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

FOURTH SECTION

DECISION

Application no. 22853/15
MERKANTIL CAR ZRT. against Hungary
and 4 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 27 November 2018 as a Chamber composed of:

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Robert Spano,
Faris Vehabović,
Egidijus Kūris,
Carlo Ranzoni,
Georges Ravarani, *judges,*

and Marialena Tsirli, *Section Registrar,*

Noting that Mr Péter Paczolay, the judge elected in respect of Hungary, withdrew from sitting in the case (Rule 28) and that, accordingly, the President appointed Mr Robert Spano, the judge elected in respect of Iceland, to sit as an ad hoc judge (Article 26 § 4 of the Convention and Rule 29),

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant companies,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicant companies is set out in the appendix. They were represented by Mr P. Veil, a lawyer practising in Paris.

descargado en www.derechosufin.com

2. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant companies are financial institutions which are active in the field of financial leasing, consumer credit and consumer loan contracts in Hungary. They are members of the OTP Bank Group.

1. Background

5. According to the figures provided by the Government, the volume of consumer loans in Hungary reached its peak on 30 June 2010 when their aggregate value was 8,647.9 billion Hungarian forints (HUF).[1] Although in the subsequent years the value of those credits continuously decreased, on 30 June 2014 their volume still exceeded HUF 6,802 billion. The value of forint consumer loans amounted to HUF 3,139.1 billion, whereas the value of foreign-currency loans amounted to HUF 3,662.9 billion.

6. In the case of foreign-currency loans, the amounts provided by the creditor and repaid by the debtor were denominated in a foreign currency (calculation currency), but both parties were to pay the amounts in forints (payment currency). Under this type of contract the debtor had a debt in foreign currency and benefited from a more favourable interest rate than that payable in the given period on forint loans. Consequently, the debtor had to bear the effects of exchange-rate fluctuations: any depreciation of the forint would result in an increase in the debtor's payment burden, and any appreciation of the forint would result in a decrease in that burden. The parties could also decide that the loan amount was to be provided and repaid in the calculation currency.

7. In 2010 the Government introduced measures to mitigate the detrimental effects of the 2008 financial crisis on debtors who held foreign-currency loans. Those measures included limiting unilateral amendments to loan contracts and fixing the exchange rates for the repayment of foreign-currency loans. In addition, Act no. CXXI of 2011 ("the Early Repayment Act") provided for the early repayment of foreign-currency loans secured by mortgages on residential real estate, resulting in a 23.3 percent decrease in such loans. That legislative change was unsuccessfully challenged by the financial institutions before the Constitutional Court, which found the interference with the financial institutions' rights to be justified on account of the exceptional and grave

1. At the time the applications were lodged with the Court 1 euro (EUR) equalled approximately HUF 310.

situation arising from the international financial crisis, which had prompted the State to take swift action to tackle the macroeconomic implications of the high volume of foreign-currency loans.

8. Following the financial crisis and the increased difficulties on the part of consumers to comply with the obligations stemming from their loan contracts, a large number of them instituted court proceedings seeking modification of the contracts. In response to the issues related thereto, *Kúria* (the historical Hungarian name for the Supreme Court, see *Baka v. Hungary* [GC], no. 20261/12, §§ 24 and 48, 23 June 2016) delivered a number of opinions and decisions.

2. The Kúria's opinions and decisions

9. On 12 December 2011 the *Kúria* issued Opinion no. 2/2011. PK [Civil Division] on certain issues related to the invalidity of a consumer contract (hereinafter "Opinion no. 2/2011), in which it addressed the question of the unfairness of non-negotiated contractual terms and standard contractual terms employed in consumer contracts. It found that the unbalanced position of the contracting parties may necessitate the protection of the party in the weaker bargaining position. On the same day the *Kúria* issued Opinion no. 3/2011. PK [Civil Division] on certain issues related to *actio popularis* in respect of consumer contracts (hereinafter "Opinion no. 3/2011). The *Kúria* confirmed that unfair general contractual terms employed in consumer contracts could be challenged before the court within the framework of *actio popularis*, even if the contracts in question had been concluded before 1 March 2006 (the date of entry into force of the corresponding provision in the old Civil Code, see paragraph 43 below) but only after 1 May 2004 (the date on which Hungary joined the European Union).

10. On 10 December 2012 the *Kúria* delivered Opinion no. 2/2012 PK on the unfairness of the standard terms of contract (hereinafter "STCs") allowing for unilateral modification of a consumer-loan contract employed by a financial institution (hereinafter "Opinion no. 2/2012"). It reads, as far as relevant:

> "(1) The financial institution may set out the right to the unilateral modification of interest rates, fees and charges, adversely affecting the consumer, among its general terms and conditions ... [in accordance with the law]. This contractual provision cannot, in itself, be qualified as unfair.
>
> (2) ... any unlawful contractual provision relating to the unilateral amendment of a contract is deemed null and void. The court initially assesses whether the provision set out among the general terms and conditions of a contract infringes any legal provisions.
>
> The contractual provision is also deemed null and void if, while it does not infringe legal regulations, one or more terms – the substance thereof – giving cause to the unilateral amendment of the contract grants an unreasonable and unilateral advantage

to the financial institution and is disadvantageous for the consumer as it breaches the requirement of good faith and fairness and is, therefore, unfair within the meaning of section 209(1) of [the old Civil Code].

(3) The unfairness of a term, the substance of which is defined exhaustively by law, is not open to judicial review. If the mandatory ... legal provision is further specified by the parties, or if the parties derogate from the dispositive [non-mandatory] legal provisions, the unfairness of such a condition may be assessed.

..."

11. The *Kúria* held that provided that the term relating to the unilateral amendment of the contract was not unlawful it was to be considered unfair, if it failed to comply with the seven principles listed in its opinion, which were substantially the same as those later set down in the Uniformity Act (see section 4(1) of that Act cited in paragraph 51 below). The *Kúria* went on to explain that an invalid contractual term according to the list of principles did not have legal effect. The courts were required of their own motion to determine whether the impugned general terms of contract were invalid, and whether their invalidity could be determined on the basis of available evidence. Furthermore, it stipulated that "when this [was] necessary for the settlement of dispute proceedings brought by the consumer or by collective action", the court was "required to examine whether the contractual term relating to unilateral amendment was unlawful or unfair regardless of whether the financial institution had actually applied such term and even if the term [was] no longer in force".

12. Lastly, on 16 June 2014 the *Kúria* delivered Civil Law Uniformity Decision no. 2/2014 (hereinafter "the Uniformity Decision"). The *Kúria* held, *inter alia*, that the fact that the debtor bore the risk of currency fluctuations (in exchange for obtaining favourable interest rates) did not, in itself, make the agreements invalid. However, currency spreads, as provided for in the contracts, were invalid (see *Bárdi and Vidovics v. Hungary* (dec.) nos. 27514/15 and 13876/16, § 7, 19 December 2017). Moreover, STCs enabling the unilateral amendment of contracts were also invalid unless they complied with the seven principles laid down in the previous Opinion no. 2/2012 (see paragraph 11 above).

3. Legislative developments

13. In order to ensure that the principles laid down in the *Kúria's* Uniformity Decision could be enforced directly, not only in pending litigation but also in connection with potential, non-litigated claims concerning consumer loan contracts, Parliament adopted three pieces of legislation. Some of these statutes were enacted also to ensure that all foreign-currency loan agreements were converted into Hungarian forints and that settlements between the consumer and the financial institution – in respect of unfairly collected sums from exchange-rate spreads and costs that had arisen from unfair unilateral amendments – were implemented in

accordance with the guidance of the *Kúria* and with pending court actions being meanwhile put on hold.

14. Act no. XXXVIII of 2014 on the resolution of questions relating to the Uniformity Decision concerning the settlement of certain issues relating to loan contracts between consumers and financial institutions ("the Uniformity Act", see paragraphs 49 to 53 below) provided that certain contractual terms which had not been negotiated, namely STCs, and which allowed the possibility to increase interest rates, fees and costs unilaterally, would be presumed unfair. It also defined the procedure by which the presumption of unfairness could be rebutted. Such presumption could be rebutted by proving that the impugned STCs complied with the seven principles listed in Opinion no. 2/2012 (see paragraph 11 above). The Uniformity Act provided that STCs allowing the unilateral increase of interest rates, fees and costs should be considered void if the financial institution in question had not lodged a legal action in order to prove their fairness, or if a court had rejected such a legal action or if a court had declared such STCs void following proceedings instituted by the Hungarian National Bank. In such situations, the financial institution was obliged to settle the accounts with the consumer (see paragraph 15 below).

15. Act no. XL of 2014 on the rules of settlement laid down in the Uniformity Act ("the Settlement Act"), which entered into force on 1 November 2014, regulated settlements between consumers and financial institutions resulting from the application of the Uniformity Act. Under the Settlement Act, the calculation of the amount due to the consumer or the amount to be set off against his or her outstanding obligations *vis à vis* the financial institution was to be provided by the latter. However, the consumer had the right to challenge the calculation, first by complaining to the financial institution and then, if necessary, by lodging a claim with the Financial Arbitration Body.

16. Act no. LXXVII of 2014 on changing the currency of consumer loan agreements denominated in foreign currency ("the Currency Conversation Act"), which entered into force on 6 December 2014, provided for the foreign-currency loan agreements to be converted into Hungarian-forint loans, using a defined exchange rate.

