

Intervening parties: Združenie na ochranu občana spotrebiteľa HOOS

Operative part of the judgment

1. Member State liability for damage caused to individuals as a result of a breach of EU law by a decision of a national court may be incurred only where that decision is made by a court of that Member State adjudicating at last instance, which it is for the referring court to determine in respect of the main proceedings. If that is the case, a decision by that national court adjudicating at last instance may constitute a sufficiently serious breach of EU law, capable of giving rise to that liability, only where, by that decision, that court manifestly infringed the applicable law or where that infringement takes place despite the existence of well-established Court case-law on the matter.

It cannot be concluded that a national court which, prior to the judgment of 4 June 2009 in Pannon GSM (C-243/08, EU: C:2009:350), failed, in the context of proceedings for enforcement of an arbitral award upholding a claim for payment of debts under a contractual term which must be regarded as unfair within the meaning of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, to assess of its own motion whether that term is unfair, although it has available to it the legal and factual elements necessary for that purpose, manifestly disregarded the Court's case-law on the matter and, therefore, committed a sufficiently serious breach of EU law.

2. The rules regarding reparation for damage caused by a breach of EU law, such as those concerning the assessment of such damage or the relationship between a claim for that reparation and other remedies which could be available, are determined by the national law of each Member State, in conformity with the principles of equivalence and effectiveness.

⁽¹⁾ OJ C 245, 27.7.2015.

Judgment of the Court (Third Chamber) of 28 July 2016 (request for a preliminary ruling from the Oberster Gerichtshof — Austria) — Verein für Konsumenteninformation v Amazon EU Sàrl

(Case C-191/15) ⁽¹⁾

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Regulations (EC) No 864/2007 and (EC) No 593/2008 — Consumer protection — Directive 93/13/EEC — Data protection — Directive 95/46/EC — Online sales contracts concluded with consumers resident in other Member States — Unfair terms — General terms and conditions containing a choice-of-law term applying the law of the Member State in which the company is established — Determination of the applicable law for assessing the unfairness of terms in those general terms and conditions in an action for an injunction — Determination of the law governing the processing of personal data of consumers)

(2016/C 350/10)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Verein für Konsumenteninformation

Defendant: Amazon EU Sàrl

Operative part of the judgment

1. Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) must be interpreted as meaning that, without prejudice to Article 1(3) of each of those regulations, the law applicable to an action for an injunction within the meaning of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests directed against the use of allegedly unfair contractual terms by an undertaking established in a Member State which concludes contracts in the course of electronic commerce with consumers resident in other Member States, in particular in the State of the court seised, must be determined in accordance with Article 6(1) of Regulation No 864/2007, whereas the law applicable to the assessment of a particular contractual term must always be determined pursuant to Regulation No 593/2008, whether that assessment is made in an individual action or in a collective action.
2. Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that a term in the general terms and conditions of a seller or supplier which has not been individually negotiated, under which the contract concluded with a consumer in the course of electronic commerce is to be governed by the law of the Member State in which the seller or supplier is established, is unfair in so far as it leads the consumer into error by giving him the impression that only the law of that Member State applies to the contract, without informing him that under Article 6(2) of Regulation No 593/2008 he also enjoys the protection of the mandatory provisions of the law that would be applicable in the absence of that term, this being for the national court to ascertain in the light of all the relevant circumstances.
3. Article 4(1)(a) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as meaning that the processing of personal data carried out by an undertaking engaged in electronic commerce is governed by the law of the Member State to which that undertaking directs its activities, if it is shown that the undertaking carries out the data processing in question in the context of the activities of an establishment situated in that Member State. It is for the national court to ascertain whether that is the case.

⁽¹⁾ OJ C 221, 6.7.2015.

Judgment of the Court (Second Chamber) of 28 July 2016 (request for a preliminary ruling from the Consiglio di Stato — Italy) — *Autorità per le Garanzie nelle Comunicazioni v Istituto Nazionale di Statistica — ISTAT, Presidenza del Consiglio dei Ministri, Ministero dell'Economia e delle Finanze*

(Case C-240/15) ⁽¹⁾

(Reference for a preliminary ruling — *Electronic communications networks and services — Directive 2002/21/EC — Article 3 — Impartiality and independence of the national regulatory authorities — Directive 2002/20/EC — Article 12 — Administrative charges — National regulatory authority subject to provisions applicable to public finances and to provisions for limiting and streamlining public authority spending*)

(2016/C 350/11)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Autorità per le Garanzie nelle Comunicazioni

Defendants: Istituto Nazionale di Statistica — ISTAT, Presidenza del Consiglio dei Ministri, Ministero dell'Economia e delle Finanze