Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

27 February 2014*

(Reference for a preliminary ruling — Consumer credit contract — Unfair terms — Directive 93/13/EEC — Enforcement of an arbitration award — Application for leave to intervene in enforcement proceedings — Consumer protection association — National legislation which does not allow such an intervention — Procedural autonomy of the Member States)

In Case C-470/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okresný súd Svidník (Slovakia), made by decision of 31 August 2012, received at the Court on 19 October 2012, in the proceedings

Pohotovosť s. r. o.

v

Miroslav Vašuta,

intervening parties:

Združenie na ochranu občana spotrebiteľa HOOS,

THE COURT (Third Chamber),

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

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Pohotovosť s. r. o., by J. Fuchs, konateľ spoločnosti,

— the Združenie na ochranu občana spotrebiteľa HOOS, by I. Šafranko, advokát,

— the Slovak Government, by B. Ricziová, acting as Agent,

— the German Government, by T. Henze and J. Kemper, acting as Agents,

* Language of the case: Slovak.

— the European Commission, by M. van Beek and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 6 to 8 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Pohotovosť s. r. o. ('Pohotovosť') and Mr Vašuta concerning the enforcement of an arbitration award ordering the latter to repay sums relating to a consumer credit contract.

Legal context

European Union law

3 Article 3(1) of Directive 93/13 states:

'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.'

4 Article 6(1) of that directive provides:

'Member States shall lay down that unfair terms used in a contract concluded with a consumer by a seller or supplier shall, as provided for under their national law, not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms.'

5 Article 7 of that directive provides:

'1. 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.

2. The means referred to in paragraph 1 shall include provisions whereby persons or organisations, having a legitimate interest under national law in protecting consumers, may take action according to the national law concerned before the courts or before competent administrative bodies for a decision as to whether contractual terms drawn up for general use are unfair, so that they can apply appropriate and effective means to prevent the continued use of such terms.

3. With due regard for national laws, the legal remedies referred to in paragraph 2 may be directed separately or jointly against a number of sellers or suppliers from the same economic sector or their associations which use or recommend the use of the same general contractual terms or similar terms.'

6 Article 8 of the directive provides:

‘Member States may introduce or maintain, in the area covered by this Directive, more stringent provisions compatible with the Treaty, to ensure a higher level of consumer protection.’

Slovak law

7 Paragraph 93 of the Code of Civil Procedure, in the version applicable to the facts in the main proceedings (‘the Code of Civil Procedure’), provides:

‘1. A person who has a legal interest in the outcome of the proceedings, except in the case of divorce proceedings, proceedings concerning the validity of a marriage or proceedings to determine whether a marriage exists, may participate in proceedings as an intervener in support of the form of order sought by the applicant or the defendant.

2. A legal person, the purpose of whose activity is the protection of rights under specific legislation, may also participate in proceedings as an intervener in support of the form of order sought by the applicant or the defendant.

3. That legal person may participate in proceedings at its own initiative or at the request of a party sent by the court. The court may rule on the admissibility of the intervention only if requested to do so.

4. In the proceedings, the intervener shall have the same rights and obligations as a party to the proceedings. However it shall act only on its own behalf. If its pleadings oppose those of the party in support of which it is intervening, the court shall assess them after examining all the circumstances.’

8 Paragraph 251(4) of the Code of Civil Procedure states:

‘Enforcement of judgments and enforcement proceedings governed by specific legislation ... shall be governed by the provisions of the preceding sections, where that specific legislation does not provide otherwise. However, decisions shall always be taken by way of decree.’

9 Paragraph 37(1) and (3) of the Enforcement Code, in the version applicable to the facts in the main proceedings (‘the Enforcement Code’), provides:

‘1. The parties to the proceedings shall be the creditor and the debtor; other persons shall be party only to those parts of the proceedings in respect of which they are granted the status of a party to the proceedings by this law. Where the court rules on the costs of enforcement, the authorised bailiff shall also be a party to the proceedings.

