

## Rechtspraak

### Bijzonderheden van de zaak

**Nationaal ID:** Partijen: Algemeen Ziekenhuis St. Lucas en Volkskliniek VZW / 1. M.S.; 2. M.Y.

**Lidstaat:** België

**Gangbare benaming:** N/A

**Soort beslissing:** Rechterlijke beslissing in beroep

**Datum beslissing:** 26/10/2012

**Gerecht:** Hof van Beroep Gent

**Onderwerp:**

**Eiser:**

**Verweerder:**

**Trefwoorden:** medical , national law, scope of the Directive

### Richtlijnartikelen

Unfair Contract Terms Directive, [Article 1](#), [2](#). Unfair Contract Terms Directive, [Article 3](#) Unfair Contract Terms Directive, [Article 6](#), [1](#).

### Koptekst

(1) As soon as the national judge has the required legal and factual information, he has an obligation to proactively raise the question whether a contractual term is unfair.

(2) A hospital is a seller or supplier in the sense of article 1 of the Directive 93/13, inter alia for the selling of drugs and other goods and for the provision of services, with the exception of practitioners of medicine which in a personal capacity fall outside the scope of Directive 93/13, as implemented in Belgian law.

(3) A conventional penalty clause and a conventional interest clause in a hospitalization declaration fall within the scope of article 3 of the Directive 93/13.

(4) The nullity of the conventional penalty clause and interest clause does not imply that it is not possible to get compensation for damages relying on general national law per article 6(1) Directive 93/13.

### Feiten

The defendants, two patients receiving treatment at plaintiff's hospital, were discharged from the hospital and did not pay all their hospital bills and were consequently sued by the plaintiff. They did not appear before the first judge.

Nevertheless the first judge ruled that the claimed compensation (which was based on a fixed amount of compensation and included interest on arrears), based on a penalty clause concluded in an addendum to the hospitalization declaration, was unfair because of the absence of reciprocity.

The plaintiff appealed the decision reasoning that the judge had no authority to instigate a claim without it being invoked by a party in the procedure (so-called decision *ultra petita*). Furthermore, the plaintiff held that the consumer protection legislation is not applicable in the case at hand.

### Juridische kwestie

(1) Does the national judge have an obligation to proactively raise the question whether a contractual term is unfair?

(2) Is a hospital a seller or supplier in the sense of the Directive 93/13, as implemented in Belgian law?

(3) Does a conventional penalty clause and a conventional interest clause in a hospitalization declaration fall within the scope of unfair terms of the Directive 93/13?

(4) Does the nullity of the conventional penalty clause and interest clause under the Directive 93/13 imply that it is also not possible to get compensation for damages relying on general national law?

### Uitspraak

The court upheld the decision of the judge in first instance. As such, the appellate court ruled that the national judge is under an obligation to raise the question whether a contractual term is unfair even if the consumer did not raise that as an issue during proceedings. According to the judge, the consumer needs protection because of the superior position the seller has towards the contractual conditions.

Further the appellate court ruled that a hospital is a seller in the sense of the Directive 93/13, because it engages in the selling of drugs, other goods and for the provision of services.

Next, the court stated that a conventional penalty clause and a conventional interest clause in a hospitalization declaration fall under the scope of the unfair contractual terms provisions of the Directive 93/13. In the court's view, the requirement of reciprocity of a penalty clause does not require a payment of both the consumer and seller. The requirement of reciprocity has to be understood as requiring for both parties a penalty clause when they do not fulfil their obligations. For every penalty clause that is applicable towards the consumer, a penalty clause should also be applicable towards the seller, in case he does not fulfil its obligations from his part. It is not required that the penalty clauses are equally formulated nor that they should contain an equal amount of penalties in case of applicability of the clause.

Finally, the court also confirmed that the nullity of the conventional penalty clause and interest clause does not imply that it is not possible to get compensation for damages relying on general national law. Considering article 6 of the Directive 93/13 it is therefore possible that a party can continue to rely on general national law to obtain damages, even where a contractual clause to that end has been considered an unfair term in a consumer contract.

Integrale tekst: [Integrale tekst](#)

### Verwante zaken

Geen resultaten

### Rechtsleer

Geen resultaten

### Resultaat

The plaintiff's requests were denied and the appellate court upheld the decision of the court of first instance.