Form of order sought

The Commission claims that the Court should:

— declare that, by failing to adopt all the measures necessary to ensure compliance with the judgment of the Court of Justice of 6 October 2011 in Case C-302/09 concerning recovery from the recipients of aid found to be unlawful and incompatible with the common market according to Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia, [1] the Italian Republic has failed to fulfil its obligations under that decision and under Article 260 TFEU;

— order the Italian Republic to pay to the Commission a lump sum, the amount of which is the product of multiplying a daily sum equivalent to EUR 24 578,40 by the number of days of continued infringement from the day on which the judgment in Case C-302/09 was delivered until the date of delivery of the judgment in the present case;

— order the Italian Republic to pay the Commission a penalty on a six-monthly basis to be determined by the Commission, starting from six months after the date of delivery of the judgment in the present case, by multiplying the daily penalty of EUR 187 264 by 182,5 and by the percentage of the aid still to be recovered at the end of the six-month period on the basis of the amount of the aid to be recovered at the date on which the Court delivers judgment in the present case;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Italian Republic has failed to adopt all the measures necessary to recover the aid declared by the decision to be unlawful and incompatible, which it was required to do by the judgment in Case C-302/09, given that, almost three years after the declaratory judgment, an amount of EUR 33 032 000 (at least) still has to be recovered from 99 recipients, amounting to approximately 70 % of the total amount to be recovered.

Despite the introduction, after the declaratory judgment, of additional regulatory measures, a large part of the aid has yet to be recovered and no significant progress has been made in that regard.

Therefore, according to the Commission, the Court should rule that the Italian Republic has failed to comply with the judgment declaring that an infringement had been committed.

[1] Commission Decision of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (notified on 10 January 2000 under document number C(1999) 4268) (Text with EEA relevance) (OJ 2000 L 150, p. 50).

Request for a preliminary ruling from the Krajský soud v Praze (Czech Republic) lodged on 7 August 2014 — Ernst Georg Radlinger, Helena Radlingerová v Finway a.s.

(Case C-377/14)

(2014/C 395/28)

Language of the case: Czech

Referring court

Krajský soud v Praze

Parties to the main proceedings

Applicants: Ernst Georg Radlinger, Helena Radlingerová

Defendant: Finway a.s.

Questions referred

1. Do Article 7(1) of Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts ('the Directive on Unfair Terms') and Article 22(2) of Directive 2008/48/EC [2] of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC ('the Directive on Consumer Credit Agreements') or other provisions of EU law on consumer protection preclude:

— the concept of Law No 182/2006 on bankruptcy and the modes of its resolution (zákon č. 182/2006 Sb., o úpadku a způsobech jeho řešení) (the Law on Insolvency), as amended by Law No 185/2013 ('the Law on Insolvency'), which enables the court to examine the authenticity, amount or ranking of claims stemming from consumer relations only on the basis of an incidental application lodged by the administrator in bankruptcy, a creditor or (under the abovementioned restrictions) the debtor (consumer)?

— provisions which, in the context of the national legislation governing insolvency proceedings, restrict the right of the debtor (consumer) to request review by the court of the registered claims of creditors (suppliers of goods or services) solely to cases in which the resolution of the consumer's bankruptcy in the form of a discharge is approved, and in this context only in relation to creditors' unsecured claims, with the objections of the debtor being further limited, in the case of enforceable claims acknowledged by a decision of the competent authority, solely to the possibility of asserting that the claim has lapsed or is time-barred, as laid down in the provisions of Paragraph 192(3) and Paragraph 410(2) and (3) of the Law on Insolvency?

2. If Question 1 is answered in the affirmative: is the court in proceedings concerning the examination of claims under a consumer credit agreement required to have regard *ex officio*, even in the absence of an objection on the part of the consumer, to the credit supplier's failure to fulfil the information requirements under Article 10(2) of the Directive on Consumer Credit Agreements and to infer the consequences provided for in national law in the form of the invalidity of the contractual arrangements?

If Question 1 or 2 is answered in the affirmative:

3. Do the provisions of the directives applied above have direct effect and is their direct application precluded by the fact that the initiation of an incidental action by the court *ex officio* (or, from the point of view of national law, the inadmissible review of a claim on the basis of an ineffective contestation by the debtor-consumer) encroaches on the horizontal relationship between the consumer and the supplier of goods or services?

4. What amount is represented by 'the total amount of credit' in accordance with Article 10(2)(d) of the Directive on Consumer Credit Agreements and what amounts are included as 'the amounts of drawdown' in the calculation of the annual percentage rate (APR) according to the formula set out in Annex I to the Directive on Consumer Credit Agreements, if the credit agreement formally promises the payment of a specific financial amount but at the same time it is agreed that, as soon as the credit is paid out, the claims of the credit supplier in terms of a fee for the provision of the credit and in terms of the first credit repayment instalment (or subsequent instalments) will to a certain extent be offset against that amount, so that the amounts thus offset are never in reality paid out to the consumer, or to his account, and remain at the creditor's disposal throughout? Does the inclusion of those amounts which are in reality not paid out affect the amount of the APR calculated?

Regardless of the answer to the preceding questions:

5. In the assessment of whether the above agreed compensation is disproportionate within the meaning of point 1(e) of the Annex to the Directive on Unfair Terms, is it necessary to evaluate the cumulative effect of all the penalty clauses, as concluded, regardless of whether the creditor actually insists that they be satisfied in full and regardless of whether some of them may from the point of view of the rules of national law be considered to have been concluded invalidly, or is it necessary to take into consideration only the total amount of the penalties actually demanded and capable of being demanded?

6. In the event that the contractual penalties are found to be abusive, is it necessary to disapply all of those partial penalties which, only when considered together, led the court to conclude that the amount of compensation was disproportionate within the meaning of point 1(e) of the Annex to the Directive on Unfair Terms, or only some of them (and in that case by what criteria is this to be judged)?

(1) OJ 1993 L 95, p. 29.
(2) OJ 2008 L 133, p. 66.