



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

25 April 2024*

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Mortgage loan contract – Term stipulating that costs relating to the contract are to be paid by the consumer – Final judicial decision finding that term unfair and declaring it void – Action for restitution of the sums paid pursuant to the unfair term – Point from which the limitation period starts to run)

In Case C-484/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de Primera Instancia No 20 de Barcelona (Court of First Instance No 20, Barcelona, Spain), made by decision of 22 July 2021, received at the Court on 6 August 2021, in the proceedings

F C C,

M A B

v

Caixabank SA, formerly Bankia SA,

THE COURT (Ninth Chamber),

composed of O. Spineanu-Matei, President of the Chamber, S. Rodin (Rapporteur) and L.S. Rossi, Judges,

Advocate General: A.M. Collins,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 19 October 2023,

after considering the observations submitted on behalf of:

- F C C and M A B, by I. Fernández Grañeda, F. Gómez Hidalgo Terán and J. Zaera Herrera, abogados,
- Caixabank SA, by J. Gutiérrez de Cabiedes Hidalgo de Caviedes, J. Rodríguez Cárcamo and E. Valencia Ortega, abogados,

* Language of the case: Spanish.

- the Spanish Government, by A. Ballesteros Panizo and A. Pérez-Zurita Gutiérrez, acting as Agents,
 - the Italian Government, by G. Palmieri, acting as Agent, and by G. Rocchitta, avvocato dello Stato,
 - the European Commission, by J. Baquero Cruz and N. Ruiz García, acting as Agents,
- having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).
- 2 The request has been made in proceedings between F C C and M A B, two consumers, on the one hand, and Caixabank SA, formerly Bankia SA, a credit institution, on the other, concerning a claim for restitution of sums paid pursuant to a contractual term that has been found to be unfair by a final judicial decision.

Legal context

European Union law

- 3 Article 6(1) of Directive 93/13 provides:

‘Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.’

- 4 Article 7(1) of that directive is worded as follows:

‘Member States shall ensure that, in the interests of consumers and of competitors, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers.’

Spanish law

- 5 Article 121–20 of Ley 29/2002, primera Ley del Código Civil de Cataluña (Law No 29/2002, First Law of the Civil Code of Catalonia) of 30 December 2002 (BOE No 32 of 6 February 2003; ‘the Catalan Civil Code’) provides:

‘Claims of any nature become time-barred after 10 years, unless someone has previously acquired rights by usucaption or this Code or specific legislation provides otherwise.’

6 Article 121–23(1) of the Catalan Civil Code provides:

‘The limitation period begins to run once the claim has arisen and becomes enforceable, and once the holder of the claim is, or could reasonably be, aware of the circumstances giving rise to the claim and the person against whom it may be brought.’

7 Under Article 121–11 of that code:

‘The following shall constitute grounds for interrupting the limitation period:

- (a) the bringing of the action before the courts, even if it is dismissed on the basis of a procedural defect;
- (b) the initiation of arbitration proceedings relating to the claim or the lodging of the application requesting the appointment of arbitrators by the court;
- (c) the pursuit of the claim out of court;
- (d) recognition of the right or waiver of the limitation by the person against whom the claim may be brought during the limitation period.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

8 The parties to the dispute in the main proceedings had concluded a mortgage loan contract in 2007. Since the clause of that contract that required the applicants in the main proceedings to pay all the costs relating to the creation of the mortgage (‘the costs clause’) had been declared void by a judgment of the Juzgado de Primera Instancia No 50 de Barcelona (Court of First Instance No 50, Barcelona, Spain) of 2 May 2019, the sums paid in respect of notarial fees were repaid to the applicants in the main proceedings.

9 On 23 February 2021, those applicants brought an action before the referring court, the Juzgado de Primera Instancia No 20 de Barcelona (Court of First Instance No 20, Barcelona, Spain), seeking reimbursement of the sums paid pursuant to the costs clause as regards the registry and agency fees, in the amount of EUR 295.36.

10 Caixabank argues before the referring court that the action brought by the applicants in the main proceedings is time-barred. It maintains that the limitation period, which, in accordance with the Catalan Civil Code, is 10 years, began to run when the mortgage was created in 2007, when the amounts the reimbursement of which is the subject of the main proceedings were paid.

