

Case law**Case Details****National ID:** link**Member State:** Italy**Common Name:** link**Decision type:** Other**Decision date:** 11/07/2005**Court:** Tribunale (Court of first instance, Ivrea)**Subject:****Plaintiff:****Defendant:****Keywords:****Directive Articles**Unfair Contract Terms Directive, [ANNEX I, 1.](#)**Headnote**

The recent decision of the Tribunale di Ivrea concerns the interpretation of a penalty clause inserted in an agency contract under the provisions of the article 1469 bis, number 6), of Italian Civil Code.

Accordingly to the decision, such a clause is not unfair because the penalty is provided for the infringement of the obligations of both parties (i.e. the professional and the consumer).

Facts

An estate agent claimed before the Justice of Peace of Ivrea that the sale contract concluded by its client after the expiration of the agency contract was a consequence of its work.

Thus, he asked for the payment of the commission provided in the agency agreement.

The Justice of Peace of Ivrea agreed with the demand of the agent and the client appealed the decision before the Tribunal of Ivrea.

In the appeal, the plaintiff claimed, inter alia, that the penalty clause contained in the agency contract should be considered unfair under the article 1469 bis of Italian Civil Code and thus null and void.

Legal issue

The discipline concerning the unfair terms in consumer contracts has been implemented in Italy by the Law of 6 February 1996 no. 52 "Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee" (Legge Comunitaria 1994).

The Law has introduced the articles from 1469-bis to 1469-sexies in the Italian Civil Code.

In particular, the decision of the Tribunale di Ivrea concerns the interpretation of a penalty clause with respect to the provisions of the article 1469 bis, number 6), of the Italian Civil Code. It states that a penalty clause of an excessive amount imposed by the professional to the consumer should be considered as null and void.

In this case, the Tribunale di Ivrea considered that the term is not unfair because the penalty is provided for the breach of the obligations of both parties.

The judge underlined the bilateral nature of such clause and concluded that the consumer's rights have not been infringed by this term.

DecisionFull text: [Full text](#)**Related Cases**

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