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APPLICATION OF EU LAW IN THE FIELD OF CONSUMER PROTECTION BY SLOVAK COURTS

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Abstract in original language

V rámci príspevku budem prezentovať výsledky výskumu, ktorý som realizovala na rozsudkoch všeobecných súdov v Slovenskej republike, ktoré sú uverejňované na internetových stránkach Ministerstva spravodlivosti SR, s cieľom reálne popísať základné trendy aplikácie práva EÚ v oblasti ochrany spotrebiteľa. V rámci výskumu som skúmala rozsudky týkajúce sa sporov zo zmlúv, na základe ktorých sú poskytované peňažné prostriedky za úplatu, ako aj právne spory týkajúce sa vymáhania plnení priznaných rozhodcovským rozsudkom od spotrebiteľov.

Key words in original language

spotrebiteľská zmluva, aplikácia práva EÚ, rozhodcovské rozhodnutie,

Abstract

In my paper I will present the results from the research, which I carried out among judgements of Slovak courts which are published on the Ministry of Justice of Slovak republic website, with an aim describe the basic trends of application of the EU law in field of consumer protection. I will focus on judgements concerning the disputes raised form contracts on providing loans and the execution of arbitration decision against consumers.

Key words

Consumer contract, application of EU law, arbtitration decision,

1. INTRODUCTION

The application of European Union law (here and after as "EU law") by ordinary courts is the most important part of realisation of rights of private individuals, which are conferred upon them. This was my primary motivation to examine the practical application of EU law, which I had done among the judgments of Slovak courts. I had focused on a field of the consumer protection, because there are several problems with the application of the EU regulation in this field, which I'm going to present in this article. But firstly I will present the results of the research[1] I had done, in which I had examine

[1] The judiciary decisions included into the research were selecting from the decisions published on the official website of the Ministry of Justice of Slovak republic by the method of searching for some specific terms in the

how the courts decide the cases between a supplier and a consumer concerning financial claims from contracts on providing loans of any kind. I will focus on how the courts interpret directives in argumentation and how they use and understand the key decisions of the Court of Justice of European Union (here and after as "ECJ"). Secondly I will provide some facts about the executions of the arbitrational decisions in the cases of contracts between the supplier and consumer on providing loans. Thirdly I will analyze the impact of the judicial decisions on the situation of consumer protection in the field of providing loans by suppliers other than banks and offer possible solutions on the questions which arise.

2. LEGAL REGULATION OF THE CONSUMER PROTECTION IN SLOVAK REPUBLIC

To assess the decision-making of general courts in Slovak republic is necessary to look closer on the legislation on consumer contracts in the Civil Code[2] as a cross-sectional legislation adopted as an implementation of Council Directive 93/13/EEC[3]. [4] That is why I will compare the legislation in Civil Code and other legislative acts governing consumer contracts to the regulation in the Council Directive 93/13/ECC. The main implementation was introduced by the Act No. 150/2004[5]. Regarding the definition of consumer and supplier in Civil Code, these are essentially identical to the definitions contained in the Directive 93/13/EEC. Directive 93/13/EEC covers also definitions of unfair terms in consumer contracts, and indirectly defines a consumer contract as a contract concluded between consumer and supplier without any further conditions. The Civil Code defines the consumer contract and unfair terms (or "inacceptable conditions"[6] - the term used by the Slovak legislator) differently.[7]

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decisions. In total the amount of decisions was 700 and approximately 1/3 of these decisions concerned cases from contracts on providing loans and executions of arbitral awards. The complete list of the decision is included in my dissertation. Some of the included decisions are not published which I mention when citing them.

[2] Act No. 40/1964 Coll. Civil Code as amended

[3] Council Directive No. 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal L 095, 21/04/1993, P. 0029 - 0034

[4] See also Cirák, J: *Vymožiteľnosť spotrebiteľských práv v kontexte úpravy nekalých klauzúl v spotrebiteľských zmluvách*, In: Vymožiteľnosť práva v Slovenskej republike, Pulished by: Justičná akadémia Slovenskej republiky(Judicial Academy of the Slovak republic), Pezinok, 2009

[5] Amendment act no. 150/2004, which changes and amend Civil Code effective from 1 April 2004

[6] In Slovak language it is "neprijateľné podmienky"

Based on the Act No. 150/2004 *consumer contract* was defined as pecuniary contract concluded in accordance with the Civil Code provided that the consumer cannot individually affect the proposal to the conclusion of the contract. This legislation didn't take into account a possibility to choose an application of Commercial Code[8] on the relation by the parties, because a loan can be granted in accordance to the type of contract under Civil Code and also under Commercial Code even when one party is a consumer. In accordance with the act no. 150/2004 and Directive 93/13/EEC an unfair term can be defined as a contractual term that causes a significant imbalance in rights and obligations of the parties to the detriment of the consumer. According to the Directive 93/13/EEC there is a second part of the definition, that the contractual term is not individually negotiated, but this part of the definition was not initially transposed into the Civil Code definition.

Despite the fact that this definition was not ideal, the problem with application begins when there was another definition introduced by the Act No. 634/1992 Coll.[9] on the consumer protection, as amended (*a lex specialis* to the Civil Code) effective from 25. 11. 2004. This act defined the consumer contract as contract concluded under Civil Code, Commercial Code or any other contract characterised by the fact that is concluded in many cases and the consumer don't affect the content of the contract markedly. As there can be seen, these definition are different and were unified by the change of the Civil Code effective from 1. 1. 2008.[10] Interesting on this situation is that the definition in the consumer protection act was more appropriate to the definition contained in the Directive 93/13/EEC[11]. This problem also emerged in the practical application of legal rules by courts in Slovak republic according to the research.[12]

By the later amendment of Civil Code there were several changes introduced. Firstly the whole list of the unfair terms contained in the annex of the Directive 93/13/EEC was copied into the Civil Code.

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[7] Further in the text I will use unfair terms, because this term is used by the directive.

[8] Act No. 513/1992 Coll. Commercial Code as amended

[9] This Act was replaced by the Act No. 250/2007 Coll. on the consumer protection effective from 1.7.2007

[10] Act No. 568/2007 Coll. which change and amend the Act No. 527/2002 Coll. on voluntary auctions and on amendment of the Act No. 323/1992 Coll. on notaries and notary work as amended

[11] But on the other hand the Directive 93/13/EEC is not mentioned in the annex of the consumer protection act.

[12] There was a great discrepancy between the courts when they apply the definition in order to determine if the particular contract is a consumer contract.

Secondly this amendment implemented also the second part of the definition of the unfair term and defined which term should be considered as individually negotiated with burden of proof on the supplier. Another great change was made by the amendment to the Civil Code effective from 1. 6. 2010[13], which stated that in a consumer contract on proving money for reward the sanction for delay of payment of the consumer cannot exceed the amount set by the regulation[14].

