

## Rechtsprechung

### Rechtssachenbeschreibung

**Nationale Kennung:** Supreme Court, Judgment 6 Ob 51/17v

**Mitgliedstaat:** Österreich

**Gebräuchliche Bezeichnung:** N/A

**Art des Beschlusses:** Beschluss des Obersten Gerichts

**Beschlussdatum:** 29/08/2017

**Gericht:** Supreme Court

**Betreff:**

**Kläger:**

**Beklagter:**

**Schlagworte:** consumer rights, Injunction

**Artikel der Richtlinie**

Injunctions Directive, [link](#)

**Leitsatz**

ECLI:AT:OGH0002:2017:0060OB00051.17V.0829.000

If there is a direct and concrete risk of an infringement on others' legal rights, an action for a preventive injunction is permissible according to settled case law. The possibility of an action for a preventive injunction has already been affirmed for the association proceedings pursuant to article 28 KSchG. It also exists in a class action lawsuit pursuant to article 28a KSchG.

### Sachverhalt

The defendant Austrian bank offers its services mainly in Vorarlberg. As part of its business activities, it also concludes credit and loan agreements with consumers in currencies other than the Euro. A large part of these credit relationships is denominated in Swiss Francs (CHF). The defendant uses predefined standard texts to conclude these contracts. Many of these agreements are based on interest escalation or adjustment clauses.

The details of the loan were negotiated between the client advisor/managing director of the defendant and the client. A central issue in the credit contract negotiations was, among other things, the interest escalation or adjustment clause, in which reference interest rate is used as the basis, and the amount of the premium.

In February 2015, the defendant sent a letter to all its foreign currency borrowers containing, among other things, the following: "Dear Customer, in recent weeks, the turmoil on the money and capital markets has taken over. Especially in this unpredictable environment, we want to remain a reliable partner for you. But this also includes clarifying key points that can lead to misunderstandings. Since the developments on the money markets described above (including negative indicators) could not be foreseen, this was not regulated when the loan agreement was concluded, so that a contractual gap arose as a result of these circumstances. For the sake of clarity, as long as the value of the indicator on the interest rate adjustment date is below 0%, we will only charge you the interest premium of 1.375% as the minimum interest rate. This minimum interest rate is necessary as the business basis for covering our risk, material and personnel costs."

The association entitled to sue pursuant to article 29 (1) KSchG seeks to ask the defendant to refrain from charging a minimum target interest rate in the amount of the agreed upon surcharge or a greater amount, in particular to refrain from charging an annual interest rate of 1.375% , in business dealings with consumers and thus not to pass on, or not to pass on in full, a negative value of the indicator to the contracting parties.

### Rechtsfrage

Is an action for preventive injunction action permissible?

### Entscheidung

If there is a direct and concrete risk of an infringement on others' legal rights, an action for a preventive injunction is permissible according to settled case law. The possibility of an action for a preventive injunction has already been affirmed for the association proceedings pursuant to article 28 KSchG. It also exists in a class action lawsuit pursuant to article 28a KSchG.

Volltext: [Volltext](#)

### Verbundene Rechtssachen

Keine Ergebnisse verfügbar

### Rechtsliteratur

Keine Ergebnisse verfügbar

### Ergebnis

The Supreme Court upheld partially the applicant's appeal, whereas the defendant's appeal was dismissed.