

es_Case Details

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es_National ID	link
Estado miembro	España
es_Common Name	“Zardoya Otis, S. A.” v “Comunidad de propietarios de la casa ...
es_Decision type	Otros
es_Decision date	30/11/1996
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 attend the court proceedings in courts other than the one closer to his home address incur in nullity since they are unfair, according to the new case law clearly consolidated by the Supreme Court since 1996 under the influence of communitarian Law.
2. The judges within a country have to act as communitarian judges and adapt the domestic legislation to the Directive on abusive clauses, even before its transposition occurs.

es_Facts

The company “Zardoya Otis, S. A.” brought a lawsuit in the court of first instance of Madrid (number 52) against an association of proprietors in Murcia so that they perform a contract of maintenance service of the lift in the building where the proprietors live. In the contract, drawn by the aforementioned company, there was a jurisdiction clause by which any disagreement between the parties had to be resolved by the courts in Madrid. The association alleged in the court of Murcia a matter in connection with the competence of courts, demanding that the lawsuit had to be heard in the place where the defendant had his home address, where the service had been carried out and where the contract was signed. This way, this association asked for the declaration of nullity of this jurisdiction clause for being unfair and the court supported this view, in this and in other several judgments of the Supreme Court on similar clauses of the same company and others.

es_Legal issue

Decisión

This judgment was one of the nearly 30 judgments of the Spanish Supreme Court which between 1993 and 2000 mainly, stated that the jurisdiction clauses are unfair according to the interpretation of the Spanish legislation following the Directive 93/13/EEC on unfair contract terms, before the transposition of this Directive (in 1998) declared them explicitly void in the reform of the Law 26/1986 on the protection of consumers. Normally, almost all these judgments follow one of two lines of argument. As an example of one of the ways to argue it, the judgment of the Supreme Court of 30th November 1996 is included. The other alternative is exemplified in this database in the

judgment of the Supreme Court of 5th July 1997.

According to the judgment of 1996, the Supreme Court “has been keeping in general terms the literal wording of the express jurisdiction clauses, formally established in standard contracts, and it is stated, among many others in the judgments 31.5.1991, 18.6.1992, 22.7.1992, etc. Recently, and in accordance with the new internal and communitarian legislation, it has been considered necessary to open to a new law case orientation, already sufficiently consolidated, of which clear examples are the judgments of 23.7.1993, 20.7.1994, 12.7.1996, 14.9.1996, 8.11.1996, etc. This new doctrine has its stating point in the clauses that unilaterally appear in the standard contracts and the consumers have not had direct intervention in its wording and creation, nor in most cases they have been allowed to modify them, being notoriously unfair for their interests”.

The art. 10 of the Law 26/1984, of 19th July refers, in general, to the unfair clauses and its characteristics. To this internal legislation is compulsory to add the content of the Directive 93/13/EC. “This disposition is a rule of mandatory transcription to the national law systems of the member States and while that establishment is carried away, the legal courts of each State as to act as if they were communitarian judges”. After that this judgment (and most of the ones that deal with the same issues) reproduces arts 3 and 6 of the Directive, and letter Q in its appendix and concludes: “the literal transcription of the aforementioned Directive makes unnecessary any further argumentations”, having to add only that the jurisdiction clause is unfair because it generates an imbalance for the users of lift maintenance services who have to defend themselves and to be in dispute in Madrid, with the difficulty for their procedural representation, practice of evidence, travels, etc., and a benefit for the businessman who comfortably centralizes his legal disputes in the capital of Spain, where with an obvious saving of money, has his legal advice guaranteed.

In order to ground the idea of the compulsory performance of the communitarian directives by the judges in the member States, while the implementation is being carried out in each country, the Supreme Court quotes paragraphs of two judgments of the ECJ the Simmenthal case (case 106/77, of 9th March 1978) and the Commission v. France (case 167/73, of 4th April 1974), as well as the doctrine on the vinculation of the Spanish Law to the Community Law of the judgments of the Supreme Court of 14.4.1989, 13.6.1991 and 13.7.1991 and the judgment of the Constitutional court of 14th February 1991.

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