Generally the first problem concerning the contract for providing loans is that it was not clear, if these contracts were consumer contracts or contracts concluded under the Commercial Code. If the contract is concluded under Commercial Code, the parties to the treaty can decide freely on the amount of interests for providing loan, the penalty payment or penalty interest, but this is limited by the provisions of Civil Code for the consumer contracts. Also the limitation period according Commercial Code is four years in comparison to the three years limitation period in the Civil Code. Thirdly if these contracts were consumer contracts, other terms could be assessed whether they are unfair in the sense of the Directive 93/13/EEC or Civil Code regulation, not only if they conflict with the principles of fair trade as a rather different category of rules.

As can be seen from the about explanation, the regulation in Slovak legal order has changed from the year 2004 until now rapidly and all this changes also with the decisions of the ECJ had influenced the decision practise of the courts in Slovak republic. And *vice versa* the case law of the courts and its development influenced the legal regulation in the consumer protection. I will try to explain this during summarising the research results.

3. APPLICATION OF EU LAW IN THE CASES OF CONTRACTS ON PROVIDING LOANS

3.1 GENERAL FRAMEWORK OF THE CONTRACTS ON PROVIDING LOANS

The cases and legal relations based on the contracts on proving loan or credit are very diverse, which is caused by rather diverse subjects which are providing loans. Each of these entities uses its own type of contract, although the conditions are in some way similar. These similar conditions are for instance a choice of Commercial Code as the legal framework for these relationships with those consequences that I mentioned above. Mostly the entities, other than banks, usually contract higher interest rates when providing a loan in comparison to

[13] Act No. 129/2010 Coll. on consumer loans and other loans for consumers and on change and amendment of other laws

[14] Government Regulation No. 87/1995 Coll. by which are specified several provisions of the Civil Code as amended

the interests generally required by banks, higher interests as sanction for delay of payment (for example 0,1 % per day, 0,05 % per day, 0,08 % per day or 20 % per annum, etc.) as set by the legislation in Civil Code and the penalty payment is contracted in addition to the penalty interest either in form of percentage from the loan or like interest of 0,1% per day for a certain period. But in addition these contracts can contain also different types of arrangements for secure that the debtor will return the loan, such as agreement on transfer of the ownership of some property rights, lien agreement, letter for attorney incorporated in contract for lawyer to acknowledge the debt on behalf of the debtor or an arbitration clause.

Generally in 2/3 of the contracts for providing loans the courts decided that these contracts are of consumer character and apply the consumer protection regulation. The courts adjudicate the penalty interests only in the amount set by the legislation in Civil Code and sometimes they lowered the penalty payment or in several cases they lowered also the interests agreed by the parties for providing the loan. In these cases decided in favour for the consumer the courts relatively often cited the provisions of the Directive 93/13/EEC, mentioned the transposition of this directive or used the directive to interpret the provisions of Slovak legislation. In the other 1/3 of the cases the courts considered the relations based on the same contracts as commercial relations and adjudicate to the creditor the interests and penalty payments as concluded in the contracts.

3.2 APPROACH OF THE SLOVAK COURT TO APPLICATION OF THE EU LAW IN CONTRACT FOR PROVIDING LOANS

3.2.1 LEASE CONTRACTS

From the judicial decisions included into the research it is clear that from 2006 the courts realize that there is some EU law, especially the Directive 93/13/EEC which they should apply. In several decisions the court simply stated that this directive was implemented into the legal order of Slovak republic, while there is nothing in the decision, what would indicate how precisely the court apply the Directive or what provision of the Directive did the court use. [15] For example in the decision of District court Brezno[16] concerning a dispute about delay with payment from some kind of lease contract, in which the consumer withdraw from the contract, because the product should be according the contract delivered only after the payment of whole price and because the price was too high for the consumer. The consumer

[15] For example see the judgment of the District Court Žilina from 27. 9. 2007 issued in the proceeding under no. 14C/40/2007 or the judgment of the District Court Čadca from 18. 9. 2007 issued in the proceedings under no. 4C/185/2005

[16] The judgmment of the District Court Brezno from 4. 7. 2007 issued in the proceeding under no. 3C/69/2006

also pays 25% of the price as penalty payment for withdrawal. But the supplier nevertheless sues the consumer alleging that she is obliged to pay the whole price, because the withdrawal from the contract was not valid. In this case the court suggests that it was proven that this contract is not only in a breach of Slovak legal regulation, but also in contrary to the Directive 93/13/EEC. The court points out the objectives of the Directive, particularly that the contracts should be clear, if there is a doubt about the meaning of the provisions of the contract, the court should prioritize the interpretation which is favourable for the consumer and the case was decided in favour for the consumer.

In the years 2008 and 2011 the courts in all cases involving claims arising from lease contracts or contracts about buying goods in instalments applied the consumer contract provisions in Civil Code. In approximately in 2/3 of these decisions the courts show a link between the Slovak regulation and EU law mostly by citation of Directive 93/13/EEC or by pointing out that it was implemented into the Slovak legal order. The interesting part of the decisions is that from some of these decisions is very clear that the court uses the Directive 93/13/EEC to extend the list of unfair terms contained in Civil Code, because the list of unfair terms in Civil Code was not identical with the list contained in the annex to the Directive 93/13/EEC.

Very clear (in the way of application of EU law) is the reasoning of the District court Žilina[17], which considered a contract for lease of a good with possibility to buy the product at the termination of the lease, as a consumer contract on which there is a need to apply the provisions on consumer contracts in Civil Code and Directive 93/13/EEC. The court further notes that in the time of delivering this decision Civil Code comprise an exemplary list of unfair terms in consumer contracts, whose inclusion into the consumer contracts is sanctioned by their nullity. According to the court Directive 93/13/EEC covers a wider list of examples of unfair terms including a requirement that a consumer who has not fulfilled its commitment to pay a debt has an obligation to pay a disproportionately high sum for compensation. The court points at the importance of interpretational importance of the Directive when applying a domestic regulation, which had implemented the directive. According to the court the Directive 93/13/EEC should be applied when the contract was drawn up in advance and the consumer could have no influence or control over the content of the provisions of the contract. After that the court declared the arrangement of the contractual penalty 30% of the price of the product for any breach of contract void, because there was no distinguishing between seriousness of the breach and because this penalty was contracted only when the breach was caused by the consumer. The court decided that the consumer has to pay the unpaid

[17] The judgment of the Distric Court Žilina from 25. 4. 2008 issued in the proceedings under no. 4C/450/2007

rent and interest for late payment in the amount prescribed by the Civil Code.

