

JUDGMENT OF THE COURT (Third Chamber)

22 November 2001 *

In Joined Cases C-541/99 and C-542/99,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Giudice di pace di Viadana (Italy) for a preliminary ruling in the proceedings pending before that court between

Cape Snc

and

Idealservice Srl (C-541/99),

and between

Idealservice MN RE Sas

and

OMAI Srl (C-542/99),

* Language of the case: Italian.

on the interpretation of Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29),

THE COURT (Third Chamber),

composed of: F. Macken (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges,

Advocate General: J. Mischo,
Registrar: D. Louterman-Hubeau, Head of Division,

after considering the written observations submitted on behalf of:

- the Italian Government, by U. Leanza and G. Castellani Pastoris, acting as Agents, assisted by D. Del Gaizo, avvocato dello Stato,
- the Spanish Government, by S. Ortiz Vamonde, acting as Agent,
- the French Government, by K. Rispal-Bellanger and R. Loosli-Surrans, acting as Agents,

— Commission of the European Communities, by M. França and P. Stancanelli, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Idealservice Srl, represented by R. Chiericati, avvocatessa, of the Italian Government, represented by D. Del Gaizo, and the Commission, represented by M. França and P. Stancanelli, at the hearing on 17 May 2001,

after hearing the Opinion of the Advocate General at the sitting on 14 June 2001,

gives the following

Judgment

- 1 By two orders of 12 November 1999, received at the Court on 31 December 1999, the Giudice di pace (Magistrate), Viadana, referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29, hereinafter 'the Directive').

- 2 Those questions were raised in two actions between Cape Snc ('Cape') and Idealservice Srl and between Idealservice MN RE Sas and OMAI Srl ('OMAI') concerning the performance of standard contracts containing a clause granting jurisdiction to the Giudice di pace di Viadana, which is contested by Cape and OMAI on the basis of the Directive.

Legal background

- 3 The purpose of the Directive is, according to Article 1(1), 'to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer'.
- 4 Article 2(b) of the Directive provides:

'For the purposes of this Directive:

...

- (b) "consumer" means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession.'

- 5 Article 2(c) of the Directive defines the term 'seller or supplier' as 'any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned'.

The main proceedings and the questions submitted

- 6 Idealservice MN RE Sas and Idealservice Srl (hereinafter 'Idealservice') concluded with OMAI and Cape, on 14 September 1990 and 26 January 1996 respectively, two contracts for the supply to them of automatic drink dispensers which were installed on the premises of those companies and were intended to be used solely by their staff.
- 7 In relation to the performance of those contracts, Cape and OMAI instituted proceedings contesting a payment order, maintaining that the clause granting jurisdiction contained in the contracts was unfair within the meaning of Article 1469a, paragraph 19, of the Italian Civil Code and could not therefore be enforced against the parties to the contracts by virtue of Article 1469d of that code.
- 8 The national court takes the view that its jurisdiction to hear the two cases brought before it depends on the construction of those provisions of the Civil Code, which constitute a 'servile transposition' of the Directive. In particular, the terms 'seller or supplier' and 'consumer' used in article 1469a of the Civil Code are a literal transcription of the definitions contained in Article 2 of the Directive.

- 9 In both cases, Idealservice contends that Cape and OMAI cannot be regarded as consumers for the purposes of applying the Directive. In addition to the fact that they are companies and not natural persons, Cape and OMAI signed the contracts at issue before the national court in the course of their business activity.
- 10 Considering that the outcome of the two actions before it depended on the construction of the Directive, the Giudice di pace di Viadana stayed proceedings and referred to the Court the following two questions, which are identical in both cases:

‘(1) Is it possible to regard as a consumer an undertaking which, by a contract with another undertaking using a form produced by the latter in so far as the contract falls within the scope of its normal business activity, acquires a service or merchandise for the sole benefit of its employees, which is wholly unconnected with and remote from its normal trade and business? Can it be said in such circumstances that that party acted for purposes which do not relate to the undertaking?

(2) If the foregoing question is answered in the affirmative, is it possible to regard any party or entity as a consumer when it is acting for purposes not relating or conducive to its normal trade or business, or does the term consumer relate only to natural persons, to the exclusion of any other?

(3) Can a company be regarded as a consumer?’

- 11 By order of the President of the Court of 17 January 2000, Cases C-541/99 and C-542/99 were joined for the purposes of the written and oral procedure and judgment.

The second and third questions

- 12 By its second and third questions, which it is appropriate to consider first, the national court seeks essentially to ascertain whether the term 'consumer' as defined in Article 2(b) of the Directive must be interpreted as referring solely to natural persons.
- 13 Idealservice, the Italian and French Governments and the Commission contend that the term 'consumer' refers only to natural persons.
- 14 The Spanish Government, on the other hand, submits that, although Community law considers that, in principle, legal persons are not consumers within the meaning of the Directive, it does not exclude an interpretation conferring that status on legal persons. Like the French Government, it contends that the definition of consumer given by the Directive does not make it impossible for Member States, when transposing it, to treat a company as a consumer in their domestic law.
- 15 In that connection, it must be observed that Article 2(b) of the Directive defines a consumer as 'any natural person' who fulfils the conditions laid down by that provision, whereas article 2(c) of the Directive, in defining the term 'supplier or seller', refers to both natural and legal persons.

- 16 It is thus clear from the wording of Article 2 of the Directive that a person other than a natural person who concludes a contract with a seller or supplier cannot be regarded as a consumer within the meaning of that provision.
- 17 Accordingly, the answer to the second and third questions must be that the term 'consumer', as defined in Article 2(b) of the Directive, must be interpreted as referring solely to natural persons.

The first question

- 18 In view of the answer given to the second and third questions, it is unnecessary to answer the first.

Costs

- 19 The costs incurred by the Italian, Spanish and French Governments, and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the Giudice di pace di Viadana by orders of 12 November 1999, hereby rules:

The term 'consumer', as defined in Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, must be interpreted as referring solely to natural persons.

Macken

Gulmann

Puissochet

Delivered in open court in Luxembourg on 22 November 2001.

R. Grass

F. Macken

Registrar

President of the Third Chamber