

es_Case Details

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es_National ID	link
Estado miembro	España
es_Common Name	"E. O. E., S.A." v A. C. S.
es_Decision type	Otros
es_Decision date	05/07/1997
Órgano jurisdiccional	Tribunal Supremo
Asunto	
Demandante	
Demandado	
Palabras clave	

es_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, [Article 6, 1](#). Unfair Contract Terms Directive, [ANNEX I, 1](#).

es_Headnote

1. The jurisdiction clauses that impose the consumer to follow proceedings in courts other than his home address' incur in nullity for being unfair.
2. To reach to this conclusion after the period of transposition of the Directive 93/13/EEC the Spanish Supreme Court applies the doctrine about the direct horizontal effect established by the ECJ.

es_Facts

The vendor company sold some books for 961 euros to be paid in 22 installments. The contract was drawn as a private document, which was filled in by hand. Above the signature and in a minuscule type, the smallest of the document, it was expressed as "conditions" that "in connection with his contract, I yield to the courts in Barcelona, relinquishing the court closest to my place of residence". Due to the non-payment, the seller brought a lawsuit before the court in Barcelona against the consumer to demand the price. The consumer argued that such clause was unfair and that the lawsuit should be taken place in the court of Seville, where he lived. The Supreme Court accepted the argument of the consumer.

es_Legal issue

Decisión

This judgment is one of the almost thirty judgments of the Supreme Court which deal with the jurisdiction clauses identified as unfair terms between 1993 and 2000. It follows a line of argument in common with many others.

According to the Supreme Court, in a standard-form contract "the freedom to sign or not the contract is kept but not the freedom for both parties to establish the clauses that are mutually accepted. It is not argued the validity of the standard-form contract, part of the present reality, but there is no doubt of the need of some legal and judicial control in order to avoid that one of the parties suffers damages which should not be tolerated by the Law (...). Since they represent a serious limitation to the principle of the autonomy of will an important legislative corpus has been dictated everywhere in Europe, not to restrict them but to control them preventing an unfair practice".

According to the Civil Code (art. 1500.2) if the place has not been established, the payment should be made in the place where the good was sold (in this case, Seville). The Law 50/1965, of 17th July, of sales by installments establishes a mandatory rule that enforces that the competent court is the one closer to the consumer's home address (art. 14, although it is not applied in this case, because contracts on books are not included). The article 10 of the Law 26/1984, of 19th July on the protection of consumers includes the rule on standard terms, and this jurisdiction clause is of this kind, and also it is unfair, according to the requirements of the art. 10.1.c.3, which demands good faith and fair balance of the considerations, as well as that the clause does not create an imbalance between the parties, as it is the case in this judgment.

Then the judgment quotes and transcribes the arts. 3 and 6 of the Directive 93/13/EEC and the letter Q of its appendix and concludes that this Directive had to be transposed into the Spanish Law at the latest on 31st December 1994, which did not happen. The case law (judgment of the Spanish Supreme Court of 18th March 1995) points at the problems of the direct effect of the Directives that have not been transposed within the ordered period: it does not exist an automatic incorporation, but, according to the ECJ, they produce a vertical effect when the citizens act against the States for not having transposed within the deadline "and also horizontal effect, within conflicts between individuals if they have not been implemented in that period and they include precise rules that may clear and immediately be enforced: in order to declare the nullity of the jurisdiction clause, this is the interpretation of the Supreme Court judgments of 8th November 1996 and 30th November 1996". Therefore, by application of the General Law on Consumers Protection and the EU Directive, this term is deemed as unfair, and, as a consequence, it falls in nullity (art. 10.4 of the Law and art. 6 of the Directive).

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