

- employees perform the same work or work to which equal value can be attributed if, taking account of a number of factors such as the nature of the work, the training requirements and the working conditions, those persons can be considered to be in a comparable situation, which it is a matter for the national court to ascertain;
- in relation to indirect pay discrimination, it is for the employer to establish objective justification for the difference in pay between the workers who consider that they have been discriminated against and the comparators;
- the employer's justification for the difference in pay, which is evidence of a *prima facie* case of gender discrimination, must relate to the comparators who, on account of the fact that their situation is described by valid statistics which cover enough individuals, do not illustrate purely fortuitous or short-term phenomena, and which, in general, appear to be significant, have been taken into account by the referring court in establishing that difference, and
- the interests of good industrial relations may be taken into consideration by the national court as one factor among others in its assessment of whether differences between the pay of two groups of workers are due to objective factors unrelated to any discrimination on grounds of sex and are compatible with the principle of proportionality.

⁽¹⁾ OJ C 311, 22.10.2011.

Judgment of the Court (First Chamber) of 21 February 2013 (request for a preliminary ruling from the Fővárosi Törvényszék (formerly the Fővárosi Bíróság) — Hungary)
— Banif Plus Bank Zrt. v Csaba Csipai, Viktória Csipai

(Case C-472/11) ⁽¹⁾

(Directive 93/13/EEC — Unfair terms in consumer contracts — Examination by the national court, of its own motion, as to whether a term is unfair — Obligation on the national court, once it has found, of its own motion, that a term is unfair, to invite the parties to submit their observations before drawing conclusions from that finding — Contractual terms to be taken into account in the assessment of that unfairness)

(2013/C 114/19)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék (formerly the Fővárosi Bíróság)

Parties to the main proceedings

Appellant: Banif Plus Bank Zrt.

Respondents: Csaba Csipai, Viktória Csipai

Re:

Request for a preliminary ruling — Fővárosi Bíróság — Interpretation of Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — National legislation providing that a national court is limited in its examination of the unfair nature of standard contract terms where the parties do not expressly request it to declare that a term is unfair — Option for the national court which finds a standard term of a contract before it to be unfair, in the absence of an express request to that effect, to ask the parties to the dispute to make a statement relating to that contract term so that the question of the invalidity of the contract on that ground may be examined

Operative part of the judgment

1. 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 the national court which has found of its own motion that a contractual term is unfair is not obliged, in order to be able to draw the consequences arising from that finding, to wait for the consumer, who has been informed of his rights, to submit a statement requesting that that term be declared invalid. However, the principle of *audi alteram partem*, as a general rule, requires the national court which has found of its own motion that a contractual term is unfair to inform the parties to the dispute of that fact and to invite each of them to set out its views on that matter, with the opportunity to challenge the views of the other party, in accordance with the formal requirements laid down in that regard by the national rules of procedure.
2. The national court must, in order to determine whether the contractual term on which the claim brought before it is based may be unfair, take account of all of the other terms of the contract.

⁽¹⁾ OJ C 370, 17.12.2012.