



Reports of Cases

ORDER OF THE COURT (Sixth Chamber)

3 July 2014*

(Reference for a preliminary ruling — Directives 93/13/EEC and 2008/48/EC — Application *ratione temporis* and *ratione materiae* — Events occurring prior to the accession of Romania to the European Union — Charter of Fundamental Rights of the European Union — Lack of implementation of EU Law — Manifest lack of jurisdiction — Articles 49 TFEU and 56 TFEU — Manifest inadmissibility)

In Case C-92/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Judecătoria Câmpulung (Romania), made by decision of 25 February 2014, received at the Court on 5 March 2014, in the proceedings

Liliana Tudoran,

Florin Iulian Tudoran,

Ilie Tudoran

v

SC Suport Colect SRL,

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber, E. Levits (Rapporteur) and M. Berger, Judge,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give its decision by reasoned order in accordance with Article 53(2) of the Rules of Procedure of the Court,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Articles 49 TFEU and 56 TFEU, Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), Articles 3 and 10 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ

* Language of the case: Romanian.

1993 L 95, p. 29), as well as various provisions of Directive 2008/48/EC of the European Parliament and Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 1987 L 133, p. 66).

- 2 The request has been made in proceedings between Mrs Tudoran, Mr Florin Iulian Tudoran and Mr Ilie Tudoran and SC Suport Colect SRL ('Suport Colect'), concerning the recovery of a debt arising from a credit agreement concluded for the purchase of immovable property subject to a mortgage.

Legal context

EU Law

- 3 The second paragraph of Article 10(1) of Directive 93/13 states:

'[The] provisions [of Directive 93/13] shall be applicable to all contracts concluded after 31 December 1994.'

- 4 Article 2(2) of Directive 2008/48 reads as follows:

'This Directive shall not apply to:

- (a) credit agreements which are secured either by a mortgage or by another comparable security commonly used in a Member State on immovable property or secured by a right related to immovable property;
- (b) credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building;

...'

Romanian Law

- 5 Article 372 of the Code of Civil Procedure provides:

'Enforcement may take place only pursuant to a court judgment or other written act which, according to law, constitutes an enforceable instrument.'

- 6 Pursuant to Article 379(1) of that code:

'Enforcement against movable or immovable property may take place only if the debt is certain, of a fixed amount and due.'

- 7 Article 399 thereof provides:

'Persons affected or injured by enforcement may object to enforcement and any enforcement order.'

- 8 Article 120 of Emergency Decree No 99 of 6 December 2006 on credit institutions and capital sufficiency (*Monitorul Oficial al Romaniei* No 1027, 'Emergency Decree No 99') specifies:

'Credit agreements, including real or personal guarantee agreements, concluded by a credit institution, shall be enforceable.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 9 On 5 October 2006 the applicants in the main proceedings concluded a credit agreement with Banca Comercială Română for the sum of EUR 17 200 for the purchase of immovable property located in Câmpulung (Romania).
- 10 That agreement provided that the rate of interest was fixed for the first year after the credit was made available. After that period, it was to be the variable reference rate calculated on the basis of the rate posted at the bank's headquarters, increased by the variable referred to as 'service of the borrower's debt', which reflects the latter's ability to meet payment deadlines, expressed in terms of days of delay in payment beyond the due date.
- 11 In addition, the agreement provides for an increase in the rate of interest over the period of the contract based on the ability of the borrower to make repayments. Accordingly, the adjusted interest rate is increased on the basis of the length of delay in making payments.
- 12 On 11 October 2006 Mr Florin Iulian Tudoran and Mrs Tudoran entered into a first mortgage, with the same bank, on the immovable property acquired in order to guarantee payment of the amounts due under the credit agreement of 5 October 2006.
- 13 On 12 May 2009 the bank notified the applicants in the main proceedings that they had failed to comply with their contractual obligations, since they had not made certain repayments under the credit agreement. They were therefore given seven days' notice, from the date of the notification, to repay the amount of EUR 233.91. In case of non-payment the whole outstanding balance would become payable and the bank would institute enforcement proceedings.
- 14 The debt owed by the applicants in the main proceedings was the subject of two successive assignment agreements and was ultimately acquired by Suport Colect under a debt assignment agreement of 5 August 2009.
- 15 On 18 May 2012 Suport Colect instituted enforcement proceedings against the applicants in the main proceedings.
- 16 On 15 March 2013 a bailiff, on the instructions of Suport Colect, issued an order for the recovery of an amount of EUR 16 980.75, on the basis of the loan agreement, guaranteed by a mortgage, entered into by the applicants in the main proceedings.
- 17 That order provided the basis for the acts of enforcement, which consisted of a salary attachment order and enforcement proceedings against the immovable property concerned.
- 18 On 13 June 2013 the applicants brought an action before the Judecătoria Câmpulung opposing all the enforcement measures. They seek the annulment of the enforcement measures as well as the order for payment.
- 19 On the merits, the applicants in the main proceedings argue that the enforcement proceedings are based on a debt which does not satisfy the conditions laid down in Article 379(1) of the Code of Civil Procedure, since the debt is not certain, of a fixed amount and due. Consequently, there is no clarity as to the precise sums which make up the overall amount of the debt.
- 20 After ordering that an expert opinion of an accountant be obtained to establish the precise amount of the debt, the referring Court examined the compatibility of clauses determining interest rates of the type contained in the credit agreement at issue in the main proceedings with Directives 93/13 and 2008/48, and the compatibility of Article 120 of Emergency Decree No 99 with Articles 49 TFEU and 56 TFEU and Article 47 of the Charter.

21 In those circumstances the Judecătoria Câmpulung decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Are [Directives 93/13 and 2008/48] applicable also to a credit agreement concluded on 5 October 2006, before Romania acceded to the European Union, but whose effects are still produced now, in that the terms thereof form the subject of enforcement at present, following successive assignments of the debt for which it makes provision?
- (2) If the answer to Question 1 is in the affirmative, can terms such as those concerning “service of the borrower’s debt”, that refer to the existence of delays in payment on the part of the debtor, and those relating to the increase in the rate of interest after one year, after which the rate is the variable reference rate of the Banca Comercială Română, posted at the bank’s headquarters, increased by 1.90 [percent], be considered to be unfair within the meaning of [Directive 93/13]?
- (3) Does the principle of effective judicial protection of the rights that individuals derive from EU law, as guaranteed by Article 47 of the Charter ..., preclude a provision of national law, such as that laid down in Article 120 of Emergency Decree No 99 ..., which recognises the enforceability of a bank credit agreement concluded by private agreement and without allowing the terms thereof to be negotiated with the debtor, under which, with brief verification and after obtaining authorisation for enforcement in a non-contentious procedure, and with limited scope for the court to assess the amount of the debt, a bailiff may seize the debtor’s assets?
- (4) Must [Directive 93/13] be interpreted as precluding a law of a Member State, such as Article 372 et seq. of the former Code of Civil Procedure, from allowing a creditor to seek enforcement of a debt deriving from unfair contractual terms by seizing an asset charged as security through the sale of the immovable property, notwithstanding the consumer’s objection, without an independent judge’s carrying out an examination of the contractual terms?
- (5) Does the existence in national law of a provision such as Article 120 of Emergency Decree No 99 ..., which recognises the enforceability of the bank credit agreement, prejudice the right to freedom of establishment laid down in Article 49 TFEU and the freedom to provide services laid down in Article 56 TFEU in that it discourages citizens of the Union from establishing themselves in a State in which the same value as an enforceable instrument represented by a judgment is conferred on a bank agreement concluded by a private institution?
- (6) If the answer to the preceding questions is in the affirmative, can the national court raise of its own motion the non-enforceability of such an instrument pursuant to which the enforcement of a debt stated in a contract is carried out?

