

Case C-198/20**Summary of a request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

11 May 2020

Referring court:

Sąd Rejonowy dla Warszawy-Woli w Warszawie (District Court for Warszawa-Wola in Warsaw, Poland)

Date of the decision to refer:

11 May 2020

Applicants:

MN

DN

JN

ZN

Defendant:

X Bank S.A.

Subject matter of the case in the main proceedings

A claim for payment of PLN 46 412.79 plus interest and legal costs as a partial claim arising from the invalidity of a contract; alternatively, the applicants claim the amount of PLN 46 614.14 as a partial claim arising from consumers not being bound by unlawful contractual terms.

Subject matter and legal basis of the reference

Interpretation of recitals 11, 18 and 22 and Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts with a view to

defining the group of persons on whom consumer protection is conferred by that directive.

The legal basis for the questions referred for a preliminary ruling is Article 19(3)(b) of the Treaty on European Union and Article 267 of the Treaty on the Functioning of the European Union.

Questions referred

1. First question: Must Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, 21.4.1993, p. 29–34 [...], ‘Directive 93/13’), Article 3(1) and (2) and Article 4 of Directive 93/13 and its following recitals:

- whereas the consumer must receive equal protection under contracts concluded by word of mouth and written contracts regardless, in the latter case, of whether the terms of the contract are contained in one or more documents;

- whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account;

- whereas contracts should be drafted in plain, intelligible language, the consumer should actually be given an opportunity to examine all the terms and, if in doubt, the interpretation most favourable to the consumer should prevail;

in the light of paragraphs 16 and 21 of the Court’s judgment of 3 September 2015, *Costea* (C-110/14, EU:C:2015:538) and points 20 and 26-33 of the Opinion of Advocate General Cruz Villalón delivered on 23 April 2015 (ECLI:EU:C:2015:271),

be interpreted as meaning that every consumer is entitled to the consumer protection conferred by Directive 93/13?

Or, as suggested by paragraph 74 of the Court’s judgment of 30 April 2014, *Kásler and Káslerné Rábai* ([C-26/13], ECLI:EU:C:2014:282), is consumer protection only available to an average consumer, who is reasonably well informed and reasonably observant and circumspect? In other words, can the national court find the terms of a contract concluded by any consumer to be

unlawful or can it only find the terms of a contract concluded by a consumer who can be considered an average consumer, who is reasonably well informed and reasonably observant and circumspect, to be unlawful?

2. Second question: If the answer to the first question is that consumer protection under Directive 93/13 is not available to every consumer, but only to an average consumer, who is reasonably well informed and reasonably observant and circumspect, can a consumer who did not read a contract for a mortgage loan indexed to a foreign currency amounting to PLN 150 000, concluded for 30 years, before its conclusion, be considered an average consumer, who is reasonably well informed and reasonably observant and circumspect? Can such a consumer be granted protection under Directive 93/13?

3. Third question: If the answer to the first question is that consumer protection under Directive 93/13 is not available to every consumer, but only to an average consumer, who is reasonably well informed and reasonably observant and circumspect, can a consumer who, although he did read a draft contract for a mortgage loan indexed to a foreign currency amounting to PLN 150 000, concluded for 30 years, he did not fully understand it, and yet did not try to understand its meaning before its conclusion, and in particular did not ask the other party to the contract (the bank) to explain its meaning and the meaning of its individual provisions, be considered an average consumer, who is reasonably well informed and reasonably observant and circumspect? Can such a consumer be granted protection under Directive 93/13?

Applicable provisions of Community law

Directive 93/13: recitals 11, 18 and 22; Articles 2, 3 and 4(1)

Applicable provisions of national law

Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny (Law of 23 April 1964 — the Civil Code, *Journal of Laws* [Dz. U.] of 2007, item 459, as amended, ‘the Civil Code’)

Article 385¹

§ 1. The terms of a contract concluded with a consumer which have not been individually negotiated shall not be binding on the consumer if his or her rights and obligations are set forth in a way that is contrary to good practice and grossly infringes his or her interests (unlawful terms). This shall not apply to provisions setting forth the principal matters to be performed by the parties, including price or remuneration, so long as they are worded clearly.

