Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

15 January 2015*

(Reference for a preliminary ruling — Directive 93/13/EEC — Scope — Consumer contracts — Contract for the provision of legal services concluded between a lawyer and a consumer)

In Case C-537/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Lithuania), made by decision of 7 October 2013, received at the Court on 14 October 2013, in the proceedings

Birutė Šiba

v

Arūnas Devėnas,

THE COURT (Ninth Chamber),

composed of J. Malenovský, acting as President of the Ninth Chamber, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 1 October 2014,

after considering the observations submitted on behalf of:

— Mr Devėnas, by himself, and I. Vėgėlė, advokatas,

— the Lithuanian Government, by G. Taluntytė, A. Svinkūnaitė, R. Krasuckaitė and D. Kriaučiūnas, acting as Agents,

— Ireland, by E. Creedon and A. Joyce, acting as Agents, and E. Carolan BL and D. McDonald SC,

— the Spanish Government, by J. García-Valdecasas Dorrego and A. Gavela Llopis, acting as Agents,

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

— the European Commission, by M. van Beek, A. Steiblytė and J. Jokubauskaitė, acting as Agents,

* Language of the case: Lithuanian.

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

2 The request has been made in proceedings between Ms Šiba and Mr Devėnas, in his capacity as a lawyer, concerning a claim for payment of fees.

Legal context

EU law

3 The 10th, 12th, 14th, 16th and 18th recitals in the preamble to Directive 93/13 state:

‘Whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all contracts concluded between sellers or suppliers and consumers; whereas as a result inter alia contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organisation of companies or partnership agreements must be excluded from this Directive;

…

Whereas … only contractual terms which have not been individually negotiated are covered by this Directive …

…

Whereas … this Directive also applies to trades, business or professions of a public nature;

…

Whereas the assessment, according to the general criteria chosen, of the unfair character of terms, in particular in sale or supply activities of a public nature providing collective services which take account of solidarity among users, must be supplemented by a means of making an overall evaluation of the different interests involved; whereas this constitutes the requirement of good faith; whereas, in making an assessment of good faith, particular regard shall be had to the strength of the bargaining positions of the parties, whether the consumer had an inducement to agree to the term and whether the goods or services were sold or supplied to the special order of the consumer; whereas the requirement of good faith may be satisfied by the seller or supplier where he deals fairly and equitably with the other party whose legitimate interests he has to take into account;

…

Whereas the nature of goods or services should have an influence on assessing the unfairness of contractual terms’.

4 According to Article 1 of that 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 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 of that directive provides:

‘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 that directive is worded as follows:

‘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.’

7 Article 4(1) of Directive 93/13 provides:

‘Without prejudice to Article 7, the unfairness of a contractual term shall be assessed, taking into account the nature of the goods or services for which the contract was concluded and by referring, at the time of conclusion of the contract, to all the circumstances attending the conclusion of the contract and to all the other terms of the contract or of another contract on which it is dependent.’

8 Article 5 of that directive provides:

‘In the case of contracts where all or certain terms offered to the consumer are in writing, these terms must always be drafted in plain, intelligible language. Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail. …’

Lithuanian law

9 Article 50 of the Law on the profession of advokatas (Advokatūros įstatymas) of 18 March 2004 (Žin., 2004 No 50-1632) provides:

‘1. Clients shall pay the lawyer for legal services supplied pursuant to the contract by paying the remuneration agreed by the parties.

…

3. To determine the amount of remuneration due to the lawyer for legal services, account must be taken of the complexity of the case, the lawyer's qualifications and experience, the client's financial position and other relevant circumstances.'

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

10 Ms Šiba concluded with Mr Devėnas, in his capacity as a lawyer, three standard-form contracts for the provision of legal services for a fee: on 25 February 2008 a contract to represent her in proceedings for divorce, division of the spouses' property and the determination of her child's place of residence, on 14 November 2008 a contract to represent her in proceedings for the annulment of a transaction by Mr Šiba, and on 21 January 2010 a contract by which Ms Šiba instructed Mr Devėnas to bring on appeal before the Klaipėdos apygardos teismas (Regional Court, Klaipėda, Lithuania) and to represent her in the proceedings before that court.

