

Communication concerning the decision of the Curia of Hungary in
civil case number Pfv.V.21.663/2017

The legal dispute concerned the examination of a telecommunications company's general consumer contract terms and conditions that entered into force on 1 September 2015. The company, the defendant to the present case, submitted a petition for judicial review to the Curia of Hungary against the second instance court's final judgement that had established the invalidity of a contractual term determining the rate of default interest.

The Curia argued as follows: according to section 6:102, subsection (1) of the new Civil Code, a general contract term shall be considered unfair if, contrary to the requirement of good faith and fair dealing, it causes a significant and unjustified imbalance in contractual rights and obligations, to the detriment of the party entering into a contract with the person imposing such contract term. Section 6:104, subsection (2), point j) of the new Civil Code stipulates, as a rebuttable legal presumption, that in contracts which involve a consumer and a business party the contract term shall, in particular, be considered unfair, until proven otherwise, if its object or effect is to order the consumer to pay a disproportionately high amount if he fails to perform obligations or fails to perform as stipulated by the contract.

The invalidity of unfair general contract terms is regulated by the new Civil Code on the basis of Council Directive number 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (hereinafter referred to as the Consumer Protection Directive), thus, the relevant provisions of the new Civil Code have to be interpreted in line with the case-law of the European Court of Justice. According to the Court's settled case-law, the relevant jurisdiction of the Court extends to the interpretation of the concept of "unfair term" used in Article 3, paragraph (1) of the Consumer Protection Directive and in the annex thereto, and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of the Consumer Protection Directive. In its judgement rendered on 14 March 2013 in the case of Mohamed Aziz and Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa) (case C-415/11, EU:C:2013:164), the Court stated that in order to ascertain whether a term causes a "significant imbalance" in the parties' rights and obligations arising under the contract, to the detriment of the consumer, it must in particular be considered what rules of national law would apply in the absence of an agreement by the parties in that regard (paragraph 68). With regard to the question of the circumstances in which such an imbalance arises "contrary to the requirement of good faith", the national court must assess for those purposes whether the seller

or supplier, dealing fairly and equitably with the consumer, could reasonably assume that the consumer would have agreed to such a term in individual contract negotiations (paragraph 69).

In the light of the Court's judgement, it can be concluded that, in line with the provisions of section 6:48 of the new Civil Code, the consumer was placed in an unfavourable legal situation due to the considerable gap between the statutory default interest and the default interest defined by the defendant company's impugned general contract term. The defendant company failed to show a fair and equitable conduct in fixing an interest rate much higher than the one regulated by law. With regard to the above, the impugned contract term was deemed to fall under the scope of application of section 6:104, subsection (2), point j) of the new Civil Code.

In order to rebut the above legal presumption, the defendant was required to prove that the impugned contract term did not fall under the scope of application of section 6:102, subsection (1) of the new Civil Code. In the judicial assessment of the defendant's provision of evidence to rebut such a presumption, the circumstances referred to in section 6:102, subsection (2) of the new Civil Code – for instance the nature of the services for which the contract was concluded and the relationship between the impugned contract term and all the other terms of the contract – were of particular significance. The facts referred to by the defendant were, however, insufficient to justify the establishment of the validity of the term in question. The legal provision according to which the default interest rate applicable to the service provider has to be equal to the default interest rate applicable to the consumer and a market environment in which other service providers have not applied more favourable general contract terms either, do not mean that the defendant has not gained such unilateral and unjustified advantage which has been detrimental to the other contracting party. The Curia was of the opinion that the fact that the default interest rates were identical in respect of both parties did not counterbalance – with regard to the different conditions and impacts of their interest payment obligation – the disadvantage suffered by the consumer. Hence, the defendant was unable to rebut the presumption of the invalidity of the impugned general contract term.

Budapest, the 16th of April 2019

Civil Department of the Curia of Hungary