



Reports of Cases

Case C-147/16

Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen VZW
v
Susan Romy Jozef Kuijpers

(Request for a preliminary ruling from the vredegerecht te Antwerpen)

(Reference for a preliminary ruling — Directive 93/13/EEC — Unfair terms in consumer contracts concluded between a seller or supplier and a consumer — Examination by the national court of its own motion of the question of whether the contract is within the scope of that directive — Article 2(c) — Notion of ‘seller or supplier’ — Higher educational establishment financed mainly by public funds — Contract for an interest-free repayment plan for registration fees and share of costs of a study trip)

Summary — Judgment of the Court (Fifth Chamber), 17 May 2018

1. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — National judge giving judgment in default — Power of the national court to examine of its own motion whether a contractual term is contrary to national rules of public order — Whether a national court is obliged to examine of its own motion the possible inclusion of a contract in the scope of application of that directive and, where appropriate, whether that term is unfair*

(Council Directive 93/13, Art. 6)

2. *Consumer protection — Unfair terms in consumer contracts — Directive 93/13 — Scope — Contract for an interest-free repayment plan for registration fees and share of costs of a study trip concluded between a student and a higher education establishment which is financed, for the most part, by public funds — Whether an establishment is to be regarded as a ‘seller or supplier’ under that contract — Included*

(Council Directive 93/13, Art. 2(c))

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a national court giving judgment in default and which has the power, under national procedural rules, to examine of its own motion whether the term upon which the claim is based is contrary to national public policy laws is required to examine of its own motion whether the contract containing that term falls within the scope of that directive and, if so, whether that term is unfair.

In addition, the Court of Justice has held that, in view of the nature and importance of the public interest underlying the protection which Directive 93/13 confers on consumers, Article 6 thereof must be regarded as a provision of equal standing to national rules which rank, within the domestic legal system, as rules of public policy. It must be held that that classification extends to all the provisions

of the directive which are essential for the purpose of attaining the objective pursued by Article 6 thereof (judgment of 30 May 2013, *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 44 and the case-law cited).

It follows that, where the national court has the power, under internal procedural rules, to examine of its own motion whether a claim is contrary to national rules of public policy, which, according to the information provided in the order for reference, is the case in the Belgian judicial system for a court giving judgment in default, it must also exercise that power for the purposes of assessing of its own motion, in the light of the criteria laid down in Directive 93/13, whether the disputed term on which the claim is based and the contract containing that term come within the scope of that directive and, if so, whether that term is unfair (see, by analogy, judgment of 30 May 2013, *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 45).

(see paras 35-37, operative part 1)

2. Subject to verifications to be carried out by the referring court, Article 2(c) of Directive 93/13 must be interpreted as meaning that a free educational establishment, such as that at issue in the main proceedings, which, by contract, has agreed with one of its students to provide repayment facilities for sums due by the latter in respect of registration fees and costs connected with a study trip, must be regarded, in the context of that contract, as a ‘seller or supplier’, within the meaning of that article, with the result that that contract falls within the scope of application of that directive.

That interpretation is corroborated by the protective purpose of that directive. In the context of a contract such as that at issue in the main proceedings, there is, in principle, an inequality between the educational establishment and the student, owing to the asymmetry of information and expertise between the parties. Such an establishment has at its disposal a permanent organisation and expertise that the student, acting on a private basis, does not necessarily have available to him when faced incidentally with such a contract.

(see paragraphs 59, 60, operative part 2)