Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

7 November 2024*

(Reference for a preliminary ruling – Consumer protection – Directive 93/13/EEC – Article 7(1) – Unfair terms in consumer contracts – Powers and obligations of the national court – First legal remedy pursued by the consumer before the court of the place where the seller or supplier has its registered office, without the assistance of a lawyer and without that consumer attending the hearing – Second legal remedy pursued by the consumer before the court of his or her place of domicile, with the assistance of a lawyer – *Res judicata* – Article 47 of the Charter of Fundamental Rights of the European Union – Effective judicial protection of the consumer)

In Case C-178/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunalul Specializat Mureș (Specialised Court, Mureș, Romania), made by decision of 3 December 2021, received at the Court on 21 March 2023, in the proceedings

ERB New Europe Funding II

v

YI,

THE COURT (Eighth Chamber),

composed of N. Jääskinen (Rapporteur), President of the Ninth Chamber, acting as President of the Eighth Chamber, M. Gavalec and Z. Csehi, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ERB New Europe Funding II, by A.M. Lefter, avocată,

– the Romanian Government, by M. Chicu and E. Gane, acting as Agents,

– the Czech Government, by S. Šindelková, M. Smolek and J. Vláčil, acting as Agents,

* Language of the case: Romanian.

– the European Commission, by A. Biolan and N. Ruiz García, acting as Agents,

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 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), the twenty-third recital of that directive, and the principle of effectiveness.

2 The request has been made in proceedings between ERB New Europe Funding II ('ERB'), a debt collection company, on the one hand, and YI, a consumer, on the other, concerning the unfair nature of certain terms included in a credit agreement.

Legal context

European Union law

3 Under the twenty-third and twenty-fourth recitals of Directive 93/13:

'Whereas persons or organisations, if regarded under the law of a Member State as having a legitimate interest in the matter, must have facilities for initiating proceedings concerning terms of contract drawn up for general use in contracts concluded with consumers, and in particular unfair terms, either before a court or before an administrative authority competent to decide upon complaints or to initiate appropriate legal proceedings; whereas this possibility does not, however, entail prior verification of the general conditions obtaining in individual economic sectors;

Whereas the courts or administrative authorities of the Member States must have at their disposal adequate and effective means of preventing the continued application of unfair terms in consumer contracts …'

4 Article 7(1) of that directive provides:

'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.'

Romanian law

Law No 193/2000 on unfair terms in contracts concluded between sellers or suppliers and consumers

5 Article 1 of Legea nr. 193/2000 privind clauzele abuzive din contractele încheiate între profesioniști și consumatori (Law No 193/2000 on unfair terms in contracts concluded between sellers or suppliers and consumers) of 6 November 2000 (republished in the *Monitorul Oficial al României*, Part I, No 543 of 3 August 2012) provides:

'(1) Any contract concluded between a seller or supplier and a consumer for the sale of goods or the supply of services shall contain clear, unambiguous terms, intelligible without need of specialist knowledge.

(2) In cases of doubt as to the interpretation of any contractual terms, those terms shall be interpreted in favour of the consumer.

(3) Sellers or suppliers are prohibited from inserting unfair terms into contracts concluded with consumers.'

6 Article 4(1) of that law provides:

'A contractual term which has not been directly negotiated with the consumer shall be regarded as unfair if, considered in isolation or together with other provisions of the contract, it causes, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance in the parties' rights and obligations.'

7 Article 6 of that law states:

'Unfair terms included in the contract and declared as such personally or by bodies authorised by law shall not have effect in respect of the consumer, and the contract shall continue in existence, with the consent of the consumer, only if this is still possible once the unfair terms have been removed.'

Law No 134/2010 laying down the Code of Civil Procedure

8 Article 431 of Legea nr. 134/2010 privind Codul de procedură civilă (Law No 134/2010 laying down the Code of Civil Procedure) of 1 July 2010 (republished in the *Monitorul Oficial al României*, Part I, No 247 of 10 April 2015), entitled 'Effects of *res judicata*', provides:

'(1) No person may be sued twice in the same capacity, for the same cause of action and in respect of the same subject matter.

(2) Any party may invoke *res judicata* in another dispute, if it is connected with the resolution of that dispute.'

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

9 On 25 July 2007, YI, in his capacity as a consumer, concluded a credit agreement with the credit establishment Bancpost S.A. București.

10 On 10 May 2018, YI – without the assistance of a lawyer – brought an action before the Judecătoria Sectorului 2 București (Court of First Instance, Sector 2, Bucharest, Romania), a court of the place where the seller or supplier has its registered office, seeking a finding that certain terms included in that agreement were unfair ('the first set of judicial proceedings'). That action, which concerned the terms of the agreement relating to the fees for arranging and managing the loan, the power of the seller or supplier unilaterally to amend contractual interest rates, fees and other loan charges, as well as the fee for early repayment, was brought against ERB, a debt collection company, to which the claim to the debt under that agreement had been transferred.

