

Rechtsprechung

Rechtssachenbeschreibung

Nationale Kennung: Supreme Court, Judgement 9 Ob 38/19g

Mitgliedstaat: Österreich

Gebräuchliche Bezeichnung:N/A

Art des Beschlusses: Beschluss des Obersten Gerichts

Beschlussdatum: 23/09/2019

Gericht: Oberster Gerichtshof

Betreff:

Kläger:

Beklagter:

Schlagworte: distance contracting, distance selling, B2C

Artikel der Richtlinie

Consumer Rights Directive, [Chapter 3, Article 8, 5](#). Consumer Rights Directive, [Chapter 3, Article 8, 6](#).

Leitsatz

ECLI:AT:OGH0002:2019:0090OB00038.19G.0923.000

Paragraph 9 (2) FAGG (Austrian Distance Selling Act) (double confirmation mechanism for contracts concluded by telephone) applies not only to distance contracts for services but also to intangible digital content.

Sachverhalt

The plaintiff is an association entitled to bring an action within the meaning of paragraph 29 KSchG (Consumer Protection Law). The defendant is a limited liability company based in Vienna, which offers pay-TV throughout Austria, thus making television content available in exchange for payment. The defendant bases the contracts on its general terms and conditions and its provisions on fees. In addition to other clauses, the proceedings also concerned the defendant's contacting its customers by telephone.

Rechtsfrage

The defendant contacted its customers by telephone to find out whether they were interested in a contract or an extension of the contract. In this context, the particular question was at what point in time such a contract negotiated or concluded by telephone would come into effect.

Entscheidung

If a distance contract for a service has been negotiated during a telephone call initiated by the seller, the consumer is only bound pursuant to paragraph 9 (2) FAGG (Austrian Distance Selling Act) if the seller provides the consumer with a confirmation of his contractual offer on a durable medium and the consumer then sends the seller a written declaration of acceptance of this offer, also on a durable medium. It is argued in the doctrine that contracts for non-physical digital contents are also covered by paragraph 9 (2) FAGG (Austrian Distance Selling Act). The Supreme Court agrees with this view.

The restriction of distance contracts "for a service" is not prescribed by Union law (the option under Art 8 (6) of Directive 2011/83/EU applies to distance contracts per se) but is an autonomous decision of the Austrian legislator. Consequently, the phrase "via a service" must be interpreted solely in accordance with national law. There is therefore no reason to initiate a preliminary ruling procedure.

Volltext: [Volltext](#)

Verbundene Rechtssachen

Keine Ergebnisse verfügbar

Rechtsliteratur

Keine Ergebnisse verfügbar

Ergebnis

In the question of how paragraph 9 (2) FAGG (Austrian Distance Selling Act) is to be interpreted, the Supreme Court follows national doctrine and refrains from making a reference for a preliminary ruling to the European Court of Justice, since the specific question concerns national law.