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Judgment of the Court in Case C-395/21 | D.V. (Lawyers' fees – Principle of an hourly rate)

A term in a contract for the provision of legal services concluded between a lawyer and a consumer which sets the price on the basis of an hourly rate, without including any further details, does not satisfy the requirement of being drafted in plain intelligible language

The national court may restore the situation in which the consumer would have been in the absence of an unfair term, leaving the seller or supplier without any remuneration for the services provided

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. Each of those contracts provided that the fees were calculated on the basis of an hourly rate, fixed at €100 for each hour of consultation or of provision of legal services to M.A. D.V. provided legal services in 2018 and 2019 and issued bills for all the services provided in March 2019. When she did not receive all the fees claimed, D.V. brought an action before the Lithuanian court of first instance seeking an order that M.A. pay the sum of € 9 900 in respect of the legal services performed and € 194.30 in respect of the expenses incurred in the performance of the contracts. That court upheld D.V.'s application in part. The appeal brought by D.V. was dismissed by the appeal court. In 2020, D.V. brought an appeal on a point of law before the Supreme Court of Lithuania.

That court asks the Court of Justice how to interpret provisions of EU law ¹ intended to protect consumers from unfair contract terms, in particular with regard to the scope of the requirement that a term in a contract for the provision of legal services must be drafted in plain intelligible language and to the effects of a finding that a term setting the price of those services is unfair.

In its judgment delivered today, the Court states, first of all, that a term which determines the principal's obligation to pay the lawyer's fees and sets out the price of those fees falls within the concept of 'main subject matter of the contract'. Accordingly, **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 concept.**

As regards the scope of the requirement that a term in a contract for the provision of legal services must be drafted in plain intelligible language, the Court emphasises that, under EU law, that requirement must be understood in a broad sense. This requires that the contract should set out transparently the specific functioning of the mechanism to which the relevant term relates, 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. However, the Court observes that, 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

¹ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

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. 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. The Court notes that it is for the national court 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. The Court rules that **a term in a contract for the provision of legal services which sets the price on the basis of an hourly rate, without the consumer being provided beforehand 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 EU law.

With regard to the possible unfairness of such a term, the Court observes, in the light of its case-law, that it is for the national 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. 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. That being so, the Court notes that it is open to the Member States to ensure, in accordance with EU law, a maximum degree of protection for the consumer. With regard to the present case, the Court finds that a term in a contract for the provision of legal services which sets the price 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, unless national legislation expressly provides for classification as an unfair term simply on that ground.

As regards the consequences of a finding that a term regarding cost is unfair, the Court observes that the national court is under an obligation to disapply that term, unless the consumer objects. Where, pursuant to the relevant provisions of national law, a contract for the provision of legal services is not be capable of continuing in existence after the term regarding cost has been removed, Directive 93/13 does not preclude the invalidation of that contract, even if, as a result, the seller or supplier does not receive any remuneration for the services provided. However, the referring court has the exceptional possibility of replacing an unfair term that has been annulled with a supplementary provision of national law if the invalidation of contract in its entirety would expose the consumer to particularly unfavourable consequences.

In the light of those considerations, the Court rules that if the invalidity of the contract in its entirety would expose the consumer to particularly unfavourable consequences, EU law does 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. On the other hand, EU law precludes the national court from replacing the unfair term that has been annulled with a judicial assessment of the level of remuneration due for the services provided.

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 European Union law or the validity of a European Union 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.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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