§ 2. If a contractual term is not binding on the consumer pursuant to paragraph 1, the contract shall otherwise continue to be binding on the parties.

§ 3. The terms of a contract which have not been individually negotiated are those over the content of which the consumer had no genuine influence. This shall refer in particular to contractual provisions taken from a standard contract proposed to a consumer by a contracting party.

§ 4. The burden of proving that a provision has been agreed individually rests with the person relying thereon.

Article 385²

The compliance of a contractual provision with good practice shall be assessed according to the state of affairs at the time of conclusion of the contract, taking into account its content, the circumstances in which it was concluded and also the contracts connected with the contract which contains the provision assessed.

Article 22¹

A 'consumer' is a natural person who, when concluding and performing a consumer contract, does not act in the course of his trade or of another commercial activity.

Article 65

§ 1. A declaration of intent should be interpreted in accordance with the principles of social conduct and with established customs, taking into account the circumstances in which the intent was expressed.

§ 2. Regard should be had to the contracts to determine the common intent of the parties and the specified objective of those contracts rather than focusing on the literal meaning of the terms used.

Brief outline of the facts and procedure

- 1 On 21 July 2008, the applicants, who are consumers, concluded a contract with the legal predecessor of the defendant Bank for a housing loan amounting to PLN 150 000, denominated in Swiss francs (indexed to the Swiss franc), for 360 months. The amount of the loan denominated in Swiss francs was to be determined according to the foreign currency buying rate stated in the exchange rate table in force at the bank on the date of loan disbursement. The loan bore interest at the floating 3M LIBOR rate plus a fixed margin of 2.32 percentage points. Loan payments were expressed in CHF and were made in PLN according to the foreign currency selling rate stated in the exchange rate table in force at the bank on the payment date.
- 2 At the time of concluding the contract, the applicant MN was attending an undergraduate course in education, the applicant DN was attending an undergraduate course in economics, while the applicant JN was employed at a

municipal office and had completed an agricultural technical college. At the time of concluding the contract, ZN was a driver with an elementary level of education.

- 3 The formalities of the loan prior to signing the contract were handled by phone and fax or by post by MN — and not by DN, who had an economics background — using the services of a credit advisor whom the applicants had never met. All the documentation was not submitted to the bank, but sent to the advisor. Given MN's and DN's insufficient creditworthiness, the advisor suggested that MN's parents (JN and ZN) become parties to the contract. The advisor indicated only one bank (the defendant's legal predecessor) that was able to grant them a loan amounting to PLN 150 000, and then only indexed to a foreign currency. The applicants' intention was to obtain a loan on the most favourable terms possible. The applicants themselves did not contact the bank's employees.
- 4 The contract was signed by MN acting on his own behalf and on behalf of DN, JN and ZN on the basis of a notarial power of attorney granted to him. The applicant MN did not read the documents at the bank before signing them. As instructed by an employee of the bank, when signing the contract, MN checked the borrowers' personal details and the details of the property the loan concerned. He indicated that he had not received the draft contract previously and that no one had informed him of that possibility. In his opinion, since the documents were long, there was no time to read all of them. After signing the contract, the applicants MN and DN tried to read it, but unfortunately could not understand it, whereas the applicants JN and ZN had nothing to do with the contract after signing the power of attorney.
- 5 The applicant MN was not interested in the foreign currency mechanism underlying loan contracts and did not know what caused movements in exchange rates. He decided to conclude such a contract because it was a popular type of contract at the time and had a good reputation among borrowers. He only became interested in exchange rate movements after the loan payments had increased significantly. The applicants concluded an annex to the loan agreement with the predecessor of the defendant bank, as a result of which they have been repaying the loan in Swiss francs since December 2012.
- 6 On 20 September 2018, MN and DN submitted a demand for payment to the defendant bank and demanded that the contract be properly performed. They also submitted a complaint. On 26 September 2018, they submitted a set-off notice to the bank.
- 7 As part of the claim, the applicants demand that the contract be declared invalid due to the unlawful nature of the terms and conditions of the loan agreement.
- 8 The defendant submits that the action should be dismissed in its entirety and that it should be awarded costs.

