

Case law

Case Details

National ID: link

Member State: Italy

Common Name: Insirello v. Soc. Findomestic

Decision type: Other

Decision date: 24/07/2000

Court: Corte di cassazione (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Doorstep Selling Directive, [Article 1, 1.](#)

Headnote

1. The article 12 of the Law 15 January 1992, n. 50 (on the contracts negotiated away from business premises) provides the territorial jurisdiction of the judge where the consumer is resident or domiciled.
2. In the decision, the Corte di cassazione stated that the controversies concerning the article 12 fall within the scope of the article 38 of the Italian Civil Code (i.e. "Incompetenza" - L'incompetenza per materia, quella per valore e quella per territorio nei casi previsti dall'articolo 28 sono rilevate, anche d'ufficio, non oltre la prima udienza di trattazione").
3. The article 38 provides that the claims on the jurisdiction should be proposed at the latest in the "udienza di trattazione", i.e. the hearing for the discussion of the case before the Court.

Facts

Mrs. Sebastiano Insirello opposed the injunction of payment issued by the Giudice di Pace of Florence. Accordingly with Mr. Insirello the Giudice di Pace of Florence was not competent for the case with respect to the article 12 of the Law 15 January 1992, n. 50.

The judge rejected the argument stating that Mrs. Insirello should have proposed his claim in his first act of opposition and not later.

Mr. Insirello then asked to the Corte di cassazione to determine if the article 38 of the Italian Civil Code Code applies to this case and thus if it is possible to propose such claim at the latest in the hearing for the discussion of the case.

Legal issue

In the decision, the Corte di cassazione stated that the controversies about the application of the article 12 fall within the scope of the article 38 of the Italian Civil Code

The article 38 provides that the claims on the jurisdiction should be proposed at the latest in the "udienza di trattazione", i.e. the hearing for the discussion of the case before the Court. (i.e. "Incompetenza" - L'incompetenza per materia, quella per valore e quella per territorio nei casi previsti dall'articolo 28 sono rilevate, anche d'ufficio, non oltre la prima udienza di trattazione").

As a consequence of the above, the claims concerning the jurisdiction on the basis of the article 12 should be proposed at the latest in the "udienza di trattazione", i.e. the hearing for the discussion of the case before the Court.

Decision

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