

# Surprise decision regarding changing case law

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In a recent case before the Supreme Court, the appellant argued that the appeals court had erred by basing its legal reasoning on [Case 1 Ob 209/16s](#), which had not been published in the online legal information system until the last day of the hearings at the trial stage. According to the appellate, because that decision had led to a new interpretation of the 'disproportionate' nature of the repair within the meaning of [Section 932\(4\) of the Civil Code](#), the appeals court should have discussed this surprising legal opinion within the context of [Section 182a of the Civil Procedural Code](#) with the appellant. If it had, the appellant could have argued – as an alternative – that it was willing to exchange the item (despite disproportionate costs). The appellant could also have argued that the defendant – if asked about it – probably would have ruled out any contribution to the costs for removal and installation.

According to the Supreme Court, even settled case law can change. The law prevents the retroactive application only of statutory laws, not court decisions. Therefore, changes in case law also apply retroactively, as there is no ban on the retroactive application of legal knowledge by the courts. The interest in maintaining 'correct' case law overrides earlier protections afforded to those applying the law; thus, it is paramount to be prepared for changes in case law.

[Case 1 Ob 209/16s](#) was based on the European Court of Justice's rulings in connected Cases C-65/09 and C-87/09 (*Weber and Putz*), which ultimately led to a new interpretation of the criteria of what is 'disproportionate' within the meaning of [Section 932\(4\) of the Civil Code](#). As such, the Supreme Court held that the application of that case could not be regarded as a substantial legal error in that regard. Further, [Case 1 Ob 209/16s](#) had already been published in the online legal information system when the appeal was filed. The Supreme Court thus ruled that the courts' duties under [Section 182 of the Civil Procedure Code](#) do not extend to requiring judges to instruct a party represented by a lawyer about the legal consequences of the party's arguments, let alone to advise that party.

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