…

3. Enforcement may be carried out against a person other than the person indicated in the decision as the debtor, or for the benefit of a person other than the person indicated in the decision as the creditor, only if it is shown that the obligations or the rights arising from the enforcement order have been transferred to that person pursuant to Article 41. If circumstances arise on the basis of which there is a transfer or subrogation of the rights and obligations arising from the enforcement order, the parties to the proceedings must notify the enforcing authority in writing and without undue delay. That notification must be accompanied by a document proving the transfer or subrogation of the rights and obligations. The enforcing authority must notify the court of an application for authorisation to modify the parties to the proceedings within a period of 14 days from the day on which it becomes aware of those circumstances. The court shall rule, by means of an order, in a

period of 60 days from the notification of the application. The decision shall be notified to the enforcing authority, to the creditor and the debtor which are referred to in the enforcement order, and to the party to whom the right or obligation has been transferred.'

10 Under Paragraph 25(1) and (2) of Law No 250/2007 on consumer protection, an association may take action before an administrative body or before a court concerning the protection of consumer rights or may be a party to such proceedings if the protection of consumer rights constitutes the main purpose of its activity or if it is included on the list of entities authorised by the European Commission, without prejudice to the right of the court to review whether the entity in question is authorised to take action in each case. In addition, an association may, if duly mandated by a consumer, represent that consumer in proceedings before State bodies concerning the exercise of his rights, including compensation for damage caused by the violation of the consumer's rights.

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

11 Pohotovosť granted a consumer credit to Mr Vašuta. By decision of 9 December 2010, the Stálý rozhodcovský súd (Permanent Court of Arbitration) ordered Mr Vašuta to pay a certain sum to Pohotovosť.

12 Pohotovosť applied for the enforcement of that arbitration award, which had become final and enforceable. On 25 March 2011, the bailiff appointed by Pohotovosť applied to the Okresný súd Svidník (District Court, Svidník) for authorisation to enforce that arbitration award. By decision of 29 June 2011, that application was rejected in so far as it sought recovery of the interest for late payment and the costs relating to that recovery. However, the court upheld the application for enforcement of the arbitration award as regards the other debts.

13 On 9 September 2011, the Združenie na ochranu občana spotrebiteľa HOOS (HOOS Consumer Protection Association, 'the Združenie HOOS') sought leave to intervene in the enforcement proceedings on the basis of Paragraph 93(2) of the Code of Civil Procedure. It claimed, in essence, that the appointed bailiff was not impartial, on the ground inter alia that the bailiff in question had in the past been employed by Pohotovosť. In accordance with the case-law of the Ľ Ústavný súd Slovenskej republiky (Constitutional Court of the Slovak Republic), the fact that the bailiff had been employed by Pohotovosť was incompatible with the bailiff's duty of impartiality. In addition, the Združenie HOOS claimed that the enforcement proceedings should be suspended in their entirety.

14 In a written submission of 27 March 2012, Pohotovosť claimed that the Združenie HOOS should not be allowed to participate in the proceedings as an intervener since that possibility was not expressly provided for in the Enforcement Code.

15 By order of 24 May 2012, the Okresný súd Svidník declared inadmissible the Združenie HOOS application to intervene in the enforcement proceedings and dismissed the application claiming that the court should suspend the proceedings.

16 On 18 June 2012, the Združenie HOOS brought an appeal against that order. It claimed that Mr Vašuta had not been provided with sufficient information and, moreover, that the court had failed to provide Mr Vašuta with protection *ex officio* against the unfair arbitration clause and had not drawn legal inferences from the failure to include the annual percentage rate in the consumer credit contract. It also claimed that court had failed to apply correctly the case-law resulting from, inter alia, the judgment in Case C-40/08 *Asturcom and Others* [2009] ECR I-9579 and the order in Case C-76/10 *Pohotovosť* [2010] ECR I-11557.

17 It can be seen from the written observations submitted to the Court that, in a judgment of 10 October 2012, the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) held that the intervention of a consumer protection association was not admissible in enforcement proceedings, since they were not contentious proceedings but rather proceedings for the enforcement of a decision on the merits which is final and binding on the debtor. Moreover, the Ústavný súd Slovenskej republiky came to a similar conclusion in a judgment of 15 January 2013.

18 The referring court is of the view that the Court's interpretation of Directive 93/13 could have a decisive influence on the outcome of the dispute in the main proceedings.

