EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Applications nos. 23255/15 and 25133/15
CIB BANK ZRT. against Hungary
and CIB LÍZING ZRT. against Hungary

The European Court of Human Rights (Fourth Section), sitting on 29 January 2019 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Egidijus Kūris,
Iulia Antoanella Motoc, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above applications lodged on 12 May 2015 and 7 May 2015 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant companies have their registered seat in Budapest. They were represented before the Court by Mr T. Szántó, a lawyer practising in Budapest.

2. The Hungarian Government ("the Government") were represented by their Agent, Mr Zoltán Tallódi, Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant companies are financial institutions which had unsuccessfully initiated domestic proceeding to prove that the standard terms of contract (hereinafter "STCs") – that is to say terms which had not

been individually negotiated – allowing for unilateral increase of interest rates, fees and costs used in their loan contracts were fair and thus valid. These proceedings were instituted under Act no. XXXVIII of 2014 concerning questions related to the Uniformity Decision for the settlement of issues related to loan contracts between consumers and financial institutions ("the Uniformity Act"), enacted by Parliament on 4 July and promulgated by the President of the Republic on 18 July 2014. The aforementioned Act provides that STCs that allow unilateral increase of interest rates, fees and costs and do not comply with seven specific principles (section 4(1) of the Act) are to be deemed unfair (for the detailed provisions of the Uniformity Act see *Merkantil Car Zrt. and Others v. Hungary* (dec.), no. 22853/15 and 4 other applications, §§ 49-53, 27 November 2018).

5. As regards the background, legislative and case-law developments leading to and surrounding the adoption of the Uniformity Act see *Merkantil Car Zrt. and Others,* cited above, §§ 5-16 and 35-39.

6. Below is the summary of the particular proceedings instituted by the applicant companies in the present cases:

1. CIB Bank Zrt. (application no. 23255/15)

7. On 25 August 2014 the applicant company, CIB Bank Zrt., lodged an application with the Budapest High Court seeking to prove that STCs used in their foreign currency loan contracts to which the Uniformity Act applied were fair. In particular, it argued that the STCs in question fulfilled all seven principles defined in section 4(1) of the Uniformity Act, and requested the court to declare that certain contractual terms did not fall within the scope of the Act. The applicant company also requested that the court initiate constitutional review proceedings in respect of section 1(1), (6) and (7), sections 6 - 21 and chapter 6 of the Uniformity Act and point 2 of the Uniformity Decision. Furthermore, the applicant company requested that the court initiate preliminary ruling procedure before the Court of Justice of the European Union ("the CJEU"). The court dismissed both requests and delivered its judgment, finding against the applicant company, on 30 September 2014.

8. The applicant company lodged an appeal, which was dismissed as unfounded on 7 November 2014. The applicant company subsequently submitted a petition for review to the *Kúria*.

9. On 12 December 2014 the *Kúria* upheld the lower court's judgment finding that the STCs in question had failed to meet the principle of transparency, which is one of the seven principles set out in the Uniformity Act (see paragraph 4 above). It held, *inter alia*, that it sufficed to establish the infringement of only one of the cumulative principles defined in the Uniformity Act and that in such a case the compliance with the remaining principles did not need to be examined.

10. The applicant company was required to reimburse its customers 24,207,566,000 Hungarian forints (HUF) (approximately 78 million euros (EUR)) on account of the unfair STCs allowing for unilateral increase of interest rates, fees and costs.

2. CIB Lízing Zrt. (application no. 25133/15)

11. On 15 August 2014 the applicant company, CIB Lízing Zrt., lodged an application with the Budapest High Court seeking to prove that STCs used in their foreign currency loan contracts to which the Uniformity Act applied were fair. The court first dismissed the applicant company's statement of claim as incomplete. However, the applicant company resubmitted the statement of claim relying on arguments similar to those put forward by CIB Bank Zrt. in the above-mentioned proceedings.

12. The applicant company also requested that the court initiate constitutional review proceedings in respect of the same provisions as those invoked by CIB Bank Zrt. (see paragraph 7 above). Furthermore, the applicant company requested that the court initiate preliminary ruling procedure before the CJEU. The court dismissed both requests and delivered its judgment, finding against the applicant company, on 19 September 2014.

13. The applicant company lodged an appeal, which was dismissed as unfounded on 30 October 2014. The applicant company subsequently submitted a petition for review to the *Kúria*.

14. On 9 December 2014 the *Kúria* upheld the lower court's judgment finding that the STCs in question had failed to meet the principles of clear and intelligible wording and transparency - two of the seven principles set out in the Uniformity Act (see paragraph 4 above).

15. The applicant company was required to reimburse its customers HUF 13,489,059,000 (approximately EUR 43 million) on account of the unfair STCs allowing for unilateral increase of interest rates, fees and costs.

