

Case C-351/23

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of
the Rules of Procedure of the Court of Justice**

Date lodged:

6 June 2023

Referring court:

Krajský súd v Prešove (Slovakia)

Date of the decision to refer:

11 May 2023

Applicant:

GR REAL s. r. o.

Defendants:

PO

RT

Subject matter of the main proceedings

Request for a preliminary ruling submitted in the context of a dispute over the vacating of a property and the determination of ownership of that property. The present request has been filed because the referring court raised doubts as to the compatibility of the Slovak legal provisions concerning the judicial protection of the ownership of a property, over which a right has been created under a lien to secure a loan, with the provisions of EU consumer protection legislation, in particular Articles 6(1) and 7(1) of Council Directive 93/13/EEC and Articles 5, 8 and 9 of Council Directive 2005/29/EC.

Subject matter and legal basis of the request

Interpretation of EU law, Article 267 TFEU

Questions referred for a preliminary ruling

A. Do Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts apply to proceedings such as those at issue in the main proceedings, which were initiated by a person who was the winning bidder in an auction for property, in respect of which a counterclaim by a consumer for the restitution of the status prior to the auction was simultaneously pending when, prior to the extrajudicial auction, the consumer used legal remedies to suspend enforcement of the lien by lodging an application for interim relief with the court and, at the same time, before the auction, informed the persons taking part in the auction of the pending court proceedings to suspend enforcement of the lien by voluntary auction, when the auction proceeded in spite of the legal proceedings?

B. Is Council Directive 93/13/EEC to be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, in the context of the enforcement by an undertaking staging private auctions ('the auctioneer') of a lien over a consumer's immovable property, with a view to recovering a debt due to a bank under a consumer credit agreement,

1. does not allow the consumer to effectively raise objections before the auctioneer concerning the unfair nature of the terms of the contract on the basis of which the bank's claim is to be enforced in order to postpone the auction, even though that claim is based on unfair contractual terms, and in particular a contractual term concerning early repayment of a loan,

2. does not allow the consumer to prevent the auction of the property which is the consumer's home, in spite of the fact that the consumer informed the

auctioneer and the persons present at the auction of the court proceedings in respect of interim relief for the purpose of preventing the auction from being conducted, while the court had not yet issued its final decision on the application, when at the same time the interim relief measure is the only opportunity for the consumer to obtain temporary court protection against the conduct of the auction as a result of unfair contractual terms,

3. does not allow consumers, in the circumstances referred to in the preceding paragraphs, to fully exercise their rights arising from the transposition of Directive 93/13/EEC and to attain the objectives of that directive, since the legislation in question limits the possibility of raising a plea of nullity of a sale by auction to the following three grounds:

- a. the invalidity of the lien agreement,
- b. infringement of Zákon č 527/2002 Z.z. o dobrovoľných dražbách (Law No 527/2002 on Voluntary Auctions),
- c. commission of an offence?

C. Is Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') to be interpreted as meaning that enforcing a lien on the basis of an unfair contractual term relating to the early recovery of a debt arising under a consumer credit agreement and, therefore, the incorrect amount of the outstanding debt, may constitute an unfair commercial practice within the meaning of Article 5 of that directive, and more specifically an aggressive commercial practice within the meaning of Articles 8 and 9 of that directive, and that the liability of the bank and the objectives of Directive 2005/29/EC apply, in addition to the bank, to the auctioneer enforcing the bank's rights under the lien?

Provisions of European Union law relied on

Charter of Fundamental Rights of the European Union, Articles 7, 38 and 47

Recitals twelve to fourteen, sixteen, twenty, twenty-one and twenty-four and Articles 1–3, 4(1), 6(1), 7 and 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and

Regulation (EC) No 2006/2004 of the European Parliament and of the Council, Articles 2(b), (c), (d), (e) and (k), 3, 5, 6(1), 7(1), 8, 9, 11 and 13

Case-law of the Court of Justice and other sources of EU law cited

Judgment of the Court of Justice of 14 March 2013, *Aziz*, C-415/11, EU:C:2013:164, paragraph 73 of the operative part

Judgment of the Court of Justice of 21 March 2013, *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraphs 43 and 44

Judgment of the Court of Justice of 7 December 2017, *Banco Santander*, C-598/15, EU:C:2017:945, operative part

Judgment of the Court of Justice of 4 June 2015, *Faber*, C-497/13, EU:C:2015:357

