

Rechtsprechung

Rechtssachenbeschreibung

Nationale Kennung: Supreme Court, Judgement 4 Ob 106/21y

Mitgliedstaat: Österreich

Gebrauchliche Bezeichnung: N/A

Art des Beschlusses: Beschluss des Obersten Gerichts

Beschlussdatum: 27/07/2021

Gericht: Supreme Court

Betreff:

Kläger:

Beklagter:

Schlagworte: injunction, jurisdiction

Artikel der Richtlinie

Injunctions Directive, [Article 2](#) Injunctions Directive, [Article 3](#) Injunctions Directive, [Article 3](#)

Leitsatz

ECLI:AT:OGH0002:2021:0040OB00106.21Y.0727.000

According to settled case law, only the complete submission to the claim of an institution entitled to bring an action pursuant to § 29 KSchG (Consumer Protection Act; = Art 3 of Directive 2009/22/EC) eliminates the risk of repetition.

Sachverhalt

The plaintiff, who was entitled to bring an action for an injunction pursuant to § 29 KSchG (= Art 3 of Directive 2009/22/EC), objected to several clauses in the defendant's general terms and conditions.

Rechtsfrage

The question was: At what point does the risk of repetition, which is a prerequisite for the admissibility of an action for an injunction in Austria, no longer exist?

Entscheidung

In this respect, the Supreme Court referred to its established case law according to which the risk of repetition is deemed to no longer exist if the defendant fully submits to the claim of an institution entitled to bring an action pursuant to § 29 KSchG (= Art 3 of Directive 2009/22/EC). Accordingly, a complete submission is not given if the defendant wishes to add certain exceptions to the declaration to cease and desist submitted pursuant to § 28 (2) KSchG (corresponds to Art 2 of Directive 2009/22/EC). With regard to certain clauses used by the plaintiff, the defendant only gave a limited undertaking to cease and desist from certain parts of the clauses. The remaining parts were "deleted" from the declaration and were to remain in place. However, this in no way eliminates the risk of repetition.

Volltext: [Volltext](#)

Verbundene Rechtssachen

Keine Ergebnisse verfügbar

Rechtsliteratur

Keine Ergebnisse verfügbar

Ergebnis

The Supreme Court follows the two lower courts in its decision. The risk of repetition is not eliminated by the statement made by the defendant.