ECLI:EU:C:2023:14

JUDGMENT OF THE COURT (Fourth Chamber)

12 January 2023 (*)

(Reference for a preliminary ruling – Unfair terms in consumer contracts – Directive 93/13/EEC – Contract for the provision of legal services concluded between a lawyer and a consumer – Article 4(2) – Assessment of the unfairness of contractual terms – Exclusion of terms relating to the main subject matter of the contract – Term providing for the payment of lawyers' fees on the basis of an hourly rate – Article 6(1) – Powers of the national court when dealing with a term considered to be 'unfair')

In Case C-395/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 23 June 2021, received at the Court on 28 June 2021, in the proceedings

D.V.

v

M.A.,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, L.S. Rossi, J.-C. Bonichot, S. Rodin and O. Spineanu-Matei (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– D.V., by A. Kakoškina, advokatė,

– the Lithuanian Government, by K. Dieninis, S. Grigonis and V. Kazlauskaitė-Švenčionienė, acting as Agents,

– the German Government, by J. Möller, U. Bartl and M. Hellmann, acting as Agents,

– the European Commission, by J. Jokubauskaitė and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 September 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1), Article 4(2), Article 6(1) and 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), as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 (OJ 2011 L 304, p. 64) (‘Directive 93/13’).

2 The request has been made in proceedings between D.V., a lawyer, and M.A., her client.

Legal context

European Union law

3 According to Article 3(1) of Directive 93/13:

‘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 4 of that directive states:

‘1. 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.

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

5 Under Article 5 of that directive:

‘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. …’

6 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.’

7 Article 7(1) of Directive 93/13 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.’

8 Article 8 of that directive is worded as follows:

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

Lithuanian law

The Civil Code

9 Under the heading ‘Unfair terms in consumer contracts’, Article 6.228[4] of Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas Nr. VIII-1864 (Law No VIII-1864 on the approval, entry into force and implementation of the Civil Code of the Republic of Lithuania) of 18 July 2000 (Žin., 2000, No 74-2262), in the version applicable to the dispute in the main proceedings (‘the Civil Code’), transposes Directive 93/13 into national law. Under that article:

‘…

2. Terms in consumer contracts which have not been individually negotiated by the parties and which, as a result of the breach of the requirement of good faith, cause a significant imbalance in the rights and obligations of the parties to the detriment of the consumer, shall be considered unfair.

…

6. Any written term in a consumer contract must be drafted in plain, intelligible language. Terms which fail to comply with that requirement shall be considered unfair.

7. Terms which define the subject matter of the consumer contract and terms which relate to the adequacy of the goods sold or of the services provided as against their price shall not be assessed with regard to unfairness, in so far as those terms are in plain intelligible language.

8. Where a court finds a term or terms of the contract to be unfair, that term or those terms shall be invalid as from the conclusion of the contract, and the remaining terms of the contract shall remain binding on the parties, provided that the contract is capable of continuing in existence after the removal of the unfair terms.’

Law No IX-2066 on the profession of lawyer

10 Article 50 of the Lietuvos Respublikos advokatūros įstatymas Nr. IX-2066 (Law of the Republic of Lithuania No IX-2066 on the profession of lawyer) of 18 March 2004 (Žin., 2004, No 50-1632), entitled 'Remuneration for the legal services provided by a lawyer', states:

'1. Clients shall pay the lawyer the fees agreed by contract for the legal services provided under the contract.

…

3. When determining 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 professional experience, the client's financial position and other relevant circumstances.'

The Order of 2 April 2004

11 Lietuvos Respublikos teisingumo ministro įsakymas Nr. 1R-85 „Dėl Rekomendacijų dėl civilinėse bylose priteistino užmokesčio už advokato ar advokato padėjėjo teikiamą teisinę pagalbą (paslaugas) maksimalaus dydžio patvirtinimo" (Order of the Minister for Justice of the Republic of Lithuania No 1R-85 approving the recommendations concerning the maximum amount of the fee for assistance provided by a lawyer (advokatas) or trainee lawyer to be awarded in civil cases), of 2 April 2004 (Žin., 2004, No 54-1845), in the version applicable as from 20 March 2015 ('the Order of 2 April 2004'), established recommendations concerning the maximum amount for the provision of legal services by a lawyer or trainee lawyer in civil cases. Those recommendations were approved by the Lithuanian Bar Association on 26 March 2004 and form the basis for applying the rules of the Code of Civil Procedure governing the awarding of costs.

