



19 June 2024

Dominik Dürsterhaus, Legal Secretary, Court of Justice of the EU, Luxembourg

CASE STUDY

Facts:

On 5 October 2012, Mr and Mrs Godin, the applicants in the main proceedings, concluded a credit agreement with Commercial Bank Croatia for the sum of EUR 17 200 for the purchase of immovable property located in Split, where they already reside.

That agreement provided that the rate of interest was fixed for the first year after the credit was made available. After that period, it was to be based on the rate posted at the bank's headquarters, increased by a variable referred to as 'service of the borrower's debt', which reflects the latter's ability to meet payment deadlines, expressed in terms of days of delay in payment beyond the due date.

In addition, the agreement provides for an increase in the rate of interest over the period of the contract based on the ability of the borrower to make repayments. Accordingly, the adjusted interest rate is increased on the basis of the length of delay in making payments.

On 11 October 2012 Mr and Mrs Godin entered into a first mortgage, with the same bank, on the immovable property acquired in order to guarantee payment of the amounts due under the credit agreement of 5 October 2006.

On 12 May 2015 the bank notified the applicants in the main proceedings that they had failed to comply with their contractual obligations, since they had not made certain repayments under the credit agreement. They were therefore given seven days' notice, from the date of the notification, to repay the amount of EUR 233.91. In case of non-payment the whole outstanding balance would become payable and the bank would institute enforcement proceedings.

The debt owed by the applicants in the main proceedings was the subject of two successive assignment agreements and was ultimately acquired by the company Support Collect under a debt assignment agreement of 5 August 2015.

On 18 May 2018 Support Collect instituted enforcement proceedings against the applicants in the main proceedings.

On 15 March 2019 a bailiff, on the instructions of Support Collect, issued an order for the recovery of an amount of EUR 16 980.75, on the basis of the loan agreement, guaranteed by a mortgage, entered into by the applicants in the main proceedings.

That order provided the basis for the acts of enforcement, which consisted of a salary attachment order and enforcement proceedings against the immovable property concerned.

On 13 June 2019 the applicants brought an action before the Court of first instance in Split opposing all the enforcement measures. They seek the annulment of the enforcement measures as well as the order for payment.

On the merits, the applicants in the main proceedings argue that the enforcement proceedings are based on a debt which does not satisfy the conditions laid down in Article 999(1) of the

Code of Civil Procedure, since the debt is not certain, of a fixed amount and due. Consequently, there is no clarity as to the precise sums which make up the overall amount of the debt.

After ordering that an expert opinion of an accountant be obtained to establish the precise amount of the debt, the referring Court examined the compatibility of clauses determining interest rates of the type contained in the credit agreement at issue in the main proceedings with Directives 93/13 and 2008/48, and the compatibility of Article 201 of Emergency Decree No 66 with Articles 49 TFEU and 56 TFEU and Article 47 of the Charter.

National law:

Article 992 of the Code of Civil Procedure provides:

‘Enforcement may take place only pursuant to a court judgment or other written act which, according to law, constitutes an enforceable instrument.’

Pursuant to Article 999(1) of that code:

‘Enforcement against movable or immovable property may take place only if the debt is certain, of a fixed amount and due.’

Article 612 thereof provides:

‘Persons affected or injured by enforcement may object to enforcement and any enforcement order.’

Article 201 of Emergency Decree No 66 of 6 December 2012 on credit institutions and capital sufficiency specifies:

‘Credit agreements, including real or personal guarantee agreements, concluded by a credit institution, shall be enforceable.’

Questions referred under Article 267 TFEU on 25 February 2020:

(1) Can terms such as those concerning “service of the borrower’s debt”, that refer to the existence of delays in payment on the part of the debtor, and those relating to the increase in the rate of interest after one year, after which the rate is the variable reference rate of the Commercial Bank Croatia, posted at the bank’s headquarters, increased by 1.90 [percent], be considered to be unfair within the meaning of Directive 93/13?

(2) Have the applicable provisions of Directive 2008/48 been infringed in respect of the credit agreement at issue ?

(3) Does the existence in national law of a provision such as Article 120 of Emergency Decree No 99, which recognises the enforceability of the bank credit agreement, prejudice the right to freedom of establishment laid down in Article 49 TFEU and the freedom to provide services laid down in Article 56 TFEU in that it discourages citizens of the Union from establishing themselves in a State in which the same value as an enforceable instrument

represented by a judgment is conferred on a bank agreement concluded by a private institution?

(4) Does the principle of effective judicial protection of the rights that individuals derive from EU law, as guaranteed by Article 47 of the Charter preclude a provision of national law, such as that laid down in Article 201 of Emergency Decree No 66, which recognises the enforceability of a bank credit agreement concluded by private agreement and without allowing the terms thereof to be negotiated with the debtor, under which, with brief verification and after obtaining authorisation for enforcement in a non-contentious procedure, and with limited scope for the court to assess the amount of the debt, a bailiff may seize the debtor's assets?

Please assess the Court of Justice's jurisdiction for this preliminary ruling reference and the admissibility of the questions referred.