19 In those circumstances, the Okresný súd Svidník decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are Articles 6(1), 7(1) and 8 of Directive 93/13 ..., in conjunction with Articles 38 and 47 of the Charter …, to be interpreted as precluding national legislation such as Paragraph 37(1) and (3) of the Enforcement Code, which does not allow a consumer protection association to intervene in enforcement proceedings?

2. If the answer to the first question is that that legislation does not conflict with [European Union] law, is Paragraph 37(1) and (3) of the Enforcement Code to be interpreted as not precluding a national court from granting a consumer protection association leave to intervene in enforcement proceedings in accordance with Articles 6(1), 7(1) and 8 [of that directive]?'

The requests made by Pohotovosť after the closure of the oral procedure

20 By a document of 31 January 2014, which was received at the Court Registry on 6 February 2014, Pohotovosť , following the Opinion of the Advocate General of 12 December 2013, requested, on the basis of Article 83 of the Rules of Procedure of the Court of Justice, the reopening of the oral part of the procedure, claiming that the Court lacked sufficient information concerning a new fact which is of such a nature as to be a decisive factor for the decision of the Court. Moreover, Pohotovosť asked the Court to hear, in the present preliminary ruling proceedings, a party to contentious proceedings pending before the Okresný súd Bardejov (District Court, Bardejov) on behalf of whom the Združenie HOOS had, according to Pohotovosť, brought an action based on erroneous pleas in law and legal arguments.

21 It should be recalled, first, that the Court may, of its own motion, on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure under Article 83 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be decided on the basis of an argument which has not been debated between the parties (Case C-361/12 *Carratù* [2013] ECR, paragraph 18 and the case-law cited).

22 Secondly, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In carrying out that task, the Advocate General may, where appropriate, analyse a request for a preliminary ruling by placing it within a context which is broader than that strictly defined by the referring court or by the parties to the main proceedings. Since the Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based, it is not absolutely necessary to reopen the oral procedure, under Article 83 of the Rules of Procedure, each time the Advocate General raises a point of law which was not the subject of debate between the parties (*Carratù*, paragraph 19 and the case-law cited).

23 In the present case, the request for a preliminary ruling does not have to be decided on the basis of arguments which have not been debated between the parties. Moreover, as regards Pohotovosť's request that a person who is party to national legal proceedings other than the main proceedings be heard by the Court in the present preliminary ruling proceedings, it must be noted that the procedure referred to in Article 267 TFEU is a procedure of cooperation between the national court and the European Union court and that, as can be seen from Article 97(1) of the Rules of Procedure, the parties to the main proceedings are those who are determined as such by the referring court or tribunal in accordance with national rules of procedure. In the present case, the person in question has not been identified as a party to the main proceedings by the referring court (see, to that effect, order of 23 March 2007 in Case C-368/06 *Cedilac*, paragraph 6).

24 In those circumstances, after hearing the views of the Advocate General, the Court rejects the requests put forward by Pohotovosť.

Admissibility of the request for a preliminary ruling

25 In its written observations submitted pursuant to the second paragraph of Article 23 of the Statute of the Court of Justice of the European Union, Pohotovosť informed the Court inter alia that on 14 November 2012 it had submitted to the referring court a written pleading by which it withdrew its application for enforcement in its entirety and requested the court to discontinue the proceedings. According to Pohotovosť, the referring court is required to rule on the withdrawal of its action by terminating the enforcement proceedings. In any event, since the dispute in the main proceedings has been resolved, the Court should dismiss the present request for a preliminary ruling as inadmissible.

26 Asked by the Court to confirm whether, in the light of the withdrawal thus notified, it was still seised of the dispute in respect of which it had initially made its request for a preliminary ruling and whether, with that in mind, it was maintaining that request, the referring court replied, by letters received at the Court Registry on 8 July and 10 September 2013, that Pohotovosť had made a request on 27 December 2012 seeking the suspension of the proceedings for enforcement of the arbitration award. The referring court also indicated that the file in the main proceedings was before the Krajský súd v Prešove (Regional Court, Prešov), which was hearing an appeal brought by Pohotovosť against the decision ordering the present reference for a preliminary ruling. However, the referring court indicated that the main proceedings were still pending before it and that, for that reason, it was maintaining its request.

