

CONSUMER ENFORCEMENT OPPORTUNITIES – NEW APPROACHES AND TRENDS IN HUNGARIAN PROCEDURAL LAWS

Katalin Gombos

University of Public Service, Budapest; Hungary

simonne.gombos.katalin@uni-nke.hu

&

András J. Pomeisl

Peter Pazmany Catholic University, Budapest, Hungary

pomeisl@birosag.hu

GOMBOS, Katalin; POMEISL, J. András. Consumer Enforcement Opportunities – New Approaches and Trends in Hungarian Procedural Laws. *International and Comparative Law Review*, 2022, vol. 22, no. 1, pp. 73–86. DOI: 10.2478/iclr-2022-0004

Summary: The European Union has put in place EU rules on consumer contracts and enforcement of consumer rights. These tendencies have also had a significant impact on the Hungarian legislation of recent years. We would describe some provisions of the new Hungarian Code of Civil Procedure concerning consumer enforcement and the Hungarian experience of Directive 93/13/EEC so far. The new Hungarian Code of Civil Procedure has reformed domestic rules on jurisdiction in the field of a consumer's claim arising from a contractual relationship. The article also covers the following areas of law: Hungarian experience with foreign currency-based loan agreements, reforms to the preliminary ruling procedure in the new Hungarian Code of Civil Procedure.

Keywords: the new Hungarian Code of Civil Procedure, consumer protection, jurisdiction, preliminary ruling procedure, consumer loan agreements, ex officio.

1 Introduction

The topic of procedural specifics of consumer dispute resolution is very fancy because the consumer protection law is a real success story in the European Union, which is clearly demonstrated by the sheer number of EU norms adopted in this particular field of law. In our opinion this legislation is still one of the most dynamically evolving fields of law of the European Union at present, in other words, judicial cooperation in civil and commercial matters in general, and judicial cooperation in procedural law in particular, is the “flagship” in this area.

The European Union has put in place EU rules on consumer contracts and enforcement of consumer rights which rules guarantee fair treatment, products that meet acceptable standards, and a right of redress if something goes wrong. In Europe the first main step was on this road to adopt in 1993 the directive on unfair terms in consumer contracts¹ (hereinafter: Directive 93/13).

National courts in Hungary use the Directive 93/13 very often and they send a lot of questions² to the Court of Justice of the European Union (hereinafter: CJEU). The dialogue with the CJEU in this area has led to a number of dogmatic procedural changes. Our first examined aspect of this topic is the judicial cooperation between CJEU and national courts in this field. The form of this cooperation is the preliminary ruling procedure. The second topic is to show how the Directive 93/13 and its judicial interpretative practice affected the codification of the new Hungarian Code of Civil Procedure, and what new procedural rules were introduced into Hungarian law as a result. In this paper, we do not touch on the procedural rules of collective redress, because this topic is dealt with in a separate study.

2 Preliminary ruling procedure

To ensure the effective and uniform application of European Union legislation and to prevent divergent interpretations, the national courts may, and sometimes must, refer to the CJEU and ask it to clarify a point concerning the interpretation of EU law.³

The new Hungarian Code of Civil Procedure modernised the Hungarian national procedural rules⁴ of the preliminary ruling procedure. It means in generally a beneficial effect on consumer protection and a right of consumer's redress too because the jurisprudence of the CJEU in the field of consumer pro-

1 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

2 See more details: GOMBOS, Katalin, LEHÓCZKI, Balázs. A tisztességtelen szerződési feltételek eltávolítása a magyarországi devizaalapú hitelszerződésekből. *Jogtudományi közlöny*, 2019, vol. 74, no.11 pp. 434–444.

3 See LACCHI, Clelia. *Preliminary References to the Court of Justice of the European Union and Effective Judicial Protection*. Brussels: Larcier, 2020, 348 p.; ROSAS, Allan. The Preliminary Rulings Procedure (Chapter 13). In PATTERSON, Dennis, SÖDERSTEN, Anna (eds). *A Companion to European Union Law and International Law*. Hoboken: Wiley-Blackwell 2016. pp. 179–192. DOI: <https://doi.org/10.1002/9781119037712.fmatter>; BROBERG, Morten, FENGER, Niels. *The Procedure before the Court of Justice*. Oxford: Oxford Scholarship, 2021. DOI: <https://doi.org/10.1093/oso/9780198843580.003.0010>; IGLESIAS, Gil Carlos Rodriguez. Der EuGH und die Gerichte der Mitgliedstaaten – Komponenten der richterlichen Gewalt in der Europäischen Union. *Neue Juristische Wochenschrift*, 2000, vol. 53, no. 27, pp. 1889–1896.