An example of application of the ECJ decisions by the courts in Slovak republic is a decision of District court Rožňava[18], where the court quoted an article 3(1) of the Directive 93/13/EEC and noted that the directive is necessary to be used as an interpretative rule for the provisions of Slovak legal order about consumer contracts. Subsequently the court stated that in accordance with the ruling of the ECJ in joined cases *Océano Gruppo*[19], effective consumer protection can be achieved only of the national court declares that it has jurisdiction to assess the unfair conditions on its own motion. Jurisdiction of the court to determine on its own motion that the condition in contract is unfair means to create appropriate means to protect consumers against unfair contract terms. The court closed the analyses by stating that the directive should be applied also when the contract was drawn up in advance and the consumer couldn'n have influence or control over the content of the provisions, which is *de facto* widening of the definition which was in the Directive 93/13/EEC but was not transposed into the definition in Civil Code after the amendment Act no. 150/2004.[20]

3.2.2 CREDIT OR LOAN CONTRACTS

From the judgments involved in research published in the years 2006 to 2008 it can be concluded that the courts not always considered a credit agreement as consumer contracts and on the conditions about the amount of interest and sanctions quite often applied provisions contained in the Commercial Code. They treat such agreements rather strictly in relation to contractual arrangements, because a loan agreement is considered under the provision 261 (3d) of the Commercial Code as so-called absolute commercial legal relationship regardless of the nation of the parties. On the other hand, under the provision 23a of the Consumer Protection Act no. 634/1992 contracts should be treated as consumer contracts also when concluded under Commercial Code if the contract is repeatedly using by the supplier and the consumer usually do not substantially affect the content of such contract. This provision of the Consumer Protection Act was in general not used by the courts, but there are some exemptions such as

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[18] The judgment of the Distric Court Rožňava from 11. 3. 2010 issued in the proceedings under no. 4C/31/2010

[19] Joined Cases *Oceáno Grupo Editorial SA v. Roció Murciano Quintero (C-240/98) and Salvat Editores SA v. José M. Sánchez Alcón Prades (C-241/98), José Luis Copano Badillo (C-242/98), Mohammed Berroane (C243/98) a Emilio Viñas Feliú (C-244/98)*, ECR 2000 I-04941

[20] See also for example the judgment of the District Court Piešťany from 26. 10. 2010 issued in the proceeding under no. 4c/145/2009 or the judgment of the District Court Galanta from 10. 2. 2010 issued in the proceeding under no. 17C/131/2009

the decisions of District Court in Žilina[21]. In these decisions the court finds, that although the loan agreement is signed according to provision 497 of the Commercial Code but with regard to the provision 23a of the Consumer Protection Act and Civil Code this agreement is a consumer contract. Interesting on this decision is that the court expressly provides that provisions of Civil Code in force at the time of concluding the contract did not correspond with the provisions of the Directive 93/13/EEC and that the term to pay disproportionately high sum in compensation for any breach of treaty provisions was not listen in the unfair terms in Civil Code. Subsequently, it states that the directives, unlike regulations, are not directly applicable. But on the other hand if the national regulation didn't comprise such unfair term it is appropriate to apply the Directive 93/13/EEC, because according the case law of the ECJ a directive may have direct effect.[22] With a reference to this Directive then the court decided that the claim of the supplier for a penalty interest of 0,03% daily has a nature of unfair term in the consumer contract and decided that this term is void.

In this decision is certainly also interesting that the court had decided to apply the provisions of the Directive 93/13/EEC directly although previously it declare that a directive does not have such characteristic according the EU law. Nevertheless, it can be concluded that the court more likely applied the Directive indirectly, because the Civil Code did not provide an exhaustive list of unfair terms. Therefore, if court had inspired in its deliberations on the Annex to Directive 93/13/EEC with regard to the determination that the contractual arrangement on the amount of penalty interest is an unfair term, it was just an interpretation of national law in accordance with the Directive rather than its direct application. But at least it shows that some judges are not sure about the difference between direct and indirect application of EU law, especially directives, because this is something completely different in comparison to the national legal system.

On the other hand there are also judgments concerning the agreements on providing loans in which the court did not apply any of the consumer protection provisions. Good example are the decisions of Regional Court in Trnava[23] in which the court reviews decisions of

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[21] The judgment of the District Court Žilina from 12. 9. 2008 issued in the proceeding under no. 11Cb/281/2007, from 18. 2. 2008 issued in the proceeding under no. 8C/54/2007, from 6. 8. 2008 issued in the proceeding under no. 11Cb/318/2007

[22] The court does not provide any further analyses whether the subject against who will be the directive applied, is State according to the CJ EU case law or even whether there are any other conditions which should be fulfilled and are fulfilled in order to conclude the direct effect of directive between two individuals.

[23] See the judgments of the Regional Court in Trnava from 4. 11. 2008 issued in the proceedings under no. 21Cob/280/2008 and from 18. 11. 2008 issued in the proceedings under no. 21Cob/323/2008

district courts where the courts did not adjudicate to the supplier the penalty payment along with penalty interest, because the parallel adjudication of those sanctions will breach the protection of consumer and such arrangement is an unfair term. These contracts were by the district courts regarded as typical agreement in which the consumer has no real affect on the content of the contract according to the provision 23a of the Consumer Protection Act. In the decision of the Regional Court the issue of whether it is a consumer contract was not addressed, instead the court applied only the provisions of Commercial Code and held that the supplier has right both on the penalty payment and the penalty interest, despite the reasoning of the district courts in the contested decisions.

The similar approach can be seen in decisions in which the court ingnores the consumer character of the particular contract on providing loan, despite the fact that the consumer could not imfluance the content of the contract and is obliged to pay 0,01% penalty interest along with penalty payment in case of failure to return borowed money. This hapened inspite the fact that the court in this decision applied provision 369(1) of the Commercial Code, which expressly state that if the obligation arise under a consumer contract, the penalty interest must not exceed the amount provided by the rules of civil law.[24]

Special category of the agreements on providing loans concluded with the agreements on transfer of ownership of real estate. These contracts grossly disturb the balance between the parties by hypertrophy of the security arrangements desinged exclusively to protect the creditor according to the courts. These contracts include for example a requirement that the debtor must redemonstrate the capability to repay the loan every year or on the demand of creditor while the creditor can at any time decide that the capablility of the debtor is not suficient and can demand from the debtor to pay the debt imediately. Courts in their judgments, in principle, note that the contract is in breach of good fait, creates a significant imbalance between the contracting parties to the detriment of the debtor and they believe it can be assumed that the aim was to acquire a property of the real estate by the creditor, which was temporarily transferred on the creditor by the contract, because the contract also contained an arrangement that the creditor is not obliged to pay the debtor the difference between the price of the real estate and the non-returned part of the loan of the debtor. During the research I did not find a judgmnet, which was decided in favour for

[24] See of instance the judgment of the District Court Kežmarok from 3. 6. 2009 issued in the proceedings under no. 8Cb/22/2009, the judgment of the District Court Ružomberok from 23. 4. 2009 issued in the proceedings under no. 6Cb/25/2009, the judgment of the District Court Zvolen from 19. 8. 2009 issued in the proceedings under no. 8Cb/14/2008

the creditor. Mostly these judgments refer to the Directive 93/13/EEC and sometimes the court cite the provisions of the Directive.[25]

3.2.3 CONTRACT ON CONSUMER LOANS

Rigidly courts treated also loans, which should be provided under a special Consumer Loans Act[26]. This can be demonstrated on the judgment of District Court Brezno[27] concerning a dispute over non-payment of debt based on a loan contract in which it was established that the legal relationship is governed by the Commercial Code. The court applied on this relationship provisions of the Commercial Code, despite the fact that at that time there were special rules for consumer loans in the Consumer Loans Act. On the other hand, it may be argued that at the time of conclusion of the contract and the time when the decision was delivered there was a doubt about the interpretation of the Consumer Loans Act.[28] The court ultimately award the creditor the amount of the debt together with the agreed penalty interest of 0,08% daily from the amount owed.

