

STATUTE OF LIMITATIONS IN CONSUMER RELATIONS

In this article, we will focus on the statute of limitations in the Slovak legal order, especially in the context of the decision of the Court of Justice of the EU in case C-485/19. This decision of the EU Court of Justice has caused problems in application practice and is often misinterpreted by consumer rights organisations and consumers themselves.



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IN CASE C-485/19, THE ECJ RULED AS FOLLOWS:

1. The principle of effectiveness must be interpreted as precluding national legislation which provides that an action brought by a consumer for repayment of sums wrongly paid in connection with the performance of a credit agreement may not be brought on the basis of unfair terms, within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, or terms contrary to the requirements of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, is subject to a limitation period of three years which begins to run from the day on which the unjust enrichment occurred.

2. Article 10(2) and Article 22(1) of Directive 2008/48, as interpreted by the judgment of 9 November 2016, Home Credit Slovakia (C42/15, EU:C:2016:842), are applicable to a credit agreement which was entered into before that

judgment was handed down and before the national legislation was amended in order to comply with the interpretation adopted in that judgment.

In particular, the following paragraphs of the reasoning of that judgment are relevant in the light of the above conclusions of the ECJ: 56, 57, 59, 60, 63, 64, 66, which, however, cannot be quoted in full for the purposes of the present paper.

In its decision, the ECJ essentially concluded that it is contrary to the principle of effectiveness to fix the commencement of the limitation period for consumer claims on the date on which the unjust enrichment actually occurred. However, the context of the decision in no way suggests that the three-year limitation period is short, inadequate or even contrary to EU law, as is often interpreted by consumer rights organisations. On the contrary, the ECJ considers a three-year limitation period to be sufficient. Nor does it ap-

pear from the reasoning or the ruling part of the judgment that the limitation period for consumer claims had expired or that a three-year limitation period was introduced, the start of which is linked to the final judgment on the unfairness of a contractual term or to the final judgment on the interest-free and charge-free nature of the credit. Such conclusions are unsustainable and have no basis in the legislation. Nevertheless, that is the reasoning and interpretation of that decision which we have already encountered in practice.

Although the ECJ does not give direct guidance in the decision on how to determine the moment when the limitation period starts to run, two options are possible when respecting the decision and the applicable law contained in the Civil Code.

The essence of both solutions is that the start of the limitation period will be linked either to the moment of termination of the credit agreement (cases in which the

credit agreement was terminated) or to the moment of the final decision by which the court ruled on the unfair contractual term (cases where there was a judicial review of the contractual terms prior to the termination of the credit agreement). In a case of termination of credit agreement, the moment when the consumer could have brought his claim before the court for the

first time will be linked to the moment of termination of the credit agreement. It is irrelevant whether the termination of the credit agreement was effected by the acceleration of the credit or by the repayment of the credit. In that case, the limitation period for the consumer's claim for the recovery of unjust enrichment shall begin to run on the termination of the credit agreement. Situations where the start of the limitation period will be linked to the finality of the court decision will apply if the consumer has brought an action for a declaration of an unfair contract term or of the interest-free and charge-free nature of the credit before the termination of the credit agreement or if the contractual terms have been reviewed after the creditor has brought an action for payment of the consumer's debt. In such a case, the limitation period shall begin to run from the final decision of the court. We are also of the opinion that it will be possible to apply the provisions of Article 107 of the Civil Code on the limitation period for the recovery of unjust enrichment.