

European Union, CJEU, Pohotovost, judgement 27 February 2014

Deciding bodies and decisions

District Court of Svidnik
Supreme Court
Constitutional Court
Court of Justice of European Union

Area of law

Consumer protection

Subject matter

collective remedies - intervention into individual proceedings

Summary Facts Of The Case

The consumer credit agreement between Pohotovosť s.r.o. and Miroslav Vašuta included an arbitration clause which was enforced through the decision on 9 December 2010 of the Slovak Permanent Court of Arbitration to order the payment of a defined sum by Mr Vasuta to Pohotovost. The arbitral award was then presented to the District Court of Svidník for enforcement. The District Court upheld the application for a limited sum (excluding interest for late payment and cost of recovery) on 29 June 2011.

On 9 September 2011, the Slovak consumer protection association HOOS applied to intervene in the enforcement proceedings on the basis of Paragraph 93(2) of the Code of Civil Procedure. By order of 24 May 2012, the District Court of Svidník declared the request inadmissible and dismissed the application claiming that the court should suspend the proceedings.

On 18 June 2012, the Slovak Consumer protection association HOOS brought an appeal against that order. The Association raised the fact that the arbitration clause should have been deemed unfair ex officio by the court, and that the legal inferences regarding the failure to include the annual percentage rates within the consumer credit contract were not taken into account.

The District Court of Svidník deemed that the request required the interpretation of the CJEU, and therefore, on 31 August 2012, made a preliminary reference posing the following questions:

“Are Articles 6(1), 7(1) and 8 of Directive 93/13 ..., in conjunction with Articles 38 and 47 of the Charter ..., to be interpreted as precluding national legislation such as Paragraph 37(1) and (3) of the Enforcement Code, which does not allow a consumer protection association to intervene in enforcement proceedings?

If the answer to the first question is that that legislation does not conflict with [European Union] law, is Paragraph 37(1) and (3) of the Enforcement Code to be interpreted as not precluding a national court from granting a consumer protection association leave to intervene in enforcement proceedings in accordance with Articles 6(1), 7(1) and 8 [of that directive]?”

Before the CJEU decided the case, on 10 October 2012, the Slovak Supreme Court addressed a similar question, affirming that the intervention of a consumer protection association was not admissible in enforcement proceedings, since they were not contentious proceedings but rather proceedings for the enforcement of a decision on the merits which is final and binding on the debtor. A similar conclusion was then made by the Slovak Constitutional Court on 15 January 2013.

On 27 February 2014, the CJEU decided the case. Initially, the CJEU acknowledged that the jurisprudence of the Supreme and Constitutional courts at national level agree on the inadmissibility of applications for the intervention of consumer protection associations in enforcement proceedings. After having confirmed the role of the national courts in evaluating the unfairness of contact clauses, the CJEU affirms that directive 93/13/EC does not contain any provision regarding the role to be accorded consumer protection associations nor does it contain any provision on their entitlement to intervene in individual disputes. It is therefore for the national system to establish such rules, in compliance with the principles of equality and effectiveness. Deeming the principle of equality satisfied, the CJEU addressed compliance with the principle of effectiveness, including in its analysis arts. 38 and 47 CFREU. The Court found that neither art 38 nor art 47 CFREU impose an interpretation of Directive 93/13/EC which would include a right for consumer protection associations to intervene. In particular, the Court distinguished between the right to effective remedies of individual consumers and that of consumer protection associations which are not, as such, infringed by the national rule regarding intervention. Moreover it noted that legal aid and the intervention of consumer protection associations are two different concepts. Thus, the CJEU reached the following decision:

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1), 7(1) and 8 of that directive, read in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of a final arbitration award.

As on 27 December 2012 Pohotovos? made a request to suspend the enforcement proceedings of the arbitration award, the District Court of Svidník decided the case and dismissed the appeal of the HOOS consumer protection association.

Relation to the scope of the Charter

The national court linked the Charter to the secondary law provisions included in the Directive 93/13/EC. The national court also used as a reference the principle stated in art 38 CFREU, although the main issue addressed by the Directive provisions mentioned in the preliminary ruling address the problem of remedies.

Within the analysis of the principle of effectiveness, the CJEU addressed the role of Charter provisions. The CJEU stated firmly that art. 38 CFREU does not entail the possibility of granting a right to intervene to consumer protection associations (or indeed any other right, given the nature of the provision as a principle). As regards art. 47 CFREU, the CJEU does address both the possibility of an infringement of consumer's rights as well as the right of the consumer association. On the one hand, the consumer's right to an effective remedy does not extend to the possibility of receiving legal support by third parties, which were not parties to the dispute. On the other hand, the right to an effective remedy enjoyed by the consumer association is not infringed as the latter still have the possibility of accessing the court pursuant to art 7(2) of Directive 93/13.

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Notes on the remedies dimension

One could ask whether, considering it is an underlying dimension of the case, the CJEU could address the issue of the ex officio power of the judge to evaluate the unfairness of contract clauses. The CJEU cited its own jurisprudence on the role and powers of the judges. Could it go further regarding the issue of whether the Slovakian courts could intervene, raising on their own motion the unfairness of the arbitration clause included in the consumer contract within the enforcement proceeding? The case may be compared with the approach in Aziz case in this respect.

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