Similarly, however, decide other courts, for example a Distric court Komárno[29] in the same type of case as above mentioned. In this case the court also cites the provisions of Civil Code containing the consumer protection, but subsequently states that the claiment proved failure of the defendant to fulfill its obligation and decided that the supplier is entitled for payment of the debt together with an agreed amount of penalty interest 0,08% per day. This judgment is interesting also because the debtor's delay occurred before the amedment Act No. 150/2004 become effective and by fact that the supplier submit an action about month and a half before the expiry of four years limitation period according to the Commercial Code, so if the court would apply Civil Code, the claim would be barred by limitation.

In some of the judgments concerning those claims appears an attempt to point at the Directive 93/13/EEC, but it is not easy to find out how

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[25] See the judgment of the Regional Court in Banská Bystrica from 28. 8. 2008 issued in the proceedings under no. 16Co/152/2008, the judgment of the District Court Zvolen from 6. 6. 2008 issued in the proceedings under no.11C/42/2007, the judgment of the High Court of the Slovak republic from 31. 7. 2009 issued in the proceedings under no. 1 M Cdo 1/2009

[26] Act No. 258/2001 Coll. on the consumer loans as amended

[27] The judgment of the Ditrict Court Brezno from 10. 7. 2008 issued in the proceedings under no. 7Cb/144/2007

[28] In the provision 2(1a) of the Act No. 285/2001 Coll. on the consumer loans was not expressly stated that this act should apply also on the credit contracts only on the loans.

[29] The judgment of the Ditrict Court Komárno from 25. 9. 2008 issued in the proceedings under no. 5Cb/150/2008

the court exactly apply the cited provisions of the Directive 93/13/EEC. Completly incomprehensible in this respect is a decision of District court Lučenec[30] in which the court finds that supplier and consumer agreed on application of Commercial Code on their relationship. In the next sentence the court conclude that the legislature of the EU on protection of consumers was transposed into the Slovak legal order and that there is a category of unfair terms, which are prohibit in the consumer contracts. However from further analyses of the court it is realy not clear how the court take into account the directives or the protection of consumers in Slovak legal order, because he decides that the creditor is entitled the contracted interest of 14% per year and the penalty interest of 15% per year. He did not evaluate whether the contract is in compliance with the Consumer Loans Act and the consumer protection in general. Such a decision is not unique, for comparison see also decisions of District court Prešov[31] or Regional Court in Banská Bystrica[32].

4. ARBITRAL DECISIONS IN CONSUMER PROTECTION CASES AND ITS ENFORCEMENT

Without metioning the cases concerning arbitral awards will be this research incomplete. In the consequence of deciding cases by the courts in favour for consumers, the duration of judicial proceedings in Slovak republic and the effort of suppliers to gain an enforceable decision for execution as soon as possible, the companies providing loans included into the contracts with a consumer an arbitration clause. This arrangements caused two main types of cases before courts. The first type are cases for annulment of the arbitration awards, which on the other hand are very rare because of the passivity of the consumers. The second type of proceedings are related to the enforcement of the arbitration decision awarded in the cases of claims from consumer contracts. Becasue of limited scope of this article and very small amount of the judgments about the annulment of the arbotration awards, I will now focus on the enforcement of the arbitral awards in consumer protection cases and the problems, which arise among these cases. The enforcement procedure emerges as the only option for the court to intervene in favour of the consumer when there is an arbitration clause in the contract. Firstly this situation resulted to address a preliminary question to the CJ EU whether there is a possibility for the court in enforcement proceedings to assess unfair terms in consumer contracts, or to decide on the invalidity of the

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[30] The judgment of the Ditrict Court Lučenec from 9. 1. 2008 issued in the proceedings under no. 9C/82/2007

[31] The judgment of the District Court Prešov from 16. 1. 2008 issued in the proceeding under no. 14C/10/2006

[32] The judgment of the Regional Court in Banská Bystrica from 28. 8. 2008 issued in the proceeding under no. 16Co/152/2008

arbitration clause and draw the consequences, which would mean the impossibility of execution such a decision.

4.1 SOME REMARKS ON THE CASES OF THE CJ EU

The CJ EU has addressed such issues in several cases, while Slovak courts cite mostly two of them, *Asturcom*[33] and *Pohotovosť*[34], which are very similar issues and the judgment in the case *Pohotovosť* was issued on the basis of questions raised by the Regional Court in Prešov. The case *Asturcom* concerned a contract on providing telecommunication services, which included the arbitration clause. The consumer did not pay several invoices and terminated the contract before the end of the agreed minimum duration of the contract. The arbitrational award ordered the consumer to pay the sum of 669,60 €. The consumer did not appeal against the arbitration award to reach its cancellation, therefore the decision become final and the supplier submit a proposal for execution of the award. Spanish national court thought that the arbitration clause is an unfair term in consumer contract for several reasons, but the national law contains no provision for the assessment of the unfair nature of such clause during the enforcement proceedings. Thefore the court address a question to the ECJ whether the consumer protection under the Directive 93/13/EEC includes the possibility that the court deciding on the enforcement of the arbotration award, which was issued without the participation of consumer, can assess on its own motion the validity of the arbitration clause and subsequently annul the award on the ground that the arbitrational clause is an unfair term and harm the consumer.

The CJ EU in the above mention decision firstly finds that because of the unequal position of the supplier and consumer the Directive 93/13/EEC provides that unfair terms should not be binding on the consumer. This is mandatory provision directed towards the establishment of genuine balance between rights and obligations of the parties, while this aim should be achieved only by positive intervention for other party then the party of the contract.[35] From this it follows that the courts must be able to examine the unfair term *ex officio*. Consequently the court examines the question whether the obligation to ensure real balance means that there is an absolute consumer protection even in the case where the consumer is passive and didn't do anything to protect his or her rights and notwithstanding the fact that the national law in these cases respect the rule of *res iudicata*. After that the ECJ notes the importance of respecting the principle of *res iudicata*. There is no regulation of remedies in this

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[33] Case C-40/08 *Asturcom Telecomunicaciones SL p. Cristine Rodríguezovej Nogueirovej* from 8 October 2009, ECR 2009 I-09579

[34] Case C-76/10 *Pohotovost' s.r.o. v Iveta Korčkovská* from 16 November 2010, Official Journal C 030, 29/01/2011 P. 0012 - 0012

[35] Decision C-40/08 in case *Asturcom*, points 29 and 30

area at EU level it is necessary to apply national legislation which meet the requirements of equivalence and effectivness.