4. Proceedings initiated by the applicant companies

17. In the decisions outlined below, the domestic courts found the relevant STCs applied by the applicant companies unfair and thus declared them null and void. As a result, those STCs ceased to be part of individual consumer contracts and consumers were entitled to reclaim amounts they had previously paid under those terms.

a. Merkantil Car Zrt. (application no. 22853/15) and Merkantil Bank Zrt. (application no. 22858/15)

18. On 18 August 2014 the applicant companies, Merkantil Car Zrt. and Merkantil Bank Zrt., lodged applications with the Budapest High Court, seeking to prove that the STCs used in their loan contracts to which the Uniformity Act applied were fair. The court dismissed their statements of claim as incomplete and on 28 August 2014 the applicant companies resubmitted the statements of claim, together with appendices, including extensive documentation concerning terms and conditions, as well as applicable fees and other provisions relevant to the proceedings. In particular, they attempted to prove the fairness of three STCs, arguing that all seven principles laid down in section 4(1) of the Uniformity Act had been complied with, and arguing that certain other STCs fell outside the scope of the Uniformity Act. They also argued that their rights had been violated, in particular as the legislation had been applied retroactively, its provisions were unclear and the *Kúria* had overstepped its powers by setting up new legal standards in the Uniformity Decision. The applicant companies requested that the court initiate constitutional review proceedings in respect of sections 4(1), 7(7)(a), 10(3)-(4) and section 11 of the Uniformity Act and the Uniformity Decision. Furthermore, they requested that the court initiate the preliminary ruling procedure before the Court of Justice of the European Union ("the CJEU"). In the alternative, they requested that the court declare the contractual terms in question fair and valid.

19. The respondent submitted two statements of defence, the second one two days before the first hearing.

20. On 10 September 2014 the Budapest High Court held two hearings, during which counsels for the parties presented their oral pleadings. Two weeks later, after reviewing the STCs in question, the court delivered decisions finding that the STCs in question failed to comply with one or more of the seven principles set out in the Uniformity Act. The court dismissed the requests for the initiation of proceedings before the Constitutional Court and the CJEU, emphasising that the dispute could be decided by the sitting court and that no issue of unconstitutionality arose in the course of applying such provisions.

21. On 30 September 2014 the applicant companies appealed against the decision to the Budapest Court of Appeal. The latter upheld the decisions of the court of first instance with respect to both the compatibility of the impugned provisions with the Fundamental Law and the unfairness of the contractual terms. In particular, the court held that the Uniformity Act did not define new grounds of invalidity but codified the uniform judicial practice concerning section 209(1) of the old Civil Code (see paragraph 42 below). It further considered that the case did not require a preliminary ruling by the CJEU. The court reviewed the STCs in question only in terms

of the requirement of transparency, upholding the decision regarding their unfairness.

22. On 12 and 13 November 2014 the applicant companies applied for a review of the above decisions before the *Kúria.* On 18 December 2014 the latter upheld the second-instance decisions, finding, *inter alia*, that it sufficed to establish non-compliance with only one of the seven principles defined in the Uniformity Act and that in such case the remaining principles did not need to be examined.

b. OTP Jelzálogbank Zrt. (application no. 33424/15) and OTP Bank Nyrt. (application no. 33426/15)

23. On 18 August 2014 the applicant companies, OTP Jelzálogbank Zrt. and OTP Bank Nyrt., lodged applications with the Budapest High Court, seeking to prove the fairness of the STCs used in the loan contracts to which the Uniformity Act applied. On 5 September 2014 they re-submitted their claims, together with extensive appendices. The applicant companies argued that the STCs they had applied in the relevant period had complied with all seven principles defined in section 4(1) of the Act, and asked the court to declare that certain contractual terms did not fall within the scope of the Act. The applicant companies also requested that the court initiate constitutional review proceedings and the preliminary ruling procedure before the CJEU. They relied on arguments similar to those put forward by Merkantil Car Zrt. and Merkantil Bank Zrt. in the above-mentioned proceedings (see paragraph 18 above). In the alternative, they requested that the court declare the contractual terms in question fair and valid.

24. On account of the partly identical STCs applied by the applicant companies OTP Jelzálogbank Zrt. and OTP Bank Nyrt., on 8 September 2014 the court decided to merge the respective proceedings. On the same day, the respondent submitted its first statement of defence. The respondent submitted its second statement of defence on 11 September 2014.

25. On 12 September 2014 the court held its first hearing and decided to suspend the proceedings and to seek a constitutional review of certain provisions of the Uniformity Act. It invoked Articles B(1) (rule of law), E (European integration), XXVIII.(1) (right to a fair trial) and 26(1) (judicial independence) of the Fundamental Law.

26. Following the Constitutional Court's decision of 11 November 2014, finding that the Uniformity Act complied with the Fundamental Law (see paragraphs 35 to 39 below), the Budapest High Court held its second hearing on 21 November 2014. Two weeks later, on 5 December 2014, the court delivered a judgment. It found that some of the STCs referred to by the two applicant companies fell outside of the scope of the Uniformity Act and that the remaining STCs did not comply with one or more of the seven principles set out in section 4(1) of that Act.

27. Both the applicant companies and the Hungarian State lodged appeals, which were dismissed as unfounded on 8 January 2015. The second-instance court found the respondent's appeal partly well-founded and it partly modified the reasoning of the first-instance judgment to widen the scope of STCs which were to be considered unfair. The applicant companies subsequently submitted an application for review to the *Kúria*.

28. On 24 February 2015 the *Kúria* upheld the lower court's judgment. It held that several STCs referred to by the applicant companies fell outside the scope of the Uniformity Act and that the remaining STCs failed to meet the requirements of clear and intelligible wording and transparency. It also found the Uniformity Act to be compatible with relevant European Union law and therefore dismissed the request for the institution of the preliminary ruling procedure.

c. OTP Ingatlanlízing Zrt. (application no. 33737/15)

29. On 18 August 2014 the applicant company OTP Ingatlanlízing Zrt. lodged an application with the Budapest High Court, seeking to prove the fairness of the relevant STCs used in its loan contracts. On 5 September 2014 it resubmitted its claims including extensive appendices.

30. The respondent submitted its first statement of defence on 10 September 2014. It submitted its second statement three days before the first hearing. The first hearing was held on 15 September 2014. The court decided to suspend the proceedings and seek a constitutional review of certain sections of the Uniformity Act.

31. Following the Constitutional Court's decision of 11 November 2014 (see paragraphs 35 to 39 below), the High Court held its second hearing on 28 November 2014. Two weeks later, on 12 December 2014, it delivered a judgment. The court held that some of the STCs referred to by the applicant company fell outside of the scope of the Uniformity Act and that the remaining STCs did not comply with one or more principles set out in section 4(1).

32. On 8 January 2015 the Budapest Court of Appeal dismissed the applicant company's appeal as unfounded.

33. Subsequently, the applicant company applied to the *Kúria* for a review. On 26 February 2015 the *Kúria* delivered a partial judgment, remitting certain issues to the second-instance court for new proceedings. The Court of Appeal delivered its second judgment on 24 March 2015 finding that some of the contractual terms referred to by the applicant company fell outside the scope of the Uniformity Act and that the remaining STCs failed to meet the requirements of clear and intelligible wording and transparency.

34. The applicant company applied to the *Kúria* for a review of the second judgment. The application was rejected by the *Kúria* on 27 April 2015.

5. The Constitutional Court's decision of 11 November 2014

35. On 11 November 2014 the Constitutional Court issued Decision no. 34/2014 (XI.14), in which it assessed the compatibility of the Uniformity Act, in particular section 1(1), (2), (3), (6) and (7), sections 4 to 15 and section 19 with the Fundamental Law. The Constitutional Court ruled by majority that the impugned legal framework did not contradict the principle of the rule of law and did not violate the right against retroactive legislation or the right to a fair trial. It found, *inter alia*, that section 210(3) of the old Credit Institutions Act (see paragraph 47 below), which was a *lex specialis*, allowed the unilateral modification of contractual terms governing interest rates, fees and other issues in a manner that was disadvantageous to the client. This, however, was only "a type of enabling provision" and it could not be said that the legislature had defined a contract term which "could not amount to being unfair". The Constitutional Court noted that the statutory requirement of good faith and fairness had, from the beginning, imposed a limit on unilateral contract modifications based on the enabling rule. The enabling provision of the old Credit Institutions Act did not repeal or suspend the requirements of fairness and fair dealing. In the Constitutional Court's view, the Uniformity Act did not contain new substantive provisions that were applicable retroactively; Parliament had merely "enacted in the form of an Act of Parliament – and thus elevated to the level of a statute – an interpretation developed and made mandatorily applicable in the practice of the European and domestic courts". In particular, it held as follows:

> "The [Uniformity] Act did not change the evaluation under the old (and the new) [Civil Code] provisions and the principles laid down by the Kúria of the fairness of the contract stipulations at issue; it merely specified, within the statutory framework of the general clause, the *ab ovo* existing content of the general clause. ...[Opinion No. 2/2012] expressed the same view, namely that 'to establish the unfairness of a general contract term under the provisions of the old Civil Code in force at the time of the conclusion of the contract on a ground which later – in light of, for example, the experience gained from the related court practice – is mandatorily regulated under a separate Act, does not violate the prohibition of retroactive application of the law."

