Reports of Cases

Case C-140/22

SM
and
KM
v
mBank S.A.

(Request for a preliminary ruling
from the Sąd Rejonowy dla Warszawy-Śródmieścia w Warszawie)

Judgment of the Court (Ninth Chamber) of 7 December 2023

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 6(1) and Article 7(1) – Effects of a finding that a term is unfair – Mortgage loan agreement indexed to a foreign currency containing unfair terms concerning the exchange rate – Nullity of that contract – Claims for restitution – Statutory interest – Limitation period)

1. *Consumer protection – Unfair terms in consumer contracts – Directive 93/13 – Means to prevent the use of unfair terms – Mortgage loan agreement – Contract not capable of continuing in existence after removal of unfair terms – Annulment of the contract – National case-law making the exercise of rights derived from the directive subject to the lodging of a declaration by the consumer – Declaration reflecting the consumer's objection to terms remaining effective, his or her awareness of the cancellation of the agreement on account of the nullity of terms, the consequences of that cancellation and his or her consent to that cancellation – Not permissible*
(Council Directive 93/13, Arts 6(1) and 7(1))

(see paragraphs 53-61, 65, operative part)

2. *Consumer protection – Unfair terms in consumer contracts – Directive 93/13 – Finding that a term is unfair – Scope – Mortgage loan agreement – Contract not capable of continuing in existence after removal of unfair terms – Annulment of the contract – National case-law allowing the compensation owed to the consumer to be reduced by the amount of interest that could have been received by the banking institution if the agreement had been valid – Not permissible*
(Council Directive 93/13, Arts 6(1) and 7(1))

(see paragraphs 62-65, operative part)

EN

See the text of the decision.