

**Jurisprudência****Informações sobre o processo****ID nacional:** 02A3692**Estado-Membro:** Portugal**Designação comum:** N/A**Tipo de decisão:** Outro**Data da decisão:** 27/06/2002**Tribunal:** Supremo Tribunal de Justiça**Assunto:****Requerente:****Requerido:****Palavras-chave:** Jurisprudência Portugal português**Artigos da diretiva**Unfair Contract Terms Directive, [Article 1, 1.](#)**Nota introdutória**

Sending a written contract to a consumer is tantamount to complying with the duty of communication laid down in article 5 of Decree 446/85 of 25 August (amended by Decree 220/95 of 31 January).

**Factos**

The consumer lodged a compensation claim to cover the damages he had incurred as a result of a commercial car dealership contract's being terminated (in his view unfairly). In his defence, the defendant cited a term in the contract under which any disputes could only be settled in an arbitration tribunal.

On the basis that the contract was subject to the legal provisions governing standard contract terms (Decree 446/85 of 25 August, amended by Decree 220/95 of 31 January), the plaintiff argued that the term should be excluded because it was never communicated to him (article 5 of Decree 446/85).

The question, therefore, was whether sending the written contract to the consumer (as laid down in article 5 of the aforementioned legislation) was tantamount to complying with the duty of prior communication and thus whether the contract terms stipulating that disputes must be settled through arbitration should be disregarded (article 8 indent a) of Decree 446/85). The outcome of the case was decisive in terms of which courts had jurisdiction over disputes resulting from the performance of a contract.

**Questões jurídicas****Decisão**

The court ruled that the duty of communication was fulfilled when the document that would go on to become the contract (once the recipient had signed it) was sent. Indeed, any other outcome would require duplicate written communication, which is not a requirement under either national or EU legislation. Nonetheless, it is still necessary to check that the document sent or delivered to the consumer is both complete and clearly drafted. Moreover, the consumer must be given a sufficiently long period so as to be able to request information and put forward amendments. Provided these conditions have been met, there is no impediment preventing the contract from being concluded when the other party signs the same document that previously served as the vehicle of communication and that already contained the sender's signature. To underscore its position, the court went on to add that, in the strictest terms, the document sent to the consumer was not in fact the contract. Rather, it was merely a proposal since an agreement of wills is required for a contract to exist. In this particular case, this agreement only came into existence when the recipient signed the document.

Texto integral: [Texto integral](#)**Processos conexos**

Sem resultados disponíveis

**Bibliografia jurídica**

Sem resultados disponíveis

**Resultado**