

Case law

Case Details

National ID: Areios Pagos 296/2001

Member State: Greece

Common Name: link

Decision type: Other

Decision date: 16/02/2001

Court: Areios Pagos (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 1, 1](#). Unfair Contract Terms Directive, [ANNEX I, 1](#).

Headnote

1. The court scrutinised price adjustment clauses: if standard terms and conditions entitle a supplier to alter unilaterally the prices for providing services without giving prior notification of the conditions under which a price adjustment may be applied, this is invalid.
2. The court scrutinised restrictions (contained in the standard terms and conditions) on the consumer's right of cancellation, particularly where the contract pushes back the time at which the consumer's decision to exercise his right of cancellation takes effect.
3. The court scrutinised the operator's entitlement (contained in the standard terms and conditions) to make further guarantee claims of the consumer if the operator could reasonably deem this necessary under the given circumstances.

Facts

The consumer agreed a service contract with a public limited company. The company offered services in the telecommunications sector. The STCs included: a) an exclusive right for the operator to change unilaterally the service charges without any reference to the criteria according to which such changes applied (art 6 para 2 of the STCs); b) a decision by the consumer to exercise his right of cancellation takes effect one month after the operator has been given notice of cancellation (should the consumer cancel the contract on compelling grounds before the end of the minimum 6-month period, he was still supposed to pay the fixed costs for the minimum period, including any costs of usage (art 10 para 1 of the STCs)); c) the contract also entitled the operator to make further guarantee claims of the consumer if he could reasonably deem this necessary under the given circumstances (art 11 sentence 1 of the STCs). The Greek Consumers' Association brought a successful class action against the PLC. Both the Court of First Instance and the Court of Appeal upheld the Association's claims. The PLC subsequently lodged an appeal against the ruling.

Legal issue

The Areios Pagos (Greek Supreme Court) proceeded on the basis that the standard terms and conditions used in a consumer contract are to be regarded as unfair if they disadvantage the consumer. Although not explicitly laid down in art 2 para 6 of Act 2251/94, the court should infer from the provision that the critical element is the question of whether the consumer is disadvantaged. Before scrutinising the contents of the STCs in accordance with the general clause in art 2 para 6 Act 2251/94, the Court of Appeal examined the question of whether the particular STCs contravened the interdictions on particular clauses specified in art 2 para 7 Act 2251/94. Any that do are to be regarded as ex lege invalid.

The Court of Appeal came to the conclusion that granting the operator an exclusive right to alter the service charges without any reference to the criteria according to which such changes applied was in breach both of art 2 para 6 and art 2 paras 7ε and 7ια of Act 2251/94. This was because such a right allowed the operator to alter the contract arbitrarily, without good reason and to the detriment of the consumer, which, in turn, was not in line with the requirements laid down in art 288 and 388 of the Greek Civil Code (ZGB). Rather, this right weakened the consumer's legal position insofar as it made it impossible for him to calculate in advance the amount and scope of his financial obligations to the operator.

Furthermore, the court ruled that the term in the STCs relating to the consumer's exercising of his right of cancellation was in breach of art 2 paras 6 and 7ιη of Act 2251/94. This was because it prevented the consumer from withdrawing from the contract without suffering considerable financial losses should the end price have risen appreciably in relation to the price agreed upon when the contract was signed.

Decision

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