

Case law

Case Details

National ID: 6 Ob 324/00s

Member State: Austria

Common Name: link

Decision type: Other

Decision date: 17/01/2001

Court: Oberster Gerichtshof (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 7](#)

Headnote

1. In class action proceedings, where the content is to be controlled as a precautionary measure, the case should be interpreted on the basis of the worst case scenario for the consumer. There is also no possibility of reducing the scope of the clause.
2. It is to be assumed that the consumer is the victim of gross discrimination under § 879 para 3 ABGB if there are no grounds for deviating from the provision in law designed to apply to the average case.
3. In view of art 7 para 2 of Directive 93/13/EEC, there are no questions over the constitutionality of the provision in § 29 KSchG granting the listed interest groups the right to file a class action lawsuit.

Facts

The Austrian Consumers' Association (one of the bodies entitled under §§ 28 ff KSchG to bring a class action) applied for an injunction order against a supplier who, inter alia, leased parking spaces in garages. The Association objected to the fact that the defendant used as the basis of his contracts STCs containing several clauses that it regarded as infringing good moral practice. One such contract term was that, should a customer park his vehicle outside a designated space or one marked "reserved", then the leaser was entitled to immobilise the vehicle to secure any subsequent financial claims, move it, at the customer's expense, to the designated space and to charge the customer for any costs incurred.

Both the Court of Instance and the Court of Appeal upheld the claim in full, imposing an injunction on the use of all disputed clauses.

Legal issue

The defendant's extraordinary appeal was unsuccessful. In making its ruling, the OGH made clear that, in class action proceedings, the case should be interpreted on the basis of the worst case scenario for the consumer and that there is also no possibility of reducing the scope of the clause. By applying these core principles, the OGH argued that the clause cited above – that the leaser could claim costs from the customer if his vehicle was partially outside the designated parking space (even by just a tyre's width) – constituted gross discrimination against the consumer as per § 879 para 3 ABGB. It also stated that it is to be assumed that the consumer is the victim of gross discrimination if there are no grounds for deviating from the provision in law designed to apply to the average case. The supplier (defendant) had not provided any objective justification for imposing the penalty contained in the clause where there was only a minor infringement of the parking regulations.

The ruling also gave the OGH the opportunity to explore the question of whether the legal basis of class action lawsuits may be anti-constitutional. In his appeal, the defendant had argued that the provision in § 29 KSchG granting the listed interest groups the right to file a class action lawsuit was anti-constitutional, especially given that different interest groups may invoke this right in such a way as to distort competition. The OGH rejected this particular objection, ruling that there were no questions over the constitutionality of the provision in § 29 KSchG given that Austrian legislators were obliged under European law to enshrine this right in national law. Indeed, EU Member States are required, under art 7 para 2 of Directive 93/13/EEC, to grant organisations recognised under national law as protecting consumers the right to refer potentially unfair contract terms to the courts for a decision.

Decision

Full text: [Full text](#)

Related Cases

No results available

Legal Literature

No results available

Result