

Retspraksis

Sagsoplysninger

Nationalt ID-nr.: 9. afd. B-0405-02

Medlemsstat: Danmark

Almindeligt anvendt navn: TDC Denmark A/S vs. The Danish Consumer Council acting on behalf of A

Afgørelsestype: Andet

Afgørelsesdato: 14/05/2003

Retsinstans: Vestre Landsret

Emne:

Sagsøger:

Sagsøgt:

Nøgleord:

Direktivets artikler

Unfair Contract Terms Directive, [Article 6, 1.](#) Unfair Contract Terms Directive, [Article 6, 2.](#)

Indledende note

The case concerned the fairness according to the Formation of Contract Act § 36 and § 38 c (implementing art. 6 of Directive 93/13/EC) of a telephone company's claim for payment for 74 telephone calls to St. Helena.

Fakta

Within a period of 14 days 74 telephone calls to St. Helena were made from the consumer A's telephone line. The calls were made automatically via a software programme that was installed on A's Internet connected computer. Instead of directing the calls to A's Internet Service Provider (and from there to the Internet), the software programme directed the calls to a premium charged telephone number on St. Helena.

A, who claimed never to have made the calls, filed a complaint with the National IT and Telecom Agency regarding the telephone company's claim. The Agency, however, upheld the phone company's claim. The Agency found that a download of the software programme (which initiated the calls) required an active action from A. If A was in no position to realise that a download was being made and the possible implications hereof, this could not be blamed on the phone company.

A subsequently filed a complaint with the Consumer Complaints Board. The Board ruled in favour of A, arguing that the phone company had not done what could be expected to eliminate the – known - risk of unintentional download of calling software, that the download – and the phone company's claim – was unexpected to A, and that the considerable size of the claim (DKK 30.000, approx. EUR 4.000) was threatening to A's welfare. Under these special circumstances, the Board concluded, it would be unreasonable and contrary to principles of fair conduct if the phone company insisted on enforcing the claim regarding the calls to St. Helena, cf. the Formation of Contract Act § 36 and § 38 c (implementing art. 6 of Directive 93/13/EC).

Juridisk spørgsmål

Afgørelse

The Western High Court also ruled in favour of A, on grounds essentially similar to the Consumer Complaints Board. Thus, A was exempted from paying for the calls made to St. Helena.

Hele teksten: [Hele teksten](#)

Relaterede sager

Ingen resultater

Retslitteratur

Ingen resultater

Resultat