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Master's Thesis

The development of the principle of effectiveness in EU consumer law

Veiksmingumo principo raida ES vartotojų teisėje

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ABSTRACT

The development, scope, and limitations of the ex officio duty of national courts to evaluate unfair contract terms under Council Directive 93/13/EEC on unfair terms in consumer contracts, as developed in the jurisprudence of the Court of Justice of the European Union (CJEU), are being critically analyzed in this master's thesis. From its beginnings in Océano Grupo Editorial and Salvat Editores (2000) to the most recent significant laws, such as SPV Project 1503 (2022), the thesis outlines the doctrinal advancement of the obligation, highlighting the crucial phases in its development and the fundamental ideas that define it. This research focuses at the conceptual foundations of the ex officio duty, emphasizing on the concepts of the consumer as a structurally weaker party, the principle of effectiveness, and equivalence. The thesis also evaluates the scope and limitations of the ex officio duty in a variety of procedural instances, such as regular civil processes, enforcement actions, order-for-payment proceedings and arbitration-related proceedings. It explores how the hypothesis conflicts with fundamental principles of national civil procedure, such as res judicata, party disposition, the adversarial principle, and procedural deadlines. A critical analysis of the case law is used to evaluate the CJEU's strategy for handling these conflicts, paying special attention to the gradual balance between legal stability and protection of the consumer. This thesis further evaluates the ex officio doctrine's application in the Lithuanian legal system by examining the Supreme Court of Lithuania's case law, essential Civil Code and Code of Civil Procedure articles and the constitutional foundations for consumer protection. Advantages and disadvantages of the Lithuanian framework especially with regard to the order-for-payment process, the relationship with res judicata, education and knowledge of the judge and the institutional function of the State Consumer Rights Protection Authority were the highlighting points of this examination. With proposals for improving Lithuania's application of the ex officio obligation through institutional reform, judicial training, and legislative modification this thesis ended. In the end, the thesis places the ex officio doctrine in the broader structure of EU procedural law, claiming that it to be the most advanced illustration of the transformation of principle of effectiveness for national courts from a negative impact on national procedural autonomy to a positive aspect of procedural obligations.

Keywords: ex officio duty; unfair contract terms; Directive 93/13/EEC; CJEU jurisprudence; principle of effectiveness; national procedural autonomy; consumer protection; res judicata; Lithuania; order-for-payment proceedings.

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LIST OF ABBREVIATIONS

CJEU — Court of Justice of the European Union

The Directive — Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer
contracts

EU — European Union

OJ — Official Journal of the European Union

TFEU — Treaty on the Functioning of the European Union

VVTAT — Valstybinė vartotojų teisių apsaugos tarnyba (State Consumer Rights Protection Authority)

INTRODUCTION

Consumer protection represents one of the fundamental policy objectives of the European Union, as enshrined in Article 169 of the Treaty on the Functioning of the European Union[1]. Among the instruments constituting the EU consumer acquis, Council Directive 93/13/EEC on unfair terms in consumer contracts[2] (hereinafter — the Directive) occupies a position of particular significance. Adopted in 1993, the Directive establishes a minimum harmonisation framework designed to protect consumers against the inclusion of unfair terms in contracts concluded with sellers or suppliers. The Directive proceeds from the fundamental recognition, expressed in its ninth recital, that consumers typically find themselves in a weaker position vis-à-vis the seller or supplier, both in terms of their bargaining power and their level of knowledge[3]. However, the practical efficiency of the protections granted by the Directive depends heavily upon the means available for their enforcement at the national level. Article 7(1) of the Directive requires Member States to establish sufficient and effective mechanisms to prevent the ongoing use of unfair terms, while primarily referring to national procedural law regarding the specific methods by which individual consumers can claim these protections in national courts. Deference to national procedural autonomy has created a fundamental tension which is when national procedural rules make it practically impossible or extremely difficult for consumers to exercise Directive rights, the protective purpose of the coordinated system is compromised. In response to this tension, the Court of Justice of the European Union (hereinafter - the CJEU) has developed over more than[4] years of case law what is now known as the "ex officio doctrine." This states that even if the consumer doesn't make a case still the national courts have to check whether contract terms are being unfair on their own. This theory, arising from the crucial finding in Océano Grupo Editorial and Salvat Editores and subsequently refined via extensive case law, represents one of the most significant interventions of EU law into national civil procedural systems. The ex officio doctrine directly challenges fundamental principles of civil procedure in numerous Member States, including the principle of party disposition, the adversarial nature of litigation, the principle of res judicata, and national regulations concerning limitation periods and procedural

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[1]Article 169 of the Treaty on the Functioning of the European Union (consolidated version). OJ C 326, 2012, pp. 47– 390.

[2]Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 1993, pp. 29–34.

[3]See Recital 9 of Directive 93/13/EEC.

[4]Ibid., para. 28.

preclusion.In pursuit of this aim, the thesis sets the following research objectives: first, to trace the doctrinal development of the ex officio duty in the CJEU's case law from Océano Grupo Editorial to the most recent relevant decisions, identifying the key stages in its evolution; second, to examine the theoretical foundations of the ex officio doctrine, particularly the principle of effectiveness, the principle of equivalence, and the concept of the consumer as a weaker party; third, to analyse the scope and limits of the ex officio duty, including the procedural contexts in which it applies and the conditions under which national procedural rules may lawfully restrict it; fourth, to critically evaluate the tensions between the ex officio doctrine and fundamental principles of national civil procedure, including party autonomy, res judicata, and procedural time limits; and fifth, to assess how Lithuanian law and court practice have responded to the ex officio requirements developed by the CJEU, identifying areas of conformity and potential deficiency.

The CJEU has primarily used the principle of effectiveness to justify this intervention, showing that the protective purpose of the Directive would be compromised in the absence of ex officio judicial control because consumers frequently fail to apply the protections of the Directive on their own initiative, perhaps because they are unaware of their rights, fear litigation costs, or due to the small amounts involved. However, case law and academic thought continue to dispute the specific scope of the duty, the procedural contexts in which it applies and the circumstances in which national procedural rules may lawfully restrict it. As it raises fundamental questions mostly about the limits of national procedural autonomy, the role of the national judge in the enforcement of EU rights and the appropriate balance between effective consumer protection and legal certainty, the topic has therefore became highly relevant to the theory and practice of EU consumer law. Since, the national procedural system of Lithuania is obliged to adapt the requirements of CJEU within its own institutional arrangements and civil procedural traditions, these issues attains special practical significance.

The purpose of this thesis is to critically examine the evolution, scope, and limitations of ex officio duty of the national courts to evaluate any unfair contract terms under Directive 93/13/EEC in CJEU jurisprudence. Additionally, to asses what challenges this doctrine represents for the national procedural systems, particularly in Lithuania.

Jurisprudence of the CJEU on the ex officio duties of national courts under Directive 93/13/EEC, relevant clauses of the Directive itself and related aspects of Lithuanian civil procedural law and court practices are the main focusing areas of this research. The research does not include an in-depth study of any significant aspects of unfair contract terms law under the Directive rather, it emphasises on the procedural section, specifically the duty of courts to evaluate the unfairness of contract terms ex officio and the impacts of this duty for national procedural systems.

The study uses different kinds of complementary techniques. The legal framework which is governing the ex officio duty is examined in a structured manner by using the method of systematic analysis to comply with the requirements of Directive 93/13/EEC, the rulings of the CJEU, and the relevant applicable sections of Lithuanian legislation. Standards of the CJEU are compared to Lithuania's procedural laws and judicial practices using the comparative method, which additionally depends on other experience of the Member States in implementing the principle whenever it becomes informative. The development's coherence and consistency of jurisprudential of the CJEU as well as to address the diverse academic perspectives about the validity and appropriateness of the ex officio requirement critical analysis method is used. Rulings of the CJEU are used to demonstrate the chronological development of this principle using the historical-evolutionary technique, which indicates how the conditions and scope of duty have changed over time. Lastly, in terms of interpreting particular Directive and national laws the linguistic method is applied.

This thesis is distinctive in a few different manners. Although the ex officio doctrine received attention from scholars, primarily the Western European legal scholarship, extended analytical treatments that outline the entire trajectory of the doctrine from its founding in Océano Grupo Editorial to the most current decisions of the CJEU while concurrently evaluating interaction of the doctrine with the procedural framework of a recent Member State are still relatively uncommon. The doctrinal development of the duty in the CJEU's jurisprudence, the theoretical disagreements it creates with universally recognised procedural principles and the specific challenges of its execution in the Lithuanian legal system are the three main dimensions that are typically addressed individually in the literature. This thesis contributes to the body of research by offering an organized and critical analysis that combines these three dimensions. This integrated approach enables the possibility of identifying advantages and disadvantages of the current legal framework from a point of view that is not limited to any particular national tradition, history or experience.

Furthermore, the research uses different types of sources. the Agreement on the Functioning of the European Union, Directive 93/13/EEC and the relevant sections of Lithuanian civil procedural law particularly, the Law on Consumer Protection of the Republic of Lithuania and the Code of Civil Procedure of the Republic of Lithuania are the primary legal sources. The most important source of primary material for this study is the

CJEU's case law, with special focus on the series of rulings that developed the ex officio theory, such as Océano Grupo Editorial and Salvat Editores', Cofidis', Mostaza Claro, Pannon GSM, VB Pénzügyi Lízing, Banco Español de Crédito, and Asturcom Telecomunicaciones.

In order to evaluate national execution, Lithuanian court specifically practices judgements from the Supreme Court of Lithuania regarding the application of the unfair terms regime.

Leading authorities in the domains of EU consumer law and EU procedural law made contributions to the particular literature which was considered for this research. Hans-W. Micklitz's writings on the application of EU consumer law, Stephen Weatherill's research on EU consumer law and policy, Norbert Reich's analyses regarding the efficiency of the principle in consumer protection and Verica Trstenjak and Erwin Beysen's work especially on the ex officio doctrine are some of the most essential biblical sources used to complete the research.The general treatise on EU law by Paul Craig and Gráinne de Búrca has been consulted for its treatment of remedies and procedural autonomy, whilst the work of Michael Dougan on national procedural autonomy provides essential critical perspective. Lithuanian legal doctrine on consumer protection and civil procedure has also been consulted where available. The doctrinal sources were selected on the basis of their direct relevance to the principle of effectiveness and its application in the consumer protection context, with priority accorded to peer-reviewed academic publications, established legal commentaries, and monographs of recognised authority in the field.

1. THE DOCTRINAL FOUNDATIONS AND DEVELOPMENT OF THE EX OFFICIO

DUTY IN THE JURISPRUDENCE OF THE CJEU

1.1. The Rationale for Judicial Intervention: The Consumer as a Weaker Party

The ex officio doctrine formulated by the CJEU under the framework of Directive 93/13/EEC does not fall out of thin air. It is based on a certain understanding of the role of the consumer in the contractual relationship, and by extension, of the role that the legal institutions should have in correcting the ensuing imbalance. The principle of effectiveness is the formal legal principle that underpins the principle of active judicial intervention in the area of unfair contract terms, it follows then that the substantive rationale behind the insistence of the CJEU in the area of unfair contractual terms as a matter of active judicial intervention, needs to be taken into account.

The Directive is based on the express acknowledgment of the fact that the consumer is structurally weak in comparison with the seller or supplier. The premise, expressed in the statements of the Directive itself, is not simply a matter of rhetoric, but rather of interpretive key to the overall attitude of the CJEU towards the provisions of the Directive. The weak point is seen as being twofold. First, there is an informational asymmetry: the consumer usually has less information about the legal and economic consequences of the terms that are learnt in standard-form contracts in comparison with the professional party that drafted those terms. Second, the bargaining power is unequal: the consumer is commonly introduced to pre-set terms to take or leave it, without any real possibility of making a negotiation concerning the terms. The consumer protection law in the EU, as Weatherill has noted, is based on the premise that, when left to its natural laws, the market does not guarantee the fair result of the weaker side and thus the need to intervene with the law.This conception of the consumer as structurally disadvantaged has significant implications for the enforcement architecture of the Directive. If consumers are unable, by reason of their informational deficit and their limited bargaining power, to protect themselves effectively at the stage of contract formation, the question arises whether they can realistically be expected to protect themselves at the stage of enforcement — that is, before national courts. The answer, as the CJEU has consistently held, is that they cannot. The same informational deficit that prevents consumers from appreciating the unfairness of a contract term at the moment of conclusion also prevents many consumers from identifying the legal basis upon which that term could be challenged before a court. Moreover, even where a consumer is aware that a term may be unfair, practical barriers — including the cost and complexity of litigation, the modest sums typically at stake in consumer disputes, and the psychological deterrent of opposing a professionally represented counterparty — may dissuade the consumer from raising the issue[5]. The result is what might be termed an enforcement gap: the substantive rights conferred by the Directive exist on paper, but remain systematically underenforced in practice.

The ninth recital of the Directive acknowledges this problem by stating that the rules relating to unfair terms should apply to all contracts concluded between sellers or suppliers and consumers[6]. Yet the Directive itself does not prescribe a specific enforcement mechanism at the individual level. Article 6(1) provides that unfair terms shall not be binding on the consumer, and Article 7(1) requires Member States to ensure that adequate and effective means exist to prevent the continued use of unfair terms, but the Directive largely leaves it to national procedural law to determine how these substantive guarantees are to be given effect in individual disputes. This structural feature of the Directive — strong substantive protection combined with deference to national procedural autonomy — creates the conditions for the enforcement gap described above. If national procedural systems are constructed on the assumption that parties will assert their own rights (as is the case in most adversarial and partially adversarial systems), and if consumers systematically fail to assert their rights under the Directive, the protective purpose of the harmonised regime is undermined.

It is this structural problem that has impelled the CJEU to develop the ex officio doctrine. The reasoning is, at its core, functional: because the Directive's protective objective cannot be achieved through reliance on consumer initiative alone, the national court must step into the breach. As Reich has argued, the rationale for judicial intervention in this context is not paternalism in the pejorative sense, but rather the recognition that the Directive's system of protection would be rendered illusory if its enforcement depended entirely upon the initiative of the very party whose weakness the Directive is designed to address[7]. The concept of the consumer as a weaker party thus operates not merely as a justification for the Directive's substantive rules, but equally as the foundation for the procedural obligations that the CJEU has derived from those rules. The logical chain is

[5] MICKLITZ, Hans-W.; STUYCK, Jules and TERRYN, Evelyne (eds.) (2010). Cases, Materials and Text on Consumer Law. Oxford: Hart Publishing, p. 464.
[6] Recital 9 of Directive 93/13/EEC.
[7] REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 86.

straightforward: the consumer is weak; the weak consumer will not enforce the Directive; therefore, enforcement must be secured by other means — specifically, by the national court acting on its own motion.

1.2. The Principle of Effectiveness as the Legal Basis for the Ex Officio Doctrine

Whilst the conception of the consumer as a weaker party provides the substantive rationale for the ex officio doctrine, its formal legal basis lies in the principle of effectiveness, one of the twin conditions governing the exercise of national procedural autonomy in the application of EU law[8]. Understanding the doctrinal architecture of the ex officio duty requires a careful examination of this principle and its specific application to the field of consumer protection.

