



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

5 December 2013 *

(References for a preliminary ruling — Directive 93/13/EEC — Action seeking an injunction brought by a regional consumer protection association — Jurisdiction of local courts — No remedy against a decision declining jurisdiction delivered at first instance — Procedural autonomy of the Member States — Principles of equivalence and effectiveness)

In Case C-413/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de Salamanca (Spain), made by decision of 7 September 2012, received at the Court on 11 September 2012, in the proceedings

Asociación de Consumidores Independientes de Castilla y León

v

Anuntis Segundamano España SL,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Asociación de Consumidores Independientes de Castilla y León, by S. Román Capillas, procuradora, assisted by A. Castro Martín, letrado,
- the Spanish Government, by S. Centeno Huerta, acting as Agent,
- the European Commission, by J. Baquero Cruz, M. van Beek and M. Owsiany-Hornung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2013,

gives the following

* Language of the case: Spanish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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 the Asociación de Consumidores Independientes de Castilla y León ('the ACICL') and Anuntis Segundamano España SL ('ASE') concerning an action for an injunction seeking a declaration of nullity of certain general conditions of use that appear on ASE's website.

Legal context

European Union law

- 3 The 23rd and 24th recitals in the preamble to Directive 93/13 read as follows:

'[w]hereas persons or organisations, if regarded under the law of a Member State as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms of contract drawn up for general use in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority competent to decide upon complaints or to initiate appropriate legal proceedings; whereas this possibility does not, however, entail prior verification of the general conditions obtaining in individual economic sectors;

[w]hereas the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts'.
- 4 Under Article 7(1) and (2) of that directive:

'1. 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.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.'

Spanish law

- 5 Article 52(1)(14) and (16) of the Spanish Law on Civil Procedure (Ley de Enjuiciamiento Civil) ('the LEC'), which comes under section 2 thereof, concerning territorial jurisdiction of Chapter II, entitled 'Rules on jurisdiction', of Title II concerning jurisdiction under the LEC, provides:

'1. The rules on jurisdiction established in the preceding articles shall not apply and competence shall be determined in accordance with the provisions set out in this article in the following cases:

...

14. In proceedings in which actions are brought for an order not to incorporate, or to have declared the nullity of, general contractual conditions, the court having jurisdiction shall be the court where the claimant has its address. And, in relation to the same subject matter, when actions for a declaration, an injunction or withdrawal are brought, the court having jurisdiction shall be the court where the defendant is established and, in the absence of any establishment, that of its address, and if the defendant has no address in Spanish territory, that of the place where the contract was concluded.

...

16. In injunction proceedings brought to defend the collective and “diffuse” (general) interests of consumers and users, the competent court shall be the court where the defendant is established and, in the absence of any establishment, that of its address and, if the defendant has no address in Spanish territory, that of the place of the address of the claimant.’

6 Article 60(1) of the LEC, concerning negative conflicts of territorial jurisdiction, provides:

‘If a court’s decision to decline jurisdiction on grounds of lack of territorial jurisdiction has been adopted pursuant to a plea of lack of jurisdiction or upon hearing all the parties concerned, the court to which the proceedings have been referred shall be bound by the decision and may not of its own motion declare its lack of territorial jurisdiction.’

7 Article 67 of the LEC, covering appeals concerning territorial jurisdiction, provides:

‘1. No appeal shall lie against orders ruling on questions of territorial jurisdiction.

2. A plea of lack of territorial jurisdiction in appeals and extraordinary appeals for breach of procedure shall be admissible only when mandatory rules apply to the case concerned.’

8 Under Spanish law, actions for injunctions in the area of consumer protection are governed by Articles 53 to 56 of the Royal Legislative Decree 1/2007 of 16 November 2007, approving the revised text of general law for the protection of consumers and users and other supplementary laws (Real Decreto Legislativo 1/2007 por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias (BOE No 287 of 30 November 2007, p. 49181)) of 16 November 2007 (‘Royal Legislative Decree 1/2007’).

9 Article 53 of Royal Legislative Decree 1/2007, covering actions for injunctions, provides:

‘Actions for an injunction are aimed at obtaining a judgment that orders the defendant to cease from conduct and to prohibit the future repetition thereof. The action may also be brought to prohibit the practice of conduct concluded at the time the action is brought, if there is sufficient evidence pointing towards the immediate repetition of this conduct.

For the purposes of the provisions of this chapter, recommending the use of unfair terms is also considered conduct contrary to this law in respect of unfair terms.’

10 Article 54(1)(b) of Royal Legislative Decree 1/2007 provides:

‘1. In the event of conduct contrary to the provisions of this law in respect of unfair terms, contracts concluded away from business premises, distance selling, guarantees in the sale of products and package travel, the following shall be authorised to bring injunctions:

...

- (b) the consumer and user associations that meet the requirements established herein, or in regional legislation on matters of consumer and user protection, if any;

...

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

- 11 The ACICL is a consumer protection association registered in the Castilla y León Registry of Consumer and User Organisations (Registro de Organizaciones de Consumidores y Usuarios de Castilla y León). It has its registered office in Salamanca (Spain) and has 110 members. Its remit is limited to the territory of Castilla y León and it is not federated or integrated in any confederation or federation of consumer associations at regional or national level.
- 12 ASE is a commercial company having its registered office in Barcelona (Spain) which manages a website on which individuals and sellers or suppliers may publish advertisements concerning real estate or second-hand goods, as well as employment.
- 13 The general conditions governing use of the website, which are available on its portal, are divided into two categories: ‘general conditions’ and ‘specific conditions covering advertising service contracts’ (‘the specific conditions’).
- 14 At the time the action for injunctive relief was brought in the main proceedings before the national courts, the specific conditions included paragraph 6, concerning ‘limitation of liability’, and paragraph 7, entitled ‘Advertiser’s declarations and guarantees/Compensation’.
- 15 The ACICL, acting on the basis of Article 54 of Royal Legislative Decree 1/2007, brought an action for an injunction against ASE before the Juzgado de Primera Instancia No 4 y de lo Mercantil de Salamanca (Court of First Instance and Commercial Court No 4, Salamanca). That action sought, first, a declaration of nullity of paragraph 6 and paragraph 7(7) of the specific conditions and, secondly, an order against ASE to delete those clauses and to refrain from using them in the future.
- 16 By order of 6 April 2011, the Juzgado de Primera Instancia No 4 y de lo Mercantil de Salamanca declined jurisdiction to hear the injunction action brought by the ACICL. It held, on the basis of Article 52(1)(14) of the LEC, that the court having jurisdiction to hear actions for injunctions brought for the defence of consumers’ collective interests is the court where the defendant is established or has its address. The order also referred to the possibility of bringing an appeal before the Audiencia Provincial de Salamanca (Provincial Court, Salamanca).
- 17 The ACICL appealed against that decision before the Audiencia Provincial de Salamanca, arguing that the refusal by the court where the consumer protection association has its registered office to accept territorial jurisdiction to hear actions for injunctions to stop the use of unfair terms brought by such an association is contrary to the objective pursued by Directive 93/13.
- 18 In its order for reference, the Audiencia Provincial de Salamanca indicates that two points in particular raise issues.
- 19 First of all, under the national procedural rules, more specifically Articles 52(1)(16) and (67) of the LEC, no appeal lies against orders declining territorial jurisdiction handed down by courts of first instance, with the result that, in a case such as that in the main proceedings, the ACICL may bring an action only before the court where the defendant is established or has its address, namely Barcelona. The referring court has some doubts as to whether those rules under Spanish law governing territorial

jurisdiction and appeals against decisions declining territorial jurisdiction handed down by courts of first instance in actions for injunctions meet the high level of consumer protection required by Directive 93/13.

- 20 Secondly, the referring court is unsure as to whether the rule on jurisdiction under which an action for an injunction brought by a consumer protection association must be brought before the court where the seller or supplier is established or has its address is compatible with either the objective of a high level of consumer protection or the principles of equivalence and effectiveness. In fact, in the circumstances described above, a consumer protection association such as the ACICL could in reality find itself having to give up on bringing such an action due to its limited budget and its limited territorial scope.
- 21 The referring court observes that, in its case-law concerning the provisions of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (OJ 1972 L 299, p. 32) ('the Brussels Convention'), the Court has held that the efficacy of actions for injunctions to prevent the continued use of unlawful terms under Article 7 of Directive 93/13 would be considerably diminished if those actions could be brought only in the State where the trader is domiciled (Case C-167/00 *Henkel* [2002] ECR I-8111, paragraph 43). It infers therefrom that the same principles can apply to a case such as the present one, with the result that the courts of the location of the registered office of a consumer protection association acting against a seller or supplier who has included unfair terms in its contracts should be held to have jurisdiction.
- 22 In those circumstances, the Audiencia Provincial de Salamanca decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '1. Does the protection afforded to the consumer under [Directive 93/13] allow the Audiencia Provincial [de Salamanca], as a national court of appeal, to hear and determine, in spite of the absence of any relevant domestic legal rule, the appeal brought against the decision of the [Juzgado de Primera Instancia nº 4 y de lo Mercantil de Salamanca] assigning to a court of the place where the defendant has its address territorial jurisdiction to hear and determine the action for an injunction brought by a consumer [protection] association of restricted territorial scope, which is not associated or federated with other associations and which has a small budget and a small number of members?
 2. Must Articles 4 [TFEU], 12 [TFEU], 114 [TFEU], 169 [TFEU] and Article 38 of the Charter of Fundamental Rights of the European Union, read in conjunction with Directive 93/13 and the case-law of the Court of Justice relating to the high level of protection of the interests of consumers, as well as to the practical effect of directives and the principles of equivalence and effectiveness, be interpreted as meaning that the court of the place where that association has its address, and not the court of the place where the defendant has its address, is to have territorial jurisdiction to hear and determine an action for an injunction against the use of unfair terms, to protect the collective or general interests of consumers and users, brought by a consumer [protection] association with restricted territorial scope, which is not associated or federated with other associations and which has a small budget and a small number of members?'

Consideration of the questions referred

- 23 By its two questions, which it is appropriate to consider together, the referring court asks, in essence, whether Directive 93/13 and the principles of equivalence and effectiveness must be interpreted as precluding national procedural rules under which actions for an injunction brought by consumer protection associations must be brought before the courts where the defendant is established or has its address and whereby no appeal lies against a decision declining territorial jurisdiction handed down by a court of first instance.

- 24 The Spanish Government has submitted that the question relating to the impossibility of contesting a decision declining jurisdiction handed down by a court before which an action for an injunction has been brought at first instance, as in the main proceedings, is inadmissible, arguing that it does not involve any principle of European Union law. In its submission, that question relates to the right to effective judicial protection, as guaranteed by the Spanish constitution.
- 25 Suffice to observe in that regard, that the legal action brought in the main proceedings was instituted by a consumer protection association in order to prevent the continued use of unfair contractual terms by a seller or supplier. It follows that, in the main proceedings, the question of there being no appeal against the decision declining territorial jurisdiction handed down by the court before which an action for an injunction has been brought concerns the effectiveness of a procedural rule intended to safeguard a right which individuals enjoy under European Union law, in this case the right of consumer protection associations to act to prevent the continued use of unfair terms, as provided for *inter alia* by Article 7 of Directive 93/13, ‘in the interests of consumers and of competitors’.
- 26 Consequently, since the questions referred concern the interpretation of European Union law, the Court of Justice may properly give a ruling on them (see, to that effect, Case C-618/10 *Banco Español de Crédito* [2012] ECR, paragraph 76).
- 27 As regards the substance, it should be remembered that Article 7(1) and (2) of Directive 93/13 requires the Member States to ensure that, in their national legal systems, adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. Those means must include provisions whereby persons or organisations having a legitimate interest under national law in protecting consumers may take action according to the national law concerned before the courts or before competent administrative bodies for that purpose.
- 28 It is clear, however, that Directive 93/13 does not contain any provisions enabling the identification of the court which is to have territorial jurisdiction to hear actions for an injunction to prevent the continued use of unfair contractual terms brought by consumer protection associations in the interests of consumers and of competitors; nor does it regulate the question of the number of instances of jurisdiction in respect of decisions declining territorial jurisdiction in such a scenario.
- 29 Moreover, as observed by the Advocate General in point 28 of his Opinion, neither Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests (OJ 1998 L 166, p. 51), nor Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers’ interests, which succeeded it, regulates the question of the number of instances of jurisdiction which the Member States should provide for in relation to decisions declining territorial jurisdiction in actions for injunctions available to consumer protection associations, or lays down rules attributing territorial jurisdiction for actions for an injunction in the sphere of protection of consumers’ interests.
- 30 In the absence of harmonised legal procedural means available to consumer protection associations to prevent the continued use of unfair terms both in the interests of both consumers and competitors, it is for the internal legal order of each Member State, under the principle of procedural autonomy, to establish such rules, provided however that they are not less favourable than those governing similar situations subject to domestic law (principle of equivalence) and that they do not make it impossible in practice or excessively difficult to exercise the rights conferred by European Union law on consumer protection associations (principle of effectiveness) (see, by analogy, Case C-415/11 *Aziz* [2013] ECR, paragraph 50, and Case C-565/11 *Irimie* [2013] ECR, paragraph 23 and the case-law cited).
- 31 As regards the principle of equivalence, it must be observed that the Court does not have before it any evidence which might raise doubts as to the compliance of the procedural rules at issue in the main proceedings with that principle.

- 32 Subject to determinations to be made by the referring court, it is clear from Article 52(1)(14) and (16) of the LEC that the rule under which territorial jurisdiction falls to the court where the defendant is established or has its address applies to all actions for an injunction, encompassing both actions to prevent the continued use of general conditions laid down in standard contracts and actions brought by consumer protection associations to defend consumers' collective interests.
- 33 It is apparent from the order for reference that the national rule providing for no appeal against decisions declining territorial jurisdiction handed down at first instance, namely Article 67(1) of the LEC, is a rule of general application in Spanish procedural law.
- 34 As regards, first, the principle of effectiveness, the Court has already held that every case in which the question arises as to whether a national procedural provision makes the application of European Union 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 (see, to that effect, Case C-40/08 *Asturcom Telecomunicaciones* [2009] ECR I-9579, paragraph 39 and the case-law cited, and *Aziz*, paragraph 53).
- 35 In the present case it has been argued that the referral of the action for an injunction at issue in the main proceedings to another court, situated further away from the ACICL's registered office, could give rise to considerable difficulties for the ACICL because it may have to abandon the action on financial grounds as a result of the geographical distance to the court having jurisdiction.
- 36 As for the difficulties relied on by the ACICL, it appears they are neither the consequence of the rule that an action for an injunction brought by a consumer protection association falls within the territorial jurisdiction of the court where the defendant is established or has its address, nor of the rule providing that no appeal lies against decisions declining territorial jurisdiction handed down by the court of first instance.
- 37 It is not those procedural rules in themselves which make it difficult for the ACICL to bring the action for an injunction at issue in the main proceedings before the court where the defendant is established; rather, it is the association's financial situation.
- 38 As observed by the Advocate General in point 36 of his Opinion, since the procedural rules relating to the structure of internal legal remedies and the number of instances of jurisdiction pursue a general interest in the sound administration of justice and foreseeability, they must prevail over individual interests, meaning that they cannot be adapted to suit the specific financial situation of a party.
- 39 Observance of the principle of effectiveness of course requires that the organisation of the internal remedies and the number of instances of jurisdiction must not make it impossible or excessively difficult to exercise the rights individuals enjoy under European Union law.
- 40 It may be noted, first of all, as evidenced by the order for reference, that under Article 60(1) of the LEC, the court where the defendant is established, before which an action for an injunction is brought after a court where the claimant is established has declined jurisdiction, cannot call into question its own jurisdiction and it is therefore bound to rule on the merits of the action.
- 41 Secondly, although the possibility cannot be ruled out that bringing the action before the court where the defendant is established may entail additional costs for the ACICL, there is nothing in the file submitted to the Court to indicate that a proper running of the proceedings requires that the ACICL be present at all stages, subject to determinations to be made by the referring court (see, by analogy, Case C-93/12 *Agrokonsulting-04* [2013] ECR, paragraph 50).

- 42 Thirdly, the difficulties faced by the ACICL may be overcome by mechanisms aimed at compensating for its financial difficulties, such as legal aid (see, to that effect, Case C-279/09 *DEB* [2010] ECR I-13849, paragraphs 59 and 60, and, by analogy, *Agrokonsulting-04*, paragraph 50).
- 43 The Spanish Government has also stated in its written observations that consumer protection organisations may obtain a waiver of security in actions for an injunction, which is a matter for the referring court to verify.
- 44 Furthermore, in the main proceedings, the jurisdictional debate is not necessarily brought to a close by the fact that no appeal lies against the order of 6 April 2011, by which the Juzgado de Primera Instancia No 4 y de lo Mercantil de Salamanca declined territorial jurisdiction to hear the action for an injunction brought by the ACICL. As evidenced by the order for reference, that issue could be reopened if an appeal is brought against the decision on its merits.
- 45 Fourthly, as pointed out by the Spanish Government in its written observations, Article 60(1) of the LEC aims, inter alia, at preventing contradictory decisions by attributing jurisdiction to a single court. Such a rule is thus liable to ensure uniform practice throughout the national territory, thereby contributing to legal certainty (see, by analogy, *Agrokonsulting-04*, paragraph 56).
- 46 As regards the Court of Justice's case emerging from *Henkel*, relied on by the referring court, it should be noted, first of all, that the provisions of the Brussels Convention and Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), which succeeded it, concern only cross-border proceedings.
- 47 It follows that the case-law as set out in *Henkel*, in particular paragraph 43 of that judgment, in respect of the interpretation to be given to the Brussels Convention, has found that the efficacy of actions for an injunction to prevent the continued use of unlawful terms under Article 7 of Directive 93/13, in the cross-border context, would be considerably diminished if those actions could be brought only in the State where the trader is domiciled, is not transposable to circumstances such as those at issue in the main proceedings which concern the interpretation of procedural provisions of domestic law of a single Member State.
- 48 In respect of equating consumer protection associations with consumers for the purposes of Directive 93/13, as suggested by the referring court, it should be borne in mind, as the Advocate General observes, in essence, in point 51 of his Opinion, that, according to the Court's settled case-law, the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in an inferior position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge (see, inter alia, Case C-243/08 *Pannon GSM* [2009] ECR I-4713, paragraph 22; *Banco Español de Crédito*, paragraph 39; and *Aziz*, paragraph 44).
- 49 However, it is clear that, as regards the procedural remedies available to consumer protection associations in order to prevent the continued use of unfair terms, they are not in an inferior position vis-à-vis the seller or supplier.
- 50 Without denying the importance of the essential role they must be able to play in order to achieve a high level of consumer protection in the European Union, it must nevertheless be recognised that an action for an injunction pitting such an association against a seller or supplier is not characterised by the same imbalance that is present in an individual action brought by a consumer against a seller or supplier.

- 51 Such a differentiated approach is, moreover, supported by Article 4(1) of Directive 98/27 and Article 4(1) of Directive 2009/22, under which it is the courts of the Member State where the defendant is established or has its address which have jurisdiction to hear actions for an injunction brought by consumer protection associations from other Member States in the event of an intra-EU infringement of European Union consumer protection legislation.
- 52 In the light of all the foregoing considerations, the Court finds that the procedural rules at issue in the main proceedings do not make it impossible in practice or excessively difficult to exercise the right to bring an action for an injunction, as brought by a consumer protection association such as the ACICL, and do not jeopardise the achievement of the objective pursued by Directive 93/13.
- 53 In those circumstances the answer to the questions referred is that Directive 93/13 and the principles of equivalence and effectiveness must be interpreted as not precluding national procedural rules under which actions for an injunction brought by consumer protection associations must be brought before the courts where the defendant is established or has its address and whereby no appeal lies against a decision declining territorial jurisdiction handed down by a court of first instance.

Costs

- 54 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 (Third Chamber) hereby rules:

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and the principles of equivalence and effectiveness must be interpreted as not precluding national procedural rules under which actions for an injunction brought by consumer protection associations must be brought before the courts where the defendant is established or has its address and whereby no appeal lies against a decision declining territorial jurisdiction handed down by a court of first instance.

[Signatures]