

Case law

Case Details

National ID: link

Member State: Italy

Common Name: Adiconsum v. Accord Viaggi S.r.l.

Decision type: Other

Decision date: 11/07/2000

Court: Tribunale

Subject:

Plaintiff:

Defendant:

Keywords:

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 7](#) Unfair Contract Terms Directive, [ANNEX I, 1](#). Package Travel Directive, [Article 1](#)

Headnote

1. The Tribunale di Palermo has stated that the contracts on package travel, package holidays and package tours are subject to the articles 1469-bis and followings of the Italian Civil Code.
2. Consequently, a clause of choice of jurisdiction - by which any controversy arising from the said contracts should be decided by the judge of the place where the tour operator is based - is unfair under the art. 1469-bis of the Italian Civil Code.
3. It is also unfair a clause of these contracts upon which the tour operator is entitled to classify the hotels accordingly to personal criteria. Moreover, as to the Court, the injunction provided by the article 1469-sexies of the Italian Civil Code represents a general anticipatory remedy, aiming to prohibit the diffusion of unfair terms in the consumers' contracts.
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Facts

The consumer association Adiconsum sued the tour operator Accord Viaggi S.r.l. before the Tribunale di Palermo seeking for an injunction under the article 1469-sexies of the Italian Civil Code.

As for the plaintiff, certain clauses of the standard forms of the tour operation should be declared unfair and thus invalid.

The tour operator opposed to the demand of the plaintiff by affirming that that, in any event, the contested clauses included in the standard forms have not been used to draft the individual contracts.

Legal issue

The Tribunale di Palermo has stated that the contracts on package travel, package holidays and package tours are subject to the articles 1469-bis and followings of the Italian Civil Code.

The Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts provides for the ineffectiveness of terms considered as vexatious (i.e. art. 1469-quinquies of Italian Civil Code) as well as for the action for an injunction for the protection of consumers from unfair terms (i.e. art. 1469-sexies of Italian Civil Code). Craft and Trade Chambers and the associations representing consumers and professional workers may avail themselves of an action for an injunction.

In particular, the judge has considered unfair under the art. 1469-bis of the Italian Civil Code: (a) a term of choice of jurisdiction by which any controversy arising from the said contracts should be decided by the judge of the place where the tour operator is based; (b) a term upon which the tour operator is entitled to classify the hotels accordingly to personal criteria.

In the same decision, the Tribunale di Palermo has admitted the legal standing of the Italian consumer association Adiconsum under the article 1469-sexies of the Italian Civil Code.

The judge has granted to the consumer association an injunction to prohibit certain clauses included in the standard contracts adopted by the tour operator Accord Viaggi S.r.l.

It should be noted that the Court held that the injunction for the protection of consumers from unfair terms applies to the unfair terms provided in the standard contracts unless they have not been used to draft individual contracts.

Decision

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