36. The Constitutional Court thus found that the impugned provisions, which had entered into force after the conclusion of the contracts, "contained no such elements that [might] have been unknown to the parties". It pointed out that "a finding of legal invalidity necessarily affect[ed] the contract as of the date of its conclusion" because "invalidity inherently contain[ed] the element that the contract, or part of the contract, suffered from some 'legal defect' already at the time of its conclusion".

37. The Constitutional Court went on to note that "[c]onsumer loan contracts [were] typically long-term contractual relationships in which the parties [had] mutual rights and obligations". It considered that "the position that in such relationships the various claims [could not] become separately

time-barred during the existence of the contract [was] constitutionally acceptable". It explained that "similarly to the solution used with respect to instalment payments in leasing contracts, in the impugned Act the legislature provided, with a view to treating the legal relationship as a single unit, an interpretation which [was] not contrary to the old Civil Code's statute of limitations rules, namely that the limitation period [should] start to run from the date on which the contractual relationship terminate[d] under the contract".

38. As regards the restrictions on procedural rights, such as short time-limits, under the Uniformity Act, the Constitutional Court found the following:

> "... [T]he statutory presumption was applicable solely to contractual provisions allowing unilateral increases in interest rates, fees and costs, which constituted a minor, clearly identifiable part of the general contractual terms. The identification of these elements, even in the case of a contract term of approximately 10 years' duration, did not pose such a problem which would make it impossible to bring an action ... with the time-limit. Moreover, the Act precisely specified the principles to be complied with by contractual provisions which had already been applied to certain contracts in ongoing lawsuits, based on which ... [the Opinion no. 2/2012] and the Uniformity Decision had been adopted ... Some of the principles leave no room for discretion [e.g. point b): whether a list of grounds exists and if it does, whether it is exhaustive], whereas the adjudication of other issues falls within the discretion of the courts [e.g. point a): whether the wording of the general contract term at issue is clear and intelligible for the consumer]. Persuasive arguments and a detailed analysis of the contractual provisions were to be submitted basically only in respect of these latter elements."

39. As regards the need for the introduction of the Uniformity Act, the Constitutional Court expressed the following view:

> "... [A]ccording to the information provided by the minister of justice, those applying the law and the legislature were to expect the lodging of some 1.8 million civil lawsuits – as compared to 160,000, which is the average annual number of new civil lawsuits – which would have resulted in a caseload increase that would have paralysed the administration of justice for a long time. Therefore, the legislative intervention whereby a very great number of individual lawsuits could be replaced by some *sui generis* proceedings which allowed the financial institutions to rebut the presumption and which thus prevented the operation of the courts from being frustrated, cannot be regarded as State interference violating the requirement of legal security."
>
> ... [C]ourts are able to secure the enforcement of consumer protection laws only in individual cases; in the event of problems affecting the whole society, the State must interfere and provide a solution, even via legislation. The very fact that in respect of a given contractual provision the State has taken over claim enforcement from the consumer and from the entity entitled to lodge an action in the public interest is in harmony with the constitutional requirement of consumer protection.
>
> ... [T]he interpretation that, where unfair contractual terms exist in great numbers, a member State's [right to interfere] ... via legislation ... in the interest of consumers, can also be inferred from the aim set forth in Directive 93/13/EEC."

B. Relevant domestic and European Union law and practice

1. Government Decree No. 275/2010 (XII. 15)

40. Government Decree No. 275/2010 (XII.15) on the unilateral amendment of interest rates agreed in a contract was in force between 18 December 2010 and 31 January 2015. Under the decree, the financial institution could unilaterally modify the interest rate in loan contracts to the disadvantage of the customer on certain conditions, which were listed in the decree and which concerned circumstances actually affecting the rate of interest (such as certain adverse changes to the financing costs of the creditor and its ability to obtain funds).

2. Old Civil Code

41. As regards contractual relationships, pursuant to Act No. IV of 1959 on the Civil Code as amended ("the old Civil Code"), the limitation period should start to run from the date on which the contractual relationship terminated.

42. In the period between 1998 and 2006 section 209 of the old Civil Code provided that the injured party could challenge the general terms in court if he or she considered them to be unfair.

43. As of 1 March 2006 the amended section 209 of the old Civil Code provided that the general terms were to be considered unfair if the rights and obligations of the parties arising from the agreement were stipulated, in breach of the requirement of good faith and fairness, in such a way that they gave unreasonable and unilateral advantage to the party who set the terms and conditions, to the detriment of the other party. Furthermore, a new section 209/A provided for the conditions under which the injured party could challenge allegedly unfair STCs in court. It read as follows:

> "(1) A contractual term incorporated into the contract as a standard contract term may be challenged as unfair by the injured party.
>
> (2) An unfair contractual term drafted in advance by the party entering into a contract with a consumer and not negotiated individually but incorporated into the contract as a standard contract term, shall be considered null and void. The contract may only be annulled in the consumer's interest."

44. As of 2009 section 209 was amended and supplemented. It provided, as far as relevant, as follows:

> "(1) A standard contract term or a term which has not been individually negotiated in a consumer contract shall be regarded as unfair if, in breach of the obligation to act fairly and in good faith, it unilaterally and unjustifiably establishes the contractual rights and obligations of the parties to the detriment of the co-contractor of the party imposing the contractual term in question.
>
> (2) The unfairness of a contractual term shall be assessed by taking into account the nature of the services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of

the contract and to all the other terms of the contract or of another contract on which it is dependent.

(3) Other legal regulations may define the contractual terms and conditions that are regarded to be unfair in respect of a consumer contract or that shall be regarded as unfair until proven otherwise.

(4) A standard contractual term or a term which has not been individually negotiated in a consumer contract shall also be regarded as unfair simply on the grounds that it is not [drafted] in plain intelligible language.

...

(6) Contractual terms determined in a statute or in accordance with a statutory provision shall not be deemed unfair."

3. New Civil Code

45. Act No. V of 2013 on the Civil Code (hereinafter "the new Civil Code"), provides, in so far as relevant, as follows:

Section 6:103

"...

(2) As regards contracts between a consumer and a business party, a standard contract term or any contract term which has been drafted in advance by the business party and which has not been individually negotiated shall be regarded as unfair if it is not drafted in plain and clearly understandable language, solely on that basis.

(3) Any unfair contract term that has been incorporated into a contract between a consumer and a business party shall be considered null and void. The right to have the term declared null and void may be invoked in favour of the consumer."

Section 6:104

"...

(2) In contracts between a consumer and a business party a contractual term shall, in particular, be considered unfair, until proven otherwise, if its object or effect is to:

...

d) enable a business party to alter the contractual terms unilaterally without a valid reason which is specified in the contract, in particular to increase the monetary consideration fixed in the contract, or to allow the business party to alter unilaterally the terms of a contract where there are serious grounds laid down in the contract for doing so, provided that in such cases the consumer is not free to withdraw from or to terminate the contract;

..."

4. Old Credit Institutions Act

46. The relevant part of section 210 of Act CXII of 1996 on Credit Institutions and Financial Enterprises, as in force after the amendment introduced by Act No. CL of 2009 Amending Certain Finance-Related Acts of Parliament (hereinafter "the old Credit Institutions Act"), provided:

descargado en www.asufin.com

"...

(2) The agreement for supplying financial services and for engaging in activities auxiliary to financial services must clearly indicate the interest rates, fees and all other charges and conditions, including the legal consequences of any default in payment, and the procedure for the enforcement of collateral obligations made in security of the contract and the legal ramifications involved.

(3) In loan contracts with consumers and in financial leasing agreements only the interest rate, fees and commissions may be changed unilaterally to the disadvantage of the customer. Other conditions, including a list of the grounds substantiating the unilateral modification of the terms and conditions of the contract may not be altered unilaterally to the disadvantage of the customer. The creditor shall be able to exercise the right of unilateral modification if the objective reasons giving grounds for modification are fixed in the contract, and if the creditor has committed its pricing criteria in writing.

...

(6) Having regard to the contracts mentioned in subsection (3) above, any changes applied unilaterally regarding interest rates, fees or commission ... , if to the disadvantage of customers, shall be published by way of posted notice sixty days prior to the operative date of such changes. ...

..."

47. On 27 November 2010 Parliament amended the old Credit Institutions Act by adding a new section 210/A, which applied to loan and credit agreements and financial leasing arrangements for housing purposes. The new provision prohibited the amendment of such agreements by financial institutions to the disadvantage of the consumer, declaring any such amended terms null and void, except "in respect of the interest rate and only in cases and under the terms and conditions specified by a government decree, and if justified by changes in the central bank base rate, in the refinancing rates, money-market indices and the interest rates of credit institutions on fixed-term deposits, by changes decreed by the Government in the regulatory framework or in the assessment of credit risk."

48. Under section 235(1) of the old Credit Institutions Act the Government was empowered to issue detailed regulations concerning the cases and the terms and conditions under which a financial institution could be authorised to unilaterally modify the interest rates of the agreements referred to in section 210/A of the Act to the disadvantage of the consumer.

