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JUDGMENT OF THE COURT (Fifth Chamber)

21 December 2016 (*)

(References for a preliminary ruling — Directive 93/13/EEC — Directive 2009/22/EC — Consumer protection — Erga omnes effect of unfair terms entered in a public register — Financial penalty imposed on a seller or supplier having used a term held to be equivalent to a term in the register — Seller or supplier who was not a party to the proceedings giving rise to the declaration that the term in question was unfair — Article 47 of the Charter of Fundamental Rights of the European Union — Concept of ‘court or tribunal against whose decisions there is no judicial remedy under national law’)

In Case C-119/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland), made by decision of 19 November 2014, received at the Court on 9 March 2015, in the proceedings

Biuro podróży ‘Partner’ sp. z o.o. sp.k. w Dąbrowie Górniczej

v

Prezes Urzędu Ochrony Konkurencji i Konsumentów,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger, A. Borg Barthet, E. Levits (Rapporteur) and F. Biltgen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 9 March 2016,

after considering the observations submitted on behalf of:

- Biuro podróży ‘Partner’ sp. z o.o. sp.k. w Dąbrowie Górniczej, by I. Bryła-Rokicka, Legal Adviser,
- the Prezes Urzędu Ochrony Konkurencji i Konsumentów, by D. Sprzączkowska, Legal Adviser,
- the Polish Government, by B. Majczyna, M. Nowak and M. Kamejsza, acting as Agents,
- the European Commission, by G. Goddin, A. Szmytkowska and D. Roussanov, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 June 2016

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Article 6(1) and Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29), read in conjunction with Articles 1 and 2 of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers’ interests (OJ 2009 L 110, p. 30) (‘Directive 2009/22’), and Article 267 TFEU.

2 The request has been made in proceedings between Biuro podróży ‘Partner’ sp. z o.o. sp.k. w Dąbrowie Górniczej (‘Biuro Partner’) and Prezes Urząd Ochrony Konkurencji i Konsumentów (President of the Office of Competition and Consumer Protection, Poland) concerning the use by Biuro Partner of unlawful terms in its standard conditions of business.

Legal context

EU law

3 Article 3(3) of Directive 93/13 provides:

‘3. The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.’

4 Article 6(1) of that directive states:

‘1. 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 the same 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 Directive 93/13 provides:

‘Member States may adopt or retain the most stringent provisions compatible with the Treaty in the area covered by this Directive, to ensure a maximum degree of protection for the consumer.’

7 Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Directive 93/13 and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64) amended Directive 93/13 in order to require Member States to inform the Commission about the adoption of specific national provisions in certain areas.

8 Article 8a of Directive 93/13, inserted into that directive by Directive 2011/83 with effect from 13 June 2014, provides:

‘Where a Member State adopts provisions in accordance with Article 8, it shall inform the Commission thereof, as well as of any subsequent changes, in particular where those provisions:

...

– contain lists of contractual terms which shall be considered as unfair.

2. The Commission shall ensure that the information referred to in paragraph 1 is easily accessible to consumers and traders, inter alia, on a dedicated website.

...’

9 Article 1 of Directive 2009/22 defines its scope as follows:

‘1. The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to actions for an injunction referred to in Article 2 aimed at the protection of the collective interests of consumers included in the Directives listed in Annex I, with a view to ensuring the smooth functioning of the internal market.

2. For the purposes of this Directive, an infringement means any act contrary to the Directives listed in Annex I as transposed into the internal legal order of the Member States which harms the collective interests referred to in paragraph 1.’

10 Article 2 of that directive entitled ‘Actions for an injunction’, provides:

1. Member States shall designate the courts or administrative authorities competent to rule on proceedings commenced by qualified entities within the meaning of Article 3 seeking:

(a) an order with all due expediency, where appropriate by way of summary procedure, requiring the cessation or prohibition of any infringement;

(b) where appropriate, measures such as the publication of the decision, in full or in part, in such form as deemed adequate and/or the publication of a corrective statement with a view to eliminating the continuing effects of the infringement;

...’

11 Directive 93/13 is listed in point 5 of Annex I to Directive 2009/22, entitled ‘List of directives referred to in Article 1 of Directive 2009/22’.

