

Judgment of the Court (Third Chamber) of 21 April 2016 (request for a preliminary ruling from the Krajský soud v Praze — Czech Republic) — Ernst Georg Radlinger, Helena Radlingerová v FINWAY a.s.

(Case C-377/14) ⁽¹⁾

(Reference for a preliminary ruling — Directive 93/13/EEC — Article 7 — National rules governing insolvency proceedings — Debts arising from a consumer credit agreement — Effective judicial remedy — Point 1(e) of the annex — Disproportionate amount of compensation — Directive 2008/48/EC — Article 3(1) — Total amount of credit — Point I of Annex I — Amount of drawdown — Calculation of the annual percentage rate — Article 10(2) — Obligation to provide information — Ex officio examination — Penalty)

(2016/C 211/10)

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.

Operative part of the judgment

1. Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, in insolvency proceedings does not permit, firstly, the court hearing the action to examine of its own motion any unfairness of contractual terms on which the claims declared in those proceedings are based, even when that court has available to it the matters of law and fact necessary to that end, and which, secondly, permits that court to examine only unsecured claims, solely in respect of a restricted number of complaints related to whether they are time-barred or have been paid.
2. Article 10(2) of 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 must be interpreted as meaning that it requires a national court hearing a dispute concerning claims based on a credit agreement within the meaning of that directive to examine of its own motion whether the obligation to provide information laid down in that provision has been complied with and to establish the consequences under national law of an infringement of that obligation, provided that the penalties satisfy the requirements of Article 23 of that directive.
3. Articles 3(1) and 10(2) of Directive 2008/48 and point I of Annex I to that directive must be interpreted as meaning that the total amount of the credit and the amount of the drawdown together designate the sums made available to the consumer, which excludes those used by the lender to pay the costs connected with the credit concerned and which are not actually paid to that consumer.
4. The provisions of Directive 93/13 must be interpreted as meaning that, in order to assess whether the amount of compensation required to be paid by a consumer who does not fulfil his obligations is disproportionately high, within the meaning of point 1(e) of the annex to that directive, it is necessary to evaluate the cumulative effect of all the penalty clauses in the contract in question, regardless of whether the creditor actually insists that they all be satisfied in full and that, if necessary, the national courts must, by virtue of Article 6(1) of that directive, establish all the consequences of the finding that certain terms are unfair, exclude all terms found to be unfair in order to ensure that the consumer is not bound by them.

⁽¹⁾ OJ C 395, 10.11.2014.