Essential arguments of the parties in the main proceedings

- 9 The applicants base their claim that the contract should be declared invalid on the fact that it is not possible to modify the statutory loan framework using freedom of contract. In accordance with the applicants' position, the provisions of the contract for a mortgage loan allow the bank to freely set the foreign currency (Swiss franc) exchange rate and thus the amount of the applicants' debt. Therefore, the bank unilaterally determines the loan balance amount expressed in foreign currency, which is the basis for calculating interest and for determining the loan payment amounts. Moreover, the applicants allege that bank loan amounts may not be indexed and that the indexing mechanism stipulated in the contract is contrary to contract indexation rules.
- 10 Furthermore, the applicants allege that the loan amount was not stated and that the principle that foreign currency liabilities may be repaid in Polish currency was infringed if it is assumed that the loan was in fact a foreign currency loan. They also allege that the bank engaged in an unfair practice which misled them.
- 11 The applicants maintain that the contract cannot be performed owing to the unlawful nature of its currency conversion clauses. This unlawfulness consists in the ambiguity of the contract template and the bank's failure to provide full information on the indexing clause using comprehensible language.
- 12 Moreover, the unlawful nature of the indexing clause is evidenced by the fact that the consumer has no right to withdraw from the contract in view of the introduction of a contractual mechanism which increases his payments.
- 13 Finally, the applicants take the view that the arbitrary mechanism for setting the Swiss franc exchange rate for the purpose of contractual settlements is also unlawful. If currency conversion clauses are deemed abusive, then maintaining loan indexation would amount to a reduction of provisions in order to maintain their effectiveness, which is prohibited.

Brief statement of and reasons for the reference

- 14 The referring court does not share the view that the invalidity of a loan agreement indexed on general terms arises from causes other than the unlawful nature of contractual clauses. When examining the unfair nature of contractual terms, the court followed the guidelines set out in the Court's judgments cited above. In the event that the provisions of the contract are found to be unlawful, the court does not rule out declaring the contract to be invalid owing to the impossibility of its performance.
- 15 At the outset, the referring court stresses that consumer protection has been enhanced as a result of the adoption and implementation of Council Directive 93/13 in the Member States; examples of this trend in Polish law include the provisions of Articles 385¹ and 385² of the Civil Code.

