Court of Justice of the European Union
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Press and Information

Judgment in Case C-630/17
Anica Milivojević v Raiffeisenbank St. Stefan-Jagerberg-Wolfsberg eGen

A national law cannot invalidate, by a retroactive, general and automatic rule, credit agreements concluded with foreign lenders which were not authorised to provide credit services in that Member State

Jurisdiction of the national court to determine whether a person taking a loan for a dual purpose is a consumer

In 2007, Ms Anica Milivojević, a Croatian national, concluded with Raiffeisenbank, which has its registered office in Austria, a non-renewable credit agreement in the sum of €47 000 in order to have renovation work carried out in her home, more particularly to create apartments in it for letting. The loan was taken out using an intermediary resident in Croatia and the agreement contains an alternative jurisdiction clause in favour of either the Austrian or the Croatian courts. As security for the repayment of the loan, Ms Milivojević also signed a notarised deed relating to the creation of a mortgage based on that agreement which was subsequently entered in the Croatian land register.

In 2015, Ms Milivojević brought an action before Općinski sud u Rijeci (Municipal Court of Rijeka, Croatia) against Raffeisenbank for a declaration of invalidity of the credit agreement and of the notarised deed and for the removal of the mortgage from the land register. While Raiffeisenbank argues that that agreement was concluded in Austria, Ms Milivojević asserts that it was concluded in Croatia.

On 14 July 2017, a national law entered into force which provides for the retroactive invalidity of credit agreements concluded in Croatia with a foreign lender which does not hold the authorisations or approvals required by the Croatian authorities and which could be applicable to the dispute in the main proceedings. The Općinski sud u Rijeci takes the view that, firstly, if it is established that the agreement at issue was concluded in Croatia, that agreement could now be invalid and, secondly, that legislation is likely to prejudice Raffeisenbank's freedom to provide financial services. In essence, it asks the Court of Justice whether that runs counter to the freedom to provide services in the internal market of the EU and about various aspects connected with its international jurisdiction to hear the action in the main proceedings, in the light of the provisions of the Brussels Ia Regulation.[1] It also asks whether the agreement at issue could be classified as a 'contract concluded by a consumer' and whether the dispute in the main proceedings falls within the rules of exclusive jurisdiction for actions *in rem*.

By today's judgment, the Court states that it has jurisdiction to examine the compatibility of the Law of 14 July 2017 with the freedom to provide services. In that regard, although Croatia argues that EU law does not apply to the agreement at issue because that agreement was concluded prior to the date of Croatia's accession to the European Union, that argument cannot be accepted, since the effects of that agreement continue to make themselves felt after that date. Moreover, as is clear from the Act of Accession of Croatia, the provisions of the original Treaties are binding on the Republic of Croatia from the date of its accession, with the result that they apply to the future effects of situations arising prior to that date.

[1] Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1–32)

Next, with regard to the freedom to provide services, the Court points out that that principle requires the elimination of all discrimination on grounds of nationality against providers of services established in other Member States and the abolition of any restriction which is liable to prohibit, impede or render less attractive the activities of a provider of services established in another Member State.

The Court notes that, in the Croatian legal order, the invalidity of credit agreements concluded with a non-authorised lender is laid down by both the Law on the invalidity of credit agreements featuring international elements of 14 July 2017 and the Law on consumer credit of 30 September 2015. Noting that, for the period between 1 July 2013, the date of the accession of Croatia to the EU, and 30 September 2015, only credit agreements concluded with non-authorised lenders which have their registered office outside Croatia are invalid, the Court considers that, for that period, the Croatian law directly discriminates against lenders established outside Croatia. From that date, since the invalidity regime applied without distinction to all non-authorised lenders, the Law of 14 July 2017 constitutes a restriction on the exercise of the freedom to provide services.

Next, the Court examines, with regard to the period between 1 July 2013 to 30 September 2015, whether the national law may be justified by overriding reasons of public order, public security or public health and notes that recourse to such justification presupposes the existence of a genuine, sufficiently serious threat affecting one of the fundamental interests of society, since economic considerations are not capable of justifying a derogation from the freedom to provide services.

So far as the period during which that regime of invalidity of the credit agreements at issue was applicable without distinction is concerned, the Court has held that it constitutes a restriction on the freedom to provide services. Although the Court stated that the overriding reasons of public interest relied upon in the present case are among those already accepted in its case-law, it nevertheless held that that regime clearly goes beyond what is necessary to achieve the objectives it seeks to pursue.

With regard to international jurisdiction, the Court recalls that, in the scheme of the Brussels 1a Regulation, the jurisdiction of the courts of the Member State within the territory of which the defendant is domiciled is the general principle. Accordingly, national legislation which provides for rules of jurisdiction which derogate from that general principle, which are not provided for in another provision of that regulation, runs counter to the system instituted by that regulation.

With regard to the possible classification of a credit agreement concluded by a debtor in order to have renovation work done in an immovable property which is his domicile, with the intention, in particular, of providing tourist accommodation services, as a 'consumer contract', the Court considers that the debtor could rely on those provisions only if the contract has such a tenuous link to the professional activity that it appears clear that the contract is essentially for private purposes, which is a matter for the referring court to ascertain.

Finally, with regard to the claims seeking a declaration of invalidity of the agreement at issue and of the notarised deed relating to the taking out of a mortgage, the Court finds that they are based on a right *in personam* which cannot be relied upon against Raffeisenbank. However, as regards the claim seeking the removal of a mortgage from the land register, it must be noted that a mortgage is a right in rem which has effects *erga omnes* and therefore does fall within the exclusive jurisdiction of the Member State where the building is located.

In those circumstances, the Court concludes that **EU law[2] precludes legislation of a Member State under which credit agreements and other legal acts based on those agreements concluded with a lender which is established in a Member State other than that of the recipient of the service and which does not hold all the necessary authorisations, issued by the competent authorities of the first Member State, are invalid, retroactively, from the date on which they were concluded.**

[2] Article 56 of the Treaty on the Functioning of the European Union (OJ 2012 C 326, p. 47).

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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