



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 121/14
Luxembourg, 10 September 2014

Judgment in Case C-34/13
Monika Kušionová v SMART Capital a.s.

The Court clarifies the scope of consumer protection in the case of a charge on the family home

Since the right to accommodation is a fundamental right, it must be taken into consideration by the national court when implementing the Unfair Terms in Consumer Contracts Directive

The purpose of the Unfair Terms in Consumer Contracts Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer.¹

In 2009, Mrs Kušionová concluded a consumer credit agreement with SMART Capital for an amount of €10 000. The loan was secured by a charge on the family home. Subsequently, Mrs Kušionová brought an action for annulment of the credit agreement and the charge agreement against SMART Capital, claiming that the contractual terms binding her to that undertaking were unfair.

In that context, the Krajský súd v Prešove (Regional Court, Prešov, Slovakia), before which an appeal was brought, referred a question to the Court of Justice. The referring court seeks to establish whether the contractual term relating to extrajudicial enforcement of the charge on immovable property is unfair. In addition, the national court states that that term enables the creditor to enforce the charge without any review being carried out by a court.

First of all, the Court notes that the Charter of Fundamental Rights of the European Union provides that EU policies must ensure a high level of consumer protection. The Charter also enshrines the right to an effective judicial remedy. Those mandatory requirements are applicable to the implementation of the Unfair Terms in Consumer Contracts Directive.

With regard to the enforcement of guarantees attached to loan agreements concluded by consumers, the Court notes that the Directive is silent as to enforcement of charges. However, it points out the importance of determining, in a situation such as that at issue, to what extent it would be impossible in practice or excessively difficult to apply the protection conferred by that directive.

In this case, it is clear from the documents before the Court that the Slovak legislation at issue provides, first, that a sale by auction may be contested within 30 days of the notice of enforcement of the charge and, secondly, that the person who contests the conditions under which that sale took place has a period of three months following the public auction to take steps.

The Court also notes that, in order to protect the rights conferred on consumers by the Directive, the Member States are bound to adopt protective measures in order prevent the continued application of terms which are deemed unfair. For that purpose, the national courts and administrative authorities must have at their disposal adequate and effective means. In particular, while the choice of penalties applicable to infringements of EU law remains within their discretion, Member States must ensure in particular that they are effective, proportionate and dissuasive.

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

With regard to the requirement that the penalty should be effective and dissuasive, it is evident that, during a procedure for the extrajudicial enforcement of a charge, the national court with jurisdiction may adopt any interim measure to prevent such a sale from going ahead.

With regard to the proportionality of the penalty, the Court notes that it is necessary to give particular attention to the fact that the property subject to the charge is immovable property forming the consumer's family home. Under EU law, the right to accommodation is a fundamental right guaranteed under the Charter of Fundamental Rights which the national court must take into consideration when implementing the Directive.

In the present case, the Court holds that the fact that it is possible for the competent national court to adopt any interim measure would suggest that adequate and effective means exist to prevent the continued use of unfair terms, which is a matter for the referring court to determine.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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