4 See more details: GOMBOS, Katalin. Impacts of European Law on the Rules of Remedy of the New Code of Hungarian Civil Procedural Law. *Acta Universitatis Sapientiae Legal Studies*, 2018, vol. 7, no. 1, pp. 5–29. Available at: <http://www.acta.sapientia.ro/acta-legal/C7-1/legal71-01.pdf>

tection law has clearly highlighted the need for an autonomous EU terminology. This procedure is in itself capable of judicial legal protection because procedural law can only serve the efficient protection of rights, if EU rules are uniformly interpreted.⁵

Our procedural rules limit the possibility of review for certain types of cases and decisions. Under these rules no judicial review may be requested in respect of actions relating to property rights where the value disputed in the application for review does not exceed five million Hungarian forints (approximately 13200 euros).⁶ Preclusion according to value limit shall not apply some specific actions.⁷

Furthermore, judicial review may not be requested in actions relating to property rights, if the court of second instance upheld the judgment of the court of first instance on the grounds of the same statutory provision and the same legal statement of reasons⁸.

But our new rules in connection with preliminary ruling procedure define conditions for the exceptional authorisation of judicial review. If no judicial review may be requested under general rule (Section 408), yet review is not precluded by an act for other reasons, the Curia of Hungary (Hungarian Supreme Court) shall authorize the judicial review where examination of an infringement having an impact as to the merits of the case is considered necessary – among others – for initiating the preliminary ruling procedure of the CJEU, in the absence of a decision by the court of second instance to that effect. The application for the authorization of judicial review shall specify questions of law underlying the need for preliminary ruling of the CJEU.

In this case, the condition for granting the review is that the application or non-application of EU law has affected the merits of the case and the Curia of Hungary considers that the legal issue raised by the party should be referred to the CJEU. According to the rule the Curia of Hungary shall authorise the judicial review where examination of an infringement having an impact as to the merits of the case is considered necessary for initiating the preliminary ruling proce-

5 Upon the matter of legal remedies comprehensively see: DOUGAN, Michael. *National remedies before the Court of Justice. Issues of harmonisation and differentiation*. Oxford: Hart Publishing, 2004, 424 p.; GOMBOS, Katalin. The Levels and Steps of the Judicial Protection Arising from the European Law. In BLUTMAN, László (ed.). *Ünnepi kötet Dr. Bodnár László egyetemi tanár 70. születésnapjára*. Szeged: Acta Universitatis Szegediensis. Acta Juridica et Politica. Tom. 77. Szegedi Tudományegyetem Állam – és Jogtudományi Kar, 2014. pp. 123–134. Available at: http://digit.bibl.u-szeged.hu/00000/00051/00442/juridpol_077.pdf

6 Section 408 (1) [Preclusion of judicial review in certain actions relating to property rights].

7 Preclusion according to value limit shall not apply to actions for damages connected with the exercise of public authority, and/or for the payment of restitution, and to actions relating maintenance or sustenance obligations, other annuities.

8 Section 408 (2) [Preclusion of judicial review in certain actions relating to property rights].

dures of the CJEU, in the absence of a decision by the court of second instance to that effect. For the purposes of this provision, it is not possible, as a general rule, for a party to first apply to the CJEU in its application for review. Exceptionally, however, although a party may first apply to the CJEU in its application for leave to review, it may request that the review be granted. This may be in case if the party has not previously initiated a request to the CJEU because, for the first time, it has been confronted with a final decision that the interpretation of Hungarian law governing the dispute is typically different from what it considers to be the correctness of an EU directive. Such a situation may arise as a result of a reversal of a decision at first instance which is more advantageous to a party. However, enabling review is not automatic. The Curia of Hungary should also consider whether it is necessary to initiate a preliminary ruling procedure to address the relevant legal issue in order to address the violation identified in the permit application.

According to the common correct interpretation of the rules on authorisation of review, a party is not precluded from seeking authorisation for review on the basis of an infringement of EU law in other cases. In this case, the application is based in conjunction with other rules. In such case, the party shall also state the reasons for granting the review in its request. The Hungarian Code of Civil Procedure pursuant to Section 409 (2) (a)⁹, a review is permitted if the Curia of Hungary has not yet taken a position on this point of law and the decision challenged by the review is contrary to one or more appellate or supreme court decisions designated by the party. In addition, Hungarian Code of Civil Procedure pursuant to Section 409 (2) (b),¹⁰ the special importance of the question of law beyond the individual case may also give rise to a review if, for example, a party infringes the application of a secondary EU law which it considers invalid in its application for review, that, under point (b) of the first paragraph of Article 267 TFEU, the CJEU has competence to assess the validity of acts of the institutions, bodies, offices or agencies of the Union. Derogation from the interpretation of EU law applied in a decision taken by the Curia of Hungary after 1 January 2012 pursuant to Section 409 (3) of the Hungarian Code of Civil Procedure may also justify the granting of a review.¹¹

These new procedural rules can make the enforcement of consumer rights much more effective, especially in the context of an EU directive.

