

Case Details

Case Details

National ID	link
Member State	Italy
Common Name	Adiconsum v. Enel
Decision type	Other
Decision date	31/08/1998
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](#). Injunctions Directive, [Article 1, 1](#). Injunctions Directive, [Annex I](#)

Headnote

1. The terms provided in the standard forms of Enel S.p.a. for the service of electricity could not be considered unfair under the article 1469-bis of the Italian Civil Code because the professional, Enel S.p.a., had proved these terms are absolutely necessary to supply the public service.
The term “necessary” means that the professional may not supply the electricity in a fruitful way without the adoption of these terms.

Facts

A consumer association, Adiconsum, brought an action before the Tribunale di Roma asking the Court to inhibit the adoption of certain unfair terms in the electricity contracts of Enel S.p.a.
The company claimed that the plaintiff had not the legal standing to act on the grounds of the Law 30 July 1998 no. 281 and underlined that such terms were essential to manage the business concerned. Enel S.p.a. also stressed that the electricity is a service of public utility.

Legal issue

The Tribunale di Roma stated that the judge, in assessing if a clause is unfair or not, should consider the issues related to the organization and the management of the business concerned.
In particular, a term could not be considered not unfair when such clause is necessary to supply the electricity (i.e. a service of public utility).
In this decision, the Tribunale di Roma also confirmed the legal standing of the consumer association to seek an injunction for the protection of the consumers' interests.
Actually, the article 1469-sexies of the Italian Civil Code provides for the action for an injunction for the protection of consumers. As for such article, Craft and Trade Chambers and the associations, representing consumers and professional workers, may avail themselves of an action for an injunction.

In this case, the judge affirmed that an urgent injunction (i.e. inibitoria urgente) is not admissible because the unfair terms have been used for a long time in the standard contracts of Enel S.p.A. and thus that it was not required a remedy to prevent an “irreparable damage” to the consumers’ interests.

Decision

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