Subsequently, the ECJ analyzis whether the legislation in Spain meets these requrements. It notes that the 2month period for submitting an application for annulment of the arbitration award, which begins by delivering of the award, meet these requrements. Consequently it states that that compliance with the principle of effectiveness in the cicumstances, as in the main proceedings, can not require the court to replace the activity of the defendant who didn't participate in the arbitration or didn't submitt the action of annulment of an arbitration award, which therefore became final.[36] As regard the principle of equivalence, it is on the national court to determine whether, under similar national legislation, is authorised to review the unfair terms on its own motion, as if they were national rules on public policy. The scope for such a review depends on the particular national procedural rules, which can give the national court an opportunity to carry out such an assessment according to the similar remedies of domestic nature. If the court concludes that it has such power, and also that the arbitration clause in consumer contract is an unfair term, then the national court must draw all the consequences with a view to ensure that consumers are not bound by this clause.

That decision is in its conclusion actually quite ambiguous as to what result is to be inferred from a practival standpoint. Simply the ECJ leaves at the national court distretion under national law within set boundaries to decide in particular case. These boundaries are the obligation to examine the unfairness of terms in consumer contracts on their own motion, imperativeness of the provision of the Directive 93/13/EEC laing down that unfair terms are not binding on the consumer, and then that the effectivness requirements regarding the remedy does not automaticly mean that the court must substitute the absolute passivity of the consumer.

The same view took the ECJ in the decision *Pohotovosť*, which was similar as to the stage of the proceeding in which there was a question addressed and in terms of the consumer activity. This case concerned the contract for providing loan and the court considered several arrangements as unfair terms in the consumer contract. Mostly the content of the decision is the same as in the *Astrucom* case, as well as how the ECJ proceeded to resolve this case. The instruction given to the national court are a little bit more specific when it states that in the main proceedings, it appears that according to information provided by the national court national legislation requires to terminate the enforcement of the arbitration award unless the commintement awarded by the arbitration decision is contratry to good morals. So the ECJ give the national court an instruction that if there is a necessary national legislative instrument and the court has information about the legal and factual backround, it can also without

[36] Decision C-40/08 in the case *Asturcom*, point 47

a proposal assess the term in consumer contract even during the enforcement proceeding. When the answer is afermative that the court is obliged to draw all the consequences from the national legislation in order to ensure that the consumer is not bound by an unfair term.

So the main question which I will try to analyze is whether it is thus possible according to the Slovak legislation in enforcement proceedings to review the content of the agreement for providing loans and the arbitration clause and what are the consequences which the enforcement court draw in practice.

4.2 LEGAL REGULATION OF THE ENFORCEMENT OF THE ARBITRATION AWARD IN SLOVAL LEGAL ORDER AND JUDICIAL PRACTICE

During my research I find to types of court decision in execution proceeding. First type is decision on termination of the enforcement proceeding and second is decision by which the court rejects the application of authorisation for the bailiff to conduct the enforcement of the arbitration award which is necessary to conduct the enforcement in the begging. According to Slovak legislation, an arbitration award, which has become final, is after the limitation period for voluntary commitement enforeceable under the regulation for enforcement of the judgments. According to the Rules of Enforcement[37] is the bailiff obliged after receiving the application for enforcement to apply for the authorisation for the particular enforcement of the judgment or arbitration award. According to the provision 44(2) of the Rules of Enforcement the court examines the application for authorisation of the bailiff, the application of the creditor and the title for execution (judgment, arbitration award, ect.).

If the court finds no contradiction between the application for authorisation to levy of execution, the proposal for levy of execution or the title for execution with the law, he issues the authorisation for enforcement within 15 days from recieving a request from the bailiff, otherwise the request is refused by an order against which the appeal si possible. After the order become final the court terminates the enforcement proceeding also by an order even without an application. Under the provision 56(2) of the Rules of Enforcement, the court may permit the suspension of the enforcement where it si expected that the execution will be stopped. According to the provision 57(2) Rules of Enforcement the court may stop the execution when it results from a special legal act, in this case the Arbitrational act even without an application. Under the provision 45 of the Arbitration Act[38] the court may terminate enforcement of the arbitration award either on a proposal or on its own motion, if, among other things, the judgment suffers by procedure error or the arbitrational award contains a

[37] Act No. 233/1995 Coll. on bailiffs and enforcement, as amended

[38] Act No. 224/2002 Coll. Arbitrational Act, as amended

commitment which is impossible to fulfil, illegal or contrary to good morals.

On this bases there are several question which arise in the context of the decision of ECJ and Slovak legal regulation of the arbitrarion and enforcement of the arbotration awards. To resolve the questions let firstly analyse the approach of the Slovak court to the enforcement of the arbitration awards in the cases based on the consumer contracts. As we will see the main conflict is about the scope of examination which is given to the execution court to review the arbitration award according to the provision 45(1c) of the Arbitration Act. What exactly means that the court can terminate the enforcement of the arbitration decision when the commitment set in the decision is impossible in practise is contrary to the law or good morals. As we can see above there is no clear instruction given by the ECJ to the national courts. The ECJ only says that the examination of the consumer contract with the arbitration clause is permitted only if the national law allows it. The annulment of the arbitration award or any other decision of the enforcement court leading to unenforceability of such decision is only possible if the national legal order allows it. On the other hand there is no such obligation arising from the requirement of the effectivity to supplement the passivity of the consumer, the ECJ respect the rule of *res iudicata*, but the court should ensure that the unfair term in consumer contract will not be binding on the consumer, if it is possible according to the national law. Because the boundaries given by the ECJ are so contradictory in the result, that it cannot by stated that the national court should in any case have the competence to refuse the enforcement of the arbitration decision in the case concerning the consumer. Subsequently it cannot be used by the Slovak courts to decide on the meaning of article 45(1c) of the Arbitration Act.

Because of the limited space in this article I will not analyse the other part of the problem concerning the conflict about when the court has a competence to terminate the enforcement of the arbitration decision. The problem is whether there is a possibility not to issue the authorisation or if the court should firstly issue the authorisation and then examines the conditions of the enforcement proceedings. When there is not a competence to examine the arbitration award in the way that the courts do, than it is not important when the competence is applied, it will be illegal in both situations. I will make just one remark on this issue. In practise there is a difference between these situations in the point of view of the consumer, because after the court issue the authorisation, the bailiff should begin the enforcement and in reality can obtain some money from the consumer before the execution will be terminated by the court afterwards. In the situation that the court refuse to issue the authorisation for the enforcement, the consumer wouldn't even know that there is an enforcement procedure against him or her.

