JUDGMENT OF THE COURT (Fifth Chamber)
21 November 2002 *

In Case C-473/00,

REFERENCE to the Court under Article 234 EC by the Tribunal d'instance de Vienne (France) for a preliminary ruling in the proceedings pending before that court between

Cofidis SA

and

Jean-Louis Fredout,

on the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29),

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, A. La Pergola and P. Jann (Rapporteur), Judges,

Advocate General: A. Tizzano,

Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Cofidis SA, by B. Célice, avocat,

— the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Commission of the European Communities, by D. Martin and M. França, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Cofidis SA, represented by B. Soltner, avocat; Mr Fredout, represented by J. Franck, avocat; the French Government, represented by R. Loosli-Surrans; and the Commission, represented by M. França, at the hearing on 17 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 18 April 2002,

gives the following

Judgment

1 By judgment of 15 December 2000, rectified by judgment of 26 January 2001, received at the Court on 27 December 2000 and 29 January 2001 respectively, the Tribunal d'instance de Vienne (District Court, Vienne) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29, 'the Directive').

2 That question was raised in proceedings between Cofidis SA, a company incorporated under French law, and Mr Fredout concerning the payment of sums due under a credit contract concluded between them.

Legal background

Community legislation

3 According to Article 1 of the Directive:

'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... shall not be subject to the provisions of this Directive.'

4 Article 3(1) of the Directive 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.'

5 Article 4 of the Directive defines how the unfair nature of a term is to be assessed. Article 4(2) provides:

'Assessment of the unfair nature of the terms shall relate neither to the definition of the main subject matter of the contract nor to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplies in exchange, on the other, in so far as these terms are in plain intelligible language.'

6 Under Article 6(1) of the Directive:

'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.'

7 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.'

National legislation

8 The provisions on unfair terms are in Book I ('Information for consumers and formation of contracts'), Title III ('General conditions of contracts'), Chapter 2 ('Unfair terms'), of the Code de la consommation (Consumer Code).

9 Article L. 132-1 of that code, in the version of Law No 95-96 of 1 February 1995 concerning unfair terms and presentation of contracts, defines what is to be understood by 'unfair terms' and states that they are to be 'deemed not written'. According to the national court's judgment, that is equivalent to nullity, which, in accordance with the general rules on contracts, may be made the subject-matter of an action within five years and pleaded as a defence without time-limit.

10 Article L. 311-37 of the Code de la consommation, to which the national court's judgment refers, is in Book III ('Debt'), Title I ('Credit'), Chapter 1 ('Consumer credit'), of the code. That chapter lays down *inter alia* precise formal rules.

11 The first paragraph of Article L. 311-37 of the Code de la consommation provides:

'The Tribunal d'instance shall have jurisdiction to hear disputes arising from the application of this chapter. Actions brought before it must be raised within two years of the event which gave rise to them and are otherwise time-barred...'.

The main proceedings and the question referred for a preliminary ruling

12 By a contract of 26 January 1998, Cofidis granted Mr Fredout the opening of a credit. When instalments remained unpaid, Cofidis brought an action against him on 24 August 2000 in the Tribunal d'instance de Vienne for payment of the sums due.

13 According to the national court's judgment, the offer of credit took the form of a leaflet printed on both sides, with the words 'Free application for money reserve' in large letters on the front, while the references to the contractual interest rate and a penalty clause were in small print on the reverse. The Tribunal d'instance de Vienne therefore concluded that 'the financial clauses... lack legibility' and that 'that lack of legibility is to be contrasted with the word "free"... in a particularly obvious form', which was likely to mislead the consumer. Its conclusion was that 'the financial clauses may be regarded as unfair'.

14 However, as the dispute was one concerning a consumer credit transaction, the Tribunal d'instance de Vienne considered that the limitation period of two years under Article L. 311-37 of the Code de la consommation applied and prevented it from annulling the terms it had found to be unfair.

15 In those circumstances, the Tribunal d'instance de Vienne decided to stay the proceedings and refer the following question to the Court for a preliminary ruling.

'Since the protection conferred by Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts implies that a national court, applying

provisions of national law previous or subsequent to that directive, is to interpret them so far as possible in the light of the wording and purpose of the latter:

Does that requirement of an interpretation in conformity with the system of consumer protection under the directive require a national court, when hearing an action for payment brought by a seller or supplier against a consumer with whom he has contracted, to set aside a procedural rule on pleas in defence, such as that in Article L. 311-37 of the Code de la consommation, in so far as it prohibits the national court, either on the application of the consumer or of its own motion, from annulling any unfair term which vitiates the contract where the latter was made more than two years before the commencement of proceedings, and in so far as it thereby permits the seller or supplier to rely on those terms before a court and base its action on them?'

