

Case law

Case Details

National ID: Case 2Cob/40/2014

Member State: Slovakia

Common Name: link

Decision type: Court decision in appeal

Decision date: 11/12/2014

Court: Regional court in Prešov

Subject:

Plaintiff: Telefónica Slovakia, s.r.o.

Defendant: Z. G.

Keywords: consumer, contract law, proportionality

Directive Articles

Price Indication Directive, [Article 2, \(e\)](#) Unfair Contract Terms Directive, [link](#)

Headnote

(1) According to Section 52 of Act No. 40/1964 Coll. the Civil Code, as amended ("Civil Code"), a consumer contract is each contract concluded between the supplier and the consumer regardless of the legal form. The definition of the consumer set forth in Directive 93/13/EEC and similarly in the Directive 2005/29/EC and Directive 98/6/EC stipulates that the consumer is a natural person not acting within the scope of business or profession.

(2) A contractual penalty which does not specify the contractual obligations that it shall cover may represent an unfair contractual term as it does not differ which contractual penalty is breached and fails to differ what time remains until the end of the contractual term. The contractual terms were not agreed individually as the consumer did not have any chance to influence the existence of this term in the consumer contract.

(3) The validity of a contractual penalty depends on the amount due that it secures as the proportionality of the contractual penalty has to be considered.

Facts

The plaintiff has concluded an Amendment to the Contract for connection with the defendant which stipulated that the plaintiff was to provide the public electronic communication service to the defendant and the defendant is obliged to pay for this service in accordance with the current price list of the plaintiff in the period of at least 24 months and to comply with other obligations of the defendant stipulated in the Contract for connection and General Terms & Conditions of the plaintiff.

According to the Contract for connection, the defendant was obliged to pay the contractual penalty in case of breach of contractual obligations. The plaintiff claimed that the defendant did not pay the invoices and has therefore breached his contractual obligations as stipulated in the Amendment and the Contract for connection and demanded the payment of the contractual penalty.

The defendant claimed that the plaintiff did not deliver him any invoice and therefore the defendant considered the contract to be terminated. The defendant has further acknowledged the receivable of the plaintiff in the amount of EUR 3,50 and interests but did not agree with the payment of the contractual penalty in the amount of EUR 319,90. The defendant considered the contractual penalty as unfair contractual term as it represented almost hundred times the value of the plaintiff's receivable together with interests.

The defendant also claimed that he was in the position of a consumer as he was not using the telephone services in connection with his business activities and therefore the provisions of consumer law shall apply.

The first instance court agreed with the claim of the plaintiff with respect to the receivable and interest but not with the amount of the contractual penalty. The first instance court considered the contractual penalty as unproportionable to the receivable and interest and therefore concluded that the contractual penalty was contrary to good morals as well as to the principles of fair business conduct. The court has dismissed the plaintiffs claim in this respect.

The plaintiff appealed against the decision of the first instance court to the court and argued that the first instance court did not provide satisfactory reasoning for its decision and that the defendant did not conclude the contract in the position of the consumer. The plaintiff claimed that the contractual penalty was validly concluded.

Legal issue

As the payment of the receivable together with interest was not contested by the plaintiff, the court only considered the case at hand with respect to the validity and amount of the contractual penalty as well as the fact whether the defendant was in the position of the consumer.

The court examined the definition of the consumer under the Directive 93/13/EEC, Directive 2005/29/EC, Directive 98/6/EC and the Council Regulation No. 44/2001 as well as under Act No. 40/1964 Coll. the Civil Code, as amended and Act No. 250/2007 on consumer protection, as amended.

The court analysed the wording with respect to the contractual penalty stipulated in the Amendment in the wording "if the party breaches any obligation under this Amendment". The court stated that such wording fails to specify certain contractual breaches it refers to. If the seller does not specify the contractual obligations which are secured by the contractual penalty, such conduct may represent unfair contractual term.

The court dismissed the decision of the first instance court in the extent contested by the plaintiff and returned the case for further proceeding to the first instance court.

Decision

(1) Under which conditions does a contract constitute a consumer contract?

(2) Can a contractual penalty which does not specify the contractual obligations that it covers represent an unfair contractual term?

(3) Is the validity of a contractual penalty dependent on the amount due that it secures?

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Result

The court dismissed the decision of the first instance court in the extent contested by the plaintiff and returned the case for further proceeding to the first instance court.