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Νομολογία

Στοιχεία της υπόθεσης

Εθνικός αναγνωριστικός αριθμός: Court decision number 561/2014 (Δ΄, Civil Cases)

Κράτος μέλος: Ελλάδα

Κοινή ονομασία:N/A

Είδος απόφασης: Απόφαση του Ανωτάτου Δικαστηρίου

Ημερομηνία απόφασης: 07/03/2014

Δικαστήριο: Άρειος Πάγος

Θέμα:

Ενάγων: Ένωση Καταναλωτών, η ποιότητα ζωής

Εναγόμενος: American Life Insurance Company (Metlife Alico)

Λέξεις-κλειδιά: abusive behaviour, average consumer, insurance contract, plain, intelligble language, price, transparency, unfair terms

Άρθρα της οδηγίας

Unfair Contract Terms Directive, Article 3, 3. Unfair Contract Terms Directive, Article 4, 1. Unfair Contract Terms Directive, Article 4, 2. Unfair Contract Terms Directive, Article 5

Περίληψη

(1) In order to assess the abusiveness of a pre-formulated term (General Term of Transaction) first it must be examined, whether this term is included in the non-exhaustive list of the “per se” abusive clauses included in the law (article 2 par. 7 of the law 2251/1994) and then -if this is not the case- whether this term is abusive because it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. The imbalance of the rights must be substantial; it must deviate, without any sufficient and reasonable cause, from the consistent and justified expectations of the average consumer.

(2) The abusiveness of a contractual term shall be assessed taking into account not only the need to protect the most vulnerable party (the consumers) but also the nature of the goods or services for which the contract was concluded, its purpose and by referring, at the time of conclusion of the contract, all the circumstances attending the conclusion of the contract and all the other terms of the contract or of another contract on which it is dependent (in compliance with art.4 par.1, Directive 1993/13/EEC).

(3) In case of written contracts the terms must always be drafted in plain, intelligible language (93/13/EEC art.5); the consumer must be able to identify in advance the critical elements of a contract, such as its length. Assessment of the abusive nature of the terms shall not relate to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange, on the other, in so far as these terms are in plain intelligible language (in compliance with art.4, par. 2, 1993/13/EEC).

Πραγματικά περιστατικά

The plaintiff, a non-profit union the members of which had signed an insurance contract with the defendant, claimed that the “table of values” contained in the policy as well as two particular pre-formulated standard contractual terms in the agreement were abusive. In specific it argued that all the above clauses were drafted in an unclear way; also that they were causing a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. The plaintiff filed a claim against the defendant before the court of first instance of Athens, which partially accepted its claims (decision no. 840/2008). Following that, the parties filed an appeal before the court of appeal of Athens, which granted the appeal in favor of the defendant. Then, the plaintiff addressed to the Supreme court by filing an appeal.

Νομικό ζήτημα

(1) When is a contractual term, which is pre-formulated in advance for future contracts (General Term of Transaction), prohibited and void?

(2) How is the abusiveness of a pre-formulated standard contractual term assessed?

(3) How should the pre-formulated standard terms be drafted and how does any ambiguity affect the assessment of the abusiveness?

Απόφαση

The court ruled that, although the specific table of values has not been individually negotiated, its content was in accordance with the principles and the rules of the Greek insurance law; therefore, its content was clear enough. Any omissions that have been noticed in its content were in accordance with the nature of the contract and with the risk taken by the insurance company as a contracting party. As such, no significant imbalance was caused to the rights and obligations of the contracting parties to the detriment of the consumer. Therefore, the decision of the court of first instance that held that the table of values was unclear was wrong; the Supreme court instead ratified the decision of the court of appeal that ruled that the table of values was in accordance with the principle of transparency. Furthermore, it was held that the two pre-formulated standard terms (General Terms of Transactions) in the insurance agreement that referred to the insurance policy’s buyout and the options of the customer in case that the insurance premium payment was terminated were adequately clear; they referred to the table of values for further information that contained extensive financial details on the matter. Therefore, it was held that the consumer could always be informed, in a simple and understandable way, about the current value of his insurance program and choose to act according to his best interests. So, the specific terms were not abusive either.

URL: http://www.areiospagos.gr/nomologia/apofaseis_DISPLAY.asp?cd=R39R4AAAVASFNHQ562OGZU8H8GHN3S&apof=561_2014&lang=EN

Πλήρες κείμενο: Πλήρες κείμενο

Συναφείς υποθέσεις

Δεν υπάρχουν αποτελέσματα

Νομική βιβλιογραφία

Δεν υπάρχουν αποτελέσματα

Αποτέλεσμα

The court rejected the plaintiff’s claims and ratified the decision of the Court of Appeal that had held that the specific General Terms of Transactions were transparent and non abusive; it also awarded the judicial costs to the defendant as the successful party (plaintiff’s appeal was dismissed).