



# *Selected adjudication of the Court of Justice of the European Union as a jurisprudence milestones in the area of consumer protection law.*

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# COUNCIL DIRECTIVE 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

# Case C-618/10 Banco Español de Crédito v Joaquín Calderón Camino



- ISSUE: Whether a national court have authority to assess of its own motion unfairness of a term concerning interest on late payments in consumer credit agreements and whether Directive 93/13/EEC grants a power to national courts to replace a contractual term.
- RULING: National court is required to assess of its own motion whether a contractual term falling within the scope of Directive 93/13 is unfair, compensating in this way for the imbalance which exists between the consumer and the seller or supplier.

# Case C– 26/13 Kásler Árpád, Káslerné Rábai Hajnalka v OTP Jelzálogbank Zrt



- ISSUE: Whether the exchange rate applicable to a loan contract denominated in a foreign currency concerns the main subject matter of the contract and whether the contested term may be regarded as being in plain intelligible language so that it is not subject to assessment of its fairness pursuant to the directive 93/13/EEC
- RULING: The prohibition on determining the unfairness of terms relating to the main subject matter of the contract must be interpreted strictly and may be applied only to term laying down the essential obligations of the contract. It is for the national court to determine whether the contested term constitutes an essential obligation of the contract. Directive 93/13 does not preclude the national court from substituting the contested term with a supplementary provision of national law

# Case C-110/14 Horatiu Ovidiu Costea v SC Volksbank Romania SA



- **ISSUE:** Whether Article 2(b) of Directive 93/13 be interpreted as including in, or as excluding from, the definition of “consumer” a natural person who practices as a lawyer and concludes a credit agreement with a bank, in which the purpose of the credit concerned is not specified, when in that agreement that natural person’s law firm is stated to be the guarantor for the mortgage
- **RULING:** Practicing lawyer could be regarded as a “consumer” under the loan agreement as despite having a higher level of knowledge, as a commercial solicitor, this did not preclude him from the protection of the Directive.

# Case C-118/17 Zsuzsanna Dunai v ERSTE Bank Hungary Zrt



- ISSUE: Is it contrary to the EU law if particular national legislation do not allow retroactive annulment of foreign currency denominated borrowing contracts, containing unfair contract terms related to exchange rate risk.
- RULING: National laws in principle complied with the directive, but that their content that precluded the retroactive cancellation of a loan on account of an unfair term relating to exchange rate risk is contrary to EU law. Under the Directive 93/13/EEC, the cancellation of a contract must be possible if the contract cannot continue to exist without the unfair term. It is for the domestic court to assess whether contract is of this nature.

# Case C-407/18 Aleš Kuhar and Jožef Kuhar v Addiko Bank



- ISSUE: In the light of the principle of effectiveness of EU law, should Directive 93/13/EEC be interpreted as meaning that, in enforcement proceedings, the national court is required of its own motion to refuse that application on the ground that a directly enforceable notarial instrument contains an unfair term, if procedural rules do not give an effective possibility of suspending or postponing enforcement until substantive decision on whether the term is unfair
- RULING: Directive 93/13 must be interpreted, in the light of the principle of effectiveness, as precluding national legislation, under which the national court does not have the option, either on application by the consumer or of its own motion, to examine whether the terms in such an instrument are unfair within the meaning of that directive, and on that basis to suspend the enforcement sought.

# Case C-260/18 Kamil Dziubak i Justyna Dziubak v. Raiffeisen Bank International AG



- ISSUE: Whether subsequent to their removal, unfair terms may be replaced by general provisions of the national law which provide that the effects expressed in a contract are to be completed by the effects arising from principles of equity or other established customs.
- RULING: Directive 93/13/EEC must be interpreted as precluding gaps in a contract after removal of the unfair terms from being filled solely on the basis of national provisions of a general nature which provide that the effects expressed in a legal transaction are to be supplemented, inter alia, by the effects arising from the principle of equity or from established customs, which are neither supplementary provisions nor provisions applicable where the parties to the contract so agree.



Thank you!