9 Section 409 (2) (a): The Curia of Hungary shall authorise the judicial review where examination of an infringement having an impact as to the merits of the case is considered necessary so as to ensure the uniformity or enhancement of legal practices.

10 Section 409 (2) (b): The Curia of Hungary shall authorise the judicial review where examination of an infringement having an impact as to the merits of the case is considered necessary due to the special weight and/or social significance of the questions of law at hand.

11 Section 409 (3): The Curia of Hungary shall authorise the judicial review if the judgment deviates in questions of law from the published Curia of Hungary decision.

3 Jurisdiction

The new Hungarian Code of Civil Procedure has reformed domestic rules on jurisdiction in the field of a consumer's claim arising from a contractual relationship. This change is also linked to the case law CJEU on consumer redress and the effectiveness of the consumer's right of access to a court. The Hungarian courts have initiated a number of preliminary ruling procedures concerning the interpretation of Directive on unfair contract terms in foreign currency-based consumer loan agreements.

Initially, the preliminary ruling proceedings focused on substantive issues, such as nullity and unfairness. However, even early submissions have raised interesting procedural issues, two of which are frequent areas: the issue of *ex officio* and issues of jurisdiction.

3.1 Territorial jurisdiction clauses in consumer contracts

Territorial jurisdiction clauses in consumer contracts have been addressed several times by the Supreme Court and then by the Curia of Hungary.¹² In many cases, general term of contracts (GTC) contained territorial jurisdiction clauses, a significant part of which stipulated the territorial jurisdiction of the largest district court in the country, the Pest Central District Court, but there were companies that stipulated the territorial jurisdiction of a smaller district court, such as the Budaörs District Court or the Gödöllő District Court. While the stipulation of the territorial jurisdiction of the Central District Court of Pest was initially a problem only for consumers who were forced to travel to Budapest from remote settlements in Hungary, the stipulation of territorial jurisdiction of smaller district courts meant a significant increase in workload for them and for courts serving as second-instance court in these cases and could jeopardize the completion of cases within a reasonable time.

In order to solve the problem, the legislator took first steps. The legislator amended the old Hungarian Code of Civil Procedure¹³ and, from 30 June 2009, prohibited the stipulation of the territorial jurisdiction of the Pest Central District Court, the Budapest Regional Court and the Pest Regional Court.¹⁴ However, this legislative amendment could not solve the problem of other district courts than the Pest Central District Court. This led the Budaörs District Court to make a preliminary ruling to the CJEU, whether and under what conditions a court may examine of its own motion the unfairness of a territorial jurisdiction

12 The Supreme Court of Hungary was the highest-level court in Hungary before 1 January 2012 under the Section 47 (1) of Act Nr. XX of 1949 on the Constitution of Republic of Hungary. Since 1 January 2012, the highest-level court in Hungary is the Curia of Hungary under the Article 25 (1) of Fundamental Law of Hungary.

13 The Act Nr. III of 1952 on Civil Procedure, which was in force until 31 December 2017.

14 See: Section 41 (6) of old Hungarian Code of Civil Procedure, amended by Section 62 (1) of Act Nr. L of 2009 on the order for payment procedure.

clause in a consumer contract in an order for payment procedure.¹⁵ The CJEU held that,

‘1.) Article 6(1) of Council Directive 93/13/EEC of 5 April 1993, on unfair terms in consumer contracts, must be interpreted as meaning that an unfair contract term is not binding on the consumer, and it is not necessary, in that regard, for that consumer to have successfully contested the validity of such a term beforehand.

2. The national court is required to examine, of its own motion, the unfairness of a contractual term where it has available to it the legal and factual elements necessary for that task. Where it considers such a term to be unfair, it must not apply it, except if the consumer opposes that non-application. That duty is also incumbent on the national court when it is ascertaining its own territorial jurisdiction.

