

Rechtsprechung

Rechtssachenbeschreibung

Nationale Kennung: IV ZR 235/99

Mitgliedstaat: Deutschland

Gebräuchliche Bezeichnung: N/A

Art des Beschlusses: Sonstiges

Beschlussdatum: 22/11/2000

Gericht: BGH

Betreff:

Kläger:

Beklagter:

Schlagworte: Rechtsprechung Deutschland Deutsch

Artikel der Richtlinie

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 3, 2.](#) Unfair Contract Terms Directive, [Article 4, 2.](#) Unfair Contract Terms Directive, [Article 5](#)

Leitsatz

1. Art. 4 Abs. 2 Klausel-Richtlinie 93/13/EWG erweitert den gem. § 8 AGBG (jetzt § 307 Abs. 3 BGB) der gerichtlichen Kontrolle entzogenen Bereich nicht, da Art. 8 der Richtlinie eine strengere Kontrolle formulierter Klauseln durch das nationale Recht erlaubt.
2. Der Ausschluss von Leistungen einer „Auslandsreise“-Krankenversicherung für das Staatsgebiet des Heimatlandes ausländischer Versicherungsnehmer in einer AGB-Klausel verstößt gegen das Transparenzgebot aus § 9 Abs. 1 AGBG (jetzt § 307 Abs. 1 S. 2 BGB).
3. Der Ausschluss jeglicher medizinischer Leistungen im Zusammenhang mit einer Schwangerschaft in einer AGB-Klausel verstößt gegen das Transparenzgebot aus § 9 Abs. 1 AGBG (jetzt § 307 Abs. 1 S. 2 BGB), da so auch medizinisch notwendige Eingriffe von der Versicherung ausgeschlossen sind, die bei krankhaften Komplikationen auftreten.

Sachverhalt

The claimant is an association with legal capacity, which according to its charter serves the interests of consumers through advice and explanation. The respondent is an insurance company operative across the federal region. Its products include holiday insurance policies. Its standard terms of insurance provide inter alia:

§ 1. Subject matter, scope and application of the insurance cover. ... (2) The insurer provides insurance cover for sickness, accidents and other events named in the insurance policy. It refunds expenses incurred for treatment and provides benefits as otherwise agreed in respect of unforeseen occurrence of the subject of cover whilst abroad.

(3) The subject of cover is the medically necessary treatment of an insured person due to sickness or accident ...

(5) "Abroad" within the meaning of subsection 2 does not include the state territory of which the insured person is a national or in which he has his permanent residence. Where an insured person possesses both German nationality as well as that of another state or is a national of a Member State of the EC, then insurance cover also extends to the state territory, whose nationality the insured person holds.

(6) The insurance cover exists for all temporary trips abroad taken by the insured person makes within the insurance year. The cover only exists however provided the duration of the individual stay abroad does not exceed a time period of six weeks (42 days) ...

(7) Persons eligible for cover are those who have not yet attained 70 years of age and whose permanent residence is in the Federal Republic of Germany.

§ 5. Limitations of cover (1) No cover exists for ...

g) Examination and treatment relating to pregnancy, childbirth and abortion as well as consequences thereof.

The applicant sought an order requiring the respondent not to apply the aforementioned clauses. The Landgericht (district court) made an order in respect of parts of the application only and dismissed the rest. The Berufung (appeal on points of fact and law) by both the respondent and the claimant were unsuccessful. The applicant's Revision (appeal on points of law only) was successful, whereas that of the respondent was dismissed.

Rechtsfrage

Entscheidung

The BGH (Bundesgerichtshof – Federal Supreme Court) stated in its judgment, that § 8 AGBG (now § 307 para. 3 BGB) does not preclude a review of the above terms. The judicial review of content is only precluded so far as it relates to the type, scope and quality of the benefits owed under the contract. Clauses, which exclude, amend, define or modify the main benefits, are however subject to review of content. Art. 4 para. 2 Unfair Contract Terms Directive 93/13/EEC does not however – contrary to the view of the court below - extend the limits of judicial review. Art. 8 of the directive expressly allows for a stricter control of preformulated clauses by national law.

According to the view of the BGH however this does not affect the present case, as § 1 (5), 1st sentence of the insurer's standard terms are in any event not within the narrow area excluded from review by § 8 AGBG. § 1 (2) of the insurer's standard terms name an insurance policy for "trips abroad", which contains a territorial distinction from domestic sickness insurance. According to this rule "abroad" does not include the territory of a state whose nationality the policy holder possesses or in which he has his habitual residence. The clause thereby modifies the promise of main benefits defined in § 1 (2) and (3) of the insurer's standard terms in a restrictive manner. Furthermore, due to the many different conceivable alternatives (persons with different nationalities and different permanent residences) the clause represents a regulatory structure, whose scope is only evident to the average policy holder, if at all, following initial interpretation of the whole clause including the exceptions. Due to a breach of the principle of transparency resulting from § 9 (1) AGBG to the detriment of the policy holder, the exclusion clause is therefore void.

Also, § 5 (1)(g) of the insurer's standard terms incommensurately disadvantages the policy holder (§ 9 (1) AGBG) and is therefore void. § 5 of the insurer's standard terms intends, as is discernible from its title, to regulate limitations of cover. It therefore encompasses all cases in which cover exists in principle, but where the insurer nevertheless does not wish to provide it. According to the exclusion of benefits in § 5 (1)(g) of the insurer's standard terms for "examination and treatment relating to pregnancy, childbirth and abortion", medically necessary treatments in this context are not covered by the policy even if they are unforeseen (§ 1(2) of the standard terms). With this content § 5 (1)(g) of the insurer's standard terms modifies the main subject of cover given in §

1 (2) of the insurer's standard terms in a restrictive manner. § 5 (1)(g) of the insurer's standard terms incommensurately disadvantages the policy holder contrary to the principle of good faith and is therefore void.

Volltext: [Volltext](#)

Verbundene Rechtssachen

Keine Ergebnisse verfügbar

Rechtsliteratur

Keine Ergebnisse verfügbar

Ergebnis