

Case law

Case Details

National ID: C 453/10

Member State: European Union

Common Name: Jana Pereničová, Vladislav Perenič v SOS financ spol. s r. o.

Decision type: Other

Decision date: 15/03/2012

Court: European Court of Justice

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Unfair Contract Terms Directive, [Article 6](#), 1. Distance Selling Directive, [Article 1](#)

Headnote

This reference for a preliminary ruling concerns the interpretation of Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), provisions of Directive 2005/29/EC 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') (OJ 2005 L 149, p. 22), and the possible effect of the application of Directive 2005/29 on Directive 93/13.

The reference has been made in the course of proceedings between Mr and Mrs Perenič and SOS financ spol. s r. o. ('SOS'), a non-bank institution which offers loans to consumers, concerning a credit agreement concluded between them and that company.

Facts

Legal issue

Decision

Article 6(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that, when assessing whether a contract concluded with a consumer by a trader which contains one or more unfair terms can continue to exist without those terms, the court hearing the case cannot base its decision solely on a possible advantage for one of the parties, in this case the consumer, of the annulment of the contract in question as a whole. That directive does not, however, preclude a Member State from providing, in compliance with European Union law, that a contract concluded with a consumer by a trader which contains one or more unfair terms is to be void as a whole where that will ensure better protection of the consumer.

A commercial practice such as that at issue in the main proceedings which consists in indicating in a credit agreement an annual percentage rate of charge lower than the real rate must be regarded as 'misleading' within the meaning of Article 6(1) of Directive 2005/29/EC 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 so far as it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. It is for the national court to ascertain whether that is the case in the main proceedings. A finding that such a commercial practice is unfair is one element among others on which the competent court may, pursuant to Article 4(1) of Directive 93/13, base its assessment of the unfairness of the contractual terms relating to the cost of the loan granted to the consumer. Such a finding, however, has no direct effect on the assessment, from the point of view of Article 6(1) of Directive 93/13, of the validity of the credit agreement concluded.

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