

Giurisprudenza

Dettagli del caso

ID nazionale: link

Stato membro: Italia

Nome comune: Adiconsum v. Soc. Aeroviaggi

Tipo di decisione: Altro

Data della decisione: 02/06/1998

Organo giurisdizionale: Tribunale

Oggetto:

Attore:

Convenuto:

Parole chiave:

Articoli della direttiva

Unfair Contract Terms Directive, [Article 1, 1](#). Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1](#). Injunctions Directive, [Article 1, 1](#). Injunctions Directive, [Article 3](#) Injunctions Directive, [Annex I](#)

Nota introduttiva

1. Under the Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998, a consumer association has standing to act before the Court to obtain an injunction for the protection of consumers' interests.

A clause providing that the professional evaluates the quality of the services and a clause of choice of jurisdiction, establishing the jurisdiction of the judge of the place where the professional is based, should be considered unfair and are subject to the injunctions by the consumers' associations.

Fatti

The Italian consumer association Adiconsum sued before the Tribunale di Palermo Aeroviaggi S.p.A.; the association has acted to obtain an injunction under the Directive 98/27/EC, aiming to prohibit the use of unfair terms in the standard contract of travel services offered by the tour operator.

As for the association, a clause providing that the tour operator, in absence of official data, may classify the hotels having regard to its standards should be deemed as unfair and, thus, it should be prohibited under the Council Directive 93/13/EEC of 5 April 1993.

The same for a clause of choice of jurisdiction stating the jurisdiction of the judge of the place where the tour operator is based.

Questione giuridica

Decisione

The Injunctions Directive 98/27/EC establishes a common procedure to allow a qualified body from one country to seek an injunction in another.

An "injunction" is an order granted by a court whereby someone is required to do or to refrain from doing a specified act.

For the purposes of this Directive, a "qualified entity" means any body or organisation which, being properly constituted according to the law of a Member State, has a legitimate interest (...).

It aims to control traders that undertake activities in one Member State, which harm the collective interests of consumers in another Member State.

The Directive has been implemented by the Law 30 July 1998, no. 281 ("Disciplina dei diritti dei consumatori e degli utenti", in Gazzetta Ufficiale no. 189, 14th August 1998).

The Tribunale di Palermo admitted the standing of the consumer association in order to obtain an injunction to prohibit the unfair terms provided in the standard contract of travel services offered by the tour operator.

When deciding whether to grant an injunction the court balances the prejudice likely to be suffered by the respondent if the injunction is granted and the applicant if it is not granted and takes into account whether the applicant can be adequately compensated by the payment of compensation if the order is not made. It also looks at the strength of the claim being made by the applicant.

In particular, the Tribunale di Palermo has stated that a clause providing that the professional evaluates the quality of the services and a clause of choice of jurisdiction - establishing the jurisdiction of the judge of the place where the professional is based - should be considered unfair and are subject to the injunctions by the consumers' associations.

Testo integrale: [Testo integrale](#)

Casi correlati

Nessun risultato disponibile

Dottrina

Nessun risultato disponibile

Risultato