EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 441 (2018)
20.12.2018

ECHR rejects complaints by Hungarian banks over 2014 law on unfair terms in consumer loan contracts

The European Court of Human Rights has in a unanimous decision today declared the applications in in the case of **Merkantil Car Zrt. v. Hungary and four other applications** (application no. 22853/15 and four others) inadmissible. The decision is final.

The case concerned complaints by five applicant companies, which are all part of the OTP Banking Group, that legislation which made various standard loan contract terms unfair unless proven otherwise had violated their right to a fair trial and to the peaceful enjoyment of their possessions.

The Court joined the applications and rejected them as inadmissible for being manifestly ill-founded.

It found in particular that strict procedural deadlines and other procedural rules applied in the proceedings in which the banks had challenged the presumption of unfairness of the standard loan contract terms had not undermined the right to a fair trial. The applicant companies had not been prevented from arguing in favour of the contractual terms and the fact their arguments had been rejected did not mean the proceedings had been unfair.

It observed that the 2014 Uniformity Act which had introduced the legislative changes had aimed at helping Hungary respond to a problem of consumer debt, particularly foreign currency based loans, after the financial crisis of 2008. The legislation had not upset the balance that had to be struck between the protection of the applicant companies' rights and the public interest.

Principal facts

The applicants Merkantil Car Zrt, Merkantil Bank Zrt, OTP Jelzálogbank Zrt, OTP Bank Nyrt and OTP Ingatlanlízing Zrt, are financial companies based in Budapest. They are part of the OTP Bank Group.

In Hungary, a number of laws were introduced after the 2008 financial crisis, to help people deal with high levels of domestic consumer debt. In 2014 Parliament passed the Uniformity Act which put into legislation various *Kúria* (supreme court) decisions on consumer loan contracts. It also introduced a presumption that standard contractual terms which had not been individually negotiated and which allowed unilateral rises in interest rates, fees and costs were presumed to be unfair unless they complied with seven principles, previously set out by the *Kúria*.

Under the Uniformity Act, the unfairness presumption could be rebutted in court and the applicant companies brought claims to do that. They argued at the same time that the Uniformity Act had introduced new legal standards retroactively, violating their rights.

The domestic courts found that one or more of the contractual terms did not comply with the seven principles. The courts made reference to a Constitutional Court ruling of November 2014 which approved the new legislation. The Constitutional Court found that the law had made general requirements of fairness and fair dealing that had already existed more specific, and had not amounted to retroactive new rules.

It also upheld procedural restrictions in the law, including short time-limits, and supported the law's aim of streamlining the legal process given the potentially large amount of litigation on disputed loans.

Complaints, procedure and composition of the Court

The first two applications (application nos. 22853/15 and 22858/15) were lodged with the European Court of Human Rights on 4 May 2015 while the others (application nos. 33424/15, 33426/15 and 33737/15) were lodged on 7 July 2015.

Relying on Article 6 (right to a fair trial), the applicant companies complained that they had lacked equality of arms in the proceedings instituted under the Uniformity Act. They also complained that the presumption that certain standard contractual terms were unfair was irrebuttable in practice.

Under Article 1 of Protocol No. 1 to the Convention (protection of property), they complained that the Uniformity Act had been applied unlawfully and that there had been a disproportionate interference with their rights.

The decision was given by a Chamber of seven judges, composed as follows:

Ganna **Yudkivska** (Ukraine), *President*,
Paulo **Pinto de Albuquerque** (Portugal),
Robert **Spano** (Iceland),
Faris **Vehabović** (Bosnia and Herzegovina),
Egidijus **Kūris** (Lithuania),
Carlo **Ranzoni** (Liechtenstein),
Georges **Ravarani** (Luxembourg),

and also Marialena **Tsirli**, *Section Registrar.*

Decision of the Court

Article 6

The Court, joining the applications owing to their similarity, observed that the companies' complaint was twofold: firstly, that the strict procedural rules undermined the principle of equality of arms and, secondly, that the presumption of unfairness could not in practice be rebutted and that it had interfered with the outcome of ongoing proceedings with borrowers.