Polish law

The Law on competition and consumer protection

12 Article 24 of the Ustawa o ochronie konkurencji i konsumentów (Law on competition and consumer protection) of 16 February 2007 (Dz. U. No 50, position 331), in the version applicable to the case in the main proceedings (‘the Law on competition and consumer protection’), is worded as follows:

‘1. Practices harming the collective interests of consumers shall be prohibited.

2. A practice harmful to the collective interests of consumers shall mean any unlawful conduct of a seller or supplier detrimental to such interests, in particular:

(1) the use of terms in standard conditions of business which have been entered in the register of terms in standard conditions of business which have been declared unlawful, referred to in Article 479⁴⁵ of the Ustawa — Kodeks postępowania cywilnego [Law establishing the Code of Civil Procedure] of 17 November 1964 (Dz. U., No 43, item 296, as amended);

...’

13 Article 106 of the Law on competition and consumer protection provides:

‘1. The President of the Office of Competition and Consumer Protection may impose on the seller or supplier, by means of a decision, a fine of up to 10% of the turnover generated in the financial year preceding the year in which the fine is imposed, where that seller or supplier, even if unintentionally:

...

(4) has employed a practice harmful to the collective interests of consumers, within the meaning of Article 24.

...’

The Code of Civil Procedure

14 Articles 398¹, 398³, 398⁹, 479⁴², 479⁴³ and 479⁴⁵ of the Law establishing the Code of Civil Procedure, in the version applicable to the case in the main proceedings (‘the Code of Civil Procedure’) provide:

‘Article 398¹

‘1. An appeal in cassation may be brought before the Sąd Najwyższy [(Supreme Court, Poland)] against a final judgment or order dismissing the action or ruling that there is no need to adjudicate closing the proceedings, in a case originating from a court of second instance, by a party, the Prokurator Generalny [Polish General Public Prosecutor], the Rzecznik Praw Obywatelskich [Commissioner for Civic Rights] or the Rzecznik Praw Dziecka [Commissioner for Children’s Rights], unless otherwise provided under a specific rule.

...

Article 398³

1. The appeal in cassation may be brought by a party on the basis of the following grounds:

- 1) infringement of the substantive law through misinterpretation or misapplication;
- 2) infringement of procedural rules, where the infringement may have a significant impact on the outcome of the case.

...

Article 398⁹

1. The Sąd Najwyższy [Supreme Court] shall grant leave to appeal in cassation on grounds of admissibility where:

- 1) the case involves a fundamental question of law;
- 2) it is necessary to interpret legal provisions raising serious doubts or giving rise to divergences in the case-law;
- 3) the proceedings are invalid; or
- 4) the appeal in cassation is clearly well-founded.

2. The Sąd Najwyższy [Supreme Court] shall decide in camera on the admissibility of the appeal in cassation. Written reasons for its decision need not be given.

...

Article 479⁴²

‘1. If the application is granted, the court shall, in the operative part of its judgment, reproduce the content of the terms contained in the standard conditions of business which have been declared unlawful and shall prohibit the use of those terms.’

...

Article 479⁴³

‘The final judgment shall produce its effects in relation to third parties once the term contained in the standard conditions of business which has been declared unlawful has been entered in the register referred to in Article 479⁴⁵(2).’

...

Article 479⁴⁵

- ‘1. The court shall forward to the [President of the Office of Competition and Consumer Protection] a copy of the final judgment granting the application.
2. The [President of the Office of Competition and Consumer Protection] shall maintain, on the basis of the judgments referred to in (1), the register of terms contained in general conditions of business which have been declared unlawful.
3. The register referred to in paragraph (2) shall be public.’

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

- 15 Biuro Partner is a Polish company engaged in the tourism services sector.
- 16 By a decision of 22 November 2011, the President of the Office of Competition and Consumer Protection found that Biuro Partner had used terms in its standard conditions of business which were considered equivalent to terms previously declared unlawful and then entered in the public register of unfair terms. According to the President of the Office of Competition and Consumer Protection, those terms used by Biuro Partner harmed the collective interests of consumers and justified the imposition of a fine of PLN 21 127 (Polish zlotys) (approximately EUR 6 400).
- 17 HK Zakład Usługowo Handlowy ‘Partner’ Sp. z o.o. (‘HK Partner’), which succeeded Biuro Partner, challenged the finding that the clauses used by the earlier company were equivalent to those entered in the aforementioned register.
- 18 By a judgment of 19 November 2013, before the Sąd Okręgowy w Warszawie — Sąd Ochrony Konkurencji i Konsumentów (Regional Court, Warsaw — Competition and Consumer Protection Court, Poland) dismissed Biuro Partner’s action brought against the decision of the President of the Office of Competition and Consumer Protection, upholding the President’s finding that the clauses were equivalent.
- 19 Biuro Partner appealed against that judgment before the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw, Poland).
- 20 The Sąd Apelacyjny w Warszawie has doubts as to the interpretation to be given of Directives 93/13 and 2009/22. It refers to the judgment of 26 April 2012, *Invitel* (C-472/10, EU:C:2012:242), in which the Court held, in essence, that the Court’s case-law that the effects of a judicial decision declaring unfair terms unlawful may be extended to all consumers having concluded a contract containing the same terms with the same seller or supplier, without their having to be a party to the proceedings brought against that seller or supplier. The referring court’s doubts concern in particular the