11 For their part, the applicants in the main proceedings maintain that, in accordance with the guidance given in the judgment of 22 April 2021, *Profi Credit Slovakia* (C-485/19, EU:C:2021:313), the limitation period did not begin to run until the costs clause was found to be void by the Juzgado de Primera Instancia No 50 de Barcelona (Court of First Instance No 50, Barcelona). They add that, in the judgment of 10 June 2021, *BNP Paribas Personal Finance* (C-776/19 to C-782/19, EU:C:2021:470), the Court held that the limitation period cannot begin to run at the time of conclusion of the contract.

- 12 According to the referring court, the question that arises is at what point the consumer is deemed to be aware of the facts that provide the grounds for the action for reimbursement of the sums paid pursuant to the clause that has been declared void. In its view, there is absolutely no doubt that Article 6(1) and Article 7(1) of Directive 93/13 would be observed – as would, therefore, the principle of effectiveness of EU law – if the starting point of the limitation period were to be fixed at the time the costs clause was found to be void. Nevertheless, the starting date of the limitation period could – and it is harder to argue for this according to the referring court – also be either the date on which the consumer in question paid the sums referred to above or the date on which the Tribunal Supremo (Supreme Court, Spain) gave a judgment declaring unfair a standard term the scope of which is, in the view of the referring court, equivalent to that of the costs clause.
- 13 Lastly, the referring court takes the view that, if the limitation period were to begin to run when the costs were paid, the action would be time-barred in that case and the consumers would not be able to obtain reimbursement of the sums unduly paid. By contrast, if the limitation period were to begin to run from the date of the judgment of the Tribunal Supremo (Supreme Court) referred to above, namely 23 December 2015, or from the date on which a court decision was given finding the costs clause to be void, in the case at hand, 2 May 2019, the 10-year limitation period would still not have expired and the consumers could still obtain redress for their damage.
- 14 In those circumstances, the Juzgado de Primera Instancia No 20 de Barcelona (Court of First Instance No 20, Barcelona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Is it compatible with Article 38 [of the Charter of Fundamental Rights of the European Union], the principle of the effectiveness of EU law, and [Article] 6(1) and [Article] 7(1) of Directive [93/13] for the limitation period of an action for damages arising from an unfair term, such as a costs clause, to begin to run before the point when the term in question has been declared void for unfairness?
- (2) Is it compatible with Article 38 [of the Charter of Fundamental Rights], the principle of the effectiveness of EU law, and [Article] 6(1) and [Article] 7(1) of Directive [93/13] to fix the commencement of the limitation period for an unfair term as the date on which a court with authority to create case-law, such as the [Tribunal Supremo (Supreme Court)], states that a particular term is unfair, irrespective of whether or not the consumer in question is aware of the content of the judgment?
- (3) Is it compatible with Article 38 [of the Charter of Fundamental Rights], the principle of the effectiveness of EU law, and [Article] 6(1) and [Article] 7(1) of Directive [93/13] to establish that, in a long-term contract, the limitation period for claiming any mortgage creation costs paid [pursuant to an unfair term] begins to run at the point when payment is made, given that the unfair term has exhausted its effects at that point and there is no risk that it will be reapplied?’

Consideration of the questions referred

- 15 As a preliminary point, it should be noted that the Court has previously held that Article 6(1) of Directive 93/13 must be interpreted as meaning that a contractual term held to be unfair must be regarded, in principle, as never having existed, so that it cannot have any effect on the consumer. Therefore, the determination by a court that such a term is unfair must, in principle, have the

consequence of restoring the consumer to the legal and factual situation that he or she would have been in if that term had not existed (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 61, and of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)*, C-520/21, EU:C:2023:478, paragraph 57).

