

**Rättspraxis****Uppgifter om ärendet****Nationellt id-nummer:** S2014/338**Medlemsstat:** Finland**Vedertaget namn:**KKO:2016:49**Beslutstyp:** Beslut av högsta domstolen**Beslutsdatum:** 16/08/2016**Domstol:** Korkein oikeus**Ämne:****Kärande:** Consumer Ombudsman**Svarande:** Elisa Oyj**Nyckelord:** invoice, payment, telecommunications operator**Direktivartiklar**Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [Article 4, 2](#). Unfair Contract Terms Directive, [Article 5](#)**Huvudanmärkning**

A contractual term concerning the charge of an additional fee for a paper invoice was not considered unreasonable when another delivery method for the payment information was also provided.

**Omständigheter**

The plaintiff demanded that the defendant shall be forbidden on pain of a penalty payment to use a contractual term, concerning telephone subscriptions concluded with consumers, under which an additional payment will be charged for a paper invoice. The delivery of the invoice is an essential part of a contractual relation and it is one of the underlying obligations of the seller. In this case, there is no reason to collect a separate invoice payment. A telephone subscription is, by its nature, a consumer staple. In relation to consumer staples, consumers groups that are in a weaker position by not having other means for receiving invoices available for them are not allowed to be set in a worse position than other consumer groups having such other means available. Therefore, the provision should be considered unreasonable.

The defendant demanded that the application should be dismissed. It provided several methods of invoicing for its customers. The methods of electrical invoicing were free of charge but they charged 1.90 Euro for the paper invoice, because it caused additional costs for the company. The electrical invoicing saves nature, reduces costs and forwards the development of the information society. The electrical delivery of the invoice is a generally used method related to telephone subscriptions.

The Market Court forbade the defendant on pain of a fine to charge the payment of 1.90 Euro or higher for an invoice, but otherwise dismissed the plaintiff's application. The provision must be considered based on its general effect. It must be taken into consideration that the law of obligations includes the principle under which the creditor bears the costs caused by the demand for the payment. In comparison with the actual costs, 1.90 Euro is an oversized payment.

Both parties appealed to the Supreme Court.

**Juridisk fråga**

Is a contractual term concerning a charge of an additional fee for a paper invoice to be considered as unreasonable?

**Beslut**

The restriction afforded by Article 4(2) of Directive 1993/13/EEC has not been implemented into the Consumer Protection Act. Therefore, the reasonableness of a term concerning the price or additional payment in relation to the good or service delivered by the trader can be assessed under national law.

The objectives mentioned in the statement of reasons of the defendant can be considered acceptable. Regardless of the above-mentioned principle under the law of obligations, the delivery of necessary information concerning payment is not regulated by the law, whereupon the method of payment can be agreed between the parties.

The handling fee is generally included in the total price of the provided service in long-term contracts, whereupon the costs are usually transferred in some form to the consumer. This supports the reasonableness of the term. Regardless of the inadequate evidence provided, it can be considered obvious that some consumers choose a paper invoice because they cannot afford to use the Internet. Therefore, it is necessary that the invoice is also provided in paper. It is not, however, necessary to provide the invoice for free.

Charging the additional fee will not lead to a situation where the defendant would benefit inappropriately. Therefore, the term concerning the charge of the additional fee for a paper invoice cannot be found unreasonable within the meaning of chapter 3 section 1 subsection 1 of the Consumer Protection Act.

URL: <http://korkeinoikeus.fi/sv/index/ennakkopaatokset/precedent/1471259084099.html>

Hela texten: [Hela texten](#)

**Ärendesamband**

Inga träffar

**Doktrin**

Inga träffar

**Resultat**

The Supreme Court reversed the judgment of the Market Court and dismissed the application of the plaintiff in all respects.