

12) Zdenek Novy

Arbitration Clause as Unfair Contract Term from the perspective of Czech and EC Law

The conflict between EU consumer protection provided for by the Directive on unfair terms in consumer contracts and principles of arbitration came to a head in the ECJ's Claro case. This case has shown that the arbitration clause may be an unfair contract term par excellence. I use this case as a point of departure for the considerations on unfairness of arbitration clause in contracts between businesses and consumers. Consequently, I draw a parallel between the Claro case and the lasting contractual practice in the Czech Republic where the arbitration clauses incorporated in standard form contracts between businesses and consumers are in many instances unfair. Their unfairness stems from the fact that arbitration clauses refer to arbitrators ad hoc who are unilaterally appointed and paid by businesses. Since standard form contracts are proffered by businesses, consumers are not given an opportunity to negotiate about the contract. This state of affairs in the Czech Republic is at variance with the Directive on unfair contract terms as well as the ECJ's case law which provides its interpretation.

From the structural viewpoint, first I am going to briefly provide information about the consumer protection provided by the Directive. Subsequently, I deal with the ECJ's cases having an importance for further considerations regarding the unfair nature of arbitration clauses while putting particular emphasis on the ECJ's Claro case. Then, I aim to show that the Directive has not been correctly implemented into Czech Law. As a next step, I would like to offer a possible solution for this unsatisfactory situation in the Czech Republic with the help of comparative insight into legal orders of the Member States. Finally, the development of the view on arbitration clauses as unfair contract terms in the EU is considered..