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FOREIGN COURT PRACTICE

**JUDGMENT OF THE EUROPEAN COURT OF JUSTICE
IN THE CASE
WALTER ENDRESS
V
ALLIANZ LEBENSVERSICHERUNGS AG**

1. Introduction

The legal issue dealt with by the European Court of Justice in the case no. C-209/12 *Walter Endress v Allianz Lebensversicherungs AG* (judgement made on 19 December 2013) was placed in the context of the right to cancellation (termination) of a life insurance contract, pursuant to Article 15 (1) of Council Directive 90/619/EEC of 8 November 1990 (so called the Second Life Assurance Directive), regarding the obligation of pre-contractual information given to the policyholder on the said right pursuant to Article 31 (1) of Council Directive 92/96/EEC of 10 November 1992 (so called the Third Life Assurance Directive).

2. EU Regulatory Framework

Recital 11 in the preamble of the Second Life Assurance Directive stipulated that “for life assurance contracts the policyholder should be given the opportunity of cancelling the contract within a period of between 14 and 30 days from the date of its conclusion”.

Article 15 (1) of the Second Life Assurance Directive stipulated that “each Member State shall prescribe that a policyholder who concludes an individual life-
insurance contract shall have a period of between 14 and 30 days from the time when

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he was informed that the contract had been concluded within which to cancel the contract”, as well as that the other “legal effects and the conditions of cancellation shall be determined by the law applicable to the contract [...], notably as regards the arrangements for informing the policyholder that the contract has been concluded.”

Recital 23 of the Preamble of the Third Life Assurance Directive stipulated that “[...] if the consumer is to profit fully from this diversity and from increased competition on insurance market, he must be provided with whatever information is necessary to enable him to choose the contract best suited to his needs [...]”.

Article 31 of the Third Life Assurance Directive stipulated that before the assurance contract is concluded, at least the information listed in point A of Annex II (Paragraph 1) shall be communicated to the policyholder. The detailed rules for implementing this Article and Annex II shall be laid down by the Member State (Paragraph 4).

Annex II of the Directive entitled Information for Policyholders, part A, Paragraph 13 stipulated arrangements for application of the cooling-off period when the policyholder can terminate the contract.

a. German Law

According to Paragraph 5a (1) of (then applicable) German Law on insurance contracts, “If the insurer has not delivered the conditions of insurance to the policyholder at the time of the application or has failed to supply consumer information required by the applicable provisions, the contract shall be considered to have been concluded on the basis of the policy document, the conditions of insurance and the additional consumer information which is relevant to the subject-matter of the contract, unless the policyholder objects in writing within 14 days from delivery of the documents. The period begins to run only when the policy document and the documentation under subparagraph 1 are fully available to the policyholder and the policyholder, on delivery of the policy document, has been informed in writing, in typographically clear form, about the right to object, the commencement of the period and its duration. [...] Notwithstanding the first sentence, however, the right to object expires one year after payment of the first premium.”

3. Subject Matter of the Proceedings and Legal Issues

Walter Endress entered into a life assurance contract with Allianz, taking effect on 1 December 1998. He received the general conditions of assurance and consumer information only when Allianz sent him the policy document.

Under that life assurance contract, Walter Endress had to pay an annual premium for a period of five years and, in return, Allianz had to pay him an annuity

from 1 December 2011. However, on 1 June 2007, Walter Endress gave notice to Allianz of the termination of the contract. In 2007, Allianz paid Walter Endress the repurchase value of the life assurance contract, which was less than the sum of the premiums with interest. By letter of 31 March 2008, Walter Endress exercised his right to 'object' under Paragraph 5a of the German Law on insurance contracts. He requested Allianz to reimburse him all of the premiums plus interest, after deduction of the repurchase value which had already been paid.

Walter Endress' action seeking payment by Allianz of that further amount was dismissed by the court of first instance. His appeal against the decision at first instance was also dismissed. Walter Endress then brought an appeal on a point of law before the Bundesgerichtshof. That court considered that the appeal could be upheld only if he had retained a right to object even though more than a year had elapsed since payment of the first insurance premium as stipulated by Article 5a (2). The legal question is whether the limitation period stipulated by Article 5a of the German Law on insurance contracts is contrary to the right of the policyholder stipulated by Article 15(1) of the Second Life Assurance Directive.

a. Opinion of the European Court of Justice

In introductory notes, the court clearly stated its competence, stating that can give rulings only whether the national legislation was compatible with the EU law. The court is empowered only to give rulings on the question of whether the exercise of the right of cancellation provided for in the Second Life Assurance Directive could be limited by national regulations and not on whether the procedure for the conclusion of an insurance contract according to the so-called 'policy' model, was compatible with the EU law.

The subject-matter of the present case is thus limited to the question of whether the exercise of the right of cancellation provided for in Article 15(1) of the Second Life Assurance Directive could be limited, by a national provision such as that at issue in the main proceedings, to one year from the date of payment by the policyholder of the first premium under the insurance contract concerned, even when that policyholder had not been informed about that right of cancellation.

The court noted that, although the directives did not mention either the case in which the policyholder was not informed about his right of cancellation or, consequently, the effect that that lack of information could have on that right, the Article 15(1) provided that "the conditions of cancellation were to be determined by the national law applicable to the contract". The Member States were therefore, entitled to adopt rules relating to the precise procedure for exercising the right of cancellation.

Concerning the aims of those directives, it should be noted that recital 23 in the preamble to the directive stated that "the consumer would had to be provided

with whatever information is necessary to enable him to choose the contract best suited to his needs". For the purpose of achieving that objective, the Third Life Assurance Directive stipulated that at least the arrangements for application of the cooling-off period should be communicated to the policyholder. It was therefore clear from both the background and the wording of the relevant provisions of the Third Life Assurance Directive that it sought to ensure that the policyholder receive precise information concerning, inter alia, his right of cancellation before conclusion of a contract. Only the policyholder who is properly informed about his rights can effectively exercise his rights (and the right to terminate the contract).

Regarding the above stated, the court concluded that the national law provision, such as the one in Article 5a of the German Insurance Contract Law, which prescribed the termination of the right of the policyholder to cancel the contract even when he was not informed of this right, is contradictory to the key objective of the Second and the Third Life Assurance Directive, because the consumer cannot exercise the right (to cancel) if he did not know about it and that therefore reasons of legal certainty cannot justify such a restriction. In the light of all the foregoing considerations, the answer to the question referred is that Article 15(1) of the Second Life Assurance Directive, read in conjunction with Article 31 of the Third Life Assurance Directive, must be interpreted as precluding a national provision.

4. Brief Overview of Judgement

In this case, the court took the position that the policyholder can exercise his right to cancel (withdraw from) the contract, for an unlimited period after the conclusion of the contract, if he was not properly informed about this right before the conclusion of the contract. According to the court, the policyholder cannot exercise a right that he was not informed about. At the same time, the court rejected the argument of legal certainty, considering that this would lead to limiting the policyholder's rights explicitly provided to him by the directives. As a consequence, if the policyholders were not properly informed of this right (and many policyholders in Austria and 1 contract, to demand the return of all premiums paid (and not the purchase value of policies) with included interest.

Translated by: Jelena Rajković