

Unfair terms in consumer contracts

Abstract

This master thesis deals with the unfair terms in contracts concluded with consumers. Firstly, the main notions associated with the topic of unfair terms are described, especially the notion of consumer as it is a crucial term for the purpose of this thesis and notions related to it such as entrepreneur, or seller of goods and supplier of services, and consumer contract.

Further it deals with the key EU legislation in the context of unfair terms, which is mainly the Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. The principle of minimum harmonisation on which this Directive is based upon is also explained.

Moreover, the case law of the Court of Justice of the European Union, which is indeed rich, considering the length of time period the Directive has already been in force, and has often undergone major developments, is one of the main focus points. In the light of the case law it aims to explain which terms are considered to be unfair, and which aspects are essential to that assessment. These include, for example, the concept of inadequacy and transparency, significant imbalance of rights and obligations or fairness. It explains how these concepts are interpreted and what are the consequences of such unfair terms, in particular their non-binding nature for consumers.

Last but not least, the thesis focuses on the Czech legislation, which is based upon the above-mentioned Directive, but at the same time, in accordance with the principle of minimum harmonization, there are certain deviations, which are pointed out, again considering the rich case law of Czech courts. Within the Czech legal system, the Directive is implemented into the Act No. 89/2012 Coll., The Civil Code, which contains the so-called *general clause*, according to which it is possible to assess the unfairness of almost any clause of the consumer contract, therefore it is a general provision. At the same time, the Code contains the so-called *black list* of terms, which are always and under any circumstances prohibited. The individual types of these terms, their nature and specifics are described. Finally, some types of terms that the Czech legislator does not explicitly state in the legislation are described. The thesis also mentions the draft of amendment to the Civil Code and the consequences that would arise out of it being adopted.

Key words: consumer protection, Directive 93/13/EHS, unfair contract terms