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

12 During the period from 11 April to 29 August 2018, M.A., as a consumer, concluded five contracts for the provision of legal services for consideration with D.V., in her capacity as a lawyer, which are the following: on 11 April 2018, two contracts in civil cases relating, respectively, to joint ownership of assets and to the place of residence of minor children, the right of access and the amount of maintenance; on 12 April and 8 May 2018, two contracts concerning the representation of M.A. before the police and the public prosecutor's office of the district of Kaunas (Lithuania); and, on 29 August 2018, a contract for the purposes of defending M.A.'s interests in divorce proceedings.

13 Under Article 1 of each of those contracts, the lawyer undertook to provide consultations orally and/or in writing, to prepare drafts of legal documents, to perform a legal review of documents and to represent the client before various bodies when carrying out related actions.

14 In each of those contracts, the fees were fixed at EUR 100 'for each hour of consultation provided to the client or of provision of legal services' ('the term regarding cost'). The contracts stipulated that 'part of the fees indicated … shall be payable immediately upon presentation by the lawyer of a bill for legal services, taking into account the hours of consultation provided or of provision of legal services' ('the term regarding the payment arrangements').

15 In addition, M.A. paid advances on fees totalling EUR 5 600.

16 D.V. provided legal services between April and December 2018 and from January to March 2019, and issued bills for all the services provided on 21 and 26 March 2019.

17 When she did not receive all the fees claimed, on 10 April 2019, D.V. brought an action before the Kauno apylinkės teismas (District Court, Kaunas, Lithuania) seeking an order that M.A. pay the sum of EUR 9 900 in respect of the legal services performed and EUR 194.30 in respect of the expenses incurred in the performance of the contracts, plus annual interest amounting to 5% of the sums due, calculated from the date on which the action was brought until the date on which the judgment is fully enforced.

18 By decision of 5 March 2020, that court upheld D.V.'s application in part. It held that, under the contracts concluded, legal services had been provided for a total amount of EUR 12 900. However, it found the terms regarding the price in all five contracts to be unfair and reduced the fees claimed by half, setting them at EUR 6 450. Accordingly, the Kauno apylinkės teismas (District Court, Kaunas) ordered M.A. to pay EUR 1 044.33, taking into account the amount which had already been paid, together with interest at the rate of 5%, calculated from the date on which the action was brought until the judgment is fully enforced, and EUR 12 in respect of costs. D.V. was ordered to pay M.A. EUR 360 in respect of costs.

19 The appeal brought by D.V. on 30 April 2020 against that decision was dismissed by order of 15 June 2020 of the Kauno apygardos teismas (Regional Court, Kaunas, Lithuania).

20 On 10 September 2020, D.V. brought an appeal on a point of law against that order before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), the referring court.

21 That court is uncertain, in essence, about two issues: first, the requirement of transparency of terms relating to the main subject matter of contracts for the provision of legal services; and, second, the effects of a finding that a term setting the price of those services is unfair.

22 As regards the first of those issues, the referring court initially examines whether a term in a contract for the provision of legal services, which has not been individually negotiated and which relates to the price of those services and the methods of calculating it, such as the term regarding cost, falls within Article 4(2) of Directive 93/13.

23 Taking the view that that is the case, the referring court then examines the requirement of transparency, which a term relating to the main subject matter of the contract must satisfy in order to avoid an assessment of its unfairness. In that regard, the referring court states that, although the term regarding cost is grammatically clear, there is reasonable doubt as to whether it is intelligible, since the average consumer cannot understand the economic consequences of that term, even taking into account the other terms of the contracts concerned, namely the term regarding the payment arrangements, which does not provide for the furnishing by the lawyer of reports on the services provided or for the frequency of payment for those services.

