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Case Details

National ID: link

Member State: Italy

Common Name:Soc. Siremar v. Adiconsum

Decision type: Other

Decision date: 22/10/1997

Court: Tribunale

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

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

Headnote

1. The decision regards the exercise of the actions for injunctions provided by the Law 30 July 1998, no. 281 on "The rights of consumers and users", published in the O.J. no.189 of 14 August 1998.

In particular, the Tribunale di Palermo confirmed that, under such Law, the consumers' associations may ask for an urgent injunction (i.e. "inibitoria urgente") to prevent the "potential" damages to the consumers' interest.

In order to decide on the demand of the consumers' associations, the judge should consider: a) the nature of the agreement to ascertain whether it concerns a fundamental right of the individual; b) the market structure and c) the potential damage that could be caused to the consumers' interests.

Facts

On the 24th July 1997, the Associazione regionale consumatori e ambiente (Adiconsum) sued the Sicilia regionale marittima s.p.a. (Siremar) before the Tribunale di Palermo.

The consumer association asked the Court an injunction to prohibit the adoption of certain clauses in the general conditions of transport services of the company. As for the plaintiff, these clauses should be deemed unfair under the Directive 93/13/ECC and thus the judge should declare that they are invalid.

The consumer association acted to obtain an urgent injunction to prevent the potential damages to the consumers' interests.

The Tribunale di Palermo agreed on the arguments presented by the plaintiff for the following reasons.

Legal issue

The Injunctions Directive 98/27/EC establishes a common procedure to allow a qualified body from one country to seek an injunction in another. 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 on "The rights of consumers and users", published in the O.J. no.189 of 14 August 1998.

Under such Law, the consumers' associations protecting collective interests may request from the judge an injunction for acts and behaviours prejudicing the rights of consumers, the adoption of measures to correct and eliminate the damaging effects of infringements ascertained and the order to publish the measure in one or more daily newspapers at a national or local level in order to contribute to the correction or elimination of the effects of said infringements.

Under the Law 30 July 1998, no. 281, an injunction is a court order either restraining a person from doing something or making a person do something. For example, stopping a person trading under someone else's name if they have no permission to do so or making a franchisee trade under the franchisor's name.

An injunction can either be granted immediately, if the order is required urgently, or after a hearing of all the issues if there is no particular urgency.

In this decision, the Tribunale di Palermo has confirmed that the association - authorized as "qualified entity" - has legal standing to act for an urgent injunction to prevent the "potential" damages to the consumers' interests.

An urgent injunction - as in our case - is usually granted on a temporary basis, that is, until the court hears all the arguments of the both parties in full at a final hearing.

To consider the demand of the consumer association, the judge should consider i) the nature of the agreement to ascertain whether it concerns a fundamental right of the individual, ii) the market structure and iii) the potential damage that could be caused to the consumers' by the unfair terms.

Decision

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