The question referred for a preliminary ruling

16 By its question the national court essentially asks whether the protection conferred on consumers by the Directive precludes a national provision which, in proceedings brought by a seller or supplier against a consumer on the basis of a contract concluded between them, prohibits the national court, on expiry of a limitation period, from finding, of its own motion or following a plea raised by the consumer, that a term of the contract is unfair.

Admissibility

17 Cofidis and the French Government express doubts as to the relevance of the question for the outcome of the main proceedings and hence the admissibility of the reference for a preliminary ruling.

18 Cofidis submits that the terms held to be unfair by the national court are not within the scope of the Directive. As financial terms in a credit contract, they relate to the definition of its main subject-matter. They are therefore excluded from the scope of the Directive under Article 4(2). The terms in question cannot be accused of lack of clarity, since they merely reproduce a model contract drawn up by the national legislature, which under Article 1(2) of the Directive is not subject to its provisions.

19 Cofidis further submits that the national court was wrong to hold that the limitation period provided for in Article L. 311-37 of the Code de la consommation concerning consumer credit applies in the field of unfair terms. The French Government observes that that question is indeed in doubt and that the French Cour de cassation (Court of Cassation) has not yet had occasion to rule on the point.

20 In this respect, it is settled case-law that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. A request from a national court may be dismissed only where it is obvious that the interpretation of Community law or the consideration of the validity of a Community rule requested by that court has no bearing on the real situation or on the subject-matter of the case (see, *inter alia*, Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraph 27, and Joined Cases C-223/99 and C-260/99 *Agorà and Excelsior* [2001] ECR I-3605, paragraphs 18 and 20).

21 In the present case, the national court considers that some of the financial terms printed in the credit contract it has to rule on are vitiated by lack of clarity and

comprehensibility. That is said to be connected with the use on the printed form used by the credit establishment of wording of an advertising nature giving the impression that the transaction is free of charge, which the national court regards as having been such as to mislead the consumer.

22 It should be observed that, in that they do not merely reflect mandatory statutory or regulatory provisions and are criticised as being ambiguous, it is not obvious that the terms in question are outside the scope of the Directive, as defined by Articles 1(2) and 4(2).

23 To fall within the scope of the Directive, however, those terms must satisfy the conditions set out in Article 3(1) of the Directive, that is, they must not have been individually negotiated and must, contrary to the requirement of good faith, cause a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. Although the national court has not provided any information on the latter point, it cannot be excluded that that condition is satisfied.

24 As to the question whether or not the limitation period under Article L. 311-37 of the Code de la consommation applies to unfair terms, that is a question of national law which as such is not within the jurisdiction of the Court.

25 In those circumstances, it is not obvious that the question referred has no bearing on the real situation or on the subject-matter of the main proceedings.

26 It follows that the reference for a preliminary ruling is admissible. It must therefore be answered, on the basis that the terms which the national court regards as unfair satisfy the criteria defined in Articles 1(2), 3(1) and 4(2) of the Directive.

Substance

27 Cofidis and the French Government argue, first, that the present case is to be distinguished from Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial and Salvat Editores* [2000] ECR I-4941. They submit that, by allowing a national court to determine of its own motion whether a jurisdiction clause is unfair, the Court merely allowed it to decline jurisdiction. In the present case, however, the question is whether or not the court must apply a limitation period laid down by the national legislature.

28 Cofidis and the French Government submit, second, that in the absence in the Directive of any provision concerning a limitation period the question of the application of such a period is covered by the principle of procedural autonomy. It is therefore for the national legal system of each Member State to regulate the procedural rules governing the actions which are to ensure respect for the rights which individuals derive from the Directive, in compliance with the principles of equivalence and effectiveness. The Court has on several occasions ruled that limitation periods shorter than the two-year period under Article L. 311-37 of the Code de la consommation are compatible with those principles (Case 33/76 *Rewe* [1976] ECR 1989 and Case C-261/95 *Palmisani* [1997] ECR I-4025).