Judgment of the Court of Justice of 19 September 2019, *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 65

Opinion of Advocate General Medina delivered on 12 January 2023 in Case C-598/21, *SP, CI v Všeobecná úverová banka a.s.*, EU:C:2023:22, points 92 to 101

Provisions of national law relied on

Zákon č. 40/1964 Zb., Občiansky zákonník (Law No 40/1964 establishing the Civil Code), as amended:

‘Paragraph 53

(1) A consumer contract must not contain provisions which cause a significant imbalance in the rights and obligations of the parties to the contract to the detriment of the consumer (“unfair terms”). That does not apply in the case of contractual terms which relate to the main object of the contract or the appropriateness of the price, where those terms are expressed precisely, clearly and intelligibly, or if the unfair terms have been individually negotiated.

[...]

(4) In particular, terms in consumer contracts shall be deemed unfair, if they:

[...]

k) impose payment of a disproportionate sum on a defaulting consumer as a sanction related to the consumer’s non-performance.

[...]

(5) Unfair terms used in consumer contracts shall be invalid.

[...]

(9) In the case of consumer contracts to be paid in instalments, the trader may exercise the rights provided for in Paragraph 565 no earlier than three months after the delay in payment and on condition that he or she has given the consumer at least 15 days' notice of the fact that he or she will exercise that right.

[...]

Paragraph 565

In the case of repayment in instalments, the creditor may demand payment of the entire claim for failure to pay an instalment only in cases where this has been agreed or established in a judgment. The creditor may, however, exercise this right no later than the due date for the next monthly instalment.'

'Paragraph 151j

(1) If a debt secured by a lien is not fulfilled correctly and in due time, the creditor holding the lien may begin to enforce the lien. When exercising a lien, the secured creditor may obtain settlement of the claim by the means specified in the contract or by sale of the collateral at auction pursuant to a specific law^{3e)} or by selling the collateral in accordance with specific statutory provisions^{3f)}, unless provided otherwise by this law or a specific statutory provision.

[...]

Paragraph 151m

(1) The secured creditor may sell the collateral by the means specified in the agreement establishing the lien or at auction at least 30 days from the date of the notice to the guarantor and debtor of the commencement of enforcement of the lien, where the debtor and the guarantor are not the same person, unless otherwise provided for by a specific law. If the lien is entered in the register of liens and the date of registration of the commencement of enforcement of the lien falls after the date of notification of the commencement of enforcement of the lien to the guarantor and the debtor, if the debtor and the guarantor are not the same person, the 30-day period shall begin from the date on which the commencement of enforcement of the lien was entered in the register of liens.

(2) After notification of the commencement of enforcement of the lien, the guarantor and the secured creditor may decide that the latter is authorised to sell the security in the manner specified in the contract creating the lien, or by public auction, even before the period under subparagraph 1 has expired.

(3) A creditor secured by a lien who has begun to enforce a lien with a view to satisfying his or her claim in the manner set out in the lien contract may, at any time, during the exercise of that right, alter the manner of exercising that right and sell the collateral at auction, or sell the collateral in accordance with specific statutory provisions. The secured creditor is required to inform the guarantor of the change in the way in which the lien is enforced.

[...]

Paragraph 151ma

[...]

(3) In the event of enforcement of a lien by a secured creditor whose right to the lien is registered first in the order of priority in which the rights under the lien are to be satisfied ('preferential creditor'), ownership of the collateral shall be transferred without encumbering the rights of lien of the other secured creditors. Where the proceeds from the sale of the collateral exceed the value of the claim guaranteed to the secured preferential creditor, the other creditors shall have the right to satisfy their claims against the object of the lien, whose title has been transferred, from the proceeds of sale of the object, after deduction of any objectively necessary costs incurred by the preferential creditor in enforcing the lien, in the order of priority for satisfaction of their rights under the lien.'

Zákon č. 527/2002 Z. z. o dobrovoľných dražbách (Law No 527/2022 on Voluntary Sale by Auction):

'Paragraph 6

(1) The auctioneer shall be the person who organises the auction and fulfils the conditions established by this Law and the Specific Law and is authorised to exercise the relevant business activity.

[...]

Paragraph 7

(1) The person seeking sale by auction shall be the owner of the object for sale, the person enforcing the lien ("secured creditor") or any other person entitled to request the sale by auction under a separate law.'