11 The arrangements for payment of fees and the periods within which payment was to be made were not specified in those contracts; the contracts also did not identify precisely the various legal services for which payment was claimed and the cost of the relevant services.

12 Since Ms Šiba did not pay the fees within the period stipulated by Mr Devėnas, the latter brought an action before the Klaipėdos miesto apylinkės teismas (District Court, Klaipėda, Lithuania) seeking an order that she pay 15 000 Lithuanian Litas (LTL) for fees due.

13 By order of 8 July 2011 and by judgment of 11 April 2012, the Klaipėdos miesto apylinkės teismas upheld Mr Devėnas' claim.

14 Hearing an appeal brought by Ms Šiba, the Klaipėdos apygardos teismas dismissed that appeal by judgment of 30 October 2012.

15 Ms Šiba brought an appeal in cassation against that judgment before the referring court. In her appeal, she argues in particular that the lower courts did not take account of her status as a consumer so that, contrary to the relevant provisions of national legislation, they failed to interpret the contracts at issue in a manner favourable to her.

16 The referring court considers it necessary to determine whether a lawyer practising a liberal profession may be classified as a 'seller or supplier' and whether a contract for legal services concluded by a lawyer with a natural person constitutes a consumer contract with all the related safeguards for the natural person.

17 In those circumstances, the Lietuvos Aukščiausiasis Teismas decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a natural person who receives legal services pursuant to agreements for legal services concluded with a lawyer (an advokatas) for a fee, those services being supplied in cases which are likely to be connected with the natural person's personal interests (divorce, division of assets acquired in the marriage and so forth), to be regarded as a consumer within the meaning of EU consumer protection laws?

2. Is a lawyer (an advokatas who is a member of a "[liberal] profession") who draws up an agreement with a natural person for the supply of legal services in return for a fee, which obliges him to provide legal services so that the natural person may achieve aims unconnected with her occupation or profession, to be regarded as a "[seller or supplier]" for the purposes of EU consumer protection laws?

3. Do agreements for the supply of legal services for a fee which a lawyer (an advokatas) draws up in the course of his professional activities as a representative of a liberal profession fall within the scope of Council Directive 93/13?

4. If the third question should be answered in the affirmative, are general criteria to be applied in classifying such agreements as consumer contracts or should they be recognised as consumer contracts according to special criteria? If it is necessary to apply special criteria for the classification of such agreements as consumer contracts, what are those criteria?'

The questions referred for a preliminary ruling

18 By its questions, which it is appropriate to examine together, the referring court asks essentially whether Directive 93/13 must be interpreted as applying to standard-form contracts for legal services, such as those at issue in the main proceedings, concluded by a lawyer with a natural person who is acting for purposes outside his trade, business or profession.

19 In that connection, it must be observed that Directive 93/13 applies, as is clear from Article 1(1) and Article 3(1), to the terms of 'a contract concluded between a seller or supplier and a consumer which have not been individually negotiated' (see, to that effect, judgment in *Constructora Principado*, C-226/12, EU:C:2014:10, paragraph 18).

20 As the 10th recital of Directive 93/13 states, the uniform rules of law in the matter of unfair terms should apply to 'all contracts' concluded between sellers or suppliers and consumers, as defined in Article 2(b) and (c) of Directive 93/13 (see judgment in *Asbeek Brusse and de Man Garabito*, C-488/11, EU:C:2013:341, paragraph 29).

21 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 the directive defines the contracts to which it applies (judgment in *Asbeek Brusse and de Man Garabito*, EU:C:2013:341, paragraph 30).

22 That criterion corresponds to the idea on which the system of protection implemented by the directive is based, namely 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 (judgment in *Asbeek Brusse and de Man Garabito*, EU:C:2013:341, paragraph 31 and the case-law cited).

23 As regards contracts for legal services, such as those at issue in the main proceedings, it should be observed that, in the field of lawyers' services, there is, as a general rule, some inequality between 'client-consumers' and lawyers owing in particular to the asymmetry of information between the parties. Lawyers display a high level of technical knowledge which consumers may not have and the latter therefore may find it difficult to judge the quality of the services provided to them (see, to that effect, judgment in *Cipolla and Others*, C-94/04 and C-202/04, EU:C:2006:758, paragraph 68).