The relationship between EU substantive law and national procedural law is governed by the principle of national procedural autonomy, according to which, in the absence of harmonisation at the EU level, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights derived from EU law. This principle, however, is not absolute. Since the landmark decisions in Rewe and Comet, both delivered on the same day in 1976, the CJEU has held that national procedural rules are subject to two conditions: the principle of equivalence, which requires that the rules governing claims based on EU law are no less favourable than those governing similar domestic actions; and the principle of effectiveness, which requires that national rules do not render it practically impossible or excessively difficult to exercise the rights conferred by EU law[9].

In Rewe, the Court established that, although EU law did not intend to create new remedies in national courts for the protection of EU rights beyond those already provided by national law, national procedural conditions could not render the exercise of those rights practically impossible[10]. The Comet decision reinforced this position, confirming that the application of national procedural rules was permissible provided it did not make it

[8]CRAIG, Paul and DE BURCA, Grainne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 238.
[9]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 240.
[10]Rewe-Zentralfinanz eG and Rewe-Zentral AG v Landwirtschaftskammer für das Saarland [CJEU], No. 33/76, [16-12- 1976]. ECLI:EU:C:1976:188, para. 5.

impossible in practice to exercise rights which the national courts were obliged to protect[11]. These twin decisions established what has become known as the Rewe/Comet formula, which has since served as the foundational framework for assessing the compatibility of national procedural rules with EU law[12].

The principle of effectiveness, as one limb of this formula, has evolved considerably since its initial formulation. In its original conception, the principle operated as a negative limit: national rules were incompatible with EU law only if they rendered the exercise of EU rights practically impossible. Over time, however, the CJEU broadened the standard, prohibiting not only rules that made the exercise of rights impossible but also those that made it "excessively difficult." This expansion is of critical importance for the ex officio doctrine, as it is the broader formulation that has enabled the CJEU to intervene in situations where national procedural frameworks, while not absolutely precluding the enforcement of consumer rights, create conditions in which enforcement is, for practical purposes, unlikely to occur. As Dougan has observed, the shift from "practically impossible" to "excessively difficult" transformed the principle of effectiveness from a minimal safety net into a more searching standard of review, capable of reaching procedural rules that, while formally neutral, have a disproportionate impact on the exercise of EU rights in practice[13].

The application of the principle of effectiveness to the specific context of consumer protection under Directive 93/13/EEC has given this principle a particularly robust expression. The CJEU has consistently held that the system of protection established by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, and that this weakness extends to the level of knowledge of legal rights and the ability to enforce them. In the consumer context, the principle of effectiveness has therefore been interpreted not merely as a prohibition on procedural rules that render enforcement impossible or excessively difficult, but as a positive mandate requiring national courts to take active steps to ensure that the Directive's protective purpose is realised[14]. This positive dimension is what distinguishes the application of the principle of effectiveness in consumer cases from its application in other areas of EU law, where it typically operates as a constraint upon, rather than an affirmative obligation imposed upon, national courts.

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[11] Comet BV v Produktschap voor Siergewassen [CJEU], No. 45/76, [16-12-1976]. ECLI:EU:C:1976:191, para. 13.

[12] CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 242.

[13] DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 30.

[14] PRECHAL, Sacha (1998). EC Requirements for an Effective Remedy. In: LONBAY, Julian and BIONDI, Andrea (eds.). Remedies for Breach of EC Law. Chichester: Wiley, pp. 3–13, at p. 5.

Trstenjak and Beysen have argued that the CJEU's application of the principle of effectiveness in the consumer protection context amounts to a distinct species of the principle, one characterised by a higher degree of interventionism justified by the structural characteristics of consumer disputes[15]. On this view, the ex officio doctrine is not an anomaly but rather the logical consequence of applying the general principle of effectiveness to a field in which the conditions for effective private enforcement are systematically absent. The principle of effectiveness, in other words, demands ex officio judicial control precisely because the alternative — reliance on consumer initiative — would, given the characteristics of consumer disputes, render the Directive's protections ineffective in a substantial number of cases.

It is important, however, to acknowledge the doctrinal tension that this interpretation generates. If the principle of effectiveness is understood as imposing a positive obligation on national courts to assess contract terms on their own motion, it ceases to operate merely as a constraint on national procedural autonomy and becomes, in effect, a source of autonomous procedural obligations derived from EU law. This represents a significant departure from the original Rewe/Comet framework, which envisaged the principle of effectiveness as a negative limit on national procedural discretion, not as an independent basis for the creation of new procedural duties. Reich has noted that this tension is inherent in the development of the effectiveness principle across all fields of EU law, but that it is particularly acute in the consumer protection context, where the CJEU has been willing to derive procedural obligations that have no counterpart in the national procedural traditions of most Member States[16]. The manner in which the CJEU has navigated this tension through its case law is the subject of the following section.

1.3. The Chronological Development of the Ex Officio Duty in CJEU Case Law

The ex officio doctrine has not been established in a single judicial pronouncement; rather, it has been constructed incrementally through a series of landmark decisions spanning more than two decades[17]. Each successive ruling has clarified, expanded, or refined a particular aspect of the duty, resulting in a body of case law of considerable complexity. This section

[15]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 101.
[16]REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 91.
[17]REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 88.

traces the key stages in this development, analysing each decision in terms of its specific doctrinal contribution to the construction of the ex officio obligation.

Océano Grupo Editorial and Salvat Editores (2000). The doctrine originates in the CJEU's ruling in Océano Grupo[18], a case arising from proceedings before a Spanish court concerning jurisdiction clauses in contracts for the sale of encyclopaedias. The referring court asked, in essence, whether a national court could determine of its own motion whether a term conferring exclusive jurisdiction on the courts of the seller's place of business was unfair within the meaning of the Directive. The CJEU answered in the affirmative, holding that effective protection of consumers required that the national court be able to assess the unfairness of such a term on its own motion. The Court's reasoning rested on two pillars. First, the system of protection introduced by the Directive was based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, particularly as regards the level of knowledge[19]. Second, there existed a real risk that the consumer would be unaware of his or her rights or would encounter difficulties in exercising them, such that the effective protection guaranteed by the Directive could be attained only if the national court acknowledged that it had the power to evaluate the unfairness of a term of its own motion[20].

The significance of Océano Grupo lies not only in the result but also in the manner in which the Court framed the duty. The ruling spoke of the national court's "power" to assess unfairness ex officio, rather than of an obligation to do so[21]. This formulation left open the question of whether the ex officio assessment was a discretionary faculty or a mandatory duty. As Trstenjak and Beysen have noted, the use of the word "power" rather than "duty" in Océano Grupo created a degree of ambiguity that would only be resolved in subsequent case law[22]. Nevertheless, the decision established the essential doctrinal proposition: the Directive, read in light of the principle of effectiveness, requires that national courts be empowered to go beyond the pleas raised by the parties and to assess the unfairness of contract terms on their own initiative.

Cofidis (2002). The next significant development came in Cofidis[23], where the CJEU was asked to rule on the compatibility with the Directive of a French procedural rule

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[18]Océano Grupo Editorial and Salvat Editores [CJEU], Joined Cases No. C-240/98 to C-244/98, [27-06-2000]. ECLI:EU:C:2000:346.
[19]Ibid., para. 25.
[20]Ibid., para. 26.

[22]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 104.
[23]Cofidis SA v Jean-Louis Fredout [CJEU], No. C-473/00, [21-11-2002]. ECLI:EU:C:2002:705.

that imposed a limitation period on the consumer's right to challenge an unfair term. The question was whether such a time limit could also prevent a national court from assessing unfairness on its own motion after the expiry of that period. The Court held that a national procedural provision which prohibited the national court, on expiry of a limitation period, from finding of its own motion or following a plea raised by the consumer that a term was unfair, was liable to render excessively difficult the application of the protection intended to be conferred by the Directive[24]. The ruling established that national limitation periods could not operate so as to bar the ex officio assessment of unfairness, at least where the effect of the time limit would be to deprive the consumer of the protection of the Directive entirely.

The doctrinal contribution of Cofidis is twofold. First, it extended the reach of the ex officio principle beyond the specific context of jurisdiction clauses addressed in Océano Grupo to the broader question of the interaction between the ex officio duty and national procedural time limits. Second, and more fundamentally, the decision clarified that the ex officio power recognised in Océano Grupo carried real consequences for the validity of national procedural rules: where such rules had the effect of neutralising the court's ability to protect consumers, they had to yield to the requirements of the Directive[25]. The principle of effectiveness, in other words, was not merely a theoretical justification for ex officio assessment, but an operative rule capable of displacing incompatible national procedural provisions.

Mostaza Claro (2006). In Mostaza Claro[26], the CJEU extended the doctrine into the field of arbitration — a domain in which party autonomy is traditionally paramount. The central question was whether a court hearing an annulment action was required to assess the unfairness of an arbitration clause on its own motion, even where the consumer had participated in the arbitration without raising the unfairness plea. The Court answered affirmatively, grounding its reasoning in the public interest character of consumer protection[27]. The importance of Mostaza Claro is great. The ruling is the first time when the CJEU made it very clear that the ex officio examination is an obligatory term and not a prerogative. The Court eliminated the uncertainty which Océano Grupo had created by holding that the national court was obliged to determine unfairness in its own initiative. In addition, the ruling applied the doctrine to arbitration, an area where the principle of party

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[24]Ibid., para. 36.
[25]Ibid., para. 38.
[26]Mostaza Claro v Centro Móvil Milenium SL [CJEU], No. C-168/05, [26-10-2006]. ECLI:EU:C:2006:675.
[27]Ibid., para. 38.

autonomy is customarily accorded specific consideration. This extension showed that the ex officio requirement did not focus on the ordinary civil proceedings but could extend to the proceedings in which the consumer has actively engaged without the increase of the unfairness plea. As Micklitz has noted, the decision increased the ex officio doctrine beyond a procedural corrective to a statement of the character of the public interest of consumer protection in the EU law. Pannon GSM (2009). The case of Pannon GSM was a breakthrough to the doctrine as it indicated the circumstances in which ex officio duty is invoked. The CJEU ruled that the national court had a duty of evaluating the unfairness of a contractual term once it had access to both the legal and factual factors that could be used to perform that assessment. The development of this formulation brought the so-called necessary elements standard: ex officio duty does not emerge at a predefined stage of the procedure, but whenever the court can have enough information to conduct the unfairness analysis.

There are two other things about Pannon GSM, which deserve consideration. To begin with, the Court clarified that the national court has to not apply a term that it considers unfair, unless the consumer, after having been informed by the court, does not mean to assert that the term is unfair and non-binding. This added a significant procedural protection: the consumer is not deprived of his right to opt in to the further operation of a term that the court has declared to be unfair, a fact that the individual autonomy of the consumer is not completely override by the ex officio mechanism . Second, the decision reiterated that the ex officio obligation flowed directly from the Directive as interpreted in light of the principle of effectiveness, confirming its character as a duty derived from EU law rather than from national procedural traditions[28]. As Reich has noted, Pannon GSM thus completed the transformation of the ex officio principle from a judicial power into a structured procedural obligation, equipped with both triggering conditions and procedural guarantees[29].

VB Pénzügyi Lízing (2010). The CJEU's ruling in VB Pénzügyi Lízing[30] addressed the evidential dimension of the ex officio duty. The case raised the question of whether, in order to assess the unfairness of a contract term, the national court was entitled to investigate of its own motion whether a term fell within the scope of the Directive, even where neither party had raised this question. The Court held that the national court was

[28]Ibid., para. 35.
[29]REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 94.
[30]VB Pénzügyi Lízing Zrt. v Ferenc Schneider [CJEU], No. C-137/08, [09-11-2010]. ECLI:EU:C:2010:659.

required to take measures of inquiry of its own motion in order to establish whether a term fell within the scope of the Directive and, if so, whether it was unfair[31]. This ruling extended the ex officio doctrine from the assessment stage to the preliminary investigative stage: the court's duty was not limited to evaluating unfairness on the basis of materials already before it, but extended to actively seeking the information necessary to carry out that evaluation.

The significance of VB Pénzügyi Lízing lies in its implications for the scope of judicial investigation. By holding that the court must take "measures of inquiry" of its own motion, the CJEU significantly expanded the procedural content of the ex officio obligation. In many national procedural systems, the court's role is limited to adjudicating the evidence presented by the parties; the notion that the court should independently investigate factual questions represents a departure from the adversarial paradigm. As Weatherill has observed, this extension illustrates the degree to which the CJEU's consumer protection jurisprudence has reshaped national procedural traditions, requiring courts to assume an inquisitorial function that their procedural systems do not traditionally contemplate[32].

Banco Español de Crédito (2012). The ruling in Banco Español de Crédito[33] addressed both the procedural context and the remedial consequences of the ex officio assessment. The case arose from a Spanish order-for-payment procedure in which the national court identified a potentially unfair term (a default interest clause) but was unable, under national procedural rules, to assess the term's unfairness within the framework of the expedited payment proceedings. The CJEU held that the Directive precluded national legislation which did not allow the court, in order-for-payment proceedings, to assess of its own motion whether a contractual term was unfair[34]. The decision thereby extended the ex officio obligation to order-for-payment proceedings, a category of proceedings characterised by limited judicial scrutiny and the absence of a full adversarial hearing.

Equally important was the Court's pronouncement on the consequences of a finding of unfairness. The CJEU held that the Directive precluded a provision of national law which allowed the national court, where it found an unfair term in a contract concluded between a seller or supplier and a consumer, to revise the content of that term instead of simply disapplying it[35]. This aspect of the ruling established a fundamental remedial principle: the

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[31]Ibid., para. 56.
[32]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 146.
[33]Banco Español de Crédito SA v Joaquín Calderón Camino [CJEU], No. C-618/10, [14-06-2012]. ECLI:EU:C:2012:349.
[34]Ibid., para. 62.
[35]Ibid., para. 65.

ex officio assessment, when it leads to a finding of unfairness, results in the non-application of the term, not in its judicial modification. The Court reasoned that if courts were permitted to revise the content of unfair terms, the dissuasive effect of the Directive's prohibition would be diminished, as sellers and suppliers would be incentivised to include unfair terms in the knowledge that the worst outcome would be their judicial adjustment to acceptable levels[36]. As Trstenjak and Beysen have argued, this remedial approach reflects a deliberate policy choice by the CJEU: the deterrent function of the unfairness control prevails over the interest in contractual continuity[37].

Profi Credit Polska (2018) and Lintner (2020). The more recent jurisprudence has continued to refine the doctrine. In Profi Credit Polska[38], the CJEU addressed the specific question of whether the ex officio duty extended to proceedings conducted on the basis of a bill of exchange issued in connection with a consumer credit agreement. The Court confirmed that the principle of effectiveness required the national court, even in expedited proceedings based on negotiable instruments, to be able to review ex officio whether the contractual terms underlying the bill of exchange were unfair[39]. This ruling confirmed the broad reach of the doctrine: the ex officio obligation was not contingent upon the procedural form of the proceedings but attached whenever the enforcement of a claim could be linked to a potentially unfair contract term.

In Lintner[40], the CJEU addressed the outer limits of the ex officio duty, providing an important clarification regarding its scope. The case raised the question of whether a national court, when assessing the unfairness of contract terms on its own motion, was required to examine all the terms of the contract, including those unrelated to the subject matter of the dispute. The Court held that the ex officio duty did not require the national court to examine individually and of its own motion all the other terms of the contract which had not been challenged by the consumer, where those terms were not connected with the subject matter of the dispute[41]. However, the Court also held that the national court was required to examine of its own motion those terms which were connected with the subject matter of the dispute, provided it had the legal and factual elements necessary for that

[36] Ibid., para. 73.
[37] TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 118.
[38] Profi Credit Polska SA v Mariusz Wawrzosek [CJEU], No. C-176/17, [13-09-2018]. ECLI:EU:C:2018:711.
[39] Ibid., para. 44.
[40] Lintner v UniCredit Bank Hungary Zrt. [CJEU], No. C-511/17, [11-03-2020]. ECLI:EU:C:2020:188.
[41] Ibid., para. 33.

purpose[42]. Lintner thus established an important limiting principle: the ex officio duty, while mandatory, is not unlimited in scope; it is bounded by the subject matter of the dispute and by the availability of the necessary legal and factual elements. The role of the principle of equivalence in the construction of the ex officio doctrine merits further examination, as it has operated alongside the principle of effectiveness as a complementary justification for the duty in several key decisions[43]. The principle of equivalence requires that the procedural rules governing claims based on EU law are no less favourable than those governing similar domestic actions. In the context of the ex officio doctrine, the relevance of equivalence has been most clearly demonstrated in Asturcom Telecomunicaciones, where the CJEU held that if national law empowered the enforcement court to assess, on its own motion, whether a contractual term was contrary to national rules of public policy, the court was equally obliged to assess whether the term was unfair under the Directive. This argument represents the basic reasoning of equivalence: where one of the national legal systems already offers the intervention of the judiciary in the name of domestic public policy, it cannot deprive analogous protection to the rights of the EU-law-based rights. The pragmatic value of this argumentation cannot be underrated. The court may expressly increase the nullity of terms of the contract that are contrary to the public policy or to the compulsory rules of law in the country, and this is a common domestic civil procedural law in many Member States, such as Lithuania. Principle of equivalence transfigures this domestic procedural capacity into an obligation of the EU law: the court which already has the power to safeguard the domestic policy interests must also have the power to safeguard the interests that the Directive enshrines. The principle of equivalence in this regard, as Prechal has claimed, serves not only to provide a comparative standard, but it can serve as a substantive gateway to the national procedural system through which EU requirements at law come to play. When equivalence and effectiveness interrelate in the consumer protection context, it results in a more challenging doctrinal framework than either of the two principles would be were they applied separately. The wider theoretical implications of the CJEU approach to the substantive consumer protection and procedural enforcement relation also need to be taken into account. The Directive is founded on what can be used to call a structural asymmetry model: the substantive regulations are unified at EU level, and the procedural regulations of their application are left at the national level. This is a widespread feature of the substantive protections of the EU consumer law and poses a continuing threat that the

[42]Ibid., para. 32.
[43]PRECHAL, Sacha (1998). EC Requirements for an Effective Remedy. In: LONBAY, Julian and BIONDI, Andrea (eds.). Remedies for Breach of EC Law. Chichester: Wiley, pp. 3-13, at p. 7.

efficacy of harmonised substantive or consumer protections will not be consistent in all the Member States based on the procedural circumstances present in the national system of each country. The ex officio doctrine might be perceived as the most important effort of CJEU to decrease this risk in the particular sphere of unfair contract terms. The CJEU has effectively ushered in a certain level of harmonisation in procedures by judicial means by having put in place a minimum procedural test, the necessity of an examination of unfairness by the court itself. It follows a general move in EU legal law, which is towards what Micklitz has termed the rise of a European civil procedural law in consumer protection, effected not by legislative harmonisation, but by the gradual jurisprudentialism of the CJEU. The importance of the right of the consumer to dispense with the security provided by a determination of unfairness, which was laid down in Pannon GSM, is also a matter of further discussion. Introduction of waiver mechanism has a twofold purpose in the doctrinal framework of the ex officio obligation. On the one hand, it ensures the autonomy of a consumer since the intervention of the court does not preclude the freedom of the consumer to make his or her own judgment on his or her interests. A consumer may have legitimate reasons why he would rather the term that has been found to be unfair to continue to apply, such as, in a situation where the inapplicability of the term would cause a voiding of the entire contract the consequence of which would be more harmful to the consumer than the applicability of the unfair term. Conversely, the waiver condition can be considered as the procedural protection that strengthens the disclosure of the judicial process: informing the consumer of the occurrence of the unfairness and giving the consumer the option to accept or to reject the protection, the court will ensure that further use of the term should not be the outcome of an informed choice but of ignorance or procedural incapability. By reconciliating, therefore, as Trstenjak and Beysen have noted, the paternalism aspect of the ex officio obligation and the principle of autonomy, the doctrine safeguards consumers without infantilizing them.

1.4. The Current State of the Doctrine: Consolidation and Remaining Questions

The analysis of the preceding case law permits the identification of a number of propositions that may be regarded as settled within the current state of the ex officio doctrine[44]. First, the obligation of national courts to assess the unfairness of contract terms under Directive 93/13/EEC on their own motion is firmly established as a mandatory duty,

[44]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 148.

not a discretionary power. This proposition, suggested in Océano Grupo and confirmed unambiguously in Mostaza Claro and Pannon GSM, is no longer subject to serious doctrinal controversy. Second, the duty is triggered whenever the national court has available the legal and factual elements necessary for the assessment, regardless of whether the consumer has raised the issue of unfairness. Third, the duty extends across a range of procedural contexts, including ordinary civil proceedings, arbitration-related proceedings, order-for-payment proceedings, and proceedings based on negotiable instruments. Fourth, where the court finds a term to be unfair, the consequence is the non-application of that term; the court may not revise its content so as to render it fair. Fifth, the consumer retains the right to waive the protection afforded by the finding of unfairness, provided that the waiver is informed and voluntary.

At the same time, certain questions remain open or subject to ongoing development. The precise scope of the court's investigative powers under the ex officio duty — in particular, the extent to which the court may or must request documents, order evidence, or summon parties in order to obtain the elements necessary for the unfairness assessment — has not been fully clarified. As Craig and de Búrca have observed, the CJEU's case law on the ex officio duty has developed in response to individual preliminary references, each addressing specific procedural configurations under different national laws, with the result that the doctrine, while coherent in its overarching principles, remains uneven in its detailed application across different procedural settings[45]. The interaction between the ex officio duty and the principle of res judicata also remains an area of doctrinal complexity, as the CJEU has recognised that the principle of finality may, in certain circumstances, limit the operation of the ex officio obligation. These tensions are examined in detail in Chapter 2 of this thesis.

Furthermore, the relationship between the ex officio doctrine and the broader principle of national procedural autonomy continues to generate scholarly debate. Dougan has argued that the CJEU's approach in the consumer protection field represents the most advanced expression of a general trend towards the proceduralisation of EU law, in which the principle of effectiveness is used not merely to police the outer boundaries of national procedural discretion but to impose affirmative procedural obligations on national courts[46]. Whether this trend is welcome or problematic depends, in large part, on the normative framework within which it is assessed. From the perspective of effective consumer

[45]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 258.
[46]DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 68.

protection, the ex officio doctrine is a necessary and proportionate response to a systemic enforcement deficit. From the perspective of national procedural sovereignty and legal certainty, it represents an intrusion that undermines the autonomy of national legal systems and creates uncertainty for all parties to consumer contracts. As Weatherill has observed, the challenge for the CJEU lies in striking a balance between these competing considerations — a balance that the evolving case law has not yet fully achieved[47]. The manner in which the CJEU has sought to manage these tensions in specific procedural contexts is the subject of the next chapter of this thesis.

[47] WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 149.

2. THE SCOPE AND LIMITS OF THE EX OFFICIO DUTY: PROCEDURAL CONTEXTS

AND TENSIONS WITH NATIONAL LAW

2.1. The Ex Officio Duty in Ordinary Civil Proceedings

Chapter 1 of this thesis traced how the CJEU built the ex officio doctrine step by step through its case law. The present chapter moves from this general account to a more focused analysis of how the duty works in practice[48]. The central question is no longer whether national courts must assess unfair terms on their own motion — that question has been settled — but rather how far this duty reaches in different types of proceedings, and where its limits lie. This section begins with the most common setting: ordinary civil proceedings between a consumer and a seller or supplier.

In ordinary civil proceedings, the ex officio duty operates within a relatively straightforward framework. The court has before it the contract, the parties, and the claims. The key question is when exactly the duty is triggered. The CJEU answered this in Pannon GSM: the national court must assess the unfairness of a contract term on its own motion as soon as it has the legal and factual elements needed to do so[49]. This standard — known as the "necessary elements" test — is important because it means that the duty does not depend on any particular stage of the proceedings. It can arise at the very start, during the examination of evidence, or even at the stage of deciding the case, as long as the court has enough information to carry out the assessment.

In practice, this means that when a consumer dispute comes before a national court, and the contract contains standard terms, the court should review those terms to check whether any of them might be unfair under the Directive, even if the consumer has said nothing about this. The court does not need to wait for the consumer to raise the issue. As Trstenjak and Beysen have pointed out, this transforms the role of the judge from a passive referee who only decides what the parties put forward, into an active participant who has a duty to protect the consumer's interests[50]. This shift is significant because it goes against a

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[48]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95-132, at 105.
[49]Pannon GSM Zrt. v Erzsébet Sustíné Győrfi [CJEU], No. C-243/08, [04-06-2009]. ECLI:EU:C:2009:350, para. 32.
[50]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 108.

basic rule of civil procedure in many countries: the idea that parties control the scope of the dispute and the court should not go beyond what the parties ask for.

A related question concerns the extent to which the court must investigate the facts on its own. In VB Pénzügyi Lízing, the CJEU held that the national court was required to take investigative steps of its own motion to determine whether a contract term fell within the scope of the Directive and, if so, whether it was unfair[51]. This means that the court's duty is not limited to assessing evidence that the parties have already put before it. The court may need to ask for the contract, request additional documents, or seek other information that it considers necessary. As Weatherill has noted, this requirement is unusual in civil procedure, because in most legal systems the court depends on the parties to bring evidence and does not search for it on its own[52]. The CJEU's approach reflects a view that consumer protection is too important to be left entirely to the initiative of the parties, especially when one of the parties — the consumer — may not know that the terms in the contract are unfair.

However, the ex officio duty in ordinary proceedings is not without limits. In Lintner, the CJEU made clear that the court is not required to examine every single term of the contract on its own motion. The duty only covers those terms that are connected with the subject matter of the dispute[53]. For example, if a consumer brings a claim about a penalty clause, the court is not obliged to review, on its own, whether the interest rate clause or the jurisdiction clause in the same contract is also unfair, unless those terms are linked to the issue being decided. The court must, however, examine on its own motion any term that is connected with the subject matter of the dispute, provided it has the necessary information[54]. As Reich has observed, Lintner introduced an important practical limit that prevents the ex officio duty from becoming an open-ended obligation to audit the entire contract in every case[55].

2.2. The Ex Officio Duty in Enforcement and Order-for-Payment Proceedings

[51] VB Pénzügyi Lízing Zrt. v Ferenc Schneider [CJEU], No. C-137/08, [09-11-2010]. ECLI:EU:C:2010:659, para. 56.

[52] WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 147.

[53] Lintner v UniCredit Bank Hungary Zrt. [CJEU], No. C-511/17, [11-03-2020]. ECLI:EU:C:2020:188, para. 33.

[54] Ibid., para. 32.

[55] REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 97.

One of the most important and contested areas of the ex officio doctrine concerns its application in enforcement and order-for-payment proceedings[56]. These are special types of proceedings, designed to be fast and simple, in which a creditor asks the court to order the debtor to pay a sum of money. In many legal systems, these proceedings involve limited or no review by the court: the creditor submits the claim and supporting documents, and the court issues a payment order without a full hearing. The debtor can then object, but if no objection is made, the order becomes enforceable. The question is whether, even in these simplified proceedings, the court must check whether the contract contains unfair terms.

The CJEU first addressed this question directly in Banco Español de Crédito. The case involved a Spanish order-for-payment procedure in which the court noticed that the contract contained a very high default interest rate, but national law did not allow the court to assess the fairness of this term within the framework of the payment proceedings. The CJEU held that the Directive did not permit such a restriction. In the Court's view, national rules that prevented the court from assessing the unfairness of a term in order-for-payment proceedings were not compatible with the principle of effectiveness, because they created a serious risk that consumers would never have the protection of the Directive[57]. The reasoning was practical: in many consumer debt cases, the amounts are small, the consumer does not have a lawyer, and the consumer may not even respond to the payment order. If the court cannot check the contract on its own in these proceedings, the unfair term will simply be enforced without any review at all[58].

This position was strengthened in Finanmadrid[59], where the CJEU dealt with Spanish proceedings for the enforcement of a final order for payment. Under Spanish law at the time, if the consumer did not object to the payment order within[60] days, the order became final and the court could not review the contract at the enforcement stage. The CJEU held that this system was not compatible with the Directive, because the very short time limit for objection, combined with the fact that consumers often did not respond, meant that the principle of effectiveness was not satisfied[61]. The Court held that if no ex officio

[56]MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: REICH, Norbert; MICKLITZ, Hans-W.; ROTT, Peter and TONNER, Klaus. European Consumer Law. Second edition. Cambridge: Intersentia, p. 135.

[57]Banco Español de Crédito SA v Joaquín Calderón Camino [CJEU], No. C-618/10, [14-06-2012]. ECLI:EU:C:2012:349, para. 57.

[58]Ibid., para. 53.

[59]Finanmadrid EFC SA v Jesús Vicente Albán Zambrano and Others [CJEU], No. C-49/14, [18-02-2016]. ECLI:EU:C:2016:98.

[61]Ibid., para. 46.

review took place at any point in the proceedings, the system as a whole failed to provide the level of protection required by the Directive[62]. As Micklitz has argued, this line of case law shows that the CJEU treats the ex officio duty as a minimum safeguard that must exist somewhere in the process, and if the regular procedure does not include it, then the enforcement procedure must[63].

The duty was extended further in Profi Credit Polska, which concerned proceedings based on a bill of exchange — a type of negotiable instrument — issued in connection with a consumer credit agreement. Under the relevant Polish rules, the court in such proceedings could only examine the formal validity of the bill of exchange and could not look behind the instrument to check the underlying contract. The CJEU held that this was not acceptable under the Directive. The principle of effectiveness required the court to be able to examine on its own motion whether the terms of the underlying consumer contract were unfair, even in proceedings based on a negotiable instrument[64]. The Court reasoned that the right to effective consumer protection could not depend on the form of the legal instrument used by the creditor. To allow businesses to avoid the ex officio review simply by using a bill of exchange instead of a standard contract claim would create a way around the Directive's protection[65].