5. The Uniformity Act

49. The Uniformity Act (see paragraph 14 above) was enacted by Parliament on 4 July 2014 and promulgated by the President of the Republic on 18 July 2014. The Uniformity Act applies to consumer loan contracts concluded between 1 May 2004 and the entry into force of the Act, namely 19 July 2014. The Act pertains to consumer loan contracts denominated in foreign currency or forints, as well as to certain financial leasing contracts

(section 1 of the Uniformity Act). The Act establishes that STCs allowing the unilateral increase of interest rates, fees and costs should be presumed to be unfair unless they can be proved to comply with all of the seven principles set forth in Opinion no. 2/2012 (see paragraphs 10 and 11 above) and enumerated in section 4 (1) of the Act (see paragraph 51 below).

50. Pursuant to section 4(2) of the Uniformity Act, it was for a financial institution to prove that the relevant STCs complied with the aforementioned seven principles and were therefore fair. For that purpose, the financial institution had to institute proceedings against the State, rather than against its individual clients.

51. The following provisions of the Uniformity Act are particularly relevant:

1. General provisions

Section 1

"(1) This Act applies to consumer loan agreements concluded between 1 May 2004 and the date of entry into force of this Act. In the application of this Act the concept of consumer loan agreement shall cover any foreign exchange based (linked to, or denominated in, a foreign currency and repaid in forints) or forint based credit or loan agreement, financial leasing agreement concluded between a financial institution and a consumer, if it incorporates standard contract terms containing a clause provided for in Subsection (1) of Section 3 or Subsection (1) of Section 4 or any contract term which has not been individually negotiated.

(1a) In the application of this Act the concept of consumer loan agreement shall - in addition to what is contained in Subsection (1) - cover any foreign exchange credit or loan agreement, financial leasing agreement not qualifying as foreign exchange based, between a financial institution and a consumer, if concluded between times provided for in Subsection (1) hereof, and it incorporates standard contract terms containing a clause provided for in Subsection (1) of Section 4 or any contract term which has not been individually negotiated."

...

(6) In respect of claims arising out of consumer loan agreements, the provisions of Act IV of 1959 on the Civil Code regarding the statute of limitation shall be interpreted in such a manner that during the existence of the loan contract, the claims do not lapse; the limitation period starts to run upon termination of the contract."

4. Resolution of contract terms allowing the possibility to alter the terms of the contract unilaterally

Section 4

"(1) As regards consumer loan agreements allowing for the possibility to alter the terms of the contract unilaterally, any term – with the exception of contract terms which have been individually negotiated – that creates a right to increase the interest rate and other costs and fees unilaterally is deemed to be unfair, given that it does not comply with:

a) the principle of clear and intelligible wording, where the term in question is neither plain nor understandable for the consumer;

b) the principle of detailed specification, where the conditions for amending the terms of the contract unilaterally are not specified in detail, that is to say the reasons are not listed, or the reasons supplied are merely indicative;

c) the principle of objectivity, where the conditions for amending the terms of the contract unilaterally lack objectivity, that is to say the party with whom the consumer is entering into a contract is able to cause such conditions to occur, and has the power to incite such conditions and to influence the extent of any change that may serve as grounds for substantiating the amendment;

d) the principle of effectiveness and proportionality, where the circumstances specified in the list of reasons do not effectively or proportionally influence the interest, costs and/or fees;

e) the principle of transparency, where the consumer was not in a position to foresee what additional burdens would be passed on to him, nor the extent and reasons for such changes;

f) the principle of withdrawability, where the consumer does not have the right to withdraw from the contract if it is amended; or

g) the principle of symmetry, where the contract does not allow any change in the conditions that may occur to the consumer's benefit to take effect for the consumer's benefit.

(2) The contract terms referred to in subsection (1) hereof shall be deemed null and void if the financial institution has failed to lodge a civil action within the time-limit specified in section 8(1), or if the court dismisses the action or terminates the proceedings ...

...

(3) In the case provided for in subsections (2) and (2a), the financial institution shall settle accounts with the consumer as provided for in the relevant legislation."

5. Examination of standard contract terms and terms not individually negotiated

Section 5

"(1) Financial institutions shall review within thirty days of the date of entry into force of this Act those standard contractual terms and any contract term which has not been individually negotiated (hereinafter referred to as "STCs") which form part of a consumer loan agreement allowing the possibility to alter the terms of the contract unilaterally.

(2) Within thirty days of the date of entry into force of this Act, financial institutions shall disclose to the Hungarian National Bank, acting within its supervisory and customer-protection function (hereinafter referred to as "the Authority") all STCs that contain a contract term as provided for in subsection (1), and shall indicate whether in their view the contract term in question should be considered fair or unfair. The notification referred to above shall include the identification numbers of the contracts which contain such terms and the amount of receivables outstanding on the basis of such contracts.

(3) Financial institutions shall review by 30 November 2014 those STCs which form part of consumer loan agreements provided for in section 1(1)a), allowing the possibility to alter the terms of the contract unilaterally.

(4) Financial institutions shall disclose to the Authority by 30 November 2014 all STCs that contain a contract term, as provided for in subsection (3), and shall indicate whether in their view the contractual term in question should be considered fair or unfair, and shall disclose whether any amendment was made to the contract resulting in an increase in the interest rate, fee or commission on the basis of such contractual terms. The notification referred to above shall include the identification numbers of the contracts which contain such terms and the amount of receivables outstanding on the basis of such contracts."

Section 6

"(1) If, following the review, the financial institution finds that any of the STCs it uses contains a contract term that is to be presumed unfair having regard to the provisions set out in section 4(1), but which the financial institution considers fair, the financial institution has the right – unless otherwise provided for in subsection (2) hereof – to bring a civil action in accordance with the provisions of this section for the rebuttal of the presumption.

(2) In the case of forint-based consumer loan agreements, or consumer loan agreements provided for in section 1(1)a), STCs published after 26 November 2010, and amendments to previous STCs published after 26 November 2010 need not be presumed unfair, having regard to the provisions set out in section 4(1). ..."

6. Civil action

Section 7

"(1) The actions provided for in this section shall be governed by the provisions of Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as "the CPC"), subject to the exceptions set out in this section.

(2) In such actions the Hungarian State is the defendant ...

(3) In such actions legal representation is mandatory.

(4) The court shall hear such cases in priority proceedings.

..."

Section 8

"(1) The statement of claim of a financial institution for initiating the ... [proceedings] referred to in section 6 shall be received by the court, if the STCs at issue:

a) was used in a foreign-exchange (linked to, or denominated in, a foreign currency and repaid in forints) credit or loan agreement, or financial leasing agreement, within thirty days of the date of entry into force of this Act;

b) was used in a forint-based credit or loan agreement, or financial leasing agreement, on 26 November 2010 or previously, between 5 January and 12 January 2015;

c) was used in a consumer loan agreement as provided for in section 1(1a), on 26 November 2010 or previously, between 5 January and 12 January 2015.
...

(3) Subject to the exception provided for in subsection (3a) hereof, financial institutions shall apply for a review of all STCs they use so as to determine their validity in accordance with the criteria provided for in section 4(1) in a single

descargado en www.asufin.com

statement of claim. The statement of claim shall, *inter alia*, indicate the period during which the financial institution applied the contract term in question.

(3a) Financial institutions shall apply for a review of all such STCs they use so as to determine their validity in accordance with the criteria provided for in section 4(1) in a single statement of claim; the statement of claim shall be received by the court between 5 January and 12 January 2015. The statement of claim shall indicate, *inter alia,* the period during which the financial institution applied the contract term in question.

(4) An application lodged by a financial institution shall be limited to the establishment of the provisions of section 11(3).

(5) In addition to the provisions of subsections (2) and (3) of section 121 of the CPC, an abstract of the STCs provided for in subsection (3) hereof, set out in the form of a single document, shall be enclosed with the statement of claim, containing only the contractual terms which the financial institution is seeking to be confirmed as valid, indicating also the periods during which the financial institution applied the contractual terms in question. Apart from the contractual terms in question, the abstract shall indicate those facts and evidence which the financial institution alleges to support the request made in the statement of claim. Furthermore, an electronic data medium shall also be enclosed in a format that can be edited with the statement of claim containing a version of the statement of claim and its enclosures processed by means of information technology equipment.

(6) If the application is dismissed under section 130 of the CPC, the legal facilities stemming from the submission of the statement of claim shall remain in force if the plaintiff resubmits the statement of claim within five days of the effective date of the relevant decision in accordance with the relevant regulations.

...”

Section 11

“(1) In the proceedings the court will only consider whether the contract term which the financial institution considers fair is in fact fair in accordance with the requirements set out in section 4(1).

(2) If the court finds that the contract term which the financial institution considers fair fails to comply with any of the requirements set out in section 4(1), and therefore the contract term in question is unfair, it shall dismiss the action.

(3) If the court finds that the contract term which the financial institution considers fair is in compliance with all of the requirements set out in section 4(1), it shall declare the contract term in question fair, and as such applicable.”

7. Pending lawsuits

Section 16

“(1) ... The court shall *ex officio* suspend, until the measure provided for in other specific legislation has been taken, at the latest until 31 December 2014, proceedings in respect of lawsuits having as their object, in part or in whole, the contract terms referred to in [this Act], or proceedings instituted by a financial institution against a consumer for the enforcement of a claim based on, *inter alia*, such contract term. ...

(2) ... The court shall also *ex officio* suspend, until the measure provided for in other specific legislation has been taken, at the latest until 31 December 2015, proceedings in respect of lawsuits having as their object, in part or in whole, the contract terms

> referred to in [this Act], or proceedings instituted by a financial institution against a consumer for the enforcement of a claim based on, *inter alia*, such contract term, if the ... contract term ... figures in a ... consumer loan contract ..."