Pursuant to Paragraph 16(1), of this Law, the auction may only be conducted on the basis of a written contract for the conduct of the auction between the person seeking the sale by auction and the auctioneer.

‘Paragraph 16

[...]

(2) The auction agreement shall include the designation of the person seeking the sale auction, the auctioneer, the object of the auction, the minimum bid, the estimated costs of the auction and the auctioneer’s remuneration or the manner in which it is to be determined, or an agreement that the auction will be conducted free of charge. A written declaration by the person seeking the sale by auction, indicating that the object of the auction may be auctioned, shall also be annexed to the agreement (Paragraph 7(2)).

[...]

Paragraph 19

(1) The auctioneer shall cancel the auction at the latest before the start of the auction (a) upon written request by the person seeking the sale by auction, (b) if the auctioneer is shown by means of an enforceable decision that the person seeking the sale by auction is not authorised to seek that sale; if the court grants interim relief, it is sufficient to demonstrate to the auctioneer that the court has adopted such a measure.

[...]

Paragraph 21

[...]

(2) Where the validity of the lien contract is challenged or the provisions of this Law have been infringed, the person claiming that his or her rights have been adversely affected may request that the court declares the auction invalid. The right to apply for annulment of the auction shall lapse if no claim is made within three months of the date of court order acknowledging the winning bid, unless the grounds for annulment are related to the commission of a criminal act and, at the same time, the sale is related to a house or apartment for which, at the time of the acknowledgement, the former owner of the property was registered as a permanent resident in accordance with specific statutory provisions^{12b}, in which case the invalidity of the sale may be applied for even after expiry of that period.’

Zákon č. 160/2015 Z. z. Civilný sporový poriadok (Law No 160/2015 on the Code of Civil Procedure; ‘the Civil Procedures Code’):

‘Paragraph 325

(1) The court may adopt an interim measure if it is necessary to resolve the relationship immediately or if there are concerns that the enforcement of the judgment will be compromised.’

In accordance with paragraph 2(d), the court may adopt an interim measure to oblige a party to the dispute to take, desist from taking, or endure a particular action.

The court may authorise payment by instalments in accordance with Paragraph 232(3) of the Civil Procedures Code.

Zákon č. 162/1995 Z. z. (katastrálny zákon) [Law No 162/1995 (Land Register Law)]

‘Paragraph 70

(1) The particulars entered in the land register referred to in Paragraph 7 shall be deemed to be correct unless proven otherwise.’

Succinct presentation of the facts and procedure in the main proceedings

- 1 PO and RT, the defendants in the main proceedings, are married. On 7 April 2011, they took out a consumer loan, repayable in instalments, with Slovenská Sporiteľňa, a.s. (‘the bank’), under which the bank issued the defendants a loan in the amount of EUR 63 000, with PO and RT undertaking to repay that loan in monthly instalments of EUR 424.41 starting on 20 June 2011, with the final payment due on 20 January 2030. On 7 April 2011, they also concluded an agreement establishing a lien on the property in order to secure the mortgage loan. The subject of the contract establishing the lien was the house in which PO and RT were living with their three children.
- 2 In a letter dated 3 November 2016, the bank announced that the loan was due with immediate effect on 3 November 2016 and demanded that PO and RT repay the outstanding debt of EUR 56 888.08. Under Slovak law, a person enforcing a lien is entitled to apply for a voluntary sale by auction of the object subject to lien. On 21 April 2017, PO and RT brought an action against the bank before the Okresný súd Prešov (District Court of Prešov, Slovakia), asking the bank to refrain from enforcing the lien by means of a voluntary auction, while applying for an interim measure requiring the bank to refrain from exercising its right under the lien by means of a voluntary auction, until the declaratory proceedings had been definitively concluded. PO and RT claimed in their action that the bank did not have the right to call in the loan early, as such a right existed only on the basis of an agreement and the parties to the agreement had not entered into an agreement to that effect.