24 The referring court recalls that, as is apparent from the Court's case-law, information, before concluding a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer, since it is on the basis of that information in particular that the consumer decides whether he or she wishes to be bound by the terms previously drawn up by the seller or supplier (judgment of 21 March 2013, *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraph 44).

25 While acknowledging the specific nature of the contracts at issue in the main proceedings and the difficulty of predicting the number of hours needed to provide legal services, the referring court asks whether it is reasonable to require a supplier to state an indicative price for those services and whether that information should be included in such contracts. It also raises the question whether

the lack of pre-contractual information could be compensated for during the performance of those contracts and whether the fact that the price becomes certain only after the representation provided by the lawyer in a specific case could be a useful factor in that analysis.

26 As regards the second of those issues, the referring court states that Article 6.228^4(6) of the Civil Code ensures a higher level of protection than that guaranteed by Directive 93/13, in so far as the lack of transparency of a contractual term is sufficient for it to be declared unfair, without it being necessary to examine the term in the light of Article 3(1) of that directive. The referring court is therefore uncertain as to the effects under EU law of a finding that a term is unfair.

27 In that regard, the referring court submits that the invalidity of the term regarding cost should entail the invalidity of the contracts for the provision of legal services and the restoration of the situation that the consumer would have been in if those terms had never existed. In the present case, that would lead to unjust enrichment on the part of the consumer and to an unfair situation vis-à-vis the supplier who has provided those services in full. In addition, that court asks whether any reduction in the cost for those services would undermine the deterrent effect pursued by Article 7(1) of Directive 93/13.

28 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must Article 4(2) of Directive 93/13 be interpreted as meaning that the words “the main subject matter of the contract” cover a term – which has not been individually negotiated and is in a contract for legal services concluded by a businessman (lawyer) and a consumer – concerning the cost and the way in which it is calculated?

(2) Must the reference in Article 4(2) of Directive 93/13 to the plainness and intelligibility of a contractual term be interpreted as meaning that it is sufficient to specify in the term in the contract regarding cost (which establishes the cost for services actually provided on the basis of an hourly rate) the amount of the hourly fee payable to the lawyer?

(3) If the answer to the second question is in the negative: must the requirement of transparency be interpreted as encompassing an obligation of the lawyer to indicate in the contract the cost of services the specific rates of which can be clearly defined and specified in advance, or must an indicative cost of the services (a preliminary budget for the legal services provided) also be specified, if it is impossible to predict the number (or duration) of specific actions, and the fee for them, when concluding the contract, and the possible risks leading to an increase or decrease in the cost be indicated? When assessing whether the contractual term regarding cost complies with the requirement of transparency, is it relevant whether information relating to the cost of legal services and the way in which it is calculated is provided to the consumer by any appropriate means or is laid down in the contract for legal services itself? Can a lack of information in pre-contractual relations be compensated for by providing information during the performance of the contract? Is the assessment of whether the contractual term complies with the requirement of transparency affected by the fact that the final cost of the legal services provided becomes clear only after their provision has come to an end? When assessing whether the contractual term regarding cost complies with the requirement of transparency, is it relevant that the contract does not stipulate the periodic provision of reports of the lawyer in respect of the services provided or the periodic presentation of bills to the consumer, which would allow the consumer to decide in good time on the refusal of legal services or a change of the contract price?

(4) If the national court decides that the contractual term establishing the cost for services actually provided on the basis of an hourly rate is not in plain intelligible language as required under Article 4(2) of Directive 93/13, must it examine whether that term is unfair within the meaning of Article 3(1) of that directive (that is to say, when examining whether the contractual term may be unfair, it must be established whether that term causes a "significant imbalance" in the rights and obligations of the parties to the contract, to the detriment of the consumer) or, … taking into account the fact that that term covers essential information under the contract, is the mere fact that the term regarding cost is not transparent sufficient for it to be found unfair?

(5) Does the fact that, when the contractual term regarding cost has been found to be unfair, the contract for legal services is not binding, as indicated in Article 6(1) of Directive 93/13, mean that it is necessary to restore the situation in which the consumer would have been in the absence of the term which has been found to be unfair? Would the restoration of such a situation mean that the consumer does not have the obligation to pay for the services already provided?

(6) If the nature of a contract for services provided for consideration means that it is impossible to restore the situation in which the consumer would have been in the absence of the term which has been found to be unfair (the services have already been provided), would the establishment of remuneration for the services provided by the lawyer be contrary to the objective of Article 7(1) of Directive 93/13? If the answer to this question is in the negative, would the real balance by which the equality of the parties to the contract is restored be achieved: (i) if the lawyer were paid for the services provided at the hourly rate specified in the contract; (ii) if the lawyer were paid the minimum cost of legal services (for example, that specified in a national legal measure, namely recommendations on the maximum amount of the fee for assistance provided by a lawyer); (iii) if the lawyer were paid a reasonable amount for the services [provided, at a level] that was determined by the court, regard being had to the complexity of the case, the lawyer's qualifications and experience, the client's financial situation and other relevant circumstances?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks, in essence, whether Article 4(2) of Directive 93/13 must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which has not been individually negotiated and which sets the cost of the services provided on the basis of an hourly rate, falls within the 'main subject matter of the contract' within the meaning of that provision.

30 In that regard, it must be recalled that Article 4(2) of Directive 93/13 lays down an exception to the mechanism for reviewing the substance of unfair terms, such as that provided for in the system of consumer protection put in place by that directive, and that that provision must therefore be interpreted strictly. Furthermore, the expression 'main subject matter of the contract' in that provision must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (see, to that effect, judgment of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 34 and the case-law cited).

31 As regards the category of contractual terms which fall within the concept of 'main subject matter of the contract', within the meaning of Article 4(2) of Directive 93/13, the Court has held that those terms must be understood as being those that lay down the essential obligations of the contract and, as such, characterise it. By contrast, terms ancillary to those that define the very

essence of the contractual relationship cannot fall within that concept of 'main subject matter of the contract' (see, inter alia, judgments of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraphs 35 and 36, and of 22 September 2022, *Vicente (Action for the recovery of lawyers' fees)*, C-335/21, EU:C:2022:720, paragraph 78).

32 In the present case, the term regarding cost relates to remuneration for legal services, which is based on an hourly rate. Such a term, which determines the principal's obligation to pay the lawyer's fees and sets out the price of those fees, is among the terms which define the very essence of the contractual relationship, a relationship which is specifically characterised by the provision of legal services for remuneration. It therefore falls within the 'main subject matter of the contract' within the meaning of Article 4(2) of Directive 93/13. The assessment of that term may, moreover, concern 'the adequacy of the price and remuneration, on the one hand, as against the services … supplied in exchange, on the other', within the meaning of that provision.

33 That interpretation applies irrespective of the fact, mentioned by the referring court in its first question referred for a preliminary ruling, that that term was not individually negotiated. Where a contractual term is among the terms which define the very essence of the contractual relationship, the above interpretation applies both where that term has been individually negotiated and where no such negotiation has taken place.

34 In the light of all the foregoing considerations, the answer to the first question is that Article 4(2) of Directive 93/13 must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the cost of the services provided on the basis of an hourly rate, is covered by that provision.

The second and third questions

35 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(2) of Directive 93/13 must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer which sets the price of those services on the basis of an hourly rate, without including any further details or information other than the hourly rate charged, meets the requirement of being drafted in plain intelligible language, within the meaning of that provision. If the answer is in the negative, the referring court asks what information is to be provided to the consumer in a situation where it proves impossible to predict the actual number of hours needed to provide the services which are the subject matter of the contract and whether the lack of such information in the pre-contractual relationship may be compensated for during the performance of that contract.

36 As regards, in the first place, the scope of the requirement of transparency of contractual terms, as is clear from Article 4(2) of Directive 93/13, the Court has ruled that that requirement, also set out in Article 5 thereof, cannot be reduced merely to those terms being formally and grammatically intelligible, but that, to the contrary, since the system of protection introduced by that directive is based on the idea that consumers are in a position of weakness vis-à-vis sellers or suppliers, in particular as regards their level of knowledge, that requirement, laid down by the directive, that the contractual terms are to be drafted in plain, intelligible language and, accordingly, that they be transparent, must be understood in a broad sense (see, to that effect, judgment of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraphs 46 and 50 and the case-law cited).