3. It is for the national court to determine whether a contractual term, such as that which is the subject-matter of the dispute in the main proceedings, satisfies the criteria to be categorised as unfair within the meaning of Article 3(1) of Directive 93/13. In so doing, the national court must take account of the fact that a term, contained in a contract concluded between a consumer and a seller or supplier, which has been included without being individually negotiated and which confers exclusive jurisdiction on the court in the territorial jurisdiction of which the seller or supplier has his principal place of business may be considered to be unfair.¹⁶

Following the decision of the CJEU, the Supreme Court adopted Opinion Nr. 2/2011 PK on certain issues related to the validity of a consumer contract.¹⁷ According to this Opinion, stipulating in a consumer contract the territorial jurisdiction of the court of domicile or registered office of the party contracting with the consumer based on a general term of contract or a non-individually negotiated term is unfair; the court designated in the clause is obliged to detect the unfairness of the clause *ex officio* in the context of the examination of its own jurisdiction, but may only transfer the application to the court of general jurisdiction if the consumer invokes the unfairness of the jurisdiction clause at the court's request.¹⁸ If the claimant does not, despite such a territorial jurisdiction clause, bring the action before a court other than that in which the party contracting with the consumer is domiciled, that court must also, in the examining

15 Judgment of the Court (Fourth Chamber) of 4 June 2009, *Pannon GSM Zrt. v Erzsébet Sustikné Györfi*, Case C-243/08, ECLI:EU:C:2009:350.

16 ECLI:EU:C:2009:350.

17 This document is a common position of judges of Civil Department of the former Supreme Court of Republic of Hungary on certain legal issues. It is a non-binding instrument provided for the highest-level court to ensure the uniform application of law as its conclusions are usually followed by the lower courts after its publication.

18 Opinion Nr. 2/2011 PK, Point 5a.

of its jurisdiction, call on the consumer whether it intends to plead the unfairness of the jurisdiction clause; the court must order the transfer of the application or the substantive hearing of the application in accordance with the content of this statement.¹⁹

In the light of that previous case-law, the new Hungarian Code of Civil Procedure²⁰ introduced a new system of territorial jurisdiction over consumer disputes.

According to the new regulation, the court of the defendant's domicile shall have exclusive jurisdiction to sue the consumer for the enforcement of a claim arising from a contractual relationship, unless otherwise provided by law, a binding legal act of the European Union or an international convention. In the absence of domicile, this exclusive jurisdiction shall be based on the defendant's usual place of residence. If the defendant's usual place of residence is unknown or abroad, the last domicile shall prevail; if the last domicile cannot be established, jurisdiction shall be determined in accordance with the general rules. In the case of several defendants, proceedings may be brought against all defendants before a court having jurisdiction over any of the defendants who are consumers.²¹ There is no place for a territorial jurisdiction clause in matters for which the law establishes the exclusive territorial jurisdiction of a court; therefore, in cases initiated against a consumer, the territorial jurisdiction of a court other than the consumer's place of residence cannot be stipulated.²²

In the absence of exclusive jurisdiction, the consumer may bring an action against the business arising from a contractual relationship by the court of his domicile instead of the court having general jurisdiction over the defendant in absence of a domicile, the action may be brought before the court of the place of his residence.²³ There is no place for a jurisdiction clause which excludes the consumer's right to enforce his claim arising from a contractual relationship with the company before the court of his domicile or, in absence of this, his domicile.²⁴

The Hungarian Code of Civil Procedure maintained the rule that the territorial jurisdiction of the Budapest Regional Court, the Budapest Surrounding Regional Court and the Central District Court of Pest could not be stipulated.²⁵

19 Opinion Nr. 2/2011 PK, Point 5b.

20 Act Nr. CXXX of 2016 on Hungarian Code of Civil Procedure.

21 Section 26 (1) of the Hungarian Code of Civil Procedure.

22 Section 27 (4) of the Hungarian Code of Civil Procedure.

23 Section 28 (1) of the Code of Civil Procedure.

24 Section 27 (5) of the Code of Civil Procedure.

25 Section 27 (6) of the Hungarian Code of Civil Procedure.

4 Ex officio

The question of *ex officio* has been considered by the CJEU in another context.²⁶ The main rule is the national procedural autonomy.²⁷ But the CJEU has developed the concept of *ex officio* and relatedly the task of the national judge to actively apply mandatory EU consumer law.²⁸

In the case of VB Pénzügyi Lízing²⁹ related to the Directive 93/13 the CJEU explicitly ordered the national court on the basis of its obligations granted by the provisions of this Directive, to examine whether the given contractual term (the subject of the dispute) forming the base for the proceedings in progress before the court is under the scope of the Directive.³⁰ It is also beyond debate that in special procedural law cases the national court can hold the obligation to evaluate the nature of the unfairness of contractual terms otherwise not complained by the consumer. Yet on the other hand, in the case of Lintner v UniCredit Bank Hungary Zrt., the CJEU proclaimed that at the examination of the unfairness of the disputed contractual term, the national court shall be obliged to consider all the terms of the contract included in its general terms and conditions, and beyond this general terms and conditions, all other possible rights and obligations as well, which are rendered by the national law. Accordingly, the obligatory examination that the national court hearing the case must carry out of its own motion (*ex officio*) pursuant to Directive 93/13 is limited, first, to contractual terms the unfair nature of which can be established on the basis of the elements

26 See more details: GOMBOS, Katalin. Harmonisation of procedural law vs procedural autonomy of the member state (Harmonizácia procesného práva vs procesná autonómia členských štátov). *Studia Iuridica Cassoviensia*, 2018, vol. 6, no. 1 pp. 24–32. Available at: http://sic.pravo.upjs.sk/files/3_gombos_-_harmonization_of_procedural_law.pdf

27 See more details HULMÁK, Milan. Consumer Protection in the Order for Payment Procedure – the Czech and European Perspective. *Journal of European Consumer and Market Law*. 2020, vol. 9, no. 3, pp. 120–124.

28 See this question comprehensively: LENAERTS, Koen, MASELIS, Ignace, GUTMAN, Kathleen (Nowak, Janek Tomasz ed.). *EU Procedural Law*. Oxford: Oxford University Press, 2014, 1056 p., para. 4.39.; GASCÓN INCHAUSTI, Marta, HESS, Burkhard, CUNIBERTI, Gilles, OBERHAMMER, Paul. An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law (Report prepared by a Consortium of European universities led by the MPI Luxembourg for Procedural Law as commissioned by the European Commission) JUST/2014/RCON/PR/CIVI/0082. Strand 2 Procedural Protection of Consumers. Luxembourg: Max Planck Institute, 2017. DOI: <https://doi.org/10.2838/38491>; HARSÁGI, Viktória, GELENCSE, Dániel. National Report – Hungary. In HESS, Burkhard; LAW, Stephanie (eds.). *Implementing EU Consumer Rights by National Procedural Law. Luxembourg Report on European Procedural Law. Volume II*. München: C. H. Beck Verlag, 2019. pp. 1–34.

29 Judgment of the Court (Grand Chamber) of 9 November 2010. *VB Pénzügyi Lízing Zrt. v Ferenc Schneider*, Case C-137/08, ECLI:EU:C:2010:659, para 49.

30 Explicitly the examination of a single concrete term is included in several other cases e.g. in: Judgment of the Court (First Chamber), 14 June 2012, *Banco Español de Crédito, SA v Joaquín Calderón Camino*, Case C-618/10. ECLI:EU:C:2012:349

of law and fact available in the file before that national court. Such an examination must, second, respect the limitations of the subject matter of the dispute, understood as being the result that a party pursues by its claims, in the light of the heads of claim and pleas in law put forward to that end.³¹ The Directive 93/13 requires positive intervention on the part of the national court hearing the case, it is nonetheless necessary, in order for that protection to be granted, for one of the parties to the contract to have brought court proceedings³². Consequently, the national court concerned is deemed to grant to the consumer, pursuant to that directive, by intervention of its own motion (*ex officio*), cannot go so far as to ignore or exceed the limitations of the subject matter of the dispute as defined by the parties by their claims, in the light of the pleas they have raised, with the result that that national court is not required to extend that dispute beyond the forms of order sought and the pleas in law submitted to it, by analysing individually, for the purpose of assessing whether they are unfair, all the other terms of a contract of which only some terms are the subject matter of the action brought before it.³³ That assessment is justified, *inter alia*, by the fact that the principle that the subject matter of an action is delimited by the parties, as well as the principle of *ne ultra petita*, according to which the court cannot rule beyond the pleadings of the parties risk being disregarded if national courts were required, under Directive 93/13, to ignore or exceed the limitations of the subject matter of the dispute established by the forms of order sought and the pleas in law of the parties.³⁴ This interpretation also applies to the provisions of the new Hungarian Code of Civil Procedure governing the conditionality of an action.

5 Parallel litigation concerning consumer contracts concluded in a notarial deed

Consumer credit agreements are often concluded in a notarial deed, which allows the creditor to seek enforcement of the contractual claim directly from the public notary without going to a court.³⁵ In this procedure, the public notary carries out only a formal examination of the enforcement claim; the public notary shall not examine the existence and validity of the claim in this procedure, nor the unfair nature of the terms included in the contract.³⁶ Infringement of Article

31 Judgment of the Court (Third Chamber) of 11 March 2020, *Györgyné Lintner v UniCredit Bank Hungary Zrt.* Case C-511/17, ECLI:EU:C:2020:188 para 28.