52. Furthermore, the following rules set out in the Uniformity Act are relevant:

- The court must adjudicate the case within thirty days (section 9(3)).
- The hearing must be scheduled so as to allow at least three days to elapse from the time the statement of claim is delivered to the respondent to the date of the hearing (section 10(1)).
- The hearing must be scheduled within eight days of the date when the statement of claim was delivered to the court (section 10(1)(2)).
- The hearing may be postponed once, for a maximum of seven days, but only if it is deemed necessary in order for the parties to present their evidence (section 10(4)).
- The court may not postpone the promulgation of the judgment for more than fifteen days (section 12(1)).
- Unless the court has postponed its promulgation, the decision of the first-instance court must be given in writing within eight days of the date on which it was adopted, and must be served by process within three days of the date on which it was put in writing (section 12(2)).
- The time-limit for appeals is eight days from the time of service of the decision (section 13(1)).
- The court must adjudicate the appeal within thirty days (section 13(4)).
- The hearing must be scheduled so as to allow at least three days to elapse from the time the appeal is delivered to the adverse party to the date of the hearing (section 13(5)).
- The court must fix the date of the hearing within fifteen days of the date on which the documents were received by the court of second instance (section 13(6)).
- The hearing may be postponed once, for a maximum of seven days (section 13(7)).
- Unless the court has suspended the proceedings, the decision concluding the second-instance proceedings must be put in writing within eight days of the date on which it was adopted. The court of second instance must serve its decision on the parties within three days (section 14(1)).
- An application for review must be submitted to the court that adopted the second-instance decision within eight days of notification of the decision (section 15(1)).
- The *Kúria* must conduct the review within thirty days (section 15(1)).
- Unless the *Kúria* has postponed its promulgation, the decision completing the review process must be put in writing within eight days and the *Kúria* must serve it on the parties within three days (section 15(6)).

53. The explanatory memorandum to the Uniformity Act contains the following passage:

> "In order to ensure that those principles are enforced directly, the present Act codifies the principles laid down in the *Kúria*'s Uniformity Decision. The Act makes the *Kúria*'s interpretation applicable to everyone. It does not create any new substantive laws or new principles in respect of consumer loan and leasing agreements, but purely codifies the interpretation of the *Kúria*. This is to ensure that a high number of consumers avoid lengthy and costly litigation that would, in any event, overburden the judicial system."

6. Unfair Contractual Terms Directive of 1993

54. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (hereinafter "the Unfair Terms Directive") protects consumers in the European Union ("the EU") from unfair terms and conditions which might be included in a standard contract for goods and services they purchase. Member States of the EU were obliged to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1994. Hungary joined the EU on 1 May 2004.

55. The Unfair Terms Directive provides, as far as relevant, as follows:

Article 1

> "1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.
>
> 2. The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive."

Article 3

> "1. A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
>
> ...
>
> 3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair."

Article 4

> "1. Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.
>
> 2. Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and

remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as these terms are in plain intelligible language."

Article 5

"In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. ..."

Article 6

"1. Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.

..."

Article 7

"1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

..."

Article 8

"Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer."

56. The "Annex" referred to in Article 3 (3) of the Unfair Terms Directive provides a list of terms which may be considered unfair. It includes any term intended to enable the seller or supplier to alter the terms of the contract unilaterally, or any term having that effect, without a valid reason being specified in the contract.

57. Furthermore, the Court of Justice of the European Union ("the CJEU") has interpreted the aforementioned Directive in a number of cases. Most notably, in its judgment of 21 November 2002 in *Cofidis SA v. Jean-Louis Fredout*, C-473/00, EU:C:2002:705, the CJEU held:

"32 It must be noted that the Court ruled in paragraph 28 of Océano Grupo Editorial and Salvat Editores that the court's power to determine of its own motion whether a term is unfair constitutes a means both of achieving the result sought by Article 6 of the Directive, namely preventing an individual consumer from being bound by an unfair term, and of contributing to achieving the aim of Article 7, since if the court undertakes such an examination, that may act as a deterrent and contribute to preventing unfair terms in contracts concluded between consumers and sellers or suppliers.

33 That power of the court has been regarded as necessary for ensuring that the consumer enjoys effective protection, in view in particular of the real risk that he is unaware of his rights or encounters difficulties in enforcing them ....

34 The protection which the [Unfair Terms] Directive confers on consumers thus 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 unfair nature of the term, whether

> because he is unaware of his rights or because he is deterred from enforcing them on account of the costs which judicial proceedings would involve.
>
> 35 It is therefore apparent that, in proceedings aimed at the enforcement of unfair terms brought by sellers or suppliers against consumers, the fixing of a time-limit on the court's power to set aside such terms, of its own motion or following a plea raised by the consumer, is liable to affect the effectiveness of the protection intended by Articles 6 and 7 of the Directive. To deprive consumers of the benefit of that protection, sellers or suppliers would merely have to wait until the expiry of the time-limit fixed by the national legislature before seeking enforcement of the unfair terms they would continue to use in contracts.
>
> ..."

58. As regards the nature of the "Annex" (see paragraph 56 above) the CJEU found in its judgment of 7 May 2002 in *Commission v. Sweden*, C-478/99, EU:C:2002:281, that it "is not disputed that a term appearing in the list need not necessarily be considered unfair and, conversely, a term that does not appear in the list may none the less be regarded as unfair."

COMPLAINTS

59. The applicant companies complained under Article 6 § 1 of the Convention that the principle of equality of arms had been breached in the proceedings instituted under the Uniformity Act. They also argued that the fairness of such proceedings had been undermined by the legal provisions introducing a presumption of unfairness in respect of certain contractual terms. Such a presumption was irrebuttable in practice and interfered with the ongoing proceedings between the applicant companies and their clients.

60. The applicant companies further complained that Article 1 of Protocol No. 1 had been violated because the Uniformity Act had been applied unlawfully and there had been a disproportionate interference with their rights.

THE LAW

A. Preliminary remarks

61. The Court notes that the subject matter of the applications is similar in terms of the facts and the substantive issues raised by the applicant companies. It therefore finds it appropriate to examine them jointly (Rule 42 § 1 of the Rules of Court).

62. The Court further notes that the Government raised objections relating to the exhaustion of domestic remedies and compliance with the

descargado en www.asalin.com

six-month time-limit. However, it does not consider it necessary to examine those objections since the applications are in any event inadmissible for the following reasons.

B. Complaints under Article 6 § 1 of the Convention

63. The applicant companies complained of a violation of Article 6 § 1 of the Convention, which so far as relevant reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

1. The parties' submissions

(a) The applicant companies

64. The applicant companies argued that the Uniformity Act had obliged them to prove the fairness of their contractual provisions but had not allowed them to adequately present their legal arguments and appropriately substantiate their factual claims, in breach of the principle of equality of arms and their right to be heard. In particular, the thirty-day time-limit for the submission of an application under the Uniformity Act and the eight-day time-limit for lodging an appeal were too short. The requirement to prove the fairness of the relevant terms in a single statement of facts and the limitations as regards the number of hearings were also too restrictive. In particular, an application under the Uniformity Act had to cover not only provisions in effect at the time of the entry into force of the Act, but all contractual terms applied in the period falling under the scope of the Act. In the statement of claims it was thus necessary to prove that dozens or even hundreds of contractual terms complied with all seven principles. The applicant companies argued that the short time-limits had made both the submission of the statement of claims and providing evidence impossible in practice and that they had not had an adequate opportunity to reply to the respondent's submissions. What is more, the State could have regulated the issue by other means through regular civil proceedings.

65. The applicant companies also argued that their right to a fair trial had been infringed as a result of the Uniformity Act's interference in ongoing proceedings between them and their clients – that is by suspending all the pending proceedings concerning issues falling within the scope of the Uniformity Act and by declaring a presumption of unfairness to the detriment of the financial institutions. The latter had been forced to take part in civil proceedings, with the obvious objective of declaring the STCs of their loan contracts unfair. In this connection, the applicant companies argued that the Uniformity Act had changed the substantive law, as it had declared contractual terms which were in line with the existing law unfair, and shifted the burden of proof to the financial institutions.

(b) The Government

66. As regards the applicant companies' argument that there had been an interference by the legislature with the administration of justice designed to influence the judicial determination of the applicant companies' disputes, the Government submitted that a large number of lawsuits challenging the fairness of the applicant companies' contractual terms had already been pending before the entry into force of the Uniformity Act. The latter did not change the rules of substantive law, as the criteria and aspects to be examined by the courts had been clear since the adoption of Opinion no. 2/2012 and the Uniformity Decision, which had been binding for all courts. In the Government's view, the Court should take into account that the present case, unlike *The Holy Monasteries v. Greece* (9 December 1994, Series A no. 301-A), concerned procedural, not substantive, changes and did not influence judicial decision-making. The suspension of ongoing proceedings had been warranted by the principles of legal certainty and uniformity of law. The State was not a party to the suspended proceedings and though in the new proceedings instituted under the Uniformity Act, the State was the defendant, it was consumers who were directly affected by the outcome of the proceedings. In other words, the proceedings had been meant to protect a vulnerable segment of consumers, and had provided no benefit to the State. The Government further argued that in any event Contracting States enjoyed a certain margin of discretion and that the legislature was not precluded, in civil matters, from adopting new retrospective provisions to regulate rights arising under existing laws.