4.2.1 WHEN THE COURT FINDS UNFAIR TERMS OTHER THAN THE ARBITRATION CLAUSES IN THE CONSUMER

CONTRACT ARE VOID IN THE ENFORCEMENT PROCEDURE

This issue is discused broadly from the year 2009[39], because around this time courts in Slovak republic observe rapid increasment of the enforcement of the arbotrational decisions, while the commitement awarded by the decision was based on the contract on providing loan for a consumer with more or less the same content. From the contract is evident that the interest for providing the loan is really high, mostly 0,25% daily (what is 91,25% annually). These contracts also contains more unfair terms, which are absolutly void, like there is no possibility for the consumer to pay back borowed money without payment all the contracted interests, there is also an arrangement which means that the Commercial Code applies on the contract and the contracts did not contain an information about annual percentage rate of charge, which means according to the applicable law[40] that the loan should be provided without any interests. But these fact are not taken into account by the arbotrator and the arbitrational decision imposes an obligation on the consumer to pay all the agreed payments including the interests, penalty interest and penalty payments as another sanction for breaking the contract obligaitons. On the bases of these allegations the commitement awarded by the arbitration decision is band by the law. Some of the authors in the discussion[41] claim that the arbitration clause itself is the unfair term which is void. As the result of this situation it is proposed to the court to terminate the enforcement of the arbitration decision is such cases on its own motion, because this is the best way how to protect the consumer.

Generally it is very difficult to gain some judicial decisions issued in the enforcement proceeding, because they are not obligatory published even on the website of the Ministry of Justice of Slovak republic. But from those decisions I have there can be drawn to types of judicial approach as I mention above. They differ on the bases of reasons used in the orders by which the court refuse to issue an authorisation for enforcement to the bailiff. Some courts[42] have an effort to examine the

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[39] Bajánková, J.: *Spotrebiteľ v exekučnom konaní*, In: Vymožiteľnosť práva v Slovenskej republike, Justičná akadémia Slovenskej republiky, Pezinok, 2009, str. 14-15

[40] Act No. 129/2010 Coll. on the consumer loans and other loans for consumers

[41] To the discussion of the admissibility of the arbitration clauses in the consumer contracts see: Drgoncová, J.: *Rozhodcovské súdy a ich právomoc v ochrane spotrebiteľov*, In: Justičná revue, No. 11/2010, p. 1159; Bardač, R: *Ad: rozhodcovské súdy a ich právomoc v ochrane spotrebiteľov*, In: Justičná reuve, No. 6-7/2011, p. 930

[42] For instance see the order of the District Court Rožňava from 25. 2. 2010 issued in the proceeding under no. 10Er/757/2009-12, order of the Regional Court in Trnava from 30. 9. 2010 issued in the proceeding under no. 10CoE/160/2010-31, not published

commitment awarded by the arbitrator even when they find that there are some unfair terms in the consumer contracts and try to separate the sum of loan from the sum of interests based on these unfair terms. The result should be that they will issue the authorisation for the enforcement of the sum of loan but deny the enforcement of the interests. But they cannot separate it only on the basis of the arbitration award and so they invite the claimant/supplier to submit the contract to the court on order to determine the exact sum of the loan interests. In this type of decisions the court did not allege the nullity of the arbitration clause at all.

The claimants mostly refuse to deliver such documents to the court. The argumentation of the claimants/suppliers are that the court is not entitled to examine the contract in the enforcement procedure nor according to the Arbitrational Act or Rules of Enforcement, the scope of the courts competence in the enforcement of the arbitration decision is to examine only of the decision hasn't any evident error regarding the award itself. Firstly they based the allegations of the fact that there exist according to the Arbitration Act a separate action for the review of the arbitration decisions and that the consumer has a right to submit such action. In such proceeding for annulment of the arbitration decision the court has full competence to examine the conditions of the contract and the award, not in the enforcement procedure. It is illogical if the court has greater competence to examine the contract with the arbitration clause as legal basis for the certain relationship, than it has when it decides on the annulment of such arbitration award. That is because the annulment can be sought only for certain reasons expressly listed in the provision 40 of the Arbitration Act. Secondly the Rules of Enforcement require only three documents to be submited to the execution court to issue the authorisation for levy the execution. These documents were delivered and the court does not have the right to require the contract and should issue the authorisation.

The court did not agree with the claimant, because according to its view the court has a right to examine the arbitrational decision in accordance with the above mention provision 45(1) of the Arbitration Act, because the court can terminate the execution of the arbitration award which oblige to the commitment which is impossible in practice, contrary to law or good morals. The court interprets it in a way that if certain provisions of the contract on providing loan are contrary to law and good morals that the award granted by the arbitration decision in accordance with such contract is issued contrary to law and that the court must terminate the enforcement of such a decision. Because the court has the obligation to examine the unfair contract arrangement in consumer contracts on its own motion and to declare them void, as long as the court didn't have the contract, he cannot assess the arrangement in it to decide on this, therefore the court refuse to authorise the bailiff to levy the execution. But on the other hand, the execution court isn't an appellate court because it has not a competence to annul the arbitration decision, but only to deny the enforceability of it. If the applicant will submit all the necessary documents to decide which claim is lawful and which isn't, the court can issue the authorisation for levy the execution.

4.2.2 WHEN THE COURT FINDS THE ARBITRATION CLAUSES AS AN UNFAIR TERMS IN THE CONSUMER CONTRACT ARE VOID IN THE ENFORCEMENT PROCEDURE

In other cases[43] despite the fact that the arbitration clause isn't exclusive the courts finds that this clause in consumer contract is void because it is an unfair term. This clause states that the arbitration court is competent to resolve the case if any of the party to the contract will submit an application to it, but any of the party can choose between the arbitrator and a court. The court states that after the supplier submits the case to the arbitrator the consumer cannot choose to submit a claim to the court, so the consumer is, by the conduct of the supplier, forced to use arbitrator to resolve the dispute. This is in fact contrary to the consumer protection legislation in Civil Code.[44] The courts state that they have the competence to examine the execution title because of the provision 57 of the Rules of Enforcement which set several not only procedural but also material reasons to terminate the enforcement procedure and in connection with this provision the courts stated that the conditions set in the provision 45(1) of the Arbitrational Act are material conditions. Failure to comply with the material conditions results in inadmissibility of execution. The provision 44(2) of the Rules of Enforcement set down an obligation for the enforcement court to examine the compliance of the execution title with the law, which is not only formal process but rather an examination of whether there are any provisions of the law which can preclude the enforcement of such title. That is what the court should do when inquire the compliance of the arbitration award with the provision 45(1) of the Arbitration Act.

