



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 February 2015*

(Reference for a preliminary ruling — Consumer protection — Directive 93/13/EEC — Article 7 — Mortgage loan agreement — Arbitration clause — Unfairness — Action by consumer — National procedural rule — Lack of jurisdiction of the court hearing the action by a consumer for a declaration of invalidity of a standard contract to hear the application for a declaration of unfairness of terms in the same contract)

In Case C-567/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Hungary), made by decision of 2 October 2013, received at the Court on 5 November 2013, in the proceedings

Nóra Baczó,

János István Vizsnyiczai

v

Raiffeisen Bank Zrt,

THE COURT (Third Chamber),

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

Advocate General: J. Kokott,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 19 November 2014,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M.M. Tátrai and M.Z. Fehér, acting as Agents,
- the European Commission, by K. Talabér-Ritz and M. van Beek, acting as Agents,

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

gives the following

* Language of the case: Hungarian.

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, on the one hand, Ms Baczó and Mr Vizsnyiczai and, on the other hand, Raiffeisen Bank Zrt concerning an application for a declaration of invalidity of a mortgage loan contract and of the arbitration clause contained in that contract.

Legal context

EU law

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

‘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 3(1) of that directive reads as follows:

‘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.’

- 5 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.’

- 6 Under Article 7(1) of the directive:

‘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.’

Hungarian law

Substantive law

- 7 Paragraph 200 of Law No IV 1959 establishing the Civil Code (a Polgári Törvénykönyvről szóló 1959. évi IV. törvény) (‘the Civil Code’), in the version in force on the date on which the contract at issue in the main proceedings was concluded, provides:

‘(1) The parties to a contract may determine the content of their contract freely. They may waive by mutual consent the provisions relating to contracts where such waiver is not prohibited by law.’

(2) Contracts which breach legal provisions and contracts concluded by evading a legal provision are void, save where a different legal consequence is provided for by law. A contract is also void if it is manifestly in breach of accepted principles of morality.’

- 8 Under Paragraph 209(1) of the Civil Code, ‘standard contract terms and terms in a consumer contract which have not been individually negotiated are to be regarded as unfair if, contrary to the requirements of good faith, they establish the parties’ rights and obligations arising under the contract unilaterally and unjustifiably, to the detriment of the contracting party which did not stipulate those terms’.
- 9 Under Paragraph 209/A(1), unfair terms may be challenged by the injured party. Subparagraph 2 thereof provides that such terms are null and void.
- 10 Under Paragraph 227(2) of the Civil Code, ‘contracts for the purpose of providing impossible services are void’.
- 11 Under Paragraph 239/A(1), a party may bring an action for a declaration of invalidity of a contract, or a declaration of the invalidity of certain provisions of a contract (limited invalidity), whether or not requesting the application of the legal consequences of invalidity.
- 12 According to Article 213(1) of Law No CXII of 1996 on financial and credit institutions (hitelintézetekről és a pénzügyi vállalkozásokról szóló 1996. évi CXII. törvény), in the version applicable at the time the contract at issue in the main proceedings was concluded, all consumer and personal loan contracts that do not include the terms listed in that provision, including in particular the subject of the contract, the annual percentage rate of charge or the overall amount of costs relating to the contract, are void.

Procedural law

- 13 Under Paragraph 3(2) of Law III of 1952 on the Code of Civil Procedure (a polgári perrendtartásról szóló 1952. évi III. törvény; ‘the Civil Procedure Code’), the court, in the absence of any statutory provision to the contrary, is bound by the submissions and legal statements made by the parties. The court must consider applications and statements made by the parties in the light of their content, rather than their formal designation.
- 14 Under Paragraph 22(1) of that code, a local court, that is a járásbíróság (Local Court) or a kerületi bíróság (District Court) has jurisdiction in all actions in which a decision is not assigned by law to the jurisdiction of the törvényszék (County Court).
- 15 In accordance with Article 23(1)(k) of that code, the törvényszék has jurisdiction to hear cases seeking a declaration of invalidity of unfair contract terms pursuant, in particular, to Paragraph 209/A of the Civil Code.
- 16 Opinion 2/2010/VI.28 of the Civil Division of the Kúria (Supreme Court) on certain questions of procedure concerning actions seeking to have contracts set aside states that the Court is required to make a finding of its own motion of a manifest ground for invalidity which may be clearly established on the basis of the available evidence.
- 17 Opinion 2/2011/XII.12 of the Civil Division of the Kúria on certain questions relating to the validity of consumer contracts states that the local court is required, when considering the substance of the case, to examine the unfairness of a contract term either on the basis of an objection lodged by the defendant or of its own motion.

18 Under Paragraph 24(1) of the Civil Procedure Code, the amount in dispute is to be determined according to the value of the claim or other right which the action seeks to have upheld.

