Pročitajte predmete Faccini Dori, CIA i Unilever i razmislite o sljedećem?

* usporedite činjeničnu situaciju u predmetu Faccini Dori s jedne i CIA/Unilever s druge strane i rezultat u pogledu mogućnosti izravnog pozivanja na direktivu
* Jesu li CIA i Unilever vertikalni ili horizontalni predmeti?
* mogu li se predmeti CIA/Unilever interpretirati kao priznavanje horizontalnog izravnog učinka direktiva od strane Suda
* Koje pravno pravilo dodjeljuje subjektivno pravo čiju zaštitu CIA traži pred sudom?
* Je li Europski sud u predmetu CIA objasnio zašto je nacionalni sud mogao izravno primijeniti direktivu?
* Je li Europski sud u predmetu Unilever objasnio zašto je nacionalni sud mogao izravno primijeniti direktivu?

**C-194/94 CIA Security International SA v Signalson SA and Securitel SPRL**
Reference for a preliminary ruling: Tribunal de commerce de Liège - Belgium.
(1996) *European Court reports I-2201*

Relevant facts (in short): *CIA Security, a firm selling alarm systems, brought proceedings in Belgian commercial court against Signalson and Securitel, also security firms, asking for the order requiring them to cease unfair trading practices. Signalson and Securitel were publically claiming that alarm systems which CIA is selling were not approved as required by Belgian technical regulations. CIA claimed that Belgian regulation was not notified to the Commission according to Directive 83/189 on the provision of information in the field of technical standards and regulation. Belgian court stayed the proceedings and requested from the ECJ answer to several preliminary questions.*

Judgment (relevant parts)

(…)

The fifth and sixth questions
32 By its fifth and sixth questions the national court asks in substance whether the provisions of Directive 83/189, and particularly Articles 8 and 9 thereof, are unconditional and sufficiently precise for individuals to be able to rely on them before a national court which must decline to apply a national technical regulation which has not been notified in accordance with the directive.

(…)

40 The first point which must be made is that Directive 83/189 is designed to protect, by means of preventive control, freedom of movement for goods, which is one of the foundations of the Community. This control serves a useful purpose in that technical regulations covered by the directive may constitute obstacles to trade in goods between Member States, such obstacles being permissible only if they are necessary to satisfy compelling public interest requirements. The control is also effective in that all draft technical regulations covered by the directive must be notified and, except in the case of those regulations whose urgency justifies an exception, their adoption or entry into force must be suspended during the periods laid down by Article 9.
41 The notification and the period of suspension therefore afford the Commission and the other Member States an opportunity to examine whether the draft regulations in question create obstacles to trade contrary to the EC Treaty or obstacles which are to be avoided through the adoption of common or harmonized measures and also to propose amendments to the national measures envisaged. This procedure also enables the Commission to propose or adopt Community rules regulating the matter dealt with by the envisaged measure.
42 It is settled law that, wherever provisions of a directive appear to be, from the point of view of their content, unconditional and sufficiently precise, they may be relied on against any national provision which is not in accordance with the directive (see the judgment in Case 8/81 Becker [1982] ECR 53 and the judgment in Joined Cases C-6/90 and C-9/90 Francovich and Others [1991] ECR I-5357.

43 The United Kingdom considers that the provisions of Directive 83/189 do not satisfy those criteria on the ground, in particular, that the notification procedure contains a number of elements that are imprecise.
44 That view cannot be adopted. Articles 8 and 9 of Directive 83/189 lay down a precise obligation on Member States to notify draft technical regulations to the Commission before they are adopted. Being, accordingly, unconditional and sufficiently precise in terms of their content, those articles may be relied on by individuals before national courts.
45 It remains to examine the legal consequences to be drawn from a breach by Member States of their obligation to notify and, more precisely, whether Directive 83/189 is to be interpreted as meaning that a breach of the obligation to notify, constituting a procedural defect in the adoption of the technical regulations concerned, renders such technical regulations inapplicable so that they may not be enforced against individuals.
(…)

54 In view of the foregoing considerations, it must be concluded that Directive 83/189 is to be interpreted as meaning that breach of the obligation to notify renders the technical regulations concerned inapplicable, so that they are unenforceable against individuals.
55 The answer to the fifth and sixth questions must therefore be that Articles 8 and 9 of Directive 83/189 are to be interpreted as meaning that individuals may rely on them before the national court which must decline to apply a national technical regulation which has not been notified in accordance with the directive.

**C-443/98 Unilever Italia SpA v Central Food SpA**Reference for a preliminary ruling: Pretore di Milano - Italy
(2000) European Court reports I-07535

Relevant facts (in short): *In response to an order from Central Food, Unilever supplied it with certain quantity of extra virgin olive oil. Central Food informed Unilever that the olive oil supplied to it was not labelled in accordance with the Italian Law, and it consequently, refused to pay the amount due and called on Unilever to remove the goods from its warehouse. Unilever contested Central Food's position, on the ground that Italian Law in question is contrary to Directive 83/189, and therefore, inapplicable. It referred to the judgment in CIA. Asserting that the olive oil supplied was therefore wholly in conformity with the Italian legislation in force, it called on Central Food to accept the consignment and to pay for it. Central Food refused to do so and Unilever commenced proceedings before the Pretore di Milano for an order requiring Central Food to pay a sum corresponding to the price of the consignment.*

Judgment (relevant parts)

(…)

31 The question from the national court seeks, in essence, to ascertain whether a national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed by Article 9 of Directive 83/189.

(…)

35 The Italian Government, supported by the Danish Government, observes that, whilst the Court has indeed attributed direct effect to certain provisions of directives in that individuals, in the absence of proper transposition, may rely on such provisions as against the defaulting Member State, it has also held that to extend such a precedent to relationships between individuals would be tantamount to granting the Community power to impose, with immediate effect, obligations on individuals, even though it has no such competence except where it is empowered to adopt regulations. Thus, it is clear from settled case-law of the Court that a directive cannot of itself impose obligations on individuals and cannot therefore be relied on as such against them. No derogation from that principle can be based on the judgment in CIA Security. The operative part of that judgment discloses no intention to reverse the principle according to which a directive cannot have direct effect in horizontal relations between individuals.
(…)

45 It is therefore necessary to consider, secondly, whether the inapplicability of technical regulations adopted in breach of Article 9 of Directive 83/189 can be invoked in civil proceedings between private individuals concerning contractual rights and obligations.
46 First, in civil proceedings of that nature, application of technical regulations adopted in breach of Article 9 of Directive 83/189 may have the effect of hindering the use or marketing of a product which does not conform to those regulations.
47 That is the case in the main proceedings, since application of the Italian rules is liable to hinder Unilever in marketing the extra virgin olive oil which it offers for sale.
48 Next, it must be borne in mind that, in CIA Security, the finding of inapplicability as a legal consequence of breach of the obligation of notification was made in response to a request for a preliminary ruling arising from proceedings between competing undertakings based on national provisions prohibiting unfair trading.
49 Thus, it follows from the case-law of the Court that the inapplicability of a technical regulation which has not been notified in accordance with Article 8 of Directive 83/189 can be invoked in proceedings between individuals for the reasons set out in paragraphs 40 to 43 of this judgment. The same applies to non-compliance with the obligations laid down by Article 9 of the same directive, and there is no reason, in that connection, to treat disputes between individuals relating to unfair competition, as in the CIA Security case, differently from disputes between individuals concerning contractual rights and obligations, as in the main proceedings.
50 Whilst it is true, as observed by the Italian and Danish Governments, that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against an individual (see Case C-91/92 Faccini Dori [1994] ECR I-3325, paragraph 20), that case-law does not apply where non-compliance with Article 8 or Article 9 of Directive 83/189, which constitutes a substantial procedural defect, renders a technical regulation adopted in breach of either of those articles inapplicable.
51 In such circumstances, and unlike the case of non-transposition of directives with which the case-law cited by those two Governments is concerned, Directive 83/189 does not in any way define the substantive scope of the legal rule on the basis of which the national court must decide the case before it. It creates neither rights nor obligations for individuals.
52 In view of all the foregoing considerations, the answer to the question submitted must be that a national court is required, in civil proceedings between individuals concerning contractual rights and obligations, to refuse to apply a national technical regulation which was adopted during a period of postponement of adoption prescribed in Article 9 of Directive 83/189.