Reports of Cases

ORDER OF THE COURT (Fifth Chamber)

8 November 2012*

(Reference for a preliminary ruling — Lack of adequate information on the factual and legal context of the dispute in the main proceedings — Questions submitted in a context which precludes any useful answer — Lack of information on the reasons justifying the need for a reply to the questions referred — Manifest inadmissibility)

In Case C-433/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Krajský súd v Prešove (Slovakia), made by decision of 10 August 2011, received at the Court on 22 August 2011, in the proceedings

SKP k.s.

v

Kveta Polhošová,

THE COURT (Fifth Chamber),

composed of A. Borg Barthet, acting as President of the Fifth Chamber, M. Ilešič and M. Safjan (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Articles 5 to 9 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22), Articles 6(1) and 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

* Language of the case: Slovak.

2 The reference has been made in proceedings between SKP k.s. ('SKP'), trustee in bankruptcy of KFZ Sys s.r.o. ('KFZ'), and Ms Polhošová concerning the performance, by that latter, of a contract for the hire-purchase of an item of consumer goods.

Legal context

European Union law

The Charter

3 Article 47 of the Charter provides:

'Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.'

Directive 93/13

4 Pursuant to 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.'

5 Article 2 of Directive 93/13 provides:

'For the purposes of this Directive:

(a) "unfair terms" means the contractual terms defined in Article 3;

(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.'

6 Article 3(1) of Directive 93/13 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.'

Directive 2005/29

7 Article 1 of Directive 2005/29 provides:

‘The purpose of this Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers’ economic interests.’

8 Article 2 of Directive 2005/29 reads as follows:

‘For the purposes of this Directive:

(a) “consumer” means any natural person who, in commercial practices covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;

(b) “trader” means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader;

(c) “product” means any goods or service including immovable property, rights and obligations;

(d) “business-to-consumer commercial practices” (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers;

...’

9 Article 3(1) and (2) of Directive 2005/29 states:

‘1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

2. This Directive is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract.’

10 Article 5(1) and (2) of Directive 2005/29 provides:

‘1. Unfair commercial practices shall be prohibited.

2. A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence,

and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.’

Slovak law

11 In accordance with Paragraph 4(2) of Law No 71/1992 on court fees, in the version applicable to the dispute in the main proceedings, a trustee in bankruptcy, within the meaning of the special legislative regulations of Law No 7/2005 on bankruptcy and restructuring, is exempt from court fees.

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

12 On 13 November 2001, Drukos a.s. concluded a contract with Ms Polhošová for the 'hire-purchase' of an item of consumer goods under which, on the expiry of the lease period, that is to say, after payment of 30 monthly instalments, Ms Polhošová was to become the owner of that item. The contract at issue contained a retention of title clause, under which the ownership title would not pass to Ms Polhošová until after she had fulfilled all her obligations, including payment of all the instalments. The price of the item was SKK 17 270 (EUR 569.73) but, taking account of the 'hire charges', Ms Polhošová was in fact to pay a total sum of SKK 24 033 (EUR 792.83).

13 Drukos a.s. was declared bankrupt and, on 16 March 2006, entered into a contract for assignment of the claim against Ms Polhošová with Mr Holec, resident in Nitra (Slovakia). By a contract of the same day, the latter then assigned the claim at issue to Mediation KMCH s.r.o., established in Nitra and, subsequently, in Banská Bystrica (Slovakia). By a contract of 23 February 2008, that claim was subsequently assigned to Ivaco Consultants Limited, established in the Seychelles. On 17 May 2008, the latter concluded a contract for the assignment of that claim with the undertaking AKROPOLIS estates s.r.o., which subsequently became KFZ, established in Slovakia.

14 On 25 July 2008, KFZ was declared bankrupt.

15 On 17 March 2010, SKP brought an action before the Okresný súd Poprad (Poprad District Court) against Ms Polhošová, in order to seek to recover payment from her of the contractual penalty provided for in the event of late payment, which represents 0.1% of the amount outstanding per day of delay, and reimbursement of the costs linked to the recovery of the sums sought. The contractual penalty at issue, covering a period of four years prior to the bringing of the action, represents a sum of EUR 987.05, the lawyer's fees claimed amounting, for their part, to EUR 117.32.

16 In a judgment of 22 February 2011, the Okresný súd Poprad dismissed that action on the ground that the contractual penalty referred to above constituted an unfair term in a consumer contract. That court held that statutory interest for late payment was to be added to the penalty concerned and that those two obligations were therefore disproportionate and caused a significant imbalance between the rights and obligations of the two types of contracting parties to the detriment of the consumer.

17 SKP lodged an appeal against that judgment before the Krajský súd v Prešove (Prešov Regional Court).

18 As is apparent from the order for reference, pursuant to the Slovak legislation the trustee of a bankrupt undertaking is exempt from court fees. In the event of the failure of its action, the costs incurred by a consumer would, in practice, be irrecoverable. Consequently, consumers would be deterred from bringing an action against bankrupt undertakings and from paying for the services of a lawyer, a situation which adversely affects the defence of their rights.

19 As it took the view that the outcome of the main proceedings depends on the interpretation of the relevant provisions of European Union law, the Krajský súd v Prešove decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Are Articles 5 to 9 of Directive 2005/29 … to be interpreted as meaning that the practice whereby a supplier assigns claims against a consumer to an entity in bankruptcy should be regarded as an unfair commercial practice if the consumer has no guarantee of reimbursement of the costs of legal proceedings arising from a consumer contract?

(2) If the answer to the preceding question is that the assignment of claims against a consumer to an entity in bankruptcy for recovery purposes is contrary to EU law, in that case:

(a) Can Article 47 of the Charter … be interpreted in such a way that it is not contravened by a court procedure whereby the court, in order to protect consumers, does not apply the statutory fee concession of the trustee in bankruptcy, and that, in such a case, the court does not infringe the right of the trustee in bankruptcy to judicial protection if it discontinues the proceedings if the fee for the application is not paid?

(b) Do Articles 6(1) and 7(1) of … Directive 93/13 … preclude the application of provisions of national law exempting a trustee in bankruptcy from court fees if, in the absence of the unfair commercial practice, the applicant would not be exempt from court fees and the discontinuance of proceedings would prevent the judicial proceedings concerning fulfilment of the unfair term?’

Admissibility of the reference for a preliminary ruling

20 Under Article 53(2) of its Rules of Procedure, where the reference for a preliminary ruling is manifestly inadmissible, the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.

First question and the first part of the second question

21 By its first question, the referring court is essentially seeking to ascertain whether a commercial practice whereby a supplier assigns claims against a consumer to an entity in bankruptcy, the consumer having no guarantee of reimbursement of the costs of the legal proceedings relating to the contract concluded with that supplier, is unfair within the meaning of Directive 2005/29. Should the first question be answered in the affirmative, the referring court asks the Court, by the first part of its second question, whether Article 47 of the Charter precludes the trustee in bankruptcy of the undertaking to which those claims were assigned from being obliged to pay the court fees where it brings an application for payment, by consumers, of a sum of money in respect of those claims.

22 It is settled case-law that the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, by means of which the Court provides the national courts with the points of interpretation of European Union law which they need in order to decide the disputes before them (see, inter alia, Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 22, and Case C-445/06 *Danske Slagterier* [2009] ECR I-2119, paragraph 65).

23 The need to provide an interpretation of European Union law which will be of use to the national court requires that the national court define the factual and legal context of its questions or, at the very least, that it explain the factual circumstances on which those questions are based (see, inter alia,

Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6; orders of 17 September 2009 in Case C-181/09 *Canon Kabushiki Kaisha*, paragraph 8, and of 3 May 2012 in Case C-185/12 *Ciampaglia*, paragraph 4).

24 The Court is empowered to rule on the interpretation of European Union provisions only on the basis of the facts which the national court puts before it (Case C-235/95 *Dumon and Froment* [1998] ECR I-4531, paragraph 25; Case C-11/07 *Eckelkamp and Others* [2008] ECR I-6845, paragraph 52; and order of 23 March 2012 in Case C-348/11 *Thomson Sales Europe*, paragraph 43).

25 In the present case, the order for reference does not fulfil that requirement. It is characterised by a lack of clarity and details regarding the factual and legal context of the dispute in the main proceedings and therefore does not enable the Court to give a useful response to the questions referred.

26 In accordance with Article 3(1) of Directive 2005/29, read in conjunction with Article 2(c) of that directive, that directive applies to unfair business-to-consumer commercial practices before, during or after a commercial transaction relating to any goods or service.

27 The referring court does not, however, explain in its decision what precise conduct on the part of a bankrupt trader with respect to a consumer may constitute an unfair commercial practice. Specifically, that court merely gives a detailed description of a succession of assignments, between traders, of the claim at issue in the main proceedings, but without indicating which aspects of the trader's conduct vis-à-vis the consumer are liable to constitute an unfair commercial practice.

28 For the sake of completeness, it is also important to add that the questions referred concern a situation in which there has been an assignment in favour of a bankrupt undertaking. However, it is not apparent from the order for reference that the main proceedings concern such an assignment, since certain assignments in the chain referred to in the preceding paragraph were made in favour of undertakings which were not bankrupt at the time of the transaction.

29 In any event, it must be held that the order for reference does not contain any information on the national legal context which makes it possible to conclude that the Court's answer will be of use for the purpose of resolving the dispute in the main proceedings.

30 In the case in the main proceedings, the national court appears to be moved to refer the questions to the Court for a preliminary ruling by doubts as to the validity of the assignment contracts at issue. However, any finding that a practice such as that at issue in the main proceedings is unfair, in the light of Directive 2005/29, has no direct effect on the assessment of that validity (see judgment of 15 March 2012 in Case C-453/10 *Pereničová and Perenič*, paragraphs 45 and 46).

31 Consequently, the first question and the first part of the second question are manifestly inadmissible.

Second part of the second question

32 By the second part of its second question, the referring court is essentially asking whether Directive 93/13 precludes the trustee in bankruptcy from being exempted, under the national provisions, from court fees where the seller or supplier concerned, if it were not bankrupt, would not be exempted from those fees.

33 That court is in actual fact seeking to assess whether the national provisions on court fees are consistent with Directive 93/13.

34 However, pursuant to 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. Consequently, it covers only the terms contained in contracts and not the allocation of the costs of legal proceedings such as provided for by the national legislation.

35 In this case, the only contract concluded by a seller or supplier with a consumer with which the main proceedings are concerned, referred to in the order for reference, is that concluded on 13 November 2001 by Ms Polhošová, whereas the Slovak Republic did not accede to the European Union until 1 May 2004.

36 It is settled case-law that the Court has jurisdiction to interpret European Union law as regards its application in a Member State only with effect from the date of that State's accession to the European Union (see Case C-302/04 *Ynos* [2006] ECR I-371, paragraph 36; Case C-64/06 *Telefónica O2 Czech Republic* [2007] ECR I-4887, paragraphs 22 and 23; Case C-96/08 *CIBA* [2010] ECR I-2911, paragraph 14; and order of 11 May 2011 in Case C-32/10 *Semerdzhiev*, paragraph 25).

37 Therefore, it must be concluded that the second part of the second question is manifestly inadmissible.

38 In the light of all of the foregoing, it must be held, pursuant to Article 53(2) of the Rules of Procedure of the Court, that the present reference for a preliminary ruling is manifestly inadmissible.

Costs

39 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 (Fifth Chamber) hereby orders:

The reference for a preliminary ruling submitted by the Krajský súd v Prešove (Slovakia), by decision of 10 August 2011, is manifestly inadmissible.

[Signatures]