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Judgment of the Court in Case C-351/23 | GR REAL

Consumer protection and the requirement of effective judicial protection mean that consumers must be able, under certain conditions, to challenge the lawfulness of the transfer of ownership to a third party following the enforcement of a mortgage on their family home

That applies if those consumers have been deprived of the possibility of obtaining, by judicial means, the suspension or annulment of that enforcement on the grounds of the existence of an unfair term in the contract on which that enforcement was based, despite corroborating evidence as to the potential unfairness of that term and of the fact that the transferee was informed of the existence of such judicial proceedings at the time of the transfer of ownership

A Slovak regional court is seised of a case in which a company, which was awarded a family home following an extrajudicial sale at auction, is seeking to obtain the eviction of the former owners of the building. Those owners were granted a mortgage on that home. They claim that their consumer rights have been infringed and have refused to vacate the premises. That court has asked the Court of Justice whether such judicial proceedings fall within the scope of the Directive on unfair terms in consumer contracts.¹ It also asks whether that directive precludes national legislation which allows extrajudicial enforcement of a mortgage despite the existence of an application for suspension of the enforcement proceedings, based on a potentially unfair term in the loan contract.

The Court answers both questions in the affirmative.

In Slovakia, a bank granted a couple a loan of €63 000, repayable in instalments until January 2030. A term contained in the general conditions of the loan provided that, in the event of a payment default, the bank may immediately demand reimbursement of the totality of the remaining capital due, guaranteed by a mortgage over the family home of those consumers.

Following delays in payment, the bank applied for the enforcement, in the context of an extrajudicial sale by auction, of that mortgage. The borrowers brought court proceedings to challenge that action, alleging that the bank had infringed their consumer rights. Although the application for suspension of the enforcement of that mortgage, made in the context of those proceedings, was still pending, the family home was sold at auction to a third party, a company. The auctioneer and the transferee were informed of the existence of a legal challenge to the enforcement at the time of that sale.

Nevertheless, the borrowers refused to vacate the house and the company brought eviction proceedings against them. The borrowers then lodged a counterclaim seeking to challenge the lawfulness of the transfer of ownership of the building, alleging a failure to observe their rights as consumers and their right to accommodation. The Regional Court, Prešov (Slovakia) referred questions on the matter to the Court of Justice for a preliminary ruling.

The Court answers, first, that **the subject matter of the main proceedings**, the circumstances in which the transfer of the ownership of the building at issue took place, namely **the fact that the borrowers did not remain passive** in the extrajudicial enforcement proceedings, and **the existence of corroborating evidence as to the possible presence of a potentially unfair term in the contract on which that enforcement was based warrant those borrowers being able to rely on the protection mechanisms provided for by that directive**. The consumers had made use of the legal remedies provided for by Slovak law in order to oppose that enforcement, while informing the persons concerned by that enforcement of their actions.

Consequently, the protection of the legal certainty of the transfer of ownership already carried out in respect of a third party is not, in the present case, absolute, which would preclude application of the Directive. Thus, the legal proceedings before the Regional Court, Prešov, **fall within the scope of the Directive**.

The Court answers, secondly, that **national legislation allowing extrajudicial enforcement of a mortgage on a family home despite a pending application for suspension of that enforcement, and corroborating evidence to the effect that that enforcement is based on an unfair contractual term, is contrary to EU law**. That applies all the more so where that legislation does not provide for any possibility of obtaining by judicial means, in proceedings subsequent to the enforcement, the annulment of the latter on the grounds of the existence of such a term in the contract on which that enforcement was based.

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 EU law or the validity of an EU 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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Council [Directive 93/13/EEC](#) of 5 April 1993 on unfair terms in consumer contracts.