

Case law

Case Details

National ID: link

Member State: Italy

Common Name: Movimento federativo democratico e altro v. Associazione Bancaria Italiana (ABI) e altro

Decision type: Other

Decision date: 21/01/2000

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 Tribunale di Roma stated that are unfair under the article 1469-bis of the Italian Civil Code the clauses providing the bank with a right of cancellation from the contract concluded with the consumer without a justified cause and a reasonable notice.

Consequently, the judge issued an injunction to prohibit that the Associazione Bancaria Italiana suggests to its members to adopt such terms in the individual contracts with the consumers.

Facts

The consumer association, Movimento Federativo Democratico (MFD), sued before the the Tribunale di Roma the Associazione Bancaria Italiana, the Banca Popolare di Milano and the Banca Fideuram.

The Associazione Bancaria Italiana is the association of the principal Italian banks.

The MFD asked the judge to declare that certain clauses of the standard contracts elaborated by the Associazione Bancaria Italiana were unfair under the art. 1469-bis of the Italian Civil Code.

ABI argued that the association has only suggested to its members the adoption of such terms, but that they have not been necessarily used in the individual contracts between the banks and the consumers.

The judge argued that some terms were unfair and granted the consumer association an injunction to inhibit the adoption of such clauses in the standard models of contract adopted by the Associazione Bancaria Italiana, the Banca Popolare di Milano and the Banca Fideuram.

Legal issue

In the leading case, the Tribunale di Roma stated that the terms upon which a bank has the right of cancellation from the contracts with the consumers without a justified cause and a reasonable notice should be considered unfair under the article 1469-bis of the Italian Civil Code.

Actually the article 1845, par. 1, of the Italian Civil Code, provides that, in the absence of an agreement between the parties or of a specific reason ("giusta causa"), the bank cannot withdraw from the contract before the expiration of the term.

As to the par. 3 of the said article, each party can withdraw from the contract by giving a notice within the time agreed in the contract or established by use or, in their absence, not less than fifteen days.

In the decision, the Tribunale di Torino also clarified that certain clauses of the contracts between a bank and a consumer should be considered unfair under the article 1469-bis of the Italian Civil Code.

The list of unfair terms includes, but is not limited to, the clauses granting the bank the unilateral decision on how to proceed in absence of the client's instructions; those excluding the responsibility of the bank when the clients' goods deposited in the bank boxes were lost or damaged; the clauses that are in contrast with the right of privacy of the clients; and the clauses excluding the responsibility of the bank for any fact that does not fall directly under the responsibility of the company.

As a consequence of the above, the Tribunale di Torino has issued an injunction to prohibit that Associazione Bancaria Italiana suggests to its members to adopt such terms in the individual contracts with the consumers.

The decision concludes that the judge may prohibit the adoption of the unfair term, but he may not issue an order to the bank to modify these clauses.

Actually, such order would represent an infringement of the individual autonomy related to the standard contracts.

Decision

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