27 It should be noted in that respect that, according to settled case-law, questions on the interpretation of European Union law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, for example, Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22 and the case-law cited).

28 Nevertheless, 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 (see, to that effect, Joined Cases C-422/93 to C-424/93 *Zabala Erasun and Others* [1995] ECR I-1567, paragraph 28; Case C-314/96 *Djabali* [1998] ECR I-1149, paragraph 18; and Case C-225/02 *García Blanco* [2005] ECR I-523, paragraph 27).

29 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 Case 244/80 *Foglia* [1981] ECR 3045, paragraph 18; Joined Cases C-480/00 to C-482/00, C-484/00, C-489/00 to C-491/00 and C-497/00 to C-499/00 *Azienda Agricola Ettore Ribaldi and Others* [2004] ECR I-2943, paragraph 72; and *García Blanco*, paragraph 28).

30 In the present case, it must be pointed out that, when asked by the Court, the referring court indicated that the case was still pending. Since 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), such an indication by a national court cannot, in principle, be called into question by the parties to the main proceedings.

31 As regards the fact that an appeal was brought against the order for reference, it must be noted that, in accordance with Article 267 TFEU, the assessment of the relevance and necessity of the question referred for a preliminary ruling is, in principle, the responsibility of the referring court alone, subject to the limited verification made by the Court in accordance with the case-law cited in paragraph 27 above. Thus, it is for the referring court to draw the proper inferences from a judgment delivered on an appeal against its decision to refer and, in particular, to come to a conclusion as to whether it is appropriate to maintain the reference for a preliminary ruling, or to amend it or to withdraw it (Case C-210/06 *Cartesio* [2008] ECR I-9641, paragraph 96).

32 It follows that, in a situation such as that in the main proceedings, the Court must – also in the interests of clarity and legal certainty – abide by the decision to make a reference for a preliminary ruling, which must have its full effect so long as it has not been revoked or amended by the referring court, such revocation or amendment being matters on which that court alone is able to take a decision (*Cartesio*, paragraph 97).

33 It is only if the appeal court were to decide, in accordance with the applicable national rules of procedure, to annul the referring court's refusal to take note of the withdrawal of the applicant in the main proceedings' action and to order that the referring court's request for a preliminary ruling be withdrawn, that the Court could consider drawing the inferences from the appeal court's decision and potentially removing the case from the register, after seeking, if necessary, the observations of the referring court in that regard (see, to that effect, order of 25 September 2013 in Case C-564/12 *BNP Paribas Personal Finance and Facet*, paragraphs 1 to 5).

34 However, it must be noted that, in the present case, the Court has not been informed by the referring court or by any other court or tribunal, within the meaning of Article 267 TFEU, of such a decision by the Krajsky súd v Prešove.

35 In the light of the foregoing, it is appropriate to answer the request for a preliminary ruling.

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether Directive 93/13, in particular Articles 6(1), 7(1) and 8 thereof, read in conjunction with Articles 38 and 47 of the Charter, must be interpreted as precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of an arbitration award.

37 In that respect, it follows from the order for reference that, in the main proceedings, the Združenie HOOS seeks leave to intervene in the enforcement proceedings brought by Pohotovosť against Mr Vašuta, because, inter alia, it is of the view that, by its decision to suspend the proceedings for enforcement of the arbitration award only in respect of part of the debt and to authorise enforcement in respect of the remainder, the Okresný súd Svidník has failed to provide the consumer with sufficient protection *ex officio* against an unfair arbitration clause and has failed to draw the legal inferences from the failure to indicate the annual percentage rate in the consumer credit contract. That decision is not in accordance with the Court's case-law arising, inter alia, from the order in *Pohotovosť*.

38 It can also be seen that, under Paragraph 93(2) of the Code of Civil Procedure, a consumer protection association may be granted leave to intervene in litigation concerning the substance of a case involving a consumer. However, in enforcement proceedings concerning a consumer, whether proceedings for the enforcement of a judgment of a national court or for the enforcement of a final arbitration award such as that at issue in the main proceedings, the Enforcement Code, in accordance with the case-law of the Najvyšší súd Slovenskej republiky and of the Ústavný súd Slovenskej republiky, does not allow the granting to such an association of leave to intervene.

39 According to settled case-law, the system of protection introduced by Directive 93/13 is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of those terms (Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial and Salvat Editores* [2000] ECR I-4941, paragraph 25; Case C-168/05 *Mostaza Claro* [2006] ECR I-10421, paragraph 25; and the order in *Pohotovosť*, paragraph 37).

40 In order to ensure the effectiveness of the protection which Directive 93/13 is intended to provide, the Court has held on numerous occasions that such an imbalance may only be corrected by positive action unconnected with the actual parties to the contract (*Océano Grupo Editorial and Salvat Editores*, paragraph 27; *Mostaza Claro*, paragraph 26; *Asturcom Telecomunicaciones*, paragraph 31; and the order in *Pohotovosť*, paragraph 39).

41 A court's power to determine of its own motion whether a term is unfair must be regarded as constituting a proper means both of achieving the result sought by Article 6 of Directive 93/13, namely preventing an individual consumer from being bound by an unfair term, and of contributing to the attainment of the objective of Article 7, since, if the court undertakes such an examination, that may act as a deterrent and contribute to preventing unfair terms being used by traders in contracts concluded with consumers (Case C-473/00 *Cofidis* [2002] ECR I-10875, paragraph 32; *Mostaza Claro*, paragraph 27; and the order in *Pohotovosť*, paragraph 41).

42 As the Advocate General noted, inter alia in points 55 and 56 of his Opinion, it is clear from the case-law of the Court that it is for the national court or tribunal seised, as in the main proceedings, of an action for enforcement of a final arbitration award to take positive action unconnected with the actual parties to the contract, as provided for in Directive 93/13, in order to correct the imbalance

between the consumer and the seller or supplier. Provided that it has available to it the necessary legal and factual elements, the national court or tribunal is required to assess of its own motion the unfair nature of the contractual terms which give rise to the debt determined in that arbitration award when, under national rules of procedure, it is required to assess of its own motion, in similar enforcement proceedings, whether an arbitration clause is in conflict with national rules of public policy (see, to that effect, Case C-243/08 *Pannon GSM* [2009] ECR I-4713, paragraph 32; *Asturcom Telecomunicaciones*, paragraph 53; and the order in *Pohotovosť*, paragraph 51).

43 As regards the role which consumer protection associations may play, it must be noted that Article 7(1) of Directive 93/13 requires the Member States to ensure that adequate and effective means exist to prevent the continued use of unfair terms in contracts concluded with consumers (Case C-472/10 *Invitel* [2012] ECR, paragraph 35). In that regard, it is apparent from Article 7(2) of the directive that the aforementioned means are to include the possibility for persons or organisations having a legitimate interest under national law in protecting consumers to take action in order to obtain a judicial decision as to whether contract terms drawn up for general use are unfair and, where appropriate, to have them prohibited (see Case C-372/99 *Commission* v *Italy* [2002] ECR I-819, paragraph 14, and *Invitel*, paragraph 36).

44 The deterrent nature and dissuasive purpose of the prohibitory actions, together with their independence of any particular dispute, mean that such actions may be brought even though the terms which it is sought to have prohibited have not been used in specific contracts (see *Commission v Italy*, paragraph 15, and *Invitel*, paragraph 37).

45 However, as the Advocate General pointed out in point 62 of his Opinion, it must be noted that neither Directive 93/13 nor the directives which followed it, adding to the legislative framework of the protection of consumers, contain any provision governing the role which may or must be accorded to consumer protection associations in individual disputes involving a consumer. Thus, Directive 93/13 does not govern whether such associations must be entitled to intervene in support of consumers in such individual disputes.

46 It follows that, in the absence of European Union legislation concerning the possibility for consumer protection associations to intervene in individual disputes involving consumers, it is for the national legal order of each Member State to establish such rules, in accordance with the principles of procedural autonomy, provided, however, that those rules are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it excessively difficult or impossible in practice to exercise the rights conferred by European Union law (principle of effectiveness).

47 As regards, first, the principle of equivalence, that principle requires that the national rule at issue be applied without distinction, whether the infringement alleged is of European Union law or national law, where the purpose and cause of action are similar (see, inter alia, Case C-63/08 *Pontin* [2009] ECR I-10467, paragraph 45).

