

UNFAIR TERMS IN CONSUMER CONTRACTS

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Abstract: *This paper examines the legal framework governing unfair terms in consumer contracts, focusing on Romanian legislation and CJEU case law. It analyzes the core criteria—lack of negotiation, significant imbalance, and breach of good faith—and emphasizes the courts' duty to assess such clauses ex officio. The study also addresses the growing risks posed by digital contracts (e.g., click-wrap, browse-wrap), where consumer consent is often illusory. It argues for a contextual and proactive legal interpretation to ensure genuine contractual fairness and effective consumer protection.*

Keywords: *Unfair terms, consumer contracts, adhesion contracts, Court of Justice of the European Union, contractual imbalance, good faith, click-wrap, digital contracting, ex officio control, consumer protection law.*

1. Introduction

The topic of unfair terms in consumer contracts is a current and highly relevant issue, both from the perspective of national and European law. In the context of a market economy and the rapid digitalization of contractual relationships, consumer protection against unfair contractual practices becomes a necessity. The purpose of this paper is to analyze the legal regime of unfair terms in adhesion contracts, with a focus on the case law of the Court of Justice of the European Union (CJEU), recent legislative changes, and the new challenges posed by digital contract formation. In recent years, judicial practice and the activity of regulatory authorities have highlighted a series of ongoing tensions between credit institutions and consumers, caused by the introduction of imbalanced contractual terms. It is well known that, taking advantage of their dominant position, financial institutions have included in credit agreements provisions that, in the absence of genuine negotiation, exclusively favor their own interests to the detriment of consumers.

This paper aims to systematically analyze the legal and jurisprudential criteria for qualifying a clause as unfair, as well as the legal mechanisms available to consumers to have such clauses annulled and, where applicable, to obtain compensation for the harm suffered.

The analysis will be structured on several levels: defining the concept of an unfair term in both national and European law, identifying the constitutive elements, examining the principle of good faith and contractual imbalance, presenting the role of national and European courts, as well as the competent administrative authorities, while also addressing the new dimensions brought by the digitalization of contracting and its implications for the professional–consumer relationship.

2. The Concept of Unfair Terms

The concept of an “unfair term” is one of the cornerstones of the legal framework for consumer protection in both European and national law. Essentially, a contractual term is deemed unfair when, without having been individually negotiated, it creates a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer, and violates the requirements of good faith. These elements—lack of negotiation, significant imbalance, and breach of good faith—are cumulative and expressly stated in Article 4(1) of Law No. 193/2000 on unfair terms in contracts concluded between professionals and consumers, as subsequently amended.

From a legislative standpoint, Law No. 193/2000, republished and updated, was significantly amended by Law No. 161/2023, which strengthened the powers of the National Authority for Consumer Protection (ANPC), introduced higher fines, and created more effective mechanisms for eliminating unfair terms. This legal act was adopted in the context of the partial transposition of Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, thus paving the way for collective actions in the field of contractual protection.

Unfair terms generally appear in adhesion contracts—those standard, pre-formulated contracts drafted by the professional and imposed on the consumer “as is”, without any real opportunity for negotiation. According to Article 1175 of the Civil Code, an adhesion contract is defined as one in which “its essential terms are imposed or drafted by one of the parties, for itself or following its instructions, with the other party only having the option to accept them in full.” Law No. 193/2000 supplements this definition with a rebuttable presumption of non-negotiation in the case of standard contracts, including atypical documents such as order slips, tickets, vouchers, or electronic interfaces. From a systematic perspective, the unfair nature of a clause is determined based on three legal criteria: the formal criterion (the clause was not individually negotiated with the consumer), the material criterion (it creates a significant imbalance between the rights and obligations of the parties), and the axiological criterion (it contravenes the requirements of good faith and contractual fairness) (Pop et al., 2015:93).

These criteria are further developed in legal doctrine through three methods of analysis: (i) in abstracto evaluation, by assessing the clause in isolation against the law; (ii) global evaluation, by considering the clause in the context of the entire contract; and (iii) in concreto evaluation, based on the actual position of the parties at the time the contract was concluded (Popa, 2004:82-83).

