

Case Details

Case Details

National ID	I. ÚS 3512/11
Member State	Czech Republic
Common Name	link
Decision type	Other
Decision date	11/11/2013
Court	The Constitutional Court of the Czech Republic
Subject	
Plaintiff	Mr Martin Skopec (a natural person)
Defendant	District Court in České Budějovice
Keywords	consumer rights, imbalance between the rights of the parties, proportionality, terms and conditions, unfair terms

Directive Articles

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

Headnote

In consumer agreements, the provision governing a contractual penalty may not be a part of the general terms and conditions. The only way is to have the provision about the contractual penalty directly in the agreement itself (i.e. in the document to which the consumer attaches his/her signature). Anyway it is necessary to deal with "good faith" according to the national laws and the Directive 93/13/ECC.

Facts

In its judgement, the District Court in České Budějovice upheld the plaintiff's action for payment of CZK 5,000 with accessories. The court concluded that the plaintiff had entered into a contract for provision of publicly available electronic communications services with the company, a major internet services provider, and that a modem had been lent to him. As part of the contract, there was a reference to the general terms and conditions containing a provision governing a contractual penalty in the amount of CZK 5,000 which would have been imposed in case that the costumer would not return the modem within 7 days after termination of the contract. The plaintiff subsequently did terminate the contract, although he did not return the modem. Therefore, the District Court in České Budějovice deemed to be proved that the plaintiff had failed to fulfil his obligation and therefore upheld its action for payment of the contractual penalty. Before the Constitutional Court, the plaintiff argued that when signing the consumer agreement (the contract for provision of publicly available electronic communications services) he had not had a chance to become familiar with the general terms and conditions of the provider. Furthermore, under the plaintiff's opinion, the District Court failed to take the position of the plaintiff as a customer into account.

Legal issue

Generally speaking, the parties may agree on the nature of rights and obligations arising out of the agreement. Those rights and obligations are typically set out within the text of the contract itself, although that does not preclude the application of the general terms and conditions to which the agreement may refer. These general terms and conditions may be written by either party to the agreement or by the third party (e.g. by a professional organization). The principle of autonomy of will, as well as other related principles, allows us to deduce that the above-mentioned

can be applicable in practice.

On the other hand, the use of the general terms and conditions is not without certain limits. As far as consumer agreements are concerned, they must not contain provisions that are contrary to the principle of good faith and create a significant imbalance in rights and obligations of the parties to the detriment of the consumer (Section 56 of the Act No. 40/1964 Coll., the Civil Code and Section 1813 of Act No. 89/2012 Coll., the new Civil Code). In practice, especially in case of standard form contracts, the wording of the agreement must be clear and logically organized enough for an average customer to understand the content and the meaning of the agreement. For example, a sufficient font size must be used, the most important or related provisions must be put together and not separately, etc. As stated above, despite the fact that the parties may generally use the general terms and conditions even in consumer agreements, there are not only formal, but also contextual limitations of the general terms and conditions in consumer agreements.

Therefore, in consumer agreements, the provision governing a contractual penalty may not be a part of the general terms and conditions. The only way is to have the provision about the contractual penalty directly in the agreement itself (i.e. in the document to which the consumer attaches his /her signature).

Decision

Can a provision governing a contractual penalty be concluded as a part of the general terms and conditions, or does the provision need to be included in the wording of the contract itself?

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Result

The court annulled the decision of the District Court in České Budějovice as to the part of the judgement regarding the contractual penalty.