67. The Government submitted that the procedural rules of which the applicant companies complained had been made in pursuit of public-interest aims (protection of legal certainty, ensuring the efficiency of the courts by reducing their caseloads, protecting the right to human dignity, ending the uncertain situation as quickly as possible by applying short time-limits, doing away with the imbalance between the banks and consumers, and applying the jurisprudence of the CJEU). They further submitted that the means applied had been proportionate to the aims sought. In particular, the statutory presumption of unfairness affected only the STCs allowing the unilateral increase of interest rates, fees and costs – a limited and identifiable part of the STCs. Though the time-limits imposed through the Uniformity Act might be regarded as short, they were in no way impossible to meet. They were applicable uniformly to both the plaintiff banks and the respondent State. Banks had extensive financial and legal resources, and the documentation which the financial institutions were required to examine and produce in the proceedings constituted expert material which was in their possession and which they owned, had drafted and used regularly. The submissions before the domestic courts appeared extensive because they contained numerous provisions. However, they were similar or identical and only about twenty to thirty pages had dealt with the question of compliance

with the relevant principles. The Government also emphasised that the proceedings had involved only a review of documentation, and as such had rarely necessitated the hearing of witnesses or experts, and had been presided over by courts with expertise in that area of law.

68. Lastly, the Government argued that the reversal of the burden of proof was meant to offset the existing imbalance and compensate for the disadvantage position of consumers, as well as taking account of the fact that the financial institutions had all the relevant material in their possession.

2. The Court's assessment

69. The Court observes that the applicant companies' complaint under Article 6 is twofold. First, they complained of the strict procedural rules applicable to proceedings under the Uniformity Act, arguing that they undermined the equality of arms. Secondly, they complained that the presumption of unfairness under the Uniformity Act in respect of STCs allowing the unilateral modification of contracts was irrebuttable in practice and that it interfered with the outcome of pending proceedings. The Court will examine those two aspects in turn.

(a) As regards the strict procedural rules

70. The Court notes that the applicant companies relied on the principle of the equality of arms (see paragraphs 59 and 64 above). However, the applicable procedural rules and time-limits applied to both parties to the proceedings and the applicant companies failed to show that they had not been put on a par with the opposing party, that is the State. In any event, the Court considers that their complaint in essence concerns the "right to a court", of which the right of access is one aspect. The Court reiterates that this right is not absolute; it is subject to limitations permitted by implication, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard. Nonetheless, the limitations applied must not restrict or reduce the individual's access in such a way or to such an extent as to impair the very essence of the right. Furthermore, limitations will only be compatible with Article 6 § 1 if they pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim pursued (see *Zubac v. Croatia* [GC], no. 40160/12, § 78, 5 April 2018, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 89, 29 November 2016). In that connection, the Court points out that the rules relating to the procedures and time-limits to be observed in bringing proceedings are designed to ensure the proper administration of justice and compliance, in particular, with the principle of legal certainty. Litigants must expect those rules to be applied (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 99, ECHR 2009). However, the rules in question, or their application, should not prevent

litigants from making use of an available remedy (see, among the latest authorities, *Tence v. Slovenia*, no. 37242/14, § 31, 31 May 2016, and the cases cited therein). The Court also points out that it is not its task to examine *in abstracto* the compatibility with the Convention of the impugned legislation (see, *mutatis mutandis*, *Phillips v. the United Kingdom*, no. 41087/98, § 41, ECHR 2001-VII), but must assess them in the context in which they were applied to the applicant companies.

71. The Court notes that although in principle the general rules of the civil procedural law applied to the proceedings under the Uniformity Act, the Act provided for a number of exceptions. For instance, it set a thirty-day deadline for the lodging of claims; it required financial institutions to submit a single statement of claim requesting the review of all STCs they used; it restricted the number of hearings that could be held; and it set out a strict time frame within which procedural steps and judicial decisions were to be taken (see paragraphs 51 and 52 above).

72. The Court observes in this connection that the proceedings in question were of a *sui generis* nature, designed to address a pressing social problem, which had arisen from the use of standard terms in consumer loan contracts ("STCs") allowing the unilateral increase of interest rates, fees and costs (see paragraph 39 above). They were aimed at preventing a backlog which could arise from the accumulation of cases concerning loan contract containing the aforementioned STCs (see paragraph 39 and 53 above). The Court therefore has no doubt that the impugned legislative provisions, which allowed the accelerated and simplified processing of such cases, pursued the legitimate aims of consumer protection and efficient administration of justice.

73. The Court also notes that the procedural time-limits provided in the Uniformity Act were indeed short and complying with them must have required particular effort on the part of the financial institutions in the period following its entry into force. However, nothing in the specific proceedings in which the applicant companies were involved indicates that they were unable to meet the procedural requirements in question. In particular, the proceedings involved a review of documentation and the applicant companies were called upon to provide argumentation and analysis of the relevant STCs, rather than contesting issues of credibility. They were the ones who had instituted the proceedings and therefore they should have been prepared for the subsequent steps to be taken. In this connection, the Court sees no reasons to question the arguments of the Constitutional Court as to the ability of the financial institutions to comply with the procedure provided for in the Uniformity Act (see paragraph 38 above, and, *mutatis mutandis*, *Adorisio and Others v. the Netherlands* (dec.), no. 47315/13 and 2 other applications, §§ 98-104, 17 March 2015).

74. Accordingly, the Court does not find that the applicant companies were prevented from making use of the proceedings available to them under

the Uniformity Act or that their right to a fair trial was otherwise impaired because of the strict procedural rules governing those proceedings.

(b) As regards the alleged interference by the legislature in the administration of justice and the presumption of unfairness in respect of the STCs in question

75. The Court reiterates that, while in principle the legislature is not precluded from adopting new retrospective provisions to regulate rights arising under existing laws, the principle of the rule of law and the notion of fair trial enshrined in Article 6 preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute, save on compelling grounds of the general interest (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 49, Series A no. 301-B, and *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 57, ECHR 1999-VII). Any reasons adduced to justify such measures should be treated with the greatest possible degree of circumspection. Financial considerations cannot by themselves warrant the legislature substituting itself for the courts in order to settle disputes (see *Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, nos. 48357/07 and 3 others, § 76, 24 June 2014, and the authorities cited therein).

76. In its decision *Bárdi and Vidovics v. Hungary* ((dec.) nos. 27514/15 and 13876/16, 19 December 2017), the Court dealt with complaints lodged by consumers who were parties to loan agreements affected by the Uniformity Act. Although those contracts were affected because of the currency spreads, rather than the unilateral modification of the contracts, the arguments concerning the legislative interference with the ongoing proceedings were similar to the arguments of the applicant companies in the present case (see paragraphs 59 and 65 above).

77. In the aforementioned case the Court noted that there was an important distinction between the effect of the Uniformity Act on the ongoing proceedings and cases in which the Court had previously found a violation. In particular, the State had not been a party to the proceedings which had been suspended under the Uniformity Act and the sole purpose of the impugned legislation had been to ensure that the principles laid down in the Uniformity Decision were enforced directly, in respect of not only pending litigations but also non-litigated claims (see *Bárdi and Vidovics*, cited above, § 28). It was further observed that the Uniformity Decision had given guidance on resolving the issues of foreign-currency consumer loan agreements and that a reaction by Parliament could thus have been foreseen. Moreover, the Court saw no reason to assume that such guidance would not have had to be followed by the domestic courts in any case, even without the enactment of the new legislation (ibid.). The Court went on to note that the rationale of the impugned legislation was to ensure that all claims

relating to the same subject matter could be resolved in a prompt and comprehensive manner, avoiding any inconsistency in case-law and overburdening of the judicial system. It concluded that the first applicant's action would, in all likelihood, have had the same outcome, if only after much more time-consuming court proceedings (see *Bárdi and Vidovics*, cited above, § 29).

78. In the present case, the parties did not provide any detailed information concerning the pending proceedings, which had allegedly been suspended, to allow the Court to assess the actual effect of the Uniformity Act on them. In any event, the above considerations set out in the *Bárdi and Vidovics* decision (see paragraph 77 above) apply also to the situation complained of by the applicant companies. In particular, the Court notes that the purpose of the Uniformity Act was clearly not to determine the outcome of the proceedings in favour of the State (see, by contrast, *Maggio and Others v. Italy*, nos. 46286/09 and 4 others, § 44, 31 May 2011), but to ensure consumer protection and public interest in general. What is more, the applicant companies must have been aware of the potentially unfair nature of the STCs in question a long time ago, as the Unfair Terms Directive of 1993, which became applicable to Hungary on 1 May 2004 and the *Kúria's* opinions and decisions interpreting the applicable domestic legislation, in particular Opinion no. 2/2012 and the Uniformity Decision, made it clear that STCs allowing the unilateral amendment of contracts and causing a significant imbalance in the parties' rights and obligations should not have been binding for the consumer (see paragraphs 101 to 104 below).