48 In order to determine whether that principle is complied with in the case before the national court, it is for that court, which alone has direct knowledge of the detailed procedural rules governing actions in its domestic legal system, to consider both the purpose and the essential characteristics of domestic actions which are claimed to be similar. However, with a view to the appraisal to be carried out by the national court, the Court may provide guidance for the interpretation of European Union law.

49 In that regard, it is clear from the order for reference that, as emphasised by the Advocate General in point 73 of his Opinion, Paragraph 37(1) of the Enforcement Code precludes the intervention of any third party in all enforcement proceedings of a decision of a national court or of a final arbitration award, whether the intervention in question is based on the infringement of European Union law or national law.

50 In those circumstances, such legislation cannot be regarded as infringing the principle of equivalence in that it does not allow a consumer protection association to intervene in proceedings for enforcement of a final arbitration award, such as that at issue in the main proceedings.

51 As regards, secondly, the principle of effectiveness, the Court has already held that every case in which the question arises as to whether a national procedural provision makes the application of European Union 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 bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see Case C-413/12 *Asociación de Consumidores Independientes de Castilla y León* [2013] ECR, paragraph 34 and the case-law cited).

52 In that regard, Article 38 of the Charter provides that European Union policies must ensure a high level of consumer protection. That requirement also applies to the implementation of Directive 93/13. However, since Directive 93/13 does not expressly provide for a right for consumer protection associations to intervene in individual disputes involving consumers, Article 38 of the Charter cannot, by itself, impose an interpretation of that directive which would encompass such a right.

53 That finding may also be made as regards the provisions of Article 47 of the Charter concerning a right to an effective remedy and access to an impartial tribunal, which entails the provision of legal aid to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. To the extent that Directive 93/13 requires that the national court hearing disputes between consumers and sellers or suppliers take positive action unconnected with the actual parties to the contract, the refusal to grant an association leave to intervene in support of a consumer cannot, in any event, be regarded as constituting an infringement of that consumer's right to an effective judicial remedy as enshrined in that article. Moreover, the intervention of a consumer protection association is not comparable to the legal aid which, under Article 47 of the Charter, must be made available, in certain cases, to those who lack sufficient resources.

54 As regards the possibility for a consumer protection association to rely on Article 47 of the Charter, it must be pointed out that the refusal to grant the association leave to intervene in proceedings involving a consumer does not affect its right to an effective judicial remedy to protect its rights as an association of that kind, including its rights to collective action as recognised by Article 7(2) of Directive 93/13.

55 Incidentally, it must be added that, under the national legislation at issue in the main proceedings, an association may directly represent such a consumer in any proceedings, including enforcement proceedings, if mandated to do so by the latter.

56 It follows from the foregoing that national legislation, such as that at issue in the main proceedings, which does not allow a consumer protection association to intervene in proceedings for enforcement of a judicial decision or a final arbitration award does not breach the principle of effectiveness.

57 Having regard to all the above considerations, the answer to the first question is that Directive 93/13, in particular Articles 6(1), 7(1) and 8 of that directive, read in conjunction with Articles 38 and 47 of the Charter, must be interpreted as not precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of a final arbitration award.

The second question

58 By its second question, the referring court asks, in essence, whether Paragraph 37(1) and (3) of the Enforcement Code must be interpreted as not precluding a national court from granting a consumer protection association leave to intervene in proceedings for enforcement of a final arbitration award pursuant to Articles 6(1), 7(1) and 8 of Directive 93/13.

59 By that question the referring court actually seeks a ruling by the Court on the interpretation to be given to its national legislation.

60 However, it is not the task of the Court of Justice, in preliminary ruling proceedings, to interpret national legislation or regulations (see, inter alia, Case C-151/02 *Jaeger* [2003] ECR I-8389, paragraph 43, and Case C-237/04 *Enirisorse* [2006] ECR I-2843, paragraph 24 and the case-law cited).

61 In the light of the foregoing, the second question must be declared inadmissible.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1), 7(1) and 8 of that directive, read in conjunction with Articles 38 and 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding national legislation which does not allow a consumer protection association to intervene in support of a consumer in proceedings for enforcement, against the latter, of a final arbitration award.

[Signatures]