The law includes, in an annex, a non-exhaustive list of potentially unfair terms (commonly referred to as the “grey list”), which comprises, among others, clauses that limit the professional’s liability, allow unilateral modification of the contract, or impose disproportionate obligations on the consumer. However, this list is not exhaustive, and the case law of the Court of Justice of the European Union has repeatedly confirmed its illustrative nature (e.g., Case C-415/11, *Aziz*, 2013).

In conclusion, the qualification of a clause as unfair requires a multifaceted legal analysis, combining elements of substantive law, judicial practice, and doctrinal interpretation. This analysis is essential for protecting consumers, particularly in the context of a digital economy where contracts are increasingly concluded in an automated and impersonal manner, with no real negotiation taking place.

3. Conditions for Determining the Unfair Nature of Contractual Terms

Determining whether a contractual clause is unfair involves a complex legal analysis that combines legal, doctrinal, and jurisprudential criteria. Under national law, the relevant provisions are found in Article 4(1) of Law No. 193/2000, which states that a contractual term that has not been directly negotiated with the consumer is deemed unfair if, by itself or together with other contractual provisions, it creates a significant imbalance between the parties' rights and obligations, contrary to the requirements of good faith.

This provision transposes into national law Article 3(1) of Council Directive 93/13/EEC, which sets out the essential criteria for identifying a clause as unfair. In legal doctrine, these conditions are systematized into the three fundamental legal criteria outlined above:

- Formal criterion: the absence of effective individual negotiation. This criterion is essential for distinguishing between freely agreed-upon terms and those imposed by the professional in an adhesion contract. Article 4(2) of Law No. 193/2000 explicitly states that a clause is considered non-negotiated when it has been established without giving the consumer the opportunity to influence its content.
- Material criterion: the existence of a significant imbalance between the rights and obligations of the parties. This is not a purely economic or technical imbalance, but a legal one, determined by the disproportion between the advantages granted to the professional and the constraints imposed on the consumer.
- Axiological criterion: the breach of good faith. Good faith should be understood not only as contractual loyalty but also as the avoidance of imposing excessive terms in the absence of genuine negotiation. Article 1170 of the Romanian Civil Code requires the parties to act in good faith both during the negotiation phase and throughout the execution of the contract.

These three criteria are assessed in doctrine through a tripartite system of analysis, also mentioned above:

- In abstracto evaluation: the clause is examined in isolation, by comparing it to the indicative list of presumed unfair terms in the Annex to Law No. 193/2000.
- Global evaluation: the clause is assessed in relation to the contract as a whole, focusing on the overall balance between mutual obligations.
- In concreto evaluation: this takes into account the specific context in which the contract was concluded, the consumer's economic and informational position, the complexity of the terms, and their actual impact on the weaker party.

This doctrinal approach is supported by authors such as Ionuț-Florin Popa, who emphasize that the determination of unfairness cannot be made without a functional and context-sensitive evaluation of the contractual content (Popa, 2004:82-83).

In the case law of the Court of Justice of the European Union, it has been consistently held that national courts must assess contractual terms not only based on their impact on the contractual balance, but also in light of the nature of the goods or services provided and the circumstances under which the contract was concluded (Case C-415/11, *Aziz*; Case C-243/08, *Pannon GSM*).

4. Lack of Pre-contractual Negotiation

One of the defining elements of the unfair nature of a contractual term is the lack of direct negotiation between the professional and the consumer. This condition is explicitly set out in Article 4(2) of Law No. 193/2000, which states that a clause is considered not to have been individually negotiated if it was unilaterally imposed by the professional without giving the consumer a genuine opportunity to influence its content.

Adhesion contracts, by their very nature, involve the wholesale acceptance of pre-established terms, in the absence of real negotiation. Article 1175 of the Civil Code defines an adhesion contract as one whose essential terms are drafted by one of the parties, with the other party having only the option to accept them as they are. This formulation highlights the imbalanced nature of the legal relationship and justifies legislative intervention in favor of the consumer.

