



The Court finds that the obligation of the national court to examine of its own motion compliance with the rules of EU consumer protection law applies to insolvency proceedings

By virtue of that obligation, the national court is also required to ascertain whether the information which must be included in consumer credit agreements is provided in a clear and concise manner

In August 2011, Mr and Mrs Radlinger concluded a consumer credit agreement with Smart Hypo. for CZK 1 170 000 (1 170 000 Czech crowns) (approximately € 43 300). They undertook to reimburse to the creditor the sum of CZK 2 958 000 (approximately €109 500) in 120 monthly instalments (the APR¹ on the credit was 28.9%) and to pay it heavy penalties in the event that they were unable to fulfil their contractual obligations.

In September 2011, Finway, to which Smart Hypo. had transferred the debts which it held over the Radlingers, requested that they reimburse the debt in full immediately, including interest, charges and penalties. That step was taken because of the fact that, when concluding the contract, the Radlingers had not informed it of a seizure ordered of their property in the amount of CZK 4 285 (approximately €160).

In April 2013, the Krajský soud v Praze (Regional Court, Prague) declared the Radlingers bankrupt and opened insolvency proceedings against them. In those proceedings, the couple contested the amount claimed by Finway (CZK 4 405 531; approximately €163 000).

In that context, the Krajský soud v Praze asks the Court of Justice whether the rules of EU consumer protection law preclude the Czech legislation, which does not permit the court called upon to rule on insolvency to examine of its own motion whether a term of a consumer contract is unfair. The Czech court also asks whether the national court is required to ascertain of its own motion whether the information on consumer credit agreements which those agreements must contain have been set out clearly and concisely.

By today's judgment, **the Court notes that the obligation of the national court to examine of its own motion the compliance, by sellers or suppliers, with the rules of EU consumer protection law² applies to insolvency proceedings and also applies to the rules concerning consumer credit agreements.**

Thus, the Court declares that **the Unfair Terms in Consumer Contracts Directive³ precludes the Czech legislation which, in insolvency proceedings, does not permit the court to examine whether a term of a consumer contract is unfair even where it has available to it the legal and factual elements necessary to that end.** That directive also precludes the legislation at issue in so far as it permits certain claims to be contested only in respect of a limited number of grounds (that they are time-barred or have been paid).

¹ Annual percentage rate of charge.

² The existence of such an obligation has already been accepted by the Court of Justice as regards certain provisions of EU law applicable in the field of unfair terms in consumer contracts, contracts negotiated away from business premises and for the sale of consumer goods and associated guarantees.

³ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

In addition, the Court notes that, by virtue of the Consumer Credit Agreement Directive,⁴ **a national court hearing a dispute concerning claims arising from such a contract must also ascertain of its own motion whether the information relating to the credit (such as the APR, for example) which must be set out therein has been stated clearly and concisely.** It is then required to establish all the consequences under its national law arising from the infringement of the obligation to provide information (the penalties must be effective, proportionate and dissuasive).

Furthermore, the Court states that, by virtue of the latter directive, **the ‘total amount of the credit’ cannot include any of the sums which make up the ‘total cost of the credit’, namely sums intended to meet the commitments agreed under the credit concerned, such as the administrative costs, interest, commissions and any other type of cost which the consumer is required to pay. The improper inclusion of those sums in the total amount of the credit has the effect of undervaluing the APR, the calculation of which depends on the total amount of the credit, and, in consequence, affects the accuracy of the information which must be set out in the contract.**

Finally, with regard to the examination of whether the penalties imposed on a consumer who fails to fulfil his obligations are unfair, the Court notes that the national court is required to **assess the cumulative effect of all terms of the agreement and**, where it finds that a number of those terms are unfair, **to exclude all unfair terms** (and not merely some of them).

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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⁴ 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 (OJ 1987 L 133, p. 66, and corrigenda OJ 2009, L 207, p. 14; OJ 2010, L 199, p. 40 and OJ 2011, L 234, p. 46).