

Case Details

Case Details

National ID	II. ÚS 412/2014
Členský štát	Slovensko
Common Name	link
Decision type	Court decision, first degree
Decision date	24/07/2014
Súd	Ústavný súd Slovenskej republiky
Predmet	
Žalobca	POHOTOVOSTĚ, s.r.o.
Žalovaný	N/A
Kľúčové slová	consumer, consumer rights, consumer rights organisation, injunction

Directive Articles

Unfair Contract Terms Directive, [Article 3, 1](#). Unfair Contract Terms Directive, [Article 4, 1](#). Unfair Contract Terms Directive, [Article 6, 1](#). Unfair Contract Terms Directive, [Article 7, 1](#). Injunctions Directive, [Article 1, 2](#). Injunctions Directive, [Article 3](#) Injunctions Directive, [Article 3, \(a\)](#) Injunctions Directive, [Article 3, \(b\)](#) Injunctions Directive, [Article 4, 3](#).

Headnote

- (1) A consumer protection organization is allowed to submit an application for preliminary injunction according to Act No. 250/2007 Coll. on Consumer Protection, as amended as long as it is listed in the list of such organizations that is established and published under Article 4 (3) of the Directive 2009/22/EC .
- (2) Such a confirmed preliminary injunction does not deprive nor does it violate the constitutional rights of the plaintiff.

Facts

The plaintiff, a legal entity, lends consumer loans in the form of regular loans and credit.

In its consumer loan contracts, the plaintiff used a provision, where the name of the attorney was preprinted. The respective attorney was automatically granted a power of attorney by the consumer, who had no other option when signing the contract. The power of attorney concerned establishment of certain securities (incl. mortgage) granted by the consumer.

The plaintiff argued that its constitutional rights were violated by the District Court Banská Bystrica that approved the application for preliminary injunction claimed by a consumer protection organization. The preliminary injunction restrained the plaintiff from concluding contracts with consumers that would grant the plaintiff pledge rights over real property of the consumers.

This preliminary injunction was appealed by the plaintiff on numerous grounds, among them also the non-eligibility of the organization to submit such application for issuing preliminary injunction. The Regional Court Banská Bystrica declined the appeal and confirmed the preliminary injunction by its own resolution.

The plaintiff, therefore, submitted a complaint to the court on similar grounds and demanded cancellation of the decision of the Regional Court Banská Bystrica.

Legal issue

- (1) Is a consumer protection organization allowed to submit an application for preliminary injunction according to Act No. 250/2007 Coll. on Consumer Protection, as amended?
- (2) Can such a confirmed preliminary injunction deprive the plaintiff of its constitutional rights?

Rozhodnutie

The court decided that the assessment of the Regional Court Banská Bystrica was not violating any constitutional rights of the plaintiff.

The court came to a conclusion that the reasoning of the District Court Banská Bystrica and the Regional Court Banská Bystrica was indeed minimalistic. It further acknowledges that these courts could have investigated certain legal aspects of the preliminary injunction in greater depth. However, given that quick process is one of the essential characteristics of the preliminary injunction proceedings, the court understood and accepted this omission.

As the court points out, none of the grounds raised by the plaintiff could be substantiated. The resolutions issued by the aforementioned courts cannot be considered as arbitrary nor unconstitutional.

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Result

The court rejected the complaint of the plaintiff.