- 16 It follows that the obligation for the national court to exclude an unfair contract term imposing the payment of amounts that prove not to be due entails, in principle, a corresponding restitutionary effect in respect of those amounts (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 62, and of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)*, C-520/21, EU:C:2023:478, paragraph 58).
- 17 The absence of such restitutionary effect would be liable to call into question the dissuasive effect that Article 6(1) of Directive 93/13, read in conjunction with Article 7(1) of that directive, is designed to attach to a finding of unfairness in respect of terms in contracts concluded between consumers and sellers or suppliers (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 63, and of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)*, C-520/21, EU:C:2023:478, paragraph 58).
- 18 It is true that Article 6(1) of Directive 93/13 requires the Member States to lay down that unfair terms are not to be binding on the consumer, ‘as provided for under their national law’ (judgments of 6 October 2009, *Asturcom Telecomunicaciones*, C-40/08, EU:C:2009:615, paragraph 57, and of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 64).
- 19 However, the regulation by national law of the protection guaranteed to consumers by Directive 93/13 may not alter the scope and, therefore, the substance of that protection and thus affect the strengthening of the effectiveness of that protection by the adoption of uniform rules of law in respect of unfair terms, which was the intention of the EU legislature, as stated in the tenth recital of Directive 93/13 (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 65, and of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)*, C-520/21, EU:C:2023:478, paragraph 60).
- 20 Consequently, while it is for the Member States, by means of their national legislation, to define the detailed rules under which the unfairness of a contractual clause is established and the actual legal effects of that finding are produced, the fact remains that such a finding must allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed, by inter alia, creating a right to restitution of advantages wrongly obtained, to the consumer’s detriment, by the seller or supplier on the basis of that unfair term (judgments of 21 December 2016, *Gutiérrez Naranjo and Others*, C-154/15, C-307/15 and C-308/15, EU:C:2016:980, paragraph 66, and of 15 June 2023, *Bank M. (Consequences of the annulment of the contract)*, C-520/21, EU:C:2023:478, paragraph 61).

The first and third questions

- 21 By its first and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 and Article 38 of the Charter of Fundamental Rights must be interpreted as precluding the limitation period for an

action for restitution of costs that were paid by the consumer, at the time of conclusion of a contract with a seller or supplier, pursuant to a contractual term that has been found to be unfair by a final judicial decision given subsequent to the payment of those costs, from beginning to run on the date of that payment or, in any event, before that term was found to be void by that decision.

- 22 It should be borne in mind that the Court has consistently held that, in the absence of specific EU rules on the matter, it is for the national legal order of each Member State to establish, in accordance with the principle of procedural autonomy, procedural rules for actions intended to safeguard the rights that individuals derive from EU law, provided, however, that those rules are no less favourable than the rules governing similar domestic actions (the principle of equivalence) and do not render impossible in practice or excessively difficult the exercise of rights conferred by EU law (the principle of effectiveness) (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 52 and the case-law cited).
- 23 As regards the principle of effectiveness, which is the only principle at issue in the present proceedings, it should be noted that every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 28 and the case-law cited).
- 24 In addition, the Court has stated that the obligation on the Member States to ensure the effectiveness of the rights that individuals derive from EU law, particularly the rights deriving from Directive 93/13, implies a requirement for effective judicial protection, also guaranteed by Article 47 of the Charter of Fundamental Rights, which applies, inter alia, to the definition of detailed procedural rules relating to actions based on such rights (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 29 and the case-law cited).
- 25 As regards the analysis of the characteristics of a limitation period such as that at issue in the main proceedings, the Court has stated that that analysis must cover the duration of the limitation period and the detailed rules for its application, including the event used to start the period running (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 30 and the case-law cited).
- 26 While the Court has held that an application brought by a consumer for a declaration that a term contained in a contract concluded between him or her and a seller or supplier is unfair cannot be subject to any limitation period (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 38 and the case-law cited), it has stated that Article 6(1) and Article 7(1) of Directive 93/13 do not preclude national legislation which makes a claim by such a consumer for the restitutionary effects of such a finding subject to a limitation period, provided that the principles of equivalence and effectiveness are observed (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 39 and the case-law cited).

