Anonymised version

Case C-290/19

Request for a preliminary ruling

Date lodged:

9 April 2019

Referring court:

Krajský súd v Trnave (Slovakia)

Date of the decision to refer:

12 March 2019

Applicant:

RN

Defendant:

Home Credit Slovakia a.s.

[OMISSIS]

[Case number]

Order

The Krajský súd v Trnave (Regional Court, Trnave, Slovakia) (‘the Regional Court, Trnave’) [OMISSIS] [names of the judges], adjudicating in the case brought by the applicant: RN [OMISSIS] [date of birth, address] residing in Šaštin - Stráže, represented by JUDr. Vladimir Sidor, lawyer, Hlohovec, against the defendant: Home Credit Slovakia a.s., [OMISSIS] [registration number, address], established in Piešťany, represented by Advokátska kancelária GOLIAŠOVÁ GABRIELA, s.r.o., established in Trenčin, concerning [the payment of] EUR 1 932.10, together with interest,

HAS DECIDED AS FOLLOWS:

Stays the proceedings pursuant to Article 162(1)(c), in conjunction with Article 378, of the Code of Civil Procedure and refers the following question to the Court of Justice of the European Union:

Is Article 10[(2)](g) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC to be interpreted as meaning that a consumer credit agreement satisfies the requirement laid down in that provision if the annual percentage rate of charge is indicated in the agreement, not as a specific percentage, but as a range between two figures (from – to)?

Grounds

1 The present court is required to rule on the appellant's appeal against the judgment of the Orkresný súd Senica (District Court, Senica, Slovokia) [OMISSIS] [Case No] of 21 March 2018, by which that court dismissed the appellant's claim that the respondent should be ordered to pay EUR 1 932.10, plus default interest, on the ground of unjust enrichment. The unjust enrichment on the part of the respondent consisted in the repayment to it of consumer credit pursuant to a credit agreement. However, that agreement did not contain all the information required by law. Accordingly, the loan granted under the agreement should be regarded as free of interest and charges and the appellant should have paid to the respondent only the capital part of the loan. Nevertheless, given that the appellant has paid to the respondent the sum of EUR 1 932.10 in addition to the capital, the appellant now claims that the respondent should reimburse that sum.

2 The court at first instance based its decision on facts that are not disputed in the appeal **[Or. 2]** or by the parties and can be summarised as follows. On 4 March 2013, a credit agreement was concluded by the appellant, as debtor, and the respondent, as creditor [OMISSIS] [agreement number]. The agreement provided, inter alia, as follows: the respondent was to grant to the appellant for a non-specified purpose the total sum of EUR 3 359.14, the monthly repayments were to be EUR 89.02, spread over 60 instalments, the annual rate of interest was to be 19.62% and the annual percentage rate of charge (APRC) was to vary between 21.5% and 22.4%. There was a note to the indication of the APRC, which stated that 'the exact value of the APRC depends on the day on which the loan is granted and the customer shall accept that the creditor will inform him of the exact value of the APRC after the loan has been granted'. Moreover, the agreement set out the dates on which the repayments fell due, the first of which being due within one month of the date on which the loan was granted. All other repayments were due on the 15th day of each calendar month and the repayment period of the loan was 60 months. By letter of 2 July 2017, the respondent confirmed to the appellant that he had repaid the loan in full. In total, the appellant had paid to the respondent in respect of the loan the sum of EUR 5 291.24.

3 The court at first instance concluded that the loan granted by the respondent to the appellant is consumer credit within the meaning of zákon č. 129/2010 Z. z o spotrebitel'ských úveroch a o iných úveroch a pôžčkách pre spotrebitel'ov a o zmene a doplneni niektorých zákonov) (Law No 129/2010 on consumer credit and other forms of credit and loans granted to consumers), in the version applicable on 4 September 2013 ('Law No 129/2010') and that the credit agreement [OMISSIS] [agreement number] contains all the information required under Article 9(2) of Law No 129/2010. Referring to the judgment of the Court of Justice of 9 November 2016 in Case C-42/15, *Home Credit Slovakia* v *Bíróová*, that court came to the conclusion that the agreement did not necessarily have to contain the exact dates on which the individual instalments fell due or the final date by which repayment of the loan was due or to indicate exactly how the individual instalments were to be spread in terms of repayment of the capital sum and repayment of interest. It also concluded that it was not necessary to indicate the APRC in the agreement unequivocally with a precise figure and that it would be disproportionate to penalise the lender defendant by taking the view that no interest or charges were payable in respect of the loan simply because the APRC was given as a range between two figures (from – to). Accordingly, the court at first instance found that the loan could not be regarded as free of interest and charges and that the respondent had not been unjustly enriched by receiving from the appellant the repayments made under the loan in the total sum agreed in the credit agreement.

