

Case law

Case Details

National ID: Areios Pagos 1219/2001

Member State: Greece

Common Name: link

Decision type: Other

Decision date: 01/01/9999

Court: Areios Pagos (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](#). Unfair Contract Terms Directive, [ANNEX I, 1](#). Unfair Contract Terms Directive, [ANNEX I, 2](#).

Headnote

1. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the bank reserves the right to charge the consumer for additional costs provided that the amount of money outstanding is still below a limit that the bank is free to determine. It ruled that para 2b of the annex to Directive 93/13 applies.
2. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the bank reserves the right to charge the consumer interest if he has withdrawn money from his account using his credit card.
3. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the consumer accepts liability for any damages incurred as a result of his credit card having been lost or stolen, irrespective of who is at fault.
4. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the bank is entitled to set unilaterally the contractual interest rates for its services without informing the consumer about the measures used in setting this interest rate.
5. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause pertaining to the establishment of jurisdiction. The clause stated that only the courts where the bank's headquarters were located had jurisdiction over any contractual disputes.
6. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which it is assumed that the consumer has received his monthly statement once a certain period has passed. If the customer does not object to its contents within twenty days, it is considered that the customer has confirmed the contents of the statement and thus forfeits his right to dispute these contents.
7. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the bank is entitled to adjust unilaterally a credit cardholder's annual subscription in accordance with the prevailing circumstances without informing the consumer about the adjustment criteria.
8. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the bank reserves the right to demand the total monies outstanding from a loan agreement if the customer is in arrears with the payment of instalments.
9. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the consumer must pay additional interest rates for financial transactions abroad.
10. The court scrutinised the standard terms and conditions of a banking contract with regard to a contract clause under which the credit cardholder incurs additional costs if he exceeds the monthly spending limit on his card.

Facts

The Greek Consumers' Association brought a class action against the bank. The STCs used in banking contracts by the defendant contained a series of contract clauses that disadvantaged consumers. These included notably: (1) The bank is entitled to charge the consumer for additional costs, provided that the amount of money outstanding is still below a limit, as defined by the bank (term 2.08); (2) The bank reserves the right to charge the consumer interest if he has withdrawn money from his account using his credit card (term 14); (3) Irrespective of who is at fault, the consumer bears responsibility for damages incurred as a result of loss or theft of his credit card (terms 2b and 21); (4) The bank is entitled to set unilaterally the contractual interest rates for its services without informing the consumer about the measures used in setting this interest rate (term 16a); (5) The terms and conditions determine jurisdiction: only the courts where the bank's headquarters are located have jurisdiction over any contractual disputes (term 26); (6) It is assumed that the consumer has received his monthly credit card statement unless he informs the bank that this is not the case within the next month. The customer carries the burden of proof for demonstrating that he has properly notified the bank. If the customer does not object to the contents of the statement within twenty days, it is considered that the customer has confirmed the contents and thus forfeits his right to dispute them (term 9); (7) The bank is entitled to adjust unilaterally a credit cardholder's annual subscription in accordance with the prevailing circumstances without informing the consumer about the relevant adjustment criteria (term 13); (8) The bank reserves the right to demand the total monies outstanding from a loan agreement if the customer makes the minimum payment after the deadline or makes four late monthly payments (term 11β); (9) The bank reserves the right to charge the consumer an additional 1.5% in interest for financial transactions abroad (term 18); (10) The bank reserves the right to demand additional costs from the consumer if he exceeds his monthly credit card spending limit (5% of the amount by which he has exceeded that limit (term 15β)).

The Greek Consumers' Association filed a lawsuit against the terms and conditions detailed above. Both the bank and the Association lodged an appeal against the Court of Appeal's ruling.

Legal issue

The Court of Appeal proceeded on the assumption that the terms and conditions were invalid if they significantly disadvantaged the other contractual party (art 2 para 6 Act 2251/94). This equally applied even after Act 2741/1999 had entered into force (art 10 para 4 altered art 2 para 6 Act 2251/94). For these reasons, the first question to be answered was whether the terms and conditions did indeed disadvantage the consumer and, if so, whether they did so unfairly. All contract clauses mentioned in art 2 para 7 Act 2251/94 are to be regarded as ex lege invalid and thus do not need to be scrutinised in

accordance with art 2 para 6.