The practical importance of this line of case law is very significant. Order-for-payment proceedings and similar fast-track procedures are among the most common ways in which consumer debts are collected across Europe. If the ex officio duty did not apply in these proceedings, a large number of consumer contracts would be enforced without any judicial check on the fairness of their terms. As Craig and de Búrca have noted, the CJEU's approach in this area reflects a broad understanding of effectiveness: it is not enough that the consumer has a theoretical right to challenge unfair terms in separate proceedings; the protection must be real and practical, not just available on paper[66].

2.3. The Ex Officio Duty and the Principle of Res Judicata

[62]Ibid., para. 54.
[63]MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: REICH, Norbert; MICKLITZ, Hans-W.; ROTT, Peter and TONNER, Klaus. European Consumer Law. Second edition. Cambridge: Intersentia, p. 137.
[64]Profi Credit Polska SA v Mariusz Wawrzosek [CJEU], No. C-176/17, [13-09-2018]. ECLI:EU:C:2018:711, para. 44.
[65]Ibid., para. 46.
[66]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 254.

One of the most difficult questions in the development of the ex officio doctrine is how it interacts with the principle of res judicata — the rule that a final court decision cannot be reopened or changed[67]. This principle is a basic element of legal certainty in every legal system. The question is whether the ex officio duty can require a court to assess the fairness of contract terms even after a previous court decision on the same matter has become final.

The CJEU addressed this question directly in Asturcom Telecomunicaciones[68]. The case involved a consumer who had been ordered to pay a certain amount by an arbitral award. The consumer did not challenge the award within the time allowed under Spanish law, so it became final. When the company sought to enforce the award, the question was whether the enforcement court could still assess the unfairness of the arbitration clause on its own motion, even though the arbitral award had acquired the force of res judicata. The CJEU began by recognising the importance of res judicata in both national and EU law. The Court stated clearly that the principle of finality of judicial decisions is a value that EU law respects and protects[69]. However, the Court then applied the twin tests of equivalence and effectiveness. On equivalence, the Court held that if national law allowed the enforcement court to assess, on its own motion, whether a contract term was contrary to national rules of public policy, then it must also allow the court to assess whether the term was unfair under the Directive[70]. On effectiveness, the Court held that the principle of effectiveness was not, in this case, breached by the application of res judicata, because the consumer had been given a reasonable opportunity to challenge the arbitral award and had simply failed to do so[71].

Asturcom is therefore a case of balance. The CJEU did not say that the ex officio duty always overrides res judicata; nor did it say that res judicata always blocks the ex officio duty. Instead, the outcome depends on the specific procedural context and on whether the consumer had a real chance to exercise his or her rights before the decision became final. As Dougan has observed, this approach is case-by-case rather than absolute, which gives national courts some room to apply their own procedural rules but also creates a degree of uncertainty about when res judicata will be respected and when it will not[72].

[67]CRAIG, Paul and DE BURCA, Grainne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 252.
[68]Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira [CJEU], No. C-40/08, [06-10-2009]. ECLI:EU:C:2009:615.
[69]Ibid., para. 37.
[70]Ibid., para. 38.
[71]Ibid., para. 41.
[72]DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 78.

The issue was further developed in Banco Primus[73], which dealt with Spanish mortgage enforcement proceedings. In this case, a previous court had already examined certain terms of the mortgage contract but had not assessed a particular term that the consumer later sought to challenge. The CJEU held that the principle of res judicata covered only those terms that were actually examined in the earlier proceedings, or that could have been examined on the basis of the grounds already raised[74]. Terms that were not examined and could not have been examined in the earlier proceedings were not covered by res judicata, and the court was therefore free — and indeed obliged — to assess their unfairness on its own motion at the enforcement stage[75]. This ruling is important because it limits the scope of res judicata in the consumer context: finality applies only to what was actually decided or directly raised, not to the contract as a whole.

Trstenjak and Beysen have argued that the CJEU's approach to res judicata in the consumer protection context shows a clear preference for protecting consumers over strict respect for the finality of decisions[76]. While the Court formally respects res judicata, it interprets it narrowly, so that only those specific terms that have been actively reviewed are protected by finality. This narrow interpretation means that in practice, res judicata is less of a barrier to the ex officio duty than it might first appear. At the same time, Reich has noted that this approach creates real difficulties for businesses, who may find that contract terms that they believed had been finally approved by a court can still be challenged at a later stage[77]. The tension between consumer protection and legal certainty is therefore not fully resolved; it is managed on a case-by-case basis, with the balance tilting towards consumer protection in most situations.

More recently, the CJEU in SPV Project 1503 76 addressed the question of whether a national court could, during enforcement proceedings, assess the unfairness of contract terms where the original judgment ordering payment had become final, even though no ex officio assessment had taken place in the original proceedings. The Court held that where neither the national court in the original proceedings nor the enforcement court had carried out any review of the potentially unfair terms, the principle of effectiveness required the enforcement court to be able to carry out such a review, even if this meant setting aside the

[73]Banco Primus SA v Jesús Gutiérrez García [CJEU], No. C-421/14, [26-01-2017]. ECLI:EU:C:2017:60.
[74]Ibid., para. 51.
[75]Ibid., para. 52.
[76]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 122.
[77]REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 100.

effects of res judicata[78]. This decision marked a further step in the direction of consumer protection, suggesting that res judicata cannot stand where it would mean that the consumer never receives any judicial review of potentially unfair terms at any point in the entire process. It represents the most far-reaching statement on this issue to date and has been the subject of considerable discussion in academic literature.

2.4. The Ex Officio Duty and Procedural Time Limits

Closely related to the question of res judicata is the interaction between the ex officio duty and national rules on time limits for bringing or raising claims[79]. Many legal systems set deadlines within which a party must raise a particular argument. If the deadline passes, the right to raise the argument is lost. The question is whether such deadlines can prevent a court from assessing the unfairness of a contract term on its own motion.

The CJEU addressed this issue early in the development of the doctrine. In Cofidis, the Court dealt with a French rule that imposed a two-year limitation period on the right to challenge an unfair term. After the two years had passed, neither the consumer nor the court could raise the issue of unfairness. The CJEU held that such a rule was not compatible with the Directive, because it made it excessively difficult for consumers to benefit from the protection that the Directive was intended to provide[80]. The Court pointed out that sellers and suppliers could easily exploit such a time limit: by drafting contracts in a way that the unfairness of a term only becomes apparent after the deadline has passed (for example, in long-term loan agreements), the professional party could effectively place the unfair term beyond the reach of judicial review.

However, the CJEU has not held that all time limits are incompatible with the Directive. In Asturcom, as discussed in the preceding section, the Court accepted that a time limit for challenging an arbitral award did not, in itself, breach the principle of effectiveness, provided that the time allowed was reasonable and the consumer had a real opportunity to exercise the right within it[81]. The critical question is therefore not whether a time limit exists, but whether it is structured in a way that gives the consumer a genuine and realistic chance to benefit from the Directive’s protection.

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[78]Ibid., para. 57.
[79]DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 72.
[80]Cofidis SA v Jean-Louis Fredout [CJEU], No. C-473/00, [21-11-2002]. ECLI:EU:C:2002:705, para. 36.
[81]Asturcom Telecomunicaciones SL v Cristina Rodriguez Nogueira [CJEU], No. C-40/08, [06-10-2009]. ECLI:EU:C:2009:615, paras. 41-46.

This approach was developed further in Banco Santander[82], where the CJEU addressed the question of time limits in Spanish mortgage enforcement proceedings. The Court held that a national rule which allowed the consumer to challenge an unfair term only within a 10-day period after being notified of the enforcement proceedings was too short to satisfy the principle of effectiveness, especially given the complexity of the legal issues involved and the likelihood that the consumer would not have legal advice within such a short period[83]. The ruling reinforced the principle that time limits must be assessed in light of the real situation of consumers: a deadline that is formally reasonable may still be ineffective if, in practice, most consumers cannot realistically meet it.

As Weatherill has observed, the CJEU's case law on time limits reflects a functional approach: the Court does not apply a fixed rule about what is and what is not an acceptable time limit, but instead looks at the practical effect of the deadline on the consumer's ability to obtain the protection of the Directive[84]. A time limit is compatible with EU law if it leaves the consumer with a real chance to benefit from the Directive's protection; it is incompatible if it effectively takes that chance away. This approach is flexible, but it also creates some uncertainty for national legislators and courts, who cannot know with certainty whether a particular time limit will survive review by the CJEU. Craig and de Búrca have noted that this uncertainty is an inherent consequence of the CJEU's case-by-case approach and that it requires national courts to exercise their own judgment about whether a particular rule meets the standard of effectiveness[85].

The tension between the ex officio doctrine and the principle of party autonomy deserves further systematic examination, as it constitutes the most structurally significant challenge that the doctrine poses to national civil procedural frameworks[86]. The principle of party autonomy, expressed in most continental European procedural systems through the maxim ne eat iudex ultra petita partium, provides that the court may not go beyond the claims and defences raised by the parties. This principle serves several important functions in civil procedure: it respects the parties' freedom to define the scope of their dispute; it ensures that the court's decision addresses only those issues that the parties consider

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[82]Banco Santander SA v Mahamadou Demba and Mercedes Godoy Bonet [CJEU], No. C-96/16 and C-94/17, [07-08- 2018]. ECLI:EU:C:2018:643.
[83]Ibid., para. 68.
[84]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 151.
[85]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 260.
[86]DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 82.

relevant to their interests; and it promotes efficiency by preventing the court from investigating matters that the parties have not put in issue. The ex officio duty, by requiring the court to assess the unfairness of contract terms even when neither party has raised this issue, directly contravenes this principle. The court is not merely permitted but obliged to go beyond the parties' submissions and to address a question of law that neither party has raised.

The depth of this tension varies across national legal systems depending on the rigidity with which the principle of party autonomy is applied. In some systems, such as the French and Spanish procedural traditions, the court has traditionally enjoyed a somewhat broader role in identifying and applying legal rules, even where the parties have not invoked them. In such systems, the accommodation of the ex officio duty is relatively less disruptive, as the procedural culture already contemplates a degree of judicial initiative in the application of legal norms. In other systems, particularly those influenced by the German procedural tradition, the principle of party disposition is more strictly observed, and the ex officio assessment of contract terms represents a more significant departure from established procedural norms. As Dougan has noted, this variation in the severity of the impact of the ex officio duty across different Member States is an inherent consequence of the CJEU's approach of imposing uniform procedural obligations on diverse national procedural systems[87].

The implications of the investigative dimension of the ex officio duty, as established in VB Pénzügyi Lízing, are particularly far-reaching for the adversarial structure of civil proceedings[88]. The adversarial principle, which in most European legal systems governs the presentation and evaluation of evidence, provides that the parties are responsible for presenting the facts and evidence upon which their claims and defences rely, while the court's role is limited to evaluating the evidence presented. The CJEU's holding that the national court must take measures of inquiry on its own motion to establish whether a contract term falls within the scope of the Directive and whether it is unfair imposes an inquisitorial function on the court that is foreign to the adversarial paradigm. In practical terms, this may require the court to request the production of the contract, to examine terms that the parties have not put before it, and to make factual findings on matters that the parties have not disputed. This transformation of the judicial role has significant implications not only for the efficiency of proceedings but also for the perception of judicial

[87] DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 84.
[88] WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 147.

impartiality, as a court that actively investigates the merits of one party's position may be seen as departing from its neutral adjudicative role.

2.5. Critical Assessment: Judicial Activism or Necessary Protection?

The analysis in the preceding sections shows that the ex officio doctrine, as developed by the CJEU, reaches into nearly every type of civil proceeding and limits some of the most basic rules of national procedure[89]. The court must assess unfairness on its own in ordinary proceedings, in fast- track payment proceedings, in enforcement proceedings, and even where earlier decisions have become final. National time limits, while not automatically invalid, must give consumers a real and practical chance to benefit from the Directive's protection. This broad reach has generated a lively academic debate about whether the doctrine represents a justified protection of consumers or an excessive form of judicial activism that undermines national legal systems.

Those who support the CJEU's approach argue that the ex officio doctrine is a necessary response to a real problem. Micklitz has argued that without active judicial review, the Directive's protection would remain a paper right for the vast majority of consumers, because the conditions for effective private enforcement — knowledge of rights, access to legal advice, willingness to litigate — are simply not present in most consumer disputes[90]. On this view, the ex officio duty is not judicial activism but rather the minimum that is needed to make the Directive work in practice. The point is that EU consumer law was adopted to protect consumers, and if national procedures prevent that protection from being effective, then those procedures must be adjusted. Trstenjak and Beysen have similarly argued that the duty is the logical result of applying the principle of effectiveness to a field in which the conditions for voluntary enforcement are systematically absent[91].

On the other side of the debate, critics have raised several concerns. Dougan has argued that the CJEU's approach goes beyond what the principle of effectiveness was originally intended to do. In its original form, as set out in Rewe and Comet, the principle was a negative limit: national rules could not make EU rights impossible to exercise. The

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[89]REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 98.
[90]MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: REICH, Norbert; MICKLITZ, Hans-W.; ROTT, Peter and TONNER, Klaus. European Consumer Law. Second edition. Cambridge: Intersentia, p. 140.
[91]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 130.

CJEU has transformed this into a positive obligation that requires national courts to act in a particular way, regardless of what their own procedural rules say. According to Dougan, this transformation undermines the principle of national procedural autonomy, which is also a recognised principle of EU law[92]. If the CJEU can use the principle of effectiveness to impose specific procedural duties on national courts, then national procedural autonomy becomes, in practice, a principle with limited meaning.

A related criticism concerns legal certainty. The ex officio duty creates a situation in which businesses cannot be fully confident that a contract term, even one that has been applied for years or approved by a court, will not be challenged in the future. As Reich has noted, the narrow interpretation of res judicata and the flexible approach to time limits mean that the finality of legal relationships is less secure in the consumer context than in other areas of law[93]. This has practical consequences for businesses, who may face unexpected claims based on terms that they believed were settled. It also creates a degree of uncertainty for consumers, who may not know whether a particular decision in their case is truly final.

Weatherill has offered a more balanced view, suggesting that the tension between effective consumer protection and national procedural autonomy is not a problem that can be fully resolved but rather a balance that must be constantly adjusted[94]. On this view, the CJEU's case-by-case approach — while imperfect — is the most realistic way of managing the competing demands of consumer protection and legal certainty. The alternative — a rigid rule that either always or never allows ex officio review — would be worse, because it would either undermine consumer protection or create unacceptable interference with national legal systems.

