

H. U. v. EK (The Electricity and Gas Case)

KEYWORDS:

electricity – gas – consumer goods – the right to withdrawal – off-premises contract – service contract – consumer

FACTS:

On 7 February 2018, an employee of the company EK specializing in energetic competition visited the client at her place of residence. The client had already signed before the contract for electricity and for gas with other companies. When visited by the employee of the company EK, the client signed a contract which obliged her to signed any contract for energy (electricity, gas) offered by the company within one month from the offer or to pay the fine of 2 500 CZK (approximately 100 EUR) for each offer declined. Later on, another employee of the company paid her visit and the client found his behaviour untrustworthy. She than called the company headquarters to get more information about possible offers on a gas supply she might get. She yet again found the behaviour of the employee untrustworthy and, thus, on 27 February 2018, she exercised her right to terminate the contract and had done so by letter which she addressed to the company.

On 2 March 2018, the client received a phone call from the company EK offering her the supply of electricity as of 2020 and the supply of gas as of 2027. The client directly refused and has been invited by the telephone operator to reconsider as she would be obliged to pay the fine of 2 500 CZK (approximately 100 EUR) for each declined offer. The telephone operator informed her that she is expected to sign the contract before 12 March 2018

The consumer visited the Students Legal Aid Office requesting an advice on how to proceed. She notably wanted to know whether she is obliged to sign the contract in ten days, even though the contract with the company EK specified that she is obliged to do so within a month from receiving the offer and whether she is obliged to sign a contract which will only come into effect as of 2027.

LEGAL ANALYSIS:

The present case raises two separate issues: 1) whether the client is obliged to sign the contract within the 10 day and 2) whether the client is obliged to pay the contractual fine if she does not sign the contract.

Legal provisions with specific reference to EU directive when applying:

National provisions (Law No. 89/2012 Coll., Civil Code; Law No. 634/1992 Coll., on the Protection of the Consumer) implementing:

- Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

LEGAL SOLUTION:

The client has been informed about possible solutions under the cited directives, as transposed in the Czech Republic.

3) Termination of the contract

The client exercised her right to terminate the contract on 27 February 2020, i. e. 20 days after she signed the contract with the company EK; thus, the 14-day legal period for withdrawal from off-premises contracts has yet expired. According to the contract concluded with the company EK, the client may, however, terminate the contract with a three-month notice period which runs from the end of a quarter of the year. The notice period will, hence, end on 30 June 2018. At the time the company EK offered the client the contracts for supplies of energies, their contract has been in force.

4) Obligation to accept the offers of contracts for energy supplies

The client should not be forced to make her decision regarding the offers before the end of the 30-day period set in the contract.

Even after that date she may not be forced to sign the contracts, however, a contractual fine has been agreed upon in the contract, if she declines.

The client has been also informed that if she signs the offered contracts for gas and electricity supplies at the company's headquarters, there will be no legal period for withdrawal, however, if she signs the contract off premises, she may withdraw within 14 days.

5) Obligation to pay the contractual fine

A fine of 2 500 CZK (approximately 100 EUR) has been agreed upon in the contract concluded between the company and the client. Having regard to Article 1813 of the Civil Code (transposition of the Council Directive 93/13/EEC), such agreement is to be regarded as invalid because it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. Having regard to the fact that the offered contracts would come into effect only in 2 and 9 years, the fine must be seen as unfair.

SUGGESTED SOLUTION:

The client had been advised:

- 1) It would be sensible not to sign the offered contracts. The client was warned that if she signs the contracts, it would be an easy solution to avoid the fine, however, as the terms of the contract are unknown to the client, it might cause her more problems in the future. If the client decides not to sign it, the company would probably request the agreed fine to be paid. In the case the client should not pay the fine and inform the company that she believes the fine is invalid with regard to Article 1813 of the Civil Code. The company might sue her for the fine, but the argumentation should stand before the court.
- 2) If she decides to sign the contracts, the client was advised to request the employee to come to her place of residence with the contracts, the legal right to withdrawal within 14 days would, hence, apply.
- 3) In any case, the client was invited to lodge a complaint with the Czech Trade Inspection suggesting that the unfair practices of the company should be reviewed.

SPECIFIC REMARKS: