Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

27 October 2022*

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Unfair terms in consumer contracts – Article 2(b) – Concept of 'consumer' – Article 2(c) – Concept of 'seller or supplier' – Natural person who owns an apartment in a building in co-ownership – Different types of legal relationships relating to the management and maintenance of that building – Difference in treatment, as regards the status of consumer, arising from the law of a Member State between co-owners who have concluded an individual contract for the management and maintenance of the communal areas of such a building and those who have not concluded such a contract)

In Case C-485/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rayonen sad Nesebar (District Court, Nessebar, Bulgaria), made by decision of 23 July 2021, received at the Court on 5 August 2021, in the proceedings

'S.V.' OOD

v

E. Ts. D.,

THE COURT (Eighth Chamber),

composed of N. Piçarra, President of the Chamber, N. Jääskinen and M. Gavalec (Rapporteur), Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Austrian Government, by A. Posch, J. Schmoll and M. Winkler-Unger, acting as Agents,

– the European Commission, by N. Nikolova, I. Rubene and N. Ruiz García, acting as Agents,

* Language of the case: Bulgarian.

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(b) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) and of Article 2(1) of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Directive 93/13 and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64).

2 The request has been made in proceedings between 'S.V.' OOD, a commercial company incorporated under Bulgarian law, managing a building in co-ownership, and E. Ts. D., a natural person who owns an apartment in that building, concerning the payment of sums due under a contract concluded for the management and maintenance of the communal areas of that building.

Legal context

European Union law

3 According to the tenth recital of Directive 93/13:

'… more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; … those rules should apply to all contracts concluded between sellers or suppliers and consumers; …'

4 Article 1 of that directive provides:

'1. 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.

2. The contractual terms which reflect mandatory statutory or regulatory provisions and the provisions or principles of international conventions to which the Member States or the Community are party, particularly in the transport area, shall not be subject to the provisions of this Directive.'

5 Article 2(b) and (c) of that directive is worded as follows:

'For the purpose 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;

(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 that '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.'

Bulgarian law

7 Article 2(1) of the zakon za upravlenie na etazhnata sobstvenost (Law on the management of co-owned property) (DV No 6 of 23 January 2009), in the version applicable to the facts in the main proceedings ('the ZUES'), provides:

'The management of the communal areas of co-owned buildings, built as part of a gated residential complex, shall be governed by a written contract, signed before a notary by the developer and owners of the residential units.'

8 Under Article 6(1)(10) of that law, owners are required to pay the managing and maintenance costs of the communal areas.

9 Article 9 of that law provides:

'The procedures for managing the co-ownership of apartments shall take the form of a general meeting and/or owners' association.'

10 Article 195(1) and (5) of the zakon za ustroystvo na teritoriata (Law on town and country planning) (DV No 1 of 2 January 2001), in the version applicable to the facts in the main proceedings, states:

'(1) The owners of buildings shall retain them in a technical condition meeting the essential requirements of Article 169(1) and (3) …

…

(5) The mayor of the municipality may, by order, require the owners of buildings … to carry out the necessary works in the interests of safety, road safety, health, hygiene, aesthetics, cleanliness and public order.'

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

11 E. Ts. D. is the owner of an apartment in a building in co-ownership, situated in Nessebar (Bulgaria).

12 Under a contract for the maintenance of the communal areas of that building, concluded on 9 January 2012 for an indefinite period, designating S.V., as 'the managing agent', and signed by E. Ts. D., the latter is required, as co-owner, to pay to that company annual charges of EUR 6 per

square metre, excluding value added tax (VAT), for the management and maintenance of the communal areas of that building. According to that contract, in the event of late payment, the said company is entitled to apply default interest to the amount due of 0.1% per day.

13 On 26 August 2020, S.V. sent a formal notice by notarial act to E. Ts. D. requesting her to pay, before 31 August 2020, the annual charges due for the period after 2012. Subsequently, it brought before the referring court, the Rayonen sad Nesebar (District Court, Nessebar, Bulgaria) an action seeking an order that E. Ts. D. pay it the amount of EUR 1 112.40, corresponding to the annual charges from 2017 to 2019, and the amount of EUR 717.87 by way of compensation for late payment.

14 Before that court, E. Ts. D. submits, in particular, that the contract referred to in paragraph 12 above contains unfair terms which require the consumer to pay excessively high compensation for late payment and which are neither clear nor intelligible. E. Ts. D. considers herself to be a 'consumer' and states that, at the time when that contract was concluded, there had been no individual negotiation between the parties.

15 The referring court is uncertain, first, whether an owner of an apartment in a building in co-ownership is a 'consumer', within the meaning of Directives 93/13 and 2011/83, given that certain elements of the contractual relationships relating to the management of the communal areas of such a building are directly governed by Bulgarian law. Secondly, it asks whether the status of 'consumer' depends on the different procedures which that law provides for in respect of that management. In addition, it expresses doubts as to the difference in treatment arising under that law between co-owners who have concluded a contract for the management and maintenance of the communal areas of a building in co-ownership and those who have not concluded such a contract. In the latter case, the body responsible for the management of the communal areas is the general meeting of the property owners.

16 Taking the view that the outcome of the dispute before it is dependent on the interpretation of the provisions of Directives 93/13 and 2011/83, the Rayonen sad Nesebar (District Court, Nessebar) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are natural persons who own individual units in a co-owned building "consumers" (within the meaning of Article 2(b) of Directive [93/13] and Article 2(1) of Directive [2011/83]) in terms of the legal relationships they enter into regarding the management and maintenance of the communal areas of the building?

(2) Does the status of natural persons who own individual units in a co-owned building as "consumers" depend on the nature of the legal relationships they enter into (individual contract for the management and maintenance of the communal areas, contract under Article 2 of the [ZUES], management by the general meeting of the property owners)?

(3) Is legislation which permits the same owners of individual units in a building to be treated differently (in relation to the status of "consumer"), depending on whether they have entered into an individual contract for the management and maintenance of the communal areas of the building or not (the management body being the general meeting of the property owners in the latter case), compatible with Directive [2011/83]?'

Consideration of the questions referred

17 First of all, it should be recalled that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgments of 17 July 1997, *Krüger*, C-334/95, EU:C:1997:378, paragraphs 22 and 23, and of 18 November 2021, *A. S.A.*, C-212/20, EU:C:2021:934, paragraph 36 and the case-law cited).

18 In the present case, it should be noted, first, that there is nothing in the request for a preliminary ruling to suggest that the situation at issue in the main proceedings falls within the material scope of Directive 2011/83 or that a provision of Bulgarian legislation transposing that directive is applicable to the contract referred to in paragraph 12 above.

19 Secondly, in its request for a preliminary ruling, the referring court does not explain the relevance, for the purpose of resolving the dispute in the main proceedings, of its questions concerning the situation in which the general meeting of the property owners is itself responsible for the management of the communal areas of the building in co-ownership, since it is apparent from that request that that management is entrusted to a managing agent under a contract concluded with the latter. Nor does it explain the relevance, for the purpose of resolving that dispute, of the fact that, under Article 2(1) of the ZUES, the management of the communal areas of co-owned buildings, built as part of a gated residential complex, is governed by a written contract, signed before a notary by the developer and owners of the residential units.

20 In those circumstances, in order to give a useful answer to the referring court, it is necessary to reformulate the questions referred and to consider that, by those questions, that court asks, in essence, whether Article 1(1) and Article 2(b) and (c) of Directive 93/13 must be interpreted as meaning that a natural person who owns an apartment in a building in co-ownership must be regarded as a 'consumer', within the meaning of that directive, where:

– that person enters into a contract with a managing agent for the purpose of managing and maintaining the communal areas of that building, certain provisions of which are governed by national law,

– the general meeting of the property owners or owners' association of that building enters into a contract with a managing agent for that purpose.

21 In the first place, it should be observed that Directive 93/13 applies, as is apparent from Article 1(1) and Article 3(1) thereof, to the terms of 'contracts concluded between a seller or supplier and a consumer' including those which have not been 'individually negotiated' (see, to that effect, order of 19 November 2015, *Tarcău*, C-74/15, EU:C:2015:772, paragraph 20 and the case-law cited).

22 As the tenth recital of that directive states, the uniform rules of law in the matter of unfair terms should apply, subject to the exceptions listed in that recital, to 'all contracts' concluded between sellers or suppliers and consumers, as defined in Article 2(b) and (c) of that directive (see, to that effect, order of 14 September 2016, *Dumitraș*, C-534/15, EU:C:2016:700, paragraphs 26 and 27 and the case-law cited).

23 In accordance with Article 2(b), a 'consumer' is any natural person who, in contracts covered by Directive 93/13, is acting for purposes which are outside his or her trade, business or profession. Likewise, under Article 2(c), a 'seller or supplier' is any natural or legal person who, in such contracts, is acting for purposes relating to his or her trade, business or profession, whether publicly owned or privately owned (see, to that effect, judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 22).

24 It is therefore by reference to the capacity of the contracting parties, according to whether or not they are acting for purposes relating to their trade, business or profession, that Directive 93/13 defines the contracts to which it applies (judgment of 21 March 2019, *Pouvin and Dijoux*, C-590/17, EU:C:2019:232, paragraph 23 and the case-law cited).

25 As regards the concept of 'consumer', within the meaning of Article 2(b) of Directive 93/13, it is clear from the settled case-law of the Court that that concept is objective in nature. It must be assessed by reference to a functional criterion, consisting in an assessment of whether the contractual relation at issue has arisen in the course of activities outside a trade, business or profession (order of 14 September 2016, *Dumitraș*, C-534/15, EU:C:2016:700, paragraph 32 and the case-law cited).

26 The national court before which an action relating to a contract which may be covered by that directive has been brought is required to determine, taking into account all the circumstances of the case and all of the evidence, whether the contracting party in question may be categorised as a 'consumer', within the meaning of that directive (order of 14 September 2016, *Dumitraș*, C-534/15, EU:C:2016:700, paragraph 33 and the case-law cited).

27 In the present case, it should be noted that it is apparent from the request for a preliminary ruling that E. Ts. D. is a natural person and that the purpose of the contract referred to in paragraph 12 above is the management and maintenance of the communal areas of the building in co-ownership in which E. Ts. D. owns an apartment. Therefore, if that person is a party to that contract and in so far as she does not use that apartment for purposes which fall exclusively within her trade, business or profession, it must, in principle, be held that that person is acting as a 'consumer', within the meaning of Article 2(b) of Directive 93/13, in that contract.

28 As regards the concept of 'seller or supplier', within the meaning of Article 2(c) of that directive, as is clear from the case-law of the Court, the EU legislature intended a broad definition to be given to that concept, with the result that every natural or legal person must be regarded as falling within that concept, when performing a professional activity, including tasks of a public nature and in the public interest (see, to that effect, judgment of 17 May 2018, *Karel de Grote – Hogeschool Katholieke Hogeschool Antwerpen*, C-147/16, EU:C:2018:320, paragraphs 48 to 51 and the case-law cited).

29 In that regard, it is not disputed that the contractual relationship at issue in the main proceedings is part of the activities carried out by S.V., as managing agent, in a professional capacity.

30 In that context, as the European Commission points out, the fact that some of the activities of managing and maintaining the communal areas of the building in co-ownership at issue in the main proceedings and the annual charges levied in that respect by that managing agent are the result of the need to comply with specific requirements relating to safety and town and country

planning, laid down by the applicable national law, is not such as to remove those activities from the scope of Article 2(c) of Directive 93/13 and, consequently, the contract referred to in paragraph 12 above from the scope of that directive.