- 27 Accordingly, it should be held that the application of a limitation period to claims for restitution brought by consumers in order to enforce rights which they derive from Directive 93/13 is not, in itself, contrary to the principle of effectiveness, provided that its application does not make it in practice impossible or excessively difficult to exercise the rights conferred by that directive (judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 40 and the case-law cited).
- 28 In that regard, it is necessary to take account of the weaker position of the consumer vis-à-vis the seller or supplier as regards both bargaining power and level of knowledge, which leads the consumer to accept terms drawn up in advance by the seller or supplier, without being able to influence their content. Similarly, it is important to recall that consumers may be unaware of the unfairness of a term in a mortgage loan agreement or not appreciate the extent of their rights under Directive 93/13 (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 45 and the case-law cited).
- 29 In that context, the Court has held that the application of a limitation period that begins to run following the signing of that contract, in so far as it means that the consumer may seek the refund of payments made pursuant to a contractual term held to be unfair only during a specified period following the signing of the contract, irrespective of whether he or she was or could reasonably have been aware of the unfairness of that term, may make it excessively difficult for that consumer to exercise his or her rights under Directive 93/13, and, consequently, run counter to the principle of effectiveness read in conjunction with the principle of legal certainty (see, to that effect, judgment of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 91; see also, by analogy, judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 63).
- 30 Thus, in the present case, it is apparent from the order for reference that, given that the costs clause produced its effects at the time of conclusion of the contract, which corresponds to the time of payment of the costs concerned, the fixing of the starting point of the limitation period for an action for reimbursement of those costs at the time of the conclusion of that contract and of the payment of those costs would have the consequence that, on the date on which the applicants in the main proceedings brought the action for restitution, that action would already be time-barred irrespective of whether the consumers were aware, or at least could reasonably have been aware, of the unfairness of the costs clause.
- 31 In the light of the case-law referred to in paragraphs 28 and 29 above, it must be held that the date of conclusion of the contract containing the unfair term and of payment of the costs concerned cannot, as such, constitute the starting point of the limitation period.
- 32 By contrast, in circumstances such as those in the main proceedings, on the date on which the decision finding the contractual term concerned to be unfair and declaring it void on that ground became final, the consumer is fully aware of the unlawfulness of that term. It is therefore, in principle, from that date that that consumer is in a position effectively to assert the rights conferred on him or her by Directive 93/13 and that, consequently, the limitation period for the action for restitution, the primary purpose of which is to restore the consumer to the legal and factual situation that he or she would have been in if that term had not existed, as is apparent from paragraphs 15 and 20 above, may begin to run.

- 33 At that time, because the aforesaid decision is a judicial decision which has the force of *res judicata* and is addressed to the consumer concerned, he or she is put in a position to become aware of the unfairness of the term in question and to assess himself or herself whether it is appropriate to bring an action for restitution of the sums paid pursuant to that term within the time limit prescribed by national law.
- 34 Thus, a limitation period which begins to run from the date on which the decision finding a contractual term to be unfair and declaring it void on that ground becomes final is compatible with the principle of effectiveness, since the consumer has the opportunity to become aware of his or her rights before that period begins to run or expires (see, to that effect, judgment of 10 June 2021, *BNP Paribas Personal Finance*, C-776/19 to C-782/19, EU:C:2021:470, paragraph 46 and the case-law cited).
- 35 However, it must be stated that, although, as is apparent from the case-law referred to in paragraph 29 above, Directive 93/13 precludes the limitation period for an action for restitution of the sums paid by a consumer pursuant to an unfair contractual term from beginning to run irrespective of whether that consumer was or could reasonably have been aware of the unfairness of that term, that directive does not preclude the seller or supplier from having the right to prove that that consumer was or could reasonably have been aware of that fact before the delivery of a judgment finding that term to be void.
- 36 In those circumstances, there is no need to interpret Article 38 of the Charter of Fundamental Rights in order to determine whether the fundamental rights enshrined in that provision preclude a national practice such as that to which the present question relates.
- 37 In the light of all the foregoing considerations, the answer to the first and third questions is that Article 6(1) and Article 7(1) of Directive 93/13, read in the light of the principle of effectiveness, must be interpreted as precluding the limitation period for an action for restitution of costs that were paid by the consumer, at the time of conclusion of a contract with a seller or supplier, pursuant to a contractual term that has been found to be unfair by a final judicial decision given subsequent to the payment of those costs, from beginning to run on the date of that payment, irrespective of whether that consumer was or could reasonably have been aware of the unfairness of that term at the time of that payment, or before that term was found to be void by that decision.

The second question

- 38 By its second question, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding the limitation period for an action for restitution of costs that were paid by the consumer pursuant to a term of a contract concluded with a seller or supplier that has been found to be unfair by a final judicial decision, from beginning to run on the date on which the national supreme court delivered an earlier judgment, in a separate case, declaring a standard term corresponding to that term of that contract unfair.
- 39 As is apparent from the case-law referred to in paragraphs 15 and 20 above, Directive 93/13 seeks to allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed, by *inter alia*, creating a right to restitution of advantages wrongly obtained, to the consumer's detriment, by the seller or supplier on the basis of that unfair term.

