Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

18 November 2020*

[Text rectified by order of 13 January 2021]

(Reference for a preliminary ruling – Judicial cooperation in civil and commercial matters – Regulation (EU) No 1215/2012 – Contract of transport by air – Jurisdiction clause agreed to by the passenger as a consumer – Claim made by the passenger against the airline – Assignment of that claim to a collection agency – Enforceability of the jurisdiction clause by the airline against the assignee company of that passenger's claim – Directive 93/13/EEC)

In Case C-519/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Okręgowy w Warszawie XXIII Wydział Gospodarczy Odwoławczy (Regional Court, Warsaw, 23rd Commercial Appeals Division, Poland), made by decision of 13 June 2019, received at the Court on 9 July 2019, in the proceedings

Ryanair DAC

v

DelayFix, formerly Passenger Rights sp. z o.o.,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader (Rapporteur), M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ryanair DAC, by A. Kasnowska, adwokat, and by M. Jóźwiak, radca prawny,

– DelayFix, formerly Passenger Rights sp. z o.o., by M. Misiaszek, K. Żbikowska and I. Wieczorek, adwokaci,

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

* Language of the case: Polish.

– [As rectified by order of 13 January 2021] the European Commission, by M. Heller, A. Szmytkowska and N. Ruiz García, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 25(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1) and of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

2 The reference has been made in proceedings between Passenger Rights sp. z o.o., now DelayFix, established in Warsaw (Poland), a company specialised in the recovery of claims and to which an air passenger assigned his rights, and the airline Ryanair DAC, established in Dublin (Ireland), concerning the payment of the sum of EUR 250 as compensation for the cancellation of a flight, on the basis of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Legal context

European Union law

Directive 93/13

3 In accordance with Article 1(1) of Directive 93/13, the purpose of that 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 of that 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 3 of that directive provides:

‘1. 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.

2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract.

The fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this article to the rest of a contract if an overall assessment of the contract indicates that it is nevertheless a pre-formulated standard contract.

Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him.

3. The annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.'

6 Article 4(1) of that directive states:

'… the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.'

7 Under Article 6(1) of Directive 93/13:

'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.'

8 Point 1(q) of the annex to that directive refers to 'terms which have the object or effect of … excluding or hindering the consumer's right to take legal action or exercise any other legal remedy …'

Regulation No 1215/2012

9 Chapter II of Regulation No 1215/2012, entitled 'Jurisdiction', contains 10 sections. Section 1, entitled 'General provisions', includes Article 4 of that regulation, which provides in paragraph 1:

'Subject to this regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.'

10 Section 2 of Chapter II, entitled 'Special jurisdiction', contains Article 7 of that regulation, which provides that:

'A person domiciled in a Member State may be sued in another Member State:

(1) (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
(b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:

…

– in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;

…’

11 Section 4 of Chapter II of that regulation, entitled ‘Jurisdiction over consumer contracts’, includes Article 17 of that regulation, which provides:

‘…

3. This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.’

12 Under Article 25 of Regulation No 1215/2012, included in Section 7 of Chapter II, entitled ‘Prorogation of jurisdiction’:

‘1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:

(a) in writing or evidenced in writing;

(b) in a form which accords with practices which the parties have established between themselves; or

(c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.

…’

Polish law

13 Paragraph 509 of the Kodeks cywilny (Civil Code), in the version applicable to the facts in the main proceedings, provides:

‘§ 1. A creditor may, without the consent of the debtor, assign a claim to a third party (transfer), save where this would be contrary to the law, a contractual stipulation or a characteristic of the obligation.

§ 2. All rights associated with the claim, in particular any claim to arrears of interest, are transferred together with the claim.’