19 As regards the calculation of the tax due for bringing contentious civil proceedings, Paragraph 39(1) of the Law on Duties and Taxes (1990. évi XCIII. tv. az illetékekről) ('the Law on Duties and Taxes') provides that, save as otherwise provided, the tax base in contentious or non-contentious proceedings is the amount at issue in the proceedings at the time the proceedings were initiated.

20 Paragraph 39(3) of that law provides:

'If the amount of the proceedings cannot be determined pursuant to subparagraph (1), the tax base for the calculation of the tax ... is to be as follows:

(a) before local courts, HUF 350 000 in contentious proceedings ...

(b) before the törvényszék:

— in contentious cases at first instance, HUF 600 000 ...'

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

21 On 13 September 2007, the applicants in the main proceedings, Ms Baczó and Mr Vizsnyiczai, concluded a mortgage loan agreement with Raiffeisen Bank Zrt, a bank incorporated under Hungarian law. That agreement contained an arbitration clause, pursuant to which disputes arising from the loan contract, except for those relating to pecuniary debts, fall within the jurisdiction of an arbitral tribunal.

22 On 26 February 2013, the applicants in the main proceedings brought an action for a declaration of invalidity of that loan agreement before the Pesti Központi Kerületi Bíróság (Central District Court, Pest).

23 In support of their action, the applicants in the main proceedings argued, on the basis of Paragraphs 239/A, 200(2) and 227(2) of the Civil Code, that the mortgage loan agreement they had signed was manifestly unlawful, manifestly in breach of accepted principles of morality and had as its object an impossible service. They also relied on the fact that that agreement satisfied the grounds of invalidity set out in Paragraph 213(1) of Law No CXII 1996 on credit institutions and financial undertakings.

24 Following a request for further information from the Pesti Központi Kerületi Bíróság, the applicants in the main proceedings also sought a declaration of invalidity of the arbitration clause contained in the agreement, in accordance with Directive 93/13, Paragraph 209(2) of the Civil Code and Opinion 2/2011/XII.12 of the Kúria.

25 Taking account of the latter head of claim and having classified the mortgage loan agreement as a 'standard contract', by order of 6 May 2013, the Pesti Központi Kerületi Bíróság referred the case to the Fővárosi Törvényszék (Budapest Court) pursuant to Paragraph 23(1)(k) of the Civil Procedure Code, according to which actions seeking to have unfair contract terms set aside fall under the jurisdiction of the county courts.

26 The applicants in the main proceedings appealed against that order, seeking to have it reversed and a declaration that the local court had jurisdiction to hear the case. In that connection, the order for reference states that, in support of their appeal, the applicants in the main proceedings deny having sought a declaration that their mortgage loan agreement contains an unfair term and a decision that their case should be referred back to the county court.

- 27 The referring court states that, pursuant to Paragraph 239(1)(k) of the Civil Procedure Code, a consumer may seek a declaration that a term, such as that at issue in the main proceedings, in a standard contract is unfair only before a county court, whereas the same consumer, as a defendant in an action brought by the seller or supplier before a local court, may raise an objection seeking a declaration that that term is unfair.
- 28 Depending on the thresholds applicable which correspond to the value of the dispute, proceedings brought by a consumer for a declaration of invalidity of a standard contract on other grounds are likely to fall within the jurisdiction of the local court. According to the referring court, it would be sensible for the local court to also be able to rule on the application for a declaration of invalidity of unfair terms in the same contract.
- 29 Finally, the referring court considers that the referral of the consumer to the county court may place him at a disadvantage, in particular because the rule in Paragraph 23(1)(k) of the Civil Procedure Code results in higher procedural costs. Such a situation is liable to jeopardise the attainment of the objectives pursued by Directive 93/13.
- 30 In those circumstances the Fővárosi Törvényszék decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘1. In proceedings brought before a local court for a declaration of the invalidity of a contract (standard contract terms), in which the consumer also seeks in his application a declaration of the unfairness of a term of the contract at issue in the proceedings, and thereby provides a basis for the jurisdiction of another court, the county court (törvényszék), is there a disadvantage for the consumer, given that, in proceedings brought by the other party to the contract, the consumer can rely on the unfairness of a contract term before the local court, and a transfer to the county court will burden the consumer with higher costs?
 2. Would the situation be more equal if, in proceedings brought by a consumer before the local court for a declaration of the invalidity of a contract, the consumer were able also to rely on the unfairness of a term of the contract, as a result of which that local court would have jurisdiction?’

