

3. That framework agreement must be interpreted as meaning that measures provided for by national legislation, such as that at issue in the main proceedings, in order to penalise the abusive use of fixed-term employment contracts or relationships must not be less favourable than those governing similar internal situations or make it practically impossible or excessively difficult to exercise the rights conferred by the legal order of the European Union. It is for the national court to assess to what extent the provisions of domestic law intended to penalise the abusive use by the public administration of successive fixed-term employment contracts or relationships comply with those principles.

(<sup>1</sup>) OJ C 63, 13.3.2010.

**Order of the Court (Eighth Chamber) of 16 November 2010 (reference for a preliminary ruling from the Krajský súd v Prešove (Slovak Republic)) — Pohotovost' s.r.o. v Iveta Korčkovská**

(Case C-76/10) (<sup>1</sup>)

*(Preliminary ruling — Consumer protection — Directive 93/13/EEC — Unfair terms — Directive 2008/48/EC — Directive 87/102 — Consumer credit contracts — Annual percentage rate of charge — Arbitration proceedings — Arbitration award — Power of the national court to examine of its own motion whether certain terms are unfair)*

(2011/C 30/18)

Language of the case: Slovak

**Referring court**

Krajský súd v Prešove

**Parties to the main proceedings**

Applicant: Pohotovost' s.r.o.

Defendant: Iveta Korčkovská

**Re:**

Reference for a preliminary ruling — Krajský súd v Prešove — Interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and 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 (OJ 2008 L 133, p. 66) — Consumer credit contract stipulating an usurious interest rate and recourse to arbitration proceedings in the case of dispute — Power of the national court hearing a case concerning the enforcement of a final arbitration award to examine of its own motion whether those terms are unfair

**Operative part of the order**

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts requires a national court, hearing an application for enforcement of a final arbitration award issued without the participation of the consumer, of its own motion, where the necessary information on the legal and factual state of affairs is available to it for this purpose, to consider the fairness of the penalty contained in a credit agreement concluded by a creditor with a consumer, that penalty having been applied in that award, if, according to national procedural rules, such an assessment may be conducted in similar proceedings under national law.
2. It is for the national court concerned to determine whether a term in a credit agreement such as that at issue in the main proceedings providing, according to the findings of that court, for the consumer to pay a disproportionately high sum in compensation must, in the light of all the circumstances attending the conclusion of the contract, be regarded as unfair within the meaning of Articles 3 and 4 of Directive 93/13. If that is the case, it is for that court to establish all the consequences thereby arising under national law, in order to ensure that the consumer is not bound by that term.
3. In circumstances such as those in the main proceedings, the failure to mention the APR in a consumer credit contract, the mention of the APR being essential information in the context of Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit, as amended by Directive 98/7/EC of the European Parliament and of the Council of 16 February 1998, may be a decisive factor in the assessment by a national court of whether a term of a consumer credit agreement concerning the cost of that credit in which no such mention is made is written in plain, intelligible language within the meaning of Article 4 of Directive 93/13. If that is not the case, that court has the power to assess, of its own motion, whether, in the light of all the circumstances attending the conclusion of that contract, the failure to mention the APR in the term of that contract concerning the cost of that credit is likely to confer on that term an unfair nature within the meaning of Articles 3 and 4 of Directive 93/13.

However, notwithstanding the power which is given to assess that contract in the light of Directive 93/13, Directive 87/102 is to be interpreted as allowing national courts to apply of their own motion the provisions transposing Article 4 of the latter directive into national law and as providing that the failure to mention the APR in a consumer credit contract means that the credit granted is deemed to be interest-free and free of charge.

(<sup>1</sup>) OJ C 134, 22.5.2010.