

## Case law

### Case Details

**National ID:** link

**Member State:** Spain

**Common Name:** Cosme v "Idiomatic Centro de Estudios de Asimilación Automática, S.A"

**Decision type:** Other

**Decision date:** 27/11/2000

**Court:** Audiencia Provincial (Appellate court, Madrid)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Doorstep Selling Directive, [Article 4](#) Doorstep Selling Directive, [Article 5](#)

### Headnote

1. The misuse of law (abuse of rights) alleged by the seller due to the "late exercise of the right by the plaintiff" cannot be accepted because the consumer is simply exercising the rights established in Article 4 of Law 26/1991 on doorstep selling.

2. The declaration of nullity cannot be deemed to entail unjust enrichment on the part of the consumer because the repayment of the price is only a legal effect of the declaration of nullity of the obligation and, consequently, there are justified grounds in the capital transfers envisaged by the legislator as a consequence of the declaration of nullity.

### Facts

The plaintiff, Mr. Cosme, signed a contract for an English language course with the defendant, "Idiomatic Centro de Estudios de Asimilación Automática S. A.". Mr. Cosme attended the aforementioned course for almost three years. After this period, Mr. Cosme claimed the nullity of the contract, claiming breach by the defendant of the provisions established in article 3 of Law 26/1991, and more specifically, the non-existence of the mandatory revocation document or form. The court accepted the declaration of nullity of the contract.

### Legal issue

After confirming the absence of the revocation document referred to in article 3 of Law 26/1991, the Courts declared the nullity of the contract the object of litigation in application of the provisions contained in article 4 of said law. Before this, it had rejected the two arguments presented by the same defendant and appellant: the misuse of law on the part of the plaintiff in exercising the proceedings for annulability; and the existence of unfair enrichment on the part of the consumer.

As regards the first reason, the misuse of law (abuse of rights), the Court considered that it this provision did not apply because of the absence of circumstances established in case law for the exercise of a right to be classified as abusive, namely: 1) use of an objective and externally legal right; 2) harm or damage to an interest not protected by a specific legal prerogative or privilege; and 3) the immoral or antisocial nature of such harm or damage, evidenced subjectively, when the action of the titleholder responds to the desire to cause harm or damage to a third party without the obtainment of any personal benefit.

In terms of the second reason, unjust enrichment, the Court stated that it did not consider the declaration of nullity of the contract to entail unjust enrichment on the part of the plaintiff since the repayment of the price by the entity offering the English course was simply a legal effect of the declaration of nullity of the obligation, and therefore there was justification for the envisaged capital transfer.

### Decision

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### Related Cases

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### Legal Literature

No results available

### Result