

Parties to the main proceedings

Applicant: CV

Respondent: DU

Operative part of the order

Article 10 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, and Article 3 of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, must be interpreted as meaning that, in a case such as that at issue in the main proceedings, in which a child who was habitually resident in a Member State was wrongfully removed by one of the parents to another Member State, the courts of that other Member State do not have jurisdiction to rule on an application relating to custody or the determination of a maintenance allowance with respect to that child, in the absence of any indication that the other parent consented to his removal or did not bring an application for the return of that child.

⁽¹⁾ OJ C 152, 30.4.2018.

Request for a preliminary ruling from the Fővárosi Ítéltábla (Budapest Regional Court of Appeal, Hungary) lodged on 18 January 2018 — Ottília Lovasné Tóth v ERSTE Bank Hungary Zrt.

(Case C-34/18)

(2018/C 240/13)

Language of the case: Hungarian

Referring court

Fővárosi Ítéltábla

Parties to the main proceedings

Appellant: Ottília Lovasné Tóth

Respondent: ERSTE Bank Hungary Zrt.

Questions referred

1. Must point 1(q) of the Annex to Directive 93/13/EEC, ⁽¹⁾ as an EU law having the status of a rule of public policy, be interpreted as a general prohibition, making any further analyses unnecessary, that prevents a lender from imposing on a debtor classed as a consumer a contract term in the form of a standard term or a term that has not been individually negotiated, when the purpose or effect of that term is to reverse the burden of proof?
2. If, pursuant to point 1(q) of the Annex to Directive [93/13], the purpose or effect of the contract term has to be assessed, can the following types of contract term be held to prevent consumers from exercising their rights?
 - A term that gives a debtor with the status of a consumer good reason to believe that he must perform the contract in its entirety, including all its terms, in the manner and to the extent required by the lender, even when the debtor is convinced that the performance demanded by the lender is not due, whether in full or in part.
 - A term that has the effect of limiting or excluding the consumer's access to a dispute resolution mechanism based on equitable negotiation, given that it is sufficient for the lender to invoke this contract term in order for the dispute to be deemed to have been resolved?

3. If a decision is required as to whether the contract terms listed in the Annex to Directive [93/13] are unfair in the light of the criteria established in Article 3(1) of the Directive, is the requirement in Article 5 of the Directive for terms to be drafted in plain, intelligible language satisfied in the case of a contract term which affects decisions by the consumer about performance of the contract, resolution of disputes with the lender through judicial or non-judicial channels, or the exercise of rights, when (although the wording is clear grammatically) the legal effects of the term can be determined only by interpreting national laws on which the courts had not formulated a consistent position at the time the contract was concluded, and on which no consistent position has emerged in subsequent years?
4. Must point 1(m) of the Annex to Directive [93/13] be interpreted as meaning that a contract term that has not been individually negotiated can also be unfair where it authorises the party contracting with the consumer to determine unilaterally whether the consumer's performance of the contract satisfies the terms of the contract, and when the consumer acknowledges himself to be bound by the term even before the contracting parties have performed any obligations?

(¹) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Appeal brought on 22 February 2018 by Tulliallan Burlington Ltd against the judgment of the General Court (Third Chamber) delivered on 6 December 2017 in Case T-120/16: Tulliallan Burlington Ltd v European Union Intellectual Property Office

(Case C-155/18 P)

(2018/C 240/14)

Language of the case: English

Parties

Appellant: Tulliallan Burlington Ltd (represented by: A. Norris, Barrister)

Other parties to the proceedings: European Union Intellectual Property Office, Burlington Fashion GmbH

Form of order sought

The appellant claims that the Court should:

- set aside the judgment of the General Court dismissing Tulliallan Burlington Ltd's (TBL) appeal from the Board of Appeal;
- set aside the decision of the Board of Appeal [or alternatively refer the case back to the General Court to be decided in accordance with the Court of Justice's decision];
- order the European Union Intellectual Property Office (EUIPO) and Burlington Fashion GmbH (BFG) to pay the costs incurred by TBL in connection with this appeal.

Pleas in law and main arguments

The appellant ('TBL') appeals from the General Court's judgment on the basis that the General Court made the following errors of law:

- 1) Pleas in law alleging infringement of Article 8(5)EUTMR (¹)

- a) The General Court erred in failing to make any findings in relation to 'link'.