37 The requirement that a contractual term must be drafted in plain intelligible language is to be understood as requiring that the contract should set out transparently the specific functioning of the

mechanism to which the relevant term relates and, where appropriate, the relationship between that mechanism and the mechanism laid down by other terms, so that that consumer is in a position to evaluate, on the basis of clear, intelligible criteria, the economic consequences for him or her which derive from it (judgments of 20 September 2017, *Andriciuc and Others*, C-186/16, EU:C:2017:703, paragraph 45, and of 16 July 2020, *Caixabank and Banco Bilbao Vizcaya Argentaria*, C-224/19 and C-259/19, EU:C:2020:578, paragraph 67 and the case-law cited).

38 Consequently, the question whether a term such as that at issue in the main proceedings is 'plain and intelligible' for the purposes of Directive 93/13 must be carried out by the national court in the light of all the relevant facts. Specifically, it is for that court to ascertain, considering the circumstances surrounding the conclusion of the contract, whether all the information likely to have a bearing on the extent of his or her commitment has been communicated to the consumer, enabling the consumer to estimate the financial consequences thereof (see, to that effect, judgment of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 52 and the case-law cited).

39 As regards, in the second place, the time at which that information must be brought to the consumer's attention, the Court has held that providing information, before concluding such a contract, on the terms of the contract and the consequences of concluding it is of fundamental importance for a consumer. It is on the basis of that information in particular that the consumer decides whether he or she wishes to be bound by the terms drawn up in advance by the seller or supplier (judgment of 9 July 2020, *Ibercaja Banco*, C-452/18, EU:C:2020:536, paragraph 47 and the case-law cited).

40 In the present case, it must be observed that, as the referring court states, the term regarding cost merely states that the fees to be received by the supplier amount to EUR 100 for each hour of legal services provided. In the absence of any other information provided by the supplier, such a mechanism for determining the price does not enable an average consumer, who is reasonably well informed and reasonably observant and circumspect, to estimate the financial consequences of that term, that is to say, the total amount to be paid for those services.

41 Admittedly, given the nature of the services which are the subject matter of a contract for the provision of legal services, it is often difficult, if not impossible, for the supplier to predict, at the time the contract is concluded, the exact number of hours needed to provide such services and, consequently, the actual total cost of those hours.

42 Furthermore, the Court has held that compliance by a seller or supplier with the requirement of transparency laid down in Article 4(2) and Article 5 of Directive 93/13 must be assessed by reference to the information available to that seller or supplier on the date of conclusion of the contract with the consumer (judgment of 9 July 2020, *Ibercaja Banco*, C-452/18, EU:C:2020:536, paragraph 49).

43 However, although a seller or supplier cannot be required to inform the consumer of the final financial consequences of his or her commitment, which depend on future events which are unpredictable and beyond the control of that seller or supplier, the fact remains that the information which the seller or supplier is required to provide before the conclusion of the contract must enable the consumer to take a prudent decision in full knowledge of the possibility that such events may occur and of the consequences which they are likely to have with regard to the duration of the provision of legal services concerned.

44 That information, which may vary according to, on the one hand, the subject matter and nature of the services provided for in the contract for legal services and, on the other, the applicable rules of professional conduct, must include particulars that enable the consumer to assess the approximate total cost of those services. Such particulars might be an estimate of the expected number or minimum number of hours needed to provide a certain service, or a commitment to send, at reasonable intervals, bills or periodic reports indicating the number of hours worked. It is for the national court, as recalled in paragraph 38 of the present judgment, to assess, taking into account all the relevant factors surrounding the conclusion of that contract, whether the information provided by the seller or supplier before the conclusion of the contract enabled the consumer to take a prudent decision in full knowledge of the financial consequences of concluding the contract.

45 In the light of all the foregoing considerations, the answer to the second and third questions is that Article 4(2) of Directive 93/13 must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer which sets the price of those services on the basis of an hourly rate, without the consumer being provided, before the conclusion of the contract, with information that enables him or her to take a prudent decision in full knowledge of the economic consequences of concluding that contract, does not satisfy the requirement of being drafted in plain intelligible language, within the meaning of that provision.

