

**Gurisprudenza****Detalji tal-Każ****ID Nazzjonali:** 13/2012**Stat Membru:** Malta**Isem Komuni:** Agius vs International Trading Company Ltd**Tip ta' deċiżjoni:** Deċiżjoni amministrattiva suġġetta għal appell**Data tad-Deċiżjoni:** 28/01/2015**Qorti:** Qorti tal- Appell (Ċivili, inferjuri)**Suġġett:****Rikorrent:** Carmen Agius**Intimat:** International Trading Company Ltd**Kliem Principali:** conformity with the contract, consumer rights, contract law, precontractual information**Artikoli tad-Direttiva**Consumer Sales and Guarantees Directive, [Article 2](#) Consumer Sales and Guarantees Directive, [Article 5, 1](#).**Nota Introduttiva**

(1) The two year time period within which a consumer may make his/her claim runs as from the date that the lack of conformity to the description of the goods 'becomes apparent' as dictated by Article 78 of the Consumer Affairs Act, which implements Article 5(1) of Directive 1999/44/EC.

**Fatti**

The plaintiff bought a fridge from the defendant company and after a while such fridge started to leak. Although the defendant tried to repair the fridge it continued to leak. The plaintiff thus launched a claim in the Consumer Claims Tribunal, and the latter ruled against the defendant, ordering rescission of the contract and a refund of the price paid. The defendant company appealed the decision reached by the Tribunal, arguing that i) the plaintiff's claim was launched after the prescriptive period had passed, basing itself on the prescribed period set out by Article 1431 of the Civil Code regarding latent defects ii) the plaintiff installed the fridge incorrectly.

**Kwistjonijiet legali**

(1) From when does the two year time period in Article 78 of the Consumer Affairs Act (which implements Article 5(1) of Directive 1999/44/EC start to run?

**Deċiżjoni**

The court argued that since the dispute concerns a consumer contract, then the law that is to apply is the special law laid out by the Consumer Affairs Act rather than the general contract law of the Civil Code. Thus, contrarily to the provisions of the Civil Code which state that prescription starts to run from the day that the consumer 'could' have discovered the latent defect, in cases of consumer contracts Article 78 of the Consumer Affairs Act (or Article 5(1) of Directive 1999/44/EC) dictates that the time in which a consumer may make his/her claim runs as from the date that the lack of conformity to the description of the goods 'becomes apparent'. Meanwhile, the same provision also dictates that such time shall be suspended once negotiations are ongoing between the trader and consumer in order to reach a settlement, which in fact happened in this particular case.

The court finally concluded that when the plaintiff bought a new fridge she had every right to expect that it would not have any defects in such a short time after delivery. It cannot be argued, as the defendant did, that the fridge was not installed properly, since if anything, if the installation was so complicated the seller should have advised the buyer at the time of the purchase.

Test sħiħ: [Test sħiħ](#)**Każijiet Relatati**

Ebda riżultat disponibbli

**Letteratura Legali**

Ebda riżultat disponibbli

**Riżultat**

The defendant's appeal was rejected and the appealed decision was confirmed by the court.