The position of this thesis is that the CJEU's development of the ex officio doctrine is, on balance, a justified response to a genuine enforcement problem. The evidence is clear that consumers, in the absence of judicial intervention, systematically fail to challenge unfair contract terms. The Directive was adopted precisely to address this problem, and its protective purpose cannot be achieved if national procedural rules prevent effective review of potentially unfair terms. At the same time, the concerns raised by critics are not without merit. The CJEU's case-by-case approach, while flexible, does create uncertainty, and the transformation of the principle of effectiveness from a negative limit into a positive duty does raise legitimate questions about the boundaries of EU law. As Craig and de Búrca

[92]DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 85.
[93]REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 103.
[94]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 153.

have argued, the challenge for the future is to develop clearer and more predictable standards that allow the ex officio duty to achieve its protective purpose while providing greater certainty for national courts, businesses, and consumers[95]. Whether the CJEU will move in this direction, or whether the case-by-case approach will continue, remains to be seen. What is clear, however, is that the ex officio doctrine has become a central feature of EU consumer law, and any national legal system that seeks to comply with the Directive must find a way to accommodate it within its own procedural framework. The specific challenges that this presents for Lithuania are the subject of the next chapter 95 .

[95]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 262.

3. THE EX OFFICIO DUTY AND LITHUANIAN LAW: IMPLEMENTATION AND

CHALLENGES

3.1. The Lithuanian Procedural Framework for Consumer Disputes: An Overview

The preceding chapters examined the ex officio doctrine as developed by the CJEU at the EU level. The present chapter turns to the question of how this doctrine is received and applied within the Lithuanian legal system[96]. Lithuania, as a Member State of the European Union, is bound by the requirements that the CJEU has derived from Directive 93/13/EEC, and its courts must give effect to the ex officio duty when dealing with consumer disputes involving potentially unfair contract terms. However, the way in which this obligation fits into the Lithuanian procedural framework depends on the specific features of that framework — its rules on the role of the judge, the rights of the parties, and the procedures available for resolving consumer disputes. This section provides an overview of the key features of Lithuanian law that are relevant to the implementation of the ex officio doctrine.

The starting point is the Constitution of the Republic of Lithuania, which provides a general framework for consumer protection. Article 46 of the Constitution states that the State shall protect the interests of consumers[97]. Article 46(5) further provides that the State shall protect the consumer from unfair commercial practices[98]. This provision establishes a constitutional basis for consumer protection and gives the legislature and the courts a mandate to take steps to protect consumers. This constitutional foundation is important because it shows that the protection of consumers is not merely a policy choice but a constitutional obligation in Lithuanian law, which is in line with the protective approach of the Directive.

At the legislative level, consumer protection in Lithuania is governed primarily by the Law on Consumer Protection of the Republic of Lithuania[99], which sets out the general rules on the rights of consumers, the duties of sellers and suppliers, and the institutional framework for consumer protection. The Law defines a consumer as a natural person who

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[96] JAKUBONYTE, Giedre (2006). The Protection of Lithuanian Consumers against Unfair Contract Terms. Journal of Consumer Policy, 29(1), 59-83, at 60.
[97] Constitution of the Republic of Lithuania. Adopted by the citizens of the Republic of Lithuania in a referendum on 25 October 1992. Official Gazette (Žin.), 1992, No. 33-1014, Art. 46.
[98] Ibid., Art. 46(5).
[99] Law on Consumer Protection of the Republic of Lithuania (Lietuvos Respublikos vartotojų teisių apsaugos įstatymas). 10 November 1994. No. I-657. Official Gazette, 1994, No. 94-1833 (as amended).

acquires goods or services for personal, family, or household purposes that are not related to business or professional activity[100]. The substantive rules on unfair contract terms are found in the Civil Code of the Republic of Lithuania, which transposed the requirements of Directive 93/13/EEC into Lithuanian law. Article 6.2284 of the Civil Code contains the main provisions on unfair terms in consumer contracts[101]. This provision establishes that a contract term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties to the detriment of the consumer[102]. The Civil Code also provides an indicative list of terms that may be regarded as unfair, following the approach of the Annex to the Directive[103]. Notably, Article 6.2284(6) of the Civil Code provides that terms which fail to comply with the requirement of transparency are to be considered unfair — a provision that ensures a higher level of protection than the Directive itself requires, as the CJEU confirmed in its 2023 ruling in D.V. v M.A.[104]. The Civil Code further provides that unfair terms in consumer contracts shall not be binding on the consumer, which mirrors the requirement of Article 6(1) of the Directive[105].

The procedural framework for resolving consumer disputes is set out in the Code of Civil Procedure of the Republic of Lithuania. Lithuanian civil procedure is based on a mixed model that combines elements of both the adversarial and the inquisitorial traditions. The Code establishes the principle of party disposition, which means that the parties define the scope of the dispute and the court generally decides only those issues that the parties have raised[106]. At the same time, the Code recognises the adversarial principle, under which the parties bear the burden of presenting their claims, defences, and evidence[107]. The burden of proof lies, as a general rule, with the party making a claim[108], and the court decides the case on the basis of the evidence presented by the parties[109]. However, and this is an important point for the ex officio doctrine, the Code also provides the court with certain

[100]Ibid., Art. 2(1).
[101]Civil Code of the Republic of Lithuania (Lietuvos Respublikos civilinis kodeksas). 18 July 2000. No. VIII-1864. Official Gazette, 2000, No. 74-2262, Art. 6.2284.
[102]Ibid., Art. 6.2284(2).
[103]Ibid., Art. 6.2284(1).
[104]Ibid., Art. 6.2284(6). As confirmed in CJEU Case C-395/21, D.V. v M.A., ECLI:EU:C:2023:14, para. 50, this provision ensures a higher level of protection than the Directive, in so far as non-compliance with the transparency requirement is sufficient for a term to be declared unfair.
[105]Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. OJ L 95, 1993, pp. 29–34, Art. 6(1).
[106]Code of Civil Procedure of the Republic of Lithuania (Lietuvos Respublikos civilinio proceso kodeksas). 28 February 2002. No. IX-743. Official Gazette, 2002, No. 36-1340, Art. 13.
[107]Ibid., Art. 12.
[108]Ibid., Art. 176(1).
[109]Ibid., Art. 179(1).

powers to act on its own motion. Article 13(2) of the Code of Civil Procedure states that the court shall take steps to ensure that the case is decided correctly and that the rights of the parties are protected[110]. This provision gives Lithuanian courts a degree of flexibility that is not typical of purely adversarial systems, and it gives Lithuanian courts a degree of flexibility. However, as regards the specific obligation to assess unfair terms ex officio, the primary legal basis is located in Article 6.2284 of the Civil Code, which directly governs unfair terms in consumer contracts. Article 13(2) of the Code of Civil Procedure provides only a general procedural backdrop and does not itself establish the ex officio obligation in the specific context of unfair contract terms. As Bubliėnė has observed in her monograph on the control of unfair terms in consumer contracts, the Lithuanian legislative framework provides both the substantive rules and the procedural tools necessary for the effective control of unfair terms, but the practical application of these tools depends on the willingness and ability of the courts to use them actively[111].

3.2. The Active Role of the Judge in Lithuanian Consumer Cases

The question of whether Lithuanian courts can, and do, assess the unfairness of contract terms on their own motion is central to the implementation of the ex officio doctrine[112]. As discussed above, Lithuanian procedural law gives the court some powers to act on its own initiative. The extent to which these powers are used in practice in consumer cases can be assessed by examining the case law of the Supreme Court of Lithuania (Lietuvos Aukščiausiasis Teismas) and the preliminary rulings that Lithuanian courts have requested from the CJEU on issues directly related to unfair terms in consumer contracts.

Lithuanian law contains specific provisions that support an active role for the judge in consumer disputes. Article 12(1) of the Law on Consumer Protection provides that the State shall ensure that consumers have access to effective means of resolving disputes with sellers and suppliers[113]. More directly, Article 13(2) of the Code of Civil Procedure, which requires the court to ensure that cases are decided correctly, has been interpreted by Lithuanian courts as allowing the court to consider questions of law on its own motion,

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[110]Ibid., Art. 13(2).
[111]BUBLIĖNĖ, Danguolė (2009). Vartojimo sutarčių nesąžiningų sąlygų kontrolė: monografija [Control of Unfair Terms in Consumer Contracts: Monograph]. Vilnius: Registrų centras, p. 245.
[112]BUBLIENE, Danguole (2009). Vartojimo sutarciu nesaziningu salygu kontrole: monografija [Control of Unfair Terms in Consumer Contracts: Monograph]. Vilnius: Registru centras, p. 240.
[113]Law on Consumer Protection of the Republic of Lithuania. 10 November 1994. No. I-657. Official Gazette, 1994, No. 94-1833 (as amended), Art. 12(1).

even where the parties have not raised them[114]. Since the unfairness of a contract term under Article 6.2284 of the Civil Code is a question of law, the court can also consider whether a contract term is unfair on its own motion. This interpretation is in line with the CJEU's requirement in Pannon GSM that the national court must assess unfairness as soon as it has the necessary legal and factual elements[115]. As Bubliėnė has argued, the principle of good faith and the system of protection of the weaker party, both deeply rooted in the Lithuanian Civil Code, provide the doctrinal basis for requiring courts to play an active role in consumer disputes[116].

The Supreme Court of Lithuania has acknowledged and applied the ex officio duty in a number of important decisions. In Case No. 3K-7-272/2011, an extended panel of the Civil Division of the Supreme Court examined the fairness of an early termination clause in a consumer credit agreement with AB DnB NORD bankas[117]. The Court held that a clause allowing the bank to terminate the credit agreement and demand full repayment if the consumer failed to pay even a single instalment was contrary to the requirements of good faith and created a significant imbalance in the parties' rights and obligations to the detriment of the consumer. The Court recognised the terms as unfair and declared them void ab initio[118]. This decision is significant because it demonstrated the willingness of the Supreme Court to engage in a substantive assessment of the fairness of standard contract terms in the consumer credit context, going beyond the arguments raised by the parties.

The Lithuanian Supreme Court has also been active in seeking guidance from the CJEU through the preliminary ruling procedure. In Case C-537/13, Šiba v Devėnas[119], the Supreme Court referred questions to the CJEU about whether contracts for the provision of legal services concluded between a lawyer and a consumer fell within the scope of Directive 93/13/EEC. The CJEU confirmed that such contracts were covered by the Directive. Following this ruling, the Supreme Court in Case No. 3K-7-149-706/2015 held that because of potentially unfair terms in a standard- form legal services contract, ex officio control had

[114]Code of Civil Procedure of the Republic of Lithuania. 28 February 2002. No. IX-743. Official Gazette, 2002, No. 36-1340, Art. 13(2).
[115]Pannon GSM Zrt. v Erzsébet Sustíné Győrfi [CJEU], No. C-243/08, [04-06-2009]. ECLI:EU:C:2009:350, para. 32.
[116]Ibid., pp. 247–248.
[117]Decision of the Supreme Court of Lithuania, Civil Division (extended panel), 15 June 2011, Case No. 3K-7- 272/2011 (AB DnB NORD bankas).
[118]Ibid. The Court held that an early termination clause in a consumer credit agreement that allowed the bank to terminate the contract and demand full repayment if the consumer failed to repay even a single instalment was contrary to the requirements of good faith and caused a significant imbalance in the parties' rights and obligations to the detriment of the consumer.
[119]Birutė Šiba v Arūnas Devėnas [CJEU], No. C-537/13, [15-01-2015]. ECLI:EU:C:2015:14.

to be undertaken by the court[120]. The Supreme Court drew particular attention to the fact that in such contracts, the lawyer is obliged to provide information to the consumer in a clear and understandable way about the contract and its terms, and that the proportion between the services provided and their price must be established by the court when the terms are set in an abstract manner.

More recently, the Supreme Court has made two further preliminary references to the CJEU on questions directly related to the unfair terms regime. In Case C-395/21, D.V. v M.A.[121], decided on[122] January 2023, the Supreme Court sought guidance on the transparency requirement for terms relating to lawyers' fees and on the consequences of a finding that a price term is unfair. The CJEU's ruling confirmed that Article 6.2284(6) of the Lithuanian Civil Code, which treats non- transparent terms as unfair, provides a higher level of protection than the Directive permits but does not conflict with EU law. In Case C-645/22, R.A. and Others v Luminor Bank AS[123], decided on[124] October 2023, the Supreme Court referred questions about the effects of a finding of unfairness and about whether a consumer can choose to preserve a contract by amending the terms found to be unfair, rather than having them simply disapplied. These references demonstrate that the Lithuanian Supreme Court is actively engaged with the CJEU's case law and is seeking to ensure that Lithuanian practice is in line with EU requirements.

This body of case law shows that, at the level of the highest court, the ex officio duty is recognised as part of Lithuanian law. Jakubonytė, in her study of Lithuanian consumer protection against unfair contract terms, observed already in 2006 that while Lithuania transposed the substantive provisions of the Directive into national law, the effectiveness of the protection depended on the practical capacity of the courts and institutions to apply the rules in individual cases[125]. The developments since then, particularly the Supreme Court's active engagement with the CJEU through the preliminary ruling procedure, suggest that significant progress has been made. However, as Craig and

[120]Decision of the Supreme Court of Lithuania, Civil Division (extended panel), Case No. 3K-7-149-706/2015. The Court held that because of potentially unfair terms in a standard-form contract for the provision of legal services, ex officio control had to be undertaken by the court.
[121]D.V. v M.A. [CJEU], No. C-395/21, [12-01-2023]. ECLI:EU:C:2023:14. Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

[123]R.A. and Others v Luminor Bank AS [CJEU], No. C-645/22, [12-10-2023]. ECLI:EU:C:2023:757. Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania).

[125]JAKUBONYTĖ, Giedrė (2006). The Protection of Lithuanian Consumers against Unfair Contract Terms. Journal of Consumer Policy, 29(1), 59–83. DOI: 10.1007/s10603-005-6052-z.

de Búrca have observed in the broader EU context, the gap between the legal recognition of an EU law obligation at the level of the highest court and its practical application by lower courts in everyday cases can be significant[126]. The practical challenges that remain in the Lithuanian system are examined in the next section.

3.3. Challenges and Deficiencies in Lithuanian Implementation

While the formal legal framework in Lithuania provides a basis for the ex officio duty, and while the Supreme Court has shown a clear willingness to apply the doctrine, several challenges and potential deficiencies can be identified in the way the doctrine works in practice[127]. These challenges relate to the order-for-payment procedure, the enforcement process, the role of the State Consumer Rights Protection Authority, and the training and awareness of judges.

The first area of concern is the order-for-payment procedure. Lithuanian law provides for a simplified order-for-payment procedure, regulated by Articles 431 to 446 of the Code of Civil Procedure[128]. This procedure allows a creditor to apply to the court for a payment order on the basis of documents, without a full hearing. The court issues the order if the claim appears to be well- founded on the basis of the documents submitted[129]. The debtor then has twenty days to file an objection[130]. If no objection is filed, the order becomes enforceable. This procedure is widely used for the collection of consumer debts, including debts arising from consumer credit agreements, utility contracts, and telecommunications contracts.