32 Judgment of the Court (Third Chamber) of 1 October 2015, *ERSTE Bank Hungary Zrt v Attila Sugár*, C-32/14, EU:C:2015:637, para 63; and ECLI:EU:C:2020:188 para 29.

33 ECLI:EU:C:2020:188 para 30.

34 ECLI:EU:C:2020:188 para 31.

35 See: Section 23/C Act Nr. LIII of 1994 on judicial enforcement.

36 This principle was recently confirmed by uniformity decision Nr 3/2020 PJE on certain aspects of the application of Section 23/C of Act LIII of 1994 on Judicial Enforcement. Uniformity decisions adopted by the highest-level court in Hungary are binding to all courts in Hungary.

6 (1) and Article 7 (1) of Directive 93/13 has previously been alleged in connection with this procedure.

Examining similar Spanish legislation, the CJEU ruled that Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court or tribunal hearing an action for enforcement of an arbitration award which has become final and was made in the absence of the consumer is required, where it has available to it the legal and factual elements necessary for that task, to assess of its own motion whether an arbitration clause in a contract concluded between a seller or supplier and a consumer is unfair, in so far as, under national rules of procedure, it can carry out such an assessment in similar actions of a domestic nature; if that is the case, it is for that court or tribunal to establish all the consequences thereby arising under national law, in order to ensure that the consumer is not bound by that clause.³⁷

Concerning the Hungarian regulations, the CJEU held that Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which allows a notary who drew up, in due form, an authentic instrument concerning a contract concluded between a seller or supplier and a consumer, to affix the enforcement clause to that instrument or to refuse to cancel it when no review of the unfairness of the contractual terms has been performed at any stage.³⁸

In reasoning of its judgement the CJEU noted that adequate and effective means to stop the use of unfair terms in consumer contracts must include provisions enabling the latter to be guaranteed effective judicial protection by making it possible for them to bring legal proceedings against the disputed contract including in the enforcement phase and under reasonable procedural conditions so that the exercise of their rights is not subject to conditions, in particular time-limits or costs which make it excessively difficult or impossible to exercise the rights guaranteed by Directive 93/13.³⁹ In case of Hungarian arrangement, it is clear that the consumer may both bring an action under Article 209/A(1) of the Hungarian Code of Civil Procedure challenging the validity of the contract and may initiate proceedings under Article 369 of the Hungarian Code of Civil Procedure to exclude or limit the enforcement. In the latter procedure the consumer may, under Paragraph 370 of the Hungarian Code of Civil Procedure, request the suspension of the enforcement of the contract at issue in the main proceedings.⁴⁰

37 Judgment of the Court (First Chamber) of 6 October 2009, *Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira*. Case C-40/08, ECLI:EU:C:2009:615.

38 Judgment of the Court (Third Chamber) of 1 October 2015, *ERSTE Bank Hungary Zrt v Attila Sugár*. Case C-32/14, ECLI:EU:C:2015:637.

39 ECLI:EU:C:2015:637, para. 59.

40 ECLI:EU:C:2015:637, para. 60.

In practice, it has often been the case that direct enforcement of notarial deeds has been ordered while the consumer has brought an action for a declaration that the contract is invalid in whole or in part. As the suspension of enforcement proceedings could not be requested in the invalidity action, the consumer was also forced to bring an action for termination and/or restriction of enforcement. Due to the parallel initiation of the action for invalidity and the action for termination and/or restriction of enforcement, the Curia of Hungary set up a case law analysis group on this issue,⁴¹ on the recommendation of which the legislator amended the regulations in force in that time to prevent parallel proceedings.⁴²

Under the amended rules, which were in force only in 2017, if the claimant seeks termination and/or restriction of enforcement relying the invalidity of the claim enforced, he must also bring an action for invalidity of the contract in that process.⁴³ If the plaintiff does not bring an action for invalidity of the contract despite a request for rectification by the court, the action for termination and/or restriction of enforcement based solely on invalidity must be dismissed without a summons or if there is no longer any possibility to dismiss the application without a summons, the case must be terminated.⁴⁴ A court having jurisdiction to terminate and/or restrict enforcement shall have jurisdiction even if a dispute concerning the invalidity of the contract on which direct enforcement is based falls within the jurisdiction and jurisdiction of another court.⁴⁵ Processes on an action for termination and/or restriction of enforcement in which the plaintiff alleges that the enforcement shall be terminated and/or limited on the basis of invalidity shall be suspended pending a final decision on the action for invalidity of the contract, if the action for invalidity has been instituted earlier or was brought by a person other than the plaintiff in the action for terminated and/or restriction of enforcement.⁴⁶