In legal doctrine, adhesion contracts are defined as standardized legal instruments that exclude the concept of pre-contractual negotiation and allow the professional to impose contractual conditions that may, in fact, be imbalanced. The absence of negotiation enables the insertion of unfair terms, as the consumer has only the choice to adhere or to forgo the contract, with no possibility of modifying any contractual term (Toader et al., 2001:76).

The legislator has extended protection even to seemingly insignificant documents such as order slips, tickets, vouchers, or electronic forms that contain pre-established general conditions. Thus, under Article 3(1) of Law No. 193/2000, the legal provisions also apply to clauses inserted in such documents, provided that there is a reference to general terms and conditions, with a presumption of lack of prior negotiation (Stanciu, 2004:139).

In the current context, the digitalization of legal relationships has led to the widespread use of pre-formulated contracts, accepted simply by ticking a checkbox ("click-wrap agreements") or even implicitly, through the use of a platform ("browse-wrap"). In such cases, negotiation is entirely absent, and the consumer is not genuinely informed about the legal effects of the contractual terms. The law, in its broad interpretation, also provides protection in these situations, treating digital contracts as modern forms of adhesion contracts (Popa, 2004).

National and European case law has established a rebuttable presumption of lack of negotiation in the case of standard contracts. This presumption can only be overturned by written evidence provided by the professional, proving that the specific clause was actually negotiated. The mere fact that a contract is signed by both parties is not sufficient to eliminate the presumption of non-negotiation. In this regard, courts have reiterated that the professional has the obligation to prove the negotiated nature of the clause through documents, correspondence, or other concrete evidence.

An important provision regulated by Article 4(3) of Law No. 193/2000 is that if only some contractual terms have been negotiated, the legal regime regarding unfair terms continues to apply to the other non-negotiated clauses. This approach supports consumer protection even in cases of partial negotiation and allows the court to individually assess each contractual clause. The principle of *contra proferentem* interpretation, provided by Article 1269(2) of the Civil Code, according to which contractual terms are interpreted against the party who drafted them, applies particularly to adhesion contracts and strengthens the consumer's position. This rule reflects the principle of contractual fairness and serves as a tool to rebalance the legal positions of the parties.

It is essential to emphasize that the regulations regarding unfair terms apply even in cases where the consumer understood the content of the clauses but had no real opportunity to negotiate them. The law thus presumes that contractual imbalance can exist even in the absence of a defect of consent, protecting the consumer based on the structural inequality between the parties, and not merely on their individual understanding of the contract.

In support of consumer protection, Article 3(1) of Law No. 193/2000 allows for a broad interpretation of the notion of a pre-formulated standard contract, extending its scope to include clauses inserted in documents such as order slips, delivery notes, tickets, vouchers, or other similar instruments. The essential condition is the explicit reference to pre-established general terms and conditions, in which case the law establishes a rebuttable presumption of lack of prior negotiation, which can only be overturned with contrary evidence.

Similarly, Article 4(2) of the same law explicitly defines a non-negotiated clause as a contractual provision established by the professional without offering the consumer a real opportunity to influence its content. This normative standard was introduced to eliminate interpretative ambiguities and to establish lack of negotiation as a defining element of adhesion contracts.

Furthermore, according to Article 4(3), even where certain clauses have been effectively negotiated, the legal framework continues to apply to the non-negotiated clauses within the same contract. This provision enables the court to assess unfairness on a clause-by-clause basis, rather than evaluating the contract as a whole.

Through a *per a contrario* interpretation of this legal text, it can be argued that the special protection offered by the unfair terms regime does not apply to clauses that were genuinely negotiated, even if they prove burdensome or unfavorable to the consumer. The law favors contractual freedom where negotiation has been real and fair.

Finally, it is important to emphasize that the applicability of the unfair terms regime is not conditioned on the consumer's ability to understand the contractual terms. The protection offered is aimed primarily at addressing the objective imbalance between the parties, rather than the consumer's subjective level of information or understanding. The law provides that contractual stipulations must be clear, unambiguous, and intelligible, without requiring specialized legal knowledge. In case of doubt, the rule of interpretation in favor of the consumer applies, pursuant to Article 1269(2) of the Civil Code.

5. Breach of the Good Faith Requirement

One of the essential conditions for classifying a contractual term as unfair is the breach of the good faith requirement. According to Article 4(1) of Law No. 193/2000, a contractual clause that has not been individually negotiated is considered unfair if, "by itself or in conjunction with other provisions of the contract, it creates, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance between the rights and obligations of the parties."

In legal doctrine, good faith is interpreted not merely as the absence of deceit or fraudulent drafting, but as a positive requirement of contractual loyalty, implying that the professional must act with transparency, fairness, and responsibility toward the consumer at all stages of the contract—from negotiation to conclusion and throughout its execution. This

interpretation is supported by Article 1170 of the Civil Code, which provides that “the parties must act in good faith both at the conclusion and throughout the performance of the contract.”

The good faith criterion involves, in practice, an assessment of the professional’s conduct at the time the contractual terms were drafted and imposed. Thus, a clause that, although formally clear, is drafted in such a way that it conceals its real economic or legal effects, or places the consumer in a contractually inferior position, may be considered unfair precisely because the professional did not act equitably.

The Court of Justice of the European Union has interpreted this notion broadly, stating in Case C-415/11, *Aziz* that good faith must be assessed in relation to “whether the professional, acting in good faith and fairly toward the consumer, could reasonably expect that the consumer would have agreed to such a term in the context of individual negotiation.” Therefore, the unfair nature of a clause is also determined using a test of legitimate expectation, in light of the reasonable expectations of the average consumer.

Another important dimension of good faith concerns the asymmetry of information and experience between the parties. In practice, the professional has access to legal, economic, and technological expertise, while the consumer typically does not possess similar resources. This structural asymmetry generates a potential systemic imbalance, and failure to comply with the obligation of contractual clarity or transparency is an objective indicator of a lack of good faith.

National case law has confirmed that it is not necessary for good faith to be breached through fraudulent or deceitful behavior. It is sufficient that the professional has taken advantage of their dominant position to impose unbalanced terms, without properly informing the consumer or allowing for real negotiation. In this logic, unfair clauses are not sanctioned for their immorality, but rather for violating a legal requirement of contractual loyalty and proportionality.

In conclusion, breach of the good faith requirement is a fundamental criterion in assessing the unfair nature of a clause. This condition is not a formal or rhetorical one, but rather a central element of consumer protection in a fair market economy. The professional is obliged to prove that they acted with transparency, fairness, and balance, and any deviation from these standards may lead to the nullity of the affected clauses.

6. Imbalance Between the Rights and Obligations of the Parties

A central condition for classifying a clause as unfair is the existence of a significant imbalance between the rights and obligations of the contracting parties, to the detriment of the consumer. This requirement is explicitly provided in Article 4(1) of Law No. 193/2000, which transposes into national law Article 3(1) of Council Directive 93/13/EEC. According to these provisions, a contractual term is considered unfair if, in the absence of individual negotiation, it creates a significant imbalance between the parties’ performances, contrary to the requirements of good faith.

The notion of “significant imbalance” is legal in nature, not merely economic. The analysis does not reduce to a simple quantitative comparison between rights and obligations, but rather targets a substantial disproportion in the allocation of contractual risks and burdens placed on the consumer. This imbalance may manifest in clauses that impose excessive penalties, unilateral sanctions, allow for the unilateral modification of the contract by the professional, or create onerous conditions for the consumer to terminate or cancel the contract.

In practice, a significant imbalance is frequently found in clauses that allow the professional to unilaterally modify the contractual terms without the consumer's express consent or prior notification, or in clauses that unfairly limit the consumer's rights to compensation or restitution in the event of termination. Such clauses are presumed to be unfair according to the Annex to Law No. 193/2000, point 1 letters a)–p).

The Court of Justice of the European Union (CJEU) has developed a functional and contextual approach to the concept of imbalance. In Case C-415/11, *Aziz*, the CJEU ruled that national courts must assess whether a clause creates, to the consumer's detriment, a significant imbalance between the rights and obligations of the parties, taking into account the national rules applicable in the absence of a contract, the nature of the product or service, and the circumstances in which the contract was concluded. In Case C-243/08, *Pannon GSM*, the Court reiterated that a clause can be deemed unfair even if it has not yet produced effects, as it is sufficient that the potential effect is inherent to the structure of the contract.

Romanian legal doctrine has emphasized that the existence of a significant legal imbalance must be assessed in light of the professional's dominant position and the lack of symmetry in the exercise of contractual rights. The imbalance is exacerbated by a lack of transparency or by the obscure nature of the clause, as the consumer cannot realistically assess the consequences of accepting it. Ambiguously worded clauses or those that conceal disproportionate economic effects can generate imbalances in favor of the professional.

According to Article 4(6) of Law No. 193/2000, the assessment of whether a clause is unfair does not apply to the relationship between the price and the main subject matter of the contract, provided that these terms are clearly, intelligibly, and transparently expressed. Therefore, even in the case of an apparently unbalanced price, if it is clearly expressed and understood, it cannot be subject to unfairness control.

Under national law, the principle of contractual balance also derives from the general provisions of the Civil Code, particularly Articles 966–970 concerning the cause of the contract and fair balance of performances, as well as Articles 1221 and following on contractual hardship (imprevision), which enshrine the principle of equity and the reasonable distribution of risks between the parties.

In conclusion, the analysis of the imbalance between the rights and obligations of the parties must go beyond a simple quantitative assessment and focus on the real impact of the clauses on the legal and economic position of the consumer. Contractual imbalance reflects a dysfunction in the legal relationship which, if it is significant and unilaterally imposed, justifies legislative and judicial intervention to restore equity and protect the weaker party.

7. Illegality of Jurisdiction Clauses in Contracts Concluded with Consumers

A frequently encountered issue in the practice of adhesion contracts is the insertion of exclusive jurisdiction clauses, which designate a specific court to resolve potential disputes between the professional and the consumer. These clauses are often unilaterally included in standard contracts, without being subject to individual negotiation and without being genuinely brought to the consumer's attention—making them likely to be considered unfair.

According to Article 3(1) of Directive 93/13/EEC, a contractual clause is unfair when, contrary to the requirement of good faith, it causes a significant imbalance between the rights and obligations of the parties, to the detriment of the consumer. In this context, the CJEU, in

Case C-240/98 – *Océano Grupo Editorial*, held that a jurisdiction clause requiring the consumer to bring legal action only before the court where the professional is located, without the clause having been negotiated, is contrary to good faith and creates a significant procedural imbalance. It must therefore be regarded as unfair.

Such clauses, by their nature and effect, limit the consumer's effective access to justice, forcing them to bear additional costs, disproportionate logistical efforts, or even to give up the exercise of their right to take legal action or defend themselves effectively. In these situations, not only is contractual balance compromised, but also the fundamental right to a fair trial, protected by Article 6 of the ECHR and the consistent case law of the CJEU.

In such cases, the national court has an obligation to analyze the specific circumstances of the case to assess whether the actual enforcement of the jurisdiction clause imposes excessive difficulties on the consumer. This analysis must consider factors such as: the geographical distance from the designated court, travel costs, logistical difficulties, and the consumer's ability to defend themselves effectively before that court. If it is found that the consumer's right of access to justice is significantly restricted or impeded, the clause must be removed as unfair.

It must also be noted that such a clause produces restrictive effects independently of the professional's subjective good faith; the relevant criterion is the objective effect of imbalance. Therefore, even if the professional claims to have had no intention of limiting the consumer's right to defense, this does not exempt the clause from being considered unfair if, in practice, it produces such restrictive effects.

In continuing the development of European case law on consumer protection, the Court of Justice of the European Union, in Case C-243/08, *Pannon GSM*, established a fundamental principle of procedural law: the national court has an obligation to examine ex officio the unfair nature of a contractual clause, even in the absence of an express request from the consumer. Furthermore, the Court emphasized that a clause deemed unfair does not produce binding legal effects on the consumer, and the lack of a prior challenge by the consumer does not condition the inapplicability of that clause.

Once the national court has the necessary legal and factual elements, it must assess the validity of the clause ex officio, and if it finds it to be unfair, it must refuse to apply it—unless the consumer explicitly opposes such a finding. This obligation persists even when the court is only seized with a matter of territorial jurisdiction, thus highlighting the autonomous and imperative nature of the control over unfair terms.

This interpretation is also reiterated in Case C-240/98 – *Océano Grupo Editorial* and *Salvat Editores SA*, where the Court held that a jurisdiction clause inserted in a standard contract, without being subject to individual negotiation and which grants exclusive jurisdiction to the court where the professional is located, must be considered unfair under Article 3(1) of Directive 93/13/EEC, as it violates the requirement of good faith and creates a significant imbalance to the detriment of the consumer.

These decisions highlight the active role of national judges in protecting consumers against unbalanced clauses, and the fact that no prior action from the consumer is required. Therefore, the unfairness of a clause can and must be found ex officio, in line with the spirit of the Directive and to ensure the effectiveness of EU consumer protection law.

A key contribution to the clarification of the legal regime applicable to unfair terms in adhesion contracts was made by the CJEU judgment of 4 June 2009, delivered in Case C-243/08, *Budaörsi Városi Bíróság*. In this case, the Court interpreted Article 6(1) of Directive 93/13/EEC, ruling that a contractual clause deemed unfair does not produce binding effects on the consumer, and that the lack of a prior objection by the consumer does not prevent the court from declaring or refusing to apply the clause.

In the view of the Court, the principle of consumer protection requires the active intervention of the court, which must examine *ex officio*—and as promptly as possible—the unfair nature of a contractual clause, once it has sufficient factual and legal information to make such an assessment. This obligation is imperative and may only be waived in the explicit case where the consumer objects to the application of the protective norm, expressly requesting that the clause in question be applied.

The significance of this ruling also lies in the fact that the national court is required to assess its own territorial jurisdiction, particularly when it derives from a unilaterally imposed jurisdiction clause inserted in a standard contract. The Court emphasized that where such a clause confers exclusive jurisdiction to the court at the professional's place of business and was not negotiated with the consumer, it may be deemed unfair, as it violates the principle of fairness and creates a significant procedural imbalance.

At the same time, the court's analysis must address the genuineness of the consumer's consent and the existence of a real opportunity for negotiation. The absence of a free and informed expression of will on the part of the consumer regarding the acceptance of a geographically distant court may be a strong indicator of the unfairness of that clause.

This ruling reinforces the role of the national judiciary as guardian of contractual balance and as a filter against imbalances imposed through adhesion contracts, where the consumer's will is, in practice, devoid of real legal relevance.

In the case law of the Court of Justice of the European Union, a jurisdiction clause unilaterally inserted into an adhesion contract is subject to strict scrutiny in terms of its compatibility with fundamental principles of consumer law. Thus, according to the consistent interpretation of Article 3(1) of Directive 93/13/EEC, any contractual clause that was not individually negotiated and that, by its effects, confers exclusive jurisdiction to the professional's local court is likely to be considered unfair, insofar as it creates a significant imbalance between the rights and obligations of the contracting parties, to the detriment of the consumer.

This approach reflects the concern of European case law for the effective balance of contractual relationships, not merely from a formal perspective, but also with regard to the actual conditions in which the consumer is placed in a position where exercising their procedural rights becomes impossible or significantly difficult. In such cases, the violation of the good faith requirement is manifested in the limitation of access to justice, as the consumer is forced to initiate or defend a lawsuit in a different territorial jurisdiction, often inaccessible or overly burdensome.

According to CJEU standards, the clause must be analyzed within the factual and contractual context of each case, and the court has an obligation to assess whether its existence results in a disproportionate obstruction of the consumer's right to defense. Elements such as

geographical distance, travel expenses, difficulties in obtaining legal representation, and lack of sufficient financial resources are relevant factors in this evaluation.

This interpretation has been affirmed in rulings such as *Océano Grupo Editorial* (C-240/98) and *Budaörsi Városi Bíróság* (C-243/08), in which the Court confirmed that a territorial jurisdiction clause unilaterally imposed on the consumer violates the principles of fairness and contractual loyalty, and must be removed from the contract, without the need for it to be invoked by the consumer.

In conclusion, the insertion of a jurisdiction clause in consumer contracts, without prior negotiation and without the consumer's freely expressed consent, is presumed to be unfair, and its validity must be analyzed contextually, in relation to the specific circumstances of each dispute. Thus, EU law demands not only formal protection of the consumer, but also substantive protection, aimed at ensuring the real balance of contractual relationships.

8. Effects of Declaring Contractual Clauses as Unfair

a. The Procedure for Repressing Unfair Clauses

The legal regime governing unfair clauses in contracts between consumers and professionals is built not only on the identification and sanctioning of such provisions but also on their actual removal from the contractual framework, in order to restore contractual balance and protect the consumer's interests.

According to Article 12 of Law No. 193/2000, the procedure for repressing unfair clauses can be initiated in two ways:

- At the initiative of the injured consumer, by filing an individual action in court;
- Ex officio, by the competent supervisory authorities—especially the National Authority for Consumer Protection (ANPC)—following the identification of non-compliant contractual practices in consumer relationships.

The supervisory bodies may identify irregularities during inspection and oversight activities. If there are reasonable indications of unfair clauses, they initiate an assessment procedure. This administrative stage involves concrete checks of the contractual documentation used by the professional, including standard contracts, annexes, and general terms and conditions. The findings are recorded in a written report, which outlines the facts, the analyzed clauses, the legal provisions violated, and the legal reasoning supporting their classification as unfair.

Subsequently, this report is submitted to the competent administrative court—generally the tribunal in the jurisdiction where the professional resides or is headquartered—with a request to order the professional to modify ongoing contracts by removing the clauses identified as unfair.

Importantly, this procedure has a coercive and remedial nature, aiming not only to establish the illegality of the clause but also to correct its contractual effects, including in relation to other consumers in similar contractual situations. Thus, the court's decision may have effects beyond the immediate parties to the case, particularly in actions initiated by ANPC under Article 12¹ of Law No. 193/2000, which regulates collective interest actions.

In addition to removing the unfair clause from future contracts, the court may order the modification of all identical ongoing contracts, based on the principle of extensive effect, to prevent the continuation of a non-compliant practice.

b. Direct Access to Justice and Applicable Sanctions

In the spirit of ensuring effective consumer protection against unbalanced contractual practices, Law No. 193/2000 grants consumers the right to directly access the courts, without being required to first undergo an administrative procedure. Therefore, any natural person in a contractual relationship with a professional may file a legal action seeking the recognition of a clause as unfair and, as a result, its nullification.

This procedural option is governed by common law, and the consumer may request not only the removal of the unfair clause, but also compensation for any damage caused by its enforcement. In practice, the court may award damages based on contractual liability, if it is proven that the application of an illegitimate clause caused direct harm.

Likewise, the law grants consumer protection associations legal standing, allowing them to bring cases before the courts or regulatory authorities, either in their own name or on behalf of their members. According to Article 2(1) of Law No. 193/2000, consumer associations are equated with individual consumers in terms of procedural rights, and may also initiate collective actions against unfair clauses found in standard contracts used by a particular professional.

As for the applicable sanctions, the courts may order:

- The professional to amend adhesion contracts currently being performed, by removing the unfair clauses;
- The prohibition of using similar clauses in future standard contracts;
- The payment of a contraventional fine, ranging from 200 to 1,000 lei, according to the provisions of the special law.

These measures have a corrective, coercive, and preventive nature, aimed not only at restoring balance in the individual contractual relationship, but also at discouraging the widespread use of clauses that violate the principles of good faith, fairness, and contractual transparency. Therefore, the national legal framework provides consumers with effective and direct procedural tools for combating contractual imbalances, thereby aligning with EU consumer protection standards.

c. Ex Officio Examination of Unfair Clauses by the Court

A particularly relevant aspect in the field of consumer protection is the court's ability to assess ex officio whether a contractual clause is unfair, even in the absence of an express request from the interested party. Although Law No. 193/2000 does not expressly confer such a power, and Directive 93/13/EEC does not literally impose this obligation, systematic interpretation and European case law firmly establish this principle as an integral part of the consumer protection mechanism.

The rationale behind this approach lies in the structural inequality between the contracting parties. The consumer, in an inferior position both in terms of bargaining power and legal knowledge, often lacks the means to effectively identify, interpret, or challenge unfair terms inserted in an adhesion contract. This imbalance justifies an active judicial intervention, meant to eliminate the abuse of dominant position by the professional and to restore contractual balance in favor of the consumer.

Legal doctrine has emphasized that, in the absence of external intervention in the contractual relationship—through the activation of ex officio judicial review—the imbalance caused by the abuse of economic power would remain unsanctioned. Within this logic, the

court's ability to assess the unfair nature of a clause on its own motion takes on the role of an indirect right in favor of the consumer, transforming contractual imbalance into a remedial mechanism activated by the justice system.

This interpretation has been firmly established in the case law of the Court of Justice of the European Union, which in numerous rulings—including C-243/08, *Pannon GSM*, C-240/98, *Océano Grupo*, and C-472/10, *Invitel*—has affirmed that the national court has an obligation to examine ex officio the unfairness of contractual clauses as soon as it has the necessary factual and legal elements to make such an assessment. Furthermore, the Court has ruled that the judge must refrain from applying the clause if it is found to be unfair, without requiring any express request from the consumer—unless the consumer explicitly wishes to maintain it.

Therefore, the court's duty to verify the validity of contractual terms does not stem solely from national legislation, but from the need to ensure the effectiveness of European Union law in the field of consumer protection. This effectiveness requires that the legal mechanisms for controlling contractual abuses function independently of any procedural initiative from the consumer, in order to combat systemic imbalance between the parties and to ensure substantive protection for the most vulnerable participants in the private legal system.

9. Conclusions

The legal regime of unfair terms in adhesion contracts represents one of the most dynamic and relevant topics in consumer protection law, reflecting both legislative and case law developments at the national and European levels, as well as the socio-economic changes brought about by the digitalization of legal relationships. The analysis carried out in this paper highlights the complexity of the protection mechanism established in favor of the consumer and underscores the need to maintain genuine contractual balance in an environment dominated by standardized contracts and repetitive commercial practices.

The recognition of a contractual clause as unfair involves the cumulative verification of several conditions: lack of individual negotiation, the existence of a significant imbalance between the rights and obligations of the parties, and the breach of the good faith requirement. Although these criteria appear to be objective, they require a contextual, in concreto analysis of the contractual relationship, in light of the general principles of equity, proportionality, and the protection of the weaker party—the consumer.

The case law of the Court of Justice of the European Union plays a crucial role in shaping and harmonizing the application of the concept of “unfair term,” establishing binding standards for all Member States. The rulings in cases such as *Océano Grupo*, *Pannon GSM*, *Invitel*, and others have reinforced the duty of national courts to examine ex officio the unfairness of contractual terms and to restore contractual balance—even in the absence of an express request from the consumer. This duty reflects a modern direction in European law, where consumer protection is no longer dependent solely on the consumer's initiative, but rather stems from a public order imperative at the EU level.

Under national law, Law No. 193/2000 faithfully transposes the requirements of Directive 93/13/EEC, offering both individual means (direct court actions) and collective mechanisms (the intervention of consumer associations and the ANPC) for the suppression of unfair terms. Additionally, the modern Civil Code, through its regulations on adhesion

contracts (Article 1175) and the interpretation of terms (Article 1269), further strengthens the consumer's position in unbalanced contractual relationships.

A highly relevant current issue is the challenge posed by the digitalization of contracting. Contracts concluded online, through mechanisms such as click-wrap or browse-wrap, amplify the risks associated with unfair terms, as acceptance occurs automatically, without a genuine awareness of the contractual content. In this context, the protection provided by current legislation must be extended and adapted to the technical realities of e-commerce, through stricter regulation of transparency and pre-contractual information in the digital environment.

In conclusion, combating unfair terms requires a coordinated legislative, judicial, and doctrinal effort aimed at ensuring effective and substantive protection for consumers. Only through an active and contextual interpretation of existing legal norms can the objectives of the legal regime applicable to such clauses be achieved: ensuring real contractual justice, preventing abuses of economic power, and promoting fair and responsible commerce, including in the digitalized environment of the 21st century.

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