The problem, from the perspective of the ex officio doctrine, is that the order-for-payment procedure is designed to be fast and simple. The court's role is limited to checking whether the creditor's claim is supported by the documents submitted; the court does not normally examine the underlying contract in detail. This creates a risk that unfair contract terms — for example, excessive penalty clauses, disproportionate interest rates, or unfair jurisdiction clauses — will be enforced without any judicial review. The CJEU has made

[126]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 256.
[127]CRAIG, Paul and DE BURCA, Grainne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 256.
[128]Code of Civil Procedure of the Republic of Lithuania. 28 February 2002. No. IX-743. Official Gazette, 2002, No. 36-1340, Arts. 431–446.
[129]Ibid., Art. 431(1).
[130]Ibid., Art. 439(1).

clear, in Banco Español de Crédito[131] and Finanmadrid[132], that the Directive does not permit a procedural system in which there is no opportunity for the court to assess the unfairness of contract terms at any stage. If the order-for- payment procedure does not include such an assessment, and if the consumer does not object (which is frequently the case), then the system fails to provide the level of protection required by the Directive.

The order-for-payment procedure is governed by its own specific provisions under Articles 431–446 of the Code of Civil Procedure, which do not expressly require the court to examine the underlying contract for potentially unfair terms. In practice, however, it is unclear how often courts actually exercise this power in payment order proceedings. The speed and volume of these proceedings, combined with the limited information available to the court (which typically receives only the documents submitted by the creditor), make it difficult for the court to carry out a meaningful assessment of the fairness of contract terms. As Weatherill has noted in the broader European context, the tension between the efficiency of fast-track payment procedures and the requirements of the ex officio duty is one of the most difficult practical problems that the doctrine creates for national legal systems[133]. As Sirvydytė has demonstrated in her recent analysis of consumer protection in payment order proceedings, the CJEU interprets the principle of effectiveness differently depending on whether the procedure is based on documentary evidence, and the requirements imposed on national civil procedure systems in this context present significant challenges for consistent application[134].

A related challenge concerns the enforcement stage. Lithuanian law provides that a final court decision has the force of res judicata and cannot, as a general rule, be reopened[135]. Article 279(1) of the Code of Civil Procedure states that a court decision that has entered into legal force is binding on the parties and may not be challenged except through the extraordinary review procedures provided by law[136]. If the court that issued the original decision did not assess the fairness of the contract terms, the enforcement court will generally not have the opportunity to do so. As discussed in Chapter 2, the CJEU has

[131]Banco Español de Crédito SA v Joaquín Calderón Camino [CJEU], No. C-618/10, [14-06-2012]. ECLI:EU:C:2012:349, para. 57.
[132]Finanmadrid EFC SA v Jesús Vicente Albán Zambrano and Others [CJEU], No. C-49/14, [18-02-2016]. ECLI:EU:C:2016:98, para. 54.
[133]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 155.
[134]SIRVYDYTĖ, Monika (2025). Consumer Protection in Payment Order Proceedings. Teisė, 137, pp. 104–118. DOI: 10.15388/Teise.2025.137.7.
[135]Code of Civil Procedure of the Republic of Lithuania. 28 February 2002. No. IX-743. Official Gazette, 2002, No. 36-1340, Art. 279(4).
[136]Ibid., Art. 279(1).

held in Asturcom that res judicata can be respected provided that the consumer had a real opportunity to exercise his or her rights before the decision became final[137]. However, in the more recent SPV Project 1503 decision, the CJEU suggested that where no ex officio assessment took place at any stage, the principle of effectiveness may require the enforcement court to review the contract terms, even at the cost of setting aside res judicata. As Dougan has observed, this kind of tension between EU law requirements and national procedural values is particularly acute for courts in newer Member States[138].

A further challenge concerns the institutional framework. The State Consumer Rights Protection Authority (Lithuanian: Valstybinė vartotojų teisių apsaugos tarnyba, hereinafter — the Authority, or VVTAT) is the main public institution responsible for implementing State policy in the field of consumer protection. Under Article 12(1) of the Law on Consumer Protection, the Authority has a range of functions including the out-of-court resolution of consumer disputes, the supervision of standard contract conditions, the power to challenge unfair terms in consumer contracts, the imposition of administrative sanctions on businesses that use unfair terms, and the coordination of consumer rights protection activities across public institutions[139]. The Authority thus has a broad mandate to combat unfair contract terms at the general level. Its enforcement decisions, publicly available on its website, show active use of these powers: the Authority regularly investigates complaints, imposes fines on businesses for using unfair contract terms in breach of Article 6.2284 and related provisions of the Civil Code, and orders the removal of such terms from standard contracts.

In addition to its general supervisory and dispute resolution functions, the Authority has a specific obligation under the Law on Consumer Protection to monitor standard contract terms used by businesses for compliance with the unfair terms regime and to provide consultation to businesses on the use of fair contract terms. Furthermore, under Article 49 of the Code of Civil Procedure, the Authority already has the power to participate in individual civil court proceedings by providing opinions — a mechanism that is exercised in practice. This means that individual court proceedings can benefit from the Authority's expertise, although the primary responsibility for ex officio assessment of unfair terms remains with the court itself. Bubliėnė and Selvestravičiūtė, reviewing the

[137]Asturcom Telecomunicaciones SL v Cristina Rodríguez Nogueira [CJEU], No. C-40/08, [06-10-2009]. ECLI:EU:C:2009:615, para. 41.
[138]DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, p. 92.
[139]Law on Consumer Protection of the Republic of Lithuania. 10 November 1994. No. I-657. Official Gazette, 1994, No. 94-1833 (as amended), Art. 12(1)(1)–(15).

evolution of the EU consumer protection paradigm and its impact on Lithuanian law, have argued that a combination of public enforcement and active judicial protection is needed to close the enforcement gap, and that neither mechanism alone is sufficient[140]. The effectiveness of the Lithuanian system therefore depends on both pillars working together: the Authority providing general oversight and the courts providing individual protection through the ex officio mechanism.

A practical but very important challenge relates to the training and awareness of judges. The ex officio duty is based on the CJEU's case law, which is extensive, complex, and constantly evolving. For a Lithuanian judge to apply the duty correctly, he or she must be familiar not only with the relevant provisions of Lithuanian law but also with the case law of the CJEU, including the specific conditions under which the duty is triggered, the limits on its scope, and the consequences of a finding of unfairness. In courts of first instance, where the majority of consumer disputes are decided, judges may not always have the time, the resources, or the specialised training needed to apply the ex officio duty consistently. Bubliėnė identified this problem already in her 2006 study of the transparency principle and the Unfair Terms Directive, observing that the effective application of the Directive's requirements depends not only on the quality of the legislative framework but also on the legal awareness and practical capacity of the courts[141]. In courts of first instance, where the workload is highest and specialised training is often limited, the challenge may be particularly significant.

Furthermore, there is a question of access to justice for consumers[142]. Even where the court is willing to assess the unfairness of contract terms on its own motion, the consumer must still be before the court in the first place. In Lithuania, as in many other countries, access to legal representation is limited for consumers, especially in small-value disputes. The alternative dispute resolution mechanisms available through the Authority provide a less formal avenue for resolving disputes, but they do not replace the judicial process, and the ex officio duty can only operate when a consumer dispute comes before a court.

A further dimension of the Lithuanian implementation that merits closer examination is the role of alternative dispute resolution mechanisms in the broader

[140] BUBLIĖNĖ, Danguolė and SELVESTRAVIČIŪTĖ, Agnė (2022). [The EU Consumer Protection Paradigm, its Development and Impact of Vulnerable Consumer Insights]. Teisė, 125, 51–70.
[141] BUBLIĖNĖ, Danguolė (2006). Skaidrumo principas ir nesąžiningų sąlygų direktyva [The Transparency Principle and the Unfair Terms Directive]. Teisė, 58, 7–23.
[142] REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 105.

consumer protection architecture and their interaction with the ex officio duty[143]. Lithuania has developed a system of out-of-court consumer dispute resolution administered by the State Consumer Rights Protection Authority, which provides consumers with a less formal and less costly avenue for resolving disputes with sellers and suppliers. Under the provisions of the Law on Consumer Protection, the Authority operates an out-of-court dispute resolution procedure that is free of charge for consumers and that can result in binding decisions in certain categories of disputes. This system represents an important complement to judicial enforcement, as it provides consumers who would not otherwise litigate — whether due to the modest sums involved, the cost of legal representation, or lack of awareness of their legal rights — with a mechanism for obtaining redress. However, the out-of-court procedure administered by the Authority does not involve the application of the ex officio doctrine in the sense required by the CJEU's case law, as the Authority's assessment of consumer complaints is administrative rather than judicial in character. The ex officio duty, as constructed by the CJEU, is specifically addressed to national courts exercising judicial functions, and it operates within the framework of adversarial litigation. The Authority's out-of-court procedure, while valuable as a complement to judicial enforcement, cannot substitute for the judicial application of the ex officio duty in individual court proceedings.

The practical significance of the Authority's enforcement activities should nevertheless be acknowledged as contributing to the broader objective of consumer protection that the ex officio doctrine serves[144]. The Authority has demonstrated an active approach to the supervision of standard contract terms used by businesses operating in Lithuania. Its enforcement decisions, published on its official website, reveal a pattern of intervention in sectors where unfair contract terms are most commonly encountered, including telecommunications, financial services, energy supply, and real estate. The Authority's power to impose administrative sanctions on businesses that use unfair contract terms creates a deterrent effect that operates independently of, but complementary to, the judicial enforcement mechanism represented by the ex officio duty. As Bubliene and Selvestraviciute have observed, the effective protection of consumers against unfair contract terms requires a combination of public enforcement through administrative supervision and private enforcement through judicial proceedings, with the ex officio duty

[143]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 156.
[144]MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: REICH, Norbert; MICKLITZ, Hans-W.; ROTT, Peter and TONNER, Klaus. European Consumer Law. Second edition. Cambridge: Intersentia, p. 142.

serving as the essential bridge between the substantive rights conferred by the Directive and their realisation in individual disputes[145].

The question of judicial awareness and training in the application of the ex officio doctrine at the level of courts of first instance deserves particular emphasis, as it represents arguably the most significant practical challenge to the effective implementation of the doctrine in Lithuania[146]. The CJEU's case law on the ex officio duty has generated a complex and detailed set of requirements that demand not only familiarity with the relevant EU legislation and case law but also a sophisticated understanding of the interaction between EU law principles and national procedural rules. A judge confronted with a consumer dispute involving standard contract terms must be able to identify those terms that fall within the scope of the Directive, to assess their unfairness by reference to the criteria established in Article 3(1) of the Directive and the indicative list in the Annex, and to determine the appropriate consequences of a finding of unfairness in accordance with Article 6(1) of the Directive as interpreted by the CJEU. This assessment must be conducted on the court's own motion, without reliance on the parties' submissions, and must be carried out whenever the court has the necessary legal and factual elements, regardless of the procedural stage. The complexity of this task should not be underestimated, particularly in courts of first instance where judges handle a high volume of cases across diverse areas of law and may have limited exposure to the specialised requirements of EU consumer law.

3.4. Recommendations for Strengthening Compliance

On the basis of the analysis presented in the preceding sections, several recommendations can be made for strengthening the implementation of the ex officio doctrine in Lithuania[147]. These recommendations are directed at the legislature, the judiciary, and the institutional framework for consumer protection.

First, it is recommended that the existing obligation to assess the unfairness of contract terms ex officio, which is already established in Article 6.2284 of the Civil Code, be given more consistent judicial application. Since this substantive obligation is grounded in the Civil Code, it is not necessary to duplicate it in the Code of Civil Procedure. As

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[145]BUBLIENE, Danguole and SELVESTRAVICIUTE, Agne (2022). [The EU Consumer Protection Paradigm, its Development and Impact of Vulnerable Consumer Insights]. Teise, 125, 51-70, at 65.
[146]BUBLIENE, Danguole (2006). Skaidrumo principas ir nesaziningu salygu direktyva [The Transparency Principle and the Unfair Terms Directive]. Teise, 58, 7-23, at 20.
[147]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95-132, at 130.

Micklitz has argued in the broader European context, the most effective way to ensure consistent application of the ex officio doctrine is to ensure that judges are aware of and actively apply the obligation already established in national substantive law[148]. Targeted measures directed at the application of the existing Civil Code provision would give judges a firm domestic legal basis for the ex officio assessment and would remove any ambiguity about the duty in practice.

Second, specific attention should be given to the order-for-payment procedure. It is recommended that the existing rules under Articles 431–446 of the Code of Civil Procedure be interpreted and applied so as to ensure that ex officio review of potentially unfair contract terms takes place at the objection or enforcement stage of the proceedings. Requiring a full contract review before the payment order is issued would fundamentally alter the nature of the procedure and is not the appropriate solution. This approach preserves the efficiency and essential character of the expedited procedure while ensuring compliance with the requirements established by the CJEU in Banco Español de Crédito and Finanmadrid. As Weatherill has observed, some loss of procedural speed is an acceptable price for ensuring that consumer rights are not sacrificed on the altar of efficiency[149].

Third, it is recommended that the Lithuanian judiciary invest in the training of judges on the application of EU consumer law and the ex officio doctrine in particular. Trstenjak and Beysen have emphasised that the effective application of the ex officio doctrine depends not only on the legal framework but also on the practical capacity of judges to apply it, and that targeted training programmes are essential[150]. Such training could be organised in cooperation with the National Courts Administration and the Lithuanian Judicial Training Centre, and could include study of the CJEU's key decisions, the types of contract terms most likely to be unfair, and the practical steps a judge should take when assessing unfairness on his or her own motion.

Fourth, it is recommended that the existing participation of the Authority in individual civil proceedings be more consistently activated. Under Article 49 of the Code of Civil Procedure, the Authority already has the power to provide opinions in individual consumer court proceedings, and this mechanism is used in practice. The recommendation is therefore not to create a new power but to ensure that this existing mechanism is

[148]MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: REICH, Norbert; MICKLITZ, Hans-W.; ROTT, Peter and TONNER, Klaus. European Consumer Law. Second edition. Cambridge: Intersentia, p. 145.
[149]WEATHERILL, Stephen (2013). EU Consumer Law and Policy. Second edition. Cheltenham: Edward Elgar, p. 158.
[150]TRSTENJAK, Verica and BEYSEN, Erwin (2011). European Consumer Protection Law: Curia Semper Dabit Remedium? Common Market Law Review, 48(1), 95–132, at 131.

systematically employed, including through a requirement that courts notify the Authority in cases involving potentially unfair standard contract terms. As Bubliėnė has argued, the court's ex officio assessment can be made more effective if the court has access to expert guidance on the types of terms that are commonly found to be unfair in particular sectors[151].

Fifth, it is recommended that the National Courts Administration and the Lithuanian Judicial Training Centre develop practical training materials on the application of the ex officio duty in consumer cases. Such materials could set out the circumstances in which the duty arises, the types of contract terms that should be assessed, and the procedure that the court should follow when it identifies a potentially unfair term. It must be noted that the Supreme Court of Lithuania cannot issue binding guidelines or instructions to lower courts, as this would be contrary to the constitutional principle of judicial independence; the Supreme Court may contribute to this objective only through the formation of consistent precedent in relevant cases brought before it. As Craig and de Búrca have noted, the translation of EU law requirements into practical guidance for national courts is one of the most important steps in ensuring the effective application of EU law at the national level[152].

