they do not preclude the national court from removing only the unfair element of a term in a contract concluded between a seller or supplier and a consumer where the deterrent objective pursued by that directive is ensured by national legislative provisions governing the use of that term, provided that that element consists of a separate contractual obligation, capable of being subject to an individual examination of its unfair nature. Second, those provisions preclude the referring court from removing only the unfair element of a term in a contract concluded between a seller or supplier and a consumer where such removal would amount to revising the content of that term by altering its substance, which it is for that court to determine. (3) Article 6(1) of Directive 93/13 must be interpreted as meaning that the consequences of a judicial finding that a term if a contract concluded between a seller or supplier and a consumer is unfair are covered by national law and the question of continuity of the contract should be assessed by the national court of its own motion in accordance with an objective approach on the basis of those provisions. (4) Article 6(1) of Directive 93/13, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that it is for the national court, finding that a term in a contract concluded between a seller or supplier and a consumer, to inform the consumer, in the context of the national procedural rules after both parties have been heard, of the legal consequences entailed by annulment of the contract, irrespective of whether the consumer is represented by a professional representative.

Link to the judgment

8. **Judgment of 10 June 2021, BNP Paribas Personal Finance SA v VE, Case 609/19 and in joint case VB, WA (C-776/19), XZ, YY (C-777/19), ZX (C-778/19), DY, EX (C-781/19) v BNP Paribas Personal Finance SA, and AV (C-779/19), BW, CX (C-780/19), FA (C-782/19) v BNP Paribas Personal Finance SA, Procureur de la République, Case 776/19 to Case 782/19**

In 2008 and 2009 consumers concluded with BNP Paribas Personal Finance mortgage loan agreements denominated in Swiss francs (CHF) and repayable in euros to finance the acquisition of immovable property or shares in property companies. Due to the characteristics of those loans, their conclusion entailed a foreign exchange risk linked to the variations in the course of the euro against that of the CHF. Even though the existence of that risk was not mentioned explicitly in the loan agreements, it nevertheless followed indirectly therefrom that that risk was inherent and was borne by the consumer. Following difficulties faced by the consumers in paying their instalments, legal proceedings were initiated before the tribunal d'instance de Lagny-sur-Marne (District Court, Lagny-sur-Marne, France) and the tribunal de grande instance de Paris (Regional Court, Paris, France), respectively. By its judgments, in the first place, the Court recalls that unfair terms in a consumer contract are not binding on the consumer and must be regarded as never having existed, so as not to have any effects on the consumer's legal and factual situation. Consequently, the Court takes the view that a claim brought by a consumer in order to obtain a declaration that a term in such a contract is unfair cannot be subject to any limitation period. That said, the Court points out that the directive does not preclude national legislation which subjects the action to enforce the restitutory effects of that finding to a limitation period. However, the Court states that a limitation period for repayment of sums paid on the basis of an unfair term which is likely to have expired even before the consumer becomes aware of the unfair nature of that term cannot be compatible with the directive. In the second place, the Court finds that it is for the referring courts to assess whether the terms at issue lay down an essential element characterising the loan agreements at issue and constitute the main subject matter thereof. In such a case, under that directive the unfairness of those terms maybe assessed only if the terms were not drafted in plain, intelligible language. In the third place, the Court notes that the requirement of transparency is not satisfied by the seller or supplier communicating to the consumer, upon conclusion of the agreement, information –even a large amount of information –if that information is based on the assumption that the exchange rate between the account currency and the payment currency will remain stable throughout the term of the agreement. That is the case, in particular, where the consumer has not been informed by the seller or supplier of the economic context liable to have an impact on exchange rate variations. In the fourth place, in the light of the seller or supplier's knowledge of the foreseeable economic context capable of having an impact on exchange rate variations, of that professional's greater means to foresee the foreign exchange risk and of the significant risk relating to foreign exchange variations that the terms at issue place on the consumer, the Court is of the opinion that those terms may give rise toa significant imbalance in the parties' rights and obligations arising under the loan agreement, to the detriment of the consumer. In so far as the seller or supplier has failed to comply with the requirement of transparency with regard to the consumer, those terms seem to place on that consumer a risk which is disproportionate in relation to the services provided and the amount of the loan received, since the effect of applying those terms is that the consumer must ultimately bear the cost of changes in the exchange rate.[4]