31 Although, under Article 1(2) of Directive 93/13, where such statutory provisions are mandatory, contractual terms reflecting those provisions are excluded from the scope of that directive, such an exclusion does not mean that the validity of other terms, which are included in the same contract and do not reflect those provisions, may not be assessed by the national court in the light of that directive (see, to that effect, judgment of 21 December 2021, *Trapeza Peiraios*, C-243/20, EU:C:2021:1045, paragraph 39 and the case-law cited.)

32 In the second place, in the event that a contract relating to the management and maintenance of the communal areas of a building in co-ownership is concluded between the managing agent and the general meeting of the property owners or the owners' association of that building, the owner of an apartment which is part of that building is regarded as a 'consumer', within the meaning of Article 2(b) of Directive 93/13, provided that that owner, first, can be classified as a 'party' to that contract, secondly, is a natural person and, thirdly, does not use that apartment exclusively for purposes which fall within his or her trade, business or profession. In the latter regard, it should be stated that the situation in which a natural person uses the apartment constituting his or her personal home for professional purposes also, such as in the context of salaried teleworking or in the exercise of a liberal profession, cannot be excluded from the scope of the concept of 'consumer'.

33 By contrast, where such an owner of an apartment cannot be classified as a 'party' to that contract, and in so far as the general meeting of the property owners or owners' association of a building is not, by definition, a 'natural person', within the meaning of Article 2(b) and, therefore, cannot be classified as a 'consumer', within the meaning of that provision, such a contract is excluded from the scope of Directive 93/13 (see, by analogy, judgment of 2 April 2020, *Condominio di Milano, via Meda*, C-329/19, EU:C:2020:263, paragraph 29).

34 However, the fact remains that Article 1(1) and Article 2(b) of that directive do not preclude national case-law which interprets legislation intended to transpose that directive into national law in such a way that its protective rules of consumer law also apply to a contract between a seller or supplier and a subject of the law such as a commonhold association without legal personality other than that of its members, notwithstanding that such a subject of the law does not fall within the scope of that directive (see, to that effect, judgment of 2 April 2020, *Condominio di Milano, via Meda*, C-329/19, EU:C:2020:263, paragraphs 18 and 38).

35 In the light of the foregoing, the answer to the questions referred is that Article 1(1) and Article 2(b) and (c) of Directive 93/13 must be interpreted as meaning that:

– a natural person who owns an apartment in a building in co-ownership must be regarded as a 'consumer', within the meaning of that directive, where that person enters into a contract with a managing agent for the purpose of managing and maintaining the communal areas of that building, provided that he or she does not use that apartment for purposes which fall exclusively within his or her trade, business or profession. The fact that some of the services provided by that managing agent under that contract are the result of the need to comply with specific requirements relating to safety and town and country planning laid down by national law is not such as to remove that contract from the scope of that directive,

– where a contract relating to the management and maintenance of the communal areas of a building in co-ownership is entered into between the managing agent and the general meeting of the property owners or owners' association of that building, a natural person who owns an apartment in that building may be regarded as a 'consumer', within the meaning of Directive 93/13, in so far as that person may be classified as a 'party' to that contract and does not use that apartment exclusively for purposes which fall within his or her trade, business or profession.

Costs

36 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 (Eighth Chamber) hereby rules:

Article 1(1) and Article 2(b) and (c) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

must be interpreted as meaning that:

– **a natural person who owns an apartment in a building in co-ownership must be regarded as a 'consumer', within the meaning of that directive, where that person enters into a contract with a managing agent for the purpose of managing and maintaining the communal areas of that building, provided that he or she does not use that apartment for purposes which fall exclusively within his or her trade, business or profession. The fact that some of the services provided by that managing agent under that contract are the result of the need to comply with specific requirements relating to safety and town and country planning laid down by national law is not such as to remove that contract from the scope of that directive,**

– **where a contract relating to the management and maintenance of the communal areas of a building in co-ownership is entered into between the managing agent and the general meeting of the property owners or owners' association of that building, a natural person who owns an apartment in that building may be regarded as a 'consumer', within the meaning of Directive 93/13, in so far as that person may be classified as a 'party' to that contract and does not use that apartment exclusively for purposes which fall within his or her trade, business or profession.**

[Signatures]