The material force of the decision also in arbitration means that there accrue a qualitatively new relationship between the parties in the form of claim adjudicated by the court/arbitrator, which means that the dispute cannot be decided again and the decision is binding between the parties and to all authorities. But in the legal system there are some exemptions from the material force of the decisions. The identification of reasons and scope of these exemptions which affects the material force of the decision is set by the legislature and the court must apply it within its competence. The court that states that it isn't bound by the effect of the material force of the arbitration award when it decides on the annulment of the arbitration decision according to the provision 40 of the Arbitrational Act. Subsequently the provision 45 of the Arbitrational Act gives the court special base for examination of the arbitration award and for such an examination the court must

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[43] The order of the Regional Court in Prešov from 19. 5. 2011 issued in the proceeding under no. 6CoE 60/2011 not published; The order of the Constitutional Court of the Slovak republic from 24. 2. 2011 issued in the proceeding under no. IV US 55/2011-19

[44] The provision 54(1r) of the Civil Code

necessary exclude the consequences of the material force of arbitration decision. The execution court is able in the assessment of the arbitration decision in the light of the reasons listed in the provision 45 of the Arbitration Act to look on this decision as it is not materially binding for it. The consequence of this approach is rather different from that above mention, because when the court denies issuing the authorisation of the bailiff then the case can be decided by the court again and this will not be in breach of the *res iudicata* principle.

5. CONCLUSION

The suppliers from these cases also submitted a complaint to the Constitution court of Slovak republic, alleging that their constitutional rights for fair trial, for property and legitimate expectations were breached by these kinds of decisions. I will not go through the argumentation of the Constitutional court, because of limited scope of this article. Very briefly the Constitutional court decides that the decisions of the courts weren't arbitral, the argumentation of the courts were very good explained, the court decides within its competence when interpreting and applying the relevant provisions of law, its considerations are clear, based on facts, logic and in constitutional point of view are legitimate and acceptable. [45]

But on the other side is this kind of approach of the courts really necessary in the protection of the consumers? Despite the fact that the scope of examination of the arbitration awards can be interpreted very logically and persuasively also rather different and more constraining as I indicate before in the objections of the suppliers, I will now focus on the analyses of the problem from the bigger perspective. From the above mentioned decisions is clear that in the second type the courts deny to issue the authorisation for enforcement of the arbitration decisions even in the part of the claim. This has broad consequences. Even if we admit that the decision of the enforcement court, not appellate court, breaks the material force of the arbitration decision and there is a possibility to enforce at least those claims which are lawful, there are further problems. Firstly there is a doubt how the courts will react on the submissions in the same cases which were decided in arbitration, because as I mentioned before courts don't think in general that the arbitration clause is a void unfair term in consumer contract itself. There is a posibility that the court will reject the claim because of the *res iudicata* principle. Maybe the suppliers

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[45] Compare Slašťan, M.: *Acceptance of Human Rights and Constitutional Values in Reviews of Arbitral Awards by the Courts of the Slovak republic*, In: *Czech (& Central European) Yearbook of Arbitration*, here: http:// ssrn.com/abstract=1796004; The order of the Constitutional Court of the Slovak republic from 27. 5. 2010 issued in the proceedings under no. I. ÚS 202/2010-17, The order of the Constitutional Court of the Slovak republic from 24.11.2010 issued in the proceedings under no. I. ÚS 442/2010-16, The order of the Constitutional Court of the Slovak republic from 3.3.2011 issued in the proceedings under no. IV ÚS 60/2011-13

shouldn't base their claim on the contract but rather on the different basis, like unjust enrichment. But there is a problem with the limitation period because the arbitration and the enforcement proceeding also last some time, so the limitation period can lapse in the meantime, while the supplier realise that the arbitration decision is unenforceable.

From the first part of this article there can be seen that the courts do not proceed uniformly when deciding the disputes based on the consumer contracts. So there are also decisions of the courts where the consumer protection is not ensured similar as in the arbitration decisions. But on the other hand the execution court doesn't deny the enforceability of the judicial decisions which aren't in accordance with the consumer protection legal regulation. The question is why the consumer protection shouldn't by granted to these consumers too. Another problem arises when the lawful claim is already paid to the supplier and the supplier sues only the unlawful interests, should the court treat these executions differently or not.

As we can see this practise of the Slovak courts bring on the light more and more problems. According to my opinion this approach can be justifiable only in the case when it is proportionate to the legitimate aim. The legitimate aim in these cases is not the punishment for the nasty supplier but the protection of the consumer only in extent that he or she won't have to pay the supplier great interest for a loan as prescribed by law. If the practice of the court will cause that the consumer won't be obliged to pay back even borrowed money, that will cause the imbalance in the rights and obligations of the parties to the consumer contract in a particular case that is according to my opinion unacceptable because is disproportionate to the aim.

Is it really necessary to protect the consumer in that way that the court will deny the enforceability to the arbitration award? On the one hand the legitimate objection is that in the arbitration the consumer protection isn't ensured even when the consumer is active and defends himself. The arbitration shouldn't serve as easy way to gain the decision for execution in cases which wouldn't be successful in the proceeding before the court. On the other hand the consumer must firstly have a chance to defend his rights and should have effective remedies available for him. Most of the consumers understand the principle that if they borrow money, they have to pay them back. There are several institutions which can grand the consumer free legal aid. More and more amendments are made to the legislation to create the effective remedies and to ensure that the cost won't hinder the consumer from defending in the case that their rights are infringed. That is why a judicial activity shouldn't replace the activity of the consumers in the judicial proceeding, but rather should the legal order be changed to avoid the situations where the arbitration award doesn't respect the consumer protection legislation.

According to my opinion it isn't right to exclude the arbitration clause from the consumer contract at all, because the arbitration has its eligible place in the modern judicial system. There are several reasons

why is the arbitration good choice for such claims. It is important to realize that the consumers make use of the small loans from the companies which aren't banks, are mostly not able to get the loan from the bank. These consumers have lower income than the banks require and mostly the loans are of small amount because they aren't able at all to pay back big amounts of money from their income. On the other hand these kinds of loans are necessary for these consumers and if there wouldn't be possibility to borrow the money legally, there will be a risk of black market. But when providing the loan for such consumers there is greater risk that in the case of sudden unemployment or disease they won't be able to pay the money back. The suppliers aren't patient and immediately begin to recover the debt. The higher risk connected with these loans is the reason to bigger interests and other sanctions claimed by the suppliers. I won't try to do some quantification of the risk and try to account the right interest. When the courts started to refuse to adjudicate the contracted interest, the suppliers started to include an arbitration clause into the consumer contracts on providing small loans.

According to my opinion is very important to find the way how to preserve the possibility to have the dispute decided by the arbitrator and in the same time ensure the respect of the consumer protection legislation, which I find very important. The consumer must be protected from disproportionately high sanctions for delay with the payment of his debt. In general how to protect the consumer which hasn't legal education in the arbitration. The arbitration should be divided into commercial arbitration and consumer arbitration. Because the relationship between the consumer and the supplier is typical for the economical disparity of the parties, which has a consequence also on the legal representation, the ability to pay costs of the proceeding and also the information that the parties have at the begging of the proceeding to defend their rights. Separate legislation should be adopted to govern the arbitration in disputes between the consumer and the supplier. The arbitration court should be permanent body and the proceedings before them should have strict rules as to a composition, costs of the proceeding, the legal representation of the consumer before the arbitrator by the nongovernmental organisations for their protection or even there should be the accountability of the arbitrator.

