

**Case law****Case Details****National ID:** 0433085**Member State:** Portugal**Common Name:** link**Decision type:** Other**Decision date:** 17/06/2004**Court:** Tribunal da Relação (Appellate court, Porto)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**

Consumer Sales and Guarantees Directive, [Article 1, 1](#). Consumer Sales and Guarantees Directive, [Article 1, 2](#). Consumer Sales and Guarantees Directive, [Article 8, 1](#).

**Headnote**

1. Directive 1999/44/EC and the legislation transposing it (Decree 67/2003 of 8 April) are aimed at promoting consumer protection in cases of product non-conformity (faults in conformity). In other words, they are designed to protect consumers against faults that cause the product to be not fit for purpose.
2. Decree 67/2003 allows consumers to make a claim not only against the seller, but also the producer.
3. Decree 67/2003 can only apply to events after 9 April 2003. For this reason, liability for any faults in goods sold before this date is governed by the provisions in the Civil Code.
4. Where the consumer good was the object of a leasing contract, any faults are covered by the provisions in the Civil Code that set the leaser's obligations vis-à-vis the lessee with regard to the object of the contract.

**Facts**

The consumer lodged a claim, inter alia, to establish the liability of the manufacturer and seller (representative) of a certain make of cars in Portugal. The plaintiff argued that his vehicle was faulty (did not conform to the specifications) because, in this particular case, it had a steering problem. This, he stated, had resulted in his incurring expenses. In fact, on account of the steering problem, the vehicle was taken to a garage, which charged the consumer the repair costs. The vehicle was subsequently transported to another (Spanish) garage, where the fault was fully repaired. The customer hired another car for this period.

The plaintiff was therefore seeking to establish the liability of the manufacturer and seller so that they would then be required to compensate him for the expenses he had incurred (for repairing the faulty vehicle and hiring another) as well as for non-material (moral) damages.

**Legal issue**

Since Directive 1999/44/EC was transposed into Portuguese law, it has been possible for a consumer to bring a claim against the producer (manufacturer) and seller on the grounds of product non-conformity (cf articles 4 and 6 of Decree 67/2003). Directive 1999/44/EC and the legislation transposing it (Decree 67/2003 of 8 April) are aimed at promoting consumer protection in cases of product non-conformity (faults in conformity). In other words, they are designed to protect consumers against faults that cause the product to be not fit for purpose. In view of these two facts, the case seemed to have a good prospect of success. However, the court ruled that the consumer was wrong. It made this ruling on the basis of two key arguments.

In the first instance, the contract granting the consumer possession of the consumer good began on 25 March 2001. Under article 14 of Decree 67/2003, this particular law does not enter into force until 9 April 2003. For this reason, it only applies to events occurring after this date (cf article 14).

Furthermore, in this case, the contract granting the consumer possession of the good is a leasing contract. Any potential liability for a fault (non-conformity) would fall to the leaser. And, under the provisions in Decree 67/2003, only he could lodge a claim against the producer (manufacturer) or seller. This is a case of vertical privity: the leaser claims against the seller, who in turn has the right to claim against the person or persons from whom he purchased the good and who is liable in the contractual chain.

[Abstract drafted by Ana Raquel Moniz]

**Decision**

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