

Case Details

Case Details

National ID	6 Co 84/2011
Členský štát	Slovensko
Common Name	link
Decision type	Court decision in appeal
Decision date	26/05/2011
Súd	Krajský súd Prešov
Predmet	
Žalobca	Unknown
Žalovaný	Unknown
Kľúčové slová	aggressive commercial practices, consumer, consumer debt, injunction, unfair commercial practices

Directive Articles

Injunctions Directive, [Article 1, 1](#). Injunctions Directive, [Article 2, 2](#).

Headnote

(1) Practice when a person or legal entity provides a financial loan and directs or otherwise influences consumers with the aim to designate the purpose of the financial loan as business, profession or entrepreneurship, even in cases when the applicants requested a consumer loan is considered unfair commercial practice as it prevents the application of protective consumer measures such as the rules for contract termination, preliminary payment of the loan, the obligatory information on overall expenses, etc.

(2) The text of the preliminary injunction can match the text of the motion providing that the purpose of the temporary protection by the preliminary injunction cannot be accomplished by other means.

(3) For the purposes of the preliminary injunction, it is sufficient to prove that the rights are being infringed.

Facts

The District Court accepted the motion to issue a preliminary injunction filed by the plaintiffs. The District Court issued the preliminary injunction obliging the defendant to refrain from certain activities, in particular providing financial loans that persuade or otherwise influence consumers with the aim to designate the purpose of the financial loan as business, profession or entrepreneurship, even in cases when the applicants requested a consumer loan, in order to secure that the consumer protection legislation would not be applicable. The District Court further stated that such practice represents an unfair commercial practice as such conduct prevents the application of protective consumer measures such as the rules for contract termination, preliminary payment of the loan, the obligatory information on overall expenses and others. These commercial practices also prevented the Slovak Trade Inspection to carry out inspections of the defendant's premises.

The defendant appealed the decision of the District Court and proposed that the appellate court dismisses the motion to issue a preliminary injunction on the basis of insufficient grounds. The defendant claimed that the motion could not be executed, lacked legal grounds and was insufficiently specific. The defendant further claimed that the debtors voluntarily concluded the contracts for loan and duly designated the purpose for such loan and therefore the purpose of the loan was designated by the debtor and not by the defendant. Furthermore, the defendant argued that

the wording of the preliminary injunction fully corresponded to the wording of the motion for its issuance which is contrary to the Slovak case law.

Legal issue

- (1) Is the practice when a person or legal entity provides a financial loan and directs or otherwise influences consumers with the aim to designate the purpose of the financial loan as business, profession or entrepreneurship, even in cases when the applicants requested a consumer loan, an unfair commercial practice?
- (2) Can the text of a preliminary injunction be almost identical to the text of the motion that requested the preliminary injunction?
- (3) Is it sufficient to prove the continuous infringement of rights in order to issue a preliminary injunction?

Rozhodnutie

The court did not agree with the defendant's claim that the wording of the motion to issue a preliminary injunction cannot match the wording of the preliminary injunction itself. The court stated that in principle the wording of the motion to issue a preliminary injunction should not match the wording of the preliminary injunction itself, nevertheless if the purpose of the temporary protection by the preliminary injunction cannot be accomplished by other means, the formalistic requirements of different wording has to be abandoned. The court further states that such measure is only temporary and does not influence the decision in the matter itself in any way.

The court also noted that Section 3 (5) of Act No. 250/2007 Coll. on consumer protection, as amended (the "Act on consumer protection"), expressly mentions the option to demand the issuance of the preliminary injunction as a protection against unfair commercial practices.

In this respect the court points out to the Directive of the European Parliament and the Council 2009/22/EC from 23 April 2009 on injunctions for the protection of consumers' interests (the "Directive"). According to Article 1 (1) of the Directive "the purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to actions for an injunction referred to in Article 2 aimed at the protection of the collective interests of consumers included in the Union acts listed in Annex I, with a view to ensuring the smooth functioning of the internal market." Furthermore, pursuant to Article 2 (2) of the Directive "for the purposes of this Directive, an infringement means any act contrary to the Union acts listed in Annex I as transposed into the internal legal order of the Member States which harms the collective interests referred to in paragraph 1." The court concluded that the Directive provides for protection in the abridged procedure and the proceeding on the issuance of the preliminary injunction should be deemed as abridged procedure.

The court stated that the preliminary injunction is only temporary measure and in the case at hand it does not hinder the crucial economic activities of the defendant which also meets the condition of proportionality of the preliminary injunction .

The court opined that the prohibition of the unfair commercial practice cannot harm the supplier, on the contrary it may represent an effective protective measure with respect to collective consumer rights.

Moreover, the court stated that the conduct of the defendant is contrary to the Directive as it represents unfair commercial practice and may also fulfill the definition of aggressive commercial practice. The court points to Sections 7, 8, 9 of the Act on consumer protection which governs the criteria for deferring lawsuit as well as criteria for assessment of the given commercial practice as unfair. For the purposes of the preliminary injunction, it is sufficient to prove that the rights are being infringed which was sufficiently proved by the solemn declarations.

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Result

The court stated that the decision of the District Court is sufficiently specific and capable of being executed and its aim was to prevent the defendant to impose any pressure on consumers to designate different purpose for the loan. The court confirmed the decision of the District Court.