4 In the appeal, the appellant raises a number of objections which the referring court none the less considers irrelevant for the purpose of the question to be referred for a preliminary ruling. Those objections concern whether the agreement should provide a detailed indication of how the individual repayments are to be spread, broken down into capital and interest, and whether the agreement should indicate the exact date (end date) on which the final repayment of the loan is due. In that regard, the referring court observes that the Court of Justice has previously provided answers to certain questions concerning the interpretation of Directive 2008/48/EC in Case C-42/15, *Home Credit Slovakia* v *Bíróová*, and that the principle of *acte clair* is therefore applicable to those questions. However, the appellant does not share the view of the court of first instance that, under Article 9(2)(j) of Law No 129/2010, it is sufficient for the APRC to be set out in the agreement in the form of a range (between two values). That interpretation, in the appellant's view, is at odds with the provision of Law No 129/2010, under which the consumer is entitled to receive unequivocal and specific information concerning the APRC, calculated on the basis of data that were valid at the time the consumer credit agreement was concluded. In support of that argument, the appellant also refers to the decisions of the various regional courts of the Slovak Republic. It maintains that as the agreement does not contain that essential item of information, referred to in Article 9(2)(j) of Law No 129/2010, the loan is free of interest and charges and the respondent is obliged to repay to the appellant the total interest paid in excess of the capital sum lent.

II EU law and national law **[Or. 3]**

5 In assessing the question to be submitted, the referring court relies, in particular, on recitals 19 and 31 and Articles 3(i), 4(2)(c), 5(1)(g), 10([2])(g) and 19 of Directive 2008/48/EC and on Part II of Annex I thereto. In the interests of conciseness, a literal citation of those provisions is dispensed with, since they are familiar to the Court of Justice.

6 Directive 2008/48/EC was transposed into Slovak law by Law No 129/2010 on consumer credit and other forms of credit and loans granted to consumers and amending and supplementing certain laws, in force at the time the agreement between the appellant and the respondent was signed. The following provisions (in force on 4 September 2013) are relevant for the purposes of the present case.

Article 1(2) provides:

‘(2) For the purposes of this law, consumer credit shall mean a temporary provision of financial means, on the basis of a consumer credit agreement, in the form of a loan, credit, deferred payment, or comparable financial assistance provided by a creditor to a consumer.’

Article 9(2)(k) and (l) provides:

‘(2) The consumer credit agreement … shall contain the following information …:

(j) the annual percentage rate of charge and the total amount the consumer is required to pay, calculated on the basis of current data at the time the consumer credit agreement is concluded; all the assumptions used in calculating the annual percentage rate of charge shall be stated …’.

Article 11(1) is worded as follows:

‘(1) Any consumer credit granted shall be deemed to be free of interest and charges if:

(a) the consumer credit agreement ... does not contain the information referred to in Article 9(2)(a) to (k) .... ’

7 Also relevant to the present case is Article 451 of the Civil Code (Law No 40/1964, as subsequently amended), which is worded, in essence, as follows:

‘(1) Any person who is unjustly enriched at the expense of others shall be obliged to return any undue payment.

(2) Unjust enrichment is an economic advantage obtained as a result of compliance with a requirement lacking in any foundation in law or which is based on an invalid legal act .... ’

III Relevance of the question and grounds for the reference for a preliminary ruling

8 In the case under consideration, the referring court is required to adjudicate on the issue of the appellant's claim for repayment of sums paid but not due, alleging unjust enrichment within the meaning of Article 451 of the Civil Code. According to the appellant, the respondent was unjustly enriched in so far as the appellant made all the loan repayments due in accordance with the credit agreement [OMISSIS] [agreement number], totalling EUR 5 291.24. However, the loan granted under the agreement should have been free of interest and charges, in accordance with Article 11(1)(a) of Law No 129/2010, and, therefore, the respondent was entitled to claim from the [appellant] only repayment of the capital part of the loan, amounting to EUR 3 359.14. Accordingly, given that the respondent also received under the agreement interest and charges, to which it was not entitled by law, it benefited from compliance with a requirement lacking any justification in law, in particular as a result of the payment of invalid statutory interest, which it is required to repay to the appellant pursuant to Article 451 of the Civil Code. According to the appellant, one of the reasons why the loan must be regarded as **[Or. 4]** free of interest and charges is because, in the credit agreement [OMISSIS] [agreement number], the annual percentage rate of charge is indicated only by a range between two values (from – to), which, the appellant claims, is at odds with Article 9(2)(i) of Law No 129/2010. The answer to the question whether the credit agreement [OMISSIS] [agreement number] satisfies the requirements laid down by law, and, therefore, whether the respondent is entitled to interest and charges under the agreement, depends on the interpretation of the provision of Law No 129/2010 mentioned above, which transposes (implements) Article 10([2])(g) of Directive 2008/48/EC. According to the referring court, in order to give judgment in the present case, it is therefore necessary to obtain a ruling on the interpretation of Directive 2008/48/EC, as provided for in the second paragraph of Article 267 of the Treaty on the Functioning of the European Union ('TFEU'). The interpretation of Directive 2008/48/EC, as an act of an institution of the European Union, within the meaning of section (b) of the first paragraph of Article 267 TFEU, falls within the jurisdiction of the Court of Justice of the European Union.

9 According to the case-law of the Court of Justice, the annual percentage rate of charge (APRC) is an important piece of information at the time the consumer makes his decision, on the basis of which he assesses the various offers of credit and at the same time the implications of his future undertaking (order of the Court of Justice in Case C-76/10, *Pohotovosť* v *Korčkovská*). The importance of that information may also be inferred from recital 19 of Directive 2008/48/EC, which seeks to ensure transparency specifically by making the method of calculating the APRC and the assumptions to be applied in that regard the same throughout the EU. To that end, Article 19 of the directive, in conjunction with Annex I thereto, sets out a detailed method for calculating the APRC and a detailed list of those assumptions. According to the referring court, it is possible, on the basis of those provisions alone, to infer that, by the term 'annual percentage rate of charge',

Directive 2008/48/EC is referring to a specific figure. Precisely because the value of the APRC depends on the date on which the loan concerned is drawn down and the dates of the individual repayments, there may be differences in the calculation of the APRC, depending on when the loan was granted. Directive 2008/48/EC addresses that problem, providing, in Part II of Annex I, a series of assumptions which may be used in such a case, and the purpose of which is to establish a specific date on which the credit is to be drawn and on which the repayments are to be made. That is also in line with the wording of Article 10(2)(g) of Directive 2008/48/EC, which provides that the agreement must specify the APRC, as 'calculated at the time the credit agreement is concluded'. Accordingly, in the view of the referring court, the wording of that provision supports the conclusion that Directive 2008/48/EC requires that the APRC be indicated by a specific figure, calculated at the time the agreement is concluded and applying the assumptions set out in Part II of Annex I, not by a range between two values (from – to).

10 In its cross-appeal of 6 February 2019, the respondent states that the credit agreement [OMISSIS] [number of the agreement] was entered into by agreement on the telephone between the appellant and the respondent and that the appellant was given 35 days within which to decide whether or not to accept the proposed agreement. Consequently, the respondent was not in a position to determine precisely the time at which the funds were granted. Nevertheless, the referring court does not find that argument convincing, because in such situations the assumptions set out in Part II of Annex I come into play, for instance those referred to in sections (a), (c) or (f). The mere fact that the date on which the loan is drawn down is not clear does not necessarily mean that there is no need to specify a single value for the APRC.

11 Furthermore, it is possible to infer from Directive 2008/48/EC that it defines exhaustively both the cases in which the APRC may be indicated other than by a specific number and the cases in which the APRC cannot be determined. It is clear from Article 19(5) of the directive that where, in calculating the APRC, it is not possible to use the assumptions set out in Part II of Annex I or those given in Article 19, the Commission has the power to supplement or modify those assumptions by delegated legislation. Similarly, Article 5 **[Or. 5]** (1)(g) of Directive 2008/48/EC governs the case in which, in certain circumstances, it is possible to modify the APRC and, in such a case, expressly permits (and requires) the creditor to indicate that certain other drawdown mechanisms for the loan may result in a higher APRC. That provision would be unnecessary if it were possible to identify the APRC as a range between two values, since, in that case, it would be sufficient to refer to such a 'higher APRC', within the meaning of Article 5(1)(g) of Directive 2008/48/EC, as the upper limit and there would be no need to indicate that this could be higher. That consideration also supports the conclusion that the intention of Directive 2008/48/EC is that the APRC should be expressed as a specific figure, not a range, and that it lays down express rules to deal with the situation in which it is not in fact possible to establish an APRC. Those rules cannot therefore be circumvented by indicating the APRC using only a range

(from – to), claiming that it is impossible to determine its exact value. Such a possibility (of indicating that the APRC may be higher or lower) is not contemplated by Article 10(2)(i) of Directive 2008/48/EC; on the contrary, that provision requires that a specific APRC be indicated. According to the referring court, the conclusion that defining the APRC by reference to a range between two values (from – to) does not satisfy the requirements laid down in Article 10(2)(g) of Directive 2008/48/EC is therefore well founded.

IV Conclusion

12 In the light of the considerations set out above, the referring court has come to the conclusion that it is necessary to submit a request to the Court of Justice of the European Union for a preliminary ruling in the present case. Accordingly, in accordance with … procedure [OMISSIS] [reference to national procedural provisions] and pursuant to Article 267 TFEU, it stays the proceedings and makes the order set out in the operative part of this decision. After the ruling has been delivered by the Court of Justice, the court will resume the proceedings [OMISSIS] [reference to national procedural provisions].

13 [OMISSIS]

[OMISSIS]

Done at Trnave, 12 March 2019.

[OMISSIS]