

Parties to the main proceedings

Applicant: Isabel González Castro

Defendants: Mutua Umivale, Prosegur España SL, Instituto Nacional de la Seguridad Social (INSS)

Operative part of the judgment

1. Article 7 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding must be interpreted as applying to a situation, such as that at issue in the main proceedings, where the worker concerned does shift work during which only part of her duties are performed at night.
2. Article 19(1) of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) must be interpreted as applying to a situation, such as that at issue in the main proceeding, in which a worker, who has been refused a medical certificate indicating the existence of a risk to breastfeeding posed by her work and, consequently, an allowance in respect of risk during breastfeeding, challenges, before a court or other competent authority of the Member State concerned, the risk assessment of her work, provided that that worker adduces factual evidence to suggest that that evaluation did not include a specific assessment taking into account her individual situation and thus permitting the presumption that there is direct discrimination on the grounds of sex, within the meaning of Directive 2006/54, which it is for the referring court to ascertain. It is then for the respondent to prove that that risk assessment did actually include such a specific assessment and that, accordingly, the principle of non-discrimination was not infringed.

⁽¹⁾ OJ C 121, 18.4.2017.

Judgment of the Court (Second Chamber) of 20 September 2018 (request for a preliminary ruling from the Fővárosi Ítéltábla — Hungary) — OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt v Teréz Ilyés, Emil Kiss

(Case C-51/17) ⁽¹⁾

(Reference for a preliminary ruling — Consumer protection — Unfair terms — Directive 93/13/EEC — Scope — Article 1(2) — Mandatory statutory or regulatory provisions — Article 3(1) — Concept of ‘contractual term which has not been individually negotiated’ — Term incorporated in the contract after its conclusion following the intervention of the national legislature — Article 4(2) — Plain and intelligible drafting of a term — Article 6(1) — Examination by the national court of its own motion as to whether a term is unfair — Loan contract denominated in a foreign currency concluded between a seller or supplier and a consumer)

(2018/C 408/12)

Language of the case: Hungarian

Referring court

Fővárosi Ítéltábla

Parties to the main proceedings

Applicants: OTP Bank Nyrt., OTP Faktoring Követeléskezelő Zrt

Defendants: Teréz Ilyés, Emil Kiss

Operative part of the judgment

1. The concept of 'term which has not been individually negotiated' in Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it covers *inter alia* a contractual term amended by a mandatory national statutory provision adopted after the conclusion of a contract with a consumer, for the purpose of removing a term which is null and void from that contract.
2. Article 1(2) of Directive 93/13 must be interpreted as meaning that the scope of that directive does not cover terms which reflect mandatory provisions of national law, inserted after the conclusion of a loan contract concluded with a consumer and intended to remove a term which is null and void from that contract, by imposing an exchange rate set by the National Bank. However, a term relating to the foreign exchange risk, such as that at issue in the main proceedings, is not excluded from that scope under that provision.
3. Article 4(2) of Directive 93/13 must be interpreted as meaning that the requirement for a contractual term to be drafted in plain intelligible language requires financial institutions to provide borrowers with adequate information to enable them to take well-informed and prudent decisions. In that regard, that requirement means that a term relating to the foreign exchange risk must be understood by the consumer both at the formal and grammatical level and also in terms of its actual effects, so that the average consumer, who is reasonably well informed and reasonably observant and circumspect, would not only be aware of the possibility of a depreciation of the national currency in relation to the foreign currency in which the loan was denominated, but would also be able to assess the potentially significant economic consequences of such a term with regard to his financial obligations.
4. Article 4 of Directive 93/13 must be interpreted as requiring that the plainness and intelligibility of the contractual terms be assessed 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, notwithstanding that some of those terms have been declared or presumed to be unfair and, accordingly, annulled at a later time by the national legislature.
5. Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as meaning that it is for the national court to identify of its own motion, in the place of the consumer in his capacity as an applicant, any unfairness of a contractual term, provided that it has available to it the legal and factual elements necessary for that task.

⁽¹⁾ OJ C 144, 8.5.2017.

Judgment of the Court (Second Chamber) of 13 September 2018 (requests for a preliminary ruling from the Consiglio di Stato — Italy) — *Autorità Garante della Concorrenza e del Mercato v Wind Tre SpA, formerly Wind Telecomunicazioni SpA (C-54/17), Vodafone Italia SpA, formerly Vodafone Omnitel NV (C-55/17)*

(Joined Cases C-54/17 and C-55/17) ⁽¹⁾

(References for a preliminary ruling — Consumer protection — Directive 2005/29/EC — Unfair commercial practices — Article 3(4) — Scope — Articles 5, 8 and 9 — Aggressive commercial practices — Annexe I, point 29 — Commercial practices which are aggressive in all circumstances — Inertia selling — Directive 2002/21/EC — Directive 2002/22/EC — Telecommunication services — Sale of SIM (Subscriber Identity Module) cards containing certain pre-installed and pre-activated services — Failure to give prior information to consumers)

(2018/C 408/13)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità Garante della Concorrenza e del Mercato