question whether that is also the case with regard to consumers having concluded a contract containing the same terms with a different seller or supplier who was not a party to the proceedings giving rise to the declaration that the terms in question were unfair.

21 In those circumstances, the Sąd Apelacyjny w Warszawie (Court of Appeal, Warsaw) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

1. In the light of Article 6(1) and Article 7 of [Directive 93/13], in conjunction with Articles 1 and 2 of [Directive 2009/22], can the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in the register of unlawful standard contract terms be regarded, in relation to another undertaking which was not a party to the proceedings culminating in the entry in the register of unlawful standard contract terms, as an unlawful act which, under national law, constitutes a practice which harms the collective interests of consumers and for that reason forms the basis for imposing a fine in national administrative proceedings?

2. In the light of the third paragraph of Article 267 TFEU, is a court of second instance, against the judgment of which on appeal it is possible to bring an appeal on a point of law, as provided for in the Code of Civil Procedure of the Republic of Poland, a court or tribunal against whose decisions there is no judicial remedy under national law, or is the Sąd Najwyższy (Supreme Court, Poland), which has jurisdiction to hear appeals on a point of law, such a court?

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 6(1) and Article 7 of Directive 93/13, read in conjunction with Articles 1 and 2 of Directive 2009/22, must be interpreted as precluding the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a register of such terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in the register of unlawful standard contract terms, as an unlawful act for which a fine may be imposed.

23 It should be noted, as a preliminary point, that both the referring court and the Commission, in its written observations, have expressed doubts as to the compatibility of a national scheme such as the one at issue in the main proceedings with the Charter of Fundamental Rights of the European Union ('the Charter') and, more specifically, with Article 47 thereof, in so far as the seller or supplier would not have the opportunity thereunder to present arguments about the lack of unfairness of the standard conditions of business in question and would thereby be deprived of its right to be heard.

24 According to the settled case-law of the Court, the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (judgment in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 19).

25 In the present case, it is apparent from the evidence in the case file submitted to the Court that the national scheme at issue in the main proceedings is the transposition of Directives 93/13 and 2009/22. Thus, the fine imposed on Biuro Partner under that scheme is an implementation of those directives. Therefore, the fundamental rights of the European Union legal order must be observed.

26 In the absence of a provision in Directives 93/13 and 2009/22 providing explicitly for a scheme of effective judicial protection for the seller or supplier, they must be interpreted in the light of Article 47 of the Charter.

27 It follows that the interpretation of Directives 93/13 and 2009/22 in the light of Article 47 of the Charter must take account of the fact that any person whose rights guaranteed by EU law might be infringed is entitled to an effective judicial remedy. This concerns not only consumers who feel that they have been wronged by an unfair term of a contract they have concluded with a seller or supplier, but also a seller or supplier, such as Biuro Partner, who argues that the contract term in dispute cannot be held to be unlawful and sanctioned by a fine solely because an equivalent term has been entered in the national registry of unlawful standard contract terms, without that seller or supplier having been a party to the proceedings culminating in the entry of such a term in that register.

28 It should further be observed that, 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 (judgment of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731, paragraph 17 and the case-law cited).

29 In the light of that weaker position, Article 6(1) of Directive 93/13 provides that unfair terms are not binding on the consumer. It is a mandatory provision which aims to replace the formal balance which the contract establishes between the rights and obligations of the parties with an effective balance which re-establishes equality between them (judgment of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731, paragraph 18 and the case-law cited).

30 Moreover, given the nature and significance of the public interest constituted by the protection of consumers, who are in a position of weakness vis-à-vis sellers or suppliers, Article 7(1) of Directive 93/13 requires 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 21 January 2015, *Unicaja Banco and Caixabank*, C-482/13, C-484/13, C-485/13 and C-487/13, EU:C:2015:21, paragraph 30 and the case-law cited).

31 That objective, consisting in putting an end to unlawful practices, is also pursued by the provisions of Directive 2009/22, which supplements the consumer protection laid down in Directive 93/13 by making available suitable procedural means for injunctive relief.

32 Within the framework set out in the preceding paragraphs, the Court is called upon to answer the first question put by the referring court.

33 It is apparent from the case file submitted to the Court and, in particular, the observations of the Polish Government, that the means deployed under Polish law, including the keeping of a national register of unlawful standard contract terms, are aimed at ensuring the best possible fulfilment of the consumer protection obligations provided for in Directives 93/13 and 2009/22.

34 The referring court describes that national register as pursuing three objectives, in order to enhance the effectiveness of the prohibition on the use of unfair contract terms.

35 First of all, the register, which is public in nature and may therefore be consulted by any consumer and by any seller or supplier, is intended to facilitate the circulation and reproduction of terms held to be unlawful by sellers or suppliers other than those who are the reason behind the entry of such terms in the register concerned. Next, that register contributes to the transparency of the consumer protection scheme under Polish law and, therefore, the ensuing legal certainty. Lastly, the register reinforces the proper functioning of the national judicial system, by avoiding multiplication of judicial proceedings involving similar standard contract terms used by those other sellers or suppliers.

36 With regards to such a register, firstly, it cannot be disputed that its establishment is compatible with EU law. It is apparent from the provisions of Directive 93/13, in particular Article 8 thereof, that the Member States may draw up lists of terms deemed to be unfair. Under Article 8a of that directive, as amended by Directive 2011/83, applicable to contracts concluded after 13 June 2014, the Member States are required to inform the Commission when such lists are drawn up. It follows from those provisions that those lists or registers drawn up by national departments are, as a rule, done so in the interest of consumer protection under Directive 93/13.

37 Secondly, it is apparent from Article 8 of Directive 93/13 that not only the establishment of a register such as the one instituted in the present case by the Office of Competition and Consumer Protection, but also the management of that register must comply with the requirements laid down in that directive and, more generally, in EU law.

38 It should be clarified in that regard that that register must be managed in a transparent manner in the interest not only of consumers, but also sellers or suppliers. That requirement implies *inter alia* that it must be structured in a clear manner, irrespective of the number of terms it contains.

39 Moreover, the terms contained in the register concerned must be current, which means that the register must be carefully kept up to date and that, in keeping with the principle of legal certainty, terms that are no longer needed are removed promptly.

40 Moreover under the principle of effective judicial protection, a seller or supplier on whom a fine is imposed due to the use of a term held to be equivalent to a term in the register concerned must, in particular, have the possibility of challenging that sanction. That right to a remedy must be able to challenge both the assessment of the conduct considered to be unlawful and the amount of the fine fixed by the competent national body, in this case the Office of Competition and Consumer Protection.

41 As regards that assessment, it is apparent from the file submitted to the Court that, under Polish law, the amount imposed on the seller or supplier is based on the finding that the term in dispute used by the seller or supplier is equivalent to a standard condition of business which has been declared unlawful and is included in the register kept by that office. In that regard the Polish system provides that the seller or supplier is entitled to challenge that equivalence before a specialized court, the Sąd Okręgowy w Warszawie — Sąd Ochrony Konkurencji i Konsumentów (Regional Court, Warsaw — Competition and Consumer Protection Court). That court has the specific task of monitoring standard conditions of business and, therefore, of maintaining uniformity of the case-law on consumer protection.

42 The evidence submitted to the Court indicates that the assessment made by the court having jurisdiction is not restricted to merely conducting a formal comparison of the terms examined with those included in the register concerned. On the contrary, that assessment consists in appraising the content of the terms in dispute, in order to determine whether, in the light of all the relevant circumstances specific to each case, those terms are materially identical to those included in the register, in the light of *inter alia* the effects they produce.

43 In the light of the foregoing considerations, the accuracy of which it is for the referring court to verify, it cannot be argued that a national scheme such as the one at issue in the main proceedings, disregards the rights of the defence of the seller or supplier or the principle of effective judicial protection.

