

## Case Details

### Case Details

National ID	Court decision number 13/2015 (B', Ordinary plenary)
Member State	Greece
Common Name	link
Decision type	Supreme court decision
Decision date	17/06/2015
Court	Areios Pagos (Supreme civil and criminal court of Greece)
Subject	
Plaintiff	Unknown
Defendant	Unknown
Keywords	abusive behaviour, consumer, good faith, standard contract, supplier, terms and conditions, unfair terms

### Directive Articles

Unfair Contract Terms Directive, [Article 2, \(b\)](#) Unfair Contract Terms Directive, [Article 3, 1.](#) Unfair Contract Terms Directive, [Article 3, 2.](#) Unfair Contract Terms Directive, [Article 3, 3.](#) Unfair Contract Terms Directive, [Article 4, 1.](#) Unfair Contract Terms Directive, [Article 8](#) Unfair Contract Terms Directive, [ANNEX I, 1., \(j\)](#)

### Headnote

- (1) The unfairness of a pre-formulated standard contractual term (General Term of Transaction) in an individual dispute should be assessed in accordance with the applicable laws, not at the time of the initial drafting or execution of the specific contract, but at the time that the actual problem that triggered the application of the specific term has arisen in the course of the duration of the contract.
- (2) According to article 2(b) of Directive 1993/13/EEC, a consumer is any natural person who is acting for purposes which are outside his trade, business or profession. However, Member States may adopt or retain more stringent provisions that are compatible with the Treaty in the area covered by Directive 1993/13/EEC, to ensure a maximum degree of protection for the consumer (in compliance with art.8, 1993/13/EEC). Therefore, the Greek law that implemented a more broad definition of the consumer to include any person that uses products or services on condition that this person is the final recipient of the product or services, is in accordance with that Directive given that the greek legislator used the above discretion provided in the Directive.
- (3) In the greek legislation, a consumer is the natural or legal person who acquires the product or services in order to meet not only his individual but also his professional needs; the fact that this person is the intended final recipient of that product or services is sufficient enough in order for that person to fall under the definition of the consumer (irrespective of whether it uses such product or services for private or for professional purposes).

### Facts

The defendant has been the guarantor in a bank loan granted by the plaintiff, a bank institution. The guarantor had filed an opposition against the payment order no. 889/2003 issued against him before the court of First Instance of Piraeus; he argued that the term in the loan agreement that gave to the bank the permission to terminate the contract without any specific or justifiable reason was abusive (under the consumer protection provisions) and as such invalid. The court of first instance ruled in favor of the guarantor's claim (decision no. 4418/2007) so the bank filed an appeal before the court of appeal of Piraeus; the court of appeal ratified the decision of the first instance court and rejected the appeal (decision no. 775/2009). Following that, the plaintiff (bank) filed an appeal before the

Supreme court (that convened in Ordinary Plenary Session). The plaintiff claimed that the defendant who was the guarantor in a loan agreement that was concluded in order to cover the professional/business needs of the debtor, cannot be considered as a consumer under the scope of Directive 1993/13/EEC; therefore, the guarantor does not fall under the consumer protection provisions regarding the abusiveness of a pre-defined standard clause (General Terms of Transactions).

#### Legal issue

The court held that according to the greek law the definition of the consumer is broader than the one laid down in Directive 1993/13/EEC. In the greek legislation, a consumer is the natural or legal person who acquires the product or services in order to meet not only his individual but also his professional needs; the fact that this person is the intended final recipient of that product or services suffices in order for that person to fall under the definition of the consumer. Hence, the debtor of a banking loan too shall be in principle regarded as a consumer, regardless of the purpose of the loan or the use of the money. The only exception is the case where the debtor cannot be considered as a weak party in a transaction, for instance due to his commercial experience regarding bank contracts or due to his financial capacity and organisational infrastructure. So, the debtor, regardless of the purpose of the banking loan and the use of the money, shall be in principle regarded as a consumer. In addition, even when the debtor enters into a banking loan agreement within the context of his profession-business, his guarantor too shall be regarded as a consumer for the same reasons as above, due to the ancillary (dependent) nature of the guarantee contract in relation to the main loan contract, on condition that the guarantor is not in the business of providing professional guarantees.

#### Decision

- (1) Based on what law should the abusiveness of a term be assessed?
- (2) Is the definition of "consumer" according to the greek law for consumer protection in accordance with the definition laid down in Directive 1993/13/EEC?
- (3) Are the debtor and the guarantor in a banking loan agreement considered as consumers when the debtor uses the money for professional- business purposes?

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#### Related Cases

No results available

#### Legal Literature

No results available

#### Result

The court considered that the guarantor falls under the notion of consumer according to the greek consumer protection law (article 1 par. 1 a of the law 2251/1994); hence it rejected the plaintiff's claims and it canceled the payment order issued against the guarantor on the grounds of abusiveness; it also awarded the judicial costs to the defendant as the successful party (plaintiff's appeal was dismissed).