Literature:

- Cirák, J: Vymožiteľnosť spotrebiteľských práv v kontexte úpravy nekalých klauzúl v spotrebiteľských zmluvách, In: Vymožiteľnosť práva v Slovenskej republike, Pulished by: Justičná akadémia Slovenskej republiky, Pezinok, 2009, ISBN: 978-80-970207-0-5
- Bajánková, J.: Spotrebiteľ v exekučnom konaní, In: Vymožiteľnosť práva v Slovenskej republike, Justičná akadémia Slovenskej republiky, Pezinok, 2009, p. 14-15, ISBN: 978-80-970207-0-5

- Drgoncová, J.: Rozhodcovské súdy a ich právomoc v ochrane spotrebiteľov, In: Justičná revue, No. 11/2010, p. 1159, from www.epi.sk
- Bardač, R: Ad: rozhodcovské súdy a ich právomoc v ochrane spotrebiteľov, In: Justičná reuve, No. 6-7/2011, p. 930, from www.epi.sk
- Slašťan, M.: Acceptance of Human Rights and Constitutional Values in Reviews of Arbitral Awards by the Courts of the Slovak republic, In: Czech (& Central European) Yearbook of Arbitration, here: http:// ssrn.com/abstract=1796004
- Joined Cases Oceáno Grupo Editorial SA v. Roció Murciano Quintero (C-240/98) and Salvat Editores SA v. José M. Sánchez Alcón Prades (C-241/98), José Luis Copano Badillo (C-242/98), Mohammed Berroane (C243/98) a Emilio Viñas Feliú (C-244/98), ECR 2000 I-04941
- Case C-40/08 Asturcom Telecomunicaciones SL p. Cristine Rodríguezovej Nogueirovej from 8 October 2009, ECR 2009 I-09579
- Case C-76/10 Pohotovosť s.r.o. v Iveta Korčkovská from 16 November 2010, Official Journal C 030, 29/01/2011 P. 0012 - 0012
- Council Directive No. 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal L 095, 21/04/1993, P. 0029 - 0034
- Act No. 40/1964 Coll. Civil Code, as amended
- Amendment act no. 150/2004, which changes and amend Civil Code
- Act No. 513/1992 Coll. Commercial Code, as amended
- Act No. 250/2007 Coll. on the consumer protection, as amended
- Act No. 568/2007 Coll. which change and amend the Act No. 527/2002 Coll. on voluntary auctions and on amendment of the Act No. 323/1992 Coll. on notaries and notary work as amended
- Act No. 129/2010 Coll. on consumer loans and other loans for consumers and on change and amendment of other laws
- Government Regulation No. 87/1995 Coll. by which are specified several provisions of the Civil Code as amended
- Act No. 258/2001 Coll. on the consumer loans as amended
- Act No. 233/1995 Coll. on bailiffs and enforcement, as amended
- Act No. 224/2002 Coll. Arbitrational Act, as amended
- The judgment of the District Court Žilina from 27. 9. 2007 issued in the proceeding under no. 14C/40/2007
- The judgment of the District Court Čadca from 18. 9. 2007 issued in the proceedings under no. 4C/185/2005
- The judgmment of the District Court Brezno from 4. 7. 2007 issued in the proceeding under no. 3C/69/2006
- The judgment of the Distric Court Žilina from 25. 4. 2008 issued in the proceedings under no. 4C/450/2007

- The judgment of the Distric Court Rožňava from 11. 3. 2010 issued in the proceedings under no. 4C/31/2010
- The judgment of the District Court Piešťany from 26. 10. 2010 issued in the proceeding under no. 4c/145/2009
- The judgment of the District Court Galanta from 10. 2. 2010 issued in the proceeding under no. 17C/131/2009
- The judgment of the District Court Žilina from 12. 9. 2008 issued in the proceeding under no. 11Cb/281/2007, from 18. 2. 2008 issued in the proceeding under no. 8C/54/2007, from 6. 8. 2008 issued in the proceeding under no. 11Cb/318/2007
- The judgments of the Regional Court in Trnava from 4. 11. 2008 issued in the proceedings under no. 21Cob/280/2008 and from 18. 11. 2008 issued in the proceedings under no. 21Cob/323/2008
- The judgment of the District Court Kežmarok from 3. 6. 2009 issued in the proceedings under no. 8Cb/22/2009,
- The judgment of the District Court Ružomberok from 23. 4. 2009 issued in the proceedings under no. 6Cb/25/2009,
- The judgment of the District Court Zvolen from 19. 8. 2009 issued in the proceedings under no. 8Cb/14/2008
- The judgment of the Regional Court in Banská Bystrica from 28. 8. 2008 issued in the proceedings under no. 16Co/152/2008,
- The judgment of the District Court Zvolen from 6. 6. 2008 issued in the proceedings under no.11C/42/2007,
- The judgment of the High Court of the Slovak republic from 31. 7. 2009 issued in the proceedings under no. 1 M Cdo 1/2009
- The judgment of the Ditrict Court Brezno from 10. 7. 2008 issued in the proceedings under no. 7Cb/144/2007
- The judgment of the Ditrict Court Komárno from 25. 9. 2008 issued in the proceedings under no. 5Cb/150/2008
- The judgment of the Ditrict Court Lučenec from 9. 1. 2008 issued in the proceedings under no. 9C/82/2007
- The judgment of the District Court Prešov from 16. 1. 2008 issued in the proceeding under no. 14C/10/2006
- The judgment of the Regional Court in Banská Bystrica from 28. 8. 2008 issued in the proceeding under no. 16Co/152/2008
- The order of the District Court Rožňava from 25. 2. 2010 issued in the proceeding under no. 10Er/757/2009-12,
- The order of the Regional Court in Trnava from 30. 9. 2010 issued in the proceeding under no. 10CoE/160/2010-31, not published
- The order of the Regional Court in Prešov from 19. 5. 2011 issued in the proceeding under no. 6CoE 60/2011 not published;
- The order of the Constitutional Court of the Slovak republic from 24. 2. 2011 issued in the proceeding under no. IV US 55/2011-19
- The order of the Constitutional Court of the Slovak republic from 27. 5. 2010 issued in the proceedings under no. I. ÚS 202/2010-17,

- The order of the Constitutional Court of the Slovak republic from 24.11.2010 issued in the proceedings under no. I. ÚS 442/2010-16,
- The order of the Constitutional Court of the Slovak republic from 3.3.2011 issued in the proceedings under no. IV ÚS 60/2011-13

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