



C/2023/308

30.10.2023

**Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 6 June 2023 —
GR REAL s. r. o. v PO, RT**

(Case C-351/23, GR REAL)

(C/2023/308)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Applicant: GR REAL s. r. o.

Defendant: PO, RT

Questions referred

A. Do Articles 6(1) and 7(1) of Council Directive 93/13/EEC⁽¹⁾ 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),

⁽¹⁾ OJ 1993 L 95, p. 29.

c. commission of an offence?

C. Is Directive 2005/29/EC⁽²⁾ 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?

⁽²⁾ OJ 2005 L 149, p. 22.