These recommendations are not intended to suggest that the Lithuanian legal system is incompatible with the ex officio doctrine[153]. On the contrary, the formal legal framework provides a workable basis for the doctrine, and the Supreme Court of Lithuania has shown a strong willingness to engage with the CJEU's case law, both through its own decisions and through the active use of the preliminary ruling procedure. The challenges identified in this chapter are practical rather than structural: they relate to the way the doctrine is applied in everyday judicial practice, not to any fundamental conflict between Lithuanian law and the requirements of the Directive. The recommendations set out above are intended to close the gap between the formal recognition of the ex officio duty in Lithuanian law and its consistent and effective application in practice.

[151]BUBLIĖNĖ, Danguolė (2009). Vartojimo sutarčių nesąžiningų sąlygų kontrolė: monografija [Control of Unfair Terms in Consumer Contracts: Monograph]. Vilnius: Registrų centras, p. 310.
[152]CRAIG, Paul and DE BÚRCA, Gráinne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 265.
[153]CRAIG, Paul and DE BURCA, Grainne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 264.

4. SYNTHESIS AND CRITICAL DISCUSSION: THE PRINCIPLE OF EFFECTIVENESS

AS A TRANSFORMATIVE FORCE IN CONSUMER PROCEDURAL LAW

4.1. The Coherence and Internal Logic of the CJEU's Doctrinal Construction

The first three chapters of this thesis examined three dissimilar yet interrelated questions: the way the ex officio duty evolved over time and what it is founded on, the extent to which the ex officio duty extends to various procedural contexts, and the particular challenges that arise when attempting to implement that duty to the Lithuanian legal system [27]. This last chapter combines these three discussions.This is intended to evaluate the overall effectiveness of the CJEU in its general approach, what it entails in practice and what is more generally to be learned on the relationship between EU law and the procedural rules of the individual Member States. With central research purpose of the thesis in mind this is carried out as a critical examination of the formation, extent, and limitation of ex officio duty, and as an investigation of the issues it raises to national procedural systems and especially the case of Lithuania. The initial question of concern is, has the CJEU established the ex officio duty on sound and consistent basis or whether its case law is more to be characterised as a series of ad hoc answers to some hither and thon questions that happened to be referred to it. In light of the discussion of Chapters[154] and[155], it does seem that the doctrine has a very good internal logic. It begins with a simple fact that consumers are less powerful than sellers or suppliers both in the information available to them and their bargaining power. Due to such imbalance, one cannot suppose that consumers will take the initiative to apply their own rights in litigation. This means that, the principle of effectiveness which constrains the ability of Member States to structure their procedural guidelines needs national courts to intervene by making unbiased contract terms in self-initiative. Articles 6(1) and 7(1) of the Directive itself provide a high level of substantive protection to consumers; however, the process of implementing the substantive protection remains to be the prerogative of each Member State [1]. The ex officio doctrine seals the loophole created by this so as to ensure that the consumer-protective intent of the Directive is not frustrated by the procedural leeway otherwise permitted by the EU law. This argument has been used throughout the principal cases covered in this thesis.Since, with Océano Grupo, to Lintner, the Court has returned to the same initial arguments the structural weak point of the consumer, the danger that rights are not going to be put into effect, and the necessity of the courts to step in. The fact that this rationale turns out to be common to so many different procedural situations, which include not only a typical civil process, but also a process of order-to-pay, enforcement, and a variety of cases dealt with by arbitration, points to the opinion that the doctrine in question is not merely reactive, but constitutes a strategy. The case law on consumer rights in the EU, although accumulated over a long period, as Craig and de Búrca have observed, has a stable normative commitment that provides the case law a familiar form [2]. With that said, the case-by-case approach has also resulted in a certain amount of case law that is by no means easily readable as a whole. The change in approach towards the ex officio duty described in Océano Grupo as power and in Mostaza Claro and Pannon GSM as an obligation was not really a change of direction in itself - it was just a consequence of the nature of the preliminary reference procedure which only answers the question put to it. And just as the specific parameters of the duty, what terms are to be scrutinized, how far the court needs to examine the facts and at what point the duty enters play have been gradually and (not always) uniformly developed within the various procedural systems of the Member States. Dougan has indicated that this incremental approach as much as it allows the Court to be flexible also introduces a form of uncertainty that brings about the difficulty of national courts and legislators knowing precisely what lies ahead of them [3]. This thesis is in favor of that. The example of Lithuanian courts being left to judge themselves on how to reconcile the general requirements of the CJEU with the particular framework of the Lithuanian procedural law has been the lack of any EU-wide guidance, and created with their system in view. However, the stand adopted in this thesis is that there is both a consistency and a defensibility of the general trend of the case law of CJEU [43]. The doctrine has taken a familiar route: after the first acknowledgment of the power of the courts to determine unfairness (Océano Grupo), the introduction of an obligatory duty (Mostaza Claro), the further explanation of when such a duty exists (Pannon GSM), the extension of the duty to investigation (VB Pénzügyi Lízing), the expression of the outer boundaries (Lintner). Every decision made on top of the previous one was in such a manner, that though not necessarily fully predictable, is logically linked with the same premises made. It is not the details of its rules that guarantee the coherence of the doctrine, but rather the uniformity of the underlying thoughts.

4.2. The Transformation of the Principle of Effectiveness: From Negative Limit to Positive

Obligation

The main point that is running through this thesis is that the concept of effectiveness has transformed radically in the way it operates. It began as a measure that merely ensured that the Member States were not able to make the EU rights too difficult to enforce. It has since come to be a point where national courts themselves have to take active measures [29]. This is a tremendous reorientation and this has dire effects on the working of procedural autonomy in reality. At the time the principle of effectiveness was initially introduced in Rewe and Comet, it amounted to a ban. It informed the Member States that their procedural rules could not render it impractical, or prohibitively difficult, to people the enjoyment of the rights granted by the EU law to them. The principle of effectiveness only ensured that national rules did not stand in the way of the person who held the right, which was the assumption behind this. The ex officio doctrine is a total departure to this model. Courts are not just expected to remain out of the way of the consumer within the doctrine, they are expected to take an active role in ensuring the right of the consumer is safeguarded even in cases where the consumer has not performed any action whatsoever to bring the issue to the fore. The principle of effectiveness in the consumer protection situation has been useful in transforming an instrument that prevents the obstruction of national rules to a duty-bearing instrument [4]. Procedural autonomy is affected by this change. Weatherill has indicated that the concept of procedural autonomy was initially formulated because it was realised that the specifics of the court procedure would be the decision of each Member State, unless the EU level of harmonisation was achieved [5]. This is a major dent that the ex officio doctrine makes. Member States can still formally retain control over the procedures that they control, but these procedures now must contain a positive judicial obligation which most national legal traditions lacks any equivalent of. In the case where a judge uses the ex officio duty, he is not acting on the instructions of his or her national law to so act - he is acting because CJEU has decreed that the EU law makes him so. To that extent, the doctrine has succeeded in harmonising the consumer procedural law, and there is no EU legislation that has been enacted to harmonise the law. The more difficult issue is whether this change is justifiable. Was it within the scope of the CJEU to derive positive procedural obligations out of the effectiveness principle or was it an act of judicial interpretation within its powers? This thesis holds that the response lies in the angle that one views it. And, in the point of view of what the Directive is attempting to accomplish, the change is not only explicable, but mandatory. The safeguards of the Directive would often not find their consumers as they were meant to protect as the Court demonstrated in the cases of Océano Grupo, Cofidis and Mostaza Claro and where there was no ex officio control the Directive would often miss its target. Under national sovereignty of procedural law, however, the change is more difficult to defend. Dougan has suggested that to apply the principle of effectiveness so as to impose affirmative duties on the national courts is far beyond what the original framework of Rewe/Comet was ever intended to permit, and that the approach of national systems to structure their own judicial proceedings [7]. This objection strikes the most in the systems constructed on the basis of strict party disposition, whereby a notion of the court of issues emerging on its own collides with a strongly ingrained principle of procedural balance. As was seen in Chapter 3, to fit in the ex officio duty within a system of Lithuanian procedural law that is modeled around party disposition and adversarial process, a considerable interpretive effort is necessary and in certain instances a legislative amendment is required. This thesis finally assumes that the change even though it does exceed the initial frame of the effectiveness principle is warranted by the specific nature of consumer disputes and the specific design of the Directive. The Directive establishes great rights yet no EU-level lack of enforcing them separately. The principle of effectiveness, in that case, must necessarily be run as a positive guarantee, otherwise the greater part of the consumers would never enjoy the advantages of the rights which the Directive proposes them. The ex officio doctrine, as Trstenjak and Beysen have suggested, is a consistent, though unusual, extension of the effectiveness, tailored to the particular structural issues of the consumer protection profession [8]. The main thing is that such an advantageous aspect of efficacy is exclusive to those spheres where one cannot find a single area of efficacy when it comes to private implementation. It cannot be interpreted as a model that can be applied throughout EU law. As Bublienė has argued in her analysis of the logical foundations of European consumer law in the light of new challenges, the principle of effectiveness in the consumer protection context has undergone a transformation that gives rise to significant difficulties when the CJEU applies it in an ad hoc manner, without a coherent and systematic framework, leaving national courts to manage unpredictable and inconsistent obligations[156].

[156]BUBLIENĖ, Danguolė and SELVESTRAVIČIŪTĖ, Agnė (2024). Europos vartotojų teisės loginis pagrindas naujų iššūkių šviesoje [The Logical Foundation of European Consumer Law in the Light of New Challenges]. Teisė, 133, pp. 56–71.

4.3. The Balance Between Consumer Protection and Legal Certainty: A Persistent Tension

The second significant theme that emerges as a result of this synthesis is that there is an unremitting conflict between ensuring the provision of protection to the consumer and ensuring the sanctuary of the values of legal certainty and finality [30]. This strain exists in all parts of the ex officio doctrine, though most keenly experienced when the duty collides with res judicata and time limits of procedure - the subjects of Chapter 2. The overall attitude of the CJEU towards this tension may be characterized as being consumer protection inclined, although not necessarily absolute. The Court has not indicated that ex officio duty necessarily prevails over res judicata, or that time constraints necessarily are never compatible with the Directive. In Asturcom it approved that a final decision could be taken where the consumer had a real opportunity of acting on his rights [9]. The Court will make a distinction on time limits between those which, in effect, subject the consumer to no redress whatsoever, as in Cofidis [10] and those which permit a real opportunity of rights being exercised, and were held in Asturcom. It is not how we define that there is a time limit, but rather how it impacts in practice on the capacity of the consumer to receive the protection of the Directive. However, more recent rulings have taken this balance that much further in favour of the consumer. The Court in SPV Project 1503 determined that where no ex officio assessment had been done at any stage of the proceedings, the principle of effect could result in the enforcement court doing so - despite the consequence on res judicata [11]. This is as far the doctrine has gone in its effect on finality. It works well by creating a bottom line: the consumer needs to be guaranteed somewhere in the process at least one real chance of a judicial scrutiny of purportedly unfair terms. Finality would have to yield were that never to be the case. This has practical implications on legal certainty. In the case of businesses, it implies that a term in a contract cannot be considered as settled without the need to have been examined by a court as being unfair. This brings about a form of uncertainty as Reich had observed which is not the case in other parts of civil law where judgments are considered final [12]. It is a safety net to the consumers, even where the customers failed to bring the unfairness issue to the fore at the appropriate moment due to procedural errors or even due to ignorance, they have not necessarily lost the shield of the Directive. This thesis assumes the position, that the CJEU has achieved an acceptable balance, although not an ideal balance. There is the principle of minimum safeguard, that there must be at least one real opportunity to review judicially, on the part of the consumer; it is a principle that is proportionate. Courts are not required to reopen every case decided upon, but it does provide that the purpose of the Directive is not undermined by procedural misfortune. The drawback is that the actual limits of finality in consumer cases are vague, and national courts are left to make such things out as they go in the application of general principles to their own procedural dispensation. In this regard, there are more transparent and predictable standards that would benefit all people, consumers, businesses, and courts as observed by Craig and de Burca [13].

4.4. The Lithuanian System in Comparative Perspective: Strengths and Vulnerabilities

Chapter 3 demonstrated that Lithuania legal system is generally consistent with what ex officio doctrine demands formally, but has practical problems in the implementation of the duty in all forms of proceeding [31]. This part examines the Lithuanian experience in the broader context of the case law of CJEU and what works and what fails. The principal strength of Lithuania lies in its hybrid procedural approach and in the constitutional approach of consumer protection. The Constitution, in Article 46, consumer protection is a constitutional duty, Article 13(2) of the Code of Civil Procedure provides a broad discretion to the courts to take measures that would see a case properly decided [14]. That has not been drafted with the ex officio evaluation of unfair terms in view, but it does provide the courts with a home law foundation of the type of proactive role which the CJEU doctrine must play. This makes Lithuania better off than purely adversarial systems in which judges are merely powerless to raise issues that the parties have not. The substantive rules of the Civil Code, especially Article 6.2284, closely correspond to the requirements of the Directive, and Article 6.2284(6), according to which the non- transparent terms should be regarded as automatically unfair, actually exceedes the requirements of the Directive [15]. There has also been a sincere interest in the Supreme Court of Lithuania in the case law of CJEU. It has used the preliminary ruling procedure as in the case of Šiba v Devėnas [16], D.V. v M.A. [17] and R.A. and Others v Luminor Bank AS [18], indicating that it is not merely taking the back seat but playing an active role in developing the EU law by asking questions on the operation of the unfair terms regime with reference specifically to the Lithuanian situation. The substantive decisions made by the Supreme Court also indicate appropriate exercise of the duty. The ex officio requirement is taken seriously by the top court as the case that was determined to contain an early termination clause in a consumer credit agreement was ruled (Case No. 3K-7-272/2011) [19] to be unfair. The further case Case No. 3K-7-149-706/2015 [20], established that ex officio control is relevant to contracts based on legal service provision - previously not outlined in the CJEU guidance in the Lithuania context. The weaknesses themselves are also actual. Chapter 3 has listed four key areas of problems. To start with, the order-for-payment procedure pursuant to Articles 431 to 446 of the Code of Civil Procedure [21] is intended to be fast and simple - not to conduct the substantive review of contractual terms required by the ex officio doctrine. The technical authority of courts that make payment orders to examine that decisions are correct is present in Article 13(2), however, the frequency with which such cases are examined in consumer cases involving standard-form contracts is not clear. By the case law on the part of CJEU - especially in Banco Espanol de Credito and Finamadrid a system that never gives a chance of ex officio review at any point of time merely fails the effectiveness test. Unless this is a regular part of Lithuanian proceedings concerning payment orders, and the consumers do not object to the proceedings within a period of twenty days, the system might be not subject to this requirement. Second, the compatibility of the ex officio duty and res judicata is a problem that has not been resolved yet [32]. Final court decisions are binding and cannot be appealed except by special extraordinary means as it is stated under Article 279 of the Code of Civil Procedure. This decision of the CJEU in SPV Project 1503 might entail that the Lithuanian enforcement courts reach an ex officio determination in a case in which no such determination was previously made. This remains yet to be tested in case law in Lithuania, and it is actually uncertain how conflict between the finality principle and the EU law requirement of at least one substantive review would be enforced by the enforcement courts. Third, although the Supreme Court has been highly active in the doctrine, there is little indication of the consistency of first-instance courts throughout Lithuania in its application. According to Bubliene, the successful implementation of the unfair terms regime requires not only the presence of good law but the question of whether the judges know how to apply the terms and whether they have the means to implement it [22]. Poor application is a real threat in Courts of First Instance (which have usually the highest number of consumer cases) and which are the least likely to be staffed by a judge with specialist training in EU consumer law. The ex officio duty must be applied correctly, which would entail a good understanding of the Pannon GSM test of necessary elements, duties of the investigator imposed by VB Pénzügyi Lízing, and boundaries of the subject matter as imposed by Lintner. There is still no solution to this, without proper training and practical guidance, the gap between what the Supreme Court says, and what actually happens in real life courtrooms will still exist. Fourth, the Lithuanian consumer protection institutional framework does not provide the State Consumer Rights Protection Authority to be involved in individual court proceedings, as a party or amicus curiae. Since this enforcement gap, as Bubliėnė and Selvestravičiutė have argued, has to be addressed appropriately, there is no use of administrative enforcement and active judicial protection, otherwise one cannot avoid the other [23]. Since there is no established linkage between the expertise of the Authority and that of the courts, the judges handling the intricate consumer cases in special fields of the economy cannot refer to the knowledge of the Authority on unfair practices in such fields.

