Reports of Cases

ORDER OF THE COURT (Eighth Chamber)

3 April 2014*

(Reference for a preliminary ruling — Directive 93/13/EEC — Scope ratione temporis — Facts preceding the accession of the Slovak Republic to the European Union — Clear lack of jurisdiction of the Court)

In Case C-153/13,

REQUEST for a preliminary ruling under 267 TFEU from the Okresný súd Bardejov (Slovakia), made by decision of 15 February 2013, received at the Court on 26 March 2013, in the proceedings

Pohotovosť s. r. o.

v

Ján Soroka,

intervener:

Združenie na ochranu občana spotrebiteľa HOOS,

THE COURT (Eighth Chamber),

composed of C.G. Fernlund, President of the Chamber, A. Ó Caoimh and C. Toader (Rapporteur), Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

— after considering the observations submitted on behalf of the Slovak Republic, by B. Ricziová, acting as Agent,

— the European Commission, by A. Tokár et M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to give its decision by reasoned order, in accordance with Article 53(2) of the Rules of Procedure of the Court,

makes the following

* Language of the case: Slovak.

Order

1 The request for a preliminary ruling concerns the interpretation of Articles 6 and 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) ('the Directive'), read in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Pohotovosť s. r. o. ('Pohotovosť') and Mr Soroka relating to the forced recovery of a sum owed by Mr Soroka under a consumer credit agreement which he had concluded with Pohotovosť.

Legal context

EU law

3 Article 3(1) of the Directive provides:

'A contractual 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 parties' rights and obligations arising under the contract, to the detriment of the consumer.'

4 Article 6(1) of the Directive provides:

'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.'

5 According to Article 7 of the Directive:

'1. Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

3. With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.'

6 Article 8 of the Directive provides:

'Member States may introduce or maintain, in the area covered by this Directive, more stringent provisions compatible with the Treaty, to ensure a higher level of consumer protection.'

Slovak law

7 Paragraph 93(2) of the Code of Civil Procedure (Občiansky súdny poriadok) provides:

'A legal person, the purpose of whose activity is the protection of rights under specific legislation, may also participate in proceedings as an intervener in support of the form of order sought by the applicant or the defendant.'

8 According to Paragraph 251(4) of that code:

'Enforcement of judgments and enforcement proceedings governed by specific legislation … shall be governed by the provisions of the preceding sections, unless that specific legislation provides otherwise. However, decisions shall always be taken by way of decree.'

9 Pursuant to Paragraph 37(1) of the Enforcement Code:

'The parties to the proceedings shall be the creditor and the debtor; other persons shall be party only to those parts of the proceedings in respect of which they are granted the status of a party to the proceedings by this law. Where the court rules on the costs of enforcement, the authorised bailiff shall also be a party to the proceedings.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 On 10 December 2002, Pohotovosť provided Mr Soroka with consumer credit to the value of 10 000 Slovak korunas (SKK) (EUR 332). That contract also included a standardised mandate given by the debtor to Mr Kušnír, Pohotovosť's lawyer.

11 It is apparent from the order for reference that the credit contract did not mention the effective annual percentage rate of charge (EAPR) and that it contained, additionally, a clause imposing a daily penalty of 0.25%, which equates to an annual penalty of 91.25%.

12 On 27 March 2003, a notary authenticated the declaration of acknowledgment by a Mr Paiček of the debt under that contract, on behalf of the consumer; Mr Paiček was mandated by the same lawyer, Mr Kušnír.

13 On the basis of that notarial deed, which, according to Slovak legislation, constitutes an enforcement order, Pohotovosť lodged, on 26 May 2003, a request seeking authorisation to enforce recovery of the sum owed. On 24 June 2004, the Okresný súd Bardejov (Bardejov District Court) granted a bailiff full authorisation to carry out recovery of EUR 474.01.

14 On 19 August 2011, the Združenie na ochranu občana spotrebiteľa HOOS (HOOS Association for the Protection of Consumers) ('Združenie HOOS') applied for leave to intervene in the enforcement proceedings being taken against Mr Soroka. On 3 April 2012, the referring court dismissed Združenie HOOS' application for leave to intervene on the ground that intervention by third parties was only possible in the context of adversarial proceedings, and not in enforcement proceedings.

15 On 16 April 2012, Združenie HOOS lodged an appeal against that decision, arguing that it was not legitimate to preclude intervention by third parties in cases in which the application for forced recovery is based on an arbitral decision or a notarial deed.

16 On 19 April 2012, the referring court suspended the enforcement proceedings on the ground that the notarial deed was unenforceable since it had been signed by only one person, representing both the creditor and debtor, which, according to that court, was contrary to applicable Slovak law, in particular Paragraph 22(2) of the Civil Code.