- 16 The national court also draws attention to the extensive case-law of the Court of Justice in cases involving loans, including loans denominated in, or indexed to, a foreign currency, within the scope of which it refers, in particular, to the following judgments: of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349; of 15 March 2012, *Pereničová and Perenič*, C-453/10, EU:C:2012:144; of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164 ; judgment of 26 February 2015, *Matei*, C-143/13, EU:C:2015:127, of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282; of 21 January 2015, *Unicaja Banco and Caixabank*, C-482/13, C-484/13, C-485/13 and C-487/13, EU:C:2015:21; of 3 December 2015, *Banif Plus Bank*, C-312/14, EU:C:2015:794; of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, *Ana María Palacios Martínez and Banco Bilbao Vizcaya Argentaria SA (BBVA)* (C-307/15), *Banco Popular Español, SA and Emil Irlés López, Teresa Torres Andreu* (C-308/15), ECLI:EU:C:2016:980; of 20 September 2017, *Andriiciuc and Others*, C-186/16, EU:C:2017:703; of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367; of 20 September 2018, *OTP Bank and OTP Factoring*, C-51/17, EU:C:2018:750; of 14 March 2019, *Dunai*, C-118/17, EU:C:2019:207; of 26 March 2019, *Abanca Corporación Bancaria and Bankia*, C-70/17 and C-179/17, EU:C:2019:250, and judgment of 3 October 2019 based on a Polish reference for a preliminary ruling: *Dziubak*, C-260/18, ECLI:EU:C:2019:819.
- 17 In the context of this case-law of the Court of Justice, the national court draws particular attention to the judgment of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, ECLI:EU:C:2014:282, citing the following grounds:
74. [...] it is for the referring court to determine whether, having regard to all the relevant information, including the promotional material and information provided by the lender in the negotiation of the contract for a loan, the **average consumer, who is reasonably well informed and reasonably observant and circumspect**, would not only be aware of the existence of the difference, generally observed on the securities market, between the selling rate of exchange and the buying rate of exchange of a foreign currency, but also be able to assess the potentially significant economic consequences for him resulting from the application of the selling rate of exchange for the calculation of the repayments for which he would ultimately be liable and, therefore, the total cost of the sum borrowed.
- 18 The referring court would also like to draw attention to the judgment of the Court of Justice of 3 September 2015, *Costea*, C-110/14, ECLI:EU:C:2015:538, citing the following grounds:
16. According to those definitions, a ‘consumer’ is any natural person who, in contracts covered by the directive, is acting for purposes which are outside his trade, business or profession. Likewise, a ‘seller or supplier’ is any natural or legal person who, in contracts covered by [Directive 93/13], is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned.

21. The concept of ‘consumer’, within the meaning of Article 2(b) of Directive 93/13, is, as the Advocate General observes in points 28 to 33 of his Opinion, objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has.

19 In addition, the referring court would like to refer to the Opinion of Advocate General Pedro Cruz Villalón delivered on 23 April 2015 in *Costea*, C-110/14, ECLI:EU:C:2015:271, citing in particular the following points:

20. It is apparent from that provision that, for the purposes of the definition of consumer and the definition of seller or supplier, the sphere in which the individual concerned acts is relevant. Thus, Article 2(b) of the Directive provides that a consumer is ‘any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession’. By contrast, according to Article 2(c), a seller or supplier is ‘any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession [...]’.

26. Thus, the wording of the Directive and the case-law interpreting that instrument and Directive 85/577 appear to opt for a concept of consumer which is both objective and functional; therefore, as regards a specific person, it is not an inherent, unalterable category, but is, on the contrary, a quality which may be assessed by reference to a person’s status in relation to a particular legal transaction or operation, among the many which he may carry out in his daily life. As Advocate General Mischo observed in *Di Pinto*, [Or. 15] as regards the concept of consumer in the context of Article 2 of Directive 85/577, the persons referred to in that provision ‘are not defined *in abstracto*, but rather according to what they do *in concreto*’, so that the same person, in different circumstances may be sometimes a consumer and sometimes a seller or supplier.

27. That conception of a consumer as an actor in a specific legal transaction, which entails both objective and functional elements as the case may be, is also confirmed in the context of the Brussels Convention, a context in which the Court has also interpreted the term ‘consumer’; however, as I shall point out below, the analogy must be qualified when interpreting the directive, taking account of the different objectives of the two measures. Thus, in *Benincasa*, the Court held that, in order to determine whether a person has the capacity of a consumer, ‘reference must be made to the position of the person concerned in a particular contract, having regard to the nature and aim of that contract, and not to the subjective situation of the person concerned. [...] [T]he self-same person may be regarded as a consumer in relation to certain transactions and as an economic operator in relation to others.’

28. In short, this is an objective and functional definition which is satisfied on the basis of a single criterion: the legal transaction in particular must form part of activities which are outside a person’s trade, business or profession. As the Romanian Government has observed, the Directive does not lay down any

additional criteria for establishing the status of consumer. It is, moreover, a concept which is defined from a situational perspective, in other words, in relation to a specific legal transaction. Accordingly, no one can be deprived of the possibility of being treated as a consumer in relation to a contract which is outside his trade, business or profession by reason of his general knowledge or his occupation, and instead regard must be had exclusively to his position vis-à-vis a specific legal transaction.