24 Thus, a lawyer who, as in the case in the main proceedings, provides a legal service for a fee, in the course of his professional activities, to a natural person acting for private purposes is a 'seller or supplier' within the meaning of Article 2(c) of Directive 93/13. The contract relating to the supply of such a service is, therefore, covered by that directive.

25 Such a finding cannot be invalidated by the public nature of lawyers' activities, since Article 2(c) of Directive 93/13 refers to any 'purposes relating to his trade, business or profession, whether publicly owned or privately owned' and as recital 14 of that directive states, it 'also applies to trades, business or professions of a public nature'.

26 Where a lawyer decides to use, in contractual relations with his clients, standard terms drafted in advance by himself or by his professional association, it is at his wish that those terms are directly incorporated into the respective contracts.

27 If a lawyer freely decides to use standard terms which do not reflect mandatory statutory or regulatory provisions within the meaning of Article 1(2) of Directive 93/13, it cannot, moreover, be argued that the application of that directive may undermine the specific nature of the relations between him and his client and the principles underlying the practice of the legal profession.

28 In light of the objective of consumer protection pursued by that directive, the public or private nature of the activities of the seller or supplier or his specific task cannot determine whether or not that directive is applicable (see, by analogy, judgment in *Zentrale zur Bekämpfung unlauteren Wettbewerbs*, C-59/12, EU:C:2013:634, paragraph 37).

29 As the Commission observed in that regard at the hearing, the exclusion from the scope of Directive 93/13 of many contracts concluded by 'client-consumers' with persons practising liberal professions, characterised by independence and ethical requirements to which those persons are subject, would deprive all those 'client-consumers' of the protection granted by that directive.

30 In particular, the fact that, in the course of their activities, lawyers are required to ensure compliance with the obligation of confidentiality in their relations with 'client-consumers' thus does not constitute an obstacle to the application of Directive 93/13 with regard to standard terms of contracts for the provision of legal services.

31 Contractual terms which have not been individually negotiated, in particular those which are drafted for general use, do not contain, as such, personal information relating to lawyers' clients, disclosure of which might undermine the confidentiality of the legal profession.

32 It is true that the specific drafting of a contractual term, in particular that concerning the arrangements for payment of the lawyer's fees might, at least incidentally, reveal certain aspects of the relationship between the lawyer and his client which should remain confidential. However, such a term would be individually negotiated and, therefore, as is clear from paragraph 19 of the present judgment, excluded from the application of Directive 93/13.

33 The fact remains that the nature of the services which are the subject-matter of the contracts subject to Directive 93/13 must be taken into account, in accordance with Article 4(1) thereof, read in the light of its 18th recital, in order to assess the unfairness of the terms of those contracts. That assessment must be conducted by the national court and take account of that nature and refer, at the time of conclusion of the contract, to all of the circumstances attending its conclusion (see, to that effect, judgment in *Aziz*, C-415/11, EU:C:2013:164, paragraph 71, and order in *Sebestyén*, C-342/13, EU:C:2014:1857, paragraph 29).

34 Thus, as regards contracts relating to legal services, such as those at issue in the main proceedings, it is for the referring court to take account of the specific nature of those services in its assessment as to whether the contractual terms are plain and intelligible, in accordance with the first sentence of Article 5 of Directive 93/13, and to give them, in case of doubt, pursuant to the second sentence of that article, the interpretation most favourable to the consumer.

35 Having regard to the foregoing considerations, the answer to the questions referred is that Directive 93/13 must be interpreted as applying to standard form contracts for legal services, such as those at issue in the main proceedings, concluded by a lawyer with a natural person acting for purposes which are outside his 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 (Ninth Chamber) hereby rules:

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts must be interpreted as applying to standard form contracts for legal services, such as those at issue in the main proceedings, concluded by a lawyer with a natural person acting for purposes which are outside his trade, business or profession.

[Signatures]