

Sudska praksa**Detalji predmeta**

Nacionalna osobna isprava: County Court, Zagreb, Judgment GŽ 6053/2017

Država članica: Hrvatska

Uobičajeni naziv: N/A

Vrsta odluke: Sudska odluka u žalbenom postupku

Datum odluke: 06/03/2018

Sud: Zagreb County Court

Predmet:

Tužitelj:

Tuženik:

Ključne riječi: loan agreement, protection of collective interests, consumer, obsolete term

Članci Direktive

Injunctions Directive, [link](#)

Uvodna napomena

The judgments of the Crown Courts found that there were loans that had unfair terms that were out of date. The procedure shows the impact of a court decision when confirming that the statute of limitations has expired.

Činjenice

The consumer and the bank have concluded a loan agreement. The consumer wants to be refunded, claiming he paid more than he needed to.

Pravno pitanje

The question that arises is whether in this case, the consumer demand is outdated, as well as the legal basis of the claim - compensation for damages or unfounded acquisition. The Court explains in more detail the purpose and scope of the application of the collective protection institute.

Odluka

First of all, it should be said that the JCEU does not define what collective interest is. It is a general consumer interest as an informal social group, it is abstract and it can only be concretized through a description of the act that violates the regulation on the protection of collective interest and consumer rights. The JCEU does not refer to the collective protection of the interests and the rights of several individual consumers, which could imply collective protection of individual interests and rights in one procedure, but deals with the protection of collective interests and rights, prohibiting in principle any business practice that is contrary to collective interests and rights, regardless of whether the individual interests and rights of individual consumers are even violated. Consequently, the procedure for the protection of collective interest under the law is not authorised to initiate a person who has been deterred by dishonest behavior but rather to which the legislator has given special authority to protect the collective interest of consumers. The conduct by which collective interest is violated or unfair business practice is expressly prohibited by the concomitant provisions of article 108 of the JPA / 09, and the protection of collective interest, consists in filing a lawsuit, a court decision stating that certain behavior or use of certain terms in standard contracts are not honest offends the collective interest of consumers with the aim of preventing such behavior now and in the future.

Therefore, since the initiation and conduct of the proceedings for the protection of collective interest does not necessitate a violation of somebody's subjective, individual interest, the initiation of proceedings for the protection of collective interest under the JCEU are not authorised by individuals and on the other hand, persons authorised by law the procedure for the protection of collective interests is not authorised to seek compensation for damages suffered by certain consumers due to certain unlawful practices and are not authorised to institute litigation for the cancellation of complete contracts concluded by certain consumers.

Individual consumers, when a court finds that there is a violation of consumer protection regulations, individual legal protection procedures, compensation claims, contract amendments or the like, may be referred to the content of the decision in the procedure of protecting collective interests and rights. In this way, the subjective boundaries of validity have been extended because the convicting verdict from the procedure of protecting collective interests in the individual legal protection proceedings initiated by the consumer obliges the other courts and thus also obliged this court.

In the specific case, the legislator for certain legal and political reasons, and apparently for the sake of protecting public interest, has determined that the judgment rendered in the protection of collective interests and consumers obliges other courts in proceedings initiated by the consumer personally for compensation of the damage caused to him by the actions of the defendants .

The rule is that, in the case of non-contractual contracts, with respect to the application of the irrevocable acquisition institute, the statute of limitation shall start to run from the day when the parties, in the performance of such contracts, have performed their obligations with due diligence.

However, in the opinion of this Court, the general mandatory legal regulations are not relevant to the specific situation, but the cited provision of article 118. The JCEU, which does not contain obsolete provisions and the beginning of the limitation period, merely states that it is a procedure that the consumer initiates personally for compensation for the damage caused to him by the conduct of the defendant.

However, and as this Court has previously stated in the specific case, it is a specially statutory right of certain associations to initiate procedures for the protection of collective interests, such protection is not authorised by individuals (which could, indeed, initiate as natural persons also claims for fortification nullity and payment), and only the finding of a violation of collective interests and consumer rights, except in the part of the defendant's obligation to refrain from the same or similar unlawful conduct in relation to all consumers in the future, would not make sense if certain consumers covered by that term were not given the possibility of reimbursement of what they paid in fulfilling such a nondescript provision.

Therefore, and in the opinion of this Court, all legal consequences of the finding of nullity of the contract in this special case must be binding on the date of the issuance of a final judgment and the limitation of the claim of what the plaintiff did in fulfilling the nullity of the contract should start only from the date when the final nullity of the loan contract is established.

In addition, the Supreme Court of the Republic of Croatia in its ruling Rev.-2245 / 17-2 of 20 March 2018 took the view that the initiation of a civil action for the protection of collective interests of consumers would result in the suspension of the statutory limitation on the basis of article 241. The ZOO and the limitation of individual restriction requirements begin to run only from the moment when the court decision on the lawsuit was brought on the ground of that complaint and for the unnecessary repetition of the reasons set out by this court, the reasons for the reasoning of that judgment are set out.

Thus, whether or not in the application of a compensation indemnity institute or the application of an indefinite acquisition institution with different statutory deadlines of three or five years, since the verdict on the protection of collective rights and interests became final on 13 June 2014 and the lawsuit was filed on 2 November 2015, the statute of limitations in each case did not occur.

Cjeloviti tekst: [Cjeloviti tekst](#)

Povezani predmeti

Nema dostupnih rezultata

Pravna literatura

Nema dostupnih rezultata

Rezultat

Unfortunately, the Court does not determine what the basis of the claim is and states that "regardless of whether the application of a compensation fund or an institute of indefinite acquisition has different statutory deadlines of three or five years, since the verdict in the protection of collective rights and interests has become valid on June 13, 2014, and the lawsuit was filed on 2 November 2015, the statute of limitations did not in any event occur ".