COMPLAINTS

16. The applicant companies complained under Article 6 § 1 of the Convention about the short procedural time-limits and other strict procedural rules as well as the burden being placed on them to prove the fairness of the relevant contractual terms. They alleged that their rights to access to court and the principle of equality of arms had been violated. They also complained that the domestic courts' powers in the proceedings under the Uniformity Act had been excessively limited.

17. The applicant companies further complained that Article 1 of Protocol No. 1 had been violated because the Uniformity Act had

unlawfully, retrospectively and disproportionately interfered with their right to property. Moreover, proceedings under the Uniformity Act offered inadequate protection of their interests.

THE LAW

18. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision (Rule 42 § 1 of the Rules of Court).

19. The applicant companies complained under Article 6 § 1 of the Convention, which, in so far as relevant, read as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

20. They further complained under Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

21. The Government objected that the applicant companies had failed to comply with the six-month time limit and the requirement of exhaustion of domestic remedies. Apart from the arguments they had submitted already in *Merkantil Car Zrt. and Others v. Hungary* ((dec.), no. 22853/15 and 4 other applications, §§ 62, 66-68 and 91-94, 27 November 2018), the Government further argued that the applicant companies had certainly known the risks of foreign-currency based lending and should have thus acted with prudence. They also submitted that the State had not supported foreign-currency lending either via interest subsidies or in any other manner.

22. The Government also maintained that a number of measures had been taken to mitigate the burden resulting from the increased instalments due to exchange-rate fluctuations and the effect this had had on debtors, in particular home owners. These measures included significantly restrictive conditions for the acquisition of foreign-currency mortgage loans and the prevention of debtors' evictions. As regards the financial institutions, the State allowed them to offset 30 percent of their losses resulting from the

application of the preferential early repayment exchange rate from the 2011 tax returns.

23. As regards the role of the Financial Supervisory Authority, the Government argued that their acts or omissions had had no relevance for the civil proceedings under consideration.

24. The applicant companies disputed the Government's arguments. They argued that the State should have acted in due time rather than retrospectively. They submitted that the State had abolished all the barriers concerning credit operations denominated in foreign currency in 2001. By creating the conditions in which consumers had been encouraged to take foreign-currency based loans (due to, *inter alia*, considerably lower interest rates compared to those set by the Hungarian National Bank) and by not acting in good time and in an appropriate manner, the State had facilitated the provision of such loans. In particular, the State had not adopted any specific laws or regulations for the protection of the consumers entering into contracts in question until 2014. In addition, the Financial Supervisory Authority had not found that the applicant companies had acted in breach of the then valid rules.

25. As regards their complaint that the courts' power of decision in the cases under the Uniformity Act had been excessively restricted, the applicant companies argued that the courts could take into account only the factors specified in the Uniformity Act, not other circumstances, and therefore the State had *de facto* determined the outcome of the proceedings.

26. The applicant companies further argued that the principle of transparency had not been part of the Hungarian statutory law prior to the contested legislation and that it must be distinguished from the principle of clear and intelligible wording.

B. The Court's assessment

27. The Court does not find it necessary to examine the Government's objections concerning the compliance with the six-month time limit and the requirement of exhaustion of domestic remedies (see paragraph 21 above), because the applications are in any event inadmissible for the following reasons.

28. The Court notes that the present complaints (see paragraphs 16 and 17 above) largely resemble those submitted in the case *Merkantil Car Zrt. and Others* (cited above, §§ 59 and 60). In the latter case the Court assessed precisely the effect of the Uniformity Act on the financial institutions. It found that the applicant companies had not been prevented from making use of the proceedings available to them under the Uniformity Act and their right to a fair trial had not been otherwise impaired because of the strict procedural rules governing those proceedings (§§ 70-74). As regards the presumption that STCs allowing the unilateral increase of interest rates, fees

and costs was unfair, which in turn meant that the burden of proving the opposite was on the financial institutions, the Court found no indication that this presumption had been applied in a manner incompatible with Article 6 § 1 of the Convention (§§ 79-81). Having regard to the arguments and materials submitted by the parties, the Court sees no reason to reach a different conclusion in the present case.

29. The Court further notes that in the aforementioned decision it found no indication that the Uniformity Act or its effect on the applicant companies had violated Article 1 of Protocol No. 1 (§§ 98-110). It does not find the applicant companies' submissions (see paragraphs 24 and 26 above) such as requiring the Court to reach a different conclusion in the present case. Accordingly, the above complaints are manifestly ill‑founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

30. Lastly, in so far the complaint about the domestic courts having limited powers under the Uniformity Act (see paragraph 25 above) has not been addressed in *Merkantil Car Zrt. and Others* (see paragraph 28 above) and in the light of all the material in its possession, the Court considers that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or the Protocols thereto and that the admissibility criteria set out in Articles 34 and 35 of the Convention have therefore not been met.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 21 February 2019.

Andrea Tamietti Deputy Registrar	Paulo Pinto de Albuquerque President