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Judgment of the Court of Justice in Case C-243/08

Pannon GSM Zrt. v. Erzsébet Sustikné Győrfi

**NATIONAL COURTS ARE REQUIRED TO EXAMINE, OF THEIR OWN MOTION,
THE UNFAIRNESS OF A TERM CONTAINED IN A CONTRACT CONCLUDED
BETWEEN A CONSUMER AND A SELLER OR SUPPLIER**

The directive on unfair terms in consumer contracts¹ provides that unfair terms used in a contract concluded with a consumer by a seller or supplier are not binding on consumers.

In December 2004, Erzsébet Sustikné Győrfi entered into a subscription contract with Pannon for the provision of mobile telephone services. By signing the contract, Mrs Sustikné Győrfi also accepted the undertaking's general terms and conditions which stipulated that the Budaörsi Városi Bíróság (Budaörs District Court), the court for the place where Pannon had its principal place of business, had jurisdiction for any dispute arising from the subscription contract or in relation to it.

Taking the view that Mrs Sustikné Győrfi had not complied with her contractual obligations, Pannon brought proceedings before the Budaörsi Városi Bíróság which observed that Mrs Sustikné Győrfi, who was in receipt of an invalidity allowance, had her place of permanent residence in Dombegyház, that is to say, 275 km from Budaörs, with limited means of transport between those two places.

The Hungarian court also noted that under the applicable rules of the Hungarian Code of Civil Procedure, in the absence of a term conferring jurisdiction in the subscription contract, the court with territorial jurisdiction would be that for the place where the subscriber resides.

In those circumstances, the Budaörsi Városi Bíróság, entertaining doubts as to the possible unfairness of the term conferring jurisdiction in the subscription contract, referred questions on the interpretation of the Directive to the Court of Justice. It wished, inter alia, to know whether it must, of its own motion, ascertain whether that term is unfair, in the context of verifying its own territorial jurisdiction.

The Court recalls, first, that the protection which the Directive confers on consumers extends to cases in which a consumer who has concluded with a seller or supplier a contract containing an unfair term fails to raise the unfairness of the term, whether because he is unaware of his rights

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

or because he is deterred from enforcing them on account of the costs which judicial proceedings would involve.

As a consequence, **the role of the national court in the area of consumer protection is not limited to a mere power to rule on the possible unfairness of a contractual term, but also consists of the obligation to examine that issue of its own motion**, where it has available to it the legal and factual elements necessary for that task, including when it is assessing whether it has territorial jurisdiction.

Where the national court considers such a clause to be unfair, it must not apply it, unless the consumer, after having been informed of it by the court, does not intend to assert its unfairness and non-binding status.

Likewise, a national law does not comply with the Directive where it provides that it is only in the event that the consumer has successfully contested the validity of a contract term before the national court that such a term is not binding on the consumer. Such a law would rule out the possibility of the national court assessing, of its own motion, the unfairness of a contractual term.

Next, the Court points out that a term, contained in a contract concluded between a consumer and a seller or supplier, which has been included without being individually negotiated and which confers exclusive jurisdiction on the court in the territorial jurisdiction of which the seller or supplier has his principal place of business, may be considered to be unfair.

A court, designated in that way, may be a long way from the consumer's place of residence, which is likely to make it difficult for him to enter an appearance. In the case of disputes concerning limited amounts of money, the costs relating to the consumer's entering an appearance could be a deterrent and cause him to forgo any legal remedy or defence.

Lastly, the Court points out that it is for the Hungarian court, in the light of the particular circumstances of the present case, to assess whether the contractual term conferring jurisdiction in the subscription contract concluded between Mrs Sustikné Gyórfi and Pannon should be categorised as unfair.

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Languages available: ES CS DE EL EN FR IT HU PT SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-243/08>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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