

New CJEU judgments on judicial review of unfair terms in consumer contracts

JUDGMENT OF THE COURT (Grand Chamber)
17 May 2022 in Case C 725/19

In May, the CJEU ruled on several preliminary questions brought by the Spanish, Italian and Romanian courts concerning the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. In short, the CJEU was asked whether national procedural principles can limit the powers of national courts (in particular enforcement courts) to assess the possible abusive nature of a contractual term under Directive 93/13/EEC.

According to Directive 93/13/EEC, the national court is obliged to assess the abusive nature of a contractual term falling within the scope of the Directive, even without a request. Although the procedural rules are not harmonized by Union law, effective judicial protection must be ensured by each Member State to guarantee the rights enshrined under the Directive.

Thus, according to the CJEU, it is possible in certain cases to break principles of the procedural law of the Member States (e.g. *res judicata*) in order to fulfil the purpose of the Directive effectively.

In particular, the preliminary question was brought before the CJEU by the Romanian court as a part of the lawsuit between IO and the company Impuls Leasing Romania IFN SA, regarding an objection to the compulsory execution of an enforcement order concerning a leasing contract. According to the Romanian courts, the leasing contract contained certain provisions that could be considered abusive.

However, a court that is ruling on the execution of an enforcement order cannot assess the content of a leasing contract, neither of its own motion nor at the request of a consumer, if this contract is an enforcement title. This is because a different kind

of lawsuit is available to the consumer that allows other courts to deliver a judgment on the matter. While the court ruling on the enforcement procedure may suspend its proceedings and await a judgment from another court deciding on the consumer's action, the consumer requesting a suspension of the proceedings must deposit a sum calculated on the basis of the value of the subject matter of the action.

The CJEU has ruled that a debtor in default does not have to deposit such a major monetary sum with the court. The court also ruled that these costs must not dissuade the consumer from filing a petition with the court whose task it is to review possible abusive provisions in a contract. That applies especially when the value of the action is significantly higher than the value of the contract.

This case, along with other similar ones the CJEU has ruled on in the same period, is therefore overturning and changing some procedural principles and as a result will have a major impact in future on the development of their understanding within consumer litigation. It is highly possible that we might soon see that the principle of protection of the weaker contracting party be placed more frequently above the rigid principles of procedural law. Such a situation could happen in cases when it benefits the protection of the consumer and liberates the consumer from an unreasonable burden, such as having to deposit large monetary sums or take other actions that can only be performed by a particular consumer/insolvent person.

Other judgments

- (i) Judgement of the court (Grand Chamber) 17 May 2022 in Case C-600/19
- (ii) Judgement of the court (Grand Chamber) 17 May 2022 in Joined Cases C 693/19 and C 831/19
- (iii) Judgement of the court (Grand Chamber) 17 May 2022 in Case C 869/19

A stylized map of Central Europe in shades of blue, showing countries like Austria, Czech Republic, Slovakia, Hungary, and Romania. Major cities like Vienna, Bratislava, and Budapest are marked with stars.

CERHA HEMPEL
CEE NEWSLETTER
Czech Republic

For more information

Nikol Jenišťová
Senior Associate
nikol.jenistova@cerhahempel.cz
Tel: +420 221 111 711

Kristýna Menzelová
Associate
kristyna.menzelova@cerhahempel.cz
Tel: +420 221 111 711