29. That conclusion is not called into question by Volksbank's submissions based on the spirit of the Directive, referring, in particular, to a number of recitals in the preamble to the Directive. Taking a systematic approach to the Directive, the idea that the consumer is vulnerable and in a weak position as regards both his bargaining power and his level of knowledge is the rationale for the Directive, since it is based on a situation in which a consumer agrees to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms. However, those notions of vulnerability and weakness, which generally underlie EU consumer protection law as a whole, were not given concrete form in the legislative [Or. 16] expression of the concept of consumer as necessary conditions through its definition in positive law. Thus, neither the definition of consumer nor any other provisions of the Directive make the existence of the status of consumer in a particular situation subject to a lack of knowledge, a lack of information or a genuine position of weakness.

30. It would undermine the practical effect of the Directive if it were possible to call into question the status of consumer in each individual case, based on factors related to the experience, education, occupation and even the intelligence of the consumer. In particular, lawyers (or those with a law degree, and other professionals) would be deprived of protection in many aspects of their private affairs. As the Romanian Government points out, even where the level of knowledge of the person in question may be comparable to that of the lender, that does not alter the fact that his bargaining power is the same as that of any other natural person vis-à-vis a seller or supplier.

31. The Court held in *Šiba* that 'lawyers display a high level of technical knowledge which consumers may not have'. However, those considerations referred to a situation in which the lawyer in question 'provides a legal service for a fee, in the course of his professional activities, to a natural person acting for private purposes' and is, therefore, a seller or supplier within the meaning of Article 2(c) of the Directive.

32. Further, an interpretation of the kind proposed by Volksbank would result in all persons who had legal advice or professional advice of another kind when the contract was concluded being denied the status of consumer.

33. In addition, the effect of the knowledge or specific situation of the person concerned has been rejected by the Court in areas distinct from that of the Directive, when the objective requirement that the activity must be outside the

trade, business or profession of the person concerned was not satisfied. That occurred in relation to Directive 85/577, with regard to which the judgment in *Di Pinto* shows that where a person acts in the context of his trade, business or profession a genuine lack of knowledge in the particular case does not detract from his status as a seller or supplier.

- 20 Bearing in mind the judgment in *Kásler and Káslerné Rábai*, and in particular paragraph 74 thereof, in the light of the facts of the case where only one of the consumers (MN) signed the contract for a loan without reading it, the court has doubts as to whether such consumer(s) can be granted protection under Directive 93/13.
- 21 Since some consumers either do not conclude such contracts at all or very rarely, it would appear that when concluding such a contract, the consumer should show an above-average interest in contractual terms and exercise above-average care to protect his interests. In the view of the referring court, a consumer who has not read a contract such as the one at issue in the present case before signing it and likewise a consumer who has read the contract but has not understood it, and yet has made no effort to understand it, cannot be regarded as average consumers, who are reasonably well informed and reasonably observant and circumspect. The court therefore has doubts as to whether consumer protection can be granted to consumers such as those in the main proceedings, and whether the court can find that the terms of a contract concluded by such consumers are unlawful.
- 22 The referring court took account of the fact that, on the one hand, in their definitions of a consumer both Article 2(b) of Directive 93/13 and Article 22¹ of the Civil Code do not literally impose any requirements on the consumer, merely indicating that a consumer is a natural person who enters into a contract not in connection with any business activity. This is also pointed out in paragraph 21 of the Court's judgment of 3 September 2015, *Costea*, C- 110/14, EU:C:2015:538, where it is stated that the concept of 'consumer' is objective in nature and is distinct from the concrete knowledge the person in question may have, or from the information that person actually has. Attention should also be drawn to the views of Advocate General Pedro Cruz Villalón presented in point 74 of his opinion in *Costea*, C-110/14, ECLI:EU:C:2015:271. On the other hand, both national and the Court's case-law indicate that the appropriate benchmark is not just any consumer, but rather an average consumer, who is reasonably well informed and reasonably observant and circumspect. This is articulated explicitly in paragraph 74 of judgment C-26/13, ECLI:EU:C:2014:282.
- 23 It is worth noting that the later Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council already explicitly mentions in recital 18 that the benchmark should be the average consumer, who is reasonably well-

informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors (including characteristics that make consumers particularly vulnerable to unfair commercial practices).

