

Case law

Case Details

National ID: link

Member State: Belgium

Common Name: Algemeen ziekenhuis Sint-Lucas v.z.w. / I. Bruynooghe

Decision type: Other

Decision date: 03/03/2004

Court: Hof van Beroep (NL)/Cour d'appel (FR) (Appellate court, Gent)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 1, 1](#). Unfair Contract Terms Directive, [ANNEX I, 1](#).

Headnote

1. Most of the provisions on unfair contract terms in the TPA protect private interests and imperative law. Infringements of imperative law provisions are sanctioned with relative nullity. Consequently, a judge may not assess on its own motion the conformity of the contract with those provisions.
2. However, some of the provisions, namely article 32, 16° and 17° about the duration of contracts and article 32, 21° concerning disproportionate damage clauses affect the very foundations of society and are therefore public order provisions. As a result, infringements of those provisions are sanctioned with absolute nullity. In those circumstances, a judge can assess on its own motion the conformity of the contract.

Facts

The appellant, a hospital, provided medical services to I. Bruynooghe, the patient. The patient agreed in the service contract to pay 10% interest on the hospital bill for each year the payment is overdue, plus 10% damages.

The first court ordered the patient to pay the hospital bill. The court however was of the opinion that the interest for overdue payment and the damages were unreasonably high and infringed Articles 32 no. 15 and no. 21 of the TPA. The first court thus assessed the conformity of the contract terms with the TPA on its own motion against which appeal was lodged by the hospital.

Legal issue

Most of the provisions on unfair contract terms are imperative law. They do not affect at all the fundamental interests of the national and/or European society or community. They merely protect private interests of contracting parties and moreover a specific category of persons therein, namely consumers. Although the protection of the individual consumer obviously has an impact on the economic order, it does not prove the legislator's intention to use the TPA as one of the legal foundations of the economic order in society. Precisely because most of the provisions on unfair contract terms in the TPA do not concern the public order, they cannot be assessed by a judge on its own motion.

However, some of the provisions on unfair contract terms serve a higher purpose and do concern the very foundations of society. They are therefore of public order and can be tested by a judge on its own motion. This is the case for article 32 no. 21 TPA. This provision considers a clause unfair when it imposes on the consumer a sum in damages for not fulfilling his obligations that is not reasonably in proportion with the disadvantage of the seller. The Court of Cassation held already in its judgment of 17 April 1970 that disproportionate penalty clauses infringe public order. The judge was therefore entitled to assess on its own motion article 32 no. 21 of the TPA.

The interest and damages agreed upon in the contract, which amount to 10% of the total sum, cannot be considered unreasonably high within the meaning of article 32 no. 21 of the TPA.

Decision

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