

Romania, Cluj Court of Appeal, C-381/19, SC Banca E SA v. G.D., special appeal, April 3rd, 2019,

Member State

 Romania

Topic

Accountability: The principles of legal certainty and effectiveness

Deciding Court Original Language

Curtea de Apel Cluj

Deciding Court English translation

Cluj Court of Appeal

Registration N

C381/19

Date Decision

15 January 2020 (Order of the Court – 9th Chamber)

ECLI (if available)

EU:C:2020:67

National Follow Up Of (when relevant)

No.

EU legal sources and CJEU jurisprudence

Directive 93/13/EEC on unfair terms in consumer contracts

ECtHR Jurisprudence

None.

Subject Matter

Consumer protection – Directive 93/13/EEC – New degree of jurisdiction introduced over the course of judicial proceedings concerning unfair terms – The application of the principles of legal certainty and effectiveness

Legal issue(s)

Accountability of judicial bodies – The application of the principles of legal certainty and effectiveness in the context of consumer protection litigation.

More precisely, the case deals with the effects of the introduction of a new degree of jurisdiction (a special appeal) during the course of judicial proceedings between a consumer and a professional.

Request for expedited/PPU procedures

No.

Interim Relief

No request for interim relief.

National Law Sources

- Article XVIII para. 2 of Law no. 2/2013 on certain measures for the relief of courts backlog and for the preparation of the application of Law no. 134/2010 on the Civil procedure code starting with February 1st, 2013
 - Decision no. 369 of May 30th, 2017 of the Romanian Constitutional Court
 - Decision no. 874 of December 18th, 2018 of the Romanian Constitutional Court
 - Article III of Law no. 310/2018 on the amendment and completion of Law no. 134/2010 on the Civil procedure code, as well as for the amendment and completion of other normative acts
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Facts of the case

G.D., a consumer, brought an action against Banca E, a credit institution,

before the Judecătoria Turda (the Municipal Court of Turda), seeking the annulment of certain clauses of a credit agreement concluded in 2007, as unfair terms. Additionally, G.D. requested the reimbursement of certain other amounts. Judecătoria Turda found that the credit agreement contained unfair terms, which were declared null and void and Banca E was ordered to reimburse

the amounts unduly paid. Certain other reimbursement claims of G.D. were denied.

Both parties appealed and had their appeals denied by the Tribunalul Specializat Cluj (Cluj Specialized Tribunal). On December 7th, 2017, Banca E lodged a special appeal with the Curtea de Apel Cluj (Cluj Court of Appeal).

The special appeal had been introduced during the course of the dispute between G.D. and Banca E, by amendments to the civil procedure legislation. The Cluj Court of Appeal suspended the dispute and referred a preliminary question to the CJEU.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The preliminary question referred by the Cluj Court of Appeal concerned the application of the principles of legal certainty and effectiveness in the context of consumer disputes. More precisely, the question submitted raises the issue of whether such EU principles preclude national rules amending the civil procedure in cases concerning the protection of consumer rights, where such amendments institute new means of appeal (a special appeal) entering into force over the course of ongoing judicial proceedings.

The Court first observes that the answer to the question may be clearly deduced from its previous case-law and leaves no room for any reasonable doubt. It then moves on to reiterate the obligation of Member States to ensure the protection of consumers against the use of unfair terms, given the latter's weak position in relation to professionals. Since EU law does not comprise rules harmonizing the procedural provisions for the examination of unfair terms, Member States enjoy procedural autonomy in applying their national rules, as long as the principles of equivalence and effectiveness are observed.

The Court notes that the information available in the case does not appear to raise any particular issue concerning the principle of equivalence, whose observance is, in any case, for the national court to verify.

In what the principle of effectiveness is concerned, the Court recalls that the analysis of whether a specific national provision renders the application of EU law impossible or excessively difficult must be conducted in relation to the position occupied by such provision in the procedure as a whole, with due regard to, inter alia, the right of defense, the principle of legal certainty and the good course of the proceedings.

In light of these observations, the Court states that the introduction of an additional means of appeal over the course of an ongoing judicial proceeding initiated by the consumer is not likely to

negatively impact the effectiveness of the latter's rights, since the consumer was able to initiate the procedure in the first place. Additionally, since the newly introduced means of appeal is immediately available not only to the professional, but also to the consumer himself, such an amendment of the procedural rules may contribute to a consolidation of the effectiveness of consumer rights.

In what the principle of legal certainty is concerned, the Court observes that while the introduction of a new means of appeal over the course of the proceedings may indeed lead to a longer duration and higher costs, such elements are in any case difficult to predict when lodging an application with the national court. As the decision to make use of the newly introduced special appeal is available to both the professional and the consumer, its mere existence does not necessarily entail that the professional will use it in a systematic fashion. In general, procedural rules concerning the degrees of jurisdiction available respond to a general interest related to the good administration of justice and predictability, which should prevail over private interests, in the sense that they cannot be established depending on the particular economic situation of one of the parties.

Consequently, the Court states that the principles of legal certainty and effectiveness should be interpreted in the sense that they do not preclude procedural rules amending the appeals system in place at the national level, by introducing a special appeal and an additional degree of jurisdiction, when such rules apply to ongoing judicial procedures between a consumer and a professional. This is due to the fact that the new special appeal is made available to both parties to the dispute.

Relation of the case to the EU Charter

The Charter was not invoked by the referring court or by the ECJ in this case.

Relation between the EU Charter and ECHR

Not applicable.

Use of Judicial Interaction technique(s)

Preliminary reference.

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

No horizontal judicial dialogue.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

No vertical judicial interaction, except for that between the referring court and the ECJ.

Strategic use of judicial interaction technique (purpose aimed by the national court)

The national court arguably made use of the preliminary reference procedure in order to solve a potential conflict of norms between the provisions of internal procedural rules and those of the Directive 93/13/EEC.

Impact on Legislation / Policy

The preliminary reference decision clarifies the fact that the introduction of an additional degree of jurisdiction, by means of a special appeal, during the course of ongoing judicial proceedings in consumer disputes, is not contrary to EU rules concerning the protection of consumer rights and to the principles of legal certainty and effectiveness, as long as such new means of appeal are available to both the professional and the consumer.

Notes on the national implementation of the preliminary ruling by the referring court

Information is not available on the decision of the national court or the follow-up to the preliminary ruling.

Impact on national case law from the same Member State or other Member States

No information is available.

Connected national caselaw / templates

Not applicable.

(Link to) full text

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=223235&pageIndex=0&doclang=RO&...>

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Request for preliminary ruling – 09.08.2019:
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=217103&pageIndex=0&doclang=E>
2. Preliminary ruling – Order of the Court – 15.01.2020:

