

## Case law

### Case Details

**National ID:** N° de pourvoi: 92-85285

**Member State:** France

**Common Name:** France v. Patrice di Pinto

**Decision type:** Other

**Decision date:** 26/05/1993

**Court:** Cour de Cassation (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Doorstep Selling Directive, [Article 2](#)

### Headnote

1. A trader cannot claim the protection of the Doorstep Selling Directive (85/577/EEC) concluding an advertising contract in a doorstep situation, however he can rely on the French provisions which, differing from the Directive, permissibly provide more favourable consumer regulations.
2. The judgment of the «Cour de Cassation» confirms that the consumer protection in the law no. 72-1137 from 22.12.1972 concerning consumer protection in the field of advertising and doorstep sale (in the following: law no. 72-1137) also includes certain door-to-door sales of traders, which exceed their business activities.
3. The exception from the application area of the law no. 72-1137, provided in its article 8 Para 1 lit. e, does not apply to a trader concluding an advertising contract for sale of his business.

### Facts

The accused, Patrice di Pinto, was an executive director of an association publishing a periodical journal with the title «GI commerce. Le partenaire du commerçant et de la franchise.»

Clients could herein place advertisements for the sale of their business. Agents of the defendant called up prospective clients, who, after their explained willingness to sell their business, were frequented at home or at their working place by the members of the association. In this context, contracts were concluded door-to-door in the years of 1985, 1986 and 1987. These contracts lacked of information concerning the right of withdrawal and included an obligation to immediate cash payment.

Patrice di Pinto was therefore sentenced to imprisonment for one year with release on licence as well as ordered to pay a fine of 15.000 FF by the first instance, the Tribunal d'Instance Paris. The Cour d'Appel Paris confirmed the judgment concerning the liability of the defendant and imposed a prison sentence of one year without probation and a 15.000 FF fine on him.

### Legal issue

The Cour de Cassation confirms the prior decisions in the criminal proceeding against the defendant Patrice di Pinto with respect to his liability. The judgment from 26.05.1993 finally sentences the accused to a yearlong imprisonment with release on licence and a 15.000 FF fine. This judgment was based on the following judicial considerations.

Article 4 of the law no. 72-1137 provided a prohibition concerning the acceptance of cash payment during the following 7 days after the door-to-door sale. Furthermore, it regulated the duty to include, at the occasion of doorstep selling, the consumer's right of withdrawal in the contract. The relevant contracts violated the above provision because of the missing information about the consumer's right of withdrawal and the duty of immediate cash payment.

The exception from the application area of the law no. 72-1137, regulated in its Article 8 para 1 lit. e, applied in case of deals being concluded to satisfy the needs of an agricultural farm, of a business establishment or a professional activity.

According to the court, this exception did not apply for a trader who concludes an advertising contract at his door in order to sell his business. Such a sale would not belong to business operations any more.

During the appellate proceedings, the Cour d'Appel Paris had brought the issue before the European Court of Justice asking whether

1. the Doorstep Selling Directive (85/577/EG) had to be interpreted in the way that a trader at the occasion of a door-to-door sale for the purpose of a business sale enjoyed the consumer protection provided by the directive, and whether

2. a national regulation corresponding to the French exception in Article 8 Para 1 lit. e of the law no. 72-1137 confirmed with the Directive.

In the following preliminary ruling procedure (ECJ, C-361/89, ECR 1991, I-1189) the European Court of Justice determined that preparing the sale of a business belonged to business activity. Therefore, a trader undertaking such a deal could not be considered as being a consumer in the sense of the directive. Moreover, the court pointed out that a trader only acts as a consumer carrying out activities to satisfy personal or familiar needs. Thus, the European Court of Justice follows a narrow interpretation of the notion of consumer.

Regarding the second question, the court argued that with respect to Article 8 of the Doorstep Selling Directive (85/577/EG) the Member States could enact or keep regulations of consumer protection that are more favorable than the Directive. A national regulation corresponding to the French exception would, therefore, not oppose European law.

As a result of this confirmation concerning possible enlargement of protection regulations in the Member States, Patrice di Pinto was finally sentenced by the

Cour de Cassation.

In the meantime, these protection provisions are regulated in articles L.121-21 – L-121-33 Code de la Consommation.

**Decision**

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