(1) In the case under examination, the Court of Appeal ruled that the contract term (2.08) entitling the bank to charge the consumer additional costs, provided that the amount of money outstanding was still below a limit that the bank was free to determine, contravened art 2 paras 7ε and 7στ Act 2251/94. This was because the clause could lead to unilateral changes being made to the essentialia negotii of the transaction without good reason, meaning that there was a real danger that the consumer would be unable to predict his future financial commitments towards the bank. The bank referred to art 2b of the annex to Directive 93/13, which allows a financial service provider to reserve the right, where justified, to adjust the interest rate payable by or to the consumer without prior warning, as long as the supplier is obliged to inform the other contractual party/parties immediately of the change, and as long as the other party/parties are free to cancel the contract with immediate effect. However, the relevant provision does not apply, since art 8 of Directive 93/13 allows Member States to enact even more stringent consumer protection regulations. In this regard, Greek legislators had made use of this option.

(2) In addition, the Court of Appeal ruled that the contract term (14) under which the bank reserved the right to charge the consumer interest if he had withdrawn money from his account using his credit card contravenes art 2 para 6 Act 2251/94 in conjunction with arts 174 and 178 ZGB and art 1 of 1969/8-8-1991 ΠΔ/ΤΕ.

(3) Furthermore, the Court of Appeal ruled that the contract term (2β and 21) under which the consumer accepts liability for any damages incurred as a result of his credit card having been lost or stolen, irrespective of who is at fault, contravenes art 2 para 7ιγ as well as art 2 para 6 Act 2251/94. This is because by making the consumer liable for damages irrespective of whether he was at fault, the terms and conditions were unfairly disadvantaging the consumer.

(4) Moreover, the court ruled that the contract term (16a) under which the bank was entitled to set the interest rates for its services unilaterally, without informing the customer about the measures used in setting this interest rate, contravenes art 2 para 7ιδ. This is because it enabled the bank to adjust the interest rate unilaterally and arbitrarily, while the other contractual party was unaware in advance of the criteria used in adjusting the interest rate. Thus, the consumer was unable to procure clear and unambiguous information about his financial commitments.

(5) The Court of Appeal also ruled that the contract term (26) according to which only courts in the region where the bank's headquarters were located had jurisdiction over contractual disputes with the bank was unfair. This was because the term was unfairly disadvantaging the consumer as per art 2 para 6 Act 2251/94 without clearly promoting the reasonable interests of the bank. The fact that Act 2251/94, unlike Act 1961/1999 (which previously applied), does not explicitly mention agreements over legal jurisdiction in its list of unfair contract terms has no bearing on whether such contract clauses are to be adjudged unfair.

(6) In terms of the regulation in term 9 of the STCs, the Court of Appeal ruled that both the assumed receipt of the bank statement and the concomitant restrictions on the consumer's defence rights indirectly shifted the burden of proof to the consumer and substantially altered the balance of power in the legal relationship between the two parties. If this happens, there is a clear breach of art 2 paras 6 and 7 κζ Act 2251/94.

(7) The Court of Appeal reached a different verdict on the term (11 β) under which the bank reserved the right to demand the total monies outstanding from a loan agreement if the customer made the minimum payment after the deadline or made four late monthly payments. In this case, the Court of Appeal ruled that this clause did not significantly disadvantage the consumer and thus was not in breach of either art 2 para 6 or art 2 para 7λ' Act 2251/94. In this case, given that it constituted a significant breach of contract, the bank's right was deemed proportionate.

(8) The Court of Appeal ruled that term 13 under which the bank was entitled to adjust unilaterally a credit cardholder's annual subscription in accordance with the prevailing circumstances contravenes art 2 para 6 Act 2251/94. This was because the contract term did not contain any duty for the bank to inform the consumer about any changes to his annual payments. This constituted a lack of transparency and thus restricted the consumer's ability to act autonomously.

(9) With regard to term 15β, which entitled the bank to charge the credit cardholder additional interest if he exceeded his monthly spending limit (5 % interest on the amount by which he had exceeded the limit), the Court of Appeal ruled that the clause did not contravene either art 2 para 6 or art 2 para 7λ' of Act 2251/94. The court regarded the bank's right to apply the additional charges as proportionate given that there was a significant breach of contract.

(10) The Court of Appeal came to a similar conclusion with regard to term 18 under which the bank was entitled to charge the consumer an additional 1.5% in interest for financial transactions abroad. The court held that, in view of the transaction costs incurred by the bank, charging the consumer 1.5% was proportionate. Thus, term 18 was not in breach of art 2 para 6 Act 2251/94.

Decision

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