



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 27/20

Luxembourg, 11 March 2020

Judgment in Case C-511/17

Györgyné Lintner v UniCredit Bank Hungary Zrt.

A court before which a consumer claims that certain contractual terms are unfair is required to review, of its own motion, other terms of the contract insofar as they are connected to the subject matter of the dispute before it

It must, where necessary, take investigative measures in order to obtain the legal and factual elements necessary to make that review

In December 2007, Mrs Györgyné Lintner concluded with UniCredit Bank Hungary a mortgage loan contract denominated in a foreign currency. That contract contains certain terms according to which UniCredit Bank has the right to make unilateral amendments to its content at a later stage. Subsequently, Mrs Lintner brought an action before the Hungarian courts seeking a declaration of invalidity of those terms, with retroactive effect, on the basis of the Unfair Contract Terms Directive¹ ('the Directive'), which provides, among other things, that unfair terms included in contracts concluded between a consumer and a seller or supplier will not bind the consumer.

In 2014, the Hungarian legislature adopted legislation governing the determination of unfairness of terms according to which banks have the right to make unilateral amendments to loan contracts concluded with consumers, and the consequences to be drawn from their unfair nature, with the result that the Hungarian courts are no longer responsible for ruling on the compatibility of those terms with the Directive.

However, the Fővárosi Törvényszék (Budapest High Court, Hungary), hearing Mrs Lintner's action, questions whether, in the light of the case-law of the Court of Justice, it should not still rule on the compatibility of certain other terms of the loan contract at issue, which were not challenged in the action, with the Directive. In the present case, those terms concern the notarial certificate, the grounds for termination and certain fees payable by the consumer. That court takes the view that it is apparent from the case-law of the Court that, in cases concerning consumer contracts, the national court is required to assess *ex officio*, that is to say of its own motion, whether contractual terms in those contracts are unfair, where it has available to it the legal and factual elements necessary for that task.

In those circumstances, the Fővárosi Törvényszék (Budapest High Court) asks the Court whether it is required, under the Directive, to examine *ex officio* the unfairness of all of the terms of the contract at issue, even if (i) the consumer did not, in its action, challenge the compatibility of those terms with the Directive, and (ii) an examination of those terms is not necessary in order to rule on that action.

By today's judgment, the Court clarifies that **the court before which a consumer brings a claim that certain terms in a contract that it entered into with a professional are unfair is not required to examine, of its own motion and individually, all the other contractual terms, which were not challenged by the consumer, in order to ascertain whether they are unfair.**

That court must, however, examine the terms which are connected to the subject matter of the dispute, as delimited by the parties, where it has available to it the legal and factual elements necessary for that task, even if those terms were not challenged by the consumer.

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

Thus, if the case file submitted to the court gives rise to serious doubts as to the unfair nature of such terms, the court must complete that file by asking the parties to provide it with the clarifications or documents necessary for that purpose.

By contrast, in order not to exceed the limitations of the subject matter of the dispute as defined by the parties by their claims, the national court is not required, under the Directive, to examine, of its own motion, whether other terms which are not connected to the subject matter of that dispute are unfair.

Further, the Court recalls that the Member States remain free to make provision, in their national law and in order to ensure a maximum degree of protection for the consumer, for a more extensive ex officio examination than that which their courts must carry out under that directive.

As regards the consequences of these findings for the present case, the Court notes that the Fővárosi Törvényszék (Budapest High Court) seems to take the view that the terms in relation to which it addressed the Court are not connected to the subject matter of the action initially brought by Mrs Lintner for a declaration of invalidity of the terms allowing her bank to unilaterally amend her loan contract. It follows that that court does not seem to be required, under the Directive, to examine of its own motion whether those terms are unfair.

Lastly, the Court notes that a national court called upon to examine whether contractual terms challenged in an action brought before it are unfair must take into account all the other terms of the contract at issue if it is necessary, for the purposes of that examination, to assess the cumulative effect of those terms. However, the Court points out that it does not follow from this that the national court is required to examine, of its own motion, all those other terms autonomously for unfairness as part of the assessment it makes of the unfairness of the term challenged in the consumer's action.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355