

Case Details

Case Details

National ID	3K-3-211/2008
Valstybė narė	Lietuva
Common Name	link
Decision type	Supreme court decision
Decision date	29/02/2008
Teismas	Lietuvos Aukščiausiasis Teismas
Tema	
Ieškovas	791st Association of Flat Owners
Atsakovas	AB Grigiškės
Raktažodžiai	consumer, service contract, unfair terms

Directive Articles

Unfair Contract Terms Directive, [ANNEX I, 1., \(f\)](#)

Headnote

(1) The agreement, concluded between the administrator of the apartment building and the electricity supplier, is considered to be a consumer contract.

(2) The provisions of the electricity supply agreement are considered to be unfair, if they grant the electricity supplier with the right to unilaterally terminate the agreement and/or unilaterally suspend the provision of electricity to the consumer.

(3) The provision of the electricity supply agreement is considered to be unfair if it establishes 0.05 % interest rate for the delayed payment by the consumer.

Facts

The plaintiff (the administrator of the apartment building) and the defendant concluded the electricity supply agreement under which: (1) the defendant (the electricity supplier) had a right to suspend the provision of electricity with a 10 days written notice, (2) the defendant (the electricity supplier) had a right to terminate the contract with a 30 day notice and (3) the plaintiff (the consumer) had to pay 0.05 % interest for delayed payments.

Under the electricity supply agreement, the electricity was provided to all apartments in the apartment building, administered by the plaintiff. The defendant suspended the provision of electricity, because some of the apartments did not pay for the electricity they consumed. After the debt was collected by debt collection agencies, employed by the defendant, the provision of electricity was restored. However, after some time the defendant yet again suspended the provision of electricity and terminated the agreement. The plaintiff then sued the defendant claiming that the suspension of the provision of electricity, as well as the termination of the agreement were unlawful.

Legal issue

(1) Can the agreement, concluded between the administrator of the apartment building and the electricity supplier, be considered a consumer contract?

(2) Can the provisions of the electricity supply agreement be considered unfair, if they grant the electricity supplier with right to unilaterally terminate the agreement and/or unilaterally suspend the provision of electricity to the consumer?

(3) Can the provision of the electricity supply agreement be considered unfair if it establishes 0.05 % interest rate for the delayed payment by the consumer?

Sprendimas

The court firstly explained that the agreement, concluded between the administrator of the apartment building and the electricity supplier, is considered to be a consumer contract, since the end-users of the electricity are the apartment owners – consumers.

In relation to the defendant's right to unilaterally terminate the electricity supply agreement, as well as to unilaterally suspend the supply of electricity, the court emphasized that such provisions create a disbalance between the plaintiff's and the defendant's rights and obligations. Such provisions of the agreement are considered to be unfair, because (1) unilateral suspension of the supply of electricity is forbidden under national mandatory laws and (2) the defendant's right to unilaterally terminate the agreement both is forbidden under national mandatory laws and falls into the grey-list of unfair terms in consumer contracts set out in Article F of Annex of the Directive 93/13/EEC (implemented into Lithuanian law by Article 6.228(4) para (2) (6) of the Civil Code).

In relation to the 0.05 % interest rate, the court explained that national laws set out the highest interest rate that the consumers should pay – 0.04 %. Thus, a provision, which establishes a higher interest rate, creates an inequality between the rights and obligations of the parties, worsens the position of the consumer and therefore is unfair.

URL: <http://liteko.teismai.lt/viesasprendimupaieska/tekstas.aspx?id=12ec3342-f596-4541-8a25-8bbcf4c34e0a>

Full Text: [Full Text](#)

Related Cases

No results available

Legal Literature

No results available

Result

The court upheld the plaintiff's claim.