79. The applicant companies also complained about the presumption that STCs allowing the unilateral increase of interest rates, fees and costs were unfair (see paragraphs 59 and 65 above). The Court observes in this connection that presumptions of fact or of law operate in every legal system (see *Salabiaku v. France*, 7 October 1988, § 28, Series A no. 141-A) and there is nothing in the Convention prohibiting such presumption in the sphere of civil law, so long as the guarantees of a fair trial, such as equality of arms, are respected. Moreover, it is not the Court's task to take the place of the domestic courts and it is for them to interpret legislation and assess the facts. The Court is therefore not empowered to substitute its own assessment of the facts and domestic law for that of the domestic courts (see *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR 2012).

80. In the present case, the impugned presumption, indeed, operated in favour of consumers. However, section 11 of the Uniformity Act clearly provided that after the financial institutions had initiated proceedings, it was for the domestic court to determine whether the relevant STCs complied with the seven principles set out in section 4 of the Uniformity Act (see paragraph 51 above). If the impugned contractual term was in compliance with such principles the domestic courts should declare it fair, and as such

applicable (see paragraph 51 above). The Court notes in this connection that there is no indication that the applicant companies did not have sufficient opportunity to submit the evidence and arguments which they thought necessary to prove that the relevant STCs were fair (see paragraph 73 above) or that the standard of proof was set excessively high. Furthermore, nothing in the file suggests that the Hungarian courts assessed the arguments submitted to them by the applicant companies arbitrarily. The fact that those arguments were rejected and that the relevant STCs were declared unfair does not, in itself, infringe the principles of a fair trial and equality of arms.

81. Accordingly, the Court finds no indication that the impugned presumption was applied in a manner incompatible with Article 6 § 1 of the Convention.

(c) Conclusion

82. The Court finds that the impugned legislation and its effect on the applicant companies' civil rights and obligations do not disclose any appearance of a violation of Article 6 § 1 of the Convention.

83. It follows that this part of the applications is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

C. Complaint under Article 1 of Protocol No. 1 of the Convention

84. The applicant companies also complained of a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

1. The parties' submissions

(a) The applicant companies

85. The applicant companies submitted that the protection of property extended to contractual rights and legal claims by private entities, and that they should be considered as having assets under Hungarian law. The statutory presumption of unfairness of the STCs allowing for unilateral contract modification could, in their view, be considered an interference amounting to deprivation of their possessions.

descargado en www.asufin.com

86. The applicant companies alleged a violation of Article 1 of Protocol No. 1 on three grounds. Firstly, although when originally drafted and applied, the STCs in question had complied with the relevant legislation, such as the old Credit Institutions Act (see paragraphs 46 to 48 above) and the Government Decree (see paragraph 40 above), they were now, under the Uniformity Act, considered invalid with retroactive effect. As a result, the applicant companies' had been obliged to accept set-off or to reimburse interest which consumers had paid on the basis of such STCs. Such retroactive legislation was incompatible with the rule of law and legal certainty.

87. The applicant companies further argued that the seven principles set out in the Uniformity Act did not comply with the old or the new Civil Code (see paragraphs 42 to 45 above) or with the Unfair Terms Directive (see paragraphs 54 to 55 above). In their view, the relevant civil-law provisions applicable to the loan contracts transposed the Unfair Terms Directive, Article 1 (2) of which precluded the unfairness of those contractual terms that reflected mandatory statutory provisions. Additionally, the Uniformity Decision was not merely a restatement of Opinion no. 12/2012 (see paragraphs 10 to 11 above), because the latter precluded the unfairness of contractual terms which complied with legislation, including the Government Decree. Moreover, the Uniformity Act likewise departed from the Uniformity Decision (see paragraph 12 above) as it set out the presumption of unfairness. It replaced, with retroactive effect, the rule that had allowed the issue of unfairness to be brought up in court, which had applied in the period from 2004 to 2006 under the provisions of the old Civil Code (see paragraph 42 above), with automatic nullification of the relevant STCs.

88. Secondly, the applicant companies submitted that under Hungarian law the statute of limitation was five years. From the perspective of the debtor, claims that could arise in the course of the fulfilment of a loan contract were separately enforceable and thus lapsed separately on the basis of the statute of limitation. The interpretation concerning the statute of limitation introduced by the Uniformity Act run contrary to this established rule and its retrospective scope extended for more than ten years, reopening very substantial claims on the part of debtors against the applicant companies.

89. Thirdly, referring to their arguments relating to their complaint under Article 6 § 1 (see paragraph 64 above), the applicant companies argued that the Uniformity Act did not sufficiently protect their procedural rights.

90. In relation to the above aspects, the applicant companies submitted that the OTP Bank Group (see paragraph 4 above) had had to reimburse to its consumers more than HUF 142 billion. They argued that the impugned measures did not take into account the benefits enjoyed by consumers who had taken out foreign-currency loans, or the fact that the Early Repayment

Act had already provided a favourable solution for consumers. Moreover, in their opinion, the obvious objective of the legislator had been to improve the position of customers who had taken out foreign-currency loans and had been forced to pay significantly higher instalments following the 2008 financial crisis. The change in the instalments, however, had been mostly attributable to the changes in foreign-exchange rates resulting from the crisis, rather than to unilateral increases in interest rates and fees applied by financial institutions.

(b) The Government

91. The Government argued that the applicant companies had never had a valid legal basis under domestic law with respect to the enrichment or pecuniary assets they had derived from the use of unfair contractual terms, and thus Article 1 of Protocol No. 1 was not applicable. In particular, the standards of fairness had not changed with the introduction of the Uniformity Act, but could be inferred from the general legal provisions existing beforehand. The applicant companies, as financial institutions, should have been aware of those standards, as well as of the fact that a significant, parallel exchange-rate change and interest-rate increase could endanger consumers' ability to repay their loans. As regards the applicant companies' arguments relating to Opinion no. 2/2012 (see paragraphs 10 and 11 above), the Government submitted that Government Decree No. 275/2010 (see paragraph 40 above) had not exhaustively specified the content of the unilaterally modifiable clauses. In the Government's submission, the outcome of the proceedings, that is the finding that the STCs were unfair, would have been the same even without the introduction of the Uniformity Act, the only difference being the shift in the burden of proof.

92. The Government maintained that the impugned statutory provision concerning the statute of limitations had merely enacted the interpretation of existing domestic law with a view to ensuring its uniform application. The Government also argued that the running of the statute of limitations in respect of separate instalments was conceptually impossible. It was used by banks only to consumers' detriment and not when it came to the banks' collection of late instalment payments. The Government also referred to Opinion no. 3/2011 (see paragraph 9 above) and the 1993 Unfair Terms Directive (see paragraphs 54 to 55 above), submitting that unfair STCs had already been considered null and void in the period between 2004 and 2006. The impugned provisions did not, therefore, amount to interference with the applicant companies' right to property. In any event, the settlement obligations arising from the rules governing the interpretation of the statute of limitations did not impose a disproportionate burden on the banks, as those obligations constituted only a fraction of the total settlement obligations.

93. The Government further argued that the financial institutions had been aware of the principles concerning fairness of STCs allowing the unilateral increase of interest rates, fees and costs, but had refrained from acting in a law-abiding manner until the adoption of the Uniformity Act. Also, they had been forewarned of the actions that would be taken under the Uniformity Act through the media coverage of the Government's intention to address the issue and the large number of legal actions continuously lodged against the financial institutions.

94. Lastly, as regards the procedural safeguards in the proceedings, the Government referred to the arguments they had submitted in respect of the Article 6 § 1 complaint (see paragraph 67 above).

2. The Court's assessment

95. The applicant companies complained that the Uniformity Act had retroactively affected their contractual rights and obligations and had forced them to repay, *inter alia*, interest which consumers had been made to pay on the basis of lawful STCs which had subsequently been declared unfair (see paragraphs 60 and 85 to 90 above).

96. The Court notes that the Government contested the applicability of Article 1 of Protocol No. 1 to the case. The Court considers that in view of its finding of inadmissibility (see paragraph 111 below), it is not necessary to definitely resolve this question. It will proceed on the assumption that the payments made pursuant to the STCs in question and the applicant companies' expectations of future payments to be made by their customers pursuant to those STCs amounted to "possessions" and that Article 1 of Protocol No. 1 is therefore applicable in the present case.

97. The Court will likewise assume that the application of the Uniformity Act in the proceedings brought by the applicant companies resulted in an interference with their right to property. Since the Uniformity Act was adopted as a measure to control the banking sector in the country and its implementation likewise amounted to such control, the Court considers that the second paragraph of Article 1 of Protocol No. 1 is applicable to the present case (see, *mutatis mutandis, Capital Bank AD v. Bulgaria*, no. 49429/99, § 131, ECHR 2005-XII (extracts)).

98. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). Moreover, and in addition to there being a public interest within the meaning of Article 1 of Protocol No. 1, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *James and Others v. the United Kingdom*, 21 February 1986, § 50, Series A no. 98). In particular, a "fair balance" must be struck between the general interest of the community and the need to protect the individual's

fundamental rights. The requisite balance will not be found if the person concerned has had to bear "an individual and excessive burden" (see *Depalle v. France* [GC], no. 34044/02, § 83, ECHR 2010).

99. In the present case, the parties agreed that the interference at issue was based on the relevant provisions of the Uniformity Act. In so far as the applicant companies complain that the Uniformity Act's retroactive effect was not compatible with rule of law (see paragraph 86 above), the Court will address this issue under its assessment of the proportionality of the interference. As to the aims pursued by the interference, the Court refers to the explanatory memorandum to the Uniformity Act (see paragraph 53 above) and the 2014 Constitutional Court's decision explaining that the impugned measures were aimed at preventing a backlog in the domestic courts and at protecting customers (see paragraph 39 above). The Court, finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 37, Series A no. 332), which is clearly not the case in this instance.