- 3 On 25 April 2017, the first round of the auction took place, at which PO raised an objection against the auction, referring to the pending court proceedings to stop the enforcement of the lien before the District Court of Prešov. The first round of the voluntary auction was unsuccessful, as no bids were made.
- 4 By order of 26 May 2017, the District Court of Prešov dismissed the application for interim measures, without addressing the defendants' claim that the bank had infringed their rights by calling in the loan prematurely. PO and RT filed an appeal against that order.
- 5 The second round of bidding took place on 18 July 2017. At that auction, the consumer PO drew the attention of the auctioneer and the notary to the fact that legal proceedings were in progress with a view to suspending enforcement of the lien, but neither the notary nor the auctioneer acknowledged his plea or his presence. The successful bidder was GR REÁL, which, inter alia, actively provides credit and loans and factoring and forfeiting services, and manages and maintains residential and non-residential property. In accordance with Slovak law, the acknowledgement of a winning bid is accompanied by the transfer of title under certain conditions.
- 6 By decision of 9 August 2017, the Krajský súd v Prešove (Regional Court of Prešov) ruled on the action brought by PO and RT, setting aside the order of the court of first instance which had dismissed the application for interim measures and referred the case back to that court for further proceedings and to deliver a new ruling. According to the appeal court, the court of first instance should have referred, in particular, to PO and RT's claim that they had not entered into an agreement with the bank that would have allowed it to call in the loan early, to the principle of proportionality, to the fact that it was the only home of PO and RT and their family, and to whether the creditor could not be satisfied in some other way.
- 7 On 19 December 2017, PO and RT withdrew the action to stop enforcement of the lien by voluntary auction, arguing that the auction had already taken place, and that therefore the action for suspension had become meaningless. By decision of 11 January 2018, the District Court of Prešov discontinued the proceedings and ordered PO and RT to pay all the procedural costs incurred by the bank.
- 8 As a result of the auction, GR REÁL was registered as the owner of the house in the land register and, as PO and RT refused to leave the family home, the company disconnected PO and RT's utilities, such as water and electricity, and brought an action under which the property would be vacated. The action was dismissed by the court of first instance, and its decision was upheld by the court of appeal. Both courts took into account the principles of morality and the fact that the property was the home of PO, RT and their three children. In its decision of 8 April 2021, the Najvyšší súd (Supreme Court, Slovakia) set aside the two judgments and stated that the courts must take account of GR REÁL's property rights.

- 9 In its second judgment, the court of first instance ordered PO and RT to vacate the property and dismissed their counterclaim. According to the court of first instance, the voluntary auction had not been declared invalid and the court seised in that case did not have jurisdiction to rule on its invalidity. GR REÁL brought an appeal against the part of the judgment of first instance that did not award it reimbursement of the costs of the proceedings. PO and RT appealed against that judgment in so far as it required them to vacate the property and dismissed their counterclaim. The appeal court stayed the main proceedings and made a request for a preliminary ruling.

The essential arguments of the parties in the main proceedings

- 10 The applicant in the main proceedings, GR REÁL, seeks to exercise its right of ownership to the property, which it claims to have acquired by voluntary auction, and to have it vacated and to be awarded reimbursement of the costs of the proceedings.
- 11 The defendants in the main proceedings, PO and RT, have brought a counterclaim to the effect that they have right of ownership over the house in question. In their view, the sale of the house constitutes an infringement of their rights as consumers and their right to a home. They argue that no agreement exists between them and the bank under which the bank may recall the loan prematurely. In addition, they claim that the bank did not agree to their request to restructure the loan, instead proceeding to put up the property for sale by voluntary auction.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 12 The referring court considers that, from the perspective of the outcome of the case in the main proceedings, the pertinent question is whether the provisions of EU law on consumer protection apply to judicial proceedings in a situation such as the one at issue in the main proceedings, in which consumers sought protection from the court before the auction was held, applied for an interim measure and drew attention to the pending judicial proceedings and yet the auction was held. The referring court considers that, if Directive 93/13 were to apply in the case in the main proceedings, this would mean that, in the case in the main proceedings, a judicial review of the contractual term relating to early repayment is required and that, if this term were found to be unfair, that would be fundamental to determining the declaratory proceedings.
- 13 The referring court also believes that a fundamental issue is whether Slovak legislation which limits consumer protection in relation to property which belongs to those consumers, and which they used as a lien to secure a loan, where that property was sold by voluntary auction, to the following three grounds: infringement of the Law on voluntary sale by auction, invalidity of the agreement establishing the lien, and cases where an offence has been committed is compatible with EU law. The referring court takes the view that neither the case

of the consumers at issue in the main proceedings, nor their allegations, relates to those three situations.

- 14 The referring court fully agrees with the arguments put forward by Advocate General Medina in her Opinion of 12 January 2023 in *SP, CI v Všeobecná úverová banka a.s.*, C-598/21, EU:C:2023:22, in particular points 92 to 105.

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