Conclusions of the summary report on the assessment of the unfairness of unilateral alterations of interests, costs and fees in consumer loan contracts

Under the powers conferred on him by Act No. CLXI of 2011 having entered into force on 1 January 2012, the President of the Curia set up a jurisprudence-analysing working group for the assessment of the unfairness of unilateral alterations of consumer loan contracts employed by financial institutions.

The working group was composed of nine members and comprised lower-instance court judges and academics (including an economist) as well.

When the working group embarked on its tasks, the number of judgments delivered in such cases was very low – altogether 26 final judgments were available for the purposes of the analysis. An examination of these judgments, however, was sufficient to reveal the issues that needed to be answered by the working group.

The 10-month long work received wide media publicity and various creditor civil organisations were ensured the opportunity to elaborate their positions.

In its summary report the jurisprudence-analysing working group summarized in ten points the mains conclusions it reached and prepared a draft *Civil Department Opinion* for adoption.

At its meeting of 10 December 2012 the Civil Department of the Curia adopted the summary report and Civil Department Opinion No. 2/2012. (XII.10.) PK, which was based on the summary report.

The most important findings of the working group were the following:

- Upon the authorization given in Act No. CXII of 1996 on Credit Institutions and Financial Enterprises, financial institutions were allowed to stipulate in their Standard-Form Contractual Terms pertaining to their consumer loan contracts or among their unbargained-for contractual terms (henceforth: Standard-Form Contractual Terms) a right to unilaterally alter, to the detriment of the consumer, the applicable interests, costs and fees. Such an authorization is, in itself, not unfair.

- A contractual term not violating any law but being – in terms of content, by violating the requirements of good faith and fairness – unfair on account of being unjustifiably and unilaterally advantageous to the financial institution and detrimental to the consumer, shall also be void. In light of judgment C-472/2010 given by the Court of Justice of the European Union in the Invitel case, the examination of these contractual provisions is not excluded under Section 209(5) of Act No. IV of 1959 on the Civil Code.

- A clause allowing for unilateral contract alteration shall be unfair unless it meets the following criteria:

    - clear and intelligible wording

    - itemised definitions

    - objectivity

- factuality and proportionality
- transparency
- terminability
- symmetry

In case a contractual term giving rise to unilateral alteration is invalid, the invalidity of the term will not result in the invalidity of the entire contract; the rest of the contract will remain valid. In light of judgment No. C-618/10 given by the Court of Justice of the European Union in the Banco Espanol case, the court may not modify such a contractual term in order to eliminate the advantage unfairly stipulated by the financial institution.

Some of the ideas contained in the Civil Department Opinion – which was adopted on the basis of the findings of the summary report and was further developed by the findings of the Court of Justice of the European Union made in the Kásler case (C-26/13) – reappeared in Civil Uniformity Decision No. 2/2014 PJE, which further elaborated the interpretation of the principles of clear and intelligent wording and transparency. The principles specified in point 6 of the Civil Department Opinion were enacted by the legislator under Section 4 of Act No. XXXVIII of 2014 on the Curia's Uniformity Decision concerning the Settlement of Certain Issues relating to Consumer Loan Contracts of Financial Institutions.