

Supreme Court of the Republic of Latvia: Refusal to initiate a case on unfair commercial practices and sustaining a EUR 20 000 fine

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Supreme Court of the Republic of Latvia refused to initiate a case on unfair commercial practices because of increased costs for provided services without consumer consent.

In a recent ruling, the Supreme Court of Latvia did not overturn a fine of EUR 20 000 to a company for unfair commercial practices because of raising provided service costs without unambiguous consent from the consumer. [1]

Background information

The Supreme Court of the Republic of Latvia (further called - Court) received a cassation complaint from a limited liability company Tele2 (further called - Applicant) against the 30 August 2022 Administrative Regional Court ruling on rejecting the Applicants' application for annulment of 4 December 2020 Decision No 20-pk of the Consumer Rights Protection Centre (further called - Decision). With this Decision, the Applicant received a fine of EUR 20 000 for engaging in unfair commercial practices when the Applicant changed its servicing fees without the active consent of its consumers.

Summary of Ruling

The Court stated that according to Article 20(2) of the Universal Service Directive, an electronic communications service provider is entitled to amend a subscriber's contract, provided that subscribers are informed of such amendments in time. Thus, giving the subscriber enough time and the right to terminate the subscription contract without a penalty. Wide enough dissemination of information was not done by the Applicant as suggested by the Court. The Court pointed out on numerous occasions, that consumer rights should be respected when amending a subscriber-type contract.

Furthermore, the Court noted that following the principle of proportionality, caution should be exercised to safeguard

effective measures by defining a sufficiently well-informed, observant, and prudent average consumer, taking into account social, cultural, and linguistic factors. In these cases, it should be precisely investigated if the commercial practice is specifically targeted at particular and unprotected consumers, such as children, the elderly etc. The impact of that commercial practice should be assessed from the point of view of an average member of that group. The method of determining the average consumer cannot be a statistical method because it falsely indicates the average consumer data. Moreover, the infringement of the vulnerable consumer standard requires that the commercial practice is specifically targeted at a particular group of consumers.

Following the reasoning of the District Court in the previous instance, the Court found no error in the understanding and application of the concept of the average consumer in the present case. It is clear that the District Court, having regard also to the Applicant's conduct in addressing the unfair practice, specifically changing users' tariff plan in the senior citizens' group, had assessed this group of consumers as part of the whole consumer population, and had not concluded the average consumer solely from the characterization of this group.

In this case, the Court could not recognize an error in the reasoning made in the previous instance for the Applicant to receive a EUR 20 000 fine. The overall conclusion is that the average consumer cannot be expected to have too high a level of understanding.

Sources:

[1] Supreme Court of the Republic of Latvia judgement No SKA-1084/2022, available in Latvian: <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/490174.pdf>

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