

Case law

Case Details

National ID: link

Member State: Slovenia

Common Name: link

Decision type: Court decision in appeal

Decision date: 06/04/2016

Court: Higher court in Ljubljana (civil department)

Subject:

Plaintiff: Unknown

Defendant: Unknown

Keywords: B2C, healthcare , illness, unfair terms

Directive Articles

Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [Article 4, 1](#).

Headnote

Contractual terms in which it is provided that the sole diagnosis of a certain disease is not enough for the payment of an insurance amount and that additional conditions need to be fulfilled are not considered to significantly change the performance of the contract compared to what a consumer can reasonably expect, as a consumer should have known these conditions if he had read the terms with diligence.

Facts

The plaintiff's general terms included a provision that the insured person needs to prove, besides the diagnosis of multiple sclerosis, the existence of two additional neurological deficits that cause the permanent and irreversible inability of the insured person to move on a flat surface from room to room or the inability to feed himself with ready-made food. The dispute arose as the defendant claimed that such terms, first, are unfair to the consumer and therefore not binding and, secondly, significantly changed the performance of the contract as compared to what he could reasonably expect.

Legal issue

The court found that the contractual terms were not against moral standards, as different insurance companies are willing to take different risks - therefore, the contractual terms vary accordingly. Furthermore, the contractual terms stipulated clearly what the insured person (the consumer) could expect by paying the insurance premium. The court also found that the disputed contractual terms did not alter the performance of the contract significantly, compared to what the consumer could reasonably expect because, if the consumer had read them with due diligence, he would have known that the additional conditions needed to be fulfilled in order for the insurance amount to be paid.

Decision

Are contractual terms which state that only the diagnosis of a certain disease is not enough for the payment of an insurance amount and that additional conditions need to be fulfilled considered as unfair to the consumer and therefore not binding?

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Result

The plaintiff's request was granted.