

AUSTRIA

Right to cancel life insurance policies may be time-barred despite incorrect information

Information for policyholders which states, contrary to the legal situation at the time, that the cancellation of a contract by the policyholder is only possible in writing, does not prevent the starting of the limitation period for the right of cancellation.

Unlimited right of cancellation for life insurance policies

In 2015, the Austrian Supreme Court (*Oberster Gerichtshof*, OGH) followed the decision of the European Court of Justice (ECJ) *Endress vs. Allianz* (C-209/12) and granted policyholders a cancellation right for an unlimited time in case of incorrect information relating to the cancellation (7 Ob 107/15h). As a result, many policyholders sued for repayment of the life insurance premiums paid, including interest.

Decision of the ECJ of December 2019

On 19 December 2019, the ECJ ruled (C-355/18 to C-357/18 and C-479/18) that the period to exercise the cancellation right starts to run even if at the time of the notification of the conclusion of the contract the information received from the insurance undertaking (i) fails to specify that the applicable law does not require a specific form for the cancellation of the contract or (ii) indicates formal requirements that are not stipulated by applicable national law or the provisions of the contract, provided that such an indication does not essentially limit the circumstances in which the policyholder can exercise his/her cancellation right as compared to a situation in which correct information had been provided. Cancellation is also possible even if the insurance contract has expired long ago and the insurance company has already paid out the surrender value.

Decision of the Austrian Supreme Court

On the basis of the new ECJ decision, the OGH ruled on 10 February 2020

(7 Ob 4/20v) that in the case at hand no incorrect information had been given. The OGH further stated that **even if the information provided by the insurance undertaking** had been incorrect or a contractual clause had required the cancellation to be in writing, this would not have **essentially limited the circumstances to exercise the cancellation right** as compared to a situation in which correct information had been provided.

According to the OGH, the information, which was incorrect under the law of the time, that the cancellation must be in written form would not deprive the policyholder of exercising the cancellation right under essentially the same conditions as if the information had been correct. A cancellation would have been legally permissible in any form, so the insurance undertaking would not have been able to insist upon written form. Also, the written form requirement does not constitute a significant burden for the policyholder, as it is currently also provided for under Austrian law (S.5c Insurance Contract Act, *Versicherungsvertragsgesetz*). EU law is also not violated because the Solvency-II-Directive allows Member States to define the required form of a cancellation. In addition, the written form is a form of notification which does not impose any practical hurdles on consumers, is common practice and also serves as proof, if necessary, that the policyholder has exercised his/her cancellation right.

Consequently, the OGH found the cancellation right, which arose in 1999, to be time-barred.

Author:

Mag. Ingo Braun

✉ ingo.braun@benn-ibler.com

☎ +43 1 531 55-700

Benn-Ibler Rechtsanwältinnen GmbH
Tuchlauben 8, 1010 Vienna

This newsletter serves as general information and does not substitute individual advice.