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No right of withdrawal in case of car leasing without purchase obligation

In a most recent decision, the European Court of Justice decided that a consumer who concludes a car leasing agreement without an obligation to purchase does not have a right of withdrawal. By contrast, a consumer who has concluded a credit agreement to purchase a car without being properly informed of his or her rights and obligations may withdraw at any point as long as he or she has not received complete and correct information and provided that the withdrawal occurs before the agreement is performed in full.

Background

In the case of the leasing agreement, the consumer had visited the premises of a car dealer authorized to provide information on the agreement, which was then concluded directly between that consumer and the bank by way of distance communication. In the case of the credit agreements, the car dealers acted as intermediaries for the banks.

All those consumers withdrew several months, or even years, after the conclusion of the agreement; however, one of them exercised his right of withdrawal after the credit had been repaid in full. They consider that the 14-day withdrawal period provided for under EU law has not started to run because they were not sufficiently informed of their rights and obligations when the agreement was concluded. As regards the banks, they submit that, in any event, a withdrawal after such a length of time must be classified as abusive.

ECJ decision

The Court held that a consumer who concludes a leasing agreement for a car ordered in accordance with his or her specifications does not have, on the basis of EU law, a right of withdrawal where the agreement stipulates that he or she is under no obligation to purchase the car at the end of the leasing period. That applies even when the agreement was concluded at a distance or away from commercial premises.

As regards credit agreements, the ECJ notes that the 14-day withdrawal period provided for such agreements does not start to run if the information which the trader must provide when the agreement is concluded is incomplete or incorrect to the point of affecting the consumer's assessment of the scope of his or her rights and obligations and to the point of affecting his or her decision to conclude the agreement. In such a case, the exercise of the right of withdrawal after the 14-day period cannot under any circumstances be regarded as abusive, even if that right is exercised long after the agreement was entered into. Finally, the ECJ states that once the credit agreement has been performed in full, the consumer may no longer exercise his or her right of withdrawal.

Source:

ECJ, judgment of 21 December 2023 in joint cases **C-38/21, C-47/21 and C-232/21**, *BMW Bank and others*.
- ECJ press release No 201/23 dated 21 Dec 2023.

Keywords

Leasing, car leasing