- 40 However, the fixing of the starting point of the limitation period for an action for restitution of costs paid by a consumer, on the basis of an unfair contractual term, at the date on which the national supreme court delivered a judgment declaring a standard term corresponding to the term included in the contract at issue unfair, would, in many cases, allow the seller or supplier to keep the sums wrongly obtained to the detriment of that consumer on the basis of the unfair term, which would be incompatible with the requirement arising from the case-law referred to in paragraph 29 above that that starting point cannot be set irrespective of whether that consumer was or could reasonably have been aware of the unfairness of that term giving rise to the right to restitution and without imposing on the seller or supplier an obligation of diligence and information in relation to the consumer, thus exacerbating the latter's position of weakness that Directive 93/13 seeks to redress.
- 41 Furthermore, in the absence of an obligation of information in that regard on the part of the seller or supplier, it cannot be assumed that the consumer may reasonably be aware of the fact that a term contained in his or her contract is equivalent in scope to a standard term that has been found to be unfair by the national supreme court.
- 42 Although the case-law of a supreme court of a Member State may enable, subject to adequate publicity, a consumer to become aware of the unfairness of a standard term included in his or her contract with a seller or supplier, it cannot, however, be expected that that consumer, whom Directive 93/13 seeks to protect in the light of his or her weaker position vis-à-vis the seller or supplier, perform steps which fall within the scope of legal research (see, to that effect, judgment of 13 July 2023, *Banco Santander (Reference to an official index)*, C-265/22, EU:C:2023:578, paragraph 60).
- 43 Furthermore, it should be noted, in that regard, that such national case-law is not necessarily such as to make it possible automatically to declare unfair all terms of that type included in all contracts between a seller or supplier and a consumer in the legal order of that Member State. Where a standard term has been declared unfair by the national supreme court, it is still necessary, in principle, to determine, on a case-by-case basis, to what extent a term included in a particular contract corresponds to that standard term and is, like the latter, to be held to be unfair.
- 44 In accordance with Article 3(1) and Article 4(1) of Directive 93/13, the examination of the possible unfairness of a term of a contract concluded between a seller or supplier and a consumer, which requires it to be determined whether that term causes a significant imbalance in the rights and obligations of the parties to a contract, to the detriment of the consumer, must be carried out in the light, inter alia, of all the circumstances attending the conclusion of that contract. Such a case-by-case examination is all the more important since the unfairness of a term may result from a lack of transparency of that term. Thus, in principle, the unfairness of a specific contractual term cannot be assumed, since such a characterisation is likely to depend on the specific circumstances attending the conclusion of each contract and, in particular, on the specific information provided by each seller or supplier to each consumer.
- 45 It follows from those considerations that an average consumer who is reasonably observant and circumspect cannot be required not only to keep himself or herself regularly informed, on his or her own initiative, of decisions of the national supreme court relating to standard terms contained in contracts of a similar nature to those which he or she has concluded with sellers or suppliers, but also to determine, on the basis of a judgment of a national supreme court, whether a term included in a particular contract is unfair.

- 46 Moreover, it would be contrary to Directive 93/13 to allow the seller or supplier to benefit from its inaction in the face of such unlawfulness found by the national supreme court. In circumstances such as those of the case in the main proceedings, the seller or supplier, as a banking institution, generally has a legal department specialised in the matter – such a legal department having drafted the contract in question in that case – which is able to follow the development of the case-law of that court and to draw conclusions from it regarding the contracts already concluded by that institution. Such a banking institution generally also has a customer service department which has all the information necessary in order easily to contact the customers concerned.
- 47 In the light of the foregoing considerations, the answer to the second question is that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding the limitation period for an action for restitution of costs that were paid by the consumer, pursuant to a term of a contract concluded with a seller or supplier that has been found to be unfair by a final judicial decision, from beginning to run on the date on which the national supreme court delivered an earlier judgment, in a separate case, declaring a standard term corresponding to that term of that contract unfair.

Costs

- 48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

- 1. Article 6(1) and Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of the principle of effectiveness,**

must be interpreted as precluding the limitation period for an action for restitution of costs that were paid by the consumer, at the time of conclusion of a contract with a seller or supplier, pursuant to a contractual term that has been found to be unfair by a final judicial decision given subsequent to the payment of those costs, from beginning to run on the date of that payment, irrespective of whether that consumer was or could reasonably have been aware of the unfairness of that term at the time of that payment, or before that term was found to be void by that decision.

- 2. Article 6(1) and Article 7(1) of Directive 93/13**

must be interpreted as precluding the limitation period for an action for restitution of costs that were paid by the consumer, pursuant to a term of a contract concluded with a seller or supplier that has been found to be unfair by a final judicial decision, from beginning to run on the date on which the national supreme court delivered an earlier judgment, in a separate case, declaring a standard term corresponding to that term of that contract unfair.

[Signatures]