

TRANSPARENCY IN CONTRACTS WITH CONSUMERS – A NEW BEGINNING?

TRANSPARÊNCIA NOS CONTRATOS COM CONSUMIDORES – UM NOVO COMEÇO?

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ÁREA DO DIREITO: Consumidor

RESUMO: Desde o acórdão de 2014, *Kásler e Káslerné Rábai*, o Tribunal de Justiça da União Europeia progrediu quanto aos requisitos de transparência da Diretiva relativa às cláusulas abusivas nos contratos celebrados com consumidores. A transparência não pode ser identificada apenas com a inteligibilidade formal e gramatical. O contrato deve permitir ao consumidor saber como funciona realmente uma cláusula específica, bem como as suas consequências económicas com base em critérios claros e atingíveis. Entramos numa nova era de deveres de informação e transparência, onde estes são entendidos num sentido ainda mais abrangente? Poderíamos estar a testemunhar o primeiro passo de um processo que acabará por colocar as questões de transparência no centro da avaliação do carácter abusivo das cláusulas contratuais gerais?

PALAVRAS-CHAVE: Contratos de consumo – Proteção do consumidor – Cláusulas contratuais gerais – Transparência – Cláusulas abusivas – Cláusulas essenciais.

ABSTRACT: From its 2014 judgment *Kásler and Káslerné Rábai* on, the Court of Justice of the European Union has taken the transparency requirement on the Unfair Terms in Consumer Contracts Directive one step forward. Transparency cannot be identified with formal and grammatical intelligibility. The contract must allow the consumer to know how the clause at stake actually works, as well as its economic consequences on the basis of clear and intelligible criteria. Have we entered in a new age of information and transparency duties, where these are understood in an even wider sense? Could we be witnessing the first step of a process that will end placing transparency issues within the core of the fairness assessment of standard contract terms?

KEYWORDS: Consumer contracts – Consumer protection – Standard contract terms – Transparency – Unfair terms – Core terms.

information and be more self-sufficient, because a paternalistic society where people depend of some other people (who allegedly are in a better position to judge and decide) is not very attractive. If anyone wants to surrender part of their freedom to choose and let others steer or lead their economic life, it is fine. But that is a choice to be done at an individual level.

In this paper, I have described what transparency meant in the beginning within the scope of the Unfair Terms in Consumer Contracts Directive, and what it means today. Then, I have presented my own view of what it should mean in the future. My insights on that desirable future will not be shared by everyone, nor should they be. But my perspective respects the eventual decision of businesses to offer higher levels of transparency, as well as the decision of consumers to abandon non-transparent businesses and reward the more transparent ones. My perspective fosters a spontaneous order where each and every consumer has the freedom and the responsibility to express the kind of contracts they want with every single decision they make in the market. If consumers do not show that they want a very high level of transparency and do not sufficiently reward the most transparent businesses, my perspective does not force a raise in that level through legislation, raise whose legitimacy could be put into question. In my view, these are good reasons to welcome a new new-beginning of transparency in consumer contracts.

7. BIBLIOGRAPHY

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