11 By judgment of 26 November 2018 – the date on which that judgment was notified to the parties is not known – that court dismissed the action as unfounded ('the first judicial decision'). As YI did not bring an appeal against that judgment, the judgment has become final.

12 On 14 August 2019, YI – now represented by a lawyer – brought an action before the court of his place of domicile, the Judecătoria Sighișoara (Court of First Instance, Sighișoara, Romania) ('the second set of judicial proceedings'). That action was brought against the same defendant as in the first set of judicial proceedings and concerned, to a large extent, the same contractual terms as those referred to in paragraph 10 of the present judgment. More specifically, the terms concerned were the contractual terms governing the fees for arranging the loan and for managing that loan on a monthly basis, as well as the term governing the annual percentage rate of charge.

13 By judgment of 5 December 2019, that court upheld that action.

14 ERB brought an appeal against that judgment before the referring court, the Tribunalul Specializat Mureș (Specialised Court, Mureș, Romania). By judgment of 6 April 2021, that court upheld ERB's complaints concerning the fee for managing the loan, while confirming the unfair nature of the other contractual terms referred to in paragraph 12 of the present judgment.

15 As the referring court did not give a ruling on the issue of the first judicial decision having the force of *res judicata*, ERB has brought an extraordinary appeal (an application for revision) before that court. That application for revision is based on a plea alleging that the court hearing the appeal failed to examine the procedural objection of *res judicata* relied on by ERB.

16 In the context of that application for revision, the referring court has doubts as to how the rights of the consumer should be weighed against the principle of *res judicata*. It explains that, according to the information available to it, it appears that, in the first set of judicial proceedings, YI – who was not assisted by a lawyer – did not have the necessary knowledge to assert his rights under the rules governing consumer protection. For this reason, YI brought proceedings before a court of the place where the seller or supplier has its registered office, whereas he could have brought proceedings before the competent court of his own place of domicile. In addition, the referring court notes that the consumer did not attend the hearing before the Judecătoria Sectorului 2 București (Court of First Instance, Sector 2, Bucharest) and that, once he was assisted by a lawyer, the unfair nature of the contractual terms at issue was confirmed, to a large extent, by two separate courts.

17 In those circumstances, the Tribunalul Specializat Mureș (Specialised Court, Mureș) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'When applying the provisions of Article 7(1) of Directive 93/13, [read] in the light of, in particular, the twenty-third recital of that directive and the principle of effectiveness, must those provisions be interpreted as not precluding the possibility for a national court to examine suspicions concerning the unfair nature of contractual terms stipulated in an agreement concluded between a seller or supplier and a consumer, even when they have previously been examined by another national court in judicial proceedings at first instance at the request of the consumer, who did not attend the related hearing and was not properly assisted or represented by a lawyer, and have been rejected by a judicial decision which has never been challenged by the consumer – [and] which has, therefore, acquired, in the domestic procedural order, the force of *res judicata* – if, from the particular circumstances of the case, it appears, in a plausible and reasonable manner, that that consumer did not make use of the legal remedy in those first judicial proceedings because of his or her limited knowledge or information?'

Consideration of the question referred

Admissibility

18 First, ERB maintains, in its written observations, that it is neither necessary nor appropriate to refer a question to the Court of Justice for a preliminary ruling, because the referring court's doubts primarily concern the rules relating to *res judicata* in Romanian civil procedural law and not in EU law.

19 Second, without explicitly raising an objection of inadmissibility, the Romanian Government notes, in its written observations, that it is not clear from the order for reference whether the contractual terms examined in the first set of judicial proceedings and the second set of judicial proceedings are identical. If those terms are different, the principle of *res judicata* cannot apply in the present case.

20 According to settled case-law, 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, which enjoy a presumption of relevance. Therefore, where the question referred concerns the interpretation or validity of a rule of EU law, the Court is, in principle, required to give a ruling, unless it is quite obvious that the interpretation 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 question submitted to it (judgment of 27 April 2023, *AxFina Hungary*, C-705/21, EU:C:2023:352, paragraph 27 and the case-law cited).

21 It is also settled case-law that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to interpret and apply national law, while the Court of Justice is

empowered only to give rulings on the interpretation or the validity of an EU provision on the basis of the facts which the national court puts before it (judgment of 27 April 2023, *AxFina Hungary*, C-705/21, EU:C:2023:352, paragraph 28 and the case-law cited).

