

## Case law

### Case Details

**National ID:** 17C/113/2010

**Member State:** Slovakia

**Common Name:** link

**Decision type:** Court decision, first degree

**Decision date:** 20/12/2011

**Court:** District Court Poprad

**Subject:**

**Plaintiff:** OMBUDSPOT Združenie na ochranu práv spotrebiteľov and Unknown

**Defendant:** Pro Content s.r.o.

**Keywords:** consumer, distance contracting, service, terms and conditions, unfair terms

### Directive Articles

Unfair Contract Terms Directive, [Article 6, 1.](#) Distance Selling Directive, [Article 2, \(2\)](#) Distance Selling Directive, [Article 4, 1., \(c\)](#) Distance Selling Directive, [Article 4, 1., \(h\)](#) Distance Selling Directive, [Article 4, 2.](#) Distance Selling Directive, [Article 5, 1.](#) Injunctions Directive, [Article 3, \(a\)](#) Injunctions Directive, [Article 3, \(b\)](#)

### Headnote

(1) A contract cannot be valid if based on conditions that were not written in a clear and comprehensible manner. This applies even more when the supplier tries to hide the information that are essential for the consumer from the plain sight. It stems from the judgment that by hiding the information such as payment for the service, the supplier had the intention to lure more customers into using the service than the service would lure if the information were clear and easy to find. It is considered as a misleading omission by the supplier.

(2) It is relevant for the assessment how other similar services are offered. The court states that the supplier needs to provide the price for the service in an even clearer and more observable way when similar services are offered for free.

(3) It is not legally sufficient enough that it sends those amendments via email as the consumer might not have access to such correspondence or he may never get acquainted with such amendments in the general terms and conditions.

### Facts

The defendant was a company that owned and operated a website that provided poems to the visitors of this website. Before the visitors could see any poems on the website, they had to register first. With the registration the second plaintiff, without his knowledge, entered into a two year contract under which he was obliged to pay EUR 60. The plaintiff was further motivated to register by the alleged opportunity to win various prizes. The first plaintiff is an organization for the protection of consumers.

After the registration, the plaintiff received an invoice for the sum of EUR 60. He tried to withdraw from the contract, which was met with denial on the side of the defendant. Afterwards, the plaintiff paid the invoice after he received multiple threats from the defendant.

The plaintiff described the act of registration as not clear, nor comprehensible. It was described as intentionally misleading with aim to confuse the average consumer.

The defendant contested these allegations stating that the general terms and conditions were available to the plaintiff and that they were easily obtainable and comprehensible. Thus, the defendant asked the court to dismiss this lawsuit.

### Legal issue

The court assessed the issue and the general terms and conditions as well.

In its judgment, the court stated that the contract lacked several key attributes in order for the contract to be valid. None of these attributes were easily or clearly found in the contract. The content of the contract was oddly found in the general terms and conditions.

It is also possible to conclude that the information about payment for the use of the website in the general terms and conditions was in a smaller font size than anything else on the website and was hardly observable even by a person with a healthy eyesight. It is considered as a misleading omission by the supplier.

The court opined that the defendant intentionally used deceit, unfairness and bad faith when contracting with the visitors of its website.

Moreover, more than a dozen of provisions listed in the general terms and conditions were declared as the unfair contract terms.

### Decision

(1) If the conditions are not written in a clear and comprehensible manner, and the supplier hides certain essential facts from the main website, is it possible for a contract based on such conditions to be valid?

(2) Is it relevant for the assessment how other similar services are offered?

(3) If the supplier amends the general terms and conditions, is it sufficient enough that it sends those amendments via email?

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**Legal Literature**

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**Result**

The judgment of the court declared the contract void, ordered the defendant to pay monetary damages to the plaintiff, and restrained the defendant from entering into any further contracts based on the provisions listed in the disputed general terms and conditions.