Link to the judgment (Case 609/19)

Link to the judgment (Case 776/19 to Case 782/19)

[4] Press Release N° 100/21 https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-06/cp210100en.pdf

9. Judgment of 10 June2021, Ultimo Portfolio Investment (Luxembourg) SA v KM, Case C-303/20

On 23 May 2018 Aasa Polska, established in Warsaw (Poland), and KM concluded a consumer credit agreement. The amount of that credit was PLN 5 000 (approximately EUR 1 080) and the total amount to be repaid was PLN 8 626.58 (approximately EUR 1 862). That sum consisted in the principal, interest for the entire duration of the agreement amounting to PLN 536.58 (approximately EUR 115), front-end fees totalling PLN 2 490 (approximately EUR 537) and administrative fees in the amount of PLN 600 (approximately EUR 130). The credit was to be repaid from 22 June 2018 until 22 May 2020 in 24 instalments amounting to PLN 408 each (approximately EUR 88). The debt arising from that agreement was assigned by Aasa Polska to Ultimo Portfolio Investment, whose seat is in Luxembourg (Luxembourg). On the date on which the consumer credit agreement was concluded, KM owed debts arising from 23 credit and loan agreements, amounting to PLN 261 850 (approximately EUR 56 500), and the total amount of monthly payments arising from those debts was PLN 8 198 (approximately EUR 1 770); her husband was also liable for the debts arising from 24 credit and loan agreements. The debts arising from all those agreements totalled PLN 457 830 (approximately EUR 98 840) and the corresponding monthly payments totalled PLN 9 974.35 (approximately EUR 2 153). As at the same date, KM was employed on the basis of an employment contract with a net salary of PLN 2 300 (approximately EUR 500). Her husband, who for health reasons did not work, received no income. The District Court, Opatów, First Civil Division, Poland, states that the agreement was concluded through a credit intermediary, and further states that, before the conclusion of that agreement, Aasa Polska did not check KM's financial situation or the amount of her debts since, during the interview before the agreement was concluded, no questions were asked about her financial situation or the amount of the income and debts of the household concerned. At the same time the District Court, Opatów, First Civil Division, Poland, states that although it ordered Ultimo Portfolio Investment, on 14 June 2019, to provide it with additional information relating to the action taken by the lender in order to assess KM's creditworthiness, no information was provided to it on that subject. The District Court, Opatów, First Civil Division, Poland asks whether the penalty provided for by the Code of minor offences (Article 138c(1a) and (4) penalises non-compliance with the obligation to assess the consumer's creditworthiness, only by imposing the fine provided for in Article 24 of that code. In addition, under Article 45, that fine is promptly time-barred), meets the requirements laid down by Directive 2008/48, and is uncertain whether that penalty is effective, proportionate and dissuasive where the creditor fails to fulfil its obligation to check the consumer's creditworthiness. Regarding this case the Court ruled that Article 23 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC must be interpreted as meaning that the examination of the effectiveness, proportionality and dissuasiveness of the penalties provided for in that provision, in the event, inter alia, of the failure to comply with the obligation to examine the creditworthiness of the consumer, laid down in Article 8 of that directive, must be carried out taking into account, in accordance with the third paragraph of Article 288 TFEU, not only the provision adopted specifically in national law to transpose that directive, but also all the provisions of that law, interpreting them, so far as possible, in the light of the wording and objectives of that directive, so that those penalties meet the requirements laid down in Article 23 thereof.

Link to the judgment

10. Judgment of 10 June 2021, Prima banka Slovensko a.s. v HD, Case C-192/20

On 17 June 2016, HD concluded a consumer loan agreement with Prima banka Slovensko for the amount of EUR 5 700 at an interest rate of 7.90%. That loan was repayable in 96 monthly

