

Case law

Case Details

National ID: Legf. Bír. Pf. IV. 21.980/2002. sz.

Member State: Hungary

Common Name: link

Decision type: Other

Decision date: 01/01/9999

Court: Magyar Köztársaság Legfelsőbb Bíróság (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 1](#), 1. Injunctions Directive, [Article 3](#)

Headnote

The OFE, in its capacity as a consumer protection body, is entitled to challenge misleading STCs used by suppliers in court.

In proceedings initiated on the basis of a practice that is causing detriment on a significant scale or to a wide group of consumers, the crucial factor is not how many consumers have complained about the practice, but rather which group of consumers are affected by it.

Facts

In 2000, the state electricity supplier amended its standard terms and conditions after giving prior written notification to consumers. The amendments primarily affected the system according to which electricity consumption was measured (and sometimes estimated) and which formed the basis of the electricity charges (with the possibility that this could subsequently be corrected if required). However, the electricity supplier did give consumers the opportunity to opt out and continue on the old system.

The Hungarian Consumers' Association (OFE), which has a nationwide remit, considered the standard terms and conditions to be inappropriate and thus filed an *actio popularis*. The action was brought on the basis of the enabling powers contained in the Civil Code (Ptk) § 209 para 2 and § 39 of the 1997 Consumer Protection Act.

§ 209 para 2 of the Ptk contains the following provision:

"If in concluding contracts, a business uses an inappropriate standard contract term, the discriminatory clause can be challenged in court by a body entitled to bring an action under a separate legal provision."

The Hungarian Consumers' Association is explicitly entitled under § 39 of the 1997 Consumer Protection Act (CPA) to file a lawsuit.

"(1) The Consumer Protection Authority, any organisation representing consumer interests, the Public Prosecutor and, in the context of services specified under § 2b and § 2m, the Financial Services Supervisory Authority may initiate legal proceedings against any entity, which, through an unlawful practice, is causing detriment on a significant scale or to a wide group of consumers, in order to protect a wide group of consumers or to put a stop to significant levels of detriment. It is possible to initiate proceedings of this nature even if it is not possible to identify exactly which consumers are suffering detriment."

(Source: KJK-Kerszöv CD Jogtár – electronic compendium of Hungarian laws)

The Court of First Instance rejected the claim on the basis that the contract terms were not unfair, meaning that there was no case to answer under § 209 para 2 Ptk. Furthermore, the court explained that the plaintiff could not use § 39 CPA to support its right to bring an action since the electricity supplier's new method of calculation did not infringe any legal provisions under the Act.

The OFE lodged an appeal against the ruling. The Court of Appeal upheld the first verdict. However, its grounds for doing so differed from those given by the Court of First Instance. The Court of Appeal held that the Association was only entitled to bring an action under § 39 paras 1 and 4 CPA (1997). However, this would only apply if the unfair terms being used by the electricity supplier were causing detriment to a wider group of consumers. In the court's view, there simply was not any evidence of this in proportional terms.

In the court's opinion, § 209 para 2 Ptk did not entitle the Association to bring an action, since § 5e of Regulation 2 from 1978 stipulates that where enabling powers are granted to file an *actio popularis*, the provisions under civil law require a statutory law to support them.

The OFE lodged an appeal with the Supreme Court, arguing that the law had been breached and that the ruling was not in line with case law.

Legal issue

The Supreme Court had to answer the following two key questions:

1. Is a consumer protection body entitled to bring an action under § 209 para 2 Ptk?

The court answered in the affirmative. In its reasoning for the decision, it argued that the relevant provisions under civil law stipulate that, if there is no contractual relationship between the parties, there must be an enabling power under statutory law entitling the organisation to bring an action. In the court's view, Regulation 2 from 1978 should be viewed as providing grounds for granting an enabling power since Act 11 from 1987, which establishes the hierarchy of legal sources, was passed after the aforementioned regulation. Prior to the passing of Act 11 in 1987, the regulation had had the same status in the hierarchy as that enjoyed by acts today.

The court did not concur with the arguments advanced by the Court of Appeal, since § 11 para 3 CPA (which had amended the Ptk in relation to the Directive on Unfair Terms) explicitly entitled the Hungarian Consumers' Association to bring an action.

2. How should the notion of "a wide group of consumers" be interpreted?

In the court's opinion, it is not the number of consumers affected that is critical, but rather which group of consumers has been affected. For this reason, the Supreme Court overturned the Court of Appeal's verdict and ordered further investigation into the case.

Decision

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