The procedure before the Court

- 22 In its request for a preliminary ruling the referring court asked for the application of the accelerated procedure laid down in Article 105 of the Rules of Procedure of the Court of Justice.
- 23 However, under Article 53(2) of the Rules of Procedure of the Court, where it is clear that the Court has no jurisdiction to hear and determine a case or where a request or an application is manifestly inadmissible, the Court may, after hearing the Advocate General, decide at any time to give a decision by reasoned order without taking further steps in the proceedings.
- 24 In this case it is therefore appropriate to apply Article 53(2) and it is unnecessary to give a ruling on the request for the application of the accelerated procedure.

The questions referred

The first question

- 25 By its first question, the referring court asks whether Directives 93/13 and 2008/48 must be interpreted as meaning that their provisions are applicable to a credit agreement for immovable property concluded before Romania acceded to the European Union, but whose effects are still produced today and, in essence, whether the Court has jurisdiction to reply to the second and fourth questions.
- 26 Firstly, in relation to Directive 93/13, it appears from the order for reference that the credit agreement at issue in the main proceedings was concluded on 5 October 2006 and that the mortgage guaranteeing it was granted on 11 October of that year, prior to the accession of Romania to the Union on 1 January 2007.
- 27 Furthermore, the Court has jurisdiction to interpret EU law only in relation to its application in a Member State from the date of accession of that State to the Union (order in *Pohotovost'*, C-153/13, EU:C:2014:264, paragraph 24 and the case-law cited).
- 28 In addition, in so far as it is apparent from the second paragraph of Article 10(1) of Directive 93/13 that the directive is applicable only to contracts concluded after 31 December 1994, the date by which it must have been transposed into national law, it is necessary to take into consideration the date of the conclusion of the contract at issue in the main proceedings to determine the applicability of the directive to the contract and the period during which the contract produced effects is not relevant.
- 29 Consequently, since the credit agreement at issue in the main proceedings was concluded on 5 October 2006 with the associated mortgage being granted on 11 October 2006, it must be concluded that Directive 93/13 is inapplicable to the main proceedings.
- 30 Secondly, in relation to Directive 2008/48, it is sufficient to note that, pursuant to Article 2(2)(a) and (b), the directive does not apply to credit agreements secured by a mortgage or credit agreements whose purpose is to acquire or retain property rights in an existing or projected building.
- 31 Since it is clear from the order for reference that the contract at issue in the main proceedings is a credit agreement whose purpose is to acquire immovable property, guaranteed by a mortgage, Directive 2008/48 is inapplicable to the facts of the main proceedings.
- 32 Consequently, neither Directive 93/13 nor Directive 2008/48 is applicable to the main proceedings.

The second and fourth questions

- 33 In view of the answer given to the first question, there is no need to answer the second and fourth questions.

The fifth question

- 34 By its fifth question the referring court asks essentially whether Articles 49 TFEU and 56 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which recognises the enforceability of a bank credit agreement.

