

## Case law

### Case Details

**National ID:** Court decision number 1636 / 2014 (A2, Civil Cases)

**Member State:** Greece

**Common Name:** link

**Decision type:** Supreme court decision

**Decision date:** 25/07/2014

**Court:** Areios Pagos (Supreme civil and criminal court of Greece)

**Subject:**

**Plaintiff:** MAN ΑΙΡ ΑΝΤΙΠΡΟΣΩΠΕΙΕΣ ΜΗΧΑΝΗΜΑΤΩΝ ΤΕΧΝΙΚΩΝ ΚΑΙ ΒΙΟΜΗΧΑΝΙΚΩΝ ΕΡΓΩΝ ΑΝΩΝΥΜΗ ΕΤΑΙΡΕΙΑ (MAN AIR Agency of Machinery Technical and Industrial Projects S.A.)

**Defendant:** ΑΦΟΙ Π. ΑΝΩΝΥΜΗ ΤΕΧΝΙΚΗ ΕΜΠΟΡΙΚΗ ΕΤΑΙΡΕΙΑ (P. BROS. TECHNICAL COMMERCIAL S.A.)

**Keywords:** choice, conformity with the contract, purchaser, replacement, right of withdrawal

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 3, 1](#). Consumer Sales and Guarantees Directive, [Article 3, 2](#). Consumer Sales and Guarantees Directive, [Article 3, 3](#). Consumer Sales and Guarantees Directive, [Article 3, 3](#). Consumer Sales and Guarantees Directive, [Article 3, 5](#). Consumer Sales and Guarantees Directive, [Article 3, 5](#), - Consumer Sales and Guarantees Directive, [Article 3, 6](#).

### Headnote

(1) The choice of the buyer to ask for the replacement of the defective good, if interpreted in the context of the Directive 1999/44/EC, is not "irreversible" and it does not per se deprive the buyer from its rights to request the reduction of the price or to withdraw from the contract in case the seller refuses to replace the defective good or does not proceed to the replacement within a reasonable time.

(2) In case of sale of a defective good, the buyer is entitled, in principle, to require the replacement of a good with another without defects and, if the seller has not accepted or failed to replace the good within a reasonable time, to claim either the price reduction or to withdraw from the contract. So if the buyer exercises his rights of product replacement this does not exclude the right to exercise at a later stage any other of his legal rights.

### Facts

The defendant had filed a claim before the court of First Instance of Athens asking either to withdraw from the contract or to reduce the price of the contract due to essential defects. The court, that had rejected that claim as unlawful, on the grounds that the buyer (defendant) had chosen to exercise the right of replacement of the defective good and that this choice is "irreversible". Following that decision of the court of First Instance (no. 175/2009), the defendant filed an appeal against this decision and the court of Appeal of Athens held that the defendant's claim was lawful and that the defendant could indeed exercise the right of withdrawal from the sale contract due to essential defects of the good or otherwise the right of reduction of the price (albeit previously exercising his right to replace the product). Therefore, the court of Appeal with its decision no. 3950/2012 overturned the decision and granted the defendant's claim on its ancillary basis and therefore reduced the sale price. Then the plaintiff (seller) appealed to the Supreme court.

### Legal issue

The court ruled that the defendant's choice to ask for the replacement of the defective good in the light of the Directive 1999/44/EC, is not "irreversible" and it does not per se deprive the buyer from its rights to request the reduction of the price or to withdraw from the contract in case the seller refuses to replace the defective good or does not proceed to the replacement within a reasonable time.

The court also held that in any case the plaintiff's argument that such choice is "irreversible", was vague and not well founded. The plaintiff did not identify the exact time and the way the defendant exercised the right of replacement of the good. In addition, it did not assert that a replacement of the good actually took place nor that it had not passed a reasonable time from the day that the buyer announced to the seller that he wished to replace the product.

### Decision

(1) Is the choice of the buyer to exercise the right to ask for the replacement of a defective good "irreversible"?

(2) Which are the rights that a buyer is entitled to in case he purchases a defective good according to the Directive 1999/44/EC?

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### Result

The court dismissed the appeal of the seller.