The fourth question

46 By its fourth question, the referring court asks, in essence, whether Article 3(1) of Directive 93/13 must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the price of those services on the basis of an hourly rate and therefore falls within the main subject matter of that contract, must be considered unfair simply on the ground that it does not satisfy the requirement of transparency laid down in Article 4(2) of that directive.

47 In that regard, the Court has held, with regard to Article 5 of Directive 93/13, that the transparent nature of a contractual term is one of the elements to be taken into account in the assessment of whether that term is unfair, which is for the national court to carry out pursuant to Article 3(1) of that directive. In that context, it is for that court to assess, having regard to all the circumstances of the case, first, the possible failure to observe the requirement of good faith and, second, the possible existence of a significant imbalance to the detriment of the consumer within the meaning of that provision (judgment of 3 October 2019, *Kiss and CIB Bank*, C-621/17, EU:C:2019:820, paragraph 49 and the case-law cited).

48 As is apparent from the case-law cited in paragraph 36 of the present judgment, the requirement of transparency of contractual terms has the same scope under Article 4(2) of Directive 93/13 as under Article 5 thereof (see also, to that effect, judgment of 30 April 2014, *Kásler and Káslerné Rábai*, C-26/13, EU:C:2014:282, paragraph 69). Accordingly, the consequences of a lack of transparency of a contractual term should not be treated differently depending on whether it concerns the main subject matter of the contract or another aspect of it.

49 Although it is apparent from the case-law referred to in paragraph 47 above that the assessment of the unfair character of a term in a contract concluded with a consumer is based, in principle, on an overall assessment which does not take account solely of the possible lack of transparency of that term, the Court notes that it is open to the Member States to ensure, in accordance with Article 8 of Directive 93/13, a maximum degree of protection for the consumer.

50 In the present case, as is apparent from the order for reference and the observations submitted by the Lithuanian Government, the Republic of Lithuania has chosen to ensure a maximum degree of protection, in so far as Article 6.228^{4}(6) of the Civil Code provides that terms which fail to comply with the requirement of transparency are to be considered unfair.

51 In so far as the Member States remain free to provide, in their national law, for such a level of protection, Directive 93/13, without requiring that the lack of transparency of a term in a contract concluded with a consumer should automatically lead to a finding that it is unfair, does not preclude such a consequence from arising from national law.

52 In the light of all the foregoing considerations, the answer to the fourth question is that Article 3(1) of Directive 93/13 must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the price of those services on the basis of an hourly rate and therefore falls within the main subject matter of that contract, is not to be considered unfair simply on the ground that it does not satisfy the requirement of transparency laid down in Article 4(2) of that directive, unless the Member State whose national law applies to the contract in question has, in accordance with Article 8 of that directive, expressly provided for classification as an 'unfair term' simply on that ground.

The fifth and sixth questions

53 By its fifth and sixth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as precluding the national court, where a contract for the provision of legal services concluded between a lawyer and a consumer is not capable of continuing in existence after a term, found to be unfair, which sets the price of the services on the basis of an hourly rate has been removed and those services have already been provided, from deciding to restore the situation in which the consumer would have been in the absence of that term, even if, as a result, the seller or supplier does not receive any remuneration for the services provided, or from replacing that term with a provision of national law relating to the maximum rate of remuneration for the assistance provided by the lawyer or with its own assessment of what it considers to be a reasonable level of remuneration for those services.

54 In order to answer those questions, it should be recalled that, as is clear from the Court's case-law, a finding that a term in an agreement is unfair must allow the restoration of the legal and factual situation that the consumer would have been in if that unfair term had not existed (see, to that effect, judgment of 31 May 2018, *Sziber*, C-483/16, EU:C:2018:367, paragraph 34 and the case-law cited).

55 Under Article 6(1) of Directive 93/13, it is for the national court to exclude the application of unfair terms so that they do not produce binding effects with regard to the consumer, unless the consumer objects. However, the contract must continue in existence, in principle, without any amendment other than that resulting from the removal of the unfair terms, in so far as, in accordance with the rules of national law, such continuity of the contract is legally possible (judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 29 and the case-law cited).

56 Where a contract concluded between a seller or supplier and a consumer is not capable of continuing in existence following the removal of an unfair term, Article 6(1) of Directive 93/13 does not preclude the national court from removing, in accordance with the principles of contract law, the unfair term and replacing it with a supplementary provision of national law in cases where

the invalidity of the unfair term would require the court to annul the contract in its entirety, thereby exposing the consumer to particularly unfavourable consequences, so that the consumer would thus be penalised (judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 32 and the case-law cited).

57 In the present case, the referring court is uncertain as to the consequences to be drawn from any finding that the term regarding cost is unfair. That court considers, first, that the contracts at issue in the main proceedings are not capable of continuing in existence in the absence of that term and, second, that the situation in which the consumer would have been in the absence of that term cannot be restored, since the consumer has benefited from the legal services provided for in those contracts.

58 In that regard, it must be observed that, as is apparent from the case-law cited in paragraphs 54 to 56 of the present judgment, a finding that the term regarding cost is unfair entails the obligation on the national court to disapply it, unless the consumer objects. The restoration of the situation in which the consumer would have been in the absence of that term is reflected, in principle, even in the case where the services have been provided, in his or her exemption from the obligation to pay the fees established on the basis of that term.

59 Therefore, if the referring court were to take the view that, pursuant to the relevant provisions of national law, the contracts would not be capable of continuing in existence after the term regarding cost has been removed, Article 6(1) of Directive 93/13 does not preclude the invalidation of those contracts, even if, as a result, the seller or supplier does not receive any remuneration for the services provided.

60 It is only if the invalidation of contracts in their entirety would expose the consumer to particularly unfavourable consequences, so that the consumer would be penalised, that the referring court has the exceptional possibility of replacing an unfair term that has been annulled with a supplementary provision of national law or a provision of national law applied by mutual agreement of the parties to the contract in question.

61 As regards the consequences which annulment of the contracts at issue in the main proceedings could have for the consumer, the Court has held, in the case of a loan agreement, that annulment of the loan agreement in its entirety would, in principle, make the outstanding balance of the loan become due forthwith, which would be likely to be in excess of the consumer's financial capacities and could expose the consumer to particularly unfavourable consequences (see, to that effect, judgment of 3 March 2020, *Gómez del Moral Guasch*, C-125/18, EU:C:2020:138, paragraph 63 and the case-law cited). However, the particularly unfavourable nature of the annulment of a contract cannot be reduced solely to purely pecuniary consequences.

62 As the Advocate General points out in points 74 and 76 of his Opinion, it is possible that the annulment of a contract for the provision of legal services that have already been performed may place the consumer in a situation of legal uncertainty, in particular where national law allows the seller or supplier to claim remuneration for those services on a different basis from that of the annulled contract. Furthermore, also under the applicable national law, the invalidity of the contract could possibly affect the validity and effectiveness of the transactions conducted under it.

63 Consequently, if, in the light of the foregoing considerations, the referring court finds that the annulment of the contracts at issue in their entirety would expose the consumer to particularly unfavourable consequences, Article 6(1) of Directive 93/13 does not preclude that court from replacing the term regarding cost with a supplementary provision of national law or a provision of

national law applied by mutual agreement of the parties to those contracts. It is important, however, that such a provision is intended to apply specifically to contracts concluded between a seller or supplier and a consumer and is not so general in scope that its application would be tantamount to allowing the national court, in essence, to set, on the basis of its own estimate, the remuneration due for the services provided (see, to that effect, judgment of 8 September 2022, *D.B.P. and Others (Mortgage loans denominated in foreign currency)*, C-80/21 to C-82/21, EU:C:2022:646, paragraphs 76 and 77 and the case-law cited).

64 Provided that the Order of 2 April 2004, referred to in the order for reference, contains such a provision, which it is for the referring court to verify, that order could be used to replace the term regarding cost with remuneration set by the court.

65 By contrast, the referring court cannot supplement the contracts at issue in the main proceedings with its own estimate of a level of remuneration which it considers reasonable for the services provided.

66 As is clear from the Court's case-law, when the national court finds that an unfair term in a contract concluded between a seller or supplier and a consumer is void, that court cannot modify the contract by revising the content of that term (judgment of 25 November 2020, *Banca B.*, C-269/19, EU:C:2020:954, paragraph 30 and the case-law cited).

67 The Court has held that if it were open to the national court to revise the content of unfair terms included in such a contract, such a power would be liable to compromise attainment of the long-term objective of Article 7 of Directive 93/13. That power would contribute to eliminating the dissuasive effect on sellers or suppliers of the straightforward non-application with regard to the consumer of those unfair terms, in so far as those sellers or suppliers would still be tempted to use those terms in the knowledge that, even if they were declared invalid, the contract could nevertheless be modified, to the extent necessary, by the national court in such a way as to safeguard the interest of those sellers or suppliers (judgment of 18 November 2021, *A. S.A.*, C-212/20, EU:C:2021:934, paragraph 69 and the case-law cited).

68 In the light of all the foregoing considerations, the answer to the fifth and sixth questions is that Article 6(1) and Article 7(1) of Directive 93/13 must be interpreted as not precluding the national court, where a contract for the provision of legal services concluded between a lawyer and a consumer is not capable of continuing in existence after a term, found to be unfair, which sets the price of the services on the basis of an hourly rate has been removed and those services have already been provided, from restoring the situation in which the consumer would have been in the absence of that term, even if, as a result, the seller or supplier does not receive any remuneration for the services provided. If the invalidity of the contract in its entirety would expose the consumer to particularly unfavourable consequences, which it is for the referring court to ascertain, those provisions do not preclude the national court from remedying the invalidity of that term by replacing it with a supplementary provision of national law or a provision of national law applied by mutual agreement of the parties to that contract. On the other hand, those provisions preclude the national court from replacing the unfair term that has been annulled with a judicial assessment of the level of remuneration due for those services.

Costs

69 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 (Fourth Chamber) hereby rules:

1. **Article 4(2) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, as amended by Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011,**

must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the cost of the services provided on the basis of an hourly rate, is covered by that provision.

2. **Article 4(2) of Directive 93/13, as amended by Directive 2011/83,**

must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer which sets the price of those services on the basis of an hourly rate, without the consumer being provided, before the conclusion of the contract, with information that enables him or her to take a prudent decision in full knowledge of the economic consequences of concluding that contract, does not satisfy the requirement of being drafted in plain intelligible language, within the meaning of that provision.

3. **Article 3(1) of Directive 93/13, as amended by Directive 2011/83,**

must be interpreted as meaning that a term in a contract for the provision of legal services concluded between a lawyer and a consumer, which sets the price of those services on the basis of an hourly rate and therefore falls within the main subject matter of that contract, is not to be considered unfair simply on the ground that it does not satisfy the requirement of transparency laid down in Article 4(2) of that directive, as amended, unless the Member State whose national law applies to the contract in question has, in accordance with Article 8 of that directive, as amended, expressly provided for classification as an unfair term simply on that ground.

4. **Article 6(1) and Article 7(1) of Directive 93/13, as amended by Directive 2011/83,**

must be interpreted as not precluding the national court, where a contract for the provision of legal services concluded between a lawyer and a consumer is not capable of continuing in existence after a term, found to be unfair, which sets the price of the services on the basis of an hourly rate has been removed and those services have already been provided, from restoring the situation in which the consumer would have been in the absence of that term, even if, as a result, the seller or supplier does not receive any remuneration for the services provided. If the invalidity of the contract in its entirety would expose the consumer to particularly unfavourable consequences, which it is for the referring court to ascertain, those provisions do not preclude the national court from remedying the invalidity of that term by replacing it with a supplementary provision of national law or a provision of national law applied by mutual agreement of the parties to that contract. On the other hand, those provisions preclude the national court from replacing the unfair term that has been annulled with a judicial assessment of the level of remuneration due for those services.

[Signatures]

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* Language of the case: Lithuanian.