However, this solution did not provide effective legal protection for the consumer, as the specific rules of a lawsuit for termination and / or restriction of enforcement were not really suitable for a thorough examination of all aspects of invalidity. In view of this shortcoming, in the light of the recommendation of

41 For the Summary Opinion of the case law analysis group dealing with certain substantive and procedural issues in actions for a declaration of invalidity and termination of a contract initiated 'in parallel' see: A „*párhuzamosan*” megindított szerződés érvénytelenségének megállapítása és végrehajtás megszüntetése (korlátozása) iránti perek egyes anyagi – és eljárásjogi kérdéseivel foglalkozó joggyakorlat-elemző csoport tevékenységéről Összefoglaló vélemény. [online]. Available at: <https://www.kuria-birosag.hu/hu/joggyakorlat-elemzo-csoportok-osszefoglalo?page=4>.

42 See: Section 4 of Act Nr. CLVIII of 2016 on amending Act Nr. LXXX of 2003 on Legal Aid and certain Acts related to procedural issues.

43 Section 370/B (1) of the old Code of Civil Procedure.

44 Section 370/B (2) of the old Code of Civil Procedure.

45 Section 370/B (4) of the old Hungarian Code of Civil Procedure.

46 Section 370/B (5) of the old Hungarian Code of Civil Procedure.

the case law analysis group, the new Hungarian Code of Civil Procedure resolved parallelism in a different way.

The new Hungarian Code of Civil Procedure has eliminated the possibility for the consumer to invoke the invalidity of an enforced claim in the context of a lawsuit for the termination and / or restriction of enforcement. At the same time, the law provides that if enforcement is pending and the claim which is the subject of the enforcement or the legal relationship on which it is based is the subject of the proceedings, the court may suspend enforcement until the final conclusion of the proceedings, so the court could suspend enforcement also in action for invalidity.⁴⁷

This solution also had an additional advantage. For a long time, previous case-law did not allow an action for a declaration of invalidity to be brought if enforcement had not yet been ordered under the contract, since the law precluded an action for a declaration if the conflict of interest could have been remedied in another way; however, court case law has held that an action for termination of enforcement based on the absence of a valid claim provides adequate legal protection against direct enforcement.⁴⁸ However, under the new regulation, such a lawsuit cannot be initiated, so both conditions for initiating an action for a declaration are met if direct enforcement could be initiated under the contract, so in this case the consumer can initiate an action for invalidity before ordering enforcement.

6 Conclusions and future trends

A number of European sources of law and interpretative case law of the CJEU have contributed to achieving a high level of consumer protection. These tendencies have also had a significant impact on the Hungarian legislation of recent years. The new Hungarian Code of Civil Procedure entered into force on 1 January 2018. As we have presented some of the general provisions of the new Hungarian Code of Civil Procedure on consumer enforcement, as well as the domestic experience of the Unfair Terms in Consumer Contracts Directive so far, the impact of EU law on Hungarian legislation and judicial enforcement is clear.⁴⁹ As a result of the interaction between the Hungarian procedural law and EU law, the effort to ensure a high level of consumer protection is clearly visible.

Important procedural developments are expected in the future to enforce consumer rights as effectively as possible. The European Union has also adopted a number of additional sources of law, which provide the current regulatory framework for consumer protection law. In addition, the Directive 93/13 has

47 See: Section 129 of the new Hungarian Code of Civil Procedure.

48 BH 1985.195., BH 2016.119., but see: BH 2015.71.

49 See more details: GOMBOS, Katalin. Europeanisation effects in the court jurisprudence. *International and Comparative Law Review*, 2019, vol. 19, no. 1, pp. 261–275. DOI: <https://doi.org/10.2478/iclr-2018-0059>

been amended several times. One of the most recent amendments that we would like to draw attention is directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (Text with EEA relevance). As a result of this modernisation the Directive 93/13 became one of the building blocks of the “New Deal for Consumers”, aiming to intensify consumer protection. This challenge for the future is also expected to have a positive impact on procedural law and practice in the Member States.

