

Ítélezési gyakorlat**Az ügy részletei**

Nemzeti azonosító: Supreme Court, Judgement Pfv.V.21.663/2017/5

Tagállam: Magyarország

Közhasználatú név: N/A

Határozat típusa: Legfelsőbb bírósági határozat

A határozat napja: 06/02/2019

Bíróság: Kúria

Tárgy:

Felperes:

Alperes:

Kulcsszavak: credit agreement, unfair terms, burden of proof, terms and conditions

Az irányelv cikkei

Unfair Contract Terms Directive, [Article 3, 1.](#)

Megjegyzés

With regards to overturning the legal assumption of unfair terms in the general terms and conditions of the consumer contract, the business must prove that the legally specified conditions resulting in the unfairness of the given clause do not exist. This assumption can also be potentially overturned if the business can prove that some circumstance or measure mitigated the disadvantage suffered by the consumer. When evaluating the unfairness of a term, the Court must take into account whether the consumer receives worse treatment than what is afforded by law, and whether the business could have expected the consumer to agree to the term after individual good faith negotiation.

Tények

The respondent used a specific contractual clause in its general terms and conditions when dealing with consumers through credit agreements. This term precipitated an allegedly disadvantageous amount of default interest for consumers. This led to the dispute between the consumers and the respondent, with the plaintiff submitting a claim to nullify this particular term for all consumers that were affected. The Court of First Instance dismissed the claim, but the Court of Appeal decided in favour of the plaintiff. This led the case to ascend to the Supreme Court.

Jogi kérdés

Whether the default interest clause in the general terms and conditions of the consumer credit agreement can be considered an unfair term.

Határozat

The Supreme Court reasoned that the burden of proof rested on the respondent, the creditor, to prove that contrary to the legal assumption provided by Hungarian law with regards to this specific circumstance, the term regarding default interest was not unfair to the consumer. However, the respondent failed to overturn this assumption due to supplying insufficient facts for considering the term fair. Furthermore, the Supreme Court implied that proving a sufficient degree of mitigation or compensation by the business would have also sufficed to overturn the assumption of the term's unfairness to consumers. And finally, the Supreme Court also acknowledged that courts should examine the discrepancy between what is afforded by law and by the actual contract to the consumer, and whether the business could have reasonably expected the consumer's consent to the contract in a good faith individual negotiation.

Teljes szöveg: [Teljes szöveg](#)

Kapcsolódó ügyek

Nincs találat

Jogi szakirodalom

Nincs találat

Eredmény

The Supreme Court dismissed the respondent's appeal and upheld the decision of the Court of Appeal. It ruled that the default interest clause in the general terms and conditions of the consumer credit agreement is assumed by relevant national law to be an unfair term, and that it is the obligation of the creditor to prove the opposite. However, the creditor failed to provide sufficient facts to support the term's fairness or show that there was a sufficient degree of mitigation or compensation to the consumer with regards to this term.