- 35 It should be recalled that it is for the Court to examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (see, to that effect, the judgments in *Volker und Markus Schecke and Eifert*, C-92/09 and C-93/09, EU:C:2010:662, paragraph 39, and *Susisalo and Others*, C-84/11, EU:C:2012:374, paragraph 16).
- 36 In this regard, it must be recalled that the Court does not have jurisdiction to reply to a question referred for a preliminary ruling where it is obvious that the provision of EU law referred to it for interpretation is incapable of applying (judgment in *Caixa d'Estalvis i Pensions de Barcelona*, C-139/12, EU:C:2014:174, paragraph 41 and the case-law cited).
- 37 As regards the rules of EU law whose interpretation is sought, the Court points out that the provisions of the TFEU on freedom of establishment and freedom to provide services do not apply to purely internal situations in a single Member State (see, concerning freedom of establishment, the judgment in *Commission v France*, C-389/05, EU:C:2008:411, paragraph 49 and the case-law cited, and, in relation to freedom to provide services, the judgment in *Omalet*, C-245/09, EU:C:2010:808, paragraph 12 and the case-law cited).
- 38 Nevertheless, it should be recalled that, in certain circumstances, the purely internal nature of the situation at issue does not prevent the Court from replying to a question referred pursuant to Article 267 TFEU.
- 39 This could be the case, in particular, if national law were to require the referring court to allow a national of the Member State of its jurisdiction to enjoy the same rights as those which a national of another Member State would derive from EU law in the same situation (see, to that effect, the judgments in *Guimont*, C-448/98, EU:C:2000:663, paragraph 23; *Servizi Ausiliari Dottori Commercialisti*, C-451/03, EU:C:2006:208, paragraph 29; and *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 30), or if the request for a preliminary ruling concerned provisions of EU law to which the national law of a Member State refers in order to determine the rules applicable to a purely internal situation within that State (see, to that effect, inter alia, the judgments in *Dzodzi*, C-297/88 and C-197/89, EU:C:1990:360, paragraph 36; *Poseidon Chartering*, C-3/04, EU:C:2006:176, paragraph 15; and *Romeo*, C-313/12, EU:C:2013:718, paragraph 21).
- 40 In the present case, it must be noted that all the facts at issue in the main proceedings are confined within a single Member State, since the dispute relates to enforcement proceedings for a debt arising from a credit agreement secured by a mortgage between Romanian nationals and a Romanian bank, and which are being carried out by a Romanian company which is the holder of that debt.
- 41 It is not apparent from the request for a preliminary ruling that the national law required the referring court to grant to the parties in the main proceedings the same treatment as that granted under EU law to an economic operator in another Member State in the same situation. Neither is it apparent that the referring court needed to base itself on an interpretation of rules of EU law in order to determine the content of the national law applicable in the present case.
- 42 It follows that, since the decision of the referring court clearly contains no specific elements making it possible to establish a link between Articles 49 TFEU and 56 TFEU and the national legislation applicable to the facts of the main proceedings, which are all confined within the Member State concerned, the fifth question is inadmissible.

The third question

- 43 By the third question, the referring court asks if the principle of judicial protection of the rights conferred on individuals by EU law, as guaranteed by Article 47 of the Charter, must be interpreted as precluding a provision of national law, such as Article 120 of Emergency Decree No 99, which recognises the enforceability of credits agreements concluded by a credit institution.
- 44 In so far as concerns the requirements stemming from the protection of fundamental rights, it is settled case-law that they are binding on Member States whenever they are called upon to implement EU law (see the orders in *Asparuhov Estov and Others*, C-339/10, EU:C:2010:680, paragraph 13, and *Chartry*, C-457/09, EU:C:2011:101, paragraph 22).
- 45 Similarly, Article 51(1) of the Charter provides that its provisions are addressed to the Member States only when they are implementing EU law. Article 6(1) TEU and Article 51(2) of the Charter provide that the provisions of the Charter do not extend the powers of the Union beyond those defined in the Treaties.
- 46 It follows from paragraphs 32 and 42 above that neither the provisions of Directives 93/13 and 2008/48 nor Articles 49 TFEU and 56 TFEU are applicable to the main proceedings.
- 47 Furthermore, the order for reference does not contain any concrete element to justify the conclusion that the object of the main proceedings is connected with other provisions of EU law or rules of national law implementing EU law within the meaning of Article 51(1) of the Charter.
- 48 Consequently, the Court manifestly lacks jurisdiction to reply to the third question referred.
- 49 Without it being necessary to examine the sixth question, it follows from all the above considerations that, pursuant to Article 53(2) of the Rules of Procedure, the Court manifestly lacks jurisdiction to answer the third question referred and that the fifth question is manifestly inadmissible.

Costs

- 50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (Sixth Chamber) hereby rules:

Council Directive 93/13/EEC of 5 April 1993 on unfair contract terms in consumer contracts and European Parliament and Council Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC are inapplicable to the main proceedings.

Moreover, the Court of Justice of the European Union manifestly lacks jurisdiction to answer the third question referred by the Judecătoria Câmpulung (Romania), by decision of 25 February 2014, and the fifth question referred by that court is manifestly inadmissible.

[Signatures]