

## Case Details

### Case Details

National ID	2-10-27805
Member State	Estonia
Common Name	link
Decision type	Court decision in appeal
Decision date	16/03/2012
Court	Tallinn Circuit Court
Subject	
Plaintiff	T K
Defendant	R P
Keywords	advertisement, economic behaviour, right of redress, sales contract

### Directive Articles

Consumer Sales and Guarantees Directive, [Article 1, 2., \(c\)](#) Consumer Sales and Guarantees Directive, [Article 2, 2., \(d\)](#) Consumer Rights Directive, [Chapter 1, Article 2, \(2\)](#) Consumer Rights Directive, [Chapter 1, Article 2, \(5\)](#)

### Headnote

(1) Posting several separate advertisements for the sale of goods on a website by a natural person can be considered as activities related to trade, business or profession. Hence, a sale contract concluded as a result should be regarded a consumer contract.

(2) Ancillary sale activities can also constitute activities related to trade, business or profession.

### Facts

The plaintiff bought a motorcycle based on an advertisement posted by the defendant on a webpage for motor vehicle enthusiasts. The defendant was a natural person who sold several motorcycles through ads on the webpage.

The defendant claimed that the sale of the motorbike was not related to his trade, business or profession and the fact that he has posted some ads for selling different motorbikes does not change that fact.

The plaintiff brought an action for compensation of damage against the defendant because the motorcycle was not in conformity with the contract. The plaintiff argued that the motorbike sold did not have the quality he could reasonable have expected.

The plaintiff claimed that the defendant presented himself as an expert of motorbikes and as the importer thereof.

### Legal issue

The court decided that the contract was a consumer contract. The court said that the fact that selling motorbikes is not the defendant's main activity does not mean that it was not related to the defendant's trade, business or profession as this can also be an ancillary activity.

The court based its decision mainly on the fact that this sale was not a one-time sale of a motorcycle by the

defendant - the defendant had posted several motorcycle sale ads and it could thus be concluded the sale was related to his trade, business or profession.

As the contract is a consumer sale contract the respective provisions applicable to consumers sale contracts can be applied. Also, agreements which are related to the legal remedies to be used in the case of a breach of contract and which derogate from the provisions to the prejudice of the purchaser are void.

#### Decision

(1) Does the posting of several advertisements by a natural person constitute activities related to trade, business or profession?

(2) Does the fact that the sale of goods was not the main activity of the seller, render the activities conducted outside trade, business or profession?

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#### Result

The court upheld the decision of the court of first instance and held that the contract was a consumer contract.