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Judgment of the Court in Case C-365/23 | [Arce] ¹

Consumer protection: a contractual term obliging a young sportsman to transfer part of his income if he becomes a professional athlete may be unfair

The national court must assess the unfairness of such a term by taking into account, in particular, whether or not that term is plain and intelligible as regards the financial consequences of the commitment

In 2009, a young sportsman of minor age, represented by his parents, concluded a contract with a Latvian undertaking which offers sportspersons a range of services for the development of their professional skills and careers. The purpose of that contract was to ensure that that young sportsman had a successful professional sporting career in the field of basketball. That contract, concluded for a duration of 15 years, provided for a whole range of services such as, inter alia, training under the supervision of specialists and sports medical services, psychological support and support in the field of marketing, legal services and accountancy.

In return, the young sportsman undertook, if he became a professional, to pay that undertaking remuneration amounting to 10% of all the net income from sports events, advertising, marketing and media linked to the sport concerned received over the course of that contract, provided that that income was at least € 1 500 per month. In view of the fact that the income generated by the young sportsman, who has since become a professional basketball player, as a result of the contracts signed with sports clubs, amounted to a total sum of more than € 16 million, he would be required to pay 10% of that amount to that undertaking, that is to say, more than € 1.6 million.

The case was brought before the Latvian courts, which considered the contractual term in question to be unfair. The undertaking concerned brought an appeal on a point of law before the Latvian Supreme Court, which decided to refer the matter to the Court of Justice. The Latvian Supreme Court wishes to ascertain whether the Directive on unfair terms in consumer contracts ² applies to the contract at issue and, if so, to what extent that directive precludes such a term.

In its judgment, the Court of Justice, first of all, confirms that **the Directive is indeed applicable** to this situation. The Court notes, however, that that directive provides that the assessment of the unfairness of a contractual term which has not been individually negotiated may relate neither to terms relating to the definition of the main subject matter of the contract nor to those relating to the adequacy of the price and remuneration, on the one hand, as against the services or goods supplied in exchange, on the other, in so far as those terms are in plain, intelligible language. A term such as that at issue in the present case falls within the scope of that exception, so that a national court may assess whether it is unfair only if it considers that it is not drafted **in plain, intelligible language**. However, national law may provide for a higher level of protection for consumers. Where that is the case, the national court can assess whether the term is unfair, even if it has been drafted in advance by the seller or supplier in plain, intelligible language.

As regards the question whether the term at issue is drafted in plain, intelligible language, the Court points out that

the directive also lays down a **requirement of transparency**. In that context, **the consumer must be provided with all the information necessary to enable him or her to assess the financial consequences of the commitment undertaken by him or her**, failing which that term cannot be regarded as having been drafted in plain, intelligible language.

The Court adds that such a term, which provides that a young sportsperson undertakes to pay 10% of the income received over the following 15 years, does not automatically create a significant imbalance between the parties. The existence of such an imbalance must be assessed in the light, in particular, of the rules applicable in national law in the absence of an agreement between the parties, fair and equitable market practices on the date of conclusion of the contract in the matter of remuneration in the field of sport concerned and all the circumstances attending the conclusion of that contract, as well as all the other terms of that contract or of another contract on which it is dependent. Furthermore, the fact that the consumer was a minor at the time that contract was concluded and that that contract was concluded by the minor's parents on behalf of the minor is relevant for the purposes of assessing whether that term is unfair.

The Court also states that a national court which has found that a term in a contract concluded between a seller or supplier and a consumer is unfair may not reduce the amount payable by the consumer to the extent of the costs actually incurred by the seller or supplier in the performance of that contract.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² [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.