The questions referred for a preliminary ruling

Preliminary observations

- 31 It follows from a combined reading of the questions referred and the grounds set out by the referring court that it asks the Court to rule on the compatibility of a national procedural rule with EU law, in particular with Directive 93/13.
- 32 It must be recalled in this respect that, although it is not the task of the Court, in preliminary ruling proceedings, to rule upon the compatibility of provisions of national law or a national practice with the legal rules of the European Union, the Court has repeatedly held that it has jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility for the purposes of the case before it (see judgment in *Pannon Gép Centrum*, C-368/09, EU:C:2010:441, paragraph 28 and the case-law cited).
- 33 In those circumstances, and in so far as the doubts of the referring court concern a possible disadvantage to which the application of Paragraph 23(1)(k) of the Civil Procedure Code may give rise for a consumer who relies on rights based on Directive 93/13, it must be held that the questions referred concern the interpretation of that directive, in particular Article 7(1) thereof.

Substance

- 34 By its questions, which it is appropriate to examine together, the referring court asks essentially whether Article 7(1) of Directive 93/13 must be interpreted as meaning that it precludes a national procedural rule according to which a local court with jurisdiction to hear an action brought by a consumer on the invalidity of a standard contract does not have jurisdiction to hear an application from that consumer for a declaration that the contractual terms in that contract are unfair.
- 35 In that connection, it must be stated at the outset that Paragraph 23(1)(k) of the Civil Procedure Code has given rise to the request for a preliminary ruling in the case which gave rise to the judgment in *Jörös*, (C-397/11, EU:C:2013:340).
- 36 In that case, the referring court had asked the Court, inter alia, whether Directive 93/13 should be interpreted as meaning that the national court, hearing a dispute on the validity of terms in a consumer contract, could examine the unfairness of the terms at issue of its own motion and to declare the contract void, even if jurisdiction to declare unfair contractual terms void was attributed to another judicial body in accordance with national rules.
- 37 In paragraph 53 of the judgment in *Jörös* (EU:C:2013:340) the Court held that Directive 93/13 must be interpreted as meaning that a national court which has, of its own motion, established that a contractual term is unfair must, as far as possible, apply its internal procedural rules in such a way as to draw all the consequences which, under national law, result from a finding that the term at issue is unfair, in order to satisfy itself that the consumer is not bound by that term.
- 38 However, it must be stated that the present case is distinguishable from that which gave rise to the judgment in *Jörös* (EU:C:2013:340) by the fact that it raises the question whether the consumer, in his capacity as the applicant, should have the opportunity to raise himself, in addition to the invalidity of a contract falling within the scope of Directive 93/13, the unfairness of contractual terms that it contains, despite a rule of jurisdiction which requires that consumer to submit such a head of claim before another national court.
- 39 Article 7(1) of Directive 93/13 requires 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.
- 40 However, Directive 93/13 does not contain any express provision determining the court competent to hear actions by consumers seeking a declaration of invalidity of such unfair terms.
- 41 According to the settled case-law of the Court, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State, in accordance with the principle of the procedural autonomy of the Member States, to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law (judgment in *Agrokonsulting-04*, C-93/12, EU:C:2013:432, paragraph 35 and the case-law cited).
- 42 On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, to that effect, judgments in *Impact*, C-268/06, EU:C:2008:223, paragraph 46 and the case-law cited, and *Asociación de Consumidores Independientes de Castilla y León*, C-413/12, EU:C:2013:800, paragraph 30).

- 43 In the first place, as regards the principle of equivalence, it must be observed that, in its written submissions and at the hearing, the European Commission expressed doubts as to the conformity with that principle of a national procedural rule, such as Paragraph 23(1)(k) of the Civil Procedure Code, which confers exclusive jurisdiction on county courts to hear actions by consumers seeking a declaration of invalidity of unfair contract terms. In that regard, the Commission makes a comparison between those actions and actions brought by consumers for a declaration, on other grounds, of the invalidity of contractual terms, since the latter actions may, depending on the applicable thresholds which correspond to the value of the subject of the dispute, fall within the jurisdiction of the local courts.
- 44 However, it must be emphasised that it is solely for the national court, which has direct knowledge of the detailed procedural rules applicable, to ascertain whether the actions concerned are similar as regards their purpose, cause of action and essential characteristics (see judgments in *Asturcom Telecomunicaciones*, EU:C:2009:615, paragraph 50, and *Agrokonsulting-04*, EU:C:2013:432, paragraph 39).
- 45 Even assuming that the actions by consumers for a declaration of invalidity of contractual terms on grounds based in particular or exclusively on the rules deriving from Directive 93/13 and actions by consumers seeking a declaration of invalidity of contractual terms on grounds based exclusively on national law are similar, it is necessary to examine whether the procedural rules for the actions based on EU law are less favourable than those based exclusively on national law.
- 46 In that connection, it must be held that the jurisdiction of the county courts to hear actions which are brought on grounds based on EU law does not necessarily constitute a procedural rule which may be classified as ‘unfavourable’. The designation of those courts, which are less numerous and hierarchically superior to the local courts, may facilitate a more homogeneous and specialised administration of justice in cases concerning the rules arising from Directive 93/13.
- 47 As regards the higher costs of justice which the applicant might incur before the county courts, it cannot be inferred from the sole fact of examining a case such as that at issue in the main proceedings before such courts that that undermines the principle of equivalence. Such an interpretation would amount to measuring the equivalence between safeguarding the rights that individuals derive from EU law on one hand and safeguarding the rights they derive from national law on the other, solely from the point of view of costs, and by ignoring the advantages of the procedure which is provided for actions based on EU law, such as those mentioned in the preceding paragraph.
- 48 It follows from the foregoing that it cannot be held that Paragraph 23(1)(k) of the Civil Procedure Code breaches the principle of equivalence.
- 49 As regards, second, the principle of effectiveness, the Court has already held that every case in which the question arises 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, before the various national bodies (judgment in *Pohotovost’*, C-470/12, EU:C:2014:101, paragraph 51).
- 50 As regards the action at issue in the main proceedings, it is clear from the order for reference that if the local court were to decline to hear the case in favour of the county court, that would be likely to involve extra costs for consumers as applicants.
- 51 In that connection, it must be recalled that 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 (judgment in *Asociación de Consumidores Independientes de Castilla y León*, EU:C:2013:800, paragraph 38).