The Court found that the procedural rules had applied to all the parties, not just the applicant companies. The Court also had no doubt that the accelerated, simplified processing of the cases, which meant for instance that the applicant companies had had to submit a single statement of claim for all the standard contractual terms they wanted to have reviewed pursued the legitimate aims of consumer protection and the efficient administration of justice.

There was no indication that the applicant companies had been unable to meet the deadlines, which, moreover, they should have expected as they had themselves begun the proceedings.

The Court noted that the applicant companies' arguments on the second issue were similar to those raised in Bárdi and Vidovics v. Hungary, a case it rejected as manifestly ill-founded in December 2017 and which concerned the Uniformity Act's effect on spreads in foreign currency loans.

It observed that the applicant companies had not been specific about which ongoing litigation had been affected by the 2014 law. In any case, the legislation had not been implemented to decide the outcome of proceedings in favour of the State – a reason it had found violations in earlier cases – but to protect consumers and the general public interest. It must also have been clear to the applicant companies for some time that the standard terms of contract in question could be deemed unfair under the European Union's Unfair Terms Directive of 1993, applicable in Hungary from 2004.

It rejected the applicant companies' view that the presumption of unfairness could not be rebutted. While it did indeed operate in favour of consumers, the companies had had the chance to present

their case and there was no indication the standard of proof had been set excessively high. The domestic courts had not acted in an arbitrary fashion and the fact the applicant companies' arguments had been rejected was not itself a violation of the principles of a fair trial or equality of arms.

The Court concluded that neither the legislation nor its effect on the applicant companies' civil rights and obligations disclosed a violation of the Convention. Their complaint under Article 6 had therefore to be rejected as manifestly ill-founded.

Article 1 of Protocol No. 1

The Court examined whether a fair balance had been struck between the general interest and the need to protect the companies' rights, noting that States enjoyed wide discretion ("a wide margin of appreciation") when it came to banking sector regulation and their response to a financial crisis.

The applicant companies argued that the 2014 Act had retroactively classified contractual terms as unfair and stated that OTP Bank Group had had to reimburse HUF 142 billion to customers. The measures had not taken account of the benefits clients had had from foreign currency based loans or that another Act had already provided a favourable solution to customers.

In addition, the companies submitted that the goal of the legislation had been to help customers who had taken out foreign currency based loans and had had bigger repayments because of the crisis. However, the rise in instalment costs had been caused by foreign exchange movements rather than unilateral increases in interest rates and fees.

The Court noted that domestic decisions had found that the 2014 legislation had codified previous judicial practice in relation to existing laws rather than introduced new provisions. While the seven principles had only been set down for the first time in 2012 in a *Kúria* decision, any contractual terms that created a significant imbalance in parties' rights and obligations were already to be considered unfair under the EU Directive.

It was the domestic courts' role to interpret and apply domestic legislation: the Constitutional Court had explained that although previous laws had allowed unilateral changes in standard contractual terms, it had not given financial institutions an unconditional right and they had continued to be bound by conditions of fairness and good faith.

The Court found that the provision of the Uniformity Act concerning the statute of limitations was not incompatible with Article 1 of Protocol No. 1.

As regards proportionality, the Court noted that the applicant companies had had the possibility to try to rebut the presumption of unfairness in the law. Furthermore, proceedings by consumers against the companies were already ongoing when the new law had come into force and their outcome would most likely have been the same as under the Uniformity Act, only after a much longer time. Apart from the disputed contract terms, loan contracts had otherwise continued to be valid and the applicant companies' claims under them had not been extinguished.

The Court found that given States' discretion, the Uniformity Act had not upset the balance which had to be struck between the public interest and the protection of the applicant companies' rights. The complaint under this provision had therefore also to be rejected as manifestly ill-founded.

The decision is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.