22 Regarding ERB's arguments, it is sufficient to observe that, by the question referred for a preliminary ruling, the referring court is asking the Court of Justice, in accordance with the requirements laid down by the case-law cited in paragraph 20 of the present judgment, to interpret Directive 93/13 and the principle of effectiveness. In addition, it is clear from the information in the order for reference that that question of interpretation of EU law is of use to the referring court in order to enable that court to determine whether it is permitted, on the basis of Directive 93/13, to derogate, in circumstances such as those at issue in the main proceedings, from the principle of *res judicata*.

23 Regarding the Romanian Government's doubts as to the applicability of the principle of *res judicata* in the case in the main proceedings, it should be observed that, in accordance with the case-law cited in paragraph 21 of the present judgment, it is, ultimately, for the referring court alone to assess whether and to what extent the contractual terms examined in the first set of judicial proceedings and the second set of judicial proceedings are identical.

24 Given that the review of the admissibility of requests for a preliminary ruling is limited to whether there has been a manifest failure to comply with the requirements referred to in paragraph 20 of the present judgment and it is not quite obvious from the file before the Court that those requirements have not been complied with in the present case, it cannot be inferred from the fact that the contractual terms examined in those two sets of proceedings may not be completely identical that the request for a preliminary ruling is inadmissible.

25 It follows that the question referred is admissible.

Substance

26 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. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 30 May 2024, *Raiffeisen Bank*, C-176/23, EU:C:2024:443, paragraph 37 and the case-law cited).

27 It is for the Court to extract from the body of material provided by the referring court, and in particular from the reasoning set out in the order for reference, the elements of EU law which require interpretation in the light of the subject matter of the dispute in the main proceedings (judgment of 30 May 2024, *Raiffeisen Bank*, C-176/23, EU:C:2024:443, paragraph 38 and the case-law cited).

28 In the present case, it is apparent from the order for reference that the referring court is primarily questioning whether the specific way in which the first set of judicial proceedings was conducted was in line with Directive 93/13 and, consequently, is questioning whether, in view of the way in which that set of proceedings was conducted, another national court may, despite the first judicial decision having the force of *res judicata*, subsequently examine whether the contractual terms which were the subject of that decision are unfair. Regarding that first set of proceedings,

the referring court indicates, inter alia, that the consumer chose the forum of the seller or supplier to bring his action, that he was not assisted by a lawyer during that set of proceedings, that he did not attend the hearing, and that he did not bring an appeal against the first judicial decision in good time.

29 Thus, it must be held that, by its single question, the referring court asks, in essence, whether Article 7(1) of Directive 93/13, read in the light of the twenty-fourth recital of that directive, the principle of effectiveness, and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), is to be interpreted as requiring a national court or tribunal to examine whether the terms of a contract concluded between a seller or supplier and a consumer are unfair where those terms have already been examined by another national court or tribunal whose decision has the force of *res judicata* if, before that other court or tribunal, the consumer was not assisted by a lawyer, did not attend the hearing and, because of his or her limited knowledge or information, did not make use of a remedy which was available to him or her.

30 As a preliminary point, it should be borne in mind that, given the nature and significance of the public interest constituted by the protection of consumers, Directive 93/13, as is apparent from Article 7(1) thereof, read in conjunction with its twenty-fourth recital, obliges the Member States to provide for adequate and effective means 'to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers' (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 73 and the case-law cited).

31 In that context, it must be observed that, according to the case-law of the Court of Justice, EU law does not harmonise the procedures applicable to examining whether a contractual term is unfair, with the result that those procedures fall within the domestic legal orders of the Member States, in accordance with the principle of the procedural autonomy of the Member States, on condition, however, that they comply with the principles of equivalence and effectiveness (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 74 and the case-law cited).

32 In that regard, the Court has already emphasised the importance, both for the EU legal order and for national legal orders, of the principle of *res judicata*. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become final after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 37 and the case-law cited).

33 Accordingly, EU law does not, in principle, require a national court or tribunal to disapply domestic rules of procedure conferring finality on a judicial decision, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 38 and the case-law cited).

34 Regarding compliance with the requirements stemming from the principles of equivalence and effectiveness, this must be analysed by reference to the role of the rules concerned in the proceedings as a whole, the way in which the proceedings are conducted, and the special features

of those rules, before the various national courts (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 41 and the case-law cited).

35 Accordingly, if the applicable domestic rules of procedure provide the possibility, under certain conditions, for a national court or tribunal to go back on a decision having the force of *res judicata* in order to render the situation compatible with national law, that possibility must prevail if those conditions are met, in accordance with the principles of equivalence and effectiveness, so that the situation at issue is brought back into line with EU law (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 42 and the case-law cited).