List of references

- BROBERG, Morten, FENGER, Niels. *The Procedure before the Court of Justice*. Oxford: Oxford Scholarship, 2021. DOI: <https://doi.org/10.1093/oso/9780198843580.003.0010>
- DOUGAN, Michael. *National remedies before the Court of Justice. Issues of harmonisation and differentiation*. Oxford: Hart Publishing, 2004, 424 p.
- GASCÓN INCHAUSTI, Marta, HESS, Burkhard, CUNIBERTI, Gilles, OBERHAMMER, Paul. An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law. (Report prepared by a Consortium of European universities led by the MPI Luxembourg for Procedural Law as commissioned by the European Commission) JUST/2014/RCON/PR/CIVI/0082. Strand 2 Procedural Protection of Consumers. Luxembourg: Max Planck Institute, 2017. DOI: <https://doi.org/10.2838/38491>
- GOMBOS, Katalin, LEHŐCZKI, Balázs. A tisztességtelen szerződési feltételek eltávolítása a magyarországi devizaalapú hitelszerződésekből. *Jogtudományi közlöny*, 2019, vol. 74, no.11 pp. 434–444.
- GOMBOS, Katalin. Europeanisation effects in the court jurisprudence. *International and Comparative Law Review*, 2019, vol. 19, no. 1, pp. 261–275. DOI: <https://doi.org/10.2478/iclr-2018-0059>
- GOMBOS, Katalin. Harmonisation of procedural law vs procedural autonomy of the member state (Harmonizácia procesného práva vs procesná autonómia členských štátov). *Studia Iuridica Cassoviensia*, 2018, vol. 6, no. 1, pp. 24–32. Available at: http://sic.pravo.upjs.sk/files/3_gombos_-_harmonization_of_procedural_law.pdf
- GOMBOS, Katalin. Impacts of European Law on the Rules of Remedy of the New Code of Hungarian Civil Procedural Law. *Acta Universitatis Sapientiae Legal Studies*, 2018, vol. 7, no. 1, pp. 5–29. Available at: <http://www.acta.sapientia.ro/acta-legal/C7-1/legal71-01.pdf>
- GOMBOS, Katalin. The Levels and Steps of the Judicial Protection Arising from the European Law. In BLUTMAN, László (ed.). *Ünnepi kötet Dr. Bodnár László egyetemi tanár 70. születésnapjára*. Szeged: Acta Universitatis Szegediensis. Acta Juridica et Politica. Tom. 77. Szegedi Tudományegyetem Állam – és Jogtudományi Kar, 2014. pp. 123–134. Available at: http://digit.bibl.u-szeged.hu/00000/00051/00442/juridpol_077.pdf
- HARSÁGI, Viktória, Gelencsér, Dániel. National Report – Hungary. In Hess, Burkhard; Law, Stephanie (eds.). *Implementing EU Consumer Rights by National Procedural Law. Luxembourg Report on European Procedural Law. Volume II*. München: C. H. Beck

- Verlag, 2019, pp. 1–34.
- HULMÁK, Milan. Consumer Protection in the Order for Payment Procedure – the Czech and European Perspective. *Journal of European Consumer and Market Law*, 2020, vol. 9, no. 3, pp. 120–124.
- IGLESIAS, Gil Carlos Rodríguez. Der EuGH und die Gerichte der Mitgliedstaaten – Komponenten der richterlichen Gewalt in der Europäischen Union. *Neue Juristische Wochenschrift*, 2000, vol. 53, no. 27, pp. 1889–1896.
- LACCHI, Clelia. Preliminary References to the Court of Justice of the European Union and Effective Judicial Protection, Brussels: Larcier, 2020, 348 p.
- LENAERTS, Koen, MASELIS, Ignace, GUTMAN, Kathleen (Nowak, Janek Tomasz ed.). *EU Procedural Law*. Oxford: Oxford University Press, 2014, 1056 p.
- ROSAS, Allan. The Preliminary Rulings Procedure (Chapter 13). In PATTERSON, Dennis, SÖDERSTEN, Anna (eds). *A Companion to European Union Law and International Law*. Hoboken: Wiley-Blackwell 2016. pp. 179–192. DOI: <https://doi.org/10.1002/9781119037712.fmatter>

Case law

- Judgment of the Court (Fourth Chamber) of 4 June 2009, Pannon GSM Zrt. v Erzsébet Sustikné Gyórfi, Case C-243/08, ECLI:EU:C:2009:350.
- Judgment of the Court (First Chamber) of 6 October 2009, Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira. Case C-40/08, ECLI:EU:C:2009:615.
- Judgment of the Court (Grand Chamber) of 9 November 2010. VB Pénzügyi Lízing Zrt. v Ferenc Schneider, Case C-137/08, ECLI:EU:C:2010:659
- Judgment of the Court (First Chamber), 14 June 2012, Banco Español de Crédito, SA v Joaquín Calderón Camino, Case C-618/10. ECLI:EU:C:2012:349
- Judgment of the Court (Third Chamber) of 1 October 2015, ERSTE Bank Hungary Zrt v Attila Sugár, C-32/14, EU:C:2015:637
- Judgment of the Court (Third Chamber) of 11 March 2020, Györgyné Lintner v UniCredit Bank Hungary Zrt. Case C-511/17, ECLI:EU:C:2020:188