

**Case C-12/22**

**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 January 2022

**Referring court:**

Okresný súd Prešov (Slovakia)

**Date of the decision to refer:**

13 December 2021

**Applicant:**

UR

**Defendant:**

365.bank a. s.

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**Subject matter of the main proceedings**

Consumer credit – Consumer protection – Directive 2008/48/EC – Directive 93/13/EEC – Requirements of a consumer credit agreement – Duration of a consumer credit agreement – Limitation period on the right to bring actions for the recovery of undue enrichment obtained by the supplier to the detriment of the consumer – Principle of effectiveness and the point at which a limitation period begins

**Subject matter and legal basis of the request**

Interpretation of European Union law, Article 267 TFEU

**Question referred for a preliminary ruling**

Do the details specified in the consumer credit agreement concluded on 21 December 2016, as quoted in the text of the present order, constitute a

clear and concise specification of the type of credit, as required by Article 10(2)(a) of Directive 2008/48/EC?

Do the details specified in the consumer credit agreement concluded on 21 December 2016, as quoted in the text of the present order, constitute a clear and concise specification of the duration of the credit agreement, as required by Article 10(2)(c) of Directive 2008/48/EC?

Do the details specified in the consumer credit agreement concluded on 21 December 2016, as quoted in the text of the present order, constitute a clear and concise specification of the type of credit, as required by Article 10(2)(g) of Directive 2008/48/EC, and

- must a consumer credit agreement contain the mathematical formula for calculating the APRC, together with the variables substituted, as well the calculation itself,
- is it sufficient for the consumer credit agreement to contain in the text thereof the variables necessary to calculate the APRC, or must those variables be stated again with the express indication that they are the assumptions for calculating the APRC?

Can Directive 93/13/EEC be interpreted as requiring national legislation or practice to oblige a court to declare a contractual term unfair even after the contractual relationship has ended, as in the present case?

Is a judicial practice which, in the case of an alleged absence of a compulsory requirement of consumer credit agreement, presumes that that fact was already known to the consumer at the time the credit agreement was signed, in particular where the consumer separately confirmed that he or she had acquainted him or herself with the credit agreement by signing other related credit documents (for example standard consumer credit information form, the list of documents received, etc.) contrary to Council Directive 93/13/EEC as a whole, and in particular the fifth recital thereof (whereas, generally speaking, consumers do not know the rules of law which, in Member States other than their own, govern contracts for the sale of goods or services; whereas this lack of awareness may deter them from direct transactions for the purchase of goods or services in another Member State)?

Is it contrary to the principle of consumer protection and the principle of effectiveness for national law to provide for a subjective limitation period for bringing an action for the recovery of unjust enrichment obtained by the supplier at the expense of the consumer, but also for an objective limitation period based on a neutral criterion (the occurrence of unjust enrichment), so that the determination of the point at which the limitation period begins is not left exclusively to the consumer's assertion and thus without the supplier having any real possibility of defending him or herself by pleading limitation?

**Is it compatible with the principle of consumer protection and the principle of effectiveness for any deficiency in a consumer credit agreement drawn up by a supplier to be regarded automatically as being the result of a deliberate fault on the part of the supplier?**

**Is the principle of effectiveness in the judgments of the Court of Justice of the European Union cited below to be construed as meaning that the limitation period for unjust enrichment obtained by reason of the interest-free and charge-free nature of the credit on account of a defect, begins only from the time the court rules on such a defect (for example by determining the interest-free and charge-free nature of the credit)?**

**From what time does the principle of effectiveness, as applied in the judgments of the Court of Justice cited below, require the limitation period to begin?**

#### **Provisions of European Union law and case-law relied on**

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: in particular Article 10(2)

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts: in particular Article 3

Judgment of the Court of Justice in Case C-485/19 (paragraph 1 of the operative part)

Judgment of the Court of Justice in Joined Cases C-224/19 and C-259/19 (paragraph 4 of the operative part)

Judgment of the Court of Justice in Joined Cases C-776/19 and C-782/19 (paragraph 1 of the operative part)

#### **Provisions of national law relied on**

Zákon č. 129/2010 Z.z. o spotrebiteľských úveroch (Law No 129/2010 on consumer credit)

Paragraph 9(2) – A consumer credit agreement must, in addition to the general requirements set out in the Civil Code, state the following:

- (a) the type of consumer credit,
- (f) the duration of the credit agreement and the date of the final repayment of the consumer credit (as from 1 May 2018 – the duration of the credit agreement),

(k) 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 basic assumptions used in calculating the annual percentage rate of charge shall be stated.