instalments. As from September 2017, HD no longer made the monthly repayments. As a result, on 28 December 2017, Prima banka Slovensko declared the early termination of the term of the loan and demanded the immediate repayment of EUR 5 083.79 in respect of the outstanding capital. In addition, Prima banka Slovensko claimed, on the basis of the provisions of the loan agreement, inter alia, default interest of 5% on the outstanding loan amount and on the interest due, for the period from the time at which the loan was declared immediately due and payable until the actual repayment of the entire amount of the capital borrowed, as well as ordinary interest of 7.90% for the same period. By judgment of 20 September 2019, the District Court, Kežmarok, Slovakia, upheld that action in so far as it sought an order requiring HD to pay default interest until full repayment of the capital borrowed and, second, dismissed that action in so far as it sought an order requiring HD to pay ordinary interest for that period, on the ground that Slovak law did not allow such an accumulation of interest. In addition, that court stated that a term in a loan agreement which provides for the accumulation of default interest and ordinary interest had already been classified as 'unfair' by the Slovak courts. Prima banka Slovensko appealed against that judgment, claiming that it follows from the judgment in *Banco Santander and Escobedo Cortés* that a borrower who has failed to fulfil his or her contractual obligations is bound, in the event of early termination of the term of the loan which he or she has taken out, not only to pay default interest but also to pay ordinary interest until the borrowed capital has been repaid. the District Court, Kežmarok, Slovakia finds that the application of ordinary interest together with default interest from the time at which the loan was declared immediately due and payable until actual repayment of the borrowed capital would, first, result in the ceiling fixed by law being exceeded and, second, necessarily lead to a worsening of the consumer's situation. By its judgment, the Court stated that the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as not being applicable to national provisions under which a consumer who has concluded a loan agreement with a seller or supplier cannot be required, on the basis of the terms of that agreement, in the event of early termination of the term of the loan, to pay to the seller or supplier ordinary interest for the period from the time at which that loan was declared immediately due and payable until the capital borrowed has actually been repaid, since the payment of default interest and of the other contractual penalties due under the terms of that agreement provides compensation for the actual harm suffered by the seller or supplier.

Link to the judgment

11. Judgment of 10 June 2021, KRONE – Verlag Gesellschaft mbH & Co KG v VI, Case C-65/20

KRONE – Verlag is a media proprietor and the publisher of a regional edition of the *Kronen-Zeitung* newspaper. On 31 December 2016, it published an article in the section entitled 'Austria' under the heading 'Hing'schaut und g'sund g'lebt' ('Taking a look and living healthily'), on the benefits of grated horseradish poultices. That article was signed by a member of a religious order, Kräuterpfarrer Benedikt, who, as an expert in the field of herbal medicine, provides free advice in a column published daily by the newspaper. The article read as follows: *'Alleviating rheumatic pain. Fresh coarsely grated horseradish can help to reduce the pain experienced as a result of rheumatism. First rub a fatty vegetable oil or lard into the affected areas, before applying a layer of grated horseradish to them and applying pressure. You can leave this layer on for two to five hours before then removing it. Its application has a positive draining effect.'* The length of time, between two and five hours, specified in the article, for which the substance should be applied, was, however, inaccurate, as the term 'hours' had been used instead of 'minutes'. On 31 December 2016, the applicant in the main proceedings, following the duration of the treatment set out in the article, applied the substance to her ankle joint for approximately three hours and removed it only after experiencing severe pain due to a toxic skin reaction. The applicant in the main proceedings claimed that KRONE –

Verlag should be ordered to pay her compensation of EUR 4 400 for the physical harm suffered and that that publisher should be held liable for any current and future harmful consequences of the incident of 31 December 2016. As her claim was dismissed at first instance and on appeal, the applicant in the main proceedings brought an appeal on a point of law before the referring court. The Supreme Court, Austria, asked to the Court of Justice if Article 2 of Directive 85/374 together with Article 1 and Article 6 thereof be interpreted as meaning that a physical copy of a daily newspaper containing a technically inaccurate health tip which, when followed, causes damage to health can also be regarded as a (defective) product? By its judgment, the Court ruled that article 2 of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, as amended by Directive 1999/34/EC of the European Parliament and of the Council of 10 May 1999, read in the light of Articles 1 and 6 thereof, as amended by Directive 1999/34, must be interpreted as meaning that a copy of a printed newspaper that, concerning paramedical matters, gives inaccurate health advice relating to the use of a plant which, when followed, has proved injurious to the health of a reader of that newspaper, does not constitute a 'defective product' within the meaning of those provisions.

Link to the judgment

30th June, 2021

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