100. It remains to be determined whether the interference complained of struck a "fair balance" between the general interest of the community and the need to protect the individual's fundamental rights (see paragraph 98 above). The Court notes in this connection that the present case concerns an area of banking-sector regulation and a need to respond to financial crises affecting a large group of individuals. Therefore, and in view of the sensitive nature of the social and financial issues involved in achieving a proper balance between the respective interests of banks, consumers and the national economy, the State must be considered to enjoy a wide margin of appreciation (see, *mutatis mutandis*, *Capital Bank AD*, cited above, § 136, and *Feldman and Slovyanskyy Bank v. Ukraine*, no. 42758/05, § 54, 21 December 2017).

101. The Court must first address the applicant companies' argument that the STCs in question had been valid at the time of the conclusion of the loan contracts but were then retroactively qualified as unfair, and nullified. This resulted in an obligation on the part of the applicant companies to refund consumers sums which the applicant companies considered to have been rightfully received (see paragraphs 86 and 87 above).

102. The Court notes that the Uniformity Act indeed provided that STCs which allowed the unilateral increase of interest rates, costs or fees were to be considered unfair if they had been concluded after 1 May 2004 and unless the financial institutions proved that they complied with seven principles aimed at securing the fair terms of such contracts, set out in section 4(1) of the Uniformity Act. The Court however notes that in the proceedings brought by Merkantil Car Zrt. and Merkantil Bank Zrt., the

Budapest Court of Appeal held that the Uniformity Act did not define new grounds of invalidity but codified the uniform judicial practice concerning section 209(1) of the old Civil Code (see paragraph 21 above). Likewise, the Constitutional Court held in its decision of 11 November 2014 that the Uniformity Act had merely "codified ... an interpretation developed and made mandatorily applicable in the practice of the European and domestic courts" and that it was in line with the old (and the new) Civil Code and the principles laid down by the *Kúria* on the issue of the fairness of the STCs in question (see paragraph 35 above).

103. The Court observes in this connection that the seven principles were listed for the first time in the *Kúria's* Opinion no. 2/2012, delivered in 2012 (see paragraphs 10 and 11 above). However, STCs which, contrary to the requirement of good faith, caused a significant imbalance in the parties' rights and obligations to the detriment of the consumer were already to be regarded as unfair under the Unfair Terms Directive, which became applicable to Hungary as of 1 May 2004 (see paragraphs 54 to 55 above). The precise content of that principle was to be interpreted by the domestic authorities and could go beyond that of the list provided in the appendix to the directive (see paragraphs 58 and 87 above). It could thus naturally involve the consideration of circumstances which later became known as the list of seven principles (see paragraph 35 above). In this connection, the Court finds nothing in the old Civil Code (see paragraphs 42 to 44 above) or in the applicant companies' submissions that would have given rise to a reasonable expectation on their part that the STCs in the contracts concluded since 1 May 2004 and not complying with the aforementioned seven principles would be considered fair by the domestic courts. This is even more so as regards the principle of clear and intelligible wording (see paragraphs 28 and 34 above), which was explicitly emphasised in the Unfair Terms Directive (see Article 4 § 2 and Article 5 cited in paragraphs 55 above).

104. The Court further notes that already under the terms of the Unfair Terms Directive (see paragraphs 55 and 57 above) the unfairness of STCs was to be determined by the domestic courts of their own motion and the consumer was not to be bound by unfair STCs. As regards the applicant companies' arguments that the STCs in question were valid under the old Credit Institutions Act and the Government Decree, and that Opinion no. 12 precluded the unfairness of such terms, namely terms which complied with the relevant legislation (see paragraphs 86 and 87 above), the Court reiterates that it is in the first place for the domestic authorities, notably the courts, to interpret and apply the domestic law (see *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 86, ECHR 2005-VI). The Constitutional Court explained that although the old Credit Institution Act allowed the unilateral modification of contracts, it had not given the financial institutions an unconditional right in this connection. Instead, the

latter continued to be bound by the principles of good faith and fairness (see paragraph 35 above). The applicant companies did not submit any persuasive arguments which would call into question this finding. Furthermore, contrary to the applicant companies' suggestions (see paragraph 87 above), Opinion no. 2/2012 explicitly provided that the seven principles must be applied to STCs that otherwise complied with the law (see paragraphs 10 and 11 above).

105. The Court must next examine whether, in view of the above considerations, section 1(6) of the Uniformity Act concerning the statute of limitations could also be justified under Article 1 of Protocol No. 1 (see paragraph 88 above). It observes that the impugned provision set out a statutory interpretation of the civil-law statute of limitation when applied to claims arising out of consumer loan agreements. The general rule under the old Civil Code provided that the limitation period should start to run from the date on which the contractual relationship terminated (see paragraph 41 above). Section 1(6) of the Uniformity Act provided that this rule should be interpreted so that during the existence of the loan contract, the claims did not lapse and the statute of limitation commenced upon termination of the contract (see paragraph 51 above).

106. The Court notes in this regard that the applicant companies did not describe the actual detrimental effect of the impugned provision on them. In particular, they did not demonstrate that any of their particular obligations stemming from the unfair STCs, as discussed above (see paragraphs 101 to 103 above), had become statute-barred under the old Civil Code but were considered to be legally enforceable under section 1(6) of the Uniformity Act.

107. In any event, the Court observes that the Constitutional Court, which was clearly better placed to interpret domestic law, persuasively explained why the statutory interpretation provided in section 1(6) of the Uniformity Act was not contrary to the old Civil Code's statute of limitation (see paragraph 37 above). It would also point out that the restrictive application of the time-limits on the courts' power to set aside unfair terms might compromise the effective protection of consumers, as emphasised by the CJEU in the case of *Cofidis SA v Jean-Louis Fredout* (see paragraph 57 above).

108. As regards the overall effect of the Uniformity Act, in particular the presumption of unfairness in respect of the relevant STCs, which was detrimental to the financial institutions, the Court notes that the applicant companies were not specifically targeted by the impugned legislation. Rather, the Act was part of wider legislative efforts pursued by the respondent State in response to the financial crisis in which people who had taken out foreign-currency loans were particularly affected (see paragraphs 7 to 8 and 13 to 16 above). The Court considers that it was primarily for the legislator to balance all the interests at stake, including

those of consumers, banks and the national economy, and in doing so it had to be allowed some discretion (see, *mutatis mutandis*, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 111, ECHR 2013 (extracts).

109. As regards the question whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *James and Others*, cited above § 50), the Court finds the following factors of further relevance. First, the presumption of unfairness in respect of STCs which allowed the unilateral modification of interest rates, costs or fees could be rebutted if the financial institutions proved that the STCs in question complied with the seven principles aimed at securing the fair terms of such contracts, set out in section 4(1) of the Uniformity Act (see section 11(3) of the Uniformity Act cited in paragraph 51 above). The Court has already found that the applicant companies had an opportunity to prove the fairness of the relevant STCs in the proceedings they had instituted under the Uniformity Act. It finds no indication that the applicant companies' interests were insufficiently safeguarded (see *Kotov v. Russia* [GC], no. 54522/00, § 114, 3 April 2012) in those proceedings (see paragraph 80 above). Secondly, by the time the Act came into force, a number of sets of proceedings were already pending against the financial institutions (see paragraphs 8 and 65 above). As the Court found in *Bárdi and Vidovics* (cited above, § 29), those proceedings would have likely had the same outcome as the proceedings under the Uniformity Act, if only after much more time. Thirdly, it cannot be said that the applicant companies' claims stemming from the loan contracts affected by the Uniformity Act were extinguished (see, by contrast, *Pressos Compania Naviera S.A.*, cited above, § 39). Indeed, the consequences of the Uniformity Act were limited to financial institutions having to reimburse or set off excess consumer payments arising from the unfair unilateral amendments (see paragraphs 14 and 15 above). The determination and modalities of such payments were determined in separate proceedings, which are not the subject of the present applications (see paragraph 15 above).

110. In view of the above consideration and having regard to the margin of appreciation left to States concerning "the use of property in accordance with the general interest" (see paragraph 100 above), the Court considers that the Uniformity Act and its effect on the applicant companies did not upset the balance which must be struck between the protection of the applicant companies' rights and the public interest.

111. Accordingly, this part of the applications is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 20 December 2018.

Marialena Tsirli
Registrar

Ganna Yudkivska
President

descargado en www.asufin.com

APPENDIX

No.	Application no.	Lodged on	Applicant company Address of the company
1.	22853/15	04/05/2015	**MERKANTIL CAR ZRT.** József Attila u. 8. H-1051 Budapest
2.	22858/15	04/05/2015	**MERKANTIL BANK ZRT.** József Attila u. 8. H-1051 Budapest
3.	33424/15	07/07/2015	**OTP JELZÁLOGBANK ZRT.** Nádor u. 21. H-1051 Budapest
4.	33426/15	07/07/2015	**OTP BANK NYRT.** Nádor u. 16. H-1051 Budapest
5.	33737/15	07/07/2015	**OTP INGATLANLÍZING ZRT.** Vérmező út 4. H-1012 Budapest

descargado en www.asufin.com