29 Mr Fredout submits that the judgment in *Océano Grupo Editorial and Salvat Editores* should be interpreted broadly. He argues that in that judgment the

Court regarded the national court's power to determine of its own motion the illegality of an unfair term as a means of achieving the result laid down in Article 6 of the Directive of ensuring that unfair terms do not bind the consumer. That result cannot be achieved if that power is subject to a time-limit. In the case of consumer credit contracts, the majority of actions are brought by the lender, and he would merely have to wait for the expiry of that time-limit to bring an action for payment, thus depriving the consumer of the protection conferred by the Directive.

30 The Austrian Government, while accepting that the Directive leaves the Member States a wide margin of appreciation and that a limitation period may contribute to legal certainty, submits that, having regard to the extinctive effect of the time-limit and the shortness of the period in question, it is doubtful whether it allows the result prescribed by Article 6 and 7 of the Directive to be attained.

31 The Commission, which likewise supports a broad interpretation of *Océano Grupo Editorial and Salvat Editores*, submits that fixing a time-limit for the court's power to find of its own motion that an unfair term is illegal is contrary to the objectives of the Directive. To allow the Member States to introduce such time-limits, which might differ from each other, would also be contrary to the principle of the uniform application of Community law.

32 It must be noted that the Court ruled in paragraph 28 of *Océano Grupo Editorial and Salvat Editores* that the court's power to determine of its own motion whether a term is unfair constitutes a means both of achieving the result sought by Article 6 of the Directive, namely preventing an individual consumer from being bound by an unfair term, and of contributing to achieving the aim of Article 7, since if the court undertakes such an examination, that may act as a deterrent and contribute to preventing unfair terms in contracts concluded between consumers and sellers or suppliers.

33 That power of the court has been regarded as necessary for ensuring that the consumer enjoys effective protection, in view in particular of the real risk that he is unaware of his rights or encounters difficulties in enforcing them (*Océano Grupo Editorial and Salvat Editores*, paragraph 26).

34 The protection which the Directive confers on consumers thus extends to cases in which a consumer who has concluded with a seller or supplier a contract containing an unfair term fails to raise the unfair nature of the term, whether because he is unaware of his rights or because he is deterred from enforcing them on account of the costs which judicial proceedings would involve.

35 It is therefore apparent that, in proceedings aimed at the enforcement of unfair terms brought by sellers or suppliers against consumers, the fixing of a time-limit on the court's power to set aside such terms, of its own motion or following a plea raised by the consumer, is liable to affect the effectiveness of the protection intended by Articles 6 and 7 of the Directive. To deprive consumers of the benefit of that protection, sellers or suppliers would merely have to wait until the expiry of the time-limit fixed by the national legislature before seeking enforcement of the unfair terms they would continue to use in contracts.

36 A procedural rule which prohibits the national court, on expiry of a limitation period, from finding of its own motion or following a plea raised by a consumer that a term sought to be enforced by a seller or supplier is unfair is therefore liable, in proceedings in which consumers are defendants, to render application of the protection intended to be conferred on them by the Directive excessively difficult.

37 That interpretation is not contradicted by the fact that, as Cofidis and the French Government submit, the Court has on several occasions ruled that limitation

periods shorter than that at issue in the main proceedings are not incompatible with the protection of rights conferred on individuals by Community law (*Rewe* and *Palmisani*). It need only be pointed out that each case which raises the question whether a national procedural provision renders application of Community law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances (Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 14). The *Rewe* and *Palmisani* decisions cited by Cofidis and the French Government are thus merely the result of assessments on a case by case basis, taking account of each case's own factual and legal context as a whole, which cannot be applied mechanically in fields other than those in which they were made.

38 In those circumstances, the answer to the national court's question must be that the protection conferred on consumers by the Directive precludes a national provision which, in proceedings brought by a seller or supplier against a consumer on the basis of a contract concluded between them, prohibits the national court, on expiry of a limitation period, from finding, of its own motion or following a plea raised by the consumer, that a term of the contract is unfair.

Costs

39 The costs incurred by the French and Austrian Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Tribunal d'instance de Vienne by judgment of 15 December 2000, rectified by judgment of 26 January 2001, hereby rules:

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts precludes a national provision which, in proceedings brought by a seller or supplier against a consumer on the basis of a contract concluded between them, prohibits the national court, on expiry of a limitation period, from finding, of its own motion or following a plea raised by the consumer, that a term of the contract is unfair.

Wathelet Timmermans Edward

La Pergola Jann

Delivered in open court in Luxembourg on 21 November 2002.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber