

## Case Details

### Case Details

National ID	<a href="#">link</a>
Estado miembro	España
Common Name	<a href="#">link</a>
Decision type	Otros
Decision date	22/01/2004
Órgano jurisdiccional	Audiencia Provincial
Asunto	
Demandante	
Demandado	
Palabras clave	

### Directive Articles

Injunctions Directive, [Article 1, 1](#). Injunctions Directive, [Article 2, 1](#). Injunctions Directive, [Annex I](#)

### Headnote

1. When the termination of the contracts is requested by a group of consumers it is necessary to comply with the requirements of publicity of art. 15 of the Law on Civil Procedure, so those consumers can attend to the proceedings.
2. The collective action brought up by a consumer association can not aim for the termination of the contracts agreed by them nor the demand of compensation if the consumers do not attend to the proceedings.

### Facts

Several consumer associations from Andalucía brought collective actions against the school of English "Opening", in one of the hundreds of legal disputes against this company due to the breach of its obligations because of it went bankrupt. The collective actions were not only aiming for the cessation of the activity (which had already taken place) but for the termination of the contracts drawn to provide with services to the consumers, involving the refund of the paid fees besides compensation for damages and the termination of the contracts which financed the main contracts, for being interpreted as linked to those main contracts. For that reason the claims are not just against the debtor ("Opening") but also against all the banks that collaborated with the school financing those courses. The judgment rejects the claims of the consumer associations due to the inadequacy of the chosen legal proceeding and for bringing up an action for the protection of the diffuse interest of the consumers, being these interests rather collective (they could be affecting around 45,000 consumers), and therefore the requirements of publicity should have been fulfilled so the affected consumers could have appeared in court.

### Legal issue

### Decisión

This lengthy judgment contains a thorough and detailed analysis of the collective actions that can be realized in protecting the consumers in the new Law on Civil Procedure of 2000, adapted to the Directive 98/27/EC.

The collective actions to protect the interests of the consumers do not protect only individual rights of each one of the affected by a business action, but collective or diffuse interests, depending on whether the consumers to whom this behaviour affects. Collective interests are those that are not an accumulation of individual interests, as the

Directive 98/27/EC points out. With these actions it is intended to “react against an illicit business behavior potentially a generator of damages for a plurality of consumers, keeping control on it, contributing to the avoidance of the spreading out of the damages already caused and to deter from the future damaging behavior with the loss for the consumers as a whole”.

The legitimization of a person for a collective action when he lacks of an own right affected raises few problems when it s only intended the cessation of a conduct against the law and damaging for the consumers, but it opens complex questions when, together to that end, it is intended to get the compensation for the damaged people or any other aims that affect directly his personal rights, as it is the termination of the contracts subscribed by them. In these cases it is needed in the first place an identification of the damaged people and of the nature of the damage in order to establish a compensation (arts. 209.3 and 219 of the Law 1/2000). And on the second place, the collective action that claims compensation for a group of consumers who are not intervening in the proceedings raises the issue of the way in which the judgment affects them. That is, if this is only affecting them as far as the benefits, but does not stop them from bringing up an individual action to better this result, if on the other hand they have to be satisfied with what has been resolved in the judgment because it produces the effects of something already judged (*res iudicata*). The latter is the solution of the Law on Civil Procedure (art. 222.3). Therefore when the judgment affects people that are not in legal dispute, especially when compensation is being asked for on behalf of a group without having its direct representation, it is crucial that the requirements for publicity of art. 15 of the Law on Civil Procedure are fulfilled, so that they know of the existence of the proceedings and are given the opportunity to take part. Of this duty of publication are only excluded the actions of cessation, because they only bind the offender businessman and does not stop the consumers from bringing up actions afterwards for damages. But if what is brought up is an action for collective compensation, independent or joined to a cessation action, that publicity is essential to respect the constitutional rights for an effective judicial defense.

According to court, the mass termination of contracts cannot be the object of a collective action if the people that signed those contracts are not taking part in the action. The collective action can only achieve that is declared in a general way the breach of contract by a company or the nature of “linked credits” of the funding of those contracts by a bank, but cannot terminate the contracts without the intervention of the ones affected, except exceptional very clear cases.

Therefore, the collective actions present a especial complexity and difficulty when they go beyond a simple action of cessation, because they involved claims for termination or compensation which affect the individual interests of an affected multitude. This complexity “would have required more detailed rules than the ones that the Law on Civil Procedure has developed, which though it opens the door to this type of actions, it does not define clearly the framework in which they have to be developed”.

After that this judgment makes a detailed analysis of each of the provisions of the Law 1/2000 which rule these collective actions, from which it should be highlighted: art. 11.2 of the Law 1/2000 regulates the requirements of a collective action on the protection of the interests of the consumers: on the one hand, there has to be a damage that affects a group of consumers and, on the other hand, the affected group has to be perfectly determined or has to be easily identifiable. According to this judgment, the expression “easily identifiable” has to be understood in reference to the degree of possibility in identifying the affected individuals, not to the effort that this task involved. In this case it was possible to identify the consumers, although through hard work, but he claimant association did not do it, so the action could not succeed, since it did breach the requirement of publicity of art. 15 of the Law 1/2000.

Besides, according to the judgment, although the law does not require it specifically, the legitimization of a consumer association has to depend on that at least one of the affected people belonged to that association, without prejudice that the effect of the brought action was applicable to everybody affected. It is needed certain connection with the events, not just pure whim.

Finally, the judgment examines whether the action of this case can be contextualized not within art. 11.2 of the Law 1/2000 (action to protect the “collective” interests), but in art. 11.3 of that law, as an action to protect the “diffuse” interests of the consumers, which occurs when the consumers are not determined or are difficult to determine. The judgment rejects it because only ten affected contracts have been submitted and it could have been possible to find the consumers. Besides, to be able to execute this type of action the law demands that the associations that make the claims are “representative”, without giving a definition of this concept. According to the judgment, his idea is connected to the number of members that it has within the area in which the action is intended to be brought up.

Since in this case it is intended that the action has a nationwide scope, the regional consumers' associations (Andalucia) do not fulfill this requirement of being representative. Lastly, the court goes over the specific requirements for an action of cessation (art. 1.4 of the Law 1/2000), which are not believed to be applicable to the case, because the damage was not to agree teaching contracts, which are valid, but the breach of contract. And the judgment concludes with a review of the procedural flaws of the claim.

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