Občiansky zákonník č. 40/1964 Zb. (Civil Code No 40/1964), Paragraph 107:

(1) The right to claim restitution on the grounds of unjust enrichment shall be time-barred within two years from the time when the person concerned becomes aware of unjust enrichment and discovers who has enriched himself or herself to his or her detriment. (Note of the court – this is a subjective limitation period)

(2) The right to restitution on the grounds of unjust enrichment shall lapse at the latest within three years, and within ten years in the case of intentional unjust enrichment, from the day on which the unjust enrichment occurred. (Note of the court – this is an objective limitation period)

### **Succinct presentation of the facts and procedure in the main proceedings**

- 1 On 21 December 2016, the applicant concluded with the defendant a consumer credit agreement pursuant to which he was granted credit in the amount of EUR 5 000, repayable in 96 monthly instalments of EUR 83.89, with a final repayment date of 25 December 2024.
- 2 Paragraph 2.2 of the agreement between the applicant and the defendant, entitled ‘Main parameters of the credit’, states that it is special-purpose credit intended for refinancing. That paragraph states the amount of the credit granted, the number of monthly credit instalments, the final credit repayment date, the amount of the monthly instalment, the amount of the final monthly instalment, the fixed interest rate, the bank’s APRC, the average APRC on the market in percentage terms, the charge for granting of the credit, the maximum permissible charge, the total amount to be paid by the borrower, the date of the first monthly instalment and the date of each subsequent monthly instalment.
- 3 The credit agreement states that it is an agreement for a fixed term until such time as all the borrower’s obligations to the defendant under the loan agreement have been repaid. If the credit is repaid in accordance with the credit agreement, the agreement will terminate on the date specified as the final credit repayment date. Paragraph 2.4 of the agreement also contains an amortisation table showing the amount of each instalment, and how it is broken down into principal and interest, with the first instalment due on 25 January 2017 and the last instalment on 25 December 2024
- 4 As regards the assumptions for calculating the APRC, in addition to the data already mentioned, the agreement contains, inter alia, the following provision – the APRC has been calculated on the assumption that the borrower will be granted the credit in the agreed amount on a one-off basis on the date on which the credit

agreement is concluded. The credit agreement will remain in force for the agreed period and the borrower and the bank will perform their obligations on the terms and within the time limits laid down in the credit agreement. For the purposes of calculating the APRC, the lender's total costs associated with the credit agreement are to be used, excluding any charges payable by the consumer for failure to fulfil any of the obligations laid down in the credit agreement.

- 5 The contractual relationship between the parties to the dispute continued until the applicant voluntarily repaid the full credit balance of EUR 5 715.08 on 16 February 2018.
- 6 In the action brought before the Okresný súd Prešov (Prešov District Court) on 16 September 2021, the applicant seeks a declaration by the court that the credit is interest-free and charge-free, that the defendant must restore unjust enrichment in the amount of EUR 715.08, and that the contractual terms are unfair.

### **The essential arguments of the parties in the main proceedings**

- 7 **The applicant** claims that the credit agreement does not contain the requirements stipulated by Law No 129/2010 on consumer credit and Directive 2008/48. He claims that the agreement does not set out sufficiently the following requirements:
  - the type of credit;
  - the duration of the credit agreement;
  - the specification of the assumptions for calculating the annual percentage rate of charge is insufficient.
- 8 The applicant states that the Slovak Law on consumer credit, unlike the directive, requires not only that the final credit repayment date but also the duration of the contract be specified. Article 10(2)(c) of the directive must be interpreted as meaning that the duration of an agreement must be specified as 'from – to'. The applicant refers to the judgment of the Krajský súd v Prešove (Prešov Regional Court, Slovakia), file ref. 19Co/76/2019, which, in relation to the duration of the agreement, *requires a precise specification of whether the agreement is concluded for an indefinite or a definite period and, in the case of a definite period, the precise duration of the agreement must be specified. It also considers it necessary for information on the duration of the contract to be contained directly in the consumer agreement itself, that is to say in the document signed by the consumer. It points out that the Slovak Law on consumer credit draws a distinction between the notion of the duration of the agreement and the date of the final repayment of the consumer credit, and that the agreement must therefore contain both of these pieces of information.*
- 9 The applicant also relies on the judgment of the Krajský súd v Prešove (Prešov Regional Court), according to which, when specifying the APRC, it is not

sufficient to state the amount of the APRC itself, but is also necessary to state all the assumptions for calculating the APRC. These assumptions are a specification of the amount of the credit, the amount of the instalment[,], the frequency of instalments, the number of instalments, the interest rate and any charges. According to Slovak case-law, the amount of the APRC alone is not sufficient to fulfil the requirements relating to the specification of the assumptions for calculating the APRC, and the **mathematical calculation** on the basis of which the lender determined the amount of the APRC must also be included in the agreement.

- 10 According to the applicant's submissions, the specification of the **type** of consumer credit is required by both the directive and the Slovak Law on consumer credit.
- 11 In the view of the applicant, the absence of mandatory requirements means that the credit agreement is interest-free and charge-free and that the limitation period begins from the time a court rules that the credit is interest-free and charge-free.
- 12 In the view of the **defendant**, all the requirements of the agreement which the applicant claims to be absent are also set out in the 'standard consumer credit information forms', in which:
  - Paragraph 2(a) states: type of consumer credit – special-purpose credit intended for refinancing.
  - Paragraphs 2(d) states: duration of credit agreement – the credit agreement is to be concluded for a fixed period, until such time as all obligations towards the bank arising from the credit agreement are repaid. In the event of correct repayment, the duration of the credit agreement is to be 96 months, the expected date of the final credit repayment is to be dependent on the due date of the first instalment and to correspond to repayment of the 96 monthly instalments.
  - Paragraph 3(b) states: the annual percentage rate of charge – the APRC is to be calculated on the basis of the following data: the amount of consumer credit, the amount of the monthly fixed instalment, the total number of fixed instalments, and the interest rate, and goes on to state what exactly is included in the agreement.
- 13 The defendant is therefore satisfied that it complied with the requirements of both the directive and the Slovak Law on consumer credit. In the view of the defendant, the action for a declaration that the credit is interest-free and charge-free, for the recovery of unjust enrichment, and for a declaration that the contractual term is unfair, was brought more than three years after the repayment of the credit and is therefore obviously speculative in nature.
- 14 The defendant further points out that the applicant received the standard consumer credit information form on 16 December 2016, that is to say five days before the



credit agreement was concluded, and that the applicant therefore had sufficient time, in the event that certain requirements were not clear to him, to take the necessary steps to clarify them before signing the agreement.

- 15 The defendant relies on the judgment of the Court of Justice in Case C-290/19, according to which, if the lender states in the credit agreement the exact amount of the APRC, it has fulfilled its obligation to the consumer to provide information.
- 16 The defendant also pleads limitation under Article 107(1) and (2) of the Civil Code. Even if the limitation period had begun on the date on which the full credit balance had been repaid, the action for recovery of unjust enrichment would have been time-barred at the time the action was brought before the court.
- 17 In the view of the defendant, it follows from the judgments of the Court of Justice in Cases C-698/18, C-699/18, C-224/19 and C-259/19 that
  - (a) it is compatible with European Union law to lay down reasonable time limits for consumers to bring proceedings in the interests of legal certainty. This also applies to the rule which makes it possible to plead limitation in respect of actions brought by consumers also in the case of actions to enforce the restitutory effects of a finding that the credit is interest-free and charge-free.
  - (b) where the three-year limitation period is laid down by law and known in advance, it is sufficient to enable a consumer to prepare and bring an effective action. The length of the limitation period, per se, is therefore not incompatible with the principle of effectiveness.
- 18 Both the applicant and certain Slovak courts have interpreted the judgment of the Court of Justice in Case C-485/19 as meaning that the Court of Justice ‘upheld’ only an objective limitation period of ten years.

### **Reasoning in the request for a preliminary ruling**

- 19 The national court considers that the Slovak Law on consumer credit did not correctly transpose the directive in relation to the duration of the agreement and obliged the supplier to set out a further requirement at the time the agreement at issue was concluded, as is apparent from a comparison between the quotation from the directive and the quotation from the Slovak Law on consumer credit.
- 20 The contractual relationship between the parties has already ended and therefore the unfair nature of the contractual terms may not be relied on.
- 21 The national court must also address the reasonableness of the limitation period. That court takes the view that it would be contrary to the principle of effectiveness if the limitation period for the recovery of unjust enrichment – a performance made on the basis of an unfair contractual term – began before the court had given a ruling on that unfair contractual term.

- 22 On the other hand, the court is uncertain whether the same conclusion should be drawn also where the agreement contains no statutory requirement (the absence of which leads to the conclusion that the credit is interest-free and charge-free) or specifies it incorrectly.
- 23 The court considers that the consumer's awareness that unjust enrichment has occurred must be linked to a specific objective moment. A mere assertion by the consumer that he became aware the unjust enrichment on a specific date from a third party (e.g. a civic association which issues him a certificate that it became aware of the unjust enrichment within two years of the action being brought) cannot suffice.
- 24 In the view of the national court, as regards when the limitation period begins in the case of an action for reimbursement on the ground of unjust enrichment, there is no difference between an action arising from a consumer relationship and an action arising from other legal relationships, provided that, in non-consumer relationships, national legislation does not provide that the limitation period is to begin only from the time when the court establishes the legal basis for those actions.
- 25 The national court disagrees with the arguments put forward by the applicant and agrees with those put forward by the defendant, but in the light of the case-law of the Krajský súd v Prešove (Prešov Regional Court) (as the appellate court) it has decided to request an interpretation of Directives 2008/48/EC and 93/13/EEC and the judgments of the Court of Justice. An interpretation of those directives and case-law is necessary to rule on the substance of the case.
- 26 Accordingly, the referring court refers the questions set out in the operative part of the judgment for a preliminary ruling.