44 Regarding the amount of the fine imposed, fixed by the Office of Competition and Consumer Protection, it should be remembered that, under Article 7(1) of Directive 93/13, Member States must 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.

45 Although the fixing of a fine due to use of a term that has been held to be unfair is undoubtedly one way of putting a stop to that use, it must nevertheless comply with the principle of proportionality. Thus, Member States must guarantee that any seller or supplier that believes that the fine imposed on it does not comply with that general

principle of EU law has the possibility of bringing proceedings to challenge the amount of the fine.

46 In the case in the main proceedings, it is for the referring court to verify if the Polish system in question confers on the seller or supplier on whom a fine has been imposed by the Office of Competition and Consumer Protection the right to bring proceedings in order to challenge the amount of that fine on grounds of non-compliance with the principle of proportionality.

47 In the light of all the foregoing considerations, the answer to the first question is that Article 6(1) and Article 7 of Directive 93/13, read in conjunction with Articles 1 and 2 of Directive 2009/22 and in the light of Article 47 of the Charter, must be interpreted as not precluding the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a national register of unlawful standard contract terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act, provided, which it is for the referring court to verify, that that seller or supplier has an effective judicial remedy against the decision declaring the terms compared to be equivalent in terms of the question whether, in the light of all relevant circumstances particular to each case, those terms are materially identical, having regard in particular to their harmful effects for consumers, and against the decision fixing the amount of the fine imposed, where applicable.

The second question

48 The second question concerns whether the referring court falls to be classified as ‘a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law’, within the meaning of the third paragraph of Article 267 TFEU.

49 It is apparent from the order for reference that that question is being asked because the categorisation of the appeal in cassation as an action within the meaning of the third paragraph of Article 267 TFEU is controversial.

50 In that context, the referring court observes that any infringement of EU law is considered a ground of appeal for the purposes Article 398³(1) of the Code of Civil Procedure. Referring to the Court’s case-law, the national court concludes that it is not among the courts referred to in the third paragraph of Article 267 TFEU, as there is a judicial remedy under national law against its decisions.

51 It should be borne in mind, as observed by both the Polish Government and the Commission, that in cases involving judicial remedy structures comparable to the one issue in the main proceedings, the Court has had the opportunity to interpret the concept of ‘court or tribunal against whose decisions there is no judicial remedy under national law’.

52 In those judgments, the Court has held that decisions of a national appellate court which can be challenged by the parties before a supreme court are not decisions of ‘a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law’ within the meaning of Article 267 TFEU. The fact that the examination of the merits of such challenges is conditional upon a preliminary declaration of admissibility by the supreme court does not have the effect of depriving the parties of a judicial remedy (judgment of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraph 76 and the case-law cited).

53 The Court further held that that is true a fortiori in the case of a procedural system that merely imposes restrictions with regard, in particular, to the nature of the pleas which may be raised before such a court, which must allege a breach of law (judgment of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraph 77).

54 In the light of that case-law relating to systems of judicial remedies under national law that are comparable to the one at issue in the case in the main proceedings, the answer to the second question is that the third paragraph of Article 267 TFEU must be interpreted as meaning that a court such as the referring court, whose decisions in proceedings such as those in the main proceedings may be the subject matter of an appeal in cassation, cannot be categorised as a ‘court or tribunal against whose decisions there is no judicial remedy under national law’.

Costs

55 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 (Fifth Chamber) hereby rules:

Article 6(1) and Article 7 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, read in conjunction with Articles 1 and 2 of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers’ interests and in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding the use of standard contract terms with content identical to that of terms which have been declared unlawful by a judicial decision having the force of law and which have been entered in a national register of unlawful standard contract terms from being regarded, in relation to another seller or supplier which was not a party to the proceedings culminating in the entry in that register, as an unlawful act, provided, which it is for the referring court to verify, that that seller or supplier has an effective judicial remedy against the decision declaring the terms compared to be equivalent in terms of the question whether, in the light of all relevant circumstances particular to each case, those terms are materially identical, having regard in particular to their harmful effects for consumers, and against the

decision fixing the amount of the fine imposed, where applicable. The third paragraph of Article 267 TFEU must be interpreted as meaning that a court such as the referring court, whose decisions in proceedings such as those in the main proceedings may be the subject matter of an appeal in cassation, cannot be categorised as a ‘court or tribunal against whose decisions there is no judicial remedy under national law’.

* Language of the case: Polish.