- 24 In this regard, it should be added that Article 4(1) of Directive 93/13 (in its English and German versions) requires that, when assessing the unfairness of a contractual term, the nature of the goods or services for which the contract was concluded as well as all the circumstances attending the conclusion of the contract should be taken into account. Similarly, both Article 65(1) and Article 385² of the Civil Code require that the circumstances in which the contract was concluded must be taken into account.
- 25 Therefore, in the opinion of the referring court, the following circumstances cannot be disregarded: the nature of the subject matter of the contract, the amount and term of the contract for a mortgage loan (PLN 150 000, 30 years) and the fact that the loan amount was indexed to a foreign currency. The circumstances attending the conclusion of the contract are also relevant, namely, that the consumers signed the contract without reading it and made no effort to understand the contract after signing despite the fact that they did not understand it.
- 26 In these circumstances, the referring court has doubts as to whether consumer protection can be granted to any consumer or only to an average consumer, who is reasonably well informed and reasonably observant and circumspect. In other words, can the national court find the terms of a contract to be unlawful where the contract was concluded by a consumer who cannot be considered an average consumer, who is reasonably well informed and reasonably observant and circumspect?
- 27 On the one hand, it appears reasonable to protect every consumer, even a consumer who behaves not entirely reasonably (does not read the contract before signing it or does not understand the contract yet takes no steps to understand it), from possible contractual clauses which are unlawful. Granting protection even to consumers such as those would induce sellers or suppliers to refrain from including unfair terms in contracts. This would provide an argument in favour of granting consumer protection to every consumer without exception.
- 28 On the other hand, granting consumer protection to a consumer who did not read the contract before signing it, or did not understand the contract, but still concluded it and made no effort to understand it (especially a contract such as the one examined in the present case) may result in a situation where the consumer, many years later, is able to invoke the unlawful nature of clauses in the contract if he does not obtain the expected benefits from it. In this instance, the consumer could nullify the risks (in this case, the exchange rate risk) that he voluntarily assumed when concluding the contract. This is incompatible with the principles of legal certainty, contract stability and *pacta sunt servanda*. Moreover, Directive 93/13 was not adopted with a view to being applied to complex long-term

financial commitments, which, in the view of the referring court, must also be taken into account when answering the questions referred for a preliminary ruling.

- 29 The national court has analysed the case-law of the Court of Justice, but did not find an explicit answer to the questions referred for a preliminary ruling as set out in this request; the referring court did not even find sufficient guidance that would enable it to decide these questions itself. Therefore, it has decided to refer questions to the Court of Justice.
- 30 As regards the answer to the first question, the national court wishes to draw attention to the dilemma of the limits of consumer protection. The conflicting values of consumer protection on the one hand, and the principles of legal certainty, stability of contracts and *pacta sunt servanda* on the other, must be balanced. If the Court concludes that not every consumer is entitled to protection, but only a consumer who can be considered an average consumer, who is reasonably well informed and reasonably observant and circumspect, the referring court points out that in its view, when answering the second question, both a consumer who has not read a contract such as the one at issue in the present case (a mortgage loan indexed to a foreign currency) before signing it and a consumer who, although he has read it, has not understood it and yet has made no effort to understand it, cannot be regarded as an average consumer, who is reasonably well informed and reasonably observant and circumspect. Consequently, the answer should be that consumer protection should not be granted to a consumer who has signed a contract such as the one at issue in the present case without reading it and that the unlawful nature of the terms of such a contract cannot be examined.