

Case law

Case Details

National ID: link

Member State: Slovenia

Common Name: link

Decision type: Court decision, first degree

Decision date: 12/03/2014

Court: Administrative court

Subject:

Plaintiff: Unknown

Defendant: The Market Inspectorate of the Republic of Slovenia

Keywords: aggressive commercial practices, coercion, misleading commercial practices, undue influence, unfair terms

Directive Articles

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

Headnote

Charging the costs of a reminder which exceed the amount of statutory interest in case of default in payment is considered unproportionally high compensation; therefore, it constitutes an unfair contractual term.

Facts

The consumer was not aware of the costs of the reminder when the contract was concluded, but only upon receipt of the reminder. Moreover, the costs were higher than the actual costs of preparing and sending the reminder and higher than the statutory interests in case of a default in payment. In the event of non-payment, the reminder specified a period of 30 days, while the bill attached to the reminder specified a deadline period as "immediately". After the expired deadline, the insurance contract would be terminated without notification period.

Legal issue

The court found the contractual terms are causing a significant imbalance between the rights of the contractual parties. It also found that such commercial practice is contrary to the requirements of professional diligence and it materially distorts or is likely to distort the economic behaviour of the average consumer. Finally, the court also found that because the consumer could not identify the correct deadline for payment of the reminder (which, because of the threat of immediate termination of the contract, forces the consumer to pay immediately), this also constitutes an aggressive commercial practice because it uses coercion or undue influence, which significantly impairs the average consumer's freedom of choice or conduct.

Decision

Is charging the costs of a reminder which exceed the amount of statutory interests in case of default in payment considered an unfair contractual term?

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Result

The plaintiff's request was denied.