Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

4 June 2020*

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC– Article 7(1) — Consumer credit — Review of whether the contractual terms are unfair — Failure of the consumer to appear at the hearing — Scope of the court's powers and obligations)

In Case C-495/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Poznaniu (Regional Court, Poznań, Poland), made by decision of 14 May 2019, received at the Court on 26 June 2019, in the proceedings

Kancelaria Medius SA

v

RN,

THE COURT (Sixth Chamber),

composed of M. Safjan, President of the Chamber, C. Toader (Rapporteur) and N. Jääskinen, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Kancelaria Medius SA, by D. Woźniak, adwokat,

– the Polish Government, by B. Majczyna, acting as Agent,

– the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,

– the European Commission, by N. Ruiz García and A. Szmytkowska, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Polish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 Kancelaria Medius SA and RN concerning a debt allegedly owed by RN under a consumer contract.

Legal context

European Union law

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

'The purpose of this Directive is 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) and (c) of that directive defines the terms 'consumer' and 'seller or supplier' as follows:

'(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;

(c) "seller or supplier" means 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.'

5 Article 3(1) of that directive provides:

'A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.'

6 Article 6(1) of that directive 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.'

7 Article 7(1) of that directive provides:

'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.'

Polish law

8 Article 339 of the Kodeks postępowania cywilnego (Code of Civil Procedure) provides:

'1. If a defendant does not appear for a scheduled hearing or appears for but does not participate in the proceedings, the court shall issue a default judgment.

2. In such case, the applicant's assertions of facts referred to in the complaint or pleadings served on the defendant prior to the proceedings shall be considered true, unless they raise reasonable doubts or were referred to for the purpose of circumventing the law.'

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

9 Kancelaria Medius, a company established in Kraków, Poland, providing debt collection services, brought an action for payment of 1 231 zloty (PLN) (approximately EUR 272), together with interest, from the respondent RN before the Sąd Rejonowy w Trzciance (District Court, Trzcianka, Poland), on the basis of an alleged consumer credit agreement concluded between RN and Kreditech Polska Spółka z ograniczoną odpowiedzialnością (a limited liability company), a banking institution established in Warsaw, Poland, and the legal predecessor of Kancelaria Medius.

10 In support of its action, Kancelaria Medius disclosed a copy of a pro forma contract without RN's signature and documents confirming the conclusion of an agreement on assignment of claims with its legal predecessor.

11 The Sąd Rejonowy w Trzciance (District Court, Trzcianka) found that the documents and the evidence submitted by Kancelaria Medius did not establish the existence of the claim in question. Although RN did not appear in person at the trial, that court issued a default judgment and dismissed the action.

12 Kancelaria Medius brought an appeal against the judgment of the Sąd Rejonowy w Trzciance (District Court, Trzcianka) before the Sąd Okręgowy w Poznaniu (Regional Court, Poznań, Poland) and submitted that, under Article 339(2) of the Code of Civil Procedure, that court should have relied solely on the documents that Kancelaria Medius had disclosed.

13 The referring court, hearing the case on appeal, first, observes that, under Polish law, the procedural rules on default judgments are also applicable in cases brought by sellers or suppliers against consumers.

14 Secondly, it points out that, in the present case, the requirements for issuing a default judgment were satisfied under Article 339 of the Code of Civil Procedure, since the defendant had failed to mount a defence after he had been duly served with a copy of the statement of claim, given that, under Article 339 of that code, 'substituted' service is deemed to have occurred when a party has not collected a court writ served on it despite the fact that it was enabled to do so.

15 In those circumstances, the referring court has doubts as to whether a national provision such as Article 339(2) of the Code of Civil Procedure is consistent with the standard of consumer protection required by Directive 93/13/EEC, in particular, as regards the court's obligation to examine of its own motion whether terms of a contract concluded with a consumer are unfair.

16 According to the referring court, the wording of Article 339(2) of the Code of Civil Procedure imposes an obligation on the court to issue a default judgment against a consumer, solely on the basis of statements made by an applicant, in the present case a seller or supplier, which are to be considered true, unless they raise 'reasonable doubts' or unless the court finds that those statements were made 'for the purpose of circumventing the law'. It follows that the more succinct the information submitted by the seller or supplier, the less likely it is that the court will have 'reasonable doubts'.

17 The referring court recalls the case-law of the Court of Justice, in particular, the judgments of 13 September 2018, *Profi Credit Polska* (C–176/17, EU:C:2018:711, paragraphs 40 and 57) and of 3 April 2019, *Aqua Med* (C–266/18, EU:C:2019:282, paragraph 47), according to which the provisions of national law must observe the principle of equivalence and the consumer's right to an effective remedy, as laid down in Article 47 of the Charter of Fundamental Rights of the European Union.

While the principle of equivalence was observed by the provisions of Article 339(2) of the Code of Civil Procedure, which applies to all civil cases brought before the Polish courts, the referring court has doubts as to whether it is consistent with the right to an effective remedy, where the national court has no opportunity to examine of its own motion whether the contractual terms are unfair.

18 The referring court submits that that is the case here, in respect of the judgment at first instance, which, pursuant to Article 339(2) of the Code of Civil Procedure, would have been obliged to grant Kancelaria Medius's claim, without the judge being able to ascertain the existence and the content of the contract.

19 In those circumstances, the Sąd Okręgowy w Poznaniu (Regional Court, Poznań) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Should Article 7(1) of [Directive 93/13] be interpreted as precluding procedural rules under which a court may issue a default judgment on the basis merely of an applicant's statements contained in the application, and which the court is obliged to accept as true, in a case where the defendant (a consumer), who has been duly notified of the date of the hearing, does not appear when summoned and does not mount a defence?'

Consideration of the question referred

20 As a preliminary matter, in respect of the admissibility of the request for a preliminary ruling, in its written observations, the Polish Government maintains, contrary to the interpretation of the referring court, that whether a debt claim is established does not come under Directive 93/13 and that the referring court, hearing the case on appeal, should rule without applying the provisions relating to default judgments, so that the outcome of the main proceedings is not dependent on the answer to the question asked and it is therefore irrelevant.

21 In that regard, it must be borne in mind that, according to the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 20 September 2017, *Andriciuc and Others*, C–186/16, EU:C:2017:703, paragraph 19 and the case-law cited).

22 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual and legal material necessary to give a useful answer to the questions submitted to it (judgment of 19 September 2019, *Lovasné Tóth*, C–34/18, EU:C:2019:764, paragraph 40 and the case-law cited).

23 In the present case, it is not obvious from the case file submitted to the Court that the facts of the case correspond to one of those situations. In particular, it is apparent from the order for reference that the appeal court is required to examine whether the court of first instance committed an error in law by dismissing the action of the seller or supplier, on the ground that the documents available to it did not enable it to assess whether the claim was based on unfair terms, within the meaning of Directive 93/13.

24 In addition, according to Articles 1(1) and 3(1) of Directive 93/13, that directive applies to the terms of contracts concluded between a seller or supplier and a consumer which have not been individually negotiated (judgment of 7 November 2019, *Profi Credit Polska*, C–419/18 and C–483/18, EU:C:2019:930, paragraph 51 and the case-law cited).

25 Since it is apparent from the information provided by the referring court that the dispute at issue in the main proceedings is between a seller or supplier and a consumer regarding a debt claim arising from a consumer credit contract, the drafting of which is standardised, such a dispute is therefore capable of falling within the scope of Directive 93/13.

26 The reference for a preliminary ruling is therefore admissible.

27 By its question, the referring court essentially asks whether Article 7(1) of Directive 93/13 must be interpreted as precluding the interpretation of a national provision whereby a court hearing an action brought against a consumer by a seller or supplier, which falls within the scope of Directive 93/13, and giving judgment in default, where that consumer has failed to appear at the hearing to which he was invited, is prevented from adopting the measures of inquiry needed in order to examine of its own motion whether the contractual terms on which the seller or supplier based its action, are unfair, when that court has doubts as to whether those terms are unfair, within the meaning of that directive, and whereby that court is required to rule on the basis of the assertions of the seller or supplier which it is obliged to accept as true.

28 First of all, it should be borne in mind that, under Article 2(b) of Directive 93/13, the term 'consumer' within the meaning of that directive means 'any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business or profession'. The term 'seller or supplier' is defined in Article 2(c) as including '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'.

29 Next, Article 7(1) of Directive 93/13 provides that Member States are to 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.

30 In its case-law, the Court has placed emphasis on the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers, as regards both their bargaining power and their level of knowledge. This leads to consumers agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (see, to that effect, judgments of 3 April 2019, *Aqua Med*, C–266/18, EU:C:2019:282, paragraphs 27 and 43, and of 11 March 2020, *Lintner*, C–511/17, EU:C:2020:188, paragraph 23).

31 Thus, the Court has stated that the protection which Directive 93/13 confers on consumers extends to cases in which a consumer who has concluded with a seller or supplier a contract containing an unfair term fails to raise, first, the fact that that contract falls within the scope of that directive and, second, the unfair nature of the term in question, whether because the consumer is unaware of his or her rights or because he or she is deterred from enforcing them on account of the costs which judicial proceedings would involve (judgment of 17 May 2018, *Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen*, C–147/16, EU:C:2018:320, paragraph 32 and the case-law cited).

32 While the Court has thus previously circumscribed, on a number of occasions, taking account of the requirements set out in Article 6(1) and Article 7(1) of Directive 93/13, the manner in which national courts must guarantee the protection of rights which consumers derive from that directive, the fact remains that, in principle, EU law does not harmonise the procedures which apply for the assessment of an allegedly unfair contractual term, and that those procedures are therefore a matter for the

national legal order, provided that they are not less favourable than those governing similar situations subject to domestic law (principle of equivalence) and that they afford effective judicial protection, as provided for in Article 47 of the Charter (judgments of 31 May 2018, *Sziber*, C–483/16, EU:C:2018:367, paragraph 35, and of 3 April 2019, *Aqua Med*, C–266/18, EU:C:2019:282, paragraph 47).

33 Concerning the principle of equivalence, it must be observed that the Court does not have before it any information such as to raise doubts concerning the compliance with that principle of the legislation at issue in the main proceedings.

34 As regards effective judicial protection, 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 conduct and its special features, viewed as a whole, before the various national bodies. Moreover, the specific characteristics of court proceedings cannot constitute a factor which is liable to affect the legal protection from which consumers must benefit under the provisions of Directive 93/13 (see, to that effect, judgment of 21 April 2016, *Radlinger & Radlingerová*, C–377/14, EU:C:2016:283, paragraph 50 and the case-law cited).

35 In this respect, the Court ruled that, without effective review of whether the terms of the contract concerned are unfair, observance of the rights conferred by Directive 93/13 cannot be guaranteed (judgment of 13 September 2018, *Profi Credit Polska*, C–176/17, EU:C:2018:711, paragraph 62 and the case-law cited).

36 In order to guarantee the protection intended by that directive, the Court has stated, in a case also involving default proceedings, that the imbalance which exists between the consumer and the seller or supplier may be corrected only by positive action unconnected with the actual parties to the contract (see, to that effect, judgment of 17 May 2018, *Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen*, C–147/16, EU:C:2018:320, paragraph 28 and the case-law cited).

37 Therefore, in the first place and according to settled case-law, the national court is required to assess of its own motion whether a contractual term coming within the scope of Directive 93/13 is unfair, and in doing so, compensate for that imbalance between the consumer and the seller or supplier, where it has available to it the legal and factual elements necessary for that task (judgment of 11 March 2020, *Lintner*, C–511/17, EU:C:2020:188, paragraph 26 and the case-law cited).

38 In the second place, in the absence of those legal and factual elements, the national court must be entitled to adopt of its own motion the measures of inquiry needed to establish whether a term in the contract which gave rise to the dispute before it, concluded between a seller or supplier and a consumer, comes within the scope of that directive (see, to that effect, judgment of 11 March 2020, *Lintner*, C–511/17, EU:C:2020:188, paragraphs 36 et 37 and the case-law cited).

39 In the present case, it is apparent from the order for reference that, in the default procedure in the main proceedings at issue, the court, when hearing an action brought by the applicant, must, where the defendant fails to appear at the hearing, rule on the basis of the factual assertions relied on by the applicant which are considered true, unless they raise reasonable doubts or unless the court finds that the assertions were made for the purpose of circumventing the law.

40 In this respect, it is clear from the case-law cited in paragraphs 36 to 38 that, even when the consumer fails to appear in court, the court, when hearing an action relating to a consumer credit contract, must be capable of adopting the measures of inquiry needed to ascertain whether a term in the contract is unfair, when it comes within the scope of Directive 93/13, in order to guarantee the protection of the consumer's rights deriving from that Directive.

41 It is true that the Court has stated that the principle that the parties delimit the subject matter of an action, which was also invoked by the Hungarian Government in its written observations, and the principle of *ne ultra petita* would risk being disregarded if national courts were required, under Directive 93/13, to ignore or exceed the limitations of the subject matter of the dispute established by the forms of order sought and the pleas in law of the parties (see, to that effect, judgment of 11 March 2020, *Lintner*, C–511/17, EU:C:2020:188, paragraph 31).

42 However, in the present case, it is not a question of examining contractual terms other than those on which the seller or supplier, who has brought the action, has based its claim and which are therefore the subject of the dispute.

43 The referring court submits that it does not have the contract on which the disputed claim is based, signed by both contractual parties, but only a copy of a pro forma contract without the defendant's signature.

44 It should be recalled that although, under Article 3(1) of Directive 93/13, that directive applies to clauses which have not been individually negotiated, which includes in particular standard form contracts, it cannot be considered that a court 'has available to it the legal and factual elements', within the meaning of the case-law referred to above, solely because it has an awareness of certain pro forma contracts used by the seller or supplier, without that court having in its possession the instrument recording the contract concluded between the parties to the dispute pending before it (see, to that effect, judgment of 7 November 2019, *Profi Credit Polska*, C–419/18 and C–483/18, EU:C:2019:930, paragraph 64).

45 Consequently, the principle that the parties delimit the subject matter of an action and the principle of *ne ultra petita* do not preclude a national court from requiring that the applicant produce the content of the document or documents on which his or her application is based, since such a request simply forms part of the evidential framework of the proceedings (judgment of 7 November 2019, *Profi Credit Polska*, C–419/18 and C–483/18, EU:C:2019:930, paragraph 68).

46 It follows that effective judicial protection cannot be guaranteed if the national court, when hearing an action brought by a seller or supplier against a consumer, which falls within the scope of Directive 93/13, has no opportunity, despite the consumer's failure to appear at the hearing, to assess the contractual terms on which the seller or supplier has based its action, when the court has doubts on whether a contractual term is unfair. If that court is obliged, under a national provision, to accept as true the factual assertions of the seller or supplier, the positive action of the court, required under Directive 93/13 for contracts falling within its scope, would be rendered nugatory.

47 However, when national courts apply domestic law, they are bound to interpret it, so far as possible, in the light of the wording and the purpose of Directive 93/13 in order to achieve the result sought by that directive (judgment of 17 May 2018, *Karel de Grote — Hogeschool Katholieke Hogeschool Antwerpen*, C–147/16, EU:C:2018:320, paragraph 41 and the case-law cited).

48 Therefore, if the referring court finds that a national provision, such as Article 339(2) of the Code of Civil Procedure, prevents a court giving judgment by default, in an action brought by a seller or supplier, from adopting of its own motion the measures of inquiry enabling it to ascertain whether the contractual terms that fall within the scope of that directive and form the subject matter of the dispute are unfair, it is for that court to assess whether an interpretation consistent with EU law could be envisaged, by means of exceptions, such as 'reasonable doubts' or ' circumventing the law' laid down in Article 339(2) of the Code of Civil Procedure, since they would allow the court giving judgment in default to adopt the measures of inquiry needed.

49 It must be recalled that it is for the national courts, taking into account the whole body of rules of national law and applying methods of interpretation recognised by that law, to decide whether and to what extent a national provision such as Article 339(2) of the Code of Civil Procedure can be interpreted in conformity with Directive 93/13 without having recourse to an interpretation *contra legem* of that national provision (see, by analogy, judgment of 17 April 2018, *Egenberger*, C–414/16, EU:C:2018:257, paragraph 71 and the case-law cited).

50 The Court has held, moreover, that the requirement to interpret national law in conformity with EU law includes the obligation for national courts to change their established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive (judgment of 17 April 2018, *Egenberger*, C–414/16, EU:C:2018:257, paragraph 72 and the case-law cited).

51 Where they cannot interpret and apply national legislation in accordance with the requirements of Directive 93/13, national courts are obliged to examine of their own motion whether the provisions agreed between the parties are unfair and, where necessary, are to disapply any national legislation or case-law which precludes such an examination (see, to that effect, judgment of 7 November 2019, *Profi Credit Polska*, C–419/18 et C–483/18, EU:C:2019:930, paragraph 76 and the case-law cited).

52 It follows from all of the foregoing considerations that Article 7(1) of Directive 93/13 must be interpreted as precluding the interpretation of a national provision whereby a court hearing an action brought against a consumer by a seller or supplier, which falls within the scope of Directive 93/13, and giving judgment in default, where that consumer has failed to appear at the hearing to which he was invited, is prevented from adopting the measures of inquiry needed in order to examine of its own motion whether the contractual terms on which the seller or supplier based its action are unfair, when that court has doubts as to whether those terms are unfair, within the meaning of that directive.

Costs

53 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 (Sixth Chamber) hereby rules:

Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as precluding the interpretation of a national provision whereby a court hearing an action brought against a consumer by a seller or supplier, which falls within the scope of Directive 93/13, and giving judgment in default, where that consumer has failed to appear at the hearing to which he was invited, is prevented from adopting the measures of inquiry needed in order to examine of its own motion whether the contractual terms on which the seller or supplier based its action are unfair, when that court has doubts as to whether those terms are unfair, within the meaning of that directive.

[Signatures]