

Case Details

Case Details

National ID	C.08.0482.N
État membre	Belgique
Common Name	link
Decision type	Supreme court decision
Decision date	21/01/2010
Jurisdiction	Hof van Cassatie
Objet	
Demandeur	D.T.
Défendeur	Q.G. and M.T.
Mots clés	

Directive Articles

Consumer Sales and Guarantees Directive, [Article 2](#) Consumer Sales and Guarantees Directive, [Article 3, 2.](#)

Headnote

(1) A seller, as defined under article 1(2)(c) of the Directive 1999/44 (implemented into Belgian law by article 1649bis, §2, 2° of the Civil Code) refers to every natural or legal person who sustainably engages in economic activity, excluding any person who does not act in a professional capacity.

(2) Someone who breeds animals as a hobby is not a 'seller' under Article 1(2)(c) Directive 1999/44 (implemented into Belgian law by article 1649bis, §2, 2° of the Civil Code).

Facts

The case concerned the purchase of a dog by the defendants from the plaintiff. Shortly after the dog was delivered to the defendants, it died.

The defendants made a claim against the plaintiff on the grounds of the dog having been afflicted with a hidden defect. As a result of this claim, and based on the principle stipulated in article 3(2) of Directive 1999/44 (implemented into Belgian law by article 1649quinquies of the Civil Code) that where a good is afflicted with a hidden defect, the consumer is entitled to reparation, the cantonal court of Lokeren held that a dog which plaintiff sold to the defendant, and which died shortly after it was delivered to defendant, was afflicted with a hidden defect and that plaintiff was thereby due compensation to defendant.

Legal issue

1) To which persons does the notion "seller", as defined in Article 1(2)(c) Directive 1999/44 (implemented into Belgian law by article 1649bis, §2, 2° of the Civil Code) refer and who is excluded from its scope of application?

(2) Should someone who breeds animals as a hobby be considered a "seller" under article 1(2)(c) Directive 1999/44?

Décision

The court set aside the judgment of the cantonal court by stating that the rules on consumer protection regarding sale of consumer goods are only applicable in sales emanating from a seller to a consumer. The court found that plaintiff did not fall within the definition of 'seller'.

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Result

The court set aside the judgment of the cantonal court and referred to the cantonal court of Sint-Niklaas.