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

14 Passenger Rights, a company specialised in the recovery of air passengers’ claims, now DelayFix, has requested the Sąd Rejonowy dla m. st. Warszawy w Warszawie (District Court for the Capital city of Warsaw, Poland) to order the airline Ryanair, on the basis of Regulation No 261/2004, to pay a sum of EUR 250 in compensation for the cancellation of a flight between Milan (Italy) and Warsaw (Poland), a passenger of that flight having assigned that company their claim with respect to that airline.

15 Ryanair raised a plea alleging that the Polish courts do not have jurisdiction, on the grounds that Section 2.4 of its general terms and conditions of carriage, to which that passenger agreed when he purchased his ticket online, provides that those terms and conditions are subject to the jurisdiction of the Irish courts. According to Ryanair, DelayFix, as the assignee of that passenger's claim, is bound by that clause.

16 By an order of 15 February 2019, the Sąd Rejonowy dla m. st. Warszawy w Warszawie (District Court for the Capital city of Warsaw) rejected that plea of lack of jurisdiction, considering that, first, the clause attributing jurisdiction in the contract of transport between that passenger and the airline was unfair, within the meaning of Directive 93/13, and second, DelayFix, as the assignee of the passenger's claim following the cancellation of the flight, could not be bound by such a clause.

17 Ryanair brought an appeal against that order before the referring court. That airline contended that, as DelayFix was not a consumer, it could not benefit from the jurisdictional protection provided for consumer contracts.

18 The referring court notes that, in accordance with the provisions of national law and as the case-law of the Sąd Najwyższy (Supreme Court, Poland) currently stands, the unfairness of a term of a contract could be established in the context of the assessment of a claim for damages brought against a liable person by a professional party who has acquired the claim of a consumer.

19 However, first, that court asks whether, under Article 3(1) and Article 6(1) of Directive 93/13, the assignee of a consumer's claim may also be regarded as a consumer. More specifically, the referring court harbours doubts as to whether the assignment by a consumer of his or her claim to a professional party has the effect of taking over that consumer's rights, allowing the professional party to rely on the favourable EU regime regarding consumer protection which arises from, inter alia, that directive.

20 Second, the questions posed by the referring court concern the case-law of the Court concerning the application of Regulation No 1215/2012, in respect of the legal regime of jurisdiction clauses, laid down in Article 25 of that regulation, and the particular regime set out in Section 4 of Chapter II of that regulation, regarding the 'jurisdiction over consumer contracts' and, in particular, the concept of a 'consumer' included in that section.

21 As regards, first, clauses covered by Article 25 of Regulation No 1215/2012, the referring court points out that it follows from the judgment of 7 February 2013, *Refcomp*, (C-543/10, EU:C:2013:62), that that type of clause incorporated in a contract can, in principle, have effect only with regard to the relationship between the parties who agreed to it on conclusion of that contract. Such a clause would stem, indeed, from an agreement between the parties and, in order for it to be enforceable on a third party, it would, in principle, be necessary for the third party to give consent to that effect.

22 Concerning, second, the concept of a 'consumer', within the meaning of Section 4 of Chapter II of Regulation No 1215/2012, the referring court notes that, since the particular regime established in Articles 17 et seq. of that regulation, is inspired by the concern to protect the consumer as the party deemed to be economically weaker and less experienced in legal matters than the other party to the contract, the consumer is protected only in so far as he is, in his personal capacity, the applicant or defendant in judicial proceedings. Consequently, if the applicant is not himself a party to the consumer contract in question, he cannot enjoy the benefit of the jurisdiction relating to consumer contracts. In the light of the case-law of the Court, the referring court asks whether, in order to determine the jurisdiction of a court and the validity of a jurisdiction clause, the 'initial' nature of the obligation must be taken into consideration or whether the professional party to which the claim has been transferred may challenge the jurisdiction clause as being unfair, relying on provisions of consumer protection laid down, inter alia, in Directive 93/13.

23 In those circumstances, the Sąd Okręgowy w Warszawie, XXIII Wydział Gospodarczy Odwoławczy (Regional Court, Warsaw, Commercial Appeals Division No 23, Poland) decided to stay the proceedings and to refer the following question for a preliminary ruling:

'Should Articles 2(b), 3(1) and (2) and 6(1) of Directive 93/13 … and Article 25 of Regulation [No 1215/2012], as regards examination of the validity of an agreement conferring jurisdiction, be interpreted as meaning that the final purchaser of a claim acquired by way of assignment from a consumer, which final purchaser is not a consumer himself, may rely on the absence of individual negotiation of contractual terms and on unfair contractual terms arising from a jurisdiction clause?'

Ryanair's request to open the oral part of the procedure

24 By its request of 4 November 2020, received at the Court Registry on the same day, Ryanair has requested, on the basis of Article 83 of the Rules of Procedure of the Court, the opening of the oral part of the procedure, arguing that the circumstances referred to in the order for reference were not sufficiently explained, that detailed argument is necessary, and that the resolution of the present case may have a decisive influence on the interpretation of the relevant provisions of EU law.

25 It must be recalled that, in accordance with that provision, the Court may, of its own motion or on a proposal from the Advocate General, or indeed at the request of the parties, order the opening or reopening of the oral procedure, if it considers that it has insufficient information or that the case must be decided on the basis of an argument which has not been debated by the parties.

26 In this instance, the conditions laid down in that provision have not been fulfilled.

27 The referring court has sufficiently set out the factual circumstances, as well as the national regulatory framework. The written part of the procedure before the Court has already allowed the parties to state their positions. Furthermore, a request for a preliminary ruling does not need to be decided on the basis of arguments which have not been debated by the parties.

28 Consequently, it is appropriate, after hearing the Advocate General, not to grant Ryanair's request to open the oral part of the procedure.

Consideration of the question referred

Admissibility of the request for a preliminary ruling

29 In the written phase of the proceedings, Ryanair stated that it had made the requested payment giving rise to the dispute before the referring court. Thus, according to Ryanair, the request for a preliminary ruling has become devoid of purpose.

30 The referring court, in answer to a question put to it by the Court, notes that the case in the main proceedings was joined to two other cases involving the parties to the main proceedings, which have similarly been made in respect of compensation claims on the basis of Regulation No 261/2004, such that an action is still pending before that court.

31 It is clear from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court of Justice by way of a reference for a preliminary ruling unless a case is pending before it in which it is called upon to give a decision which is capable of taking account of the preliminary ruling. The justification for a reference for a preliminary ruling is not

that it enables advisory opinions on general or hypothetical questions to be delivered but rather that it is necessary for the effective resolution of a dispute (see, to that effect, judgment of 27 February 2014, *Pohotovosť*, C-470/12, EU:C:2014:101, paragraphs 28 and 29 and the case-law cited.)

32 In the present case, it should be noted that the case in the main proceedings has been joined to two other cases, with regard to which it has not been established before the Court that the compensation claims have been settled, such that it is appropriate to take the view that the main proceedings are still pending before the referring court.

33 Since the procedure created by Article 267 TFEU is an instrument of cooperation between the Court and the national courts, by means of which the Court provides the national courts with the points of interpretation of EU law which they need in order to decide the disputes before them, such an indication by a national court is binding on the Court and cannot, in principle, be called into question by the parties to the main proceedings (judgment of 27 February 2014, *Pohotovosť*, C-470/12, EU:C:2014:101, paragraph 30 and the case-law cited).

34 The request for a preliminary ruling is therefore admissible.

Substance

35 By the question referred, the referring court asks, in essence, whether Article 25 of Regulation No 1215/2012 and Article 2(b), Article 3(1) and (2) and Article 6(1) of Directive 93/13 must be interpreted as meaning that, for the purposes of contesting the jurisdiction of a court to hear an action for compensation on the basis of Regulation No 261/2004 and brought against an airline, a jurisdiction clause incorporated in a contract of carriage between a passenger and that airline can be enforceable by the latter against a collection agency to which the passenger has assigned the claim.

36 The answer to that question necessitates a determination of the conditions under which such a jurisdiction clause can bind a collection agency to which the passenger has assigned the claim.

37 While the referring court's questions regarding the jurisdiction clause at issue in the present case refer to both Directive 93/13 and Regulation No 1215/2012, since the legal regime governing that type of clause is established by Article 25 of that regulation, it is appropriate to begin by examining the question in the light of the latter.

38 In accordance with the settled case-law, the concept of a 'jurisdiction clause' must be interpreted as an independent concept of EU law and as giving full effect to the principle of freedom of choice on which Article 25(1) of Regulation No 1215/2012 is based (see, to that effect, judgments of 10 March 1992, *Powell Duffryn*, C-214/89, EU:C:1992:115, paragraph 14; of 9 December 2003, *Gasser*, C-116/02, EU:C:2003:657, paragraph 51 and the case-law cited; and of 7 February 2013, *Refcomp*, C-543/10, EU:C:2013:62, paragraphs 22 and 40 and the case-law cited).

39 In particular, the fact that the contract in question was concluded online is not, in itself, able to invalidate such a clause, subject to compliance with conditions set out in the case-law of the Court regarding, inter alia, the creation of a durable record of the text in which that clause is found (see, to that effect, judgment of 21 May 2015, *El Majdoub*, C-322/14, EU:C:2015:334, paragraph 40).

40 Furthermore, Article 25(1) of Regulation No 1215/2012 does not specify whether a jurisdiction clause may be assigned, beyond the circle of the parties to a contract, to a third party, who is a party to a subsequent contract and successor, in whole or in part, to the rights and to the obligations of one of the parties to the initial contract (judgments of 7 February 2013, *Refcomp*, C-543/10, EU:C:2013:62, paragraph 25, and of 20 April 2016, *Profit Investment SIM*, C-366/13, EU:C:2016:282, paragraph 23).

41 Thus, the court before which the matter is brought has the duty of examining, *in limine litis*, whether the jurisdiction clause was in fact the subject of consensus between the parties, which must be clearly and precisely demonstrated, the purpose of the requirements as to form imposed by Article 25(1) of Regulation No 1215/2012 being, in that regard, to ensure that consensus between the parties is in fact established (see, to that effect, judgments of 7 February 2013, *Refcomp*, C-543/10, EU:C:2013:62, paragraph 27 and the case-law cited, and of 8 March 2018, *Saey Home & Garden*, C-64/17, EU:C:2018:173, paragraph 25 and the case-law cited).

42 It follows that, in principle, a jurisdiction clause incorporated in a contract may produce effects only in the relations between the parties who have given their agreement to the conclusion of that contract (judgments of 7 February 2013, *Refcomp*, C-543/10, EU:C:2013:62, paragraph 29, and of 28 June 2017, *Leventis and Vafeias*, C-436/16, EU:C:2017:497, paragraph 35 and the case-law cited).

43 In this instance, the jurisdiction clause at issue in the main proceedings is not being enforced on one of the parties to the contract in which it appears, but on a third party to the contract.

44 However, while neither Passenger Rights nor DelayFix, successor to Passenger Rights, consented to be bound to Ryanair by a jurisdiction clause, neither has that airline consented to be bound to that collection agency by such a clause.

45 Furthermore, neither the parties to the main proceedings nor the referring court have set out details or evidence that the parties had, in one of the manners provided for in Article 25(1)(b) and (c) of Regulation No 1215/2012, entered into an agreement containing a clause conferring jurisdiction, such as that at issue in the main proceedings.

46 It follows from the foregoing, therefore, that, in order to contest the jurisdiction of a court to hear an action for compensation on the basis of Regulation No 261/2004 and brought against an airline, a jurisdiction clause incorporated in the contract of carriage between a passenger and that airline cannot, in principle, be enforced by the latter against a collection agency to which the passenger has assigned the claim.

47 Only where the third party not privy to the original contract had succeeded to an original contracting party's rights and obligations, in accordance with national substantive law, could that third party nevertheless be bound by a jurisdiction clause to which it had not agreed (see, to that effect, judgment of 21 May 2015, *CDC Hydrogen Peroxide*, C-352/13, EU:C:2015:335, paragraph 65 and the case-law cited).

48 The question raised by the referring court also requires the conditions for the validity of such a clause to be identified.

49 In accordance with Article 25(1) of Regulation No 1215/2012, the courts designated in the jurisdiction clause have jurisdiction, unless the agreement is null and void as to its substantive validity 'under the law of that Member State'. The EU legislature thus established the rule that the validity of a jurisdiction clause is to be assessed in accordance with the legislation of the Member State whose courts are designated in that clause.

50 In this instance, where the referring court assesses the validity of the jurisdiction clause, it falls to that court, therefore, to do so in the light of the legislation of the Member State whose courts are designated in that clause, that is to say, in the light of Irish law.

51 Furthermore, it is for the court seised of a dispute, such as that in the main proceedings, to apply the legislation of the Member State whose courts are designated in that clause, interpreting that legislation in accordance with EU law, in particular Directive 93/13 (see, to that effect, judgments of 21 April 2016, *Radlinger and Radlingerová*, C-377/14, EU:C:2016:283, paragraph 79, and of 17 May 2018, *Karel de Grote – Hogeschool Katholieke Hogeschool Antwerpen*, C-147/16, EU:C:2018:320, paragraph 41).

52 In that context, first, it is important to point out that, as regards the relationship between Directive 93/13 and the rights of air passengers such as those stemming from Regulation No 261/2004, the Court has held that Directive 93/13 is a general regulation for consumer protection, intended to apply in all sectors of economic activity, including in the air transport sector (see, to that effect, judgment of 6 July 2017, *Air Berlin*, C-290/16, EU:C:2017:523, paragraph 44 and the case-law cited).

53 Second, it is important to note that, in circumstances such as those in the main proceedings, regarding the assignment of claims to a collection agency, the Court has held, with regard to Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66), that the fact that the disputes in those proceedings were between only sellers or suppliers would not preclude the application of a relevant instrument of EU consumer law, in so far as the scope of that directive is not dependent on the identity of the parties to the dispute, but on the capacity of the parties to the agreement (see, to that effect, judgment of 11 September 2019, *Lexitor*, C-383/18, EU:C:2019:702, paragraph 20).

54 That case-law must be applied with regard to the application of Directive 93/13.

55 Under Articles 1(1) and 3(1) of Directive 93/13, that directive applies to the terms incorporated in contracts concluded between a seller or supplier and a consumer which have not been individually negotiated (judgments 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, and of 10 September 2020, *A (Subletting of social housing)*, C-738/19, EU:C:2020:687, paragraph 34).

56 In the present case, the contract of carriage on which the claim relied on by DelayFix is based was initially concluded between a seller or supplier, that is to say the airline, and a passenger and there is nothing to suggest that the passenger purchased the air ticket for purposes other than private use.

57 Third, it is appropriate to recall that, under Article 3(1) of Directive 93/13, a term is to be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and the obligations arising under the contract in question.

58 In that context, the Court has repeatedly held that a jurisdiction clause, incorporated in a contract between a consumer and a seller or supplier, that was not subject to an individual negotiation and which confers exclusive jurisdiction to the courts in whose territory that seller or supplier is based, must be considered as unfair under Article 3(1) of Directive 93/13 if, contrary to requirement of good faith, it causes significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer (see, in that regard, judgments of 27 June 2000, *Océano Grupo Editorial and Salvat Editores*, C-240/98 to C-244/98, EU:C:2000:346, paragraph 24; of 4 June 2009, *Pannon GSM*, C-243/08, EU:C:2009:350, paragraph 40; and of 9 November 2010, *VB Pénzügyi Lízing*, C-137/08, EU:C:2010:659, paragraph 53).

59 Such a term falls within the category of terms which have the object or effect of excluding or hindering the consumer's right to take legal action, a category referred to in paragraph 1(q) of the Annex to that directive (judgments of 27 June 2000, *Océano Grupo Editorial and Salvat Editores*, C-240/98 to C-244/98, EU:C:2000:346, paragraph 22; of 4 June 2009, *Pannon GSM*, C-243/08, EU:C:2009:350, paragraph 41; and of 9 November 2010, *VB Pénzügyi Lízing*, C-137/08, EU:C:2010:659, paragraph 54).

60 In that context, the unfairness of a contractual term is to be assessed taking into account the nature of the services for which the contract in question was concluded and referring to all the circumstances surrounding the conclusion of the contract, in accordance with Article 4(1) of Directive 93/13.

61 Thus, it is for the national courts seised of a dispute such as that in the present proceedings, when applying the legislation of a Member State whose courts are designated in a jurisdiction clause, and when interpreting that legislation in accordance with the requirements of Directive 93/13, to draw legal conclusions from the potential unfairness of such a clause, given that it follows from the wording of Article 6(1) of that directive that the national courts are bound to disapply an unfair term in order that it not produce binding effects.

62 Finally, it should be pointed out that, in accordance with the settled case-law, under Article 7(1)(b) of Regulation No 1215/2012 and with regard to direct flights, both the place of departure and that of arrival must be considered, in the same respect, as the principal places of provision of the services which are the subject of a contract for transport by air, thus giving the person bringing a claim for compensation on the basis of Regulation No 261/2004 the choice of bringing that claim before the court or tribunal which has territorial jurisdiction over either the place of departure or the place of arrival of the aircraft, as those places are agreed in that contract (see, to that effect, judgment of 9 July 2009, *Rehder*, C-204/08, EU:C:2009:439, paragraph 47, and order of 13 February 2020, *flightright*, C-606/19, EU:C:2020:101, paragraph 26).

63 In the light of all the foregoing considerations, the answer to the question referred is that Article 25 of Regulation No 1215/2012 must be interpreted as meaning that, in order to contest the jurisdiction of a court to hear and determine an action for compensation brought under Regulation No 261/2004 and against an airline, a jurisdiction clause incorporated in a contract of carriage concluded between a passenger and that airline cannot be enforced by the airline against a collection agency to which the passenger has assigned the claim, unless, under the legislation of the Member State whose courts are designated in that clause, that collection agency is the successor to all the initial contracting party's rights and obligations, which it is for the referring court to determine. Where appropriate, such a clause, incorporated, without having been subject to an individual negotiation, in a contract concluded between a consumer, that is to say, the air passenger, and a seller or supplier, that is to say, the airline, and which confers exclusive jurisdiction on the courts which have jurisdiction over the territory in which that airline is based, must be considered as being unfair within the meaning of Article 3(1) of Directive 93/13.

Costs

64 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 (First Chamber) hereby rules:

Article 25 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that, in order to contest the jurisdiction of a court to hear and determine an action brought for compensation under Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 and against an airline, a jurisdiction clause incorporated in a contract of carriage concluded between a passenger and that airline cannot be enforced by the airline against a collection agency to which the passenger has assigned the claim, unless, under the legislation of

the Member State whose courts are designated in that clause, that collection agency is the successor to all the initial contracting party's rights and obligations, which it is for the referring court to determine. Where appropriate, such a clause, incorporated, without having been subject to an individual negotiation, in a contract concluded between a consumer, that is to say, the air passenger, and a seller or supplier, that is to say, the airline, and which confers exclusive jurisdiction on the courts which have jurisdiction over the territory in which that airline is based, must be considered as being unfair within the meaning of Article 3(1) of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

[Signatures]