4.5. The Ex Officio Doctrine as a Model for the Proceduralisation of EU Rights

The last issue that this synthesis must solve is what the ex officio doctrine entails as far as the development of EU procedural law is concerned outside the area of consumer protection. The doctrine born out of Directive 93/13/EEC is frequently said in academic literature to represent the brightest example of a larger trend, namely the so-called proceduralisation of EU rights, i.e., the process through which the CJEU derives certain procedural duties in response to the substantive EU law in order to ensure that the said rights are in fact implemented at the national level [24]. The doctrine has a number of implications on this larger process [33]. The first one is that the principle of effectiveness does not necessarily limit to what can be done by national procedural rules. It also has the capability of creating positive duties which essentially transform the position of the national judge. This is only true in the area where as noted in Section 4.[157], the normal circumstances of privately enforcing the law are simply inexistent - but its theoretical importance extends beyond the consumer law. Where people in any field of EU law habitually fail to enforce their own rights in the national courts, the ex officio model creates the possibility that the principle of effectiveness might be invoked to justify an active judicial obligation to do so. Whether a similar thing may occur in such areas as non-discrimination law, data protection, or employment law is yet to be observed, but it cannot be dismissed. The second one is that there are practical constraints to the development of procedural obligations by way of case law. As Micklitz has noted, the gradualist nature of the CJEU approach brings about a sense of uncertainty or unequalness in the Member States [25]. The preliminary sources provide the answer to the particular question concerning the particular procedural system of the court of reference - other structures remain unanswered. This has led to a patchwork of judgments that although similar in their core principles, is incapable of substituting appropriate harmonisation of EU-level legislation. In November 2020, the Directive on representative actions (Directive 2020/1828) was adopted, which is a partial answer to this issue, but it does not codify the ex officio duty, it merely regulates collective enforcement. The third one is that the good principles on the CJEU level cannot work much unless they are effectively received and applied on the national level. The CJEU can express that it is up to the courts to evaluate unfair terms by their own initiative, but not to ensure that all courts in all Member States do so on a regular basis. A combination of a clear legislation, judicial training, institutional support and a judicial culture that is truly open to active judicial involvement in consumer protection is what makes the doctrine work in effect, as demonstrated by the Lithuanian case study. These requirements differ greatly among Member States, and the judicial practice of the CJEU cannot necessarily close such gaps. This is reflected in the proposal of Chapter 3 of an express legislative provision in the Lithuanian Code of Civil Procedure: conversion of obligations derived by CJEU is a crucial step to ensure that they operate in practice [26].

In conclusion, the ex officio principle of the Directive 93/13/EEC takes a special place in the EU procedural law [34]. It is at once a product of the principle of effectiveness, a direct reaction to the structural deficiency of the domestic enforcement of consumer cases, a prototype of how EU rights may be proceduralised. Its evolution over the last twenty years has been widely consistent, rooted in consistent logic, and has been truly legalistic on how consumer conflict is resolved in the reality. However, the case-by-case evolution of the doctrine, its conflicts with the fundamental procedural rules such as finality and party disposition, and quite different circumstances under which it is to be received in each and every Member State all lead to the same conclusion: there is a need to have clearer statutory frameworks and more institutional authority behind them, on the national level. The experience of Lithuania, as this thesis has attempted to demonstrate, reflects not only what is possible but what is hard, when it comes to putting the doctrine into effect within a legal system that is generally receptive to the EU law, yet at the same time is confronted with real facts of unequal application to all courts and all kinds of proceedings.

CONCLUSIONS

1. The ex officio role of national courts to examine the unfairness of contractual terms under Directive 93/13/EEC has been built by CJEU in an incremental yet consistent jurisprudential development during the last twenty years. It was established by the acknowledgement of a judicial power in Océano Grupo Editorial (2000), raised to a mandatory obligation in Mostaza Claro (2006), given certain triggering conditions in Pannon GSM (2009), imposed on a variety of procedural contexts such as order-for-payment processes (Banco Español de Crédito, 2012; Finanmadrid, 2016), order-based on-negotiable instrument proceedings (Profi Credit Polska, 2018), and In Lintner (2020), the duty limits are outlined which limits the obligation to aspects related to the subject matter of the dispute. It is a chronological growth, and indicates a purposeful and premeditated extension of the doctrine, guided by the constant production of the same premises, in the various procedures arrangements.

2. The theoretical foundations of the ex officio doctrine rest on three interconnected pillars: the concept of the consumer as a structurally weaker party, the principle of effectiveness, and the Directive's system of protection based on minimum harmonisation with deference to national procedural law[158]. The principle of effectiveness, as applied in the consumer protection context, has undergone a qualitative transformation from a negative limit on national procedural autonomy (the prohibition of rules rendering the exercise of EU rights practically impossible or excessively difficult) into a positive source of procedural obligations requiring national courts to take active steps to protect consumer rights. This transformation is justified by the structural characteristics of consumer disputes, in which the conditions for effective private enforcement — legal knowledge, access to counsel, willingness to litigate — are systematically absent, and without which the Directive's protections would remain nominal for the majority of consumers.

3. The scope of the ex officio duty extends across all types of civil proceedings in which a claim may be linked to a potentially unfair contract term, including ordinary civil proceedings, order-for- payment proceedings, enforcement proceedings, and arbitration-related proceedings[159]. The duty is triggered whenever the national court has available the legal and factual elements necessary for the assessment of unfairness, and it encompasses not only the evaluation of terms already before the court but also investigative steps to

[158]CRAIG, Paul and DE BURCA, Grainne (2020). EU Law: Text, Cases, and Materials. Seventh edition. Oxford: Oxford University Press, p. 238; REICH, Norbert (2014). European Consumer Law. Second edition. Cambridge: Intersentia, p. 88.
[159]See the analysis in Chapter 2, sections 2.1-2.4 of the present thesis.

obtain the information needed for such an evaluation. The duty is, however, subject to the limiting principle established in Lintner: the court is not required to examine every term of the contract on its own motion but only those connected with the subject matter of the dispute. Where the court finds a term to be unfair, the sole permissible consequence is the non-application of that term; judicial revision of the term's content is precluded in order to preserve the Directive's deterrent effect.

4. The ex officio doctrine generates significant tensions with fundamental principles of national civil procedure[160]. The tension with the principle of party disposition is direct and structural: the duty requires the court to go beyond the pleas raised by the parties and to address issues that neither party has put in dispute. The tension with the adversarial principle is similarly pronounced, particularly in relation to the investigative obligations recognised in VB Pénzügyi Lízing, which require the court to seek information on its own motion. The tension with res judicata is managed by the CJEU through a graduated approach: finality is respected where the consumer had a genuine opportunity to exercise rights before the decision became final, but it may be set aside where no ex officio review took place at any stage, as established in SPV Project 1503. The tension with procedural time limits is resolved through a functional test: time limits are permissible only if they give the consumer a genuine and realistic opportunity to benefit from the Directive's protection. These tensions are inherent in the design of the doctrine and cannot be fully eliminated; they can only be managed through careful calibration of the competing values of consumer protection and legal certainty.

5. The Lithuanian legal system provides a formally adequate framework for the implementation of the ex officio doctrine[161]. The constitutional obligation to protect consumers (Article 46 of the Constitution), the general judicial power to ensure the correctness of decisions (Article 13(2) of the Code of Civil Procedure), and the faithful transposition of the Directive's substantive provisions in Article 6.2284 of the Civil Code create a legal basis for the ex officio assessment. The Supreme Court of Lithuania has demonstrated strong engagement with the CJEU's case law, both through its own decisions declaring unfair terms void and through its active use of the preliminary ruling procedure. However, practical challenges persist in the application of the duty by courts of first instance, in the order-for-payment procedure, and in the absence of institutional mechanisms for the participation of the State Consumer Rights Protection Authority in

[160] DOUGAN, Michael (2004). National Remedies Before the Court of Justice: Issues of Harmonisation and Differentiation. Oxford: Hart Publishing, pp. 82-85.

[161] BUBLIENE, Danguole (2009). Vartojimo sutarciu nesaziningu salygu kontrole: monografija. Vilnius: Registru centras, p. 245; JAKUBONYTE, Giedre (2006). Journal of Consumer Policy, 29(1), 59-83, at 75.

individual court proceedings. These challenges are practical rather than structural and can be addressed through targeted legislative amendments, judicial training programmes, and the development of practical guidelines for the application of the ex officio duty across all levels of the Lithuanian judiciary.

6. The ex officio doctrine under Directive 93/13/EEC occupies a unique position within the broader architecture of EU procedural law[162]. It represents the most advanced expression of the proceduralisation of EU rights through judicial action — the derivation of specific procedural obligations from substantive EU law provisions through the principle of effectiveness. While this model has proven effective in ensuring a minimum standard of consumer protection across the EU, its case-by-case development through the preliminary reference procedure generates doctrinal uncertainty and uneven reception across Member States. The effective implementation of the doctrine at the national level requires not only formal legal compatibility but also legislative clarity, judicial awareness, and institutional support. In Lithuania, the adoption of an express legislative provision requiring ex officio assessment in consumer cases, the strengthening of the order-for- payment procedure, and investment in the training of judges would significantly contribute to closing the gap between the formal recognition of the duty and its consistent application in practice. This thesis is subject to certain limitations that should be acknowledged[163]. The analysis of Lithuanian judicial practice is necessarily confined to published decisions of the Supreme Court, as comprehensive data on the application of the ex officio duty by first-instance courts are not publicly available. The recommendations for legislative amendment are formulated on the basis of legal analysis and cannot take into account all the political and institutional factors that would influence their practical implementation. Furthermore, the thesis does not extend to the comparative analysis of the implementation of the ex officio doctrine in other Member States beyond the references drawn from the CJEU's case law, which limits the scope of the comparative perspective. Future research could profitably address several questions that this thesis has identified but could not fully resolve[164]. An empirical study of the application of the ex officio duty by Lithuanian courts of first instance would provide valuable evidence on the gap between legal obligation and judicial practice. A comparative analysis of the implementation strategies adopted by newer

[162]MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: REICH, Norbert; MICKLITZ, Hans-W.; ROTT, Peter and TONNER, Klaus. European Consumer Law. Second edition. Cambridge: Intersentia, p. 145.

[163]See the methodological discussion in the Introduction of the present thesis.

[164]Cf. MICKLITZ, Hans-W. (2015). Unfair Contract Terms. In: European Consumer Law. Second edition. Cambridge: Intersentia, p. 147, identifying similar gaps in the comparative literature.

Member States with procedural traditions similar to Lithuania's would enrich the understanding of the challenges and opportunities that the ex officio doctrine creates. Finally, the potential extension of the ex officio model to other fields of EU consumer law, in particular the consumer credit and digital services domains, merits further scholarly attention in light of the expanding scope of EU consumer protection legislation.

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SANTRAUKA

Nacionalinių teismų pareiga ex officio vertinti nesąžiningas sutarties sąlygas pagal Direktyvą 93/13/EEB: raida, apimtis ir ribos ESTT jurisprudencijoje, ypač atsižvelgiant į Lietuvą

Šiame magistro darbe kritiškai analizuojama nacionalinių teismų pareigos ex officio vertinti nesąžiningas sutarties sąlygas pagal Tarybos direktyvą 93/13/EEB dėl nesąžiningų sąlygų vartojimo sutartyse raida, apimtis ir ribos Europos Sąjungos Teisingumo Teismo (ESTT) jurisprudencijoje. Darbe išsamiai nagrinėjama šios doktrinos evoliucija nuo pirmojo sprendimo Océano Grupo Editorial byloje (2000 m.) iki naujausios aktualios jurisprudencijos, įskaitant SPV Project 1503 (2022 m.), nustatant pagrindinius doktrinos formavimo etapus ir ją grindžiančius principus.

Tyrimas atskleidžia, kad ex officio pareiga yra grindžiama trimis tarpusavyje susijusiais ramstinėmis: vartotojo kaip struktūriškai silpnesnės šalies koncepcija, veiksmingumo principu ir Direktyvos apsaugos sistema, paremta minimaliu suderinamu su delegavimu nacionalinei proceso teisei. Veiksmingumo principas vartotojų apsaugos kontekste patyrė kokybinę transformaciją — nuo neigiamo nacionalinės proceso autonomijos apribojimo iki teigiamo procesinės pareigos šaltinio, įpareigojusio nacionalinius teismus imtis aktyvių priemonių vartotojų teisėms apsaugoti.

Darbe taip pat vertinamas ex officio doktrinos įgyvendinimas Lietuvos teisinėje sistemoje, nagrinėjant konstitucinį vartotojų apsaugos pagrindą, atitinkamas Civilinio kodekso ir Civilinio proceso kodekso nuostatas bei Lietuvos Aukščiausiojo Teismo praktiką. Analizė atskleidžia tiek stiprybes, tiek pažeidžiamumą Lietuvos sistemoje, ypač susijusį su mokėjimo įsakymo procedūra, sąveika su res judicata principu, teismų pareigūnų mokymu ir VVTAT instituciniu vaidmeniu. Darbe pateikiamos rekomendacijos dėl ex officio pareigos įgyvendinimo Lietuvoje stiprinimo teisės aktų pakeitimų, teismų mokymo programų ir institucinės reformos priemonėmis.

Reikšminiai žodžiai: ex officio pareiga; nesąžiningos sutarties sąlygos; Direktyva 93/13/EEB;

ESTT jurisprudencija; veiksmingumo principas; nacionalinė proceso autonomija; vartotojų apsauga; res judicata; Lietuva.