

Request for a preliminary ruling from the Krajský súd v Prešove (Slovakia) lodged on 23 January 2013 — Monika Kušionová v SMART Capital, a.s.

(Case C-34/13)

(2013/C 141/14)

Language of the case: Slovak

Referring court

Krajský súd v Prešove

Parties to the main proceedings

Appellant: Monika Kušionová

Defendant: SMART Capital, a.s.

Questions referred

1. Are Council Directive 93/13/EEC ⁽¹⁾ of 5 April 1993 on unfair terms in consumer contracts and 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'), in the light of Article 38 of the Charter of Fundamental Rights of the European Union, to be interpreted as precluding legislation of a Member State, such as Paragraph 151j(1) of the Občiansky zákonník (Civil Code) in conjunction with other provisions of the legislation at issue in the present case, which enables a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien against a consumer's immovable property without an assessment of the contract terms by a court, despite there being a dispute regarding the issue as to whether a contract term is unfair?
2. Does the European Union legislation set out in question 1 preclude the use of a national rule such as Paragraph 151j(1) of the Občiansky zákonník in conjunction with other provisions of the legislation at issue in the present case, which enables a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien against a consumer's immovable property without an assessment of the contract terms by a court, despite there being a dispute regarding the issue as to whether a contract term is unfair?
3. Must the judgment of the Court of Justice of the European Union of 9 March 1978 in Case C-106/77 *Amministrazione delle Finanze dello Stato v Simmenthal* ⁽³⁾ be interpreted as

precluding, in the interests of meeting the objective of the Directives set out in question 1 in the light of Article 38 of the Charter of Fundamental Rights of the European Union, the national court from applying national provisions, such as Paragraph 151j(1) of the Občiansky zákonník in conjunction with other provisions of the legislation at issue in the present case, which enable a creditor to enforce the fulfilment of unfair contract terms by enforcing a lien against a consumer's immovable property without an assessment of the contract terms by a court and also, despite there being a dispute, to circumvent the review by a court of its own motion of the contract terms?

4. Is Article 4 of Council Directive 93/13/EEC on unfair terms in consumer contracts to be interpreted as meaning that a contract term in a consumer contract, concluded by the consumer without representation by a lawyer, which enables a creditor to enforce a lien by out-of-court means and without review by a court, is a circumvention of the important principle of European Union law that contract terms are to be reviewed by courts of their own motion and for that reason is unfair, even in the situation where the wording of such a contract term is based on national legislation?

⁽¹⁾ OJ 1993 L 95, p. 29.

⁽²⁾ OJ 2005 L 149, p. 22.

⁽³⁾ OJ 1978 p. 22.

Request for a preliminary ruling from the Sąd Rejonowy w Białymstoku (Poland) lodged on 25 January 2013 — Małgorzata Nierodzik v Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr Stanisława Deresza w Choroszczy

(Case C-38/13)

(2013/C 141/15)

Language of the case: Polish

Referring court

Sąd Rejonowy w Białymstoku

Parties to the main proceedings

Applicant: Małgorzata Nierodzik

Defendant: Samodzielny Publiczny Psychiatryczny Zakład Opieki Zdrowotnej im. dr Stanisława Deresza w Choroszczy