

Case Details

Case Details

National ID	II. ÚS 2164/10
Member State	Czech Republic
Common Name	link
Decision type	Other
Decision date	01/11/2011
Court	Ústavní soud (Constitutional court)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

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

Headnote

The arbitration clause in consumer contracts must contain transparent and clear rules for appointing a person as arbitrator. In case of arrangement under consumer contract the arbitration must generally guarantee procedural rights comparable to those that would be applied in proceedings without arbitration clause (oral deposition, straightness requirements, board of instances, absence of other barriers to exercise consumer's rights).

Facts

Consumer referring to arbitration clause, filed along with another claimant for hearing before arbitrator Mgr. K., but the latter explicitly refused to resolve the dispute and, therefore, turned to the court which also turned down to settle the dispute for its alleged lack of competence. Complainant expresses its conviction that the contract does not imply that if one of two arbitrators refuses to deal with the case, proposal must be submitted to another arbitrator, what general courts deduced. He emphasized that the arbitration clause expressly states that the parties opted for the arbitrator Mgr. K., who however refused to settle the dispute. It is not possible to invoke a vague arbitration clause and to appoint arbitrator on an ad hoc basis. The complainant states that the appointment of the second arbitrator is invalid and courts should take account of this invalidity.

Legal issue

Constitutional Court concludes that the arbitration clause, as it was negotiated in this case, is inadmissible, because the situation in which arbitrator, who is not appointed in a transparent way (discussed in the section below), decided only by the principles of justice and consumer was deprived of his right of a civil court action means violation of his right to a fair trial.

Decision

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