- 52 Observance of the principle of effectiveness requires that the organisation of the internal remedies must not, however, make it impossible or excessively difficult to exercise the rights individuals enjoy under EU law (judgment in *Asociación de Consumidores Independientes de Castilla y León*, EU:C:2013:800, paragraph 39).
- 53 In the present case, it must be observed, first, that it is apparent from the documents submitted to the Court that it is only in a specific and unusual situation that the exclusive substantive jurisdiction of the county court conferred by Paragraph 23(1)(k) of the Civil Procedure Code is likely to involve for the consumer, acting in his capacity as the applicant, the payment of a higher rate of tax. Subject to verifications to be made by the referring court in that regard, that would be the case only if the value of the subject-matter of the dispute cannot be established, so that, pursuant to Paragraph 39(3)(b) of the Law on Duties and Taxes, the tax due in respect of an action brought before the county court corresponds, in that case, to a lump sum payment.
- 54 Second, it is also apparent from the documents submitted to the Court that actions brought before a county court, including those seeking a declaration of unfairness of contractual terms, require the assistance of a lawyer.
- 55 However, it is necessary to take into consideration the mechanisms provided by the national procedural rules aiming to compensate for the consumer's financial difficulties, such as legal aid, which may help to offset the additional costs in relation to the costs of the proceedings involved in the local court declining to hear the case in favour of the county court and related to both the imposition of higher tax and the need to have recourse to a lawyer (see judgment in *Asociación de Consumidores Independientes de Castilla y León*, EU:C:2013:800, paragraph 42 and the case-law cited).
- 56 Third, the Commission submits that the possible geographical remoteness of the county court in relation to the consumer's home may constitute an obstacle to the exercise of his right to bring proceedings.
- 57 However, it must be held that there is nothing in the documents submitted to the Court to indicate that a proper running of the proceedings requires that the consumer, in his capacity as applicant, be present at all stages (see, to that effect, judgment in *Asociación de Consumidores Independientes de Castilla y León*, EU:C:2013:800, paragraph 41) .
- 58 Fourth and finally, it must be emphasised, as the Hungarian Government rightly observed in its submissions, that the purpose of Paragraph 23(1)(k) of the Civil Procedure Code is to assign disputes relating to unfair contract terms to the judges of the county courts who have more extensive professional experience and, thereby, to ensure uniform practice and a more effective protection of consumer rights.
- 59 Accordingly, the answer to the questions referred is that Article 7(1) of Directive 93/13 must be interpreted as meaning that it does not preclude a national procedural rule pursuant to which a local court which has jurisdiction to rule on an action brought by a consumer seeking a declaration of invalidity of a standard contract does not have jurisdiction to hear an application by the consumer for a declaration of unfairness of contract terms in the same contract, unless declining jurisdiction by the local court gives rise to procedural difficulties that would make the exercise of the rights conferred on consumers by the EU legal order excessively difficult. It is for the national court to carry out the necessary verifications in that respect.

Costs

- ⁶⁰ 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:

Article 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as meaning that it does not preclude a national procedural rule pursuant to which a local court which has jurisdiction to rule on an action brought by a consumer seeking a declaration of invalidity of a standard contract does not have jurisdiction to hear an application by the consumer for a declaration of unfairness of contract terms in the same contract, unless declining jurisdiction by the local court gives rise to procedural difficulties that would make the exercise of the rights conferred on consumers by the European Union legal order excessively difficult. It is for the national court to carry out the necessary verifications in that respect.

[Signatures]