36 Regarding, more specifically, the requirements stemming from the principle of effectiveness, which is the only principle covered by the question referred, it should be emphasised that the obligation on the Member States to ensure the effectiveness of the rights which individuals derive from EU law implies, in particular as regards the rights deriving from Directive 93/13, a requirement for effective judicial protection, reasserted in Article 7(1) of that directive and also guaranteed by Article 47 of the Charter. That requirement applies, in particular, to the detailed procedural rules relating to actions based on the rights which individuals derive from EU law (judgment of 9 April 2024, *Profi Credit Polska (Reopening of proceedings concluded with a final judicial decision)*, C-582/21, EU:C:2024:282, paragraph 76 and the case-law cited).

37 In the present case, the referring court's doubts primarily concern whether the specific way in which the first set of judicial proceedings was conducted was in line with Directive 93/13 and not the relevant national legislation. Indeed, there is nothing in the order for reference indicating that the applicable national legislation, relating to the arrangements for implementing the principle of *res judicata* in actions brought by consumers seeking a finding that contractual terms are unfair, is not in line with the principle of effectiveness, inasmuch as it (i) makes it impossible or excessively difficult to apply the protection which Directive 93/13 is intended to confer on consumers or (ii) undermines, for another reason, the effectiveness of Directive 93/13, which it is nonetheless for the referring court to verify.

38 In that regard, it should be noted that the obligation of the national court to examine of its own motion whether contractual terms are unfair is justified by the nature and significance of the public interest underlying the protection which Directive 93/13 confers on consumers, with the result that an effective review, as required by that directive, of whether contractual terms are unfair could not be guaranteed if the force of *res judicata* were to be extended to judicial decisions which do not indicate that such a review has been conducted (judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 50).

39 By contrast, it must be held that such protection would be ensured if, in the case in the main proceedings, the referring court were to come to the conclusion that, in the course of the first set of judicial proceedings, (i) the competent court had conducted a review of whether the terms of the agreement concerned were unfair, (ii) that review, accompanied by at least a summary statement of reasons, had not revealed the existence of any unfair terms, and (iii) the consumer had been duly informed that, if no appeal was brought within the time limit prescribed by national law, that consumer would be time barred from subsequently pleading the possible unfair nature of those terms (see, by analogy, judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, paragraph 51).

40 The unfavourable outcome of an effective review of whether contractual terms are unfair cannot, in itself, constitute an element capable of calling into question the principle of *res judicata*.

41 Similarly, the circumstances referred to in paragraph 28 of the present judgment do not necessarily mean that the first set of judicial proceedings was not capable of ensuring an adequate review of the contractual terms alleged to be unfair and of ensuring, as a result, effective judicial protection for the consumer as guaranteed by Article 47 of the Charter, which it is however for the referring court to verify. In particular, that court must verify whether the first judicial decision was duly notified to the consumer, together with an indication of the remedies available to him, and that there are no other particular reasons connected with the conduct of that set of proceedings, such as a failure to state the reasons for that decision, which could have prevented or dissuaded the consumer from properly exercising his procedural rights.

42 Having regard to all of the foregoing, the answer to the question referred is that Article 7(1) of Directive 93/13, read in the light of the twenty-fourth recital of that directive, the principle of effectiveness, and Article 47 of the Charter, must be interpreted as not requiring a national court or tribunal to examine whether the terms of a contract concluded between a seller or supplier and a consumer are unfair where those terms have already been examined by another national court or tribunal whose decision has the force of *res judicata*, even if, before that other court or tribunal, the consumer was not assisted by a lawyer, did not attend the hearing and did not make use of a remedy which was available to him or her, provided that that decision was duly notified to the consumer, together with an indication of the remedies available to him or her, and that there are no other particular reasons connected with the conduct of the proceedings, such as a failure to state the reasons for that decision, which could have prevented or dissuaded the consumer from properly exercising his or her procedural rights.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 7(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in the light of the twenty-fourth recital of that directive, the principle of effectiveness, and Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as not requiring a national court or tribunal to examine whether the terms of a contract concluded between a seller or supplier and a consumer are unfair where those terms have already been examined by another national court or tribunal whose decision has the force of *res judicata*, even if, before that other court or tribunal, the consumer was not assisted by a lawyer, did not attend the hearing and did not make use of a remedy which was available to him or her, provided that that decision was duly notified to the consumer, together with an indication of the remedies available to him or her, and that there are no other particular reasons connected with the conduct of the proceedings, such as a failure to state the reasons for that decision, which could have prevented or dissuaded the consumer from properly exercising his or her procedural rights.

[Signatures]