

Sudska praksa**Detalji predmeta**

Nacionalna osobna isprava: Revt 249/14-2

Država članica: Hrvatska

Uobičajeni naziv: The "Franak" case

Vrsta odluke: Odluka Vrhovnog suda

Datum odluke: 09/04/2015

Sud: Vrhovni sud Republike Hrvatske

Predmet:

Tužitelj: Potrošač – Hrvatski Savez udruga za zaštitu potrošača (Croatian Union of Consumer Protection Associations)

Tuženik: 1. Privredna banka Zagreb d.d., 2. Zagrebačka banka d.d., 3. Erste & Steiermärkische Bank d.d., 4. Raiffeisenbank Austria d.d., 5. Hypo Alpe-Adria-Bank d.d., 6. OTP banka d.d., 7. Societe General - Splitska banka d.d., 8. Volksbank (Sberbank d.d.)

Ključne riječi: collective action, financial services, nullity, unfair terms

Članci Direktive

Unfair Contract Terms Directive, [link](#)

Uvodna napomena

(1) The currency clause in Swiss francs, provided in the loan agreements, is not invalid when the terms in the loan agreement are clear, understandable and in line with the interpretation of the Court of Justice of the European Union

(2) The variable interest rate on loans denominated in Swiss francs is lawful, but the variation of the agreed interest rate upon unilateral decision of the defendant is unlawful.

Činjenice

The subject of the dispute was the protection of collective interests of consumers. The plaintiff raised a collective action against eight banks requesting (i) the abolition of a currency clause in Swiss francs (as this was the main reason for the increase of the loan obligations); (ii) allowing only the currency clause in Euro; and (iii) the prohibition of unilateral changes in interest rate of loans in Swiss francs.

The plaintiff argued that the provisions of the loan agreements, with principal in Swiss francs and regular interest rate (subject to unilateral changes by the banks), are in substance unfair contractual provisions which violate collective interests and rights of the consumers.

Pravno pitanje

(1) Is the currency clause in Swiss francs, which stipulates that the principal amount is linked to Swiss francs, invalid?

(2) Is the variable interest rate of loans in Swiss francs illegal, as the agreed interest rate is variable upon unilateral decisions of the defendant?

Odluka

The banks failed to sufficiently explain to clients how variable interest rates work but did not fail to explain the currency risks entailed in taking foreign currency loans.

The court held that the currency clause in Swiss francs are clear and understandable, hence should not be declared invalid. The terms were not considered as unfair, since the consumers were provided with clear and understandable contractual terms (e.g. they were aware that the principal amount in the course of the duration of the loan agreement would be calculated with the application of the exchange rate for the Swiss francs in relation to the Croatian kuna), and therefore any requirements for the examination of their fairness were not fulfilled. The consumers were not prevented from stipulating loan agreements with currency clause in other foreign currency (e.g. EUR) and have chosen the currency clause in Swiss francs on their own free will. The terms were also deemed to be in compliance with Article 4 Paragraph 2 of Directive 93/13/EEZ. Further, the court held that the banks could not predict the events which have happened in the period from 2004 to 2008, i.e. the financial crisis, and even if they could have anticipated it, any credit policy would have been negatively oriented towards the consumers.

The court declared variable interest rate, which are subject to unilateral change by the banks, illegal.

The court stated in the judgment that Croatian courts are obliged to interpret national law in the spirit of EU law and its *acquis communautaire*, and furthermore that the judgement is aligned with the EU law on consumer protection and the EEC Directive 93/13.

This judgement applies to all borrowers who entered into loan agreements with currency clause in Swiss francs with any of the eight banks which acted as defendant in this dispute.

URL: <http://www.vsrh.hr/CustomPages/Static/HRV/Files/Priopcenje-2015-05-14.pdf>

Cjeloviti tekst: [Cjeloviti tekst](#)

Povezani predmeti

Nema dostupnih rezultata

Pravna literatura

Nema dostupnih rezultata

Rezultat

The court rejected the revision filed by the plaintiff as well as the revision filed by the defendants, and upheld the decision of the High Commercial Court of the Republic of Croatia.