

Case C-227/08

Eva Martín Martín

v

EDP Editores SL

(Reference for a preliminary ruling
from the Audiencia Provincial de Salamanca)

(Directive 85/577/EEC — Article 4 — Consumer protection — Contracts negotiated
away from business premises — Right of cancellation — Obligation on the trader to give
notice of that right — Contract void — Appropriate measures)

Opinion of Advocate General Trstenjak delivered on 7 May 2009 I - 11941
Judgment of the Court (First Chamber), 17 December 2009 I - 11976

Summary of the Judgment

*Approximation of laws — Consumer protection in respect of contracts negotiated away from
business premises — Directive 85/577 — Consumer’s right to cancel*

(Council Directive 85/577, Arts 4 and 5(1))

Article 4 of Directive 85/577 to protect the consumer in respect of contracts negotiated away from business premises does not preclude a national court from declaring, of its own motion, that a contract falling within the scope of that directive is void on the ground that the consumer was not informed of his right to cancel, even though the consumer at no stage pleaded that the contract was void before the competent national courts.

On the one hand, that provision comes under the public interest in justifying a positive intervention by the national court in order to compensate for the imbalance between the consumer and the trader in the context of contracts concluded away from business premises.

On the other hand, a measure which consists in declaring the contract in dispute void can be categorised as ‘appropriate’ within the

meaning of the third paragraph of Article 4 of Directive 85/577, in that it penalises the failure to comply with an obligation which is essential to create binding intent on the part of the consumer and to attain the level of protection sought by the Community legislature.

However, that finding does not rule out the possibility that other measures might also ensure that level of protection, such as, for example, the resetting of the relevant time-limits relating to the cancellation of the contract, thus placing the consumer in a position to exercise the right which is granted to him by Article 5(1) of the directive. In addition, the national court seised may also have to take account, in certain circumstances, of the consumer’s wish not to have the contract at issue cancelled.

(see paras 28, 34-36, operative part)