

Case law**Case Details****National ID:** C00/315HR**Member State:** Netherlands**Common Name:** Johannes Maria Bramer v. Hofman Beheer BV & Colpro BV**Decision type:** Other**Decision date:** 14/06/2002**Court:** Hoge Raad (Supreme court)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**Unfair Contract Terms Directive, [Article 1, 1](#). Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1](#).**Headnote**

If article 6:248 BW and article 6:233 BW are both applicable in a situation but cumulation isn't possible, it is a free choice of parties which rule they call upon in court.

Facts

In 1995 Hofman gives a commission to Bramer to make a specific machine for the firm. The price will be paid in several parts by Hofman and Colpro, to which are added some extra costs for additional work. In 1997 Hofman reports a failure of the machine to Bramer and summons him to repair the machine. In his reaction Bramer refers to him general terms of the contract and postpones his reaction until the unpaid bills are paid. This leads to the case in court.

Legal issue

The question is the standard to which a clause in the general terms of a contract must be judged is given (a) by article 6:233 (which posess that a clause is destructible when it is undue burdensome) or (b) by article 6:248 (which gives a general rule that obligations may not be unfair or unreasonable) both of the Dutch Civil Code. The answer is that parties have a free choice in which article the base their claims on, which is a general rule in Dutch law when more than one option exists.

The rules in chapter 6.5.3 of the Civil Code (partially based on Directive 93/13/EC) are tend to protect the position of the counterparty of the person using the general terms. This goal is not served well if the counterparty is withheld the option to invoke the protection which article 6:248 offers. The difference in the result of the application of both rules gives no reason to judge that this choice should not be offered, since it does not lead to an unacceptable result for the user of the general terms.

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