

## Case law

### Case Details

**National ID:** 7 Ob 287/01h

**Member State:** Austria

**Common Name:** link

**Decision type:** Other

**Decision date:** 17/04/2002

**Court:** Oberster Gerichtshof (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

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

### Headnote

1. In carrying out an ex-ante control of the disputed terms of an insurance contract in accordance with § 6 para 2 line 3 KSchG, the list of factors documented in § 178f para 2 of the Austrian insurance contract law (VersVG) should be taken as a starting point. If the adjustment clause contained in the health insurance contract is in line with the factors detailed therein, then, in accordance with § 6 para 2 line 3 KSchG, it is valid even if it has not been individually negotiated. Equally, there is no infringement of the principle of contractual equivalence as laid down in Council Directive 93/13/EEC.

### Facts

The Austrian Consumers' Association brought a class action against an insurance company under §§ 28 ff KSchG. It applied for an injunction against the defendant, ordering it to desist from applying in its commercial transactions with consumers the following clause and equivalent clauses: "The insurer is entitled to amend the standard terms and conditions of insurance as well as the payment plan where such amendments are required on the grounds of changes to the factors referred to in the payment plan, changes in the health system or changes in the legal provisions applicable to it". In addition, the Association requested that the verdict be made public.

The Court of First Instance upheld the claim, as did the Court of Appeal.

### Legal issue

The defendant's appeal to the OGH was successful in that the court revised the verdicts of the lower courts and rejected the claim. In giving the reasons behind its ruling, the Supreme Court had to explore first and foremost the relationship between § 178f VersVG and the legal provisions contained in § 6 para 1 line 5 and para 3 line 3 KSchG. To do so, the court referred to historical material, discussed provisions in consumer law and argued that health insurance was a special case since it was provided for an unusually long period of time. The OGH reached the conclusion outlined in the headnote above. It held that the disputed clause was in line with the factors documented in § 178f para 2 VersVG.

### Decision

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result