17 On 7 June 2012, Pohotovosť appealed against that order to the referring court. That court notes in its decision, first, that, in situations where the defendant is without fixed abode, which seems to be the case for Mr Soroka, it would be useful that Združenie HOOS be granted leave to intervene, all the more so as Združenie HOOS is, in the present case, willing to do so with a view to defending his interests. Second, the court indicates that on 10 October 2012, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) held, in a decision handed down in another case, that the intervention of a third party was only permissible in adversarial proceedings and not in enforcement proceedings, which, by their nature, are not adversarial in nature. One of the judges of the Najvyšší súd Slovenskej republiky, however, gave a dissenting opinion, and stated that intervention of a third party could not be permitted for the whole of the enforcement proceedings, but should nonetheless be permitted for certain parts of those proceedings.

18 The referring court therefore concluded that, applying the case-law of the Najvyšší súd Slovenskej republiky, Združenie HOOS' application for leave to intervene should be rejected. However, it questions whether that case-law is in compliance with the Directive.

19 In those circumstances, the Okresný súd Bardejov decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

'(1) Is [Directive 93/13], in conjunction with Articles 47 and 38 of the [Charter], to be interpreted as precluding legislation of a Member State, such as the legislation at issue in the present case, which does not allow a legal person whose purpose is the protection of consumers' rights to intervene in court enforcement proceedings to defend a consumer against whom enforcement proceedings are being brought for the recovery of a claim under a consumer contract and who is not represented by a lawyer?

(2) Are the provisions of EU law set out in question 1 to be interpreted as meaning that the basic right to legal protection of the consumer and of an intervening party under Article 47 of the [Charter] is infringed when the intervention of a legal person whose purpose is the protection of consumers' rights is not allowed in court enforcement proceedings and the consumer is not represented by a lawyer?'

Procedure before the Court

20 By email of 4 July 2013, Pohotovosť informed the Court that it had, on 26 March 2013, withdrawn its appeal and that, pursuant to national law, the referring court was required to terminate the proceedings. Consequently, the order suspending the enforcement proceedings made by the same court on 19 April 2012 had become final.

21 Asked by the Court to confirm that the dispute in the main proceedings was still before it, and to indicate whether, from that point of view, it wished to maintain its request for a preliminary ruling, the referring court, by letter of 3 December 2013, stated that the Krajský súd v Prešove (Regional Court, Prešov), by order of 31 October 2013, first, had annulled the order of 3 April 2012 dismissing Združenie HOOS' application to intervene and had referred the case back to it, and, second, had decided that there was no further need to rule on the appeal brought by Pohotovosť against the order of 19 April 2012 suspending the enforcement proceedings. In those circumstances, the referring court

stated that the answer to the questions referred for a preliminary ruling was vital for resolving the issue of intervention in the arbitration proceedings and that it therefore wished to maintain its request for a preliminary ruling.

Jurisdiction of the Court

22 Under Article 53(2) of the Rules of Procedure, where it is clear that it has no jurisdiction to hear and determine a case, the Court may, after hearing the Advocate General, at any time decide to give a decision by reasoned order without taking further steps in the proceedings. It is appropriate to apply that provision in the present case.

23 In the present case, it is apparent from the order for reference that the only credit contract at issue in the main proceedings was concluded on 10 December 2002, thus before 1 May 2004, the date of the accession of the Slovak Republic to the European Union.

24 As noted by the European Commission in its written observations, according to the settled case-law of the Court, the Court has jurisdiction to interpret EU law only as regards its application in a Member State from the date of that State's accession to the European Union (see *Ynos*, C-302/04, EU:C:2006:9, paragraph 36; *Telefónica O2 Czech Republic*, C-64/06, EU:C:2007:348, paragraphs 22 and 23; *CIBA*, C-96/08, EU:C:2010:185, paragraph 14; and order in *Semerdzhiev*, C-32/10, EU:C:2011:288, paragraph 25). The Court has already applied that case-law as regards a request for interpretation of Directive 93/13 in connection with a consumer credit agreement concluded before the Slovak Republic's accession (order in *SKP*, C-433/11, EU:C:2012:702, paragraph 36).

25 It follows that, on the basis of Article 53(2) of the Rules of Procedure, the Court manifestly lacks jurisdiction to answer the questions referred by the Okresný súd Bardejov.

Costs

26 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby orders:

The Court of Justice of the European Union manifestly lacks jurisdiction to answer the